

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

S U P E R I O R C O U R T
(Commercial Division)
(Sitting as a court designated pursuant to the
Bankruptcy and Insolvency Act (the "*BIA*"),
R.S.C. 1985, C. B-3)

No.: 500-11-052107-170/500-11-052108-178
500-11-052109-176/500-11-052106-172

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

FREEMARK APPAREL BRANDS ESP INC.

-and-

FREEMARK APPAREL BRANDS USA INC.

-and-

FREEMARK APPAREL BRANDS INC.

-and-

FREEMARK APPAREL BRANDS TEC
INC.

Debtors/Petitioners

-and-

RICHTER ADVISORY GROUP INC.

Trustee

MOTION FOR THE APPROVAL OF A JOINT PROPOSAL
(Sections 58 and seq. of the *Bankruptcy and Insolvency Act*)

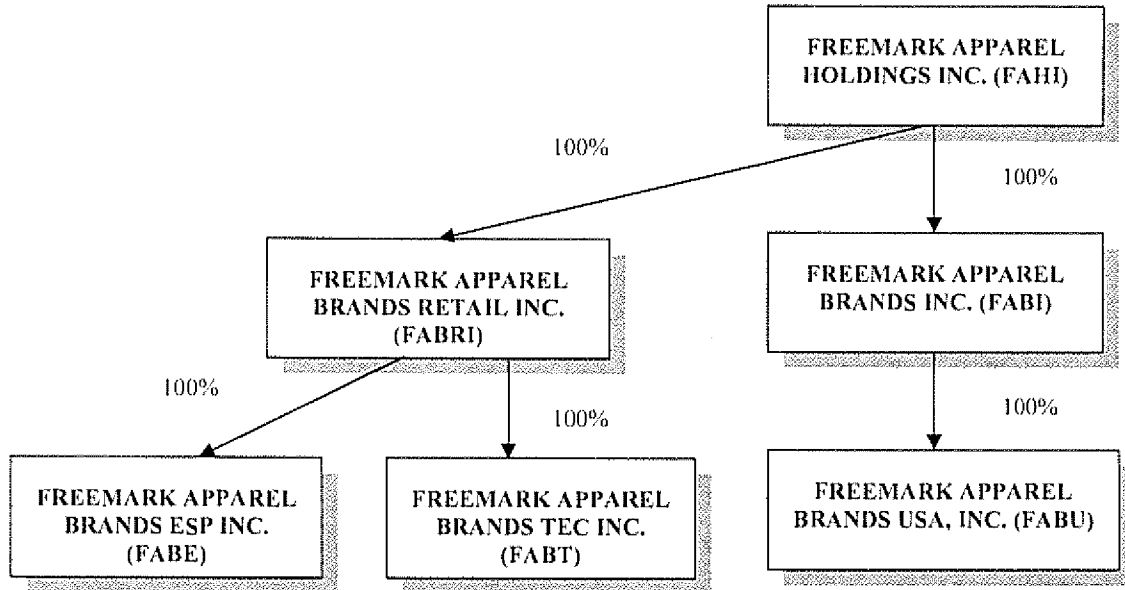
TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT OR TO THE REGISTRAR, SITTING IN COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF MONTRÉAL, THE PETITIONERS RESPECTFULLY SUBMIT THE FOLLOWING:

I. INTRODUCTION

1. By the present motion, Freemark Apparel Brands ESP Inc. ("**FABE**"), Freemark Apparel Brands USA, Inc. ("**FABU**"), Freemark Apparel Brands Inc. ("**FABI**") and Freemark Apparel Brands Tec Inc. ("**FABT**") and collectively with FABE, FABI and FABU, the "**Debtors**") seek the approval of a joint proposal filed on July 24, 2017 (the "**Proposal**"). Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Proposal.

II. FACTUAL & PROCEDURAL BACKGROUND

2. FABE with FABT are owned by Freemark Apparel Brands Retail Inc. (“FABRI”). FABRI is owned by Freemark Apparel Holdings Inc. (“FAHI”) which also own FABI which in turn owns FABU. FABI, FAHI, FABE, FABRI, FABT and FABU are collectively hereinafter defined as the “FAB Group”.
3. The FAB Group organizational chart can be represented as follows:



4. The FAB Group was a premier retailer of branded apparel, operating since 2004 (the “Business”). The Business can be described more fully as follows:
 - (i) FABE and FABT used to operate 58 retail locations throughout Canada under the following banners: Bench, Scotch & Soda, Esprit and Thread+Copper. FABT operated the Bench, Scotch & Soda and Thread+Copper stores while FABE operated the Esprit stores;
 - (ii) FABI operated the wholesale business of the FAB Group in Canada. FABI has long-standing relationships with The Bay, Simons, Winners, Saks Off 5th and many other retailers;
 - (iii) FABU operated the wholesale business of the FAB Group in the United States; and;
 - (iv) The FAB Group had licensing agreements for the following world class brands: Bench, Scotch & Soda, Esprit and Garcia.
5. On February 17, 2017, each of the Debtors filed a notice of intention to make a proposal (the “Notices”) and Richter Advisory Group Inc. (“Richter” or the “Trustee”) was appointed trustee to the Notices.

6. On February 23, 2017, this Court allowed the joint administration of the Notices of all the Debtors, the whole as it appears from this Court's record. Therefore, this motion is filed in file 500-11-052107-170 (FABI), but also applies to files number 500-11-052108-178 (FABU), 500-11-052109-176 (FABT) and 500-11-052106-172 (FABE). In said order, the Court also allowed the Debtors to file a joint proposal.
7. On or around February 28, 2017, the Debtors disclaimed, in accordance with section 65.11 *BIA*, 31 leases of underperforming stores.
8. On March 9, 2017, this Court issued a vesting order in accordance with section 65.13 *BIA* pursuant to which FABI and FABT sold the Business that relates to the Scotch and Soda brand (the "**S&S Transaction**"), the whole as it appears from this Court's record.
9. On March 16, 2017, the Debtors presented a *First Motion for an Extension of Time to File a Proposal* which was granted by this Court.
10. On the same day, this Court granted an *Order Authorizing a Sale and Investment Solicitation Process*, the whole as it appears from this Court's record.
11. The milestones provided for in the *Sale and Investment Solicitation Process* (the "**SISP**") were subsequently amended with the consent of Richter and HSBC Bank (the "**Bank**"), the Debtors' first ranking secured creditor, and the deadline to close the transaction(s) was extended to May 19, 2017.
12. On April 27, 2017, in furtherance to the SISP, the Debtors presented a *Second Motion for an Extension of Time to File a Proposal* which was granted by this Court.
13. On May 16, 2017, this Court issued a vesting order in accordance with section 65.13 *BIA* pursuant to which all the business of the Debtors, save for the assets already sold pursuant to the S&S Transaction, was sold (the "**Transaction**"), the whole as it appears from this Court's record.
14. The material terms of the Transaction were, *inter alia*, as follows:
 - (i) the purchase price was the aggregate amount of (a) the entire indebtedness of the Debtors towards the Bank as at the Closing Date (b) the entire indebtedness of the Debtors towards FAHL, the second ranking secured creditor, as at the Closing Date and (c) certain assumed liabilities which included only obligations which were incurred and became due after the filing of the Notices (save and except for obligations incurred and/or accrued prior to the date of the filing of the Notices in respect of employees which are being assumed by the Purchaser) (collectively, the "**Assumed Liabilities**");
 - (ii) the purchased assets had to be free of all liens or other encumbrances;
 - (iii) the purchased assets had to be sold on an "as is, where is" basis;
 - (iv) the purchaser did not assume any liabilities of the Debtors other than the Assumed Liabilities (which included, amongst other, all post filings liabilities); and

- (vii) the Transaction had to close by no later than May 19, 2017.
15. On May 19, 2017, the Transaction closed, as scheduled. Pursuant to the closing of the Transaction, the Debtors had no assets left.
 16. On June 9, 2017, the Debtors presented a *Third Motion for an Extension of Time to File a Proposal* which was granted by this Court.
 17. On July 24, 2017, the Debtors filed the Proposal to their creditors with the Official Receiver, as it appears from a copy of said Proposal produced herewith as **Exhibit R-1**. Said Proposal is financed by the shareholder of the Debtors, FAHI, given that the Debtors don't have assets or operations.
 18. On or around July 28, 2017, the Trustee sent its report on the proposal to the creditors, as it appears from a copy of such report produced herewith as **Exhibit R-2**.
 19. On August 14, 2017, the meeting of the creditors was duly held at the Trustee's office (the "**Meeting**"), as it appears from a copy of the *Notice of Proposal to Creditors* produced herewith as **Exhibit R-3** (the "**Notice to Creditors**").
 20. At the Meeting, the creditors voted by a majority of 97.98% in number representing 99.81% of the value of all voted unsecured claims to accept the Proposal as appears from the minutes of the said meeting produced herewith as **Exhibit R-4**.
 21. The table below summarizes the result of the vote:

	Number		Value	
	Number	%	\$	%
For	97	97.98%	16,765,964.42	99.81
Against	2	2.02%	32,659.80	0.19

22. The Trustee sent a notice of the hearing of this motion, within the prescribed delay to the Debtors, to the Official Receiver and to every known creditor, as it appears from a copy of the Notice to Creditors.
23. The Trustee is of the view that the terms of the Proposal (Exhibit R-1) are reasonable and will benefit the general body of the creditors, as appears from a copy of its report produced herewith as **Exhibit R-5**.
24. Indeed, in the event of a bankruptcy of the Debtors, the creditors would have received nothing from the estate.

III. THE TERMS OF THE PROPOSAL

25. The Proposal (Exhibit R-1) provides, *inter alia*, for the following:
 - (a.) FAHI will remit to the Trustee an amount of \$225,000 which shall be used to create the Shareholder's Contribution which will be used for distribution to the

Subsequent Creditors, the Secured Creditors (if any), the Preferred Creditors and then the Unsecured Creditors in full and final settlement of their Claims against the Debtors.

- (b.) The Shareholder's Contribution will be distributed in the following order:
- (i) in payment of the Subsequent Claims, if any;
 - (ii) in payment of the Secured Claims, if any;
 - (iii) in payment of all Proven Claims of the Preferred Claims;
 - (iv) in payment of the Unsecured Claims, without interest, as follows:
 - i. the lesser of a) the amount of the Proven Claim of each such Unsecured Creditor and b) \$1,000 (the "**First Level Distribution**") which amount (subject to any required reserves for disputed claims) shall be received within sixty (60) days after the Approval for all Unsecured Creditors other than Employee Creditors and fifteen (15) days after receipt by the Trustee of the required governmental confirmation with respect of Employee Creditors;
 - ii. an amount equal to each Unsecured Creditor's pro rata share of any amount remaining in the Shareholder's Contribution after distribution of the First Level Distribution amounts (subject to any required reserves for disputed claims) (the "**Second Level Distribution**"), paid within sixty (60) days after the Approval for all Unsecured Creditors other than Employee Creditors and fifteen (15) days after receipt by the Trustee of the required governmental confirmation in respect of Employee Creditors only.
26. Without the Shareholder's Contribution made voluntarily, it would not have been possible for the Debtors to file a proposal and the creditors would have had no recovery from the estate.
27. The Proposal is fair and reasonable and in the best interest of the creditors.
28. Given the circumstances, and the necessity to make the distribution in due time and to avoid difficulties, the Order to be rendered should be executory notwithstanding appeal.
29. The present motion is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

- [1] **GRANT** the present *Motion for the Approval of a Joint Proposal*;
- [2] **APPROVE** the Proposal (Exhibit R-1) filed on July 24, 2017 and, upon delivery of a certificate of full performance in accordance with section 65.3 of the *Bankruptcy and Insolvency Act* (the "**BIA**"), **GIVE** full effect to sections 10 and 11 of the Proposal (Exhibit R-1);

- [3] **REQUEST** the aid and recognition of any court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order;
- [4] **ORDER** the provisional execution of the Order to be rendered notwithstanding any appeal;

THE WHOLE, without costs, except in case of contestation and then with costs against any and all opposing party.

MONTREAL, August 16, 2017

Davies Ward Phillips & Vineberg LLP
DAVIES WARD PHILLIPS & VINEBERG LLP
Attorneys for the Debtors.

AFFIDAVIT

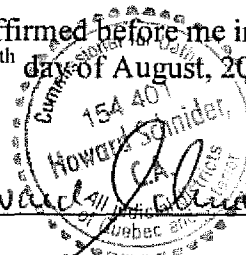

I, the undersigned, Michael Routtenberg, director of the Debtors, having a place of business at 5640 Paré Street in the City of Mont-Royal, Québec, solemnly declare the following:

1. I am a director of the Debtors/Petitioners herein and I am duly authorized for the purposes hereof;
2. I have taken cognizance of the attached *Motion for the Approval of a Joint Proposal*;
3. All the facts alleged in the said motion are true.

AND I HAVE SIGNED



Solemnly affirmed before me in Montreal
on the 16th day of August, 2017

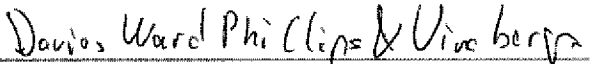
NOTICE OF PRESENTATION

TO THE SERVICE LIST

TAKE NOTICE that the *Motion for the Approval of a Joint Proposal* will be presented for hearing and allowance at 8:45 a.m. on August 21, 2017 in room 16.10 in the Montréal Courthouse, located at 1 Notre-Dame Street East, in the City of Montréal, Province of Québec, or so soon thereafter as Counsel may be heard.

DO GOVERN YOURSELF ACCORDINGLY.

MONTRÉAL, August 16, 2017



DAVIES WARD PHILLIPS & VINEBERG LLP
Attorneys for the Debtors

Nos. 500-11-052107-170 / 500-11-052106-172
500-11-052109-176 / 500-11-052108-178
SUPERIOR COURT
Commercial Division/District of Montréal

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

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FREEMARK APPAREL BRANDS INC.
FREEMARK APPAREL BRANDS TEC INC.**

Debtors/Petitioners

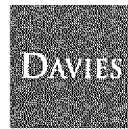
- and -

RICHTER ADVISORY GROUP INC.

Trustee

**MOTION FOR THE APPROVAL OF A JOINT
PROPOSAL, AFFIDAVIT AND NOTICE OF
PRESENTATION**

ORIGINAL



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