

[UNOFFICIAL TRANSLATION]

SUPERIOR COURT

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

NO: 500-11-022070-037

DATE: MAY 21, 2004

THE HONORABLE CLÉMENT GASCON, J.S.C., PRESIDING

**IN THE MATTER OF THE PLAN OF ARRANGEMENT
WITH THE CREDITORS OF:**

**LES BOUTIQUES SAN FRANCISCO INCORPORÉES,
AND
LES AILES DE LA MODE INCORPORÉES,
AND
LES ÉDITIONS SAN FRANCISCO INCORPORÉES,**

Petitioners

AND

RSM RICHTER INC.,

Monitor

JUDGEMENT

**RESPECTING A MOTION TO ESTABLISH THE PROCEDURE FOR FILING
CLAIMS, TO DETERMINE A CLAIMS BAR DATE AND FOR THE HOLDING OF
THE CREDITORS' MEETING (PROCEDURE 126)**

[1] **CONSIDERING** the motion, the affidavit and the exhibits in support thereof;

- [2] **CONSIDERING** the necessity, in relation to sections 4, 5 and 9 of the CCAA to issue orders for :
- (a) allowing the Monitor to determine the time and place to hold a creditors' meeting;
 - (b) establishing the procedure to file and assess claims;
 - (c) determining a bar date to file the claims;
 - (d) approving a procedure to solicit proxies for the exercise of voting right at the creditors' meeting;
 - (e) establishing the procedure applicable at this meeting;
- [3] **CONSIDERING** that although some delays in the motion are short, it appears inappropriate to extend them, given the interest of all concerned parties that the procedure be performed quickly, and the Tribunal having in any event the required discretion, as the case may be, to correct the injustices which may reasonably result therefrom;
- [4] **FOR THESE REASONS**, the Tribunal:
- [5] **GRANTS** the Motion;
- [6] **DISPENSES** the Petitioners from service of this Motion and any notice or delay for presentation;
- [7] **ORDERS** that for the purpose of the present judgment, the following terms have the meanings hereinbelow ascribed:
- (f) "**Business Day**" means a day, other than Saturday or Sunday, on which chartered banks are generally open for business in Montréal, Province of Québec;
 - (g) "**CCAA**" means the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended from time to time;
 - (h) "**Claim**" means the entitlement of any Person with regard to any of the Petitioners with respect to any debt, liability or obligation whatsoever of the Petitioners towards that Person, which entitlement is existing on the Determination Date (or thereafter, insofar as the Plan applies to and affects any such Claim) and any interest then accrued, regardless of whether the aforementioned indebtedness, liability or obligation is liquid or not, determinate or contingent, due or not yet due, contested or uncontested, legal, in equity, secured or unsecured, present, future, known or unknown, guaranteed or secured and regardless of whether or not such debt, liability or obligation is executory, including, but without limiting the generality of the foregoing, the entitlement or legal capacity of any Person to

submit a Claim for contribution or indemnity or otherwise, with regard to any matter, action, cause or right of action, present or future, based in whole or in part on facts existing before or on the Determination Date (with the exception of Claims based on, or related to, facts occurring after the Determination Date, and that are affected by the Plan); including, specifically, any (i) secured claim (ii) Crown claim (iii) unsecured claim, (iv) or any other claim that would constitute a provable claim in bankruptcy had the Petitioners become bankrupt on the Determination Date. A Claim does not include a Non-qualifying Obligation. Notwithstanding the foregoing, a Claim includes any demand or Claim arising from, or related to, the termination, rescission or cancellation of Terminated Contracts and any Claim of a Dismissed Employee for anything other than Wages. A Claim does not include any interest accrued after the Determination Date, or any costs, unless expressly provided for in the Plan;

- (i) "**Court**" means the Superior Court of Québec (sitting in commercial division) in the District of Montréal, the Court of Appeal of Québec and, where applicable, the Supreme Court of Canada;
- (j) "**Creditor**" means any Person with a Claim and may, if the context so requires, mean an assignee, trustee, mandatary or any other Person acting on behalf of the Creditor. The term "Creditor" does not include a Non-qualifying Creditor;
- (k) "**Creditors' Meeting**" means the meeting of creditors' convened to consider the Plan and vote thereon in accordance with the CCAA, as well as any adjournment, postponement or continuation of such meeting;
- (l) "**Claims Bar Date**" means 5:00 p.m. (Eastern Daylight Saving Time) on June 30, 2004 or any later date as may be ordered by this Court, or thirty (30) days following the date of termination or rescission of a Terminated Contract where notice of termination or rescission is given less than 30 days before June 30, 2004;
- (m) "**Determination Date**" means December 17, 2003;
- (n) "**Dismissed Employee**" means a Person who, on the Determination Date was an employee of any of the Petitioners and/or who provided services as an employee at the request of any of the Petitioners and whose position was terminated or whose contract of services was rescinded after the Determination Date;
- (o) "**Effective Date**" means the later of the following dates:
 - i) the first Business Day after the day on which the period for leave to appeal a Confirmation Order has expired without an appeal having been instituted, or if appeal proceedings or a Motion for leave to appeal has

- been instituted, the first day after the day on which a decision that has become final is rendered;
- ii) the day following the date on which all conditions for implementing the Plan, as set forth therein, have been duly satisfied or waived in writing;
- (p) "**Employee**" means a Person who, on the Determination Date, was an employee of any of the Petitioners and/or who provided services as an employee at the request of any of the Petitioners;
 - (q) "**Information Document**" means a set of documents that shall include a Notice to Creditors of the Claims Bar Date, a Proof of Claim Form, a copy of the Information Sheet, a copy of the Order to be rendered and any other information that the Monitor may consider appropriate or advisable to include;
 - (r) "**Information Sheet**" means the Information Sheet prepared by the Monitor and sent to the Creditors as part of the Information Documents regarding the preparation of a Proof of Claim by a Creditor;
 - (s) "**Initial Order**" means the Initial Order rendered on December 17, 2003 by the Honorable Clément Gascon, J.S.C., as may from time to time be amended, reformulated or modified;
 - (t) "**Interim Creditor**" means any Person who has provided or will provide services, goods, materials or supplies or who has advanced or will advance funds to the Petitioners in the Interim Period, but solely in respect of their Claims pertaining to such services rendered, goods, materials or supplies delivered or funds advanced during the Interim Period, but excludes Employees with Job-related Claims and Creditors with Claims arising from Terminated Contracts in respect of any Claim arising, resulting or derived from, or which is directly or indirectly related to, such termination or rescission;
 - (u) "**Interim Period**" means the period between the Determination Date and the Effective Date;
 - (v) "**Monitor**" means RSM Richter Inc. (previously known as Richter et Associés inc.) acting as the Court-appointed Monitor of the Petitioners;
 - (w) "**Non-qualifying Creditor**" means a Person with a Claim who is not contemplated by the Plan to be filed, for the purposes of that Claim, including a Non-qualifying Obligation. Should a Creditor have both a Qualifying Claim and a Non-qualifying Claim, that Person will be considered a Creditor for the qualifying portion of its Claim and a Non-qualifying Creditor for the non-qualifying portion;

- (x) "**Non-qualifying Obligation**" means an obligation of the Petitioners pertaining to an Interim Creditor or an Employee with a Claim for Wages;
- (y) "**Notice to Creditors**" means the notice to Creditors of the Claims Bar Date, which notice shall be transmitted to the Creditors and published as stipulated in paragraph 15 hereof;
- (z) "**Person**" means any individual, natural or legal person, association of persons, including, without limiting the generality of the foregoing, the meaning of the word "Person" as defined in subsection 2 (1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3;
- (aa) "**Petitioners**" means Les Boutiques San Francisco Incorporées, Les Ailes de la Mode Incorporées and Les Éditions San Francisco Incorporées;
- (bb) "**Plan**" means the plan or plans of compromise or of arrangement to be filed by the Petitioners pursuant to the CCAA, as amended, modified or revised;
- (cc) "**Proof of Claim**" means a proof of Claim filed by a Qualifying Creditor in accordance with the order pertaining to claims, according to the Proof of Claim Form detailing its Claim and duly supported by a statement of account, invoice or affidavit;
- (dd) "**Proof of Claim Form**" means the form prepared by the Monitor for the filing of Proofs of Claim by Creditors;
- (ee) "**Proved Claim**" means the amount of a Creditor's Claim definitively determined, in accordance with the provisions of the orders set forth herein, the CCAA and any other order rendered by the Court;
- (ff) "**Rejection Notice**" means the notice sent by the Monitor to a Creditor advising it that the Monitor has revised or rejected, in whole or in part, the Creditor's Claim or a part thereof;
- (gg) "**Terminated Contract**" means any contract, agreement or undertaking, written or verbal, to which one or more Petitioners is a party or pursuant to which the assets of one or more Petitioners are affected or committed and (i) which has been terminated or rescinded by any Petitioner pursuant to the amended Initial Order or (ii) which is the subject of a notice of termination or rescission by any Petitioner after December 17, 2003 at 12:01 p.m.;
- (hh) "**Wages**" means any salary, wages or similar remuneration payable as of or after the Determination Date, but excludes any severance pay, termination notice, damages, bonus or other form of monetary compensation or indemnity other than

that specifically provided for in the *Labour Standards Act*, R.S.Q. N-1.1 and the *Employment Standards Act*, 2000, S.O. chapter 41;

A) FILING AND ASSESSMENT OF CLAIMS

1) Role of the Monitor under the Claims Procedure

[8] **ORDERS** that in addition to the rights and obligations prescribed under the CCAA and pursuant to the Initial Order, the Monitor with the assistance of the Petitioners as required, assume responsibility for administering the procedure for filing Claims described herein, including determining Creditors' Claims, as requested from time to time by the Petitioners, and that the Monitor is mandated and authorized to take all actions and fulfill all roles provided for in the orders contained herein;

2) Notice to Creditors

[9] **ORDERS** the Monitor to do the following:

- (a) send a copy of the Information Documents (Exhibit R-1) by regular mail to all known Creditors as soon as possible, but, in any event, before 11:59 p.m. (Eastern Daylight Saving Time) on May 28, 2004;
- (b) publish the Notice to Creditors (Exhibit R-2) once in each of the following newspapers on or before June 7, 2004, the *Globe and Mail* (national edition); *The Gazette* (in English); and *La Presse* (in French); and
- (c) send a copy of the Information Documents by regular mail, by courier, facsimile machine or electronic mail, as soon as possible following the receipt of a Motion request, to any Person claiming the status of Creditor and requesting such information;

3) Filing Proofs of Claim

[10] **ORDERS** that any Person who alleges he has a Claim must file a Proof of Claim with the Monitor, on or before the Claims Bar Date;

[11] **ORDERS** that subject to paragraph 12 and 13 or to an order of the Tribunal to the contrary, a Creditor who fails to comply with paragraph 10 hereof, with the result that the Monitor does not receive the Creditor's Proof of Claim on or before the Claims Bar Date:

- a) shall forever be deprived of the right to assert or enforce any Claim against the Petitioners or to demand any payment from them;
- b) shall not be entitled to any further notice; and

- c) shall not participate as a Creditor in these proceedings;
- d) shall not receive any distribution in respect of any such Claim;

4) **Proof of Claim Form**

- [12] **ORDERS** that the following Claims are excluded from the Claims filing process and that they are not affected by the orders contained herein:
- (a) The claims of the Monitor, of the Petitioners and of their Counsel for costs and fees referred to in the charge established by section 65 of the Initial Order;
 - (b) The Claims of the Officers and Directors of the Petitioners and covered by the charge established by section 55 of the Initial Order;
 - (c) Any claim thus determined under the Plan;
- [13] **ORDERS** that the Monitor be mandated and authorized to use its reasonable discretion regarding the adequacy of compliance with the drafting procedure and mode of transmission of Proofs of Claim and that the Monitor may, if it is satisfied that the Claim is properly proved, waive the requirements stipulated herein regarding the drafting of Proofs of Claim;
- [14] **ORDERS** that any Claim in foreign currency shall, for the purposes hereof, be converted into Canadian dollars and shall be considered an obligation in Canadian dollars, and the exchange rate shall be calculated according to the rate of exchange applied by the Bank of Canada, at twelve noon, Montréal time, as at the Determination Date;
- 5) **Assessment of Claims**
- [15] **ORDERS** the Monitor, with the assistance of the Petitioners, where applicable, to review each Proof of Claim received before the Claims Bar Date, and to accept, revise or reject in whole or in part the amount claimed for the purpose of voting and/or receiving a distribution under the Plan;
- 6) **Rejection Notice**
- [16] **ORDERS** that should the Monitor, after consultation with the Petitioners, where applicable, contest the Claim alleged in a Proof of Claim, the Monitor may, with the Petitioners, attempt to resolve the Claim with the Creditor and/or send a Rejection Notice to the Creditor;
- [17] **ORDERS** that should the Monitor not send a Rejection Notice, the Creditor's Proof of Claim shall be deemed accepted as final and binding for the purpose of receiving a distribution under the Plan, subject to any later Order of this Court;

7) Appeal

- [18] **ORDERS** that any Creditor who wishes to contest a Rejection Notice may file an appeal with this Court within five (5) Business Days of receiving the Rejection Notice by serving the Monitor with a Motion presentable on a date to be fixed by the Court, and by filing the aforesaid Motion in the Court. If no appeal is filed within that period, the partial or total revision of the Claim shall become final and executory;

8) Service and Notice

- [19] **ORDERS** that the Monitor may send the Information Documents, any letter, notice or other documents to the Creditors or to any other Person (determined at the discretion of the Monitor) by sending certified copies by regular mail, courier, personal delivery, facsimile machine or electronic mail to such Person at his last known address recorded in the books and records of the Petitioners, and that any such service or notice by courier, personal delivery, facsimile machine or electronic mail is deemed to have been served or delivered on the Business Day following the date it was sent, or if sent by regular mail, the third (3rd) Business Day after mailing to an address in the Province of Québec, the fifth (5th) Business Day after mailing to an address outside Québec but in Canada, and the sixth (6th) Business Day after mailing to an address outside Canada;
- [20] **ORDERS** that any notice or other communication (including without limitation the Proofs of Claim) to be given hereunder by a Creditor to the Monitor shall be in writing substantially in the form provided for hereunder, where applicable, and will not be regarded as validly sent unless sent by registered mail, courier, personal delivery, facsimile machine or electronic mail to the following address:

RSM RICHTER INC., in its capacity as
Court-appointed Monitor of Les Boutiques San
Francisco Incorporées, Les Ailes de la Mode
Incorporées and Les Éditions San Francisco
Incorporées
Attention: Mr. Benoit Gingues
2 Alexis-Nihon Plaza, 22nd floor
Montréal, Québec H3Z 3C2
Telephone: (514) 934-3514
Fax: (514) 934-3504
e-mail: bgingues@richter.ca

Any such notice or other communication sent by a Creditor shall be deemed to be received the same day during business hours if sent on a Business Day or, if received outside business hours, the following Business Day and the Creditor has the burden of establishing the date the Monitor received any such notice or communication;

[21] **ORDERS** that in the event of a postal strike or other interruption of postal service during period in which notices or other communications are given hereunder, notices or other communications sent by regular mail but not received shall be valid subject to an order to the contrary issued by this Court, and any notice or other communication shall be valid only if the notice or the communication is sent by courier, personal delivery, facsimile machine or electronic mail in accordance herewith;

9) **Miscellaneous**

- [22] **ORDERS** that this judgement and the filing of any Claim shall be without prejudice to the position of any Person (including notably the Petitioners and the Monitor) regarding the existence, validity or interpretation of any Claim, including whether or not the Claim is governed by the Plan to be filed;
- [23] **ORDERS** that notwithstanding any other provision hereof, the solicitation of Proofs of Claim by the Monitor or the Petitioners and the filing by a Creditor of a Proof of Claim shall not, by virtue of that fact, provide to any Person any entitlement whatsoever under the Plan;
- [24] **ORDERS** that no order contained herein may be deemed to be a division of Claims into distinct classes, and that the establishment of classes of Creditors for voting purposes and for receiving distributions shall be subject to the terms of the Plan or of a later order of this Court;
- [25] **ORDERS** that as long as the Plan is not approved by this Court, the Claims Bar Date shall be without effect regarding any subsequent proceedings or distribution concerning Creditors' Claims;

B) CREDITORS' MEETING

- [26] **ORDERS** that the Creditors' Meeting be held in Montréal for the purpose of assessing and voting on the Plan, for all Creditors together or for each class of Creditors separately, as shall be provided for in the Plan, the whole on a date to be determined by the Monitor but no later than 15 days following the mailing of a notice convening the meeting;
- [27] **ORDERS** that the holding of the Creditors' Meeting shall be governed by the following procedure:

- (a) After consultation with the Petitioners, the Monitor shall determine the date, time and place of the Creditors' Meeting, which, subject to any later order, shall be held no later than July 6, 2004 provided that a Plan is filed by the Petitioners no later than June 7, 2004, to give effect to the May 10, 2004 private investment offer;
- (b) The Monitor shall send notice of the Creditors' Meeting to all known Creditors for the purpose of approving the Plan, along with a copy of Plan, the form of proxy and a votation letter, and shall publish a notice, as set forth in paragraph 27b) hereof;
- (c) The Creditors' Meeting shall be held by the Monitor and all Proofs of Claim shall be filed in accordance with the terms hereof;
- (d) A representative of the Monitor shall chair the Creditors' Meeting and shall decide any question concerning the holding, adjournment, postponement, or continuation of the Creditors' Meeting. A Creditor may file an appeal of any such decision before the Court within five (5) days thereof;
- (e) The only Persons who may attend the Creditors' Meeting are those Persons, including proxy-holders, entitled to vote at the Creditors' Meeting and their attorneys, and the officers, directors, auditors and attorneys of the Petitioners; any other Person may be admitted by invitation of the Chairman of the Creditors' Meeting or with the unanimous consent of the Creditors at the Creditors' Meeting;
- (f) A Creditor shall be entitled to attend the Creditors' Meeting and vote in person or by proxy if, before the Claims Bar Date, the Creditor files a Proof of Claim with the Monitor (accompanied by a statement of account, invoice or affidavit in support of its Claim) acceptable to the Monitor;
- (g) A Creditor who is not present or who is not represented by a proxy at the Meeting of its class of Creditors shall vote on the Plan by filing with the Monitor, before the commencement of the Creditors' Meeting, a duly completed votation letter indicating its vote, failing which, it shall not be entitled to vote;
- (h) A Creditor entitled to vote shall be entitled to a number of votes equal to the dollar value of its Claim as accepted by the Monitor or otherwise determined by the Court;

[28] **ORDERS** that, in addition to any power or obligation under the CCAA, the Monitor is authorized to do the following:

- (a) At least ten (10) days before the Creditors' Meeting, send to all known Creditors of the Petitioners a copy of the Plan to be submitted to the Creditors, along with a

- notice of meeting, a form of proxy and a votation letter, by prepaid regular mail, courier, personal delivery, facsimile machine or electronic mail;
- (b) At least ten (10) days before the holding of the Creditors' Meeting, publish a Notice to Creditors concerning the Creditors' Meeting in the following newspapers: the national edition of the Globe and Mail; The Gazette (in English); and La Presse (in French);
 - (c) Act as Chairman of the Creditors' Meeting and decide any issue or dispute at the meeting, with any Creditor being able to appeal such a decision within five (5) days thereof;
 - (d) Prepare the Information Documents and any other document that is useful or necessary to the procedure surrounding the filing Proofs of Claim and the Creditors' Meeting;
 - (e) Subject to the Claims Bar Date, allow each Creditor with a Claim to attend the Creditors' Meeting and to vote in person or by proxy if the Creditor files its Proof of Claim with the Monitor;
 - (f) Upon receipt of a duly completed Proof of Claim accompanied with a statement of account in proper form, an invoice or affidavit, the Monitor, jointly with the Petitioners and in accordance with the Initial Order, shall allow, revise or reject, the amount of the Claim in whole or in part, as established for voting purposes. As regards the Creditor's contestation of any such determination, the resolution of any such dispute or of any other related matter, the Petitioners, the Monitor and the Creditors shall follow the procedure established in the Orders and the Plan. The amount of a Creditor's Claim thus determined prior to the Creditors' Meeting shall be the Proved Claim for voting purposes. Should the aforementioned determination not be completed before the holding of the Creditors' Meeting, the Monitor, in accordance with the Initial Order and the Plan, and the Order to be rendered in this Motion shall determine the admissibility, in whole or in part, of the aforementioned Proofs of Claim. The determination by the Monitor, acting in concert with the Petitioner, shall be the Claim admitted for voting purposes.
 - (g) Hold a vote of Creditors at the Creditors' Meeting and record the results thereof;
 - (h) File and present to the Court any proceedings, motion or other application, that may be necessary or appropriate, or that the Monitor believes is appropriate or necessary, concerning the following:
 - i) the affairs of the Petitioners;
 - ii) the Plan;

- iii) the determination of any right of the Petitioners or of its Creditors, other contracting parties or shareholders;
 - iv) any directive, instruction or assistance that it may require from this Court; or
 - v) any other matter it believes to be necessary or appropriate;
- (i) With the consent of the Petitioners, to retain the services of any professional required or desired including, without limiting the generality of the foregoing, an accountant, attorney or notary;
 - (j) Delegate, where required or necessary, to any Person duly qualified in the opinion of the Monitor, the powers listed herein provided that the Monitor remains responsible as provided for in any Order;
 - (k) Obtain any information from a Petitioner that it considers useful concerning changes in its financial situation and the progress of its restructuring plan;
 - (l) Make any payment under the Plan;
 - (m) Sign any instrument, contract or agreement or do whatever may be necessary to give full effect to the Plan;
 - (n) Assist the Petitioners in their discussions with their Creditors, shareholders or any other party;
 - (o) Assist the Petitioners in negotiating and settling Creditors' Claims;
 - (p) File or object to any Claim or proceedings concerning the assets of the Petitioners, after consulting the Petitioners;
 - (q) Certify copies as true copies of the Order to be rendered herein and any modification or renewal thereof or any other order;
 - (r) Send notices of stay of proceedings, as if it were a trustee in bankruptcy, concerning any judicial, administrative or other proceedings or claim;
 - (s) Do anything or enter into any agreement whatsoever to protect the Petitioners, their assets, their Creditors or to give effect to the Plan; and
 - (t) Exercise all the powers of a trustee pursuant to a notice of intention or a proposal under the *Bankruptcy and Insolvency Act* for the purpose of assisting the Petitioners in filing and implementing the Plan;

C) GENERAL

- [29] **RESERVES** the right of the Petitioners and of the Monitor to file any Motion to amend proceedings pertaining to the filing and assessment of the Claims;
- [30] **RESERVES** the right of the Petitioners and of the Monitor, as the case may be, to file any Motion to determine the date of the Creditors' Meeting;
- [31] **RESERVES** the right of the Petitioners and of the Monitor to file any Motion to amend proceedings pertaining to the Creditors' Meeting;
- [32] **RESERVES** the right of the Petitioners and of the Monitor to file any Motion to expand, modify or clarify the Monitor's powers and obligations;
- [33] **DECLARES** the notices of presentation of this Motion to be valid and sufficient;
- [34] **ORDERS** provisional execution of any order notwithstanding appeal;
- [35] **REQUESTS** the assistance and recognition of any court or judicial, regulatory or administrative body, of any province or territory of Canada (including the assistance of any court in Canada pursuant to section 17 of the CCAA), the Federal Court of Canada and any judicial, regulatory or administrative tribunal, or other court created by the Parliament of Canada or the legislature of any province, for the purpose of assisting this Court in executing the terms of the Order;
- [36] **THE WHOLE** without costs.

CLÉMENT GASCON, J.S.C.