

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF **NORDSTROM CANADA RETAIL,  
INC., NORDSTROM CANADA HOLDINGS, LLC** and  
**NORDSTROM CANADA HOLDINGS II, LLC**

APPLICANTS

**FACTUM OF THE APPLICANTS  
(APPROVAL AND VESTING ORDERS)**

July 13, 2023

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## PART I - NATURE OF THE MOTION

1. On March 2, 2023, Nordstrom Canada Retail, Inc., Nordstrom Canada Holdings, LLC, and Nordstrom Canada Holdings II, LLC (the “**Applicants**”) obtained relief under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985 c. C-36 (the “**CCAA**”) pursuant to an Initial Order (the “**Initial Order**”). The stay of proceedings in the Initial Order was extended to Nordstrom Canada Leasing LP (together with the Applicants, the “**Nordstrom Canada Entities**”). Alvarez & Marsal Canada Inc. was appointed as monitor (the “**Monitor**”). On March 10, 2023, the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted an Amended and Restated Initial Order.

2. In furtherance of the orderly and expeditious wind-down of their business, and pursuant to the Amended and Restated Initial Order, the Nordstrom Canada Entities, in consultation with the Monitor, retained Jones Lang LaSalle Real Estate Services, Inc. (“**JLL**”) as real estate advisor for the purpose of facilitating the sale of leases and other property rights for some or all of the Nordstrom Rack Leases and the Nordstrom full-line Leases in Canada (the “**Leases**”). JLL commenced a marketing process seeking to complete transactions for the Leases for the benefit of the Nordstrom Canada Entities’ stakeholders. This marketing process gave rise to two transactions for three of the Nordstrom Rack Leases, both now subject to court approval.

3. This factum is filed in support of a motion by the Applicants for orders (the “**Approval and Vesting Orders**”), among other things:

- (a) approving the transactions contemplated by the Omnibus Assignment and Assumption of Leases, dated as of June 5, 2023 (as amended, the “**Winners Agreement**”) between Canada Leasing LP and Winners Merchants International

L.P. (“**Winners LP**”) solely with respect to the Vaughan Mills Lease and the Deerfoot Meadows Lease (as discussed below);

- (b) approving the transaction contemplated by the Assignment and Assumption of Lease, dated as of June 8, 2023 (as amended) (the “**G2MC Agreement**”) between Canada Leasing LP and G2MC Inc. (“**G2MC**”) with respect to the Heartland Lease (as discussed below); and
- (c) approving the activities of the Monitor and the fees and disbursements of the Monitor and its counsel.

4. Pursuant to the Winners Agreement and the G2MC Agreement, the Nordstrom Canada Entities’ interest in three Leases will be assigned for aggregate cash consideration of \$938,734. The Landlord of a fourth Nordstrom Rack Lease (the Train Yards Lease) elected to terminate the Lease rather than negotiate an assignment. In addition to the cash consideration payable pursuant to the transactions, the Winners Agreement and the G2MC Agreement will significantly reduce Landlord claims against the Nordstrom Canada Entities by reducing the number of Leases that will have to be disclaimed. Both the cash consideration and the reduction in Landlord claims will be of material benefit to the Nordstrom Canada Entities and their stakeholders, even considering the additional rent that must be paid as a result of the delayed closing date required by the Winners Agreement.

5. The Nordstrom Canada Entities submit that the Winners Agreement and the G2MC Agreement should be approved and the transactions contained therein implemented. The Winners Agreement and the G2MC Agreement represent the result of a sale process involving more than 200 potential purchasers and are the highest-value, non-overlapping bids to emerge from the process. The Monitor supports the proposed transactions.

## **PART II - SUMMARY OF FACTS**

6. The facts underlying this motion are more fully set out in the affidavits of Misti Heckel.<sup>1</sup> Facts relevant to the requested relief are highlighted in the relevant sections below.

### **A. The Nordstrom Canada Entities' Marketing of the Leases**

7. To permit the Nordstrom Canada Entities to proceed with an orderly wind-down, the Amended and Restated Initial Order authorized the Nordstrom Canada Entities, with the assistance of any real estate advisor as may be desirable, to pursue all avenues for the sale, transfer, or assignment of the Nordstrom Canada Entities' Leases.<sup>2</sup> The Nordstrom Canada Entities engaged JLL to act as real estate advisor with respect to the Leases.<sup>3</sup>

8. The Nordstrom Canada Entities, with the assistance of JLL and under the supervision of the Monitor, implemented a lease transaction process for the Leases. A total of 213 parties were in contact with JLL to discuss the process for bidding on one or more of the Leases.<sup>4</sup> 28 parties executed non-disclosure agreements with Canada Leasing LP and were granted access to a confidential data room to assist potential bidders with their due diligence.<sup>5</sup>

9. With respect to the Nordstrom Rack Leases, on April 19, 2023, JLL requested that each interested party submit an expression of interest by no later than 5:00 p.m. (Eastern Time) on April 28, 2023, confirming which Nordstrom Rack Leases it was interested in, the consideration it was

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<sup>1</sup> Affidavit of Misti Heckel, sworn July 11, 2023 [**Lease Assignment Affidavit**] and Affidavit of Misti Heckel, sworn May 19, 2023 [**Claims Process Affidavit**]. Unless otherwise specified, capitalized terms in this factum have the same meaning as in the Lease Assignment Affidavit.

<sup>2</sup> Claims Process Affidavit at para 38.

<sup>3</sup> Claims Process Affidavit at paras 38-39.

<sup>4</sup> Lease Assignment Affidavit at para 8.

<sup>5</sup> Lease Assignment Affidavit at para 8.

willing to provide for same, and any conditions for the closing of a transaction (each a “**Nordstrom Rack EOI**”).<sup>6</sup>

10. The Nordstrom Canada Entities received Nordstrom Rack EOIs from third-party retailers for the assignment and assumption of four Nordstrom Rack Leases.<sup>7</sup> Upon receipt of the Nordstrom Rack EOIs, the Nordstrom Canada Entities and JLL, in consultation with the Monitor, undertook negotiations with bidders who submitted the most attractive, non-conflicting bids for each Nordstrom Rack Lease, including providing draft assignment agreements to certain of the potential assignees.<sup>8</sup> These negotiations resulted in the Winners Agreement and the G2MC Agreement, described more fully below, respecting initially four of the Nordstrom Rack Leases.

11. In addition, on May 24, 2023, JLL sent potentially interested parties an email requesting that each party confirm which Nordstrom Canada full-line store Leases it was interested in, the consideration it was willing to provide for same, and any conditions for the closing of a transaction (each a “**Nordstrom Full-Line EOI**”) by no later than 5:00 p.m. (Eastern Time) on June 8, 2023 (the “**Full-Line Store EOI Deadline**”).<sup>9</sup>

12. As of the Full-Line Store EOI Deadline, the Nordstrom Canada Entities received Nordstrom Full-Line EOIs from third parties for potential transactions involving each of the Nordstrom Canada full-line store Leases. The Nordstrom Canada Entities discussed the Nordstrom Full-Line EOIs with JLL, the Monitor, the proposed assignees, and the applicable Landlords. No executable transactions acceptable to the applicable Landlords for the assignment of Nordstrom

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<sup>6</sup> Lease Assignment Affidavit at para 7.

<sup>7</sup> Lease Assignment Affidavit at para 7.

<sup>8</sup> Lease Assignment Affidavit at para 7.

<sup>9</sup> Lease Assignment Affidavit at para 9.

Canada full-line store Leases emerged as a result of these discussions and the lease transaction process.<sup>10</sup>

13. The Nordstrom Canada Entities, with the approval of the Monitor, issued notices of disclaimer to the Landlords of all Nordstrom Canada full-line store Leases (which disclaimers will become effective July 22, 2023), and with respect to all Nordstrom Rack stores for which no Nordstrom Rack EOIs were received (which disclaimers became effective in early June).<sup>11</sup>

## **B. Lease Transactions**

14. The Nordstrom Canada Entities, with the assistance of JLL and the Monitor, sought to negotiate lease transactions for the four Nordstrom Rack Leases in respect of which Nordstrom Rack EOIs had been received.<sup>12</sup> Those negotiations culminated in the execution of:

(a) the Winners Agreement relating to the Vaughan Mills Lease, the Deerfoot Meadows Lease, and the Train Yards Lease (each as defined below); and

(b) the G2MC Agreement relating to the Heartland Lease (as defined below).<sup>13</sup>

15. The transaction with respect to the Train Yards Lease under the Winners Agreement has since been terminated because the Landlord of the Train Yards Lease elected to terminate the Lease rather than negotiate an assignment. The remainder of the transactions under the Winners Agreement remain valid and in full force and effect.<sup>14</sup>

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<sup>10</sup> Lease Assignment Affidavit at para 10.

<sup>11</sup> Lease Assignment Affidavit at paras 11 and 15.

<sup>12</sup> Lease Assignment Affidavit at para 12.

<sup>13</sup> Lease Assignment Affidavit at para 12.

<sup>14</sup> Lease Assignment Affidavit at para 12.

16. The ultimate aggregate consideration payable under the Winners Agreement and the G2MC Agreement totals approximately \$938,734, broken down as follows:<sup>15</sup>

- (a) \$150,000 for the Vaughan Mills Lease;
- (b) \$200,000 for the Deerfoot Meadows Lease; and
- (c) \$588,734 for the Heartland Lease.<sup>16</sup>

17. The proposed transactions, and the termination of the Train Yards Lease, will also result in a reduction of Landlord claims against the Nordstrom Canada Entities' estate that would otherwise have arisen from disclaimers of the Heartland Lease, the Train Yards Lease, the Deerfoot Meadows Lease, and the Vaughan Mills Lease.<sup>17</sup>

**(a) The Winners Agreement**

18. On June 5, 2023, Canada Leasing LP and Winners LP entered into the Winners Agreement.<sup>18</sup> Winners LP is a wholly-owned subsidiary of TJX, a public company ranked 75 in the 2022 Fortune 500 company listings.<sup>19</sup> Winners LP holds TJX Canada's real estate portfolio and holds leases for 555 retail stores in Canada.<sup>20</sup>

19. The Winners Agreement effectively constitutes three separate agreements for an assignment in respect of each of the Vaughan Mills Lease, the Deerfoot Meadows Lease, and the Train Yards Lease. If the Winners Agreement terminates in respect of any single Assignment, it

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<sup>15</sup> Lease Assignment Affidavit at para 14.

<sup>16</sup> The consideration for the Heartland Lease has been reduced to this amount subject to certain conditions set out in an amendment to the G2MC Agreement: Lease Assignment Affidavit at para 14.

<sup>17</sup> Lease Assignment Affidavit at para 14.

<sup>18</sup> Lease Assignment Affidavit at para 16.

<sup>19</sup> Lease Assignment Affidavit at para 26.

<sup>20</sup> Lease Assignment Affidavit at para 27.

remains valid and in full force and effect for the other assignments. Despite the termination of the Train Yards Lease, therefore, the Winners Agreement remains effective with respect to the assignment of the Vaughan Mills Lease and the Deerfoot Lease.<sup>21</sup>

20. Key terms of the Winners Agreement include the following:<sup>22</sup>

- (a) Canada Leasing LP agrees to assign and transfer, and Winners LP agrees to assume, all of Canada Leasing LP's right, title and interest in and to: (i) each Assigned Winners' Lease on an "as is, where is" basis; (ii) various FF&E and Trade Fixtures that Canada Leasing LP leaves in the Assigned Winners' Premises; and (iii) all related rights, benefits and advantages, if any, contained in each Assigned Winners' Lease;
- (b) Only "Assigned Leases" will ultimately be assigned to Winners LP. Assigned Leases are defined as each Lease in respect of which either a Winners Landlord Waiver<sup>23</sup> or an order assigning such Lease pursuant to section 11.3 of the CCAA has been obtained by the Closing Date. Winners Landlord Waivers have been obtained with respect to both the Vaughan Mills and the Deerfoot Meadows Leases;
- (c) Winners LP will be responsible for all costs related to non-monetary defaults under the Assigned Winners' Leases, save and except for any non-monetary default arising by reason of the Nordstrom Canada Entities' CCAA proceedings or the

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<sup>21</sup> Lease Assignment Affidavit at para 17.

<sup>22</sup> Lease Assignment Affidavit at para 17.

<sup>23</sup> Key terms of the Winners Landlord Waivers are described more fully in the Lease Assignment Affidavit at paras 17-18. Pursuant to the Winners Landlord Waivers, among other things, the applicable landlord waives its right to terminate the Lease upon assignment, Winners agrees to pay all outstanding rent owed by Canada Leasing LP up to the Closing Date and to perform future obligations under the Lease after the Closing Date, and the landlord releases the Nordstrom Canada Entities from all terms under the Lease and waives any claim it might have in the Nordstrom Canada Entities' CCAA proceedings.



insolvency of Canada Leasing LP. Canada Leasing LP will be responsible for costs relating to monetary defaults existing as of the applicable Closing Date for each Assigned Winners' Lease;

- (d) Winners LP paid counsel to the Nordstrom Canada Entities cash consideration in the aggregate amount of \$450,000 as contemplated in the Winners Agreement, to be held in trust pending the closing of the Assignment of each Lease;<sup>24</sup> and
- (e) The closing date for the assignment and assumption of the Vaughan Mills Lease and the Deerfoot Meadows Lease is February 1, 2024.

**(b) The G2MC Agreement**

21. On June 8, 2023, Canada Leasing LP and G2MC entered into the G2MC Agreement with respect to the Lease between Orlando Corporation (the "**Heartland Landlord**"), as landlord, and Canada Leasing LP, as tenant, dated November 21, 2016, for the premises located at Heartland Town Centre (the "**Heartland Lease**").<sup>25</sup>

22. G2MC has a portfolio of brands and operates 16 stores in Ontario and Quebec in the mid-high end interior and exterior furniture category.<sup>26</sup> G2MC is owned by the private equity group Champlain Financial Corporation and generates over \$200 million in annual revenue.<sup>27</sup>

23. Key terms of the G2MC Agreement include the following:<sup>28</sup>

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<sup>24</sup> The \$100,000 paid in consideration for the Train Yards Lease has since been returned to Winners LP: Lease Assignment Affidavit at para 17.

<sup>25</sup> Lease Assignment Affidavit at para 29.

<sup>26</sup> Lease Assignment Affidavit at para 35.

<sup>27</sup> Lease Assignment Affidavit at para 36.

<sup>28</sup> Lease Assignment Affidavit at para 30.

- (a) Canada Leasing LP agrees to assign and transfer, and G2MC agrees to assume, all of Canada Leasing LP's obligations, rights, title and interest in and to: (i) the Heartland Lease on an "as is, where is" basis; and (ii) all related rights, benefits and advantages, if any, contained in the Heartland Lease;
- (b) the Heartland Landlord was to provide a G2MC Landlord Waiver<sup>29</sup> on or before July 10, 2023 (which was subsequently extended to July 11, 2023). This condition has been satisfied;
- (c) G2MC will not be responsible for, nor shall it indemnify Canada Leasing LP with respect to, any Cure Costs. Canada Leasing LP may either pay the Cure Costs prior to the Closing Date or, with the consent of the Monitor, terminate the G2MC Agreement. If any known Cure Costs remain unpaid at the Closing Date, G2MC may terminate the G2MC Agreement;
- (d) G2MC paid counsel to the Nordstrom Canada Entities cash consideration in the aggregate amount of \$588,734 as contemplated in the G2MC Agreement and the G2MC Amending Agreement, to be held in trust pending the closing of the assignment of the Heartland Lease; and
- (e) the Closing Date of the G2MC Agreement is two Business Days immediately following the date on which all closing conditions have been satisfied or waived, provided that closing is on or before August 1, 2023, failing which the G2MC

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<sup>29</sup> Key terms of the G2MC Landlord Waiver are described more fully in the Lease Assignment Affidavit at para 31. Pursuant to the G2MC Landlord Waiver, among other things, the Heartland Landlord waives its right to terminate the Heartland Lease upon assignment, G2MC agrees to perform future obligations under the Heartland Lease after the Closing Date, and the Heartland Landlord releases the Nordstrom Canada Entities from all terms under the Heartland Lease and waives any claim it might have in the Nordstrom Canada Entities' CCAA proceedings.

Agreement will automatically terminate and the consideration paid for the Heartland Lease will be returned to G2MC.

### **PART III - ISSUES AND THE LAW**

24. The issue on this motion is whether this Court should approve the Winners Agreement and the G2MC Agreement and grant the proposed Approval and Vesting Orders.

#### **A. The Winners Agreement and the G2MC Agreement should be approved**

25. Section 36 of the CCAA sets out the legal test for obtaining court approval that applies where a debtor company seeks to sell assets outside the ordinary course of business during a CCAA proceeding. Section 36 provides:

**36(1) Restriction on disposition of business assets** - A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

**36(2) Notice to creditors** - A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

**36(3) Factors to be considered** - In deciding whether to grant the authorization, the court is to consider, among other things,

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- (b) whether the monitor approved the process leading to the proposed sale or disposition;
- (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

26. These factors overlap, to a certain degree, with the *Soundair* factors that were applied in approving sale transactions under pre-amendment CCAA case law.<sup>30</sup> Under the *Soundair* test, it was necessary to consider (1) whether sufficient efforts had been made to obtain the best price and that the debtor had not acted improvidently; (2) whether the interests of all parties had been considered; (3) the integrity and efficacy of the process for obtaining offers; and (4) whether there was any unfairness in working out the process.

27. The Applicants submit that, taking into account the factors listed in section 36(3) and with regard to the general interpretive principles of the CCAA, this Court should approve the Winners Agreement and the G2MC Agreement and grant the proposed Approval and Vesting Orders.

- (a) Process was reasonable – whether the process for achieving a sale transaction is reasonable must be considered contextually, in light of the circumstances existing at the time.<sup>31</sup> Assessing the reasonableness of a sale process does not require the Court to examine in minute detail all of the circumstances leading up to the acceptance of a particular offer.<sup>32</sup> The Court must be satisfied overall that the debtor has not acted improvidently.

The comprehensive marketing process undertaken by JLL, under the supervision of the Monitor, involved contact with more than 200 potential bidders and led to 28

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<sup>30</sup> *Canwest Global Communications Corp.*, [2010 ONSC 2870](#) (CanLII) at para 13, citing *Royal Bank of Canada v. Soundair Corp.*, [\[1991\] O.J. No. 1137 \(QL\)](#) [*Soundair*] at para 16. See also *Target Canada Co. (Re)*, [2015 ONSC 2066](#) [*Target*] at para 15.

<sup>31</sup> See *White Birch Paper Holding Company (Arrangement relatif à)*, [2010 QCCS 4915](#) at para 49: "The Court has to look at the transaction as a whole and essentially decide whether or not the sale is appropriate, fair and reasonable. In other words, the Court could grant the process for reasons others than those mentioned in Section 36 CCAA or refuse to grant it for reasons which are not mentioned in Section 36 CCAA." See also *Corporation (Re)*, [2016 ABQB 257](#) [*Sanjel*] at paras [77](#) and [80](#).

<sup>32</sup> *Soundair* at paras [48-49](#).

parties signing NDAs to access the confidential data room for due diligence.<sup>33</sup> The Winners Agreement and the G2MC Agreement are the product of significant negotiations undertaken by the Nordstrom Canada Entities, in consultation with the Monitor, with the successful bidders.<sup>34</sup> There is no evidence that the Nordstrom Canada Entities have acted improvidently. While the Amended and Restated Initial Order authorized the Nordstrom Canada Entities to pursue all avenues for the sale or assignment of the Leases, the lease marketing process itself was not formally approved by this Court. However, it was fair, reasonable and comprehensive. There are many examples where a sale was approved by the court even though the process did not receive prior court approval.<sup>35</sup>

- (b) Monitor concurs – the Monitor concurs with the Nordstrom Canada Entities in respect of the sale process and supports the relief sought on this motion.<sup>36</sup> The Monitor supervised the implementation of the lease transaction process, reviewed all Nordstrom Rack EOIs and Nordstrom Full-Line EOIs received during the process, and was consulted throughout during negotiations in respect of the Winners Agreement and the G2MC Agreement.<sup>37</sup>
- (c) Purchase price is fair and reasonable – to establish this criterion, the debtor must demonstrate that sufficient effort has been made to obtain the best price and that it has not acted improvidently, based on the information available at the time the offer

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<sup>33</sup> Lease Assignment Affidavit at paras 7 and 40. The lease transaction process was also described in more detail in the Claims Process Affidavit at paras 38-51.

<sup>34</sup> Lease Assignment Affidavit at para 40.

<sup>35</sup> See e.g., [Sanjel](#), where the SISP had been run before an initial order was sought under the CCAA. Also see [Soundair](#), where a sale of an airline by a receiver was approved after the receiver had been given significant discretion to run the sales process as best it saw fit.

<sup>36</sup> Lease Assignment Affidavit at para 41; Fourth Report of the Monitor at para 12.1.

<sup>37</sup> Lease Assignment Affidavit at paras 7, 11, 12,

is accepted.<sup>38</sup> The decision to accept a particular offer is a matter of business judgment on the part of the debtor that should not lightly be interfered with in the absence of evidence of imprudence or unfairness.<sup>39</sup>

The consideration to be received under the Winners Agreement and the G2MC Agreement (including the G2MC Amending Agreement) is fair and reasonable.<sup>40</sup>

The marketing process for the sale of the Leases was rigorous, thoroughly testing the available market to obtain the best price. The Monitor agrees that the Winners Agreement and the G2MC Agreement represent the highest, non-overlapping executable offers received within the marketing process for the applicable Leases.<sup>41</sup>

- (d) Transaction in the best interests of stakeholders – the Nordstrom Canada Entities, with the support of JLL and the Monitor, believe that the Winners Agreement and the G2MC Agreement (including the G2MC Amending Agreement) are in the best interests of the Nordstrom Canada Entities and their stakeholders.<sup>42</sup> In addition to the aggregate payable consideration of \$938,734, a particular benefit from the proposed transactions is the significant reduction of Landlord claims in the estate that would otherwise arise from disclaimers of those Leases. It is anticipated that claims arising from disclaimed Leases will form a significant portion of the claims pool in the CCAA estate. Completing transactions for three of the 13 Leases of the

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<sup>38</sup> *Terrace Bay Pulp Inc. (Re)*, [2012 ONSC 4247](#) [*Terrace Bay*] at paras 50-55; *Sanjel* at para [56](#);

<sup>39</sup> *Soundair* at paras [21](#) and [30-31](#); see also *Sanjel* at para [99](#) and *Terrace Bay* at paras [45](#) and [51-52](#).

<sup>40</sup> Lease Assignment Affidavit at para 38.

<sup>41</sup> Lease Assignment Affidavit at para 38.

<sup>42</sup> Lease Assignment Affidavit at para 38.

Nordstrom Canada Entities will be of material benefit to the stakeholders of the Nordstrom Canada Entities as a whole.<sup>43</sup>

- (e) As set out in the Monitor's Fourth Report, the amount of combined rent to be paid by Canada Leasing LP to the delayed Closing Date required by Winners LP under the Winners Agreement exceeds the aggregate consideration to be paid by Winners LP for the assignment of the Vaughan Mills Lease and the Deerfoot Meadows Lease. However, as a result of the significant reduction of Landlord claims from the assignments, the Monitor's view is that the assignment of these Leases is value accretive to the Nordstrom Canada Entities' estate and is a superior outcome for creditors generally than a scenario in which such Leases were disclaimed or where the transaction was completed in bankruptcy.<sup>44</sup>

28. It is the informed business judgment of the Nordstrom Canada Entities and JLL, supported by the Monitor, that the Winners Agreement and the G2MC Agreement are in the best interests of the Nordstrom Canada Entities and their stakeholders. In the absence of any indication that the Applicants have acted improvidently, that business judgment is entitled to deference by this Court.<sup>45</sup>

**B. Approval of the activities and fees and disbursements of the Monitor and its counsel**

29. The Approval and Vesting Order in respect of the Winners Agreement also approves the reports of the Monitor filed in the CCAA proceedings to date and the activities of the Monitor referred to therein. This Court has noted that requests for approval of the activities of the monitor

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<sup>43</sup> Lease Assignment Affidavit at para 39.

<sup>44</sup> Fourth Report of the Monitor at para 7.7.

<sup>45</sup> *AbitibiBowater Inc. (Re)*, [2010 QCCS 1742](#) at paras 70-72. See also *Sanjel* at para [57](#); *Target Canada Co. (Re)*, [2015 ONSC 1487](#) at para 18.

are common and that there are good policy and practical reasons for the court to approve of monitor's activities and provide a level of protection for monitors during the CCAA process.<sup>46</sup>

30. The proposed approval incorporates the limitation adopted by the Court in *Target Canada* and expressly provides that only the Monitor, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

31. The jurisdiction of this Court to pass the accounts of the Monitor and its counsel is confirmed in paragraph 52 of the Amended and Restated Initial Order, which provides that "the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice."

32. The overarching test for assessing the fees and disbursements of the Monitor and its counsel in a CCAA proceeding is whether they are "fair and reasonable" in all of the circumstances. This requires an overall assessment of the work done and a consideration of the results achieved. The value provided should predominate the consideration of what amount is fair and reasonable.<sup>47</sup> The factors to be considered include: (a) the nature, extent, and value of the assets being handled; (b) the time spent and the complications and difficulties encountered; (c) the Monitor's knowledge, experience and skill; (d) the diligence and thoroughness displayed by the Monitor; (e) the responsibilities the Monitor assumed; and (f) the results of the Monitor's efforts.<sup>48</sup>

33. The fees and disbursements of the Monitor and its counsel for which approval is sought are detailed in the Monitor's Fourth Report and the related fee affidavit appendices. As detailed in

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<sup>46</sup> *Target Canada Co. (Re)*, [2015 ONSC 7574](#) at paras 1-2 and 22.

<sup>47</sup> *Nortel Networks Corp.*, [2017 ONSC 673](#) [*Nortel*] at para 21.

<sup>48</sup> *Bank of Nova Scotia v. Diemer*, [2014 ONCA 851](#) at paras 33-36; *Nortel* at para [14](#).



the Monitor's Fourth Report and its previous reports to Court, the Monitor and its counsel have had an important role in overseeing and assisting the Nordstrom Canada Entities in all aspects of the CCAA proceedings to date, including with respect to matters relating to the initial CCAA filing (including establishing and administering the Employee Trust), the Liquidation Sale, the FF&E removal process, the lease transaction process, the development of the Claims Process, and other matters pertaining to employees, suppliers of goods and services, concession vendors, Landlords and other stakeholders.<sup>49</sup>

34. Accordingly, the Applicants support the approval of the activities of the Monitor and the fees and disbursements of the Monitor and its counsel.

#### **PART IV - NATURE OF THE ORDER SOUGHT**

35. For the foregoing reasons, the Applicants submit that this Court should grant the Approval and Vesting Orders.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 13<sup>th</sup> day of July, 2023:



**OSLER, HOSKIN & HARCOURT, LLP**  
**per Marleigh Dick**  
P.O. Box 50, 1 First Canadian Place  
Toronto, ON M5X 1B8  
Lawyers for the Applicants

**TO: THE ATTACHED SERVICE LIST**

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<sup>49</sup> Fourth Report of the Monitor at para 10.2.

## SCHEDULE “A”: LIST OF AUTHORITIES

### *Cases*

1. *AbitibiBowater Inc. (Re)*, [2010 QCCS 1742](#)
2. *Bank of Nova Scotia v. Diemer*, [2014 ONCA 851](#)
3. *Canwest Global Communications Corp.*, [2010 ONSC 2870](#)
4. *Nortel Networks Corp.*, [2017 ONSC 673](#)
5. *Royal Bank of Canada v. Soundair Corp.*, [\[1991\] O.J. No. 1137 \(QL\)](#)
6. *Sanjel Corporation (Re)*, [2016 ABQB 257](#)
7. *Target Canada Co. (Re)*, [2015 ONSC 1487](#)
8. *Target Canada Co. (Re)*, [2015 ONSC 2066](#)
9. *Target Canada Co. (Re)*, [2015 ONSC 7574](#)
10. *Terrace Bay Pulp Inc. (Re)*, [2012 ONSC 4247](#)
11. *White Birch Paper Holding Company (Arrangement relatif à)*, [2010 QCCS 4915](#)

**SCHEDULE “B”**  
**TEXT OF STATUTES, REGULATIONS & BY-LAWS**

***COMPANIES’ CREDITORS ARRANGEMENT ACT***

R.S.C., 1985, c. C-36, as amended

**Restriction on disposition of business assets**

**36 (1)** A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

**(2)** A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

**(3)** In deciding whether to grant the authorization, the court is to consider, among other things,

**(a)** whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

**(b)** whether the monitor approved the process leading to the proposed sale or disposition;

**(c)** whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

**(d)** the extent to which the creditors were consulted;

**(e)** the effects of the proposed sale or disposition on the creditors and other interested parties; and

**(f)** whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C.  
C-36, AS AMENDED**

Court File No: CV-23-00695619-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF NORDSTROM  
CANADA RETAIL, INC., NORDSTROM CANADA HOLDINGS, LLC and NORDSTROM CANADA  
HOLDINGS II, LLC

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

**PROCEEDING COMMENCED AT TORONTO**

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