

**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

MEETING ORDER FACTUM

December 15, 2023

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TO: THE SERVICE LIST

PART I - NATURE OF THIS MOTION

1. The Applicants obtained relief under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (“**CCAA**”) by an initial order dated March 2, 2023 (the “**Initial Order**”). This Court (the “**CCAA Court**”) subsequently granted an Amended and Restated Initial Order on March 10, 2023. On May 30, 2023, the CCAA Court granted an order (the “**Claims Procedure Order**”) establishing a process to determine the nature, quantum and validity of claims against the Nordstrom Canada Entities and their directors and officers.¹

2. Since the Initial Order was granted, the Applicants have been working diligently to carry out the responsible and orderly wind-down of the business of the Nordstrom Canada Entities, a process which is now nearing completion. They have also been engaged in developing a plan of compromise and arrangement to present to their creditors for voting, which is now complete.

3. Based on the most up-to-date information from the Nordstrom Canada Entities and the Monitor, the Nordstrom Canada Entities expect that all Affected Creditors will receive distributions of approximately **71% to 75%** of their Affected Claims that are Proven Claims.

4. The Applicants therefore seek the proposed Meeting Order, among other things: (i) accepting the filing of the Nordstrom Canada Entities' Consolidated Plan of Compromise and Arrangement, dated December 13, 2023 (the “**Plan**”); (ii) authorizing the Nordstrom Canada Entities to establish one class of Affected Creditors for the purpose of considering and voting on the Plan; (iii) authorizing the Nordstrom Canada Entities to call, hold and conduct a virtual meeting of the Affected Creditor Class on March 1, 2024 (the “**Creditors' Meeting**”) to consider and vote

¹ The facts supporting this factum are set out in the Affidavit of Misti Heckel, sworn December 13, 2023 (“**Meeting Order Affidavit**”). Capitalized terms have the same meaning as in the Meeting Order Affidavit unless otherwise specified.

on a resolution to approve the Plan; and (iv) approving the procedures for calling and holding the Creditors' Meeting.

5. The requested Meeting Order, together with the Plan, represent an important milestone in the CCAA proceedings of the Nordstrom Canada Entities. The threshold for granting the Meeting Order is clearly satisfied. Considerations of fairness and reasonableness are matters to be addressed at the hearing of the Sanction Motion. At this stage, this Court must be satisfied only that there are no legal impediments to placing the Plan before the Affected Creditors for their approval. The Applicants submit that there are none.

6. The Plan contains a number of typical features that have been approved in numerous other plans. Specifically, the Plan is presented on a consolidated basis in light of the significant intertwining of the Nordstrom Canada Entities, which together carried out the Nordstrom business in Canada. Accordingly, the Plan contemplates a single class of Affected Creditors, all of which have unsecured Claims against one or more of the Nordstrom Canada Entities. As is typical of many plans, it also utilizes a Convenience Class consisting of Affected Creditors holding smaller Claims that are less than a threshold amount.

7. If the Meeting Order is granted, the Plan is approved by the requisite majority of Creditors and the Plan is sanctioned by the Court and subsequently implemented, this process will result in the orderly, timely and efficient distribution of the assets of the Nordstrom Canada Entities to all Creditors with Proven Claims.

PART II - SUMMARY OF FACTS

A. Orderly Wind-Down Process Nears Completion

8. Since the granting of the Initial Order, the Nordstrom Canada Entities, in close consultation with the Monitor, have been working diligently to complete the orderly wind-down of the business.

(a) *Liquidation Sale*

9. On March 20, 2023, the CCAA Court granted an order approving an amended and restated consulting agreement between Nordstrom Canada and Canada Leasing LP (the “**Merchant**”) and a contractual joint venture comprised of Hilco Merchant Retail Solutions ULC, Gordon Brothers Canada, ULC, Tiger Asset Solutions, ULC and B. Riley Retail Canada ULC (together, the “**Consultant**”) to carry out the liquidation of the Merchandise and the furniture, fixtures and equipment (“**FF&E**”) at each of the Merchant’s stores through the Liquidation Sale. This Court also approved the Sale Guidelines for the orderly liquidation of the Merchandise and the FF&E.²

10. The Merchant, with the assistance of the Consultant, conducted the Liquidation Sale between March 21, 2023 until May 14, 2023 (in the case of the Nordstrom Rack stores) and June 12, 2023 (in the case of the Nordstrom full-line stores).³ The final reconciliation and settlement of all revenues, costs and expenses with respect to the Liquidation Sale are now complete. The Liquidation Sale generated total receipts of approximately \$103.7 million from the sale of the Merchandise, \$7.8 million from the sale of the FF&E and \$0.6 million from the sale of the Additional Consultant Goods. This entitled the Consultant to fees of \$1.6 million for the Merchandise, \$1.2 million from the sale of the FF&E, and \$1.2 million in Additional Incentive

² Meeting Order Affidavit, para. 23.

³ Meeting Order Affidavit, para. 29.

Compensation, for a total of \$4.0 million.⁴ The net proceeds (after payment of certain Consultant expenses) of approximately \$107.7 million are available for distribution in accordance with the Plan.⁵

(b) Lease Monetization Process

11. On March 22, 2023, Canada Leasing LP entered into a Consulting Services Agreement with Jones Lang LaSalle Real Estate Services Inc. (“**JLL**”) under which JLL was retained to support the potential sale, assignment or transfer of the Nordstrom Canada Entities’ Leases.⁶

12. The details of the process are set out in the Meeting Order Affidavit.⁷ The process did not generate any executable transaction acceptable to the applicable Landlords in relation to the Leases for the Nordstrom full-line stores. Two transactions for three stores were identified in relation to Nordstrom Rack store locations.⁸

13. Following this process, on July 17, 2023, the CCAA Court approved two Lease assignment transactions. The first involved the assignment of two Nordstrom Rack store Leases (Deerfoot Meadows and Vaughan Mills) from Canada Leasing LP to Winners Merchants International LP (the “**Winners Transaction**”). The second involved the assignment of the Heartland Nordstrom Rack Lease from Canada Leasing LP to G2MC Inc. (the “**G2MC Transaction**”).⁹

⁴ Meeting Order Affidavit, para. 32.

⁵ Meeting Order Affidavit, para. 79.

⁶ Meeting Order Affidavit, para. 24.

⁷ Meeting Order Affidavit, para. 51. See also Fourth Heckel Affidavit, sworn May 19, 2023.

⁸ Meeting Order Affidavit, paras. 51-53.

⁹ Meeting Order Affidavit, para. 26.

14. It is anticipated that the Winners Transaction will close on February 1, 2024. The G2MC Transaction has already closed.¹⁰

15. The completion of these transactions has not only materially reduced the Landlord claims in the estate but has generated proceeds for distributions to Creditors under the Plan.

(c) *Claims Procedure*

(i) *Summary of Claims Received*

16. On May 30, 2023, the CCAA Court granted the Claims Procedure Order, which approved a claims process for the identification, quantification and resolution of Claims (as defined in the Claims Procedure Order) as against the Nordstrom Canada Entities and their respective current and former directors and officers.¹¹ The Nordstrom Canada Entities, in consultation with the Monitor, have now reviewed all Proofs of Claim and Notices of Dispute of Negative Notice Claim received in the Claims Process and have communicated revisions, admittances or Notices of Revision or Disallowance to the vast majority of Claimants.¹²

17. A summary of the Proofs of Claim filed in the Claims Process prior to the Claims Bar Date and the Negative Notice Claims delivered by the Monitor to Claimants is set out in the Meeting Order Affidavit.¹³ Two Pre-Filing D&O Claims were filed by the Claims Bar Date. Both were disallowed in full and the time for the Claimant to object has passed.¹⁴

¹⁰ Meeting Order Affidavit, paras. 54-55.

¹¹ Meeting Order Affidavit, para. 25.

¹² Meeting Order Affidavit, para. 34.

¹³ Meeting Order Affidavit, para. 35.

¹⁴ Meeting Order Affidavit, para. 43.

18. As of December 11, 2023, 597 Claims, totaling \$684.6 million, have been resolved. 123 Claims in the amount of \$8.7 million remain unresolved. The Nordstrom Canada Entities, with the assistance of the Monitor, are working to resolve these remaining Claims.¹⁵

19. As of December 11, 2023, 69 Claims, totalling \$2,805,099, had been filed after the Claims Bar Date (the “**Late Filed Claims**”). None of these included any D&O Claims. Pursuant to paragraph 8 of the Claims Procedure Order, the Monitor (in consultation with the Nordstrom Canada Entities) has exercised its discretion to admit solely these Late Filed Claims received as of December 11, 2023 into the Claims Process, subject to validation and reconciliation.¹⁶ The Nordstrom Canada Entities do not intend to summarily admit any further Late Filed Claims. To the extent any further Late Filed Claims are received, these will be analyzed by the Monitor and the Nordstrom Canada Entities on an individual basis, taking into account the advanced stage of these CCAA proceedings.¹⁷

20. Four concession vendors have filed Claims in the Claims Process which if proven would take priority over the Claims of unsecured creditors. The Nordstrom Canada Entities, with the assistance of the Monitor, have resolved certain of these Claims, and certain of them are subject to ongoing discussions with Claimants.¹⁸

(ii) Employee Claims

21. A total of 15 employee and workplace-related claims (together the “**Employee Claims**”), totaling \$464,275, were filed by the Claims Bar Date. Of these Employee Claims, nine were Pre-

¹⁵ Meeting Order Affidavit, para. 37.

¹⁶ Meeting Order Affidavit, para. 36.

¹⁷ Meeting Order Affidavit, para. 36.

¹⁸ Meeting Order Affidavit, para. 38.

Filing Claims totaling \$164,074, five were Restructuring Period Claims totaling \$224,437, and one was a Pre-Filing and Restructuring Period Claim totaling \$75,763. The Nordstrom Canada Entities and the Monitor have reviewed the Proofs of Claim for all such Employee Claims.¹⁹

22. The Nordstrom Canada Entities have met with the Monitor and Employee Representative Counsel to review and discuss the Employee Claims filed by Employee Representative Counsel. Agreements in principle have been reached regarding eight Employee Claims, subject to execution of mutually agreeable documentation. The Nordstrom Canada Entities, in consultation with the Monitor, will continue to engage with Employee Representative Counsel to discuss the status of the remaining Employee Claims, to canvas proposals for resolution and to establish a process and procedure for the determination of any Employee Claims that are not able to be resolved in a mutually agreeable manner.²⁰

23. As contemplated in the September Stay Extension Order, the Employee Trust is now in the process of being wound up. The statutory termination and severance payments owing have been reconciled and a final reimbursement to Nordstrom Canada from the trust has been paid, for a total amount reimbursed by the Employee Trust to Nordstrom Canada of \$14,599,347. The Monitor and the Trustee are now working to complete the final tax return for the Employee Trust before completing the wind up in accordance with the September Stay Extension Order.²¹

¹⁹ Meeting Order Affidavit, para. 40.

²⁰ Meeting Order Affidavit, paras. 41-42.

²¹ Meeting Order Affidavit, paras. 66-72.

(iii) Intercompany Claims

24. As contemplated under the Claims Procedure Order, the Monitor prepared a report detailing its review of all Intercompany Claims, assessing the amount and characterization of such Claims. The Monitor served its Intercompany Claims Report on August 3, 2023. Each Intercompany Claim identified in the Monitor's Intercompany Claims Report is deemed to have been properly submitted through a Proof of Claim by the relevant entity if such Claim was a Pre-Filing Claim or Restructuring Period Claim, as applicable.²²

25. The Claims Procedure Order requires Court approval, on notice to the Service List, for the acceptance of an Intercompany Claim. It is proposed that the Intercompany Claims attached as Schedule "A" to the Plan be approved by the CCAA Court as part of the Sanction and Vesting Order.²³

(iv) Landlord Claims

26. The Nordstrom Canada Entities, with the approval of the Monitor, issued disclaimer notices to the Landlords of three of the Nordstrom Rack stores on May 3 and 5, 2023. Further disclaimer notices in relation to all six of Nordstrom Canada's full-line store Leases were issued on June 22, 2023. The Nordstrom Canada Entities provided assistance in effecting the transition of the premises back to the Landlords of the disclaimed locations.²⁴

²² Meeting Order Affidavit, paras. 44-45.

²³ Meeting Order Affidavit, para. 46. A summary of the Intercompany Claims as of August 3, 2023, as included in the Monitor's Intercompany Claims Report, is provided at para. 47 of the Meeting Order Affidavit. See also Meeting Order Affidavit, paras. 101-105.

²⁴ Meeting Order Affidavit, paras. 48-50.

27. The Nordstrom Canada Entities and Nordstrom US, among others, have entered into settlement agreements (the “**FLS Landlord Settlement Agreements**”) with the Landlords for the Nordstrom full-line stores (the “**FLS Landlords**”). Additionally, the Nordstrom Canada Entities have entered or will be entering into separate settlement agreements (the “**Supporting Rack Landlord Settlement Agreements**”) with the three Landlords for the Nordstrom Rack stores who had their Leases disclaimed (the “**Supporting Rack Landlords**”).²⁵

28. The FLS Landlord Settlement Agreements effect a global resolution of both the FLS Landlords’ Claims against Nordstrom US under certain indemnities provided by Nordstrom US in relation to the performance of the full-line store Leases and the Restructuring Period Claims filed against the Nordstrom Canada Entities by the FLS Landlords in the Claims Process (any Proof of Claim filed by a Landlord, a “**CCAA Lease Claim**”).²⁶ They involve a payment by Nordstrom US to the FLS Landlords of cash in the aggregate of \$174,700,000 exclusive of HST. The FLS Landlord Settlement Agreements also provide that an amount equal to any payment or distribution ultimately received by an FLS Landlord from the Nordstrom Canada Entities, in respect of their CCAA Lease Claims, shall be paid by such FLS Landlord to Nordstrom US.²⁷

29. The FLS Landlord Settlement Agreements are the product of significant discussions and negotiations among the FLS Landlords, Nordstrom US and the Nordstrom Canada Entities, with the support and assistance of the Monitor. Pursuant to the FLS Landlord Settlement Agreements, the CCAA Lease Claims of the FLS Landlords were accepted as Proven Claims in the Claims

²⁵ Meeting Order Affidavit, paras. 58 and 62. All substantive and economic terms of the Supporting Rack Landlord Settlement Agreements have been agreed upon, but one has not yet been formally executed.

²⁶ Meeting Order Affidavit, paras. 56-58.

²⁷ The key terms of the FLS Landlord Settlement Agreements are set out in the Meeting Order Affidavit at para. 59.

Process, with the consent of the Monitor, at an amount equal to four and a half years' rent under the Leases.²⁸

30. The Supporting Rack Landlord Settlement Agreements resolve the CCAA Lease Claims of each of the Supporting Rack Landlords who had their Nordstrom Rack store Leases disclaimed as part of the CCAA proceedings.²⁹ Key terms of the Supporting Rack Landlord Settlement Agreements are set out in the Meeting Order Affidavit.³⁰

31. Specifically, the Supporting Rack Landlords' CCAA Lease Claims are accepted and proven, with the consent of the Monitor, at an amount that results in the Nordstrom Canada Entities paying a cash distribution under the Plan of one year of rent under the applicable Lease. Based on current modelling, this should result in a Proven Claim for each Supporting Rack Landlord of approximately 17 months' rent under the respective Lease. The Supporting Rack Landlords have agreed to support the Meeting Order motion and the Plan.³¹

32. The Nordstrom Canada Entities are of the view, supported by the Monitor, that the quantum of the CCAA Lease Claims of the FLS Landlords accepted as Proven Claims is fair and reasonable in the circumstances, including relative to the accepted amount of the CCAA Lease Claims of the Supporting Rack Landlords. Each of the former Nordstrom full-line stores were significantly larger than the Nordstrom Rack locations, were generally located in more valuable shopping centres in primary real estate markets and each of the Nordstrom full line stores was an anchor tenant of its respective shopping centre. Securing a replacement anchor tenant, modifying the premises to

²⁸ Meeting Order Affidavit, para. 60.

²⁹ Meeting Order Affidavit, paras. 61-62.

³⁰ Meeting Order Affidavit, para. 63.

³¹ Meeting Order Affidavit, para. 63.

instead house multiple tenants, or accommodating other uses will likely be more challenging for the FLS Landlords and take longer to reconfigure than for the Supporting Rack Landlords.³²

(v) Letter Agreement with the CRA

33. The Nordstrom Canada Entities, with the assistance of the Monitor, have been engaged with the CRA regarding Notices of Assessment issued on June 27, 2023 by the CRA against the Applicant Nordstrom Canada Holdings, LLC (“NCH”) under Part XIII of the *Income Tax Act* (the “CRA NCH Assessments”). The CRA NCH Assessments reflect the Minister’s position that NCH is liable to pay non-resident withholding tax on behalf of Nordstrom International Limited (“NIL”) in respect of interest paid by NCH to NIL in connection with the NIL Canada Expansion Loan. The CRA NCH Assessments total approximately \$36 million as of June 27, 2023.³³

34. In order to resolve the CRA NCH Assessments for the benefit of third-party creditors and the CCAA proceedings as a whole, following negotiations and with the support of the Monitor, NIL, NCH and the Minister have entered into an agreement pursuant to which the Minister will vacate the CRA NCH Assessments as against NCH and instead assess and accept security from NIL. The key terms of this agreement are set out in the Meeting Order Affidavit.³⁴

B. The Plan

35. The Plan establishes voting and distribution mechanisms in respect of Creditors’ Claims that have been accepted by the Nordstrom Canada Entities, in consultation with the Monitor, and

³² Meeting Order Affidavit, para. 65.

³³ Meeting Order Affidavit, paras. 73-74.

³⁴ Meeting Order Affidavit, para. 75.

determined under the Claims Procedure Order.³⁵ If approved, sanctioned and implemented, the Plan will complete the orderly and timely wind-down of the Nordstrom Canada Entities, effect a release and discharge of all Affected Claims and of all claims proposed to be released pursuant to the Plan, and effect a global resolution of these CCAA proceedings.³⁶

36. Details regarding the features and mechanics of the Plan are set out in the Meeting Order Affidavit.³⁷ Since the fairness and reasonableness of the Plan are issues for the hearing of the Sanction Motion, only certain features of the Plan are summarized here:

- (a) The Plan is being presented on a consolidated basis.³⁸
- (b) Each of the Nordstrom Canada Entities will deliver or cause to be delivered all of its Cash, including all proceeds from the Liquidation Sale and the Lease Monetization Process, to be held in the Consolidated Cash Pool Account, from which Creditor distributions will be made and the Administrative and Disputed Claims Reserves will be established.³⁹
- (c) The Plan contemplates that a single class of Affected Creditors – the Unsecured Creditors' Class – will consider and vote on the Plan.⁴⁰

³⁵ Meeting Order Affidavit, para. 82.

³⁶ Meeting Order Affidavit, para. 86.

³⁷ Meeting Order Affidavit, paras. 6-16; see also paras. 97-100 and Exhibit A. Further details regarding certain Plan steps are set out at paras. 123-127.

³⁸ Meeting Order Affidavit, paras. 10, 87-91.

³⁹ Meeting Order Affidavit, para. 97. The provision for treatment of certain input tax credits, as well as the provision for certain reserves, is addressed in greater detail at para. 97.

⁴⁰ Meeting Order Affidavit, para. 92.

- (d) Each holder of an accepted Other Priority Claim will receive a distribution of the full amount of its Other Priority Claim on the Initial Distribution Date.⁴¹
- (e) Each Convenience Class Creditor will receive a distribution in the full amount of its Convenience Class Claim up to a maximum of \$15,000 on the Initial Distribution Date.⁴²
- (f) Each Affected Creditor with a Proven Claim (other than Convenience Class Creditors and the Supporting Rack Landlords) will receive an initial distribution on the Initial Distribution date of an amount equal to its Pro Rata Share of the Cash in the Consolidated Cash Pool Account, with further distributions to be made in accordance with the Plan.⁴³
- (g) Each Supporting Rack Landlord will receive, on the Initial Distribution Date, the full amount required to be paid pursuant to the Supporting Rack Landlord Settlement Agreement.⁴⁴
- (h) The Plan contemplates a number of releases, including third-party releases in favour of the Plan Sponsor.⁴⁵

37. Nordstrom US has agreed to act as Plan Sponsor and Nordstrom US is also by far the largest single creditor of the Nordstrom Canada Entities. The Plan contemplates significant

⁴¹ Meeting Order Affidavit, para. 106(a).

⁴² Meeting Order Affidavit, para. 106(b).

⁴³ Meeting Order Affidavit, para. 106(c).

⁴⁴ Meeting Order Affidavit, para. 106(c).

⁴⁵ Meeting Order Affidavit, paras. 116-120.

economic contributions of Nordstrom US to these CCAA proceedings. Accordingly, the Plan contemplates typical third-party releases in favour of Nordstrom US (with certain exceptions in relation to the FLS Landlord Guarantee Claims).⁴⁶

38. As noted above, the Landlords of Nordstrom Canada's former retail Leases have also agreed to resolve their Claims – by far the largest third-party Claims in the Claims Process – in accordance with the proposed Plan.⁴⁷

39. Based on currently available information, the Nordstrom Canada Entities expect that the Plan will provide the Affected Creditors with distributions of approximately 71% to 75% of their Affected Claims that are Proven Claims.⁴⁸

40. More detailed disclosure regarding the Plan will be provided to Affected Creditors in a Letter to Creditors that will be included as part of the Meeting Materials to assist in their understanding and consideration of the Plan.⁴⁹

PART III - ISSUES AND THE LAW

41. The principal issues on this motion are whether:

- (a) the Plan should be accepted for filing and the Creditors' Meeting authorized; and
- (b) the Stay Period (including the Co-Tenancy Stay) should be extended until and including April 5, 2024.

⁴⁶ Meeting Order Affidavit, paras. 14-15.

⁴⁷ Meeting Order Affidavit, paras. 16 and 84.

⁴⁸ Meeting Order Affidavit, para. 12.

⁴⁹ Meeting Order Affidavit, para. 17. See also para. 130.

A. THE MEETING ORDER SHOULD BE GRANTED

(a) *Threshold For Granting Meeting Order is Low*

42. Section 4 of the CCAA provides that the Court may order a meeting of creditors, or class of creditors, to vote on a compromise or an arrangement.⁵⁰

43. The standard for issuing a meeting order is low. The feasibility of a plan is a relevant factor to be considered in determining whether to order a meeting of creditors. However, the Court should not impose a heavy burden on a debtor company to establish the likelihood of ultimate success at the outset.⁵¹

44. Courts are not required to address the fairness and reasonableness of the Plan at this stage. Issues of fairness are to be considered at the sanction hearing if the plan is approved by the required majorities of creditors at a meeting.⁵² Unless it is obvious that a plan cannot be approved by the affected creditors or would not be approved by the Court for some other reason, a debtor company should be authorized to present its plan to its creditors at a meeting.⁵³

45. The Plan is the product of extensive consultation among the Nordstrom Canada Entities, Nordstrom US, the Monitor and a number of key stakeholders. It would present Affected Creditors with material recoveries for their Proven Claims and provides for efficient, near-term distributions

⁵⁰ CCAA, s. 4.

⁵¹ *Laurentian University of Sudbury*, [2022 ONSC 4433](#) at para. 23, citing *Nova Metal Products Inc. v. Comiskey (Trustee of)* (1990), [41 O.A.C. 282](#) (C.A.) at para. 90, Doherty J.A., dissenting.

⁵² *Jaguar Mining Inc. (Re)*, [2014 ONSC 494](#) at para. 48.

⁵³ *Re ScoZinc Ltd.*, [2009 NSSC 163](#) at paras. 4-7; *Arrangement relatif à Bloom Lake*, [2018 QCCS 1657](#) at para. 19.

to such Creditors. At the same time, it is the culminating step in the orderly wind-down of the Nordstrom Canada Entities.⁵⁴

46. The Plan's fairness will be fully briefed at the hearing of the Sanction Motion if the Required Majority of Affected Creditors vote in favour of the Plan at the Creditors' Meeting. The Applicants submit that they have satisfied the threshold applicable to whether they should be permitted to present the Plan at the Creditors' Meeting. The Plan does not contain any provisions that would render it incapable of being approved by creditors and the CCAA Court. There is no indication that the Plan is not feasible or doomed to fail, nor is there any legal impediment that should prevent the Affected Creditors from considering and voting upon it.

(b) *The Consolidated Plan Should be Accepted for Filing*

47. Under a consolidated plan, affiliated legal entities are treated as one for the purposes of the plan, such that the assets of all debtors are "pooled to create a common fund out of which claims of creditors of all the debtors are jointly satisfied."⁵⁵ Courts will authorize the filing of a consolidated plan of arrangement in appropriate circumstances.⁵⁶

48. In evaluating whether consolidation is appropriate, courts consider a number of factors, including whether (i) the elements of consolidation are present, such as the intertwining of corporate functions and other commonalities; (ii) the benefits of consolidation outweigh the prejudice to particular creditors; and (iii) consolidation is fair and reasonable in the circumstances.⁵⁷ The "elements of consolidation" considered at the first stage of the inquiry are:

⁵⁴ Meeting Order Affidavit, para. 7.

⁵⁵ *Redstone Investment Corp. (Receiver of)*, Re, [2016 ONSC 4453](#) ("*Redstone*") at para. 7.

⁵⁶ *Cline Mining Corporation (Re)*, [2014 ONSC 6998](#) at para. 80.

⁵⁷ *Redstone* at para. 78.

(i) difficulty in segregating assets; (ii) presence of consolidated financial statements; (iii) profitability of consolidation at a single location; (iv) co-mingling of assets and business functions; (v) unity of interests in ownership; (vi) existence of inter-corporate loan guarantees; and (vii) transfer of assets without observing corporate formalities.⁵⁸

49. Facts that militate in favour of consolidation might include the use of a common head office shared by related companies, one entity's employment of all employees of a group of companies, and the centralized consolidation and distribution of funds.⁵⁹

50. The Nordstrom Canada Entities' interrelationship demonstrates significant elements supporting consolidation. Their business functions were intertwined such that the Nordstrom Canada Entities together operated the "Nordstrom" business in Canada. Nordstrom Canada acted as the retail operating entity in Canada, including by employing all former Canadian employees.⁶⁰ Each store location formerly operated by Nordstrom Canada was leased by a third-party landlord to Canada Leasing LP and thereafter subleased by Canada Leasing LP to Nordstrom Canada by a separate sublease.⁶¹

51. Additional factors supporting consolidation include the fact that the Nordstrom Canada Entities, by means of inter-affiliate service agreements, together relied on the Shared Services and the intellectual property provided by Nordstrom US.⁶² The Nordstrom Canada Entities maintained

⁵⁸ *Redstone* at para. 47.

⁵⁹ *White Oak Commercial Finance, LLC v. Nygård Holdings (USA) Limited et al*, [2022 MBQB 48](#) at para. 26, aff'd [2023 MBCA 73](#); *Nortel Networks Corp. Re*, [2015 ONSC 2987](#) at para. 223, leave to appeal ref'd [2016 ONCA 332](#).

⁶⁰ Meeting Order Affidavit, para. 87.

⁶¹ Meeting Order Affidavit, para. 87.

⁶² Meeting Order Affidavit, para. 88.

a centralized cash management system, which was administered by Nordstrom US from its head office in Seattle to collect, transfer and disburse funds generated from the operations of the Nordstrom Canada Entities. Treasury, banking and related services were provided by Nordstrom US as part of the Shared Services under the License and Services Agreement.⁶³ Prior to the Credit Agreement Amendment, Nordstrom Canada was a Loan Party to Nordstrom US' Credit Agreement.⁶⁴

52. The Nordstrom Canada Entities, or any of them on an individual basis, did not prepare stand-alone financial statements. As a publicly-traded company, Nordstrom US files consolidated financial statements with the US Securities and Exchange Commission, which, prior to the CCAA proceedings, included the consolidated results of operations in the US and Canada.⁶⁵

53. The Plan is being put forward by the Nordstrom Canada Entities on a consolidated basis with the expectation that, on balance, the Affected Creditors as a whole will derive a greater benefit from the implementation of the Plan than would result from a non-consolidated plan.⁶⁶

54. The Monitor has stated, having regard to all of the circumstances, including the structure of the settlements with the FLS Landlords and the Supporting Rack Landlords and the resolution of the CRA NCH Assessments, that a significant majority of Affected Creditors will receive a better financial recovery under the consolidated Plan relative to an unconsolidated scenario, and that there is no material prejudice to Affected Creditors from the Nordstrom Canada Entities'

⁶³ Meeting Order Affidavit, para. 89.

⁶⁴ Meeting Order Affidavit, para. 118(i).

⁶⁵ Meeting Order Affidavit, para. 90.

⁶⁶ Meeting Order Affidavit, para. 10.

decision to proceed by way of a consolidated Plan. The Monitor also notes that there are efficiency benefits and cost savings realized by proceeding by way of a consolidated Plan.⁶⁷

(c) ***Proposed Classification of Creditors for Voting and Distribution is Appropriate***

55. Section 22(1) of the CCAA provides that a debtor company may divide creditors into classes for the purpose of a meeting in respect of a plan of compromise or arrangement. Section 22(2) of the CCAA provides that creditors may be included in the same class if their interests are sufficiently similar to give them a commonality of interest, taking into account (among other things) (a) the nature of the debts, liabilities or obligations giving rise to their claims; (b) the nature of any security in respect of their claims, as well as the remedies available to those creditors in the absence of the compromise or arrangement being sanctioned; and (c) the extent to which those creditors would recover claims by exercising those remedies.⁶⁸

56. Section 22(2) codifies principles that applied under the jurisprudence that pre-dates the 2009 amendments to the CCAA, which added section 22.⁶⁹ Before and after 2009, classification of creditors is guided by certain fundamental principles, including that the starting point must be the objectives of the CCAA and its purpose in facilitating the restructuring of debtor companies.⁷⁰

57. The basis for creditor classification is commonality of legal interest of the creditors relative to the debtor. However, those creditors do not have to have an identity of interests in order to be

⁶⁷ Seventh Report of the Monitor dated December 14, 2023 (“**Seventh Report**”), para. 6.19.

⁶⁸ CCAA, s. 22.

⁶⁹ L.W. Houlden, G.B. Morawetz & Janis Sarra, *Bankruptcy and Insolvency Law of Canada*, 4th ed. (Toronto: Thomson Reuters, 2009) (loose-leaf revision 2023-11), [§ 23:12](#).

⁷⁰ *Re SemCanada Crude Co.*, [2009 ABOB 490](#) at para. 16 (“*SemCanada Crude*”), citing *Re Canadian Airlines Corp.* (2000), [19 CBR \(4th\) 12](#) (Alta. Q.B.) at para. 14 (“*Canadian Airlines*”), leave to appeal ref’d [2000 ABCA 149](#).

placed in the same class. In other words, creditors with different legal rights can be included within the same class, as long as their interests are not so dissimilar as to make it impossible for them to consult together with a view to voting in their common interest.⁷¹

58. Classification of creditors is a fact-specific determination. It must be approached with the flexible and remedial jurisdiction of the CCAA in mind – namely, to facilitate reorganization, if at all possible.⁷² One of the principal objectives of classification is the avoidance of unnecessary fragmentation. As Farley J. stated in *Stelco S.C.*, “[f]ragmentation if necessary, but not necessarily fragmentation.”⁷³ Excessive fragmentation of creditor classes is generally antithetical to a successful restructuring because it can confer an effective veto on those creditors who are placed in separate classes.⁷⁴

59. The proposed Plan contemplates that a single class of Affected Creditors will consider and vote on the Plan and then receive cash distributions as such under the Plan in respect of their Proven Claims.⁷⁵ The fact that all of the creditors in the Affected Creditors’ Class hold unsecured Claims against one or more of the Nordstrom Canada Entities is the principal factor that creates the commonality of interest required to classify them together in one class.⁷⁶ Outside the CCAA,

⁷¹ *Canadian Airlines* at paras. 17 and 25; *Just Energy Group Inc. et. al. v. Morgan Stanley Capital Group Inc. et. al.*, [2022 ONSC 3487](#) at para. ix; *Just Energy Group Inc. et. al. v. Morgan Stanley Capital Group Inc. et. al.*, [2022 ONSC 3470](#) at para. 60.

⁷² *Canadian Airlines* at para. 18.

⁷³ *Re Stelco Inc.*, [\[2005\] O.J. No. 4814](#) at para. 13 (“*Stelco S.C.*”), aff’d [78 O.R. \(3d\) 241](#) (C.A.) (“*Stelco C.A.*”), cited in *SemCanada Crude* at para. 21.

⁷⁴ *Atlantic Yarns Inc., Re*, [2008 NBQB 144](#) at para. 59, citing *Stelco C.A.* at paras. 35-36; *Canadian Airlines* at para. 30, citing *Sklar-Peppler Furniture Corp. v. Bank of Nova Scotia* (1991), [86 D.L.R. \(4th\) 621](#) (Ont. S.C.) at paras. 13-14.

⁷⁵ Meeting Order Affidavit, para. 92. The procedures for valuing Voting Claims and resolving disputes and entitlements to vote are set forth in the Claims Procedure Order, the Meeting Order, the Plan and the CCAA.

⁷⁶ Seventh Report, para. 8.22.

they would have similar remedies against the Nordstrom Canada Entities. CCAA Courts have recognized the classification of all unsecured creditors in one class as appropriate.⁷⁷

60. Certain Claims are unaffected by the Plan (defined in the Plan as “**Unaffected Claims**”) and will not be compromised or voted. These include any (i) Excluded Claim, (ii) Claim in respect of the Administrative Reserve Costs, (iii) FLS Landlord Guarantee Claim, (iv) Priority Claim, and (v) Insured Claim.⁷⁸ Persons holding Equity Claims will not be entitled to vote or receive any distributions under the Plan.⁷⁹

61. The Plan Sponsor will not be entitled to vote on the Plan, including in respect of any amounts paid to any FLS Landlords in respect of any FLS Landlord Guarantee Claim. The CCAA Lease Claims of the FLS Landlords will also not be voted at the Creditors’ Meeting as the Plan Sponsor will receive amounts distributed in respect of such Claims from the FLS Landlords.⁸⁰

62. The proposed classification should be approved, as it is consistent with the objectives of the CCAA and the interests of the Creditors. It also flows from the acceptance of the proposed consolidation of the Nordstrom Canada Entities for the purposes of the Plan.

(d) Convenience Class is a Commonly Accepted Mechanism in CCAA Plans

63. Under the Plan, Affected Creditors with Proven Claims that are less than or equal to \$15,000 are “Convenience Class Creditors,” each of whom would receive a distribution in the full

⁷⁷ *Stelco S.C.* at para. 13.

⁷⁸ Meeting Order Affidavit, para. 93.

⁷⁹ Meeting Order Affidavit, para. 94.

⁸⁰ Meeting Order Affidavit, para. 95.

amount of its Convenience Class Claim and would be deemed to vote in favour of the Plan.⁸¹ The Plan also allows Affected Creditors to “elect down” to become a Convenience Class Creditor. This is a typical mechanism used in CCAA plans to assist small creditors. It also improves efficiencies by immediately resolving claims that have little relative importance in a debtor’s overall restructuring.⁸²

64. There are numerous examples of CCAA courts sanctioning plans that provide for a convenience class.⁸³ The British Columbia Court recently granted a meeting order in *Quest University*, concluding that the inclusion of the convenience class creditors as part of a single voting class was appropriate. Like in the proposed Plan, the convenience class creditors would receive full recovery and be deemed to vote in favour of the plan. The Court noted: “[The Affected Creditors] all hold unsecured claims against Quest and they all rank the same in priority. While the Convenience and Cash Election Creditors will be treated slightly differently, practical reasons justify this approach, and they are common in CCAA plans”.⁸⁴

65. In any event, any issues of fairness regarding the deemed voting of the Convenience Class Creditors and the effect on Plan approval are properly addressed at the hearing of the Sanction Motion.

⁸¹ Meeting Order Affidavit, para. 98.

⁸² Seventh Report, para. 8.22.

⁸³ *E.g.*: *Re Nelson Financial Group Ltd.*, [2011 ONSC 2750](#) at para. 14; *Re Target Canada Corp.*, [2016 ONSC 3651](#) at para. 8; *Target Canada Co. (Re)* (13 April 2016), Toronto, CV-15-10832-00CL (Ont. S.C.) ([Meeting Order](#)) at para. 25; See also *Arrangement relatif à FormerXBC Inc. (Xebec Adsorption Inc.)*, [2023 QCCS 4213](#) at para. 21.

⁸⁴ *Quest University (Re)*, [2020 BCSC 1845](#) at para. 45. See also *Trican Well Service Ltd. v. Delphi Energy Corp.* (11 September 2020), Calgary, 2001-05124 (Alta. Q.B.) ([Transcript of reasons](#)) at 76ff, leave to appeal ref’d [2020 ABCA 363](#), where the Alberta Court of Queen’s Bench approved such a mechanism in the plan, in the face of allegations that the use of a convenience class had the effect of swamping certain claimants and amounted to “ballot stuffing.”

B. STAY EXTENSION SHOULD BE GRANTED

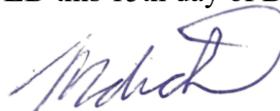
66. The Stay Period has been extended a number of times, most recently to December 22, 2023.⁸⁵ The Applicants submit that the extension of the Stay Period (including the Co-Tenancy Stay) until and including April 5, 2024 should be granted, as they continue to act in good faith and with due diligence.⁸⁶

67. The requested extension of the Stay Period will provide the opportunity to present the Plan to the Affected Creditors for their consideration and for voting at the Creditors' Meeting. Provided that the Plan is approved by the Required Majority of Affected Creditors voting on the Plan, the proposed stay extension will permit the Applicants to bring a motion to the CCAA Court requesting the sanction of the Plan. Maintaining the Co-Tenancy Stay during this time period will continue to provide stability to the CCAA proceedings.⁸⁷

PART IV - NATURE OF THE ORDER SOUGHT

68. The Applicants submit that the proposed Meeting Order and extension of the Stay Period should be granted for all of the reasons set out above.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 15th day of December, 2023:



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per Marleigh Dick

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Lawyers for the Applicants

⁸⁵ Meeting Order Affidavit, para. 139.

⁸⁶ CCAA, ss. 11.02(2) to 11.02(3); Meeting Order Affidavit, para. 143.

⁸⁷ Meeting Order Affidavit, para. 141.

SCHEDULE “A” – LIST OF AUTHORITIES

Case Law

1. *Arrangement relatif à Bloom Lake*, [2018 QCCS 1657](#)
2. *Arrangement relatif à FormerXBC Inc. (Xebec Adsorption Inc.)*, [2023 QCCS 4213](#)
3. *Atlantic Yarns Inc., Re*, [2008 NBQB 144](#)
4. *Cline Mining Corporation (Re)*, [2014 ONSC 6998](#)
5. *Jaguar Mining Inc. (Re)*, [2014 ONSC 494](#)
6. *Just Energy Group Inc. et. al. v. Morgan Stanley Capital Group Inc. et. al.*, [2022 ONSC 3487](#)
7. *Just Energy Group Inc. et. al. v. Morgan Stanley Capital Group Inc. et. al.*, [2022 ONSC 3470](#)
8. *Laurentian University of Sudbury*, [2022 ONSC 4433](#)
9. *Nortel Networks Corp, Re*, [2015 ONSC 2987](#), leave to appeal ref'd [2016 ONCA 332](#)
10. *Nova Metal Products Inc. v. Comiskey (Trustee of)* (1990), [41 O.A.C. 282](#) (C.A.)
11. *Quest University (Re)*, [2020 BCSC 1845](#)
12. *Re Canadian Airlines Corp.* (2000), [19 CBR \(4th\) 12](#) (Alta. Q.B.), leave to appeal ref'd [2000 ABCA 149](#)
13. *Redstone Investment Corp. (Receiver of), Re*, [2016 ONSC 4453](#)
14. *Re Nelson Financial Group Ltd.*, [2011 ONSC 2750](#)
15. *Re ScoZinc Ltd.*, [2009 NSSC 163](#)
16. *Re SemCanada Crude Co.*, [2009 ABQB 490](#)
17. *Re Stelco Inc.*, [\[2005\] O.J. No. 4814](#), aff'd [78 O.R. \(3d\) 241](#) (C.A.)
18. *Re Target Canada Corp.*, [2016 ONSC 3651](#)
19. *Sklar-Peppler Furniture Corp. v. Bank of Nova Scotia* (1991), [86 D.L.R. \(4th\) 621](#) (Ont. S.C.)
20. *Target Canada Co. (Re)* (13 April 2016), Toronto, CV-15-10832-00CL (Ont. S.C.) ([Meeting Order](#))

Case Law

21. *Trican Well Service Ltd. v. Delphi Energy Corp.* (11 September 2020), Calgary, 2001-05124 (Alta. Q.B.) ([Transcript of reasons](#)), leave to appeal ref'd [2020 ABCA 363](#)
22. *White Oak Commercial Finance, LLC v. Nygård Holdings (USA) Limited et al*, [2022 MBQB 48](#), aff'd [2023 MBCA 73](#)

Secondary Sources

23. L.W. Houlden, G.B. Morawetz & Janis Sarra, [Bankruptcy and Insolvency Law of Canada](#), 4th ed. (Toronto: Thomson Reuters, 2009) (loose-leaf revision 2023-11)

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

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

Compromise with unsecured creditors

4 Where a compromise or an arrangement is proposed between a debtor company and its unsecured creditors or any class of them, the court may, on the application in a summary way of the company, of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.

Stays, etc. — other than initial application

11.02 (2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an act referred to in paragraph (1)(a);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

- (a) the applicant satisfies the court that circumstances exist that make the order appropriate; and
- (b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Company may establish classes

22 (1) A debtor company may divide its creditors into classes for the purpose of a meeting to be held under section 4 or 5 in respect of a compromise or arrangement relating to the company and, if it does so, it is to apply to the court for approval of the division before the meeting is held.

Factors

(2) For the purpose of subsection (1), creditors may be included in the same class if their interests or rights are sufficiently similar to give them a commonality of interest, taking into account

- (a) the nature of the debts, liabilities or obligations giving rise to their claims;
- (b) the nature and rank of any security in respect of their claims;
- (c) the remedies available to the creditors in the absence of the compromise or arrangement being sanctioned, and the extent to which the creditors would recover their claims by exercising those remedies; and
- (d) any further criteria, consistent with those set out in paragraphs (a) to (c), that are prescribed.

Related creditors

- (3) A creditor who is related to the company may vote against, but not for, a compromise or arrangement relating to the company.

**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

MEETING ORDER FACTUM

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