

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Estate/Court File No. 31-2363758

Estate/Court File No. 31-2363759

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF JONES CANADA, INC., A CORPORATION WITH A HEAD OFFICE IN THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO, AND NINE WEST CANADA LP, A PARTNERSHIP WITH A HEAD OFFICE IN THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO**

**Applicants**

**MOTION RECORD**

**(Re: Extension of Proposal Period et al.)  
(Returnable August 2, 2018)**

July 27, 2018

**STIKEMAN ELLIOTT LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

**Elizabeth Pillon** LSUC#: 35638M  
Tel: (416) 869-5623  
Email: lpillon@stikeman.com

**Maria Konyukhova** LSUC #:52880V  
Tel: (416) 869-5230  
Email: mkonyukhova@stikeman.com

**Sanja Sopic** LSUC#: 66487P  
Tel: (416) 869-6825  
Email: ssopic@stikeman.com  
Fax: (416) 947-0866

**Lawyers for the Applicants**

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TAB 1

1

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

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**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF JONES CANADA, INC., A CORPORATION WITH A HEAD OFFICE IN THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO, AND NINE WEST CANADA LP, A PARTNERSHIP WITH A HEAD OFFICE IN THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO**

**Applicants**

**NOTICE OF MOTION  
(Returnable August 2, 2018)  
(Re Extension of Proposal Period et al.)**

Nine West Canada LP (“**NW Canada LP**”) and Jones Canada, Inc. (“**Jones Canada**”, and together with NW Canada LP, the “**NW Canada Entities**” or the “**Applicants**”), will make a motion to a judge presiding over the Commercial List on August 2, 2018 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 (the “**Extension Order**”), substantially in the form of the draft order located at tab 3 of the Motion Record:
  - (a) extending the time for each of the Applicants to file a proposal (the “**Proposal Period**”) under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) until September 17, 2018;

- (b) approving the fees and disbursements of Richter Advisory Group Inc. in its capacity as Proposal Trustee in connection with the Notices of Intention to Make a Proposal filed by the NW Canada Entities (the "**Proposal Trustee**") for the period from June 3, 2018 to July 20, 2018 and those of the Proposal Trustee's counsel, Aird & Berlis LLP ("**Aird & Berlis**"), for the period from June 11, 2018 to July 17, 2018 (collectively, the "**Fees**"); and
- (c) approving the Third Report of the Proposal Trustee dated July 27, 2018 (the "**Third Report**") as well as the activities, actions and conduct of the Proposal Trustee set out therein.

**THE GROUNDS FOR THE MOTION ARE:**

**Background**

2. The NW Canada Entities were wholesalers and retailers of Nine West brand footwear and accessories in Canada. The NW Canada Entities were also the exclusive wholesalers of various brands of women's apparel, jewellery, handbags and women's footwear in Canada. The NW Canada Entities are indirect wholly-owned subsidiaries of U.S. parent companies whose ultimate parent is Jasper Parent LLC (the "**NW U.S. Entities**", and, collectively with the NW Canada Entities, the "**NW Entities**");
3. On April 6, 2018, restructuring proceedings were commenced in respect of the NW Canada Entities and the NW U.S. Entities. Each of the NW Canada Entities filed a Notice of Intention to File a Proposal ("**NOI**") under the BIA (the "**Proposal Proceedings**"). As part of the filing of the NOIs, Richter was appointed as the Proposal Trustee in the Proposal Proceedings. The NW U.S. Entities also filed for protection under Chapter 11 of the U.S. Bankruptcy Code (the "**Chapter 11 Proceedings**"). The Proposal Proceedings and Chapter 11 Proceedings are independent processes;
4. Prior to the commencement of the Chapter 11 Proceedings, the NW U.S. Entities undertook a comprehensive marketing process of their Nine West and Bandolino brands to potential strategic and financial buyers. These efforts did not generate interest in the NW Canada Entities' assets but resulted in an asset purchase agreement dated April 5, 2018 between

certain of the NW U.S. Entities and certain entities affiliated with Authentic Brands Group LLC (“**ABG**”) and Marc Fisher as operating partner, which provides for those entities to purchase the intellectual property associated with the Nine West and Bandolino brands and certain inventory;

5. On May 5, 2018, the United States Bankruptcy Court for the District of Delaware (the “**US Court**”) approved bidding procedures in the Chapter 11 Proceedings with respect to the assets of the Nine West, Bandolino, and associated brands. The NW U.S. Entities received one bid prior to the bid deadline. Following an auction, ABG was determined to be the successful bidder with an increased purchase price. The sale of the NW U.S. Entities’ assets to ABG closed on July 3, 2018;

6. On April 11, 2018, Justice Hainey granted an order (the “**Liquidation Process Order**”), which, among other things, approved sale guidelines governing the conduct of liquidations in the retail locations, and approved a consulting agreement (the “**Consulting Agreement**”) between the NW Canada Entities and SB360 Capital Partners LLC (the “**Consultant**”), setting out the terms of the engagement of the Consultant to assist the NW Canada Entities in carrying out the liquidation;

7. On April 11, 2018, Justice Hainey also granted an order (the “**Administration Order**”), which, among other things, extended the Proposal Period to June 20, 2018, approved the substantive and procedural consolidation of the NW Canada Entities’ Proposal Proceedings, and approved certain court-ordered charges. On June 19, 2018, Justice Hainey granted an order extending the Proposal Period to August 3, 2018;

#### **Progress of the Liquidation Sales and Store Closures**

8. Liquidation sales commenced on April 14, 2018, and were completed by June 30, 2018. The NW Canada Entities have vacated all of their retail locations;

9. The majority of wholesale inventory was sold through the NW Canada Entities’ customary wholesale channels, and the remainder was included in the liquidation sales at the closing stores;

10. Net recoveries from the liquidation sales have exceeded projections. Additional information regarding the liquidation sales is contained in the Third Report;

11. The Consulting Agreement contemplates a final settlement with respect to the reimbursable costs and fees of the Consultant. The NW Entities have reviewed and approved the Consultant's final settlement and the recovery of the NW Canada Entities' deposit, net of any amounts owed to the Consultant, is anticipated prior to the end of July 2018;

#### **Store Closures and Contract Disclaimers**

12. At the commencement of the Proposal Proceedings, the NW Canada Entities operated 35 retail locations across Canada, of which 22 were located in Ontario. Since the commencement of the liquidation sales at the NW Canada Entities' retail locations, lease disclaimer notices have been delivered (as necessary) with respect to all retail 35 stores, effective on or before June 30, 2018;

13. As of July 26, 2018, the NW Canada Entities have disclaimed nearly all contracts to which they were a party pursuant to notices to disclaim agreements which were delivered pursuant to the BIA;

14. The NW Canada Entities anticipate delivering the few remaining disclaimers as they complete the wind down of their operations. A few contractual counterparties were holding deposits, which the NW Canada Entities are working on recovering in conjunction with the Proposal Trustee;

15. As of July 26, 2018, no counterparty to a disclaimed lease or disclaimed contract has disputed the NW Canada Entities' disclaimer or termination of the relevant agreement;

#### **Employees**

16. At the commencement of the Proposal Proceedings, Nine West Canada LP employed approximately 332 people, of whom 225 were employed on a part-time basis, and all of whom were non-unionized. Of these employees, approximately 35 made up senior management and administrative office positions and 295 were retail sales staff;



17. As the liquidation sales progressed, the NW Canada Entities sent notices of termination to all retail and head office employees. With the exception of 7 head office employees who were necessary to assist in concluding the orderly wind down of operations, the employment of all retail and head office employees was terminated on or before June 30, 2018;

18. As of the date of the within motion, the NW Canada Entities sent notices of termination to the seven head office employees who were assisting with the wind down of operations, effective on or before August 17, 2018;

19. All terminated employees will receive their wages, benefits and accrued vacation to the date of termination, and may have a claim in the Proposal Proceedings for any severance obligations;

#### **Approval of the Third Report and the Fees**

20. The Proposal Trustee has reported on its activities since the date of its previous report in its Third Report;

21. The Proposal Trustee and Aird & Berlis have maintained detailed records of their professional time and costs, as detailed in the affidavits of Adam Sherman and Ian Aversa appended to the Third Report;

22. The Proposal Trustee is seeking approval of its fees and disbursements for the period from June 3, 2018 to July 20, 2018 and those of its counsel Aird & Berlis for the period from June 11, 2018 to July 17, 2018 in connection with the performance of their duties in the Proposal Proceedings;

#### **Stay Extension**

23. Since April 14, 2018, the NW Canada Entities, the Consultant, the Proposal Trustee and their advisors have been working together to carry out the liquidation sales, address employee, supplier, customer and other stakeholder issues, and otherwise advance the Proposal Proceedings;

24. The NW Canada Entities have prepared a draft form of proposal to their creditors based on the available proceeds and asset monetization achieved following the completion of the liquidation sales;

25. The NW Canada Entities engaged in discussions with their largest stakeholder, the NW U.S. Entities, regarding the quantification of the NW U.S. Entities' secured and unsecured claims and the terms of the NW Canada Entities' proposal, including treatment of related claims and structuring the proposal in a tax efficient manner. The discussions did not progress as quickly as was anticipated, in part, due to the NW U.S. Entities' own insolvency proceedings and the closing of the sale transaction with respect to the NW U.S. Entities' assets. The NW U.S. Entities are currently considering the tax and other consequences of the NW Canada Entities' draft proposal;

26. A 45-day extension of the Proposal Period would give the NW Canada Entities the time needed to: conclude their efforts to monetize their remaining assets and recovery of remaining receivables, continue discussions with their largest stakeholders regarding limiting the claims pool to maximize recovery and structuring their proposal in a tax efficient manner, and to complete their proposal for consideration of the NW Canada Entities' creditors. At this time, the NW Canada Entities anticipate being in a position to file a proposal in advance of the expiration of the proposed extension of the Proposal Proceedings to September 17, 2018;

27. No creditors of the NW Canada Entities would be prejudiced by this extension. The cashflow statement prepared by the NW Canada Entities with assistance from the Proposal Trustee shows that the Applicants will have sufficient liquidity to complete the wind-down of the NW Canada Entities' operations and finalize the proposal during the requested stay extension;

#### **General**

28. Sections 50.4 (9) and 69.1 of the BIA and the other provisions of the BIA;

29. Rules 1.04, 1.05, 2.03, 3.02 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and

30. Such further grounds as counsel may advise and this Court may see fit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the <sup>7</sup>  
motion:

1. The Schipani Affidavit sworn July 26, 2018, and the exhibits attached thereto;
2. The Third Report; and
3. Such further and other materials as counsel may advise and this Court may permit.

July 27, 2018

**STIKEMAN ELLIOTT LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

**Elizabeth Pillon** LSUC#: 35638M  
Tel: (416) 869-5623  
Email: [lpillon@stikeman.com](mailto:lpillon@stikeman.com)

**Maria Konyukhova** LSUC#: 52880V  
Tel: (416) 869-5230  
Email: [mkonyukhova@stikeman.com](mailto:mkonyukhova@stikeman.com)

**Sanja Sopic** LSUC#: 66487P  
Tel: (416) 869-6825  
Email: [ssopic@stikeman.com](mailto:ssopic@stikeman.com)  
Fax: (416) 947-0866

**Lawyers for the Applicants**

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF JONES CANADA, INC., A CORPORATION WITH A HEAD OFFICE IN THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO, AND NINE WEST CANADA LP, A PARTNERSHIP WITH A HEAD OFFICE IN THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO

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**ONTARIO**  
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**(COMMERCIAL LIST)**  
Proceeding commenced at Toronto

**NOTICE OF MOTION**  
**(Re Extension of Proposal Period et al.)**

**Stikeman Elliott LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

**Elizabeth Pillon** LSUC#: 35638M  
Tel: (416) 869-5623  
Email: [lpillon@stikeman.com](mailto:lpillon@stikeman.com)

**Maria Konyukhova** LSUC#: 52880V  
Tel: (416) 869-5230  
Email: [mkonyukhova@stikeman.com](mailto:mkonyukhova@stikeman.com)

**Sanja Sopic** LSUC#: 66487P  
Tel: (416) 869-6825  
Email: [ssopic@stikeman.com](mailto:ssopic@stikeman.com)  
Fax: (416) 947-0866

**Lawyers for the Applicants**

# TAB 2

ONTARIO  
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IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF JONES CANADA, INC., A CORPORATION WITH A HEAD OFFICE IN THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO, AND NINE WEST CANADA LP, A PARTNERSHIP WITH A HEAD OFFICE IN THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO

Applicants

AFFIDAVIT OF RALPH SCHIPANI  
(Sworn July 26, 2018)

I, RALPH SCHIPANI, of the City of New York, in the State of New York, MAKE OATH AND SAY:

1. I am the President of the applicants, Jones Canada, Inc. ("**Jones Canada**") and Nine West Canada LP ("**NW Canada LP**", and together with Jones Canada, the "**NW Canada Entities**" or the "**Applicants**"). I am also Interim Chief Executive Officer of Nine West Holdings, Inc. and certain of its affiliates and subsidiaries, which are referred to herein as the NW U.S. Entities and further described below.

2. As a result of my roles with the NW Canada Entities, I have knowledge of the matters to which I hereinafter depose. I have also reviewed the books and records of the NW Canada Entities and have spoken with certain of the directors, officers and/or employees of the NW Canada Entities, as necessary and applicable, and where I have relied upon such information, I have set forth the source and believe such information to be true.

3. This affidavit is sworn in support of a motion sought by the NW Canada Entities seeking an Order (the "**Extension Order**") extending the time for each of the Applicants to file a proposal (the "**Proposal Period**") under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") to September 17, 2018.

## BACKGROUND

4. The NW Canada Entities were wholesalers and retailers of Nine West brand footwear and accessories in Canada. The NW Canada Entities were also the exclusive wholesalers of various brands of women's jewellery, handbags and women's footwear in Canada. The NW Canada Entities are indirect wholly-owned subsidiaries of U.S. parent companies whose ultimate parent is Jasper Parent LLC (collectively, the "NW U.S. Entities", and, together with the NW Canada Entities, the "NW Entities").

5. For the last several years, the NW Entities have experienced a consistent decline in the financial performance of their Canadian and U.S. operations relating to Nine West and other brands. This decline was caused by a variety of factors, including unfavourable retail market trends, changing consumer preferences, and inventory and design choices that did not align with consumer preferences.

6. On February 26, 2018, Richter Advisory Group Inc. ("**Richter**") was engaged as Financial Advisor to the NW Canada Entities.

7. On April 6, 2018, restructuring proceedings were commenced in respect of the NW Canada Entities and the NW U.S. Entities. Each of the NW Canada Entities filed a Notice of Intention to File a Proposal ("**NOI**") under the BIA (the "**Proposal Proceedings**"). The NOI filings were necessary to provide stability to the NW Canada Entities and permit the implementation of the proposed liquidation, which is now nearly completed and which is further described below. As part of the filing of the NOIs, Richter was named as the Proposal Trustee in the Proposal Proceedings. The NW U.S. Entities filed for protection under Chapter 11 of the U.S. Bankruptcy Code (the "**Chapter 11 Proceedings**").

8. The Proposal Proceedings and the Chapter 11 Proceedings are independent processes. The NW Canada Entities are neither borrowers nor guarantors of the debt of the NW U.S. Entities, and are not borrowers under the U.S. debtor-in-possession facility in the Chapter 11 Proceedings. The NW Canada Entities are not applicants in the Chapter 11 Proceedings, and no recognition orders are being sought in Canada with respect to the Chapter 11 Proceedings. Similarly, no relief was sought in respect of the NW Canada Entities in the U.S.

9. Further background information on the NW Entities and the circumstances leading up to the commencement of the Proposal Proceedings and Chapter 11 Proceedings can be found in my affidavit sworn April 6, 2018, a copy of which, without exhibits, is attached hereto as **Exhibit "A"**. Additional information on the administration of the Proposal Proceedings and the approval and conduct of a liquidation process with respect to the NW Canada Entities' retail locations is contained in my affidavit sworn June 12, 2018, a copy of which, without exhibits, is attached hereto as **Exhibit "B"** (the "**June 12 Affidavit**").<sup>1</sup>

10. As described in my June 12 Affidavit, the NW U.S. Entities' marketing efforts prior to the commencement of the Chapter 11 Proceedings did not generate any interest in the NW Canada Entities' assets but resulted in an asset purchase agreement dated April 5, 2018 between certain of the NW U.S. Entities and certain entities affiliated with Authentic Brands Group LLC ("**ABG**") and Marc Fisher as operating partner (the "**Stalking Horse APA**"), which committed those entities to pay USD\$123 million for the intellectual property associated with the Nine West and Bandolino brands and USD\$77 million for inventory. On May 5, 2018, the US Court approved bidding procedures in the Chapter 11 Proceedings with respect to the assets of the Nine West, Bandolino, and associated brands. The bidding procedures set a bid deadline of June 4, 2018, provided for an auction, if necessary, to be conducted on June 8, 2018, and contemplated a sale hearing on June 18, 2018. The NW U.S. Entities received one bid prior to the bid deadline, which was submitted by shoe retailer DSW Inc. Following an auction, ABG was determined to be the successful bidder with an increased purchase price. The sale of the NW U.S. Entities' assets to ABG closed on July 3, 2018.

11. On April 11, 2018, Justice Hainey granted an order (the "**Administration Order**"), which, among other things, approved the substantive consolidation of the Proposal Proceedings and authorized the Proposal Trustee to administer the consolidated Proposal Proceedings as if they were a single proceeding for the purpose of carrying out its duties and responsibilities as a proposal trustee under the BIA with respect to the administration of proposal proceedings generally.

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<sup>1</sup> All capitalized terms not defined herein are defined in the June 12 Affidavit.



12. On June 19, 2018, Justice Hainey granted an order extending the Proposal Period to August 3, 2018.

#### **STATUS OF THE LIQUIDATIONS AND STORE CLOSURES**

13. On April 11, 2018, Justice Hainey granted an order (the "**Liquidation Process Order**"), which, among other things, approved sale guidelines governing the conduct of liquidations in the retail locations, and approved a consulting agreement setting out the terms of the engagement of a consultant to assist the NW Canada Entities in carrying out the liquidation (the "**Consulting Agreement**"). The Consulting Agreement was executed on April 11, 2018, following the issuance of the Liquidation Process Order. Liquidation sales commenced on April 14, 2018, and were completed by June 30, 2018 (the "**Liquidation Sales**"). As of the swearing of this affidavit, all retail locations have been vacated.

14. The majority of the NW Canada Entities' wholesale inventory was sold through the NW Canada Entities' customary wholesale channels, and the remainder was included in the Liquidation Sales at the retail locations.

15. Net recoveries from the Liquidation Sales have exceeded projections. I understand that additional information regarding the Liquidation Sales will be provided in the third report of the Proposal Trustee to be filed in connection with the within motion (the "**Third Report**").

16. The Consulting Agreement contemplates a final settlement with respect to the reimbursable costs and fees of the Consultant (as defined in the Consulting Agreement), which fees represent a percentage of the gross proceeds from the sale of inventory and the gross receipts from all sales or other dispositions of fixtures, furniture and equipment. The NW Canada Entities have reviewed and approved the Consultant's final settlement and the recovery of the NW Canada Entities' deposit, net of any amounts owed to the Consultant, is anticipated prior to the end of July 2018.

#### **Store Closures and Lease Disclaimers**

17. At the commencement of the Proposal Proceedings, the NW Canada Entities operated 35 retail locations across Canada, of which 22 were located in Ontario. I am advised by Maria

Konyukhova of Stikeman Elliot LLP that lease disclaimer notices were delivered (as necessary) with respect to all 35 retail locations, effective on or before June 30, 2018.

18. Pursuant to the BIA, the requisite Form 45 *Notice to Lessor to Disclaim or Resiliate a Lease by Commercial Tenant* and explanatory cover letters were sent to the relevant landlords primarily at the end of May 2018. Two of the disclaimed leases operated on a month-to-month basis.

19. The NW Canada Entities operate a corporate head office located in Toronto, Ontario. As part of their orderly windup, the NW Canada Entities determined that they would continue to require a portion of their head office space until later in the Proposal Proceedings. The lease disclaimer notice with respect to the head office was delivered on July 12, 2018, and is effective on August 11, 2018.

20. The NW Canada Entities remitted any remaining payments in respect of post-filing store lease obligations in July 2018.

21. As of July 26, 2018, no counterparty to a disclaimed lease or a terminated lease has disputed the NW Canada Entities' disclaimer or termination of the relevant lease.

## **EMPLOYEES**

### **Employee Terminations**

22. At the commencement of the Proposal Proceedings, NW Canada LP employed approximately 330 people, of whom 225 were employed on a part-time basis, and all of whom were non-unionized. Of NW Canada LP's employees, approximately 35 made up senior management and administrative office positions and 295 were retail sales staff.

23. As the Liquidation Sales progressed, the NW Canada Entities sent notices of termination to all retail and head office employees. With the exception of seven head office employees who were necessary to assist in concluding the orderly wind down of operations, the employment of all retail and head office employees was terminated on or before June 30, 2018.<sup>2</sup> As of the date

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<sup>2</sup> In addition to the six head office employees, there is one employee of Jasper Apparel Group Canada, LP, who is currently on NW Canada LP's payroll and is currently being moved to an alternate employer.

of this affidavit, the NW Canada Entities have sent notices of termination to the seven head office employees who were assisting with the wind down of operations, effective on or before August 17, 2018.

24. All employees whose employment was terminated were paid their wages, benefits and accrued vacation to the date of termination. Terminated employees may have claims for severance in accordance with the requirements under the relevant provincial employment standards legislation and common law.

#### **KERA Distribution**

25. Given the short timeframe of the retail operations wind-down, it was imperative that the NW Canada Entities maintain certain key employees to assist with the orderly wind down of the NW Canada Entities' operations and the liquidation of their inventory. The NW Canada Entities obtained approval of a key employee retention agreement (the "KERA") on April 11, 2018, in an attempt to ensure the continued participation of employees identified as key employees during the Proposal Proceedings.

26. In order for a KERA participant to receive payments under the KERA, such employee cannot have: (a) disclosed the terms of the KERA (other than to his or her legal, financial and tax advisors or as required by law); or (b) at any time on or before the date on which any portion of the funds contemplated under the KERA is paid (i) resign or (ii) be terminated for cause.

27. There were initially eleven employees who were participants in the KERA and were eligible to receive KERA payments. Due to certain employee departures following the commencement of the Proposal Proceedings, the NW Canada Entities, in consultation with the Proposal Trustee, made certain changes to the allocation of the maximum KERA amount. Currently, the KERA contemplates the participation of nine employees. As of the date of this affidavit, approximately \$8,500 of KERA payments have been paid or are payable. The NW Canada Entities anticipate distributing the remaining KERA payments in August 2018.

## CONTRACT DISCLAIMERS

28. As of the date of this affidavit, the NW Canada Entities have disclaimed nearly all of the contracts to which they were a party (the “**Disclaimed Contracts**”) pursuant to the BIA. Disclaimer notices, consisting of a Form 44.1 *Notice by Debtor to Disclaim or Resiliate an Agreement* and explanatory cover letter, were sent to the counterparties of the Disclaimed Contracts between the end of April and the middle of July 2018.

29. The NW Canada Entities made use of a distribution centre in Toronto, which is owned and operated by a third party logistics provider. The NW Canada Entities disclaimed the contract with respect to the third party distribution centre and vacated the distribution centre at the end of June 2018.

30. The Proposal Trustee approved the disclaimer of the Disclaimed Contracts. As of July 26, 2018, no counterparty to a Disclaimed Contract has disputed the NW Canada Entities’ disclaimers.

31. The NW Canada Entities anticipate delivering the few remaining disclaimers as they complete the wind down of their operations.

32. A few contract counterparties are holding deposits, which the NW Canada Entities are working on recovering in conjunction with the Proposal Trustee.

## REMAINING ASSETS

33. As at the date of this affidavit, the NW Canada Entities have liquidated nearly all of their assets. The NW Canada Entities, under the supervision of the Proposal Trustee, are in discussions about the potential sale of the few remaining assets the value of which has not yet been ascertained. The NW Canada Entities will update the Court on the outcome of these discussions and what, if any, value can be obtained from their sale.

34. The NW Canada Entities and the Proposal Trustee are also reconciling and pursuing recovery on remaining wholesale and other receivables. Should the NW Canada Entities require assistance in determining or recovering on the final reconciliations, they will return to this Court as required.

## PROPOSAL

35. The NW Canada Entities have prepared a draft form of proposal to their creditors based on the available proceeds and asset monetization achieved following the completion of the Liquidation Sales. The proposal includes a quantification of the claims of various creditors, including landlords and employees.

36. The NW Canada Entities engaged in discussions with their largest stakeholder, the NW U.S. Entities, regarding the quantification of the NW U.S. Entities' secured and unsecured claims and the terms of the NW Canada Entities' proposal, including treatment of related claims and structuring the proposal in a tax efficient manner. The discussions did not progress as quickly as anticipated, in part, due to the NW U.S. Entities' own insolvency proceedings and the closing of the sale transaction with respect to the NW U.S. Entities' assets. The NW U.S. Entities are currently considering the tax and other consequences of the NW Canada Entities' draft proposal.

## UPDATED CASH FLOWS

37. The initial cash flow forecast prepared by the Proposal Trustee and appended to First Report was for the 11-week period from April 8, 2018 to June 23, 2018. In connection with the NW Canada Entities' motion to extend the Proposal Period to August 3, 2018, the Proposal Trustee assisted the NW Canada Entities in preparing a report on actual versus forecast results for the 8 weeks ended June 2, 2018, and an extended cash flow forecast for the 9 week period from June 3, 2018 to August 4, 2018, copies of which were appended to the Second Report of the Proposal Trustee.

38. In connection with the NW Canada Entities' motion to extend the Proposal Period to September 17, 2018, the Proposal Trustee assisted the NW Canada Entities in preparing a report on actual versus forecast results for the thirteen weeks ended July 14, 2018, and an extended cash flow forecast (the "**Extended Cash Flow Forecast**") for the ten week period from July 15, 2018 to September 22, 2018 (the "**Extended Cash Flow Period**"), copies of which I understand will be appended to the Third Report of the Proposal Trustee.

39. As set out in the Extended Cash Flow Forecast, the NW Canada Entities are expected to have sufficient liquidity to operate to the end of the Extended Cash Flow Period, which coincides with the extension of the Proposal Proceedings to September 17, 2018. The NW Canada Entities' principal use of cash following the commencement of the Proposal Proceedings to the completion of the Liquidation Sales consisted of regular course operating expenditures, including amounts paid or to be paid to employees and landlords. These expenditures decreased over time as store closures were effected. The NW Canada Entities' principal use of cash through to September 17, 2018 will be expenses in connection with winding down their operations, reconciliation and payment of post filing expenses and preparing a proposal to present to their creditors.

#### **STAY EXTENSION**

40. Since April 14, 2018, the NW Canada Entities, the Consultant, the Proposal Trustee and their advisors have been working together to carry out the Liquidation Sales, address employee, supplier, customer and other stakeholder issues, and otherwise advance the Proposal Proceedings. The Liquidation Sales were completed on June 30, 2018 and the NW Canada Entities have vacated all of their retail locations.

41. A 45-day extension of the Proposal Period would give the NW Canada Entities the time needed to: conclude their efforts to monetize their remaining assets and recovery of remaining receivables; continue discussions with their largest stakeholders regarding limiting the claims pool to maximize recovery and structuring their proposal in a tax efficient manner; and to complete their proposal for consideration of the NW Canada Entities' creditors. The NW Canada Entities' anticipate being in a position to file a proposal in advance of the expiration of the proposed extension of the Proposal Proceedings to September 17, 2018.

42. I am not aware of any creditors who would be harmed by the extension of the Proposal Period to September 17, 2018.

CONCLUSION

43. I swear this affidavit in support of the Extension Order being sought in the Proposal Proceedings and for no improper purpose.

SWORN BEFORE ME at the City of New York, State of New York on July 26, 2018.

  
Notary

**JARITA D. WHITFIELD**  
Notary Public, State of New York  
No. 01WH6180449  
Qualified in Dutchess County  
Commission Expires Feb. 05, 2019



RALPH SCHIPANI

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF JONES  
CANADA, INC. AND NINE WEST CANADA LP

Estate/Court File No. 31-2363758  
Estate/Court File No. 31-2363759

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
Proceeding commenced at Toronto

**AFFIDAVIT OF RALPH SCHIPANI**  
**(SWORN JULY 26, 2018)**

**STIKEMAN ELLIOTT LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

**Elizabeth Pillon** LSUC#: 35638M  
Tel: (416) 869-5623  
Email: lpillon@stikeman.com

**Maria Konyukhova** LSUC #:52880V  
Tel: (416) 869-5230  
Email: mkonyukhova@stikeman.com

**Sanja Sopic** LSUC#: 66487P  
Tel: (416) 869-6825  
Email: [ssopic@stikeman.com](mailto:ssopic@stikeman.com)  
Fax: (416) 947-0866

**Lawyers for the Applicants**

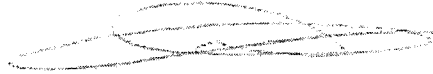


# EXHIBIT “A”

Exhibit "A" to the Affidavit

of Ralph Schipani sworn

July 26, 2018

A handwritten signature in dark ink, appearing to be a cursive name, positioned above a horizontal line.

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Commissioner for taking affidavits

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Estate/Court File No. 31-2363758

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF JONES  
CANADA, INC., A CORPORATION WITH A HEAD OFFICE IN THE CITY OF TORONTO  
IN THE PROVINCE OF ONTARIO

Applicant

Estate/Court File No. 31-2363759

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF NINE  
WEST CANADA LP, A PARTNERSHIP WITH A HEAD OFFICE IN THE CITY OF  
TORONTO IN THE PROVINCE OF ONTARIO

Applicant

AFFIDAVIT OF RALPH SCHIPANI  
(Sworn April 6, 2018)

I, RALPH SCHIPANI, of the City of New York, in the State of New York, MAKE OATH  
AND SAY:

1. I am the President of the applicants, Jones Canada, Inc. ("Jones Canada") and Nine West  
Canada LP ("NW Canada LP", and together with Jones Canada, the "NW Canada Entities" or  
the "Applicants"). I am also Interim Chief Executive Officer of Nine West Holdings, Inc. and  
certain of its affiliates and subsidiaries, which are referred to herein as the NW U.S. Entities and  
further described below.

2. As a result of my roles with the NW Canada Entities, I have knowledge of the matters  
to which I hereinafter depose. I have also reviewed the books and records of the NW Canada  
Entities and have spoken with certain of the directors, officers and/or employees of the NW  
Canada Entities, as necessary and applicable, and where I have relied upon such information, I  
have set forth the source and believe such information to be true.

3. This affidavit is sworn in support of a motion sought by the NW Canada Entities seeking:

- (a) An order (the "**Liquidation Process Order**"), substantially in the form of the draft order located at tab 4 of the Motion Record:
  - i. approving the consulting agreement (the "**Consulting Agreement**") between the NW Canada Entities and SB360 Capital Partners LLC (the "**Consultant**") in the form attached as Exhibit "L" to this affidavit (and which I understand from Richter Advisory Group Inc. ("**Richter**"), in its capacity as the Proposal Trustee of the NW Canada Entities (the "**Proposal Trustee**"), will also appended to the First Report of the Proposal Trustee that is to be filed (the "**First Report**")), and the transactions contemplated thereunder;
  - ii. approving the sale guidelines (the "**Sale Guidelines**") in the form attached as Schedule A to the Liquidation Process Order;
  - iii. authorizing NW Canada LP, with the assistance of the Consultant, to conduct a liquidation sale in accordance with the Consulting Agreement, the Liquidation Process Order and the Sale Guidelines; and
  - iv. authorizing and directing the NW Canada Entities to take any and all actions as may be necessary or desirable to implement the Consulting Agreement and each of the transactions contemplated therein;
  
- (b) An order (the "**Administration Order**"), substantially in the form of the draft order located at tab 5 of the Motion Record:
  - i. extending the time for filing a proposal (the "**Proposal Period**") pursuant to s. 50.4(9) of the *Bankruptcy and Insolvency Act*, RSC 1983, c B-3, as amended (the "**BIA**") to June 20, 2018;
  - ii. approving the substantive consolidation of the NW Canada Entities' Proposal Proceedings (as hereinafter defined) and authorizing the

- Proposal Trustee of the consolidated Proposal Proceedings of the NW Canada Entities to administer the Proposal Proceedings as if the proceedings were a single proceeding for the purpose of carrying out its duties and responsibilities as a proposal trustee under the BIA with respect to the administration of proposal proceedings generally;
- iii. authorizing the Applicants to continue using the Cash Management System (as defined and described below) currently in place but for repayment of any intercompany amounts;
  - iv. approving the D&O Charge (as defined and described below) in the amount of \$700,000<sup>1</sup>;
  - v. approving the Administration Charge (as defined and described below) in the amount of \$750,000;
  - vi. approving the key employee retention agreement (the “KERA”), a copy of which I understand from the Proposal Trustee will be attached as a confidential appendix to the First Report, and approving the KERA Charge (as defined and described below);
  - vii. sealing the KERA and the Comparative Analysis (as defined below), copies of which I understand will be attached as confidential appendices to the First Report, pending further order of the Court; and
- (c) such other relief as the Court may deem appropriate.

#### CANADIAN AND U.S. RESTRUCTURING PROCEEDINGS

4. On April 6, 2018, restructuring proceedings were commenced in respect of the NW Canada Entities and the Nine West U.S. Entities. Each of the NW Canada Entities filed a Notice of Intention to File a Proposal (“NOI”) under the BIA (the “Proposal Proceedings”). The NW

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<sup>1</sup> All references to currency in this Affidavit are to Canadian dollars unless stated otherwise.

U.S. Entities filed for protection under Chapter 11 of the U.S. Bankruptcy Code (the "Chapter 11 Proceedings").

5. The Proposal Proceedings and the Chapter 11 Proceedings are independent processes. The NW Canada Entities are not applicants in the Chapter 11 Proceedings, and no recognition orders are being sought in Canada with respect to the Chapter 11 Proceedings. As discussed further below, the Canadian NW Entities are neither borrowers nor guarantors of the debt of the NW U.S. Entities, and are not borrowers under the proposed U.S. debtor-in-possession facility in the Chapter 11 Proceedings and no relief is being sought in respect of the NW Canada Entities in the U.S.

## OVERVIEW OF THE NW CANADA ENTITIES' OPERATIONS AND ASSETS

### Introduction

6. The NW Canada Entities are wholesalers and retailers of Nine West brand footwear and accessories in Canada. Pursuant to a series of distribution agreements which are further described below, the NW Canada Entities are also the exclusive wholesalers of various brands of women's jewellery, handbags and women's footwear in Canada. The NW Canada Entities are indirect wholly-owned subsidiaries of U.S. parent companies whose ultimate parent is Jasper Parent LLC (collectively, the "NW U.S. Entities", and, together with the NW Canada Entities, the "NW Entities"). A chart showing the corporate structure of the NW Canada Entities and their position in the NW Entities' organization is attached hereto as Exhibit "A".

7. Through a series of transactions in 2014, Sycamore Partners L.P. and certain of its affiliates (collectively, "Sycamore") acquired the Nine West U.S. Entities. In 2015, the Nine West U.S. Entities incorporated Canadian subsidiaries and acquired what is now the NW Canada Entities' business from Sherson Group Inc. ("Sherson"), which was the Canadian wholesaler and retailer of Nine West merchandise for nearly 30 years. Through this acquisition, the NW Canada Entities became a part of the NW Entities' group.

8. For the last several years, the NW Entities have experienced a consistent decline in the financial performance of their Canadian and U.S. operations relating to Nine West and other brands. This decline was caused by a confluence of factors, including unfavourable retail market trends, changing consumer preferences, and inventory and design choices that did not

align with consumer preferences. As outlined further below, attempts to revitalize the Nine West brand and associated brands proved challenging in both Canada and the U.S.

9. With the commencement of the Chapter 11 Proceedings (which is described in greater detail below), the NW Canada Entities have lost access to critical funding without which they are unable to continue operations. The Chapter 11 Proceedings contemplate a sale of the NW U.S. Entities' intellectual property and certain working capital assets. The extensive marketing process undertaken by the NW U.S. Entities did not generate any interest in the NW Canada Entities' assets. In the circumstances, the NW Canada Entities believe that the best way to maximize recoveries for their stakeholders is through a supervised and orderly liquidation process and wind-down of their retail operations.

10. It is currently contemplated that the Canadian wholesale operations will also be winding down as part of the Proposal Proceedings and the Chapter 11 Proceedings. A final decision relating to the Canadian wholesale operations is not known at this time but will become definitive upon the completion of the U.S. sales process to be completed within the Chapter 11 Proceedings. In the interim, in order to monetize the current value of the NW Canada Entities for existing creditors, the inventory previously purchased for wholesale distribution will be monetized either through Canadian wholesale channels or through liquidation via retail distribution channels with the assistance of the Consultant.

#### Corporate Structure

11. Jones Canada is a private company incorporated under the Ontario *Business Corporations Act*, R.S.O. 1990, c. B. 16 (the "OBCA") whose registered office is located at Suite 100, 1446 Don Mills Road, Toronto, Ontario. Jones Canada is the general partner of NW Canada LP, a limited partnership whose limited partner is Jones Apparel Group Canada ULC, a Nova Scotia unlimited liability corporation.

12. Jones Canada carries on no other business aside from being the general partner of NW Canada LP.

### Historical Overview

13. As noted, the NW Canada Entities acquired their business from Sherson in 2015, which was the Canadian wholesaler and retailer of Nine West merchandise for nearly 30 years. As a result of poor financial performance, Sherson filed a NOI under section 50.4(1) of the BIA on June 29, 2015.

14. The NW U.S. Entities were involved in the Sherson NOI proceedings in their capacity as the licensor of Nine West and other brands to Sherson and were Sherson's largest creditor at the time of the filing. In the face of an application to place Sherson into receivership by one of its secured creditors, it was ultimately determined that in order to maintain the Nine West brand in Canada, the NW U.S. Entities would acquire the assets of the Sherson operations and continue the retail and wholesale operations in Canada.

15. On August 20, 2015, this Court approved the sale of substantially all of Sherson's business and assets to NW Canada LP, which sale closed on August 21, 2015. The consideration from the sale was insufficient to satisfy all of Sherson's secured indebtedness or support a distribution to its other creditors. As Sherson failed to present a proposal to its unsecured creditors in its NOI proceedings, Sherson was deemed to have made an assignment in bankruptcy on November 19, 2015.

### License Arrangements with NW U.S. Entities

16. Since their founding in 1970, the NW U.S. Entities have acquired numerous licenses or trademarks for several well-known brands and currently operate several major business lines. These are described in greater detail in my Declaration in support of the NW U.S. Entities' Chapter 11 petitions (the "US First Day Declaration"), a final copy of which I understand will be appended to the First Report and will be posted to the Proposal Trustee's website.

17. The NW U.S. Entities licence their brands to U.S.-based and international licensees in over 60 countries, including Canada. Pursuant to a 2004 Distribution and Licence Agreement between Sherson Marketing Group and certain of the NW U.S. Entities (the "Sherson Licence Agreement"), which was assumed by the NW Canada Entities upon their acquisition of Sherson's assets in 2015, the NW Canada Entities are the exclusive distributors in Canada of women's footwear and accessories bearing certain trademarks owned by the NW U.S. Entities,



including Nine West®, Bandolino® and Anne Klein®. The NW Canada Entities do not own their own trademarks.

18. In addition, pursuant to a series of Distribution and Buying Agent Agreements between Sherson and several third party licensors, some of which agreements were assigned to the NW Canada Entities upon the Sherson asset acquisition in 2015, the NW Canada Entities are wholesalers of various brands of women's jewellery, handbags and footwear in Canada. As further outlined below, the NW Canada Entities sell this merchandise on a wholesale basis to various department stores, including The Hudson's Bay Company.

#### Sourcing and Manufacturing

19. The NW U.S. Entities design merchandise in-house and contract with various foreign manufacturers for inventory which is then available throughout the NW Entities, including the NW Canada Entities.

#### Internal Supply Chain

20. As noted, the NW Canada Entities purchase the inventory needed for their operations from the NW U.S. Entities, which source the merchandise from third party manufacturers. The NW Canada Entities pay the NW U.S. Entities for the cost of the merchandise purchased from overseas manufacturers. Inventory charges, such as license, royalty or design fees, have historically been charged on the merchandise as further described below. The merchandise purchased by the NW U.S. Entities which is sold to the NW Canada Entities is shipped directly from the overseas manufacturers to Vancouver, British Columbia. From there, the merchandise is shipped by rail to a distribution centre located in Toronto, Ontario, which is owned and operated by a third party logistics provider. The third party provider sorts the merchandise and delivers it to Canadian Nine West retail locations, as well as department stores with which the NW Canada Entities have contractual wholesale arrangements.

21. At the time of the 2015 purchase from Sherson, the NW U.S. Entities (as suppliers and licensors of goods to Sherson for the Canadian operations) were owed approximately \$17 million by Sherson. These amounts were assumed by the NW Canada Entities upon their acquisition of the Sherson business, however the majority of the amount was written down following the initial acquisition. Thereafter, the NW U.S. Entities initially continued to charge

license fees at the rate of 7% found in the Sherson License Agreement which had been assumed. As a result of limited resources within Canada, the royalty rates were altered and were instead charged on a "cost plus 20%" commissions basis commencing in January 2016. Thereafter, the royalty arrangement was amended internally to a design fee basis, with varying rates based on the brand.

22. Since purchasing the Sherson operations, a total of approximately \$4.545 million was charged by the NW U.S. Entities by way of licence-related charges (royalties, commissions and/or design fees) on branded product sold by the NW Canada Entities. These inventory charges were accrued, but in many cases the NW Canada Entities were unable to pay the total amounts, and as such they were accounted for within the intercompany amounts owing to the NW U.S. Entities, as outlined below. The Sherson License Agreement, which had been assumed, was never terminated or formally amended to reflect the internal change in licensing fees, which the NW U.S. Entities had agreed to in order to attempt to maintain the Canadian operations.

#### Customs and Duties

23. The NW Canada Entities use customs brokers to handle duties, shipping charges and other related expenses. The NW Canada Entities also maintain customs bonds as security for the payment of duties on the merchandise received in the amount of \$400,000. As of the date of filing, the NW Canada Entities owe approximately \$900,000 in duties for merchandise that has arrived in Vancouver.

#### Retail and Wholesale operations

24. The NW Canada Entities operate 35 retail locations across Canada, of which 22 are located in Ontario. The NW Canada Entities also have stores in Manitoba, Alberta, British Columbia, Quebec and Nova Scotia. All of the NW Canada Entities' retail locations are leased. Approximately 75% of the NW Canada Entities' total revenues is derived from their retail operations. A chart showing the store locations by province is attached hereto as **Exhibit "B"**.

25. The NW Canada Entities have wholesale arrangements to supply branded footwear and accessories with several large retailers including The Hudson's Bay Company, Nordstrom Rack, Winners, Saks Off Fifth, the Designer Shoe Warehouse, the Shoe Company, and Amazon.

Approximately 25% of the NW Canada Entities' total revenues is derived from their wholesale operations.

26. The NW Canada Entities will be liquidating their wholesale inventory and winding down their wholesale operations as part of the Proposal Proceedings. A final conclusion on whether the wholesale operations in Canada will be carried on by another entity will be reached once the sales process being undertaken in the Chapter 11 Proceedings is completed. As described further below, Nine West Holdings Inc. has entered into an agreement to sell the Nine West and Bandolino brands to Authentic Brands Group LLC ("ABG") with Marc Fisher Footwear as ABG's operating partner. Currently, ABG does not intend to continue wholesale operations on the current Canadian platform. The transaction is subject to a bidding process and approval by the U.S. Bankruptcy Court. If an alternative buyer is identified in the Chapter 11 Proceedings, the alternative buyer has the right to determine whether it wants to continue wholesale operations in Canada. The NW Canada Entities will update its Canadian wholesalers as and when additional information is available during the Chapter 11 Proceedings.

#### Properties and Facilities

27. In addition to the NW Canada Entities' 35 retail locations, the NW Canada Entities have a leased head office located in Toronto, Ontario, which employs managerial and administrative staff. The NW Canada Entities also make use of a distribution centre in Toronto, which is owned and operated by a third party logistics provider.

#### Employees

28. As of the date of swearing this affidavit, Nine West Canada LP employed approximately 332 people, of which 225 are employed on a part-time basis, and all of whom are non-unionized. Of these employees, approximately 35 make up senior management and administrative office positions and 295 are retail sales staff. The NW Canada Entities do not sponsor any pension plans for their employees.

### Cash Management System

29. In the ordinary course of their business, the NW Canada Entities use a centralized cash management system (the “Cash Management System”) to, among other things, collect funds and pay expenses associated with their operations.

30. The NW Entities maintain bank accounts in both Canada and the U.S. for their respective Canadian and U.S. operations. Most of the NW Entities’ North American accounts are with Bank of America (“BOA”) and Wells Fargo (“Wells Fargo”). The NW Canada Entities’ bank accounts are in the name of NW Canada LP. A chart outlining the NW Canada Entities’ BOA account structure is attached hereto as Exhibit “C”. With the exception of one account, the accounts are in Canadian dollars. There are separate accounts for wholesale accounts receivable deposits, daily credit card deposits and daily cash deposits, and the funds from those accounts are swept into a Canadian operating account. Disbursements for operating expenses and payroll are made from separate disbursement accounts, and the funds used to make these disbursements are sourced from the operating account. Further, there is a standalone disbursement account in U.S. dollars, which is used to pay U.S. invoices, and was also the account into which the NW U.S. Entities advanced funds to the NW Canada Entities pursuant to the intercompany financing, described further below.

31. The NW Canada Entities will continue to operate the existing cash management process, with one modification: where cash sweeps were sometimes made from NW Canada LP to the NW U.S. Entities, these sweeps will cease unless approved by the Proposal Trustee.

### THE NW CANADA ENTITIES’ LIABILITIES

#### Intercompany Indebtedness

32. The acquisition of the Nine West business from Sherson in 2015 was completed on an urgent basis and it was not possible for the NW Canada Entities to implement third party secured financing for the Canadian operations. Thus, portions of the initial purchase price and future operating costs were funded to the NW Canada Entities on an intercompany basis through various NW U.S. Entities.

33. Intercompany financing has continued to be utilized since the 2015 Sherson acquisition to assist with Canadian operations. Attempts were made post 2015 to secure outside financing from traditional lenders, including NW U.S. Entities' third party lenders; however, these attempts were unsuccessful.

34. The operating costs of the NW Canada Entities funded by intercompany financing included inventory purchases initiated by the NW U.S. Entities on behalf of the Canadian entities, licence-related charges / design assist costs relating to the NW U.S. Entities and other branded merchandise acquired by the NW Canada Entities and various other operating costs such as travel and insurance. Partial payments were historically made by the NW Canada Entities to the U.S. intercompany lenders. From the 2015 Sherson asset acquisition to date, intercompany funding totalled in excess of \$40 million.

35. In the fall of 2017, the NW Canada Entities sought and obtained additional financing on a secured basis from the NW U.S. Entities. This financing was critical as it permitted the NW Canada Entities to meet their obligations and continue operations. On October 18, 2017, NW Canada LP issued two interest-bearing revolving inter-company notes in favour of two U.S. entities (collectively, the "Promissory Notes"): a note in favour of Nine West Management Service LLC ("NW Management") in the principal amount of \$2 million and a note in favour of Nine West Holdings Inc. ("NW Holdings") in the principal amount of \$23 million. Copies of the NW Management note and the NW Holdings note are attached hereto as Exhibits "D" and "E", respectively. Intercompany financing continued on a secured basis thereafter, with in excess of \$6 million of secured financing being provided post October 2017.

36. As security for NW Canada LP's obligations under the Promissory Notes, NW Canada LP provided general security agreements and hypothecs to NW Management and NW Holdings (collectively, the "Intercompany Security"), copies of which are attached hereto as Exhibits "F" and "G", respectively. The Intercompany Security was registered in the personal property registration systems of Ontario, Manitoba, British Columbia, Nova Scotia and Quebec, as well as Alberta's real property registration system.

37. Partial repayments have been made toward the unsecured and secured intercompany financing historically since 2015. Upon the closing of the March financial statements for the NW

Entities, updated intercompany balances will be available and provided to the Proposal Trustee. At the time of the swearing of this Affidavit, the estimated balances of unsecured intercompany financing from the Nine West U.S. entities (not including March 2018 advances) total approximately US \$12,465,000 and secured intercompany financing total approximately US \$1,583,000. While historically repayments of intercompany financing had occurred through a sweep of the Canadian accounts, all repayments of intercompany amounts have ceased.

#### PPSA Registrations

38. A search of the Personal Property Security Registration System in Ontario ("PPRS") as of March 20, 2018 shows that the only registrations against the NW Canada Entities are NW Management and NW Holdings on account of the Intercompany Security, and equipment lessors. A copy of the PPRS search results in Ontario for the NW Canada Entities is attached hereto as **Exhibit "H"**. As outlined below, the Applicants will be seeking the D&O Charge, Administration Charge and KERA Charge, all of which will rank subordinate to the security interests of registered equipment lessors not receiving notice of this motion.

#### Employee Liabilities

39. As noted above, as of April 4, 2018, the NW Canada Entities employed 332 employees in Canada. The NW Canada Entities are current on all required payments in respect of employee wages, vacation pay for store employees and benefits to their employees, as well as outstanding obligations of amounts required to be remitted to governmental authorities through source deductions or otherwise. There are vacation pay accruals totalling approximately \$85,000 for head office staff and a number of outstanding obligations to employees relating to outstanding commissions, benefits and expenses, totalling approximately \$30,000.

#### GST/HST Liabilities

40. Through their retail operations, the NW Canada Entities are net payors of GST/HST. Returns are filed in the ordinary course one month in arrears of operations. The February GST/HST return was filed and the obligations owing as reflected in the return totalling \$308,000 have been paid. The March GST/HST return is due to be filed in April.

Other Indebtedness

41. I understand from a review of the NW Canada Entities' corporate records that in addition to the liabilities described above, NW Canada LP and Jones Canada have liabilities to unsecured creditors totalling approximately \$1,300,000.

**FINANCIAL DIFFICULTIES**

42. The NW Canada Entities have experienced declining financial performance since acquiring the Canadian Nine West business from Sherson in 2015. Despite the well-known and respected nature of the Nine West brand and the other brands sold by the NW Canada Entities through retail and wholesale channels, the NW Canada Entities have encountered a confluence of factors that have adversely affected their financial position. First, the NW Canada Entities, like the NW U.S. Entities, have faced unfavourable trends in the retail market, such as a change in consumer preferences away from branded apparel and decreased foot traffic due to a rising preference for online shopping. Second, the NW U.S. Entities made unfavourable inventory and design choices that did not align with consumer preferences and led to substantial losses in revenue generation from the sale of footwear, which losses were echoed in Canada. The investment hypothesis behind the Sherson acquisition in 2015 was initially to protect and maintain the Canadian operations and then attempt to revitalize the Nine West brand in Canada, but this did not happen.

43. Similarly, in the U.S., the 2014 leveraged buyout that led to the NW U.S. Entities' existing business operations and capital structure was not successful in turning the Nine West and associated brands around, and losses continued to accumulate since 2014 in respect of the Nine West brands. As a result, the NW U.S. Entities have commenced the Chapter 11 Proceedings and are unable to provide any additional funding to NW Canada Entities.

Current Financial Position

44. The NW Canada Entities' most current unconsolidated unaudited financial statements are for the fiscal year ended December 31, 2017. Copies of the NW Canada Entities' unconsolidated unaudited financial statements for the fiscal years ending December 31, 2016 and December 31, 2017, in CAD and USD, are attached as Exhibit "I" to this affidavit.

45. The financial statements show that the NW Canada Entities are insolvent. NW Canada LP's current and capital assets as of December 31, 2017 totalled US \$12,088,529 (CAD \$15,175,336) consisting of cash, accounts receivable, inventory, office supplies and equipment. NW Canada LP had total liabilities of USD \$17,893,085 (CAD \$22,462,089) as at this same date. Jones Canada carries on no other business aside from being the general partner of NW Canada LP and has no significant assets or liabilities aside from those arising as a result of it being a general partner of NW Canada LP.

46. The financial statements attached as Exhibit "I" show that the NW Canada Entities operated at a loss of USD \$7,463,667 (CAD \$9,881,296) in 2016 and USD \$4,020,022 (CAD \$4,950,470) in 2017.

47. These losses have been financed by the NW U.S. Entities.

48. When the Canadian operations were operated under Sherson, the operations were also uneconomic but were able to sustain themselves as a result of the failure to pay the inventory payables and licensing fees accruing and owing to the NW U.S. Entities. At the time of Sherson's demise in 2015, the payables to the NW U.S. Entities totalled in excess of \$17 million.

#### NW U.S. Entities' Financial Difficulties

49. In light of the unfavourable retail market, changing consumer preferences and design choices inconsistent with those preferences, the NW U.S. Entities experienced significant losses in the operations related to their Nine West footwear and handbag businesses for the last three years, and accumulated an overleveraged balance sheet with approximately US\$1.6 billion in funded debt obligations, a portion of which was set to mature in 2019. On March 15, 2018, approximately US\$18.6 million in aggregate interest payments were due under certain of the NW U.S. Entities' unsecured notes. The indentures governing these interest payments each permitted the NW U.S. Entities a 30-day "grace period" before the failure to make payment would mature into an "Event of Default" under such indentures. To preserve liquidity, the NW U.S. Entities entered into a grace period with respect to each of these interest payments while they entered into restructuring negotiations with their main secured and unsecured term loan lender groups.



50. As noted, on April 6, 2018, the NW U.S. Entities, including NW Management and NW Holdings, commenced the Chapter 11 Proceedings in the Southern District of New York. In conjunction with the Chapter 11 Proceedings, the NW U.S. Entities have ceased all retail operations and all store locations were closed prior to the commencement of the proceedings. The NW U.S. Entities' e-commerce and wholesale operations will continue as the stalking horse process described below is implemented.

51. Prior to the filing, the NW U.S. Entities undertook a comprehensive marketing process of their Nine West and Bandolino brands to potential strategic and financial buyers. In the spring of 2017, the NW U.S. Entities retained Lazard Frères & Co LLC ("**Lazard**") as investment banker, to assist in a review of all strategic alternatives. Further Consensus Advisors LLC ("**Consensus**"), an investment banker, was approached by a third party in April 2017 expressing interest in purchasing the Nine West brand. Concurrently with engaging in negotiations, with the assistance of Lazard, with the creditors of their secured and unsecured debt to gauge support regarding a potential restructuring of their debt, the NW U.S. Entities started reaching out to potential Nine West brand purchasers. The NW U.S. Entities through Consensus ultimately reached out to more than fifty strategic buyers regarding the potential sale of the Nine West brand. Twenty of these buyers either executed confidentiality agreements or otherwise participated in additional diligence under another party's confidentiality agreements. In the fall of 2017, the NW U.S. Entities engaged in constructive negotiations with one of these parties regarding the terms of an asset purchase agreement. These discussions, however, did not result in agreement on a definitive agreement. By January 2018, the NW U.S. Entities had made additional progress not just with the first potential purchaser but also with ABG, and determined, with the advice of their advisors, that entry into the letter of intent with ABG was in the best interests of the NW U.S. Entities and their stakeholders.

52. On January 17, 2018 the NW U.S. Entities agreed to a letter of intent with ABG, with Marc Fisher Footwear as ABG's operating partner, which provided ABG with the exclusive right to negotiate for the purchase of the Nine West, Bandolino and associated brands and certain of the working capital assets related thereto. These negotiations ultimately resulted in an asset purchase agreement between certain of the NW U.S. Entities and certain entities affiliated with ABG and Marc Fisher as operating partner (the "**Stalking Horse APA**") which

commits those entities to pay USD\$123 million for the intellectual property associated with the Nine West and Bandolino brands and USD \$77 million for inventory. The Stalking Horse APA sets a minimum price for the sale of the purchased assets and ensures the continued viability of the Nine West brand to consumers, and allows the NW U.S. Entities to leave the footwear business.

53. During this extensive marketing process in the U.S., no party expressed any interest in the Canadian operations or in continuing to license the Nine West brands to the NW Canada Entities. ABG expressly excluded the Canadian assets and liabilities from the Stalking Horse APA and is not prepared to license the brands to the NW Canada Entities once it acquire the trademarks. As such, continuing the NW Canada Entities as a going concern is not an option and the NW Canada Entities elected to conduct an orderly liquidation of their inventory and wind-down of operations to maximize value for their stakeholders.

54. The Stalking Horse APA does not provide for ongoing wholesale operations in Canada. If an alternative buyer is identified in the Chapter 11 Proceedings, the alternative buyer has the right to determine whether it wants to continue wholesale operations in Canada. The Proposal Trustee and the Court will be advised should this occur.

55. Contemporaneously with the commencement of the Chapter 11 Proceedings, the NW U.S. Entities are seeking court approval of bidding procedures related to the sale of the assets covered by the Stalking Horse APA. In the First Day motions in the Chapter 11 Proceedings, the NW U.S. Entities are seeking an order which outlines a bidding procedure period of approximately 5 weeks. It is contemplated that if an auction is required in the U.S., it would be held approximately 4 days after the end of the bidding procedure period and a sale hearing would occur 2 days after the action.

56. Following the completion of the sale of the Nine West brands in the U.S., it is anticipated that the Chapter 11 Proceedings will be focused on the execution of a turnaround strategy to enable the NW U.S. Entities to focus their operations exclusively on their wholesale business with respect to their jeanswear, women's apparel and fashion jewellery business lines.

## THE PROPOSAL PROCEEDINGS

57. As noted above, the Canadian operations historically experienced financial difficulties. The decisions made on a global basis in respect of the future of Nine West retail operations, the lack of any interest through the SISP process that had been run and ultimately the commencement of the Chapter 11 Proceedings resulted in the NW Canada Entities commencing the Proposal Proceedings. The Chapter 11 Proceedings eliminated the NW Canada Entities' ability to obtain further funding through the intercorporate advances described above. The continuing decline in sales and negative publicity generated by the reporting of the NW U.S. Entities' financial problems in the media also contributed to the Canadian operations commencing the Proposal Proceedings in Canada.

58. As a result, on April 6, 2018, each of Jones Canada and NW Canada LP filed an NOI under the BIA and commenced the Proposal Proceedings. Copies of the certificates of the NOIs are attached as Exhibits "J" and "K", respectively, to my affidavit. The NOI filings were necessary to provide stability to the NW Canada Entities and permit the implementation of the proposed liquidation, which is further described below.

59. The NOI filings were authorized by Jones Canada's board of directors.

60. On February 26, 2018, Richter was engaged as Financial Advisor to the NW Canada Entities. As part of the filing of the NOIs, Richter was appointed as the Proposal Trustee in the Proposal Proceedings.

### Cash Flows

61. The Proposal Trustee has assisted the NW Canada Entities in preparing a cash flow forecast which sets out projected cash flows for the 12 week period ending June 30, 2018, a copy of which I understand from the Proposal Trustee will be attached as an appendix to the First Report. As set out in the Cash Flow Forecast, the NW Canada Entities are expected to have sufficient liquidity to operate to the end of the Cash Flow Period, which coincides with the completion of the proposed Liquidation Sale (defined and described below). The NW Canada Entities' principal use of cash during this period will consist of regular course operating expenditures, including amounts to be paid to employees and landlords. These expenditures will decrease over time as store closures are effected.

62. Immediately prior to the commencement of the Proposal Proceedings, the NW Canada Entities set aside funds (the "D&O Trust") sufficient to cover the NW Canada Entities' estimated pre-filing GST/HST liability, employee source deduction, payroll and accrued vacation pay liabilities, such that the NW Canada Entities will have the funds to make these required payments. The D&O Trust was funded through secured intercompany advances.

#### **Proposed Process for NOI Proceedings**

63. As stated above, prior to commencing their Chapter 11 Proceedings, the NW U.S. Entities ran a thorough marketing process and no party was interested in acquiring the Canadian operations.

64. The NW Canada Entities, together with Richter as Financial Advisor and anticipating Richter's role as Proposal Trustee, determined that the manner in which to maximize the recovery on existing retail operations was through the appointment of a liquidator to assist with the orderly wind down of the retail operations.

65. I believe that the realizations under an orderly liquidation conducted by the NW Canada Entities, with the assistance of the Consultant, are likely to exceed the recoveries under a sale of the assets in a receivership or bankruptcy scenario. The NW Canada Entities will also pursue other asset recoveries including collection of outstanding receivables, and have started drafting a form of Proposal to their creditors, which will be updated as available proceeds and asset monetizations are further quantified.

#### **Liquidator Selection Process**

66. On March 12, 2018, the NW Canada Entities, with the assistance of Richter, commenced a request for proposal ("RFP") process to solicit proposals from third party liquidators to assist the NW Canada Entities in the orderly liquidation of the inventory, furniture, fixtures and other store equipment through the conduct of "going-out-of-business" or similar themed sales (the "Liquidation Sale"). The RFP was amended on March 19, 2018, to, among other things, extend the deadline for submitting proposals to March 26, 2018. I understand from the Proposal Trustee that more details in this regard will be provided in the First Report.

67. The RFP invited each of the liquidation firms to submit a single proposal with, among other things : (i) an offer to assist the NW Canada Entities in their disposition of the inventory as well as furniture, fixtures and equipment (“FF&E”) located in the closing locations; and (ii) a proposal in the form of the draft Consulting Agreement, with any changes to the Consulting Agreement highlighted. The RFP required all bidders to submit proposals by no later than March 26, 2018. Bidders were told to assume that the sale at the closing locations would begin as soon as possible after April 7, 2018 and conclude no later than June 30, 2018 or such earlier date as agreed upon by the parties.

68. On March 12, 2018, Richter, on behalf of the NW Canada Entities, contacted seven potential liquidators with prior experience handling large-scale liquidations, including large-scale liquidations in Canada, informing them of the RFP process and providing them with a form of non-disclosure agreement (the “NDA”). Subsequently, seven parties executed NDAs and were provided with access to a virtual data room on March 15, 2018, which included relevant financial and operational data concerning the inventory and FF&E, as well an overview of the RFP process and a form of the Consulting Agreement. Richter and the NW Canada Entities answered questions and provided follow-up information to the liquidators during the course of their due diligence.

69. Three proposals were received on March 26, 2018. Richter prepared a comparative analysis of the proposals (the “**Comparative Analysis**”), which I understand from the Proposal Trustee will be attached as a confidential appendix to the First Report. Following consideration of all of the proposals, the NW Canada Entities, in consultation with Richter, selected SB360 Capital Partners, LLC, as the successful bidder, or Consultant. I am advised that the Consultant has extensive experience conducting retail liquidations, including inventory dispositions for a wide variety of former retailers.

70. I understand from the Proposal Trustee that the First Report will further outline the efforts undertaken during this time to select a liquidator.

### **The Consulting Agreement**

71. On April 3, 2018, the Consultant and the NW Canada Entities agreed to a final form of the Consulting Agreement, a copy of which is attached hereto as **Exhibit “L”**. It is intended that

the Consulting Agreement will be executed following the requested issuance of the Liquidation Process Order. The proposed Liquidation Sale under the Consulting Agreement would then be conducted in accordance with the Sale Guidelines attached to the Liquidation Process Order. The Consulting Agreement contemplates the Liquidation Sale will commence between April 14, 2018 and April 21, 2018 and will conclude no later than June 30, 2018, or such other dates agreed to by the NW Canada Entities and the Consultant. The Sale Guidelines provide, among other things, that subject to certain exceptions, the Liquidation Sale shall be conducted in accordance with the terms of the applicable leases for each of the closing stores. Further, the Liquidation Process Order grants the Consultant access to the closing stores in accordance with the applicable leases until July 30, 2018.

72. The Consulting Agreement provides that the Consultant will act as an exclusive independent consultant for the purpose of advising the NW Canada Entities with respect to the sale of the inventory and FF&E located at the retail store locations. The Consulting Agreement provides that the NW Canada Entities are responsible for all expenses incurred in connection with the sale of inventory and FF&E at the retail locations, including supervisor costs and advertising and sign expenses, subject to an agreed upon budget between the NW Canada Entities and the Consultant.

73. The Consulting Agreement provides that the Consultant will be paid a fee equal to 1.25% of the gross proceeds of the sale of inventory and 15% of the gross receipts (net of sales tax) from all sales or other dispositions of FF&E. In addition, the NW Canada Entities will reimburse the Consultant for the Consultant's reasonable out of pocket expenses incurred in connection with the sale or disposition of the FF&E per the terms of the Consulting Agreement, or which have been previously approved in writing by the NW Canada Entities.

74. Pursuant to the Consulting Agreement, the Consultant will provide the NW Canada Entities among others, with the following services, with respect to the liquidation:

- (a) full-time supervisors to supervise and conduct the liquidation, provided that the number of supervisors is determined by the Consultant following consultation with the NW Canada Entities;

- (b) the oversight, supervision and guidance with respect to the conduct of the liquidation and disposal of the inventory and FF&E as may be required in order to maximize gross proceeds;
  - (c) recommend and implement appropriate point of purchase, point of sale and external advertising to effectively sell the inventory and FF&E;
  - (d) advice as to appropriate pricing and discounting of the inventory and FF&E and appropriate staffing levels at the retail locations during the conduct of the liquidation; and
  - (e) advice as to the appropriate closing date of individual closing stores and potential consolidation of inventory to remaining stores in order to maximize gross proceeds.
75. Some other key terms of the Consulting Agreement include:
- (a) the Consultant will not be considered an employer of the NW Canada Entities' employees and shall have no obligation whatsoever in that respect. Moreover, title to all inventory and FF&E shall remain with the NW Canada Entities at all times during the sale term until such inventory and FF&E is sold;
  - (b) all sales of inventory and FF&E will be "final sales" and "as is" and no closing stores will honour returns with respect to any items;
  - (c) all inventory must be sold through retail channels and if there is any remaining unsaleable inventory at the Sale Termination Date (as defined in the Consulting Agreement), the Consultant shall dispose of all such merchandise; and
  - (d) the Consulting Agreement is conditional upon the NW Canada Entities having obtained the Liquidation Process Order.

**Approval of the Liquidation Process and Consulting Agreement**

76. I believe that the proposed Liquidation Sale under the Liquidation Process Order, Sales Guidelines and Consulting Agreement is the best way to maximize the value of the NW Canada

Entities' inventory and FF&E for the benefit of all of the NW Canada Entities' stakeholders. The NW Canada Entities' retail stores operate at a loss, and the sooner the inventory and FF&E is liquidated, the more cash the NW Canada Entities will be able to preserve for their creditors.

77. The final determination in respect of future Canadian wholesale operations will not be finalized until the U.S. sales process is finalized and it is determined whether an alternative buyer will be named which wishes to continue with Canadian wholesale operations. In the interim, in order to monetize the current value of the NW Canada Entities for existing creditors, the inventory previously purchased for wholesale distribution will be monetized either through Canadian wholesale or retail distribution channels.

78. The NW Canada Entities' board of directors and management believe the liquidation is a fair and reasonable process for the sale of the assets and will result in the maximization of value for the NW Canada Entities' creditors. Further, the Liquidation Process Order and Sale Guidelines are supported by the NW U.S. Entities and the Proposal Trustee.

79. The NW Canada Entities believe that engaging a professional liquidator to undertake a sale of the inventory and FF&E in the closing retail locations will produce better results for the NW Canada Entities than an attempt to sell such inventory and FF&E without professional assistance. The Consultant has extensive experience conducting retail liquidations, including inventory dispositions for a wide variety of former retailers, and is experienced in dealing with the type of landlord and customer concerns that may arise in the type of process contemplated in the liquidation.

80. The NW Canada Entities, together with their advisors, have considered the potential value of seeking to market the real estate leases and have determined that the potential of canvassing the market for recovery from such locations does not warrant the extension to the Proposal Proceedings for purposes of these efforts and/or the potential disruption with their landlords.



### D&O Charge and other Provisions

81. To ensure that the liquidation is carried out successfully and value is maximized for the NW Canada Entities' Creditors, the Applicants require the continued participation of their respective directors, officers, managers and employees.

82. I am advised by the NW Canada Entities' counsel, Stikeman Elliott LLP, that in certain circumstances directors can be held liable for certain obligations of a corporation owing to employees and government entities. As of April 5, 2018, the NW Canada Entities are potentially liable for accrued but unpaid vacation pay, wages, source deductions and sales tax in the aggregate amount of approximately \$1,000,000 which amount has been set aside in the D&O Trust.

83. The NW Canada Entities maintain directors' and officers' liability insurance (the "D&O Insurance") that benefit the directors and officers of the NW Canada Entities. The current D&O Insurance policy provides \$55 million in aggregate coverage for the NW Entities which is subject to various limitations and deductibles. The term of the policy is from October 1, 2017 to October 1, 2018. The directors and officers of the NW Canada Entities have indicated that, due to the potentially significant personal exposure arising going forward, they cannot continue their service with the NW Canada Entities unless they obtain a charge on all of the NW Canada Entities' property, assets and undertakings (the "Property") in the amount of \$700,000, being an estimate of potential post filing statutory obligations (the "D&O Charge").

84. The D&O Charge is proposed to rank second in priority on the Property after the Administration Charge (as defined herein) after any secured creditors without notice of this motion. NW Management and NW Holdings, as secured creditors of the NW Canada Entities, have agreed to the Administration Charge and D&O Charge ranking ahead of their secured debt position.

85. The D&O Charge will allow the NW Canada Entities to continue to benefit from the efforts and knowledge of their directors and officers. The NW Canada Entities and the Proposal Trustee believe that the D&O Charge is reasonable in the circumstances.

### **Administration Charge**

86. The NW Canada Entities seek an order granting a charge over the Property securing the fees and disbursements of counsel to the NW Canada Entities, the Proposal Trustee and its counsel in the amount of \$750,000 (the "Administration Charge"). The professionals whose fees are to be secured by the Administration Charge have taken on, and will continue to take on, a critical role in these proceedings and there will be no unwarranted duplication of roles.

87. The NW Canada Entities have worked with the Proposal Trustee and other insolvency professionals to estimate the proposed quantum of the Administration Charge and I believe it to be reasonable and appropriate in the circumstances. The amount of the Administration Charge contemplates that professionals are paid on a current basis during these proceedings.

88. The Administration Charge is proposed to rank first in priority on the Property after the interests of any secured creditors without notice of this motion.

### **KERA Approval**

89. Given the short timeframe of the retail operations wind-down, it is imperative that the NW Canada Entities maintain certain key employees to assist with the orderly wind down of the NW Canada Entities' operations and the liquidation of their inventory. The NW Canada Entities have worked with the Proposal Trustee to identify those key individuals and the amounts which are available to offer to assist with maintaining their ongoing involvement during key timeframes.

90. In an attempt to ensure the continued participation of employees identified as key employees during the Proposal Proceedings, the NW Canada Entities are seeking approval of the KERA.

91. In order for a KERA participant to receive payments under the KERA, such employee cannot have: (a) disclosed the terms of the KERA (other than to his or her legal, financial and tax advisors or as required by law); or (b) at any time on or before the date any portion of the funds contemplated under the KERA is paid (i) resign or (ii) be terminated for cause.

92. The NW Canada Entities are seeking a charge on the Property ranking behind the Administration Charge and the D&O Charge in the maximum amount of the KERA's value (the "KERA Charge") to secure the obligations under the KERA. The D&O Charge, the Administration Charge and the KERA Charge are to rank in priority to all other charges other than those of secured creditors without notice of this motion.

93. Without the KERA and the security provided by the KERA Charge, there is concern that key employees would leave prior to the closing of the transaction/completion of the liquidation, which would be of significant negative effect to the NW Canada Entities. I believe that the KERA and the KERA Charge are necessary in order to complete the sale contemplated by the Liquidation Process Order and Consulting Agreement and ensure the success of the Proposal Proceedings.

94. I understand that the Proposal Trustee supports the proposed KERA and KERA Charge.

95. I understand from the Proposal Trustee that a copy of the KERA will be attached as a confidential appendix to the First Report and requested to be sealed pending further order of the Court.

#### **Substantive Consolidation**

96. As noted above, the relationship between the NW Canada Entities is closely intertwined. The NW Canada Entities share common management and administrative support. The proposed liquidation involves the sale of all of the property of the NW Canada Entities. Jones Canada, the general partner of NW Canada LP, does not carry on business independently and has no assets or liabilities apart from those incurred in its role as the general partner of NW Canada LP.

97. The proposed substantive consolidation of the NW Canada Entities is appropriate, as it would allow the Proposal Trustee to avoid performing, *inter alia*, the following separate actions in respect of each of Jones Canada and NW Canada LP, thereby reducing certain administrative expenses:

- (a) issuing separate reports;
- (b) making, filing, advertising and distribution of all filings and notices required under the BIA in duplicate;
- (c) opening separate bank accounts;
- (d) conducting separate meetings for the voting on a proposal and determining and advising the creditors of Jones Canada and NW Canada LP separately in the making of distributions; and
- (e) conducting in duplicate all such other administrative duties and responsibilities to be carried out by a Proposal Trustee in the administration of proposal proceedings under the BIA.

98. The largest creditors of the NW Canada Entities, NW Management and NW Holdings, have no objections to the proposed consolidation. The proposed consolidation will not result in any prejudice to the creditors of the NW Canada Entities.

99. I believe that it would be in the best interest of all interested persons if the NW Canada Entities' Proposal Proceedings proceeded jointly. The consolidation of the Proposal Proceedings would prevent the duplication of efforts to file and maintain two separate sets of motion materials over the course of the Proposal Proceedings, which will reduce costs in the proceedings. This would be in furtherance of the principle of proportionality and will maximize the recovery for the NW Canada Entities' stakeholders.

#### Sealing Orders

100. The Comparative Analysis contains sensitive commercial and competitive information, the disclosure of which would cause harm to the NW Canada Entities, their stakeholders, and bidders in the RFP process if released. Further, the KERA contains sensitive personal information about certain of the NW Canada Entities' employees. As a result, the NW Canada Entities are seeking orders sealing the Comparative Analysis and the KERA.

**Stay Extension**

101. The Consulting Agreement contemplates the Liquidation Sale to commence between April 14, 2018 and April 21, 2018 and conclude no later than June 30, 2018, or such other dates agreed to by the NW Canada Entities and the Consultant. Leading up to this date, the NW Canada Entities, the Consultant, the Proposal Trustee and their advisors will be working together to complete the Liquidation Sale, deal with employees, suppliers, customers and other stakeholder issues, and otherwise advance the Proposal Proceedings.

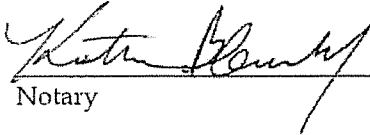
102. A 45-day extension of the Proposal Period would give the NW Canada Entities the time needed to move forward with the Liquidation Sale and make progress towards achieving the terms of a proposal for consideration of the NW Canada Entities' creditors. Thereafter, a further stay extension is anticipated to be needed to complete the Liquidation Sale and advance a proposal. We will return to court prior to June 20, 2018 with a further update and timeline.

103. I am not aware of any creditors who would be harmed by the extension of the Proposal Period to June 20, 2018.

**CONCLUSION**

104. I swear this affidavit in support of the orders sought in the Proposal Proceedings and for no improper purpose.

SWORN BEFORE ME at the City of  
New York, State of New York on April  
6, 2018.

  
\_\_\_\_\_  
Notary

  
\_\_\_\_\_  
RALPH SCHIPANI

**KATHERINE BLAUKOPF**  
NOTARY PUBLIC, State of New York  
No. 01BLG024412  
Qualified in New York County  
Commission Expires May 10, 2019

# EXHIBIT “B”

Exhibit "B" to the Affidavit  
of Ralph Schipani sworn  
July 26, 2018



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Commissioner for taking affidavits

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Estate/Court File No. 31-2363758

Estate/Court File No. 31-2363759

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF JONES CANADA, INC., A CORPORATION WITH A HEAD OFFICE IN THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO, AND NINE WEST CANADA LP, A PARTNERSHIP WITH A HEAD OFFICE IN THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO

Applicants

AFFIDAVIT OF RALPH SCHIPANI  
(Sworn June 12, 2018)

I, RALPH SCHIPANI, of the City of New York, in the State of New York, MAKE OATH AND SAY:

1. I am the President of the applicants, Jones Canada, Inc. ("**Jones Canada**") and Nine West Canada LP ("**NW Canada LP**", and together with Jones Canada, the "**NW Canada Entities**" or the "**Applicants**"). I am also Interim Chief Executive Officer of Nine West Holdings, Inc. and certain of its affiliates and subsidiaries, which are referred to herein as the NW U.S. Entities and further described below.
2. As a result of my roles with the NW Canada Entities, I have knowledge of the matters to which I hereinafter depose. I have also reviewed the books and records of the NW Canada Entities and have spoken with certain of the directors, officers and/or employees of the NW Canada Entities, as necessary and applicable, and where I have relied upon such information, I have set forth the source and believe such information to be true.
3. This affidavit is sworn in support of a motion sought by the NW Canada Entities seeking an Order (the "**Extension Order**") extending the time for each of the Applicants to file a proposal (the "**Proposal Period**") under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") to August 3, 2018.



## BACKGROUND

4. The NW Canada Entities are wholesalers and retailers of Nine West brand footwear and accessories in Canada. The NW Canada Entities are also the exclusive wholesalers of various brands of women's jewellery, handbags and women's footwear in Canada. The NW Canada Entities are indirect wholly-owned subsidiaries of U.S. parent companies whose ultimate parent is Jasper Parent LLC (collectively, the "NW U.S. Entities", and, together with the NW Canada Entities, the "NW Entities").

5. For the last several years, the NW Entities have experienced a consistent decline in the financial performance of their Canadian and U.S. operations relating to Nine West and other brands. This decline was caused by a variety of factors, including unfavourable retail market trends, changing consumer preferences, and inventory and design choices that did not align with consumer preferences.

6. On February 26, 2018, Richter Advisory Group Inc. ("**Richter**") was engaged as Financial Advisor to the NW Canada Entities.

7. On April 6, 2018, restructuring proceedings were commenced in respect of the NW Canada Entities and the Nine West U.S. Entities. Each of the NW Canada Entities filed a Notice of Intention to File a Proposal ("**NOI**") under the BIA (the "**Proposal Proceedings**"). The NOI filings were necessary to provide stability to the NW Canada Entities and permit the implementation of the proposed liquidation, which is now being implemented and which is further described below. The NW U.S. Entities filed for protection under Chapter 11 of the U.S. Bankruptcy Code (the "**Chapter 11 Proceedings**"). As part of the filing of the NOIs, Richter was named as the Proposal Trustee in the Proposal Proceedings.

8. The Proposal Proceedings and the Chapter 11 Proceedings are independent processes. The NW Canada Entities are neither borrowers nor guarantors of the debt of the NW U.S. Entities, and are not borrowers under the U.S. debtor-in-possession facility in the Chapter 11 Proceedings. The NW Canada Entities are not applicants in the Chapter 11 Proceedings, and no recognition orders are being sought in Canada with respect to the Chapter 11 Proceedings. Similarly, no relief was sought in respect of the NW Canada Entities in the U.S.

9. Further background information on the NW Entities and the circumstances leading up to the commencement of the Proposal Proceedings and Chapter 11 Proceedings can be found in my affidavit sworn April 6, 2018, a copy of which, without exhibits, is attached hereto as Exhibit "A".

10. Prior to the commencement of the Chapter 11 Proceedings, the NW U.S. Entities undertook a comprehensive marketing process of their Nine West and Bandolino brands to potential strategic and financial buyers. These efforts ultimately resulted in an asset purchase agreement dated April 5, 2018 between certain of the NW U.S. Entities and certain entities affiliated with Authentic Brands Group LLC ("ABG") and Marc Fisher as operating partner (the "Stalking Horse APA") which commits those entities to pay USD\$123 million for the intellectual property associated with the Nine West and Bandolino brands and USD \$77 million for inventory. The Stalking Horse APA set a minimum price for the sale of the purchased assets, ensured the continued viability of the Nine West brand to consumers, and allowed the NW U.S. Entities to leave the footwear business.

11. On May 5, 2018, the United States Bankruptcy Court for the District of Delaware (the "US Court") approved bidding procedures in the Chapter 11 Proceedings with respect to the assets of the West, Bandolino, and associated brands. The bidding procedures set a bid deadline of June 4, 2018, provided for an auction, if necessary, to be conducted on June 8, 2018, and contemplate a sale hearing on June 18, 2018. The NW U.S. Entities received one bid prior to the bid deadline, which was submitted by shoe retailer DSW Inc. As described in more detail below, following an auction, ABG was determined to be the successful bidder.

12. The extensive marketing process undertaken by the NW U.S. Entities did not generate any interest in the NW Canada Entities' assets. In the circumstances, the NW Canada Entities, together with Richter as Financial Advisor and anticipating Richter's role as Proposal Trustee, determined that the manner in which to maximize the recovery from the NW Canada Entities' existing retail operations was through the engagement of a liquidator to assist with the orderly wind down of the retail operations.

13. A final decision relating to the Canadian wholesale operations is not known but will become definitive upon the completion of the U.S. sales process to be completed within the

Chapter 11 Proceedings. In the interim, in order to monetize the current value of the NW Canada Entities for existing creditors, it was decided that the inventory previously purchased for wholesale distribution should be monetized either through Canadian wholesale channels or through liquidation via retail distribution channels with the assistance of the Consultant (as described below).

#### **APPROVAL OF THE LIQUIDATION PROCESS ORDER AND ADMINISTRATION ORDER**

14. On March 12, 2018, the NW Canada Entities, with the assistance of Richter, commenced a request for proposal (“RFP”) process to solicit proposals from third party liquidators to assist the NW Canada Entities in the orderly liquidation of the inventory, furniture, fixtures and other store equipment through the conduct of “going-out-of-business” or similar themed sales (the “Liquidation Sales”). Following consideration of all of the proposals, the NW Canada Entities, in consultation with Richter, selected SB360 Capital Partners, LLC as the successful bidder (the “Consultant”).

15. On April 11, 2018, Justice Hainey granted an order (the “Liquidation Process Order”), among other things:

- (a) approving the consulting agreement (the “Consulting Agreement”) between the NW Canada Entities and the Consultant, a copy of which is attached hereto as Exhibit “B”, and the transactions contemplated thereunder;
- (b) approving the sale guidelines with respect to the Liquidation Sales (the “Sale Guidelines”) in the form attached as Schedule A to the Liquidation Process Order;
- (c) authorizing NW Canada LP, with the assistance of the Consultant, to conduct the Liquidation Sales in accordance with the Consulting Agreement, the Liquidation Process Order, and the Sale Guidelines; and
- (d) authorizing and directing the NW Canada Entities to take any and all actions as may be necessary or desirable to implement the Consulting Agreement and each of the transactions contemplated therein.

A copy of the issued and entered Liquidation Process Order is attached hereto as **Exhibit "C"**.

16. The same day, Justice Hainey also granted an order (the "**Administration Order**"), among other things:

- (a) extending the Proposal Period to June 20, 2018;
- (b) approving the substantive consolidation of the Proposal Proceedings and authorizing the Proposal Trustee to administer the consolidated Proposal Proceedings as if they were a single proceeding for the purpose of carrying out its duties and responsibilities as a proposal trustee under the BIA with respect to the administration of proposal proceedings generally;
- (c) approving certain court-ordered charges, including the D&O Charge and the Administration Charge (as defined in the Administration Order); and
- (d) approving the key employee retention agreement (the "**KERA**"), a copy of which was attached as a confidential appendix to the first report of the Proposal Trustee dated April 9, 2018 (the "**First Report**"), and approving the KERA Charge (as defined in the Administration Order).

A copy of the issued and entered Administration Order is attached hereto as **Exhibit "D"**.

## **STATUS OF THE LIQUIDATION AND STORE CLOSURES**

### **Liquidation Sales**

17. The Consulting Agreement was executed on April 11, 2018, following the issuance of the Liquidation Process Order. Liquidation Sales commenced on April 14, 2018, and it is anticipated that they will be completed by June 30, 2018.

18. The majority of the NW Canada Entities' wholesale inventory was sold through the NW Canada Entities' customary wholesale channels, and the remainder has been included in the Liquidation Sales at the retail locations.

19. To date, net recoveries from the Liquidation Sales have exceeded projections. I understand that additional information regarding the Liquidation Sales will be provided in the

second report of the Proposal Trustee to be filed in connection with the within motion (the "Second Report").

20. The Consulting Agreement contemplates a final settlement with respect to the reimbursable costs and fees of the Consultant, which fees represent a percentage of the gross proceeds from the sale of inventory and the gross receipts from all sales or other dispositions of fixtures, furniture and equipment. It is expected that the final settlement will be completed as soon as possible, and within 30 days following the end of the Liquidation Sales.

#### **Store Closures and Lease Disclaimers**

21. At the commencement of the Proposal Proceedings, the NW Canada Entities operated 35 retail locations across Canada, of which 22 were located in Ontario. I am advised by Maria Konyukhova of Stikeman Elliot LLP that since the commencement of the Liquidation Sales at the NW Canada Entities' retail locations, lease disclaimer notices have been delivered (as necessary) with respect to all 35 retail locations, effective on or before June 30, 2018.

22. Pursuant to the BIA, the requisite Form 45 *Notice to Lessor to Disclaim or Resiliate a Lease by Commercial Tenant* and explanatory cover letters were sent to the relevant landlords primarily at the end of May 2018. Two of the disclaimed leases operated on a month-to-month basis.

23. The NW Canada Entities expect to calculate and make any remaining payments in respect of post-filing store lease obligations in July 2018.

24. The NW Canada Entities operate a corporate head office located in Toronto, Ontario. The lease with respect to the head office has not yet been disclaimed. As part of their orderly windup, the NW Canada Entities have determined that they will continue to require a portion of their head office space until later in the Proposal Proceedings. The NW Canada Entities were in negotiations with the landlord for the head office premises to surrender portions of the head office premises to the landlord in advance of the end of the Proposal Proceedings in order to enable the landlord to negotiate new lease agreements for the surrendered premises with two prospective tenants. However, these negotiations did not result in an agreement, and the NW Canada Entities will continue their subletting efforts.

25. As of June 12, 2018, no counterparty to a disclaimed lease or a terminated lease has disputed the NW Canada Entities' disclaimer or termination of the relevant agreement.

26. As of June 12, 2018, Liquidation Sales are ongoing at 33 stores.

## EMPLOYEES

### Employee Terminations

27. At the commencement of the Proposal Proceedings, NW Canada LP employed approximately 330 people, of which 225 were employed on a part-time basis, and all of whom were non-unionized. Of NW Canada LP's employees, approximately 35 made up senior management and administrative office positions and 295 were retail sales staff.

28. As the Liquidation Sales have progressed, the NW Canada Entities have sent notices of termination to 77 retail and head office employees. With the exception of 7 head office employees who are necessary to assist in concluding the orderly wind down of operations, it is expected that the employment of all remaining employees will be terminated by June 30, 2018.<sup>1</sup> In accordance with the requirements of the *Employment Standards Act* (Ontario), on June 6, 2018 NW Canada LP filed a Notice of Termination of Employment with the Ministry of Labour notifying the Ministry that it was terminating more than 50 employees in the same four-week period.

29. All employees whose employment was terminated were paid their wages, benefits and accrued vacation to the date of termination. The employees whose employment was terminated may have claims for severance in accordance with the requirements under the relevant provincial employment standards legislation and common law. It is expected that all employees will be terminated in connection with the Proposal Proceedings. All terminated employees will receive their wages, benefits and accrued vacation to the date of termination, and may have a claim in the Proposal Proceedings for any severance obligations.

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<sup>1</sup> In addition to the 7 head office employees, there is one employee of Jasper Apparel Group Canada, LP, who is currently on NW Canada LP's payroll and is currently being moved to an alternate employer.

### **KERA Distribution**

30. Given the short timeframe of the retail operations wind-down, it was and remains imperative that the NW Canada Entities maintain certain key employees to assist with the orderly wind down of the NW Canada Entities' operations and the liquidation of their inventory. As stated above, in an attempt to ensure the continued participation of employees identified as key employees during the Proposal Proceedings, the NW Canada Entities obtained approval of the KERA.

31. In order for a KERA participant to receive payments under the KERA, such employee cannot have: (a) disclosed the terms of the KERA (other than to his or her legal, financial and tax advisors or as required by law); or (b) at any time on or before the date on which any portion of the funds contemplated under the KERA is paid (i) resign or (ii) be terminated for cause.

32. There were initially eleven employees who were participants in the KERA and were eligible to receive KERA payments, totalling \$75,000 in the aggregate. Following the commencement of the Proposal Proceedings, three employees were removed or resigned prior to earning a KERA payment, and one employee was added. Currently, the KERA contemplates the participation of nine employees, with aggregate KERA payments in the amount of \$86,000. As of the date of this affidavit, approximately \$8,500 of KERA payments have been paid or are payable. The NW Canada Entities anticipate distributing the remaining KERA payments following the termination of the KERA participants, at certain milestones during the wind-down of operations.

33. One KERA participant announced their resignation effective prior to the completion of the Liquidation Sales. As a result, with the approval of the Proposal Trustee, the NW Canada Entities will be setting aside a portion of the KERA funds which was earmarked for that individual and distributing it to two other KERA participants.

### **CONTRACT DISCLAIMERS**

34. As of the date of this Affidavit, the NW Canada Entities have taken steps to disclaim the majority of contracts to which they were a party (the "Disclaimed Contracts"). To date, notices to disclaim agreements with approximately 20 counterparties have been delivered pursuant to

the BIA. Disclaimer notices, consisting of a Form 44.1 *Notice by Debtor to Disclaim or Resiliate an Agreement* and explanatory cover letter, were sent to the counterparties of the Disclaimed Contracts between the end of April and the end of May 2018.

35. The Proposal Trustee approved the disclaimer of the Disclaimed Contracts. As of June 12, 2018, no counterparty to a Disclaimed Contract has disputed the NW Canada Entities' disclaimers.

36. The NW Canada Entities anticipate delivering more disclaimers as they continue to wind down their operations.

#### **UPDATED CASH FLOWS**

37. The initial cash flow forecast prepared by the Proposal Trustee and appended to First Report was for the 11-week period from April 8, 2018 to June 23, 2018. In connection with the within motion, the Proposal Trustee has assisted the NW Canada Entities in preparing (i) a report on actual versus forecast results for the 8 weeks ended June 2, 2018, and (ii) an extended cash flow forecast (the "**Extended Cash Flow Forecast**") for the 9 week period from June 3, 2018 to August 4, 2018 (the "**Extended Cash Flow Period**"), copies of which I understand from the Proposal Trustee will be attached as appendices to the Second Report. As set out in the Extended Cash Flow Forecast, the NW Canada Entities are expected to have sufficient liquidity to operate to the end of the Extended Cash Flow Period, which coincides with the extension of the Proposal Proceedings to August 3, 2018. The NW Canada Entities' principal use of cash following the commencement of the Proposal Proceedings to the completion of the Liquidation Sales consists of regular course operating expenditures, including amounts paid or to be paid to employees and landlords. These expenditures are expected to decrease over time as store closures are effected.

#### **STATUS OF THE NW U.S. ENTITIES' CHAPTER 11 PROCEEDINGS**

38. As outlined in my affidavit sworn April 6, 2018, the NW U.S. Entities entered into the Stalking Horse APA with certain entities affiliated with ABG and Marc Fisher on April 5, 2018, which committed those entities to pay USD\$123 million for the intellectual property associated with the Nine West and Bandolino brands and USD \$77 million for inventory. On May 5, 2018,



the US Court approved bidding procedures in the Chapter 11 Proceedings with respect to the assets of the Nine West, Bandolino, and associated brands. The bidding procedures set a bid deadline of June 4, 2018, provided for an auction to be conducted on June 8, 2018 if necessary, and contemplated a sale hearing on June 18, 2018. The NW U.S. Entities received one bid prior to the bid deadline, which was submitted by shoe retailer DSW Inc. Following an auction, ABG was declared to be the successful bidder with a revised bid of USD \$330 million. <sup>4</sup> ~~330~~ <sup>PPG</sup>

39. The NW Canada Entities and Proposal Trustee will provide further relevant information to this Court on the Chapter 11 Proceedings as it becomes available.

#### STAY EXTENSION

40. Since April 14, 2018, the NW Canada Entities, the Consultant, the Proposal Trustee and their advisors have been working together to carry out the Liquidation Sales, address employee, supplier, customer and other stakeholder issues, and otherwise advance the Proposal Proceedings. The Consulting Agreement contemplates that the Liquidation Sales will be completed by June 30, 2018 and the NW Canada Entities are on track to meet that deadline.

41. The NW Canada Entities have started drafting a form of proposal to their creditors, subject to further drafting and advancement as available proceeds and asset monetizations are further quantified. The proposal will likely include a quantification of the claims of various creditors, including landlords and employees.

42. A 45-day extension of the Proposal Period would give the NW Canada Entities the time needed to complete the Liquidation Sales and finalize a proposal for consideration of the NW Canada Entities' creditors.

43. I am not aware of any creditors who would be harmed by the extension of the Proposal Period to August 3, 2018.

CONCLUSION

44. I swear this affidavit in support of the Extension Order being sought in the Proposal Proceedings and for no improper purpose.

SWORN BEFORE ME at the City of New York, State of New York on June 12, 2018.

*Janita D. Whitfield*  
Notary

*Ralph Schipani*

RALPH SCHIPANI

JANITA D. WHITFIELD  
Notary Public, State of New York  
No. 01119 0400  
Queens County  
Commission Expires 06/05, 2019

TAB 3

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE )  
JUSTICE )  
)

THURSDAY, THE 2<sup>ND</sup>  
DAY OF AUGUST, 2018

Estate/Court File No. 31-2363758  
Estate/Court File No. 31-2363759

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF JONES CANADA, INC., A CORPORATION WITH A HEAD OFFICE IN THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO, AND NINE WEST CANADA LP, A PARTNERSHIP WITH A HEAD OFFICE IN THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO

Applicants

ORDER  
(Re Extension of Proposal Period et al.)

THIS MOTION made by Jones Canada, Inc. ("**Jones Canada**") and Nine West Canada LP ("**NW Canada**" and, together with Jones Canada, the "**Applicants**") pursuant to the *Bankruptcy and Insolvency Act* R.S.C. 1985, c. B-3 (the "**BIA**") for an order extending the time for filing a proposal (the "**Proposal Period**") pursuant to s. 50.4(9) of the BIA, 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 Ralph Schipani sworn July ●, 2018 and exhibits thereto (the "**Schipani Affidavit**"), the Third Report (the "**Third Report**") of Richter Advisory Group Inc. in its capacity as proposal trustee of the Applicants (in such capacity, the "**Proposal Trustee**") dated July ●, 2018 and the appendices thereto, filed, and on hearing the submissions of respective counsel for the Applicants, the Proposal Trustee, and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of ● sworn July ●, 2018, filed;

**SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Third Report is hereby abridged and validated so that this motion is properly returnable today and that service, including the form, manner and time that such service was actually effected on all parties, is hereby validated, and where such service was not effected such service is hereby dispensed with.

**STAY EXTENSION**

2. **THIS COURT ORDERS** that the Proposal Period is hereby extended in accordance with subsection 50.4(9) of the BIA, to and including September 17, 2018.

**APPROVAL OF PROPOSAL TRUSTEE'S REPORT**

3. **THIS COURT ORDERS** that the Third Report and the activities of the Proposal Trustee described therein are hereby approved.

**APPROVAL OF FEES**

4. **THIS COURT ORDERS** that the fees and disbursements of the Proposal Trustee for the period from June 3, 2018 to July 20, 2018 and those of the Proposal Trustee's counsel, Aird & Berlis LLP, for the period from June 11, 2018 to July 17, 2018 are hereby approved.

**GENERAL**

5. **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 Proposal 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 the Applicants and to the Proposal Trustee, as an officer of this Court, as may

be necessary or desirable to give effect to this Order, to grant representative status to the Proposal Trustee in any foreign proceeding, or to assist the Applicants and the Proposal Trustee and their respective agents in carrying out the terms of this Order.

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IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF JONES CANADA, INC., A CORPORATION WITH A HEAD OFFICE IN THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO, AND NINE WEST CANADA LP, A PARTNERSHIP WITH A HEAD OFFICE IN THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO

Estate/Court File No. 31-2363758  
Estate/Court File No. 31-2363759

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
Proceeding commenced at Toronto

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**ORDER**  
**(Re Extension of Proposal Period et al)**

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**STIKEMAN ELLIOTT LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

**Elizabeth Pillon** LSUC#: 35638M  
Tel: (416) 869-5236

**Maria Konyukhova** LSUC #: 52880V  
Tel: (416) 869-5230

**Sanja Sopic** LSUC#: 66487P  
Tel: (416) 869-6825

**Lawyers for the Applicants**

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF JONES  
CANADA, INC. AND NINE WEST CANADA LP

Estate/Court File No. 31-2363758  
Estate/Court File No. 31-2363759

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
Proceeding commenced at Toronto

**MOTION RECORD**  
**(RETURNABLE AUGUST 2, 2018)**

**STIKEMAN ELLIOTT LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

**Elizabeth Pillon** LSUC#: 35638M  
Tel: (416) 869-5623  
Email: lpillon@stikeman.com

**Maria Konyukhova** LSUC #:52880V  
Tel: (416) 869-5230  
Email: mkonyukhova@stikeman.com

**Sanja Sopic** LSUC#: 66487P  
Tel: (416) 869-6825  
Email: ssopic@stikeman.com  
Fax: (416) 947-0866

**Lawyers for the Applicants**