

**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

**MOTION RECORD  
(Motion for Claims Procedure Order and Stay Extension)  
Volume 1 of 2**

May 19, 2023

**OSLER, HOSKIN & HARCOURT LLP**  
100 King Street West  
1 First Canadian Place  
Suite 6200, P.O. Box 50  
Toronto ON M5X 1B8

**Tracy C. Sandler** (LSO# 32443N)  
Tel: 416.862.5890  
Email: [tsandler@osler.com](mailto:tsandler@osler.com)

**Jeremy Dacks** (LSO# 41851R)  
Tel: 416.862.4923  
Email: [jdacks@osler.com](mailto:jdacks@osler.com)

**Martino Calvaruso** (LSO# 57359Q)  
Tel: 416.862.5960  
Email: [mcalvaruso@osler.com](mailto:mcalvaruso@osler.com)

**Marleigh Dick** (LSO# 79390S)  
Tel: 416.862.4725  
Email: [mdick@osler.com](mailto:mdick@osler.com)

Lawyers for the Applicants

TO: **SERVICE LIST**

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

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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 (the “**Applicants**”)

**SERVICE LIST**  
(As at May 18, 2023)

<p><b>OSLER, HOSKIN &amp; HARCOURT LLP</b> 100 King Street West 1 First Canadian Place, Suite 6200 P.O. Box 50 Toronto, ON M5X 1B8</p> <p><b>Tracy C. Sandler</b> Direct: 416.862.5890 E-mail: <a href="mailto:tsandler@osler.com">tsandler@osler.com</a></p> <p><b>Jeremy Dacks</b> Direct: 416.862.4923 E-mail: <a href="mailto:jdacks@osler.com">jdacks@osler.com</a></p> <p><b>Martino Calvaruso</b> Direct: 416.862.6665 E-mail: <a href="mailto:mcalvaruso@osler.com">mcalvaruso@osler.com</a></p> <p><b>Marleigh Dick</b> Direct: 416.862.4725 E-mail: <a href="mailto:mdick@osler.com">mdick@osler.com</a></p> <p><i>Counsel to the Nordstrom Canada Entities</i></p>	<p><b>ALVAREZ &amp; MARSAL CANADA INC.</b> Royal Bank Plaza, South Tower 200 Bay Street, Suite 2900 P.O. Box 22 Toronto, ON M5J 2J1</p> <p><b>Doug McIntosh</b> Direct: 416.847.5150 E-mail: <a href="mailto:dmcintosh@alvarezandmarsal.com">dmcintosh@alvarezandmarsal.com</a></p> <p><b>Al Hutchens</b> Direct: 416.847.5159 E-mail: <a href="mailto:ahutchens@alvarezandmarsal.com">ahutchens@alvarezandmarsal.com</a></p> <p><b>Nate Fennema</b> Direct: 416.847.5183 E-mail: <a href="mailto:nfennema@alvarezandmarsal.com">nfennema@alvarezandmarsal.com</a></p> <p><b>Skylar Rushton</b> Direct: 416.847.5173 E-mail: <a href="mailto:srushton@alvarezandmarsal.com">srushton@alvarezandmarsal.com</a></p> <p><b>Connor Good</b> Direct: 705.717.9025 E-mail: <a href="mailto:cgood@alvarezandmarsal.com">cgood@alvarezandmarsal.com</a></p> <p><i>Monitor</i></p>
---	---

<p><b>GOODMANS LLP</b>  Bay Adelaide Centre – West Tower  333 Bay Street, Suite 3400  Toronto, ON M5H 2S7</p> <p><b>Brendan O’Neill</b>  Direct: 416.849.6017  E-mail: boneill@goodmans.ca</p> <p><b>Bradley Wiffen</b>  Direct: 416.597.4208  E-mail: bwiffen@goodmans.ca</p> <p><b>Andrew Harmes</b>  Direct: 416.849.6923  E-mail: aharmes@goodmans.ca</p> <p><b>Brennan Caldwell</b>  Direct: 416.849.6896  E-mail: bcaldwell@goodmans.ca</p> <p><i>Counsel to Monitor</i></p>	<p><b>FASKEN MARTINEAU DUMOULIN LLP</b>  Bay Adelaide Centre  333 Bay Street, Suite 2400  Toronto, ON M5H 2T6</p> <p><b>Aubrey Kaufmann</b>  Direct: 416.868.3538  E-mail: akauffman@fasken.com</p> <p><b>Daniel Richer</b>  Direct: 416.868.4445  E-mail: dricher@fasken.com</p> <p><i>Canadian counsel to Nordstrom, Inc.</i></p>
<p><b>URSEL PHILLIPS FELLOWS HOPKINSON LLP</b>  555 Richmond St. W., Suite 1200  Toronto, ON M5V 3B1</p> <p><b>Susan Ursel</b>  Direct: 416.969.3515  E-mail: SUrsel@upfhlaw.ca</p> <p><b>Karen Ensslen</b>  Direct: 416.969.3518  E-mail: KEnsslen@upfhlaw.ca</p> <p><b>Simone Truemner-Caron</b>  Direct: 416.642.4504  E-mail: struemnercaron@upfhlaw.ca</p> <p><i>Employee Representative Counsel</i></p>	<p><b>CHAITONS LLP</b>  5000 Yonge Street, 10th Floor  Toronto, ON M2N 7E9</p> <p><b>Harvey Chaiton</b>  Direct: 416.218.1129  E-mail: harvey@chaitons.com</p> <p><b>George Benchetrit</b>  Direct: 416.218.1141  E-mail: george@chaitons.com</p> <p><i>Counsel to the Directors and Officers of the Nordstrom Canada Entities</i></p>
<p><b>GALE RUBENSTEIN</b>  c/o of Goodmans LLP  Bay Adelaide Centre  333 Bay St, Suite 3400  Toronto, ON M5H 2S7</p> <p>E-mail: grubenstein@goodmans.ca</p> <p><i>Trustee of the Nordstrom Canada Employee Trust</i></p>	<p><b>EMKAY CANADA LEASING CORPORATION</b>  55 Standish Court, Suite 440  Mississauga, ON L5R 4B2 Canada</p> <p>320, 909-17<sup>th</sup> Avenue S.W.  Calgary, AB T2T 0A4</p> <p>300, 109 Atlantic Ave  Toronto, ON M6K 1X4</p>

	<p><b>Lisa Shavrnoch</b> E-mail: lshavrnoch@emkay.com</p>
<p><b>GOLDEN GOOSE S.P.A.</b> Via Privata E. Marelli 10 Milan 20139 Italy</p> <p><b>Silvio Campara</b> E-mail: s.campara@goldengoose.com</p> <p><b>Siliva Merati</b> E-mail: s.merati@goldengoose.com</p> <p><b>Vincenzo Roberto</b> E-mail: vincenzo.roberto@goldengoose.com</p> <p><b>Leila Boscaino</b> E-mail: l.boscaino@goldengoose.com</p>	<p><b>ADIDAS CANADA LIMITED</b> 8100 Highway 27 Woodbridge, ON L4H 3N2</p> <p><b>Matt Rossetti</b> Director, Legal Counsel E-mail: matt.rossetti@adidas.com</p>
<p><b>MCCARTHY TÉTRAULT LLP</b> 1000 De La Gauchetière Street West Suite MZ400 Montréal, QC H3B 0A2</p> <p><b>Hugo Babos-Marchand</b> Tel: 514.397.4156 E-mail: hbmarchand@mccarthy.ca</p> <p><b>François Alexandre Toupin</b> Tel: 514.397.4210 E-mail: fatoupin@mccarthy.ca <i>Counsel to L'Oréal Canada Inc.</i></p>	<p><b>DR. MARTENS AIRWAIR CANADA INC.</b></p> <p><b>Dinah Choi</b> Vice President of Legal – Americas E-mail: dinah.choi@drmartens.com</p>
<p><b>ALLEN MCDONALD SWARTZ LLP</b> 100 King Street West First Canadian Place, Suite 5600 Toronto, ON M5X 1C9</p> <p><b>Brad Elberg</b> Tel: 416.642.2524 E-mail: belberg@amsbizlaw.com <i>Counsel to Dr. Martens AirWair Canada Inc.</i></p>	<p><b>WEYCO GROUP</b></p> <p><b>Amanda Schindler</b> Director of Credit E-mail: aschindler@weycogroup.com</p> <p><b>Veronica Montes de Oca Mirele</b> Credit Manager E-mail: vmontes@weycogroup.com</p>

<p><b>MILLER THOMSON LLP</b>          Scotia Plaza          40 King Street West, Suite 5800          P.O. Box 1011          Toronto, Ontario M5H 3S1</p> <p><b>Patrick Corney</b>          Tel: 416.595.8555          E-mail: pcorney@millerthomson.com</p> <p><b>David Ward</b>          Tel: 416.595.8625          E-mail: dward@millerthomson.com</p> <p><i>Counsel to Suitsupply</i></p>	<p><b>WRIGHT HENRY LLP</b>          200 Wellington St. West          Suite 602          Toronto, ON M5V 3C7</p> <p><b>Michael Wright</b>          Tel: 416.306.8270          E-mail: mwright@wrighthenry.ca</p> <p><i>Counsel to Alix Box, Senior Vice President,          Regional Manager Canada at Nordstrom</i></p>
<p><b>SPORTS INDUSTRY CREDIT ASSOCIATION</b>          245 Victoria Avenue, Suite 800          Westmount (Quebec), Canada          H3Z 2M6</p> <p><b>Brian Dabarno</b>          President          E-mail: Brian@sica.ca</p> <p><b>William Anidjar</b>          Director of Credit – North America          Tel: 514.931.5561, Ext. 223          E-mail: william@sica.ca</p>	<p><b>AIRD &amp; BERLIS LLP</b>          Brookfield Place          181 Bay Street, Suite 1800          Toronto, ON M5J 2T9</p> <p><b>Sam Babe</b>          Tel: 416.865.7718          E-mail: sbabe@airdberlis.com</p> <p><b>Richard Epstein</b>          Tel: 416.865.3437          E-mail: repstein@airdberlis.com</p> <p><b>Matilda Lici</b>          Tel: 416.865.3428          E-mail: mlici@airdberlis.com</p> <p><i>Counsel for National Logistics Services          (2006) Inc.</i></p>
<p><b>MCCARTHY TÉTRAULT LLP</b>          Suite 5300, Toronto Dominion Bank Tower          Toronto, ON M5K 1E6</p> <p><b>Casey Halladay</b>          Tel: 416.601.4348          E-mail: challaday@mccarthy.ca</p> <p><b>Sanea Tanvir</b>          Tel: 416.601.8181          E-mail: stanvir@mccarthy.ca</p> <p><i>Counsel for Estee Lauder Cosmetics Ltd. and          Valentino</i></p>	<p><b>OWENS WRIGHT LLP</b>          300 – 20 Holly St.          Toronto, ON M4S 3B1</p> <p><b>Robert S. Choi</b>          Tel: 416.484.4722          E-mail: rchoi@owenswright.com</p> <p><b>Jonathan Gross</b>          Tel: 416.848.8671          E-mail: jgross@owenswright.com</p> <p><i>Counsel for Brunello Cucinelli</i></p>

<p><b>BYREDO</b> 500 7th Avenue, 9th Floor New York, NY 10018, USA</p> <p><b>Adam Banfield</b> President and General Manager - North America E-mail: abanfield@byredo.com</p> <p><b>Albert Coldecarrera Vega</b> North American Legal Director, Puig E-mail: albert.coldecarrera@puig.es</p>	<p><b>MONTGOMERY MCCrackEN WALKER &amp; RHOADS LLP</b> 437 Madison Avenue New York, NY 10022</p> <p><b>Edward L. Schnitzer</b> Tel: 212.551.7781 E-mail: eschnitzer@mmwr.com</p> <p><i>Counsel to Milberg Factors, Inc.</i></p>
<p><b>MILBERG FACTORS, INC.</b> 99 Park Avenue New York, NY 10016</p> <p><b>Maurice Sabony</b> E-mail: msabony@milfac.com</p> <p><b>Barry Machowsky</b> E-mail: bmachowsky@milfac.com</p> <p><b>Jeff Litt</b> E-mail: jlitt@milfac.com</p>	<p><b>BAKER &amp; MCKENZIE LLP</b> Brookfield Place, Suite 2100 181 Bay Street, P.O. Box 874 Toronto, ON M5J 2T3</p> <p><b>Michael Nowina</b> E-mail: Michael.Nowina@bakermckenzie.com</p> <p><i>Counsel to PRADA USA Corp.</i></p>
<p><b>MILLER THOMSON LLP</b> Scotia Plaza 40 King Street West, Suite 5800 P.O. Box 1011 Toronto, ON Canada M5H 3S1</p> <p><b>Jeffrey Carhart</b> E-mail: jcarhart@millerthomson.com</p> <p><b>Monica Faheim</b> E-mail: mfaheim@millerthomson.com</p> <p><i>Counsel to Wells Fargo Bank</i></p>	<p><b>WELLS FARGO BANK</b> 800 Walnut St., Des Moines, IA 50309 United States</p> <p><b>Jeffrey A. Chadwick</b> E-mail: jeffrey.a.chadwick@wellsfargo.com</p>
<p><b>CASSELS BROCK &amp; BLACKWELL LLP</b> Suite 2100, Scotia Plaza 40 King Street West Toronto, ON, M5H 3C2</p> <p><b>Jane Dietrich</b> jdietrich@cassels.com</p> <p><b>Monique Sassi</b> msassi@cassels.com</p> <p><i>Counsel to the Consultant</i></p>	<p><b>BLAKE, CASSELS &amp; GRAYDON LLP</b> 199 Bay Street Suite 4000, Commerce Court West Toronto, Ontario M5L 1A9</p> <p><b>Linc Rogers</b> linc.rogers@blakes.com</p> <p><b>Jake Harris</b> jake.harris@blakes.com</p>

	<i>Counsel to LVMH Moet Hennessy Louis Vuitton Inc.</i>
<p><b>WALKER ENVIRONMENTAL GROUP INC.</b></p> <p><b>Michael Capp</b> In-House Counsel Tel: 905.465.4889 E-mail: MCappa@walkerind.com</p>	<p><b>MCCARTHY TETRAULT LLP</b> Suite 2400 745 Thurlow Street Vancouver, BC V6E 0C5</p> <p><b>H. Lance Williams</b> Direct: 604.643.7154 E-mail: lwilliams@mccarthy.ca</p> <p><b>Ashley Bowron</b> Direct: 604.643.7973 E-mail: abowron@mccarthy.ca</p> <p><b>Sue Danielisz</b> E-mail: sdanielisz@mccarthy.ca</p> <p><i>Counsel to Tory Burch LLC</i></p>
<p><b>VINCE, LLC</b> 500 Fifth Avenue, 20th Floor New York, NY 10110</p> <p><b>Nicole Lee</b> General Counsel E-mail: legal@vince.com</p>	<p><b>DENTONS CANADA LLP</b> 77 King Street West, Suite 400 Toronto-Dominion Centre Toronto, ON M5K 0A1</p> <p><b>John Salmas (LSO#42336B)</b> Tel: 416.863.4737 E-mail: john.salmas@dentons.com</p> <p><b>Mark A. Freake (LSO #63656H)</b> Tel: 416.863.4456 E-mail: mark.freake@dentons.com</p> <p><b>Larry Nevsky</b> Tel: 416.863.4612 E-mail: larry.nevsky@dentons.com</p> <p><i>Counsel for Kering Americas, Inc.</i></p>
<p><b>DENTONS CANADA LLP</b> 15<sup>th</sup> Floor, Bankers Court 850 – 2<sup>nd</sup> Street SW Calgary, Alberta T2P 0R8</p> <p><b>Afshan Naveed</b> Tel: 403.268.7015 E-mail: afshan.naveed@dentons.com</p> <p><i>Counsel for Alight Solutions LLC</i></p>	<p><b>STIKEMAN ELLIOTT LLP</b> 5300 Commerce Court West 199 Bay Street Toronto, Canada M5L 1B9</p> <p><b>Danny Duy Vu</b> Tel: 514.397.6495 E-mail: ddvu@stikeman.com</p> <p><i>Lawyers for Richemont Canada Inc. and Peter Millar LLC</i></p>

<p><b>GOWLING WLG (CANADA) LLP</b> 550 Burrard St. #2300 Vancouver, BC V6C 2B5</p> <p><b>Jonathan Ross</b> Tel: 604.891.2778 E-mail: Jonathan.Ross@gowlingwlg.com</p> <p><i>Counsel to Yurman Retail Canada Corporation</i></p>	<p><b>SUPREME MUNSINGWEAR CANADA INC. AND SUPREME INTERNATIONAL LLC</b></p> <p><b>Robert Cantillo</b> Director of Credit Ops Tel: 305.873.1004 E-mail: Robert.Cantillo@Pery.com</p> <p><b>Mayra Ortega</b> AR Manager Tel: 305.873.1444 E-mail: Mayra.Ortega@Pery.com</p>
<p><b>MCMILLAN LLP</b> 1000, Sherbrooke St. West, Suite 2700 Montreal (Quebec) H3A 3G4</p> <p><b>Emile Catimel-Marchand</b> Tel: 514.987.5031 E-mail: emile.catimel-marchand@mcmillan.ca</p> <p><i>Counsel to The CIT Group/Commercial Services, Inc.</i></p>	<p><b>THE CIT GROUP/COMMERCIAL SERVICES, INC.</b> 201 South Tryon Street, 7<sup>th</sup> Floor Charlotte, North Carolina 28202</p> <p><b>Robert W. Franklin</b> Assistant Chief Counsel Tel: 704.339.2975 E-mail: Robert.Franklin@firstcitizens.com</p>
<p><b>MILLER THOMSON LLP</b> Scotia Plaza 40 King Street West, Suite 5800 P.O. Box 1011 Toronto, ON Canada M5H 3S1</p> <p><b>Craig A. Mills</b> Tel: 416.595.8596 E-mail: cmills@millerthomson.com</p> <p><i>Counsel to Birkenstock Canada Ltd.</i></p>	<p><b>BRIDGEHOUSE LAW LLP</b> 9<sup>th</sup> Floor, 900 West Hastings St. Vancouver, BC V6E 1E5</p> <p><b>Ritchie Clark K.C.</b> Tel: 604.336.8344 E-mail: rclark@bridgehouselaw.ca</p> <p><i>Counsel to Vestis (Max Mara)</i></p>
<p><b>PENGUIN RANDOM HOUSE CANADA, LIMITED</b> 320 Front Street West, Suite 1400 Toronto, ON M5V 3B6</p> <p><b>Anne Mink</b> Credit Representative Tel: 410.386.7424 E-mail: amink@penguinrandomhouse.com</p>	<p><b>SAUL EWING LLP</b> Centre Square West 1500 Market Street, 38th Floor Philadelphia, PA 19102-2186</p> <p><b>Adam H. Isenberg</b> Tel: 215.972.8662 E-mail: adam.isenberg@saul.com</p> <p><i>Counsel to Longchamp Canada Inc.</i></p>

*Landlords:*

<p><b>TORYS LLP</b> 79 Wellington Street West, Suite 3300, Toronto, ON M5K 1N2</p> <p><b>David Bish</b> Tel: 416.865.7353 E-mail: dbish@torys.com</p> <p><b>Adam Slavens</b> Tel: 416.865.7333 E-mail: aslavens@torys.com</p> <p><i>Lawyers to Cadillac Fairview for Store 830 (Nordstrom Chinook Centre, 6455 Macleod Trail, Calgary, AB), Store 831 (Nordstrom Rideau Centre, 50 Rideau St, Ottawa, ON), Store 832 (Nordstrom Pacific Centre, 799 Robson St, Vancouver, BC), Store 833 (Nordstrom Sherway Gardens, 25 The West Mall, Etobicoke, ON), and Store 835 (Nordstrom Toronto Eaton Centre, 260 Yonge St., Toronto, ON)</i></p>	<p><b>THORNTON GROUT FINNIGAN LLP</b> 100 Wellington Street West, Suite 3200 Toronto, ON M5K 1K7</p> <p><b>D.J. Miller</b> Tel: 416.304.0559 E-mail: djmiller@tgf.ca</p> <p><b>Adrienne Ho</b> Tel : 416.304.0561 E-mail : aho@tgf.ca</p> <p><i>Lawyers to Oxford Properties Group for Store 834 (Nordstrom Yorkdale Shopping Centre, located at 3401 Dufferin Street, Toronto, ON)</i></p>
<p><b>BLANEY MCMURTRY LLP</b> 1500 – 2 Queen Street East Toronto, ON M5C 3G5</p> <p><b>John C. Wolf</b> Tel: 416.593.2994 E-mail: jwolf@blaney.com</p> <p><b>David T. Ullmann</b> Tel: 416.596.4289 E-mail: dullmann@blaney.com</p> <p><b>Brendan Jones</b> Tel: 416.593.2997 E-mail: bjones@blaney.com</p> <p><i>Counsel to 2725312 Canada Inc., 2973758 Canada Inc. and Willowbrook Langley Holdings Inc.</i></p>	<p><b>2725312 CANADA INC., 2973758 CANADA INC., and WILLOWBROOK LANGLEY HOLDINGS INC.</b> <b>bcIMC Realty Corporation</b> <b>c/o QuadReal Property Group Limited Partnership</b> Suite 800, 666 Burrard Street Vancouver, BC V6C 2X8</p> <p><b>Larissa Jacobson-Rooke</b> Vice President, Retail Leasing E-mail: larissa.jacobson@quadreal.com</p> <p><i>Landlord to Store 840 (Nordstrom Rack Willowbrook Centre, 19705 Fraser Hwy, Langley, B.C.)</i></p>

<p><b>CAMELINO GALESSIERE LLP</b> 65 Queen St W, Suite 440 Toronto, ON M5H 2M5</p> <p><b>Linda Galessiere</b> Tel: 416.306.3827 E-mail: lgalessiere@cglegal.ca</p> <p><b>Gustavo F. Camelino</b> Tel: 416.306.3834 Email: gcamelino@cglegal.ca</p> <p><i>Lawyers to Ivanhoé Cambridge for Store 841 (Nordstrom Rack Vaughan Mills, 1 Bass Pro Mills Dr., Vaughan, ON); Orlando Corporation for Store 843 (Nordstrom Rack Heartland Town Centre, 788 Boyer Blvd, Mississauga, ON); and 6914861 Canada Inc. for Store 846 (Nordstrom Rack Deerfoot Meadows, 277 - 8180 11th Street SE, Calgary, AB)</i></p>	<p><b>WITTEN LLP</b> Suite 2500, Canadian Western Bank Place, 10303 Jasper Avenue, Edmonton, AB T5J 3N6</p> <p><b>Howard J. Sniderman</b> Tel: 780.441.3203 E-mail: hsniderman@wittenlaw.com</p> <p><i>Lawyers to Cameron Corporation and Canadian Property Holdings (Alberta) Inc. for Store 842 (Nordstrom Rack South Edmonton Common, 1910-102 Street NW, Edmonton, AB)</i></p>
<p><b>FIRST CAPITAL HOLDINGS (ONTARIO) CORPORATION</b> c/o First Capital Asset Management ULC 85 Hanna Avenue, Suite 400 Toronto, ON M6H 3S3</p> <p>55 Avenue Road, Suite 2200 – East Offices Toronto, ON M5R 3L2</p> <p><b>Kirryn Hashmi</b> Director, Senior Legal Counsel E-mail: Kirryn.Hashmi@fcr.ca <i>Landlord to Store 844 (Nordstrom Rack One Bloor, 731 Yonge St., Toronto, ON)</i></p>	<p><b>TORYS LLP</b> 79 Wellington Street West, Suite 3300, Toronto, ON M5K 1N2</p> <p><b>Scott A. Bomhof</b> Tel: 416.865.7370 E-mail: sbomhof@torys.com</p> <p><i>Lawyers to First Capital Holdings (Ontario) Corporation for Store 844 (Nordstrom Rack One Bloor, 731 Yonge St., Toronto, ON)</i></p>

<p><b>ORLANDO CORPORATION</b> 6205 Airport Road, 5th Floor Mississauga, ON L4V 1E3</p> <p><b>Daniel Kolanko</b> Legal Counsel E-mail: kolankod@orlandocorp.com</p> <p><b>Louis Pilla</b> Legal Counsel E-mail: pillal@orlandocorp.com</p> <p><i>Landlord to Store 843 (Nordstrom Rack Heartland Town Centre, 788 Boyer Blvd, Mississauga, ON)</i></p>	<p><b>MANN LAWYERS LLP</b> 300-11 Holland Avenue Ottawa, ON K1Y 4S1</p> <p><b>Brett Hodgins</b> Brett.hodgins@mannlawyers.com Tel: 613.722.1500</p> <p><i>Lawyers to 1221986 Ontario Inc. for Store 845 (Nordstrom Rack Ottawa Train Yards, 100-223 Colonnade Road South, Ottawa, ON)</i></p>
<p><b>1221986 ONTARIO INC.</b> Ottawa Train Yards Inc. 100-223 Colonnade Road South Ottawa, ON K2E 7K3</p> <p><b>Peter Dent</b> E-mail: peterdent@controlex.ca</p> <p><b>Susan Dent</b> E-mail : sdent@controlex.ca</p> <p><i>Landlord to Store 845 (Nordstrom Rack Ottawa Train Yards, 100-223 Colonnade Road South, Ottawa, ON)</i></p>	

*Ministries / Regulatory Authorities:*

<p><b>DEPARTMENT OF JUSTICE CANADA</b>  Ontario Regional Office, Tax Law Section  120 Adelaide Street West, Suite 400  Toronto, Ontario M5H 1T1  Fax: 416.973.0810</p> <p><b>Diane Winters</b>, General Counsel  Tel: 416-973-3172  E-mail: diane.winters@justice.gc.ca</p> <p><b>Edward Park</b>, Senior Counsel  E-mail: Edward.Park@justice.gc.ca</p> <p><i>Lawyers for Canada Revenue Agency</i></p>	<p><b>MINISTRY OF FINANCE (ONTARIO)</b>  Legal Services Branch  33 King Street West, 6th Floor  Oshawa, ON L1H 8H5  E-mail: insolvency.unit@ontario.ca</p>
<p><b>CANADA REVENUE AGENCY</b>  1 Front Street West  Toronto, ON M5J 2X6  Fax: 416.964.6411</p> <p><b>Pat Confalone</b>  Tel: 416.954.6514  E-mail: pat.confalone@cra-arc.gc.ca</p>	<p><b>MINISTRY OF JUSTICE AND SOLICITOR GENERAL (ALBERTA)</b>  Legal Services  2nd Floor, Peace Hills Trust Tower  10011 – 109 Street  Edmonton, AB T5J 3S8  Fax: 780.427.2789</p> <p><b>General Enquiries:</b>  Tel: 780.427.2711  E-mail: ministryofjustice@gov.ab.ca</p>
<p><b>MINISTRY OF THE ATTORNEY GENERAL (BRITISH COLUMBIA)</b>  Legal Services Branch, Revenue &amp; Taxation  PO Box 9280 Stn Prov Govt  Victoria, BC V8W 9J7</p> <p><b>Aaron Welch</b>  Legal Counsel  Tel: 250.356.8589  E-mail: Aaron.Welch@gov.bc.ca</p> <p><b>Ira Tee</b>  Legal Counsel  Tel: 236.478.4109  E-mail: Ira.Tee@gov.bc.ca</p> <p><b>Revenue and Taxation Group, Legal Services Branch</b>  AGLSBRevTaxInsolvency@gov.bc.ca</p>	

**E-MAIL DISTRIBUTION LIST:**

tsandler@osler.com; jdacks@osler.com; mcalvaruso@osler.com; mdick@osler.com;  
jkanji@osler.com; tsun@osler.com; hdavis@osler.com; dmcintosh@alvarezandmarsal.com;  
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srushton@alvarezandmarsal.com; cgood@alvarezandmarsal.com; SUrsel@upflaw.ca;  
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dricher@fasken.com; harvey@chaitons.com; george@chaitons.com; grubenstein@goodmans.ca;  
jshaffer@longviewcomms.ca; lshavrnock@emkay.com; s.campara@goldengoose.com;  
s.merati@goldengoose.com; vincenzo.roberto@goldengoose.com;  
l.boscaino@goldengoose.com; matt.rossetti@adidas.com; dbish@torys.com;  
aslavens@torys.com; djmiller@tgf.ca; aho@tgf.ca; larissa.jacobson@quadreal.com;  
lgalessiere@cglegal.ca; gcamelino@cglegal.ca; hsniderman@wittenlaw.com;  
Kirryn.Hashmi@fcr.ca; sbomhof@torys.com; kolankod@orlandocorp.com;  
pillal@orlandocorp.com; peterdent@controlex.ca; sdent@controlex.ca;  
diane.winters@justice.gc.ca; Edward.Park@justice.gc.ca; pat.confalone@justice.gc.ca;  
insolvency.unit@ontario.ca; pat.confalone@cra-arc.gc.ca; ministryofjustice@gov.ab.ca;  
Aaron.Welch@gov.bc.ca; Ira.Tee@gov.bc.ca; AGLSBRevTaxInsolvency@gov.bc.ca;  
hbmarchand@mccarthy.ca; fatoupin@mccarthy.ca; dinah.choi@drmartens.com;  
belberg@amsbizlaw.com; aschindler@weycogroup.com; vmontes@weycogroup.com;  
pcorney@millerthomson.com; dward@millerthomson.com; mwright@wrightshenry.ca;  
Jwolf@blaney.com; dullmann@blaney.com; bjones@blaney.com; Brian@sica.ca;  
william@sica.ca; sbabe@airdberlis.com; repstein@airdberlis.com; mlici@airdberlis.com;  
challaday@mccarthy.ca; stanvir@mccarthy.ca; Brett.hodgins@mannlawyers.com;  
rchoi@owenswright.com; jgross@owenswright.com; abanfield@byredo.com;  
albert.colldecarrera@puig.es; msabony@milfac.com; bmachowsky@milfac.com;  
jlitt@milfac.com; eschnitzer@mmwr.com; Michael.Nowina@bakermckenzie.com;  
jcarhart@millerthomson.com; mfaheim@millerthomson.com;  
jeffrey.a.chadwick@wellsfargo.com; jdietrich@cassels.com; msassi@cassels.com;  
linc.rogers@blakes.com; jake.harris@blakes.com; MCappa@walkerind.com;  
lwilliams@mccarthy.ca; abowron@mccarthy.ca; sdanielisz@mccarthy.ca; legal@vince.com;  
john.salmas@dentons.com; mark.freake@dentons.com; larry.nevsky@dentons.com;  
afshan.naveed@dentons.com; ddvu@stikeman.com; Jonathan.Ross@gowlingwlg.com;  
Robert.Cantillo@Pery.com; Mayra.Ortega@Pery.com; emile.catimel-marchand@mcmillan.ca;  
Robert.Franklin@firstcitizens.com; cmills@millerthomson.com; rclark@bridgehouselaw.ca;  
amink@penguinrandomhouse.com; adam.isenberg@saul.com

**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

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# TAB 1

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

**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

**NOTICE OF MOTION  
(Motion for Claims Procedure Order and Stay Extension)**

The Applicants, Nordstrom Canada Retail, Inc., Nordstrom Canada Holdings, LLC and Nordstrom Canada Holdings II, LLC, will make a motion before the Honourable Chief Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) on May 30, 2023, at 9:00 a.m. (ET), or as soon after that time as the motion can be heard.

**PROPOSED METHOD OF HEARING:** The Motion is to be heard

- In writing
- In person
- By telephone conference
- By video conference

at the following location: Zoom link to be circulated.

**THE MOTION IS FOR**

1. An Order substantially in the form attached at Tab 3 of the Motion Record (the “**Claims Procedure Order**”), among other things:

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- (a) approving a claims process (the “**Claims Process**”) for the identification, quantification, and resolution of Claims<sup>1</sup> as against the Applicants and Nordstrom Canada Leasing LP (“**Canada Leasing LP**”, and together with the Applicants, the “**Nordstrom Canada Entities**”) and their respective current and former directors and officers (the “**D&O Claims**”);
- (b) authorizing the Nordstrom Canada Entities, the Monitor, and the Claims Officers to perform their respective obligations under the Claims Procedure Order;
- (c) establishing the Claims Bar Date and the Restructuring Period Claims Bar Date;
- (d) extending the Stay Period and Parent Stay to September 29, 2023; and
- (e) such further and other relief as this Honourable Court may deem just.

#### **THE GROUNDS FOR THE MOTION ARE**

2. On March 2, 2023, the Applicants were granted protection under the *Companies’ Creditors Arrangement Act*, RSC 1985, c. C-36, as amended (the “**CCAA**”) pursuant to an Initial Order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). The Initial Order extended the benefits of the protections and authorizations under the Initial Order to Canada Leasing LP. On March 10, 2023, the Court granted an Amended and Restated Initial Order;

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<sup>1</sup> All capitalized terms not otherwise defined have the meaning given to them in the affidavit of Misti Heckel, sworn May 19, 2023 (the “**Fourth Heckel Affidavit**”).

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3. On March 20, 2023, the Court granted the Sale Approval Order, pursuant to which the Nordstrom Canada Entities are conducting the Liquidation Sale, with the assistance of the Consultant and in consultation with the Monitor, in order to maximize the value of certain merchandise, furnishings, trade fixtures, and equipment for the benefit of the Nordstrom Canada Entities' stakeholders. The Nordstrom Canada Entities have attempted to undertake the Liquidation Sale in as efficient and responsible a manner as possible;

#### *Claims Process*

4. The Nordstrom Canada Entities have developed, in consultation with the Monitor and Employee Representative Counsel, a proposed Claims Process to govern the process for filing and determining the nature, quantum, and validity of Claims against the Nordstrom Canada Entities (including Claims by Employees) and D&O Claims. The proposed Claims Process does not apply to Excluded Claims;

5. The Nordstrom Canada Entities, with the assistance of the Monitor, have engaged in a significant amount of advance preparation for the launch of the Claims Process as they wish to distribute the proceeds of realization to their creditors as soon as reasonably possible;

6. The proposed Claims Process includes a streamlined and simplified process to assist Employees in resolving their Claims in these CCAA proceedings, and the Nordstrom Canada Entities have worked closely with Employee Representative Counsel in developing such a process;

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7. The Claims Process includes a proposed Claims Bar Date of 5:00 p.m. on August 4, 2023, and a proposed Restructuring Period Claims Bar Date which is the later of (i) August 4, 2023; or (ii) 30 days after the date on which the Monitor sends a Negative Notice Claims Package or General Claims Package, as appropriate, with respect to a Restructuring Period Claim or Restructuring Period D&O Claim. The Claims Bar Date and the Restructuring Period Claims Bar Date were selected by the Nordstrom Canada Entities, in consultation with the Monitor;

8. The Claims Bar Date and the Restructuring Period Claims Bar Date are reasonable in that they provide sufficient time for potential Claimants to evaluate and submit any Claim they may have against the Nordstrom Canada Entities or their Directors and Officers;

9. Where the assessment of a Claim is disputed by a Claimant and cannot be resolved consensually, the proposed Claim Procedure Order gives the Nordstrom Canada Entities, in consultation with the Monitor, the discretion to determine whether a disputed Claim should be adjudicated by the Court or by a Claims Officer. The proposed Claims Procedure Order contemplates the appointment of two Claims Officers to adjudicate any unresolved Claims;

10. The proposed Claims Procedure Order also requires the Monitor to prepare a report detailing its review of all Intercompany Claims identified by the Monitor and assessing the amount and Characterization of such Claims, which report will contain a recommendation on next steps, if any, to be taken with respect to the Intercompany Claims;

11. The Claims Process is a fair, efficient, and reasonable process for the filing and determination of Claims against the Nordstrom Canada Entities and D&O Claims and has been tailored to the specific circumstances of these CCAA proceedings;

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12. The proposed Claims Procedure Order ensures that all Persons holding or wishing to assert a Claim against the Nordstrom Canada Entities receive notice of the Claims Process;

13. The Monitor supports the Claims Process and the proposed Claims Procedure Order;

***Stay Period***

14. The Initial Order granted an initial stay of proceedings until March 12, 2023 (the “**Stay Period**”). The Amended and Restated Initial Order extended the Stay Period, including the Parent Stay, until March 20, 2023. The Sale Approval Order further extended the Stay Period and Parent Stay until June 30, 2023. The Applicants are seeking to extend the Stay Period, including the Parent Stay, until September 29, 2023;

15. The Nordstrom Canada Entities have acted, and continue to act, in good faith and with due diligence to stabilize and wind down their business and operations as part of these CCAA proceedings in a responsible and orderly manner. As part of their wind down efforts, the Nordstrom Canada Entities have worked closely with the Monitor to develop and implement an extensive proactive communication and consultation plan with stakeholders, including employees, Landlords, suppliers, and vendors. In consultation with the Monitor, the Nordstrom Canada Entities have engaged, and will continue engaging, in discussions with their stakeholders as these CCAA proceedings progress;

16. As set out in the Fourth Heckel Affidavit, the Nordstrom Canada Entities have also engaged with numerous stakeholders with respect to the conduct of the Liquidation Sale, issues relating to the safe and responsible removal of furniture, fixtures and equipment and the eventual

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cessation of the Nordstrom Canada Entities' retail operations in Canada. With the assistance of the Monitor, the Nordstrom Canada Entities have attempted to be proactive in anticipating and resolving stakeholder concerns with respect to the Liquidation Sale;

17. The extension of the Stay Period is necessary and appropriate in the circumstances to allow for the Claims Process to unfold and the Nordstrom Canada Entities to focus on the orderly wind down, with the assistance of the Monitor, for the benefit of all their stakeholders. An extension of the Parent Stay is also necessary to allow the Nordstrom Canada Entities the breathing space and necessary time to complete the Claims Process while continuing to engage with vendors and Landlords who may be affected by the Parent Stay;

18. The Nordstrom Canada Entities have sufficient liquidity to complete the Liquidation Sale and continue their responsible and orderly wind down through to September 29, 2023;

19. The proposed extension of the Stay Period is in the best interests of the Nordstrom Canada Entities and their stakeholders;

20. The Monitor supports the request to extend the Stay Period and the Parent Stay;

***Other Grounds***

21. The provisions of the CCAA, including s. 11.02(2), and the inherent and equitable jurisdiction of this Honourable Court;

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22. Rules 1.04, 1.05, 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended, and sections 106 and 137 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended; and
23. Such further and other grounds as the lawyers may advise.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Motion:

24. The affidavit of Misti Heckel sworn May 19, 2023;
25. Third Report of the Monitor, to be filed; and
26. Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

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May 19, 2023

**OSLER, HOSKIN & HARCOURT LLP**

100 King Street West  
1 First Canadian Place  
Suite 6200, P.O. Box 50  
Toronto ON M5X 1B8

**Tracy C. Sandler (LSO# 32443N)**

Tel: 416.862.5890  
Email: [tsandler@osler.com](mailto:tsandler@osler.com)

**Jeremy Dacks (LSO# 41851R)**

Tel: 416.862.4923  
Email: [jdacks@osler.com](mailto:jdacks@osler.com)

**Martino Calvaruso (LSO# 57359Q)**

Tel: 416.862.5960  
Email: [mcalvaruso@osler.com](mailto:mcalvaruso@osler.com)

**Marleigh Dick (LSO# 79390S)**

Tel: 416.862.4725  
Email: [mdick@osler.com](mailto:mdick@osler.com)

Lawyers for the Applicants

**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

**NOTICE OF MOTION**

**OSLER, HOSKIN & HARCOURT LLP**

100 King Street West  
1 First Canadian Place  
Suite 6200, P.O. Box 50  
Toronto ON M5X 1B8

Tracy C. Sandler (LSO# 32443N)  
Tel: 416.862.5890  
Email: [tsandler@osler.com](mailto:tsandler@osler.com)

Jeremy Dacks (LSO# 41851R)  
Tel: 416.862.4923  
Email: [jdacks@osler.com](mailto:jdacks@osler.com)

Martino Calvaruso (LSO# 57359Q)  
Tel: 416.862.5960  
Email: [mcalvaruso@osler.com](mailto:mcalvaruso@osler.com)

Marleigh Dick (LSO# 79390S)  
Tel: 416.862.4725  
Email: [mdick@osler.com](mailto:mdick@osler.com)

Lawyers for the Applicants

# TAB 2

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

*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

**AFFIDAVIT OF MISTI HECKEL**  
**(Sworn May 19, 2023)**

I, Misti Heckel, of the City of Renton, in the State of Washington, MAKE OATH AND  
SAY:

1. I am the President of Nordstrom Canada Retail, Inc. ("**Nordstrom Canada**"), and  
President and Treasurer of Nordstrom Canada Holdings, LLC ("**NCH**") and Nordstrom Canada  
Holdings II, LLC ("**NCHII**"), and together with Nordstrom Canada and NCH, the "**Applicants**".  
Together, the Applicants and Nordstrom Canada Leasing LP ("**Canada Leasing LP**") are defined  
herein as the "**Nordstrom Canada Entities**".

2. In addition to my role as President of Nordstrom Canada and President and Treasurer of  
NCH and NCHII, I am currently the Vice President - Tax of Nordstrom, Inc. ("**Nordstrom US**"),  
the indirect parent of the Nordstrom Canada Entities. In my role, I have oversight of the tax  
function for the Nordstrom Canada Entities and am involved in the financial and tax matters related

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to the Nordstrom Canada Entities. I am familiar with the business, and have relied upon the books and records of the Nordstrom Canada Entities. As such, I have personal knowledge of the matters deposed to herein. Where I have relied on other sources of information, I have so stated and I believe them to be true. In preparing this affidavit, I have also consulted with members of the senior management teams of the Applicants and Nordstrom US, as applicable, and Nordstrom US' and the Applicants' respective financial and legal advisors. The Nordstrom Canada Entities and Nordstrom US do not waive or intend to waive any applicable privilege by any statement herein.

3. This affidavit is made in support of a motion by the Applicants for an order (the “**Claims Procedure Order**”), among other things:

- (a) approving a claims process for the identification, quantification, and resolution of Claims (as defined below) as against the Nordstrom Canada Entities and their respective current and former directors and officers;
- (b) authorizing the Nordstrom Canada Entities, the Monitor, and the Claims Officers (each as defined below) to perform their respective obligations under the Claims Procedure Order;
- (c) establishing the Claims Bar Date and the Restructuring Period Claims Bar Date (each as defined below); and
- (d) extending the Stay Period and Parent Stay (each as defined below) to September 29, 2023.

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4. All references to monetary amounts in this affidavit are in Canadian dollars unless noted otherwise.

5. This affidavit is organized into the following sections:

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#### **A. Overview of the CCAA Proceedings**

6. On March 2, 2023 (the “**Filing Date**”), the Applicants were granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) pursuant to an Initial Order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). The stay of proceedings and other benefits of the Initial Order were extended to Canada Leasing LP.

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7. In support of the Initial Order, I swore an affidavit dated March 1, 2023 (the “**Initial Heckel Affidavit**”), which described, among other things, the events leading to the Nordstrom Canada Entities’ insolvency, their urgent need for relief under the CCAA, and their intended liquidation and responsible and orderly wind down within these CCAA proceedings. A copy of the Initial Heckel Affidavit (without exhibits) is attached as **Exhibit “A”** to this affidavit.

8. Among other things, the Initial Order:

- (a) appointed Alvarez & Marsal Canada Inc. as monitor within these CCAA proceedings (the “**Monitor**”);
- (b) granted an initial stay of all proceedings against the Nordstrom Canada Entities, the Monitor, and their respective employees, directors, advisors, officers and representatives acting in such capacities until March 12, 2023 (the “**Stay Period**”);
- (c) granted a “**Co-Tenancy Stay**” of potential rights, including termination rights and claims for rent reduction or abatement, that may be asserted by third-party tenants and occupants in commercial properties where Nordstrom Canada stores are located that arise as a result of the making of the Initial Order for the Stay Period;
- (d) granted an initial stay of proceedings against Nordstrom US and its direct and indirect subsidiaries (other than the Nordstrom Canada Entities) relating to claims in connection with any indebtedness, indemnity, liability or obligation of Nordstrom US in respect of obligations that are the primary liability of or related

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to the Nordstrom Canada Entities, including indemnities granted by Nordstrom US under any Canadian real property leases (the “**Parent Stay**”);

- (e) authorized, but did not require, the Nordstrom Canada Entities to pay certain pre-filing amounts with the consent of the Monitor to key participants in the Nordstrom Canada Entities’ distribution network and payment processing systems, and to other critical suppliers, if required to ensure an orderly wind down of the Nordstrom Canada Entities’ business;
- (f) granted an Administration Charge and a Directors’ Charge<sup>1</sup>; and
- (g) approved the creation of an Employee Trust and appointed Employee Representative Counsel.

9. In accordance with the Initial Order, the Monitor established a website (<http://www.alvarezandmarsal.com/NordstromCanada>) to post information and documents regarding these CCAA proceedings, including Orders, motion materials, Monitor’s reports, and the service list (the “**Monitor’s Website**”).

10. On March 10, 2023, the Court granted an Amended and Restated Initial Order among other things: (i) extending the Stay Period and the Parent Stay to March 20, 2023; (ii) increasing the Administration Charge and the Directors’ Charge; (iii) increasing the quantum of pre-filing amounts the Nordstrom Canada Entities are authorized, but not required, to pay with the consent of the Monitor; and (iv) approving a key employee retention plan (the “**KERP**”) and granting a

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<sup>1</sup> Capitalized terms not otherwise defined have the meanings given to them in the Initial Heckel Affidavit.

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related KERP Charge. A copy of the Amended and Restated Initial Order is attached as **Exhibit “B”** to this affidavit. I swore an affidavit dated March 8, 2023 (the “**Second Heckel Affidavit**”), in support of the Amended and Restated Initial Order, providing an update on the Nordstrom Canada Entities’ activities after the granting of the Initial Order. A copy of the Second Heckel Affidavit can be found on the Monitor’s Website.

11. On March 20, 2023, the Court granted an order (the “**Sale Approval Order**”) that, among other things:

- (a) approved an amended and restated consulting agreement between Nordstrom Canada and Canada Leasing LP (together, the “**Merchant**”) and a contractual joint venture comprised of Hilco Merchant Retail Solutions ULC, Gordon Brothers Canada, ULC, Tiger Asset Solutions Canada, ULC and B. Riley Retail Canada ULC (together, the “**Consultant**”) dated March 16, 2023 (the “**Consulting Agreement**”);
- (b) approved sale guidelines (the “**Sale Guidelines**”) for the orderly liquidation of certain Merchandise and FF&E (each as defined in the Sale Approval Order) at each of the Merchant’s stores through a “store closing”, “everything must go”, “everything on sale” or similar themed sale (the “**Liquidation Sale**”);
- (c) authorized the Merchant, with the assistance of the Consultant, to undertake the Liquidation Sale in accordance with the terms of the Sale Approval Order, the Consulting Agreement, and the Sale Guidelines; and

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(d) extended the Stay Period and the Parent Stay to June 30, 2023.

12. As discussed in my affidavit sworn March 14, 2023 (the “**Third Heckel Affidavit**”), the Nordstrom Canada Entities and the Monitor engaged with the Landlords regarding the Sale Approval Order and Sale Guidelines. The Sale Approval Order and Sale Guidelines as ultimately approved by the Court reflected the result of such Landlord engagement.

13. Further details regarding the Consulting Agreement and the Sale Guidelines are found in the Third Heckel Affidavit. A copy of the Third Heckel Affidavit can be found on the Monitor’s Website. A copy of the Sale Approval Order, including the final Sale Guidelines, is attached to this affidavit as **Exhibit “C”**.

14. Since the granting of the Initial Order, the Nordstrom Canada Entities, in close consultation and with the assistance of the Monitor, have worked in good faith and with due diligence to stabilize and wind down their business and operations as part of these CCAA proceedings in a responsible and orderly manner. All six Nordstrom full-line stores have remained operational since the granting of the Initial Order as part of the Liquidation Sale. All seven Nordstrom Rack stores remained operational from the granting of the Initial Order until the cessation of the Liquidation Sale at those stores on or about May 14, 2023. As part of their wind down efforts, the Nordstrom Canada Entities have worked closely with the Monitor to develop and implement an extensive proactive communication and consultation plan with stakeholders, including employees, Landlords, suppliers, and vendors.

**(a) Employees**

15. The Nordstrom Canada Entities, directly and through their counsel, together with the Monitor, have engaged in regular communication with Employee Representative Counsel regarding employee matters, including to ensure that employee questions and concerns are being considered and addressed. Nordstrom Canada has also continued to pay employees' regular wages in the ordinary course in accordance with the Amended and Restated Initial Order.

16. In addition, counsel to the Nordstrom Canada Entities have provided regular updates to Employee Representative Counsel concerning the status of the Liquidation Sale and these CCAA proceedings generally.

17. On March 21, 2023, all employees of Nordstrom Canada, with the exception of two senior managerial employees, were provided notice of termination. Of the 311 Nordstrom Rack employees, 296 employees were provided with notice of termination effective May 16, 2023, and 15 employees were provided with notice of termination effective May 31, 2023. Of the 1,948 Nordstrom full-line store employees, 1,930 employees were provided with notice of termination effective June 13, 2023, and 18 employees were provided with notice of termination effective June 30, 2023. A certain number of employees from each Nordstrom Rack and Nordstrom full-line store will have the opportunity to choose to stay on following their effective date of termination and assist during the decommissioning of the stores following the conclusion of the Liquidation Sale.

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18. Also on March 21, 2023, Nordstrom Canada through its counsel delivered the required notices of mass termination to:

- (a) the Ontario Ministry of Labour pursuant to section 58(2) of the *Employment Standards Act, 2000 (Ontario)*;
- (b) the British Columbia Ministry of Labour pursuant to section 64 of the *Employment Standards Act (BC)*; and
- (c) the Alberta Ministry of Labour pursuant to section 137 of the *Employment Standards Code (Alberta)*.

19. Since providing the termination notices, Nordstrom Canada has published an expanded Frequently Asked Questions document (the “**Expanded FAQ**”) to address further common employee questions and concerns. The Expanded FAQ was posted to the internal employee intranet site (the “**HR Hub**”). In addition, Nordstrom Canada has compiled and published on the HR Hub a variety of resources provided by provincial regulators and other publicly available resources to assist employees with their future job prospects, including links to job boards, employment services and support centres, employment programs, and resume writing tips.

20. The Amended and Restated Initial Order approved the creation of the Employee Trust, which included an initial contribution of \$14 million by Nordstrom US, and contemplated additional contributions, up to a total maximum contribution of \$25 million. Eligible Employees receive top-up payments in respect of statutory termination and severance pay directly from Nordstrom Canada pursuant to Nordstrom Canada’s existing payroll system, and Nordstrom

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Canada is subsequently reimbursed for these payments by the Employee Trust. Nordstrom Canada has worked closely with the Monitor, as the Administrator of the Employee Trust, to calculate and process top-up payments funded by the Employee Trust. On April 26, 2023, Nordstrom Canada received an initial reimbursement from the Employee Trust in the amount of approximately \$1.1 million for top-up payments made to Eligible Employees on April 6 and 14, 2023, in respect of statutory termination entitlements for those pay periods. Following this payment, reimbursements from the Employee Trust have been processed in the week immediately subsequent to the applicable pay date.

21. Ms. Rubenstein, as Trustee of the Employee Trust, has continued to discharge her duties contemplated therein. Nordstrom Canada has provided regular updates to employees regarding top-up payments funded by the Employee Trust. In addition, Nordstrom Canada and the Monitor, as the Administrator of the Employee Trust, have worked with Employee Representative Counsel to respond to questions raised by employees with respect to the Employee Trust, including responding to 16 Notices of Dispute filed by employees as of May 16, 2023, in accordance with the Amended and Restated Initial Order. As of May 18, 2023, Nordstrom Canada has been reimbursed \$2.7 million from the Employee Trust for top-up payments made to Nordstrom Canada employees.

**(b) Landlords**

22. Promptly after obtaining the Initial Order, counsel for the Nordstrom Canada Entities sent letters to each Landlord setting out, among other things, a summary of rent obligations remaining under their respective Lease or Leases to assist the Landlords in determining the potential amounts

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owing as rent with respect to each Nordstrom Canada store. The Nordstrom Canada Entities continue to engage in discussions with the Landlords regarding a reconciliation of these amounts.

23. As described above, prior to the hearing for the Sale Approval Order on March 20, 2023, the Nordstrom Canada Entities circulated draft sale guidelines to obtain Landlord feedback. To the extent requested by the Landlords, proposed signage for the Liquidation Sale was sent to the Landlords for approval.

24. Prior to the granting of the Sale Approval Order, representatives of the Nordstrom Canada Entities, the Monitor, the Consultant, certain of Nordstrom Canada's concession vendors (the "**Concession Vendors**") and the Landlords also attended walk-throughs of Nordstrom full-line stores to verify ownership of merchandise and furniture, fixtures, and equipment ("**FF&E**"). These walk-throughs took place on March 13 and 14, 2023 to facilitate the removal of Concession Vendor-owned merchandise and non-fixed FF&E prior to the Liquidation Sale. Discussions between the Nordstrom Canada Entities, the Monitor, and the Landlords regarding the operations of the Liquidation Sale have remained ongoing as the Liquidation Sale has progressed. Several of the Nordstrom Rack Landlords also requested walk-throughs and attended their respective stores, accompanied by the Monitor.

25. The Nordstrom Canada Entities, with the assistance of the Monitor, intend to continue to consult and engage with the Landlords throughout these CCAA proceedings with a view to reaching a consensual resolution of Landlord claims. The Nordstrom Canada Entities will arrange walk-throughs with the Landlords of the Nordstrom full-line stores to deal with any remaining FF&E after the completion of the Liquidation Sale. In addition, the Nordstrom Canada Entities

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intend to arrange additional walk-throughs with each of the Landlords for all Nordstrom Canada stores upon the completion of the decommissioning of the stores, prior to vacating the premises.

**(c) Inventory Liquidation**

26. As of the granting of the Initial Order, the Nordstrom Canada Entities stopped issuing new purchase orders for merchandise. Merchandise already purchased and in transit at the time of the Initial Order was received by National Logistics Services (2006) Inc. (“NLS”) at the distribution centre managed and operated by NLS in Etobicoke, Ontario (the “**Distribution Centre**”), before being distributed to Nordstrom Canada stores and sold as part of the Liquidation Sale.

27. The Liquidation Sale commenced on the morning of March 21, 2023, and continued in accordance with the Sale Approval Order and Sale Guidelines until on or about May 14, 2023, for Nordstrom Rack stores, and is projected to continue until mid-June for Nordstrom full-line stores. It is anticipated that the FF&E removal period for the Nordstrom Rack stores will continue until May 28, 2023.

28. The Nordstrom Canada Entities and the Monitor have been in frequent contact with the Consultant to discuss the conduct of the Liquidation Sale, including: the cadence of discounting, the length of the Liquidation Sale, advertising spend, the sale of FF&E, and staffing issues. Issues raised by Landlords, vendors and other stakeholders have been brought to the attention of the Consultant and resolved as soon as possible.

29. The Nordstrom Canada Entities, in consultation with the Consultant and the Monitor, have undergone extensive preparations for the vacating of the Nordstrom stores in Canada. Preparations

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for the removal of signage and leaving the stores in a “broom swept” and clean condition in accordance with the Sale Guidelines are well underway. Other preparations include dealing with FF&E, records retention issues, security matters and other logistical issues involved with the closure of a store.

30. By May 9, 2023, all inventory held at the Distribution Centre had been distributed to Nordstrom Canada stores. On April 28, 2023, Nordstrom Canada provided notice to NLS of its intention to disclaim the master agreement between Nordstrom Canada and NLS, dated October 23, 2013 (as amended from time to time), pursuant to the CCAA. As part of the cessation of operations with NLS, the Nordstrom Canada Entities, in consultation with the Monitor, and NLS are working to resolve issues surrounding the ownership of the FF&E at the Distribution Centre as part of the final reconciliation of amounts between the parties.

31. The Nordstrom Canada Entities have attempted to complete the Liquidation Sale in as efficient and responsible a manner as possible. For example, arrangements have been made to recycle certain technology inventory that has negligible commercial value with an environmentally friendly technology recycler. In addition, arrangements are being made to donate certain prosthesis inventory for use by cancer patients at the Princess Margaret Hospital.

**(d) Concession Vendors**

32. Upon being granted the Initial Order, the Nordstrom Canada Entities, including through their counsel, began engaging with the Concession Vendors to, among other things, coordinate the March 13 and 14, 2023 walk-throughs of Nordstrom full-line stores described above to facilitate

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the identification and removal of Concession Vendor-owned merchandise and FF&E where practicable prior to the Liquidation Sale.

33. On March 16, 2023, counsel to the Nordstrom Canada Entities sent letters to the Concession Vendors providing them with guidelines for the removal of Concession Vendor-owned merchandise and non-fixed FF&E. The removal of the Concession Vendor-owned merchandise and non-fixed FF&E took place during the period of March 17 to 19, 2023. The letters informed the Concession Vendors that any FF&E owned by the Concession Vendor that was affixed or not otherwise carriable by hand would remain in the stores until the completion of the Liquidation Sale.

34. Subsequently, counsel to the Nordstrom Canada Entities sent letters to the Concession Vendors stating that the Nordstrom Canada Entities, in consultation with the Monitor, had reconciled the amounts owed to Concession Vendors for the sale of Concession Vendor-owned merchandise for the period since the granting of the Initial Order, net of the fees owing to Nordstrom Canada in respect of such sales, including the amounts collected on such sales in respect of sales taxes (collectively, the “**Post-Filing Amounts**”). In addition, the letters advised that the Nordstrom Canada Entities, in consultation with the Monitor, had determined the amount owed to Concession Vendors with respect to sales taxes for the period prior to obtaining the Initial Order (the “**Pre-Filing Period**”). The Nordstrom Canada Entities, with the approval of the Monitor, provided for payment of the Post-Filing Amounts to Concession Vendors, and the sales taxes outstanding for the Pre-Filing Period were either paid to the Concession Vendors or had been remitted by the Nordstrom Canada Entities to the taxing authority on their behalf in the ordinary course, based on the applicable contractual relationship.

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35. Thereafter, counsel to the Nordstrom Canada Entities wrote again to the Concession Vendors advising that the Nordstrom Canada Entities, in consultation with the Monitor, had determined the net amount owing to each Concession Vendor with respect to sales of Concession Vendor-owned merchandise during the Pre-Filing Period. Attached to each letter was a reconciliation outlining the specifics of the Pre-Filing Period amounts owing. The letters stated that each Concession Vendor would be permitted to file a Claim with respect to the amounts owing for the Pre-Filing Period in accordance with the Claims Process (as defined below).

36. Certain of the Concession Vendors have taken the position that they should be paid amounts owing by the Nordstrom Canada Entities for the Pre-Filing Period in priority to general unsecured creditors. To the extent any such claims are made, they will be addressed in the proposed Claims Process, as described below.

37. The Nordstrom Canada Entities, with the assistance of the Monitor, will continue to engage with Concession Vendors, in particular with respect to the removal of any remaining FF&E after the completion of the Liquidation Sale.

**(e) Lease Transaction Process**

38. The Initial Order authorized the Nordstrom Canada Entities, with the assistance of any real estate advisor or other Assistants (as defined in the Amended and Restated Initial Order) as may be desirable, to pursue all avenues and offers for the sale, transfer, or assignment of the Leases to third-parties, and return to Court for approval of any such sale, transfer, or assignment, to permit the Nordstrom Canada Entities to proceed with an orderly wind down.

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39. In accordance with the Initial Order, the Nordstrom Canada Entities, after discussions with multiple potential advisors, engaged Jones Lang LaSalle Real Estate Services, Inc. (“**JLL**”) to act as real estate advisor with respect to a monetization process for the Leases. JLL is a global commercial real estate services company with Canadian operations in Toronto, Vancouver, Calgary, Edmonton, and Montreal that specializes in the provision of brokerage and consulting services for retailers expanding and/or re-evaluating their operations both in North America and internationally. Tim Sanderson, Executive Vice President and National Lead – Retail, and Scott Lee, Executive Vice President – Retail, have over 50 years of combined experience in the Canadian commercial real estate industry. Mr. Sanderson’s and Mr. Lee’s prior company, Northwest Atlantic (Canada) Inc., which was sold to JLL in 2018, acted as Court-approved listing broker in the CCAA proceedings of Target Canada.

40. On March 22, 2023, Canada Leasing LP entered into a Consulting Services Agreement with JLL for the period of March 22 to June 30, 2023 (the “**Consulting Services Agreement**”) for JLL to, among other things:

- (a) First Mandate:
  - (i) review all Leases and determine if any have realizable value in the market;  
and
  - (ii) prepare and deliver a confidential Lease Analysis and Marketing Report for each Lease.

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- (b) Second Mandate:
- (i) provide local knowledge regarding real estate market conditions and activity;
  - (ii) leverage landlord, tenant, distribution and other potential purchaser or tenant relationships in support of the sale, assignment, or transfer of the Leases;
  - (iii) assist with the sale or other termination of the Leases and advise and consult with the Nordstrom Canada Entities and the Monitor throughout sale proceedings; and
  - (iv) provide any required licensed real estate brokerage services.

A copy of the Consulting Services Agreement is attached as **Exhibit “D”** to this affidavit.

41. Pursuant to the Consulting Services Agreement, Canada Leasing LP and JLL agreed that Canada Leasing LP would pay to JLL a lump sum one-time payment of \$50,000.00, plus HST, as compensation for JLL’s First Mandate, and a monthly fee of \$40,000.00, plus HST (to a maximum amount of \$160,000.00, plus HST), as compensation for JLL’s Second Mandate. In connection with any Court-approved sale, transfer or assignment of any Lease, upon a successful closing, Canada Leasing LP also agreed to pay a one-time gross fee per Lease of \$1.50 per square foot, plus HST (to a maximum of \$375,000.00, plus HST, per Lease), for Nordstrom full-line store Leases, and a one-time gross fee of \$4.00 per square foot, plus HST, per Nordstrom Rack Lease.

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42. Upon execution of the Consulting Services Agreement, JLL, in accordance with its First Mandate, prepared and delivered to the Nordstrom Canada Entities, their counsel, and the Monitor, a confidential Lease Analysis and Marketing Report (the “**Report**”). The Report set out, on a Lease by Lease basis: (i) a summary of the features of the Lease; (ii) the rent for each of the leased premises and comparable rents for similar premises in similar locations; (iii) JLL’s opinion as to the possibility of a third-party taking a transfer of the Lease; and (iv) a timeline for the applicable Landlord to re-lease, repurpose or otherwise redevelop each leased premises.

43. After a review of the Report, the Nordstrom Canada Entities determined, in consultation with the Monitor, that JLL should proceed to market the Leases in accordance with their Second Mandate.

44. The Leases were marketed to, among others, commercial real estate brokerages, retail organizations operating in and outside Canada, and various other companies/organizations that may have potential interest in one or more of the Leases. Since April 1, 2023, 195 parties were contacted by, or reached out directly to, JLL to discuss the process for bidding on one or more of the Leases.

45. Of the 195 parties contacted or who initiated contact with respect to the Leases, 26 parties executed a non-disclosure agreement (“**NDA**”) with Canada Leasing LP and were granted access to a data room containing copies of Lease files (including copies of all available Leases, waivers, and other relevant documentation), a summary of outstanding rent obligations for each Lease, property tax statements, and floorplans. A copy of the standard form correspondence sent by JLL

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to parties regarding the bidding process and inviting them to sign an NDA is attached to this affidavit as **Exhibit “E”**.

46. Since April 1, 2023, JLL and the Nordstrom Canada Entities, in consultation with the Monitor, engaged with interested parties to respond to due diligence inquiries, provide additional information and documentation upon request, and address anticipated conditions to closing to proactively streamline the process for finalizing definitive documents.

47. On April 19, 2023, JLL requested that each party confirm which Nordstrom Rack 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 Rack EOI**”) by no later than 5:00 p.m. (EST) on April 28, 2023 (the “**EOI Deadline**”). A copy of the standard form correspondence sent by JLL to participants in the process advising of the EOI Deadline for the Nordstrom Rack Leases is attached to this affidavit as **Exhibit “F”**.

48. The process undertaken by the Nordstrom Canada Entities, with the advice of JLL and in consultation with the Monitor, to market and sell the Leases has taken into account timing and logistical issues inherent in these CCAA proceedings. The dates applicable for the Nordstrom Rack stores took into account the expected conclusion of the Liquidation Sale in Nordstrom Rack stores on or about May 14, 2023, with the FF&E removal period projected to end on or about May 28, 2023, and the need for the Nordstrom Canada Entities to disclaim their interests in any Nordstrom Rack Leases not subject to a sale transaction as soon as reasonably practicable to avoid paying additional rent. It is the view of the Nordstrom Canada Entities that this timing did not, in any way, compromise the integrity of the process. None of the interested parties expressed concern about

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the timing of the process. As of the EOI Deadline, the Nordstrom Canada Entities received Nordstrom Rack EOIs from third-parties for potential transactions involving one or more of the Nordstrom Rack Leases located at four separate locations. An additional Nordstrom Rack EOI was received shortly after the EOI Deadline. Copies of the Nordstrom Rack EOIs were reviewed by the Nordstrom Canada Entities, JLL and the Monitor.

49. The Nordstrom Rack EOIs received by the Nordstrom Canada Entities were comprised of offers by third-party retailers for the assignment and assumption of certain Nordstrom Rack Leases, some of which were included in multiple Nordstrom Rack EOIs. Upon receipt of the Nordstrom Rack EOIs, the Nordstrom Canada Entities and JLL, in consultation with the Monitor, undertook negotiations with applicable bidders, including providing draft assignment agreements to certain of the potential assignees.

50. Discussions remain ongoing between potential assignees, JLL, and the Nordstrom Canada Entities, in consultation with the Monitor, in respect of four of the Nordstrom Rack Leases that have not been disclaimed. As of the date of this affidavit, no definitive agreements for the assignment of any of the Nordstrom Rack Leases have been signed.

51. As the precise date for vacating the Nordstrom full-line stores will not be known for several weeks, no deadline for receipt of expressions of interest for the full-line stores has yet been set. JLL and the Nordstrom Canada Entities, with the assistance of the Monitor, continue to respond to due diligence and information requests from potential assignees who have expressed interest in those locations.

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**(f) Disclaimers of the Leases**

52. On May 3, 2023, the Nordstrom Canada Entities, after receiving no expressions of interest for these locations, and with the approval of the Monitor, issued notices of disclaimer to the Landlords of the South Edmonton Common and Willowbrook Langley Nordstrom Rack stores to disclaim the Leases and related agreements for those stores. Such disclaimers will become effective on June 2, 2023.

53. Subsequently, after receiving no expressions of interest and having further discussions with the Monitor and JLL concerning potential assignment opportunities, on May 5, 2023, the Nordstrom Canada Entities, with the approval of the Monitor, issued a notice of disclaimer to the Landlord of the One Bloor Street East Nordstrom Rack store to disclaim the Lease and related agreements. Such disclaimer will become effective on June 4, 2023.

**(g) Other Stakeholders, Contract Terminations and Disclaimers**

54. On March 7, 2023, the Monitor sent a notice to all of the Nordstrom Canada Entities' known creditors who had claims over \$1,000. The Monitor also posted on the Monitor's Website a list of those creditors and the estimated amount owing to each listed creditor.

55. On March 9 and March 16, 2023, the Monitor caused to be published in *The Globe and Mail* (National Edition) notice that the Initial Order had been granted and other details of the proceeding.

56. In advance of the Claims Process, the Nordstrom Canada Entities, in consultation with the Monitor, continue to engage with vendors to reconcile amounts owed to them for the Pre-Filing

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Period by requesting that vendors provide updated statements of account including all outstanding amounts, which will allow the Nordstrom Canada Entities to address vendor Claims more efficiently. In addition, the Nordstrom Canada Entities, in consultation with the Monitor, have responded to inquiries from vendors who were either omitted from the list of creditors on the Monitor's Website or referred to therein by a different corporate name, and vendors who were included on the list of creditors but dispute the listed amount owing.

57. In order to reduce costs to the estate as much as possible, the Nordstrom Canada Entities, in consultation with the Monitor, entered into a process of terminating certain contracts in accordance with their terms or disclaiming contracts in accordance with the CCAA where, in either case, such contracts were no longer necessary for the orderly wind down of the Nordstrom Canada Entities' business. In addition, the Nordstrom Canada Entities have ceased receiving services ordinarily delivered under purchase orders which were not required as part of their orderly wind down.

58. With the approval of the Monitor, the Nordstrom Canada Entities sent notices of their intention to disclaim certain contractual and other arrangements that the Nordstrom Canada Entities had with certain third-parties as of the date of filing (the "**Non-Lease Disclaimers**"). Each of the Non-Lease Disclaimers advised that the Nordstrom Canada Entities intended to disclaim such contracts effective 30 days after delivering the notices. The Non-Lease Disclaimers included some of the Nordstrom Canada Entities' agreements with, among others, merchandise suppliers and suppliers of gift cards.

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59. The Nordstrom Canada Entities have not terminated agreements or provided notice of the intention to disclaim agreements that will still be required for the responsible and orderly wind down after the completion of the Liquidation Sale. For example, the Nordstrom Canada Entities have not terminated or disclaimed certain agreements in respect of utilities, card processing services and employee benefits. The Nordstrom Canada Entities intend to disclaim or terminate, in accordance with their terms, the remaining agreements at an appropriate time, to be determined in consultation with the Monitor.

## **B. Claims Process**

60. The Nordstrom Canada Entities have developed, in consultation with the Monitor and with Employee Representative Counsel, a proposed claims process (the “**Claims Process**”) to govern the process for filing and determining Claims against the Nordstrom Canada Entities (including Intercompany Claims and Claims by Employees) and any Claims against the current and former Directors and Officers of the Nordstrom Canada Entities (“**D&O Claims**”). The Nordstrom Canada Entities believe that the Claims Process is a fair, efficient, and reasonable process for the determination of Claims against the Nordstrom Canada Entities and D&O Claims and has been tailored to the specific circumstances of these CCAA proceedings. I am informed by the Monitor that it supports the Claims Process. Capitalized terms not otherwise defined in this section have the meanings given to them in the proposed Claims Procedure Order.

61. The Nordstrom Canada Entities, with the assistance of the Monitor, have engaged in a significant amount of advance preparation for the launch of the Claims Process as they wish to distribute the proceeds of realization to their creditors as soon as reasonably possible. The

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Nordstrom Canada Entities are seeking approval of the Claims Process at this time, despite the current Stay Period ending on June 30, 2023, in order to move forward as quickly and efficiently as possible with the ultimate goal of developing a plan of arrangement for the benefit of all their stakeholders.

62. Below is a summary of the key features of the Claims Process, as more fully set out in the proposed Claims Procedure Order.

**(a) Claims**

63. As set out in greater detail in the proposed Claims Procedure Order, the Nordstrom Canada Entities are soliciting the following Claims:

- (a) *Pre-Filing Claims*: any right or claim of any Person against any of the Nordstrom Canada Entities, including a priority, property or trust claim, in connection with any indebtedness, liability or obligation of any kind whatsoever of any such Nordstrom Canada Entity to such Person that was in existence on the Filing Date;
- (b) *Restructuring Period Claims*: any right or claim of any Person against any of the Nordstrom Canada Entities in connection with any indebtedness, liability or obligation of any kind whatsoever of any such Nordstrom Canada Entity to such Person arising out of the restructuring, disclaimer, termination or breach by such Nordstrom Canada Entity on or after the Filing Date of any contract, lease or other agreement, whether written or oral;

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- (c) *Pre-Filing D&O Claims*: any right or claim of any Person against one or more Directors and/or Officers arising based in whole or in part on facts that existed prior to the Filing Date, including any right or ability of any Person to advance a claim for contribution, indemnity or otherwise against any of the Directors and/or Officers; and
  - (d) *Restructuring Period D&O Claims*: any right or claim of any Person against one or more of the Directors and/or Officers arising after the Filing Date, including any right or ability of any Person to advance a claim for contribution, indemnity or otherwise against any of the Directors and/or Officers.
64. The Claims Process does not apply to (collectively, the “**Excluded Claims**”):
- (a) any Claim that may be asserted by any beneficiary of the Administration Charge, the Directors’ Charge, the KERP Charge, or any other charge granted by the Court in these CCAA Proceedings with respect to such charges;
  - (b) any Claim that may be asserted by the Consultant;
  - (c) any Claim that may be asserted by any of the Nordstrom Canada Entities against any Directors and/or Officers; and
  - (d) any Excluded Claim arising through subrogation.
65. The Claims Process is intended to determine the nature, quantum, and validity of Claims against the Nordstrom Canada Entities and their Directors and Officers. The proposed Claims

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Process has been designed to make the process as user friendly as possible for potential Claimants to assert and have their Claims resolved in a fair and efficient manner.

**(b) Claims Process and Notice**

**(i) General Claims Process**

66. The proposed Claims Process requires the Monitor to send a General Claims Package containing a Proof of Claim form and D&O Proof of Claim form to: (i) each Person that appears on the Service List (except Persons that are likely to assert only Excluded Claims, in the reasonable opinion of the Nordstrom Canada Entities and the Monitor); (ii) any Person that has requested a Proof of Claim in respect of any potential Claim that is not captured in a Statement of Negative Notice Claim or Employee Letter (each discussed further below); and (iii) any Person known to the Nordstrom Canada Entities or the Monitor as having a potential Claim based on the books and records of the Nordstrom Canada Entities that is not captured in any Statement of Negative Notice Claim or Employee Letter. The proposed Claims Procedure Order requires that the General Claims Package be sent to the foregoing groups by no later than 5:00 p.m. on the 10<sup>th</sup> Business Day following the date of the Claims Procedure Order.

67. Further, in order to ensure that all Persons holding or wishing to assert a Claim against the Nordstrom Canada Entities receive notice of the Claims Process, in addition to the foregoing, the proposed Claims Procedure Order requires:

- (a) the Monitor to cause a Notice to Claimants (substantially in the form attached to the Claims Procedure Order, or a condensed version thereof) to be published once

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in *The Globe and Mail* (National Edition) as soon as practicable after the date of the Claims Procedure Order; and

- (b) the Monitor to cause the Notice to Claimants, the General Claims Package, and a blank form of Notice of Dispute of Negative Notice Claim to be posted to the Monitor's Website as soon as practicable, but no later than 5:00 p.m. on the 10<sup>th</sup> Business Day following the date of the Claims Procedure Order.

68. Any Claimant that intends to assert a Pre-Filing Claim or a Pre-Filing D&O Claim that is not captured in a Statement of Negative Notice Claim or Employee Letter must file a Proof of Claim or a D&O Proof of Claim, as applicable, with the Monitor on or before the Claims Bar Date of August 4, 2023.

69. The proposed Claims Procedure Order requires the Monitor, upon becoming aware of a circumstance giving rise to a potential Restructuring Period Claim or Restructuring Period D&O Claim after the noticing described above is complete, in consultation with the Nordstrom Canada Entities, to send a General Claims Package or a Negative Notice Claims Package, as appropriate, to the Claimant in respect of such Claim. Any Claimant that intends to assert a Restructuring Period Claim or a Restructuring Period D&O Claim that is not captured in a Statement of Negative Notice Claim or Employee Letter must file a Proof of Claim or a D&O Proof of Claim, as applicable, with the Monitor on or before the Restructuring Period Claims Bar Date – being the later of 30 days after the Monitor sends a package to such Claimant or the Claims Bar Date of August 4, 2023.

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**(ii) Negative Notice Claims Process – Employees**

70. The Nordstrom Canada Entities are proposing a streamlined and simplified process to assist Employees in resolving their Claims in these CCAA Proceedings, and have worked closely with Employee Representative Counsel in developing such a process.

71. As described below, a subset of Employees that are known to have Claims against the Nordstrom Canada Entities as determined pursuant to the Known Employee Claims Methodology will be sent a Statement of Negative Notice Claim specifying the amount and Characterization of their Claims.

72. In order to make the Claims Process as user friendly as possible for the Employees, the Nordstrom Canada Entities, in consultation with Employee Representative Counsel, developed the Employee Letter as a means to provide the majority of Employees with a simplified version of the type of claim documentation normally provided in a CCAA proceeding. The Claims Process requires the Monitor to send the Employee Letter to all Employee Letter Recipients, being Employees who were employed as at the Filing Date and:

- (a) who are not Known Employee Claimants with Known Employee Claims valued at greater than \$0; and
- (b) are not otherwise sent a Statement of Negative Notice Claim by the Nordstrom Canada Entities, in consultation with the Monitor

informing the Employee Letter Recipients that the Nordstrom Canada Entities have reviewed and assessed the Employee Letter Recipients' length of service, province of employment, store

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location, and terms of employment contract, and have determined that no further payments are or will be owing to the Employee Letter Recipient by any of the Nordstrom Canada Entities. The proposed form of the Employee Letter is found at Schedule J of the proposed Claims Procedure Order. As set out in the form of Employee Letter, the vast majority of Employees are projected to have no Claim in the Claims Process as their severance and termination entitlements are being topped up through the Employee Trust. The Nordstrom Canada Entities intend to work with the Monitor and Employee Representative Counsel to modify the Employee Letter to deal with smaller groups of employees, as necessary.

73. The Employee Letter states that if the Employee Letter Recipient disagrees with the Nordstrom Canada Entities' assessment, a dispute notice must be filed in accordance with the Claims Process, and the Employee Letter will include a link to access the Monitor's Website (which will include a link to the Notice of Dispute of Negative Notice Claim form and the General Claims Package).

74. A small percentage of Employees have Claims that are known to the Nordstrom Canada Entities and the Monitor. I am advised by Sven Poysa, of Osler, Hoskin & Harcourt LLP ("**Osler**"), counsel for the Nordstrom Canada Entities, and believe that these include (a) Claims by Employees in Ontario who have resigned or who may resign during their statutory notice period and whose severance pay under the *Employment Standards Act, 2000* (Ontario) is therefore not payable by the Employee Trust, and (b) Claims by certain Employees in Ontario to common law reasonable notice of termination or payment in lieu thereof given the specific terms of their contracts of employment.

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75. Claims by Employees for severance pay under the *Employment Standards Act, 2000* (Ontario) will be calculated in accordance with the statutory formula. For calculating the Claims for Employees with known common law “reasonable” notice claims (such Claims, the “**Known Employee Claims**”) the proposed Claims Procedure Order contemplates the usage of a methodology – the “**Known Employee Claims Methodology**”. The Known Employee Claims Methodology provides for a consideration of Employees’ position/character of employment, age and length of service. I am advised by Sven Poysa of Osler and believe that these factors are in keeping with the well-established “Bardal factors” used by the courts for determining common law reasonable notice periods. The Known Employee Claims Methodology provides a reasonable and consistent method for evaluating Known Employee Claims in a manner that is fair and efficient and in accordance with legal principles. The Known Employee Claims Methodology was jointly developed by Employee Representative Counsel and the Nordstrom Canada Entities in consultation with the Monitor. A copy of the Known Employee Claims Methodology is attached to this affidavit as **Exhibit “G”**.

76. With respect to Known Employee Claims, the proposed Claims Procedure Order provides that:

- (a) the Known Employee Claims Methodology shall be final and binding on all Employees represented by Employee Representative Counsel and Employees not represented by Employee Representative Counsel who do not submit a Notice of Dispute of Negative Notice Claim by the applicable Bar Date;

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- (b) any Employee who did not submit a Notice of Dispute of Negative Notice Claim by the applicable Bar Date, shall not directly or indirectly assert, advance, re-assert or re-file any Claim determined pursuant to the Known Employee Claims Methodology, as set out in their Statement of Negative Notice Claim or referred to in their Employee Letter;
- (c) any Claim that is determined pursuant to the Known Employee Claims Methodology and set out in a Statement of Negative Notice Claim or referred to in an Employee Letter that is directly or indirectly asserted, advanced, re-asserted or re-filed by or on behalf of an Employee, shall be disallowed unless submitted pursuant to a Notice of Dispute of Negative Notice Claim by the applicable Bar Date; and
- (d) any Employee shall be permitted to file a Proof of Claim by the applicable Bar Date in respect of any Claim that is not contemplated by the Known Employee Claims Methodology.

**(iii) Negative Notice Claims Process – General**

77. In addition to Claims of Employees (including Known Employee Claimants and Employee Letter Recipients), Negative Notice Claims include Pre-Filing Claims and/or Restructuring Period Claims, as applicable, that are set out in a Statement of Negative Notice Claim, and include Claims of any other Person to whom the Nordstrom Canada Entities, in consultation with the Monitor, determine to send a Negative Notice Claims Package based on the books and records of the Nordstrom Canada Entities.

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78. In respect of Negative Notice Claims, the proposed Claims Procedure Order provides that:
- (a) by no later than 5:00 p.m. on the 10<sup>th</sup> Business Day following the date of the Claims Procedure Order, the Monitor will cause a Negative Notice Claims Package to be sent to every Negative Notice Claimant, other than Employees (including Known Employee Claimants), at their last known municipal or e-mail address as recorded in the Nordstrom Canada Entities' books and records;
  - (b) on the 15<sup>th</sup> Business Day following the date of the Claims Procedure Order or as soon as practicable thereafter, the Monitor will cause the applicable Negative Notice Claims Package (including an Employee Letter, where applicable) to be sent to each Employee who was employed at the Filing Date at their last known municipal or e-mail address as recorded in the Nordstrom Canada Entities' books and records;
  - (c) the Negative Notice Claims Package will include: (i) a Statement of Negative Notice Claim which specifies the amount of the Claimant's Negative Notice Claim as valued by the Nordstrom Canada Entities, in consultation with the Monitor, based on the books and records of the Nordstrom Canada Entities, and a Notice of Dispute of Negative Notice Claim form; or (ii) an Employee Letter; and
  - (d) if a Negative Notice Claimant wishes to dispute the amount (if any) or Characterization of its Negative Notice Claim (including the application of the Known Employee Claims Methodology, as applicable), it must deliver to the

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Monitor a Notice of Dispute of Negative Notice Claim, which must be received by the Monitor no later than the applicable Bar Date (discussed further below).

**(c) Bar Dates**

79. The Nordstrom Canada Entities propose that any Person asserting a Pre-Filing Claim or a Pre-Filing D&O Claim or disputing a Negative Notice Claim provided to them in a Statement of Negative Notice Claim or referred to in its Employee Letter be required to deliver to the Monitor a Notice of Dispute of Negative Notice Claim (in the case of Negative Notice Claimants), or a Proof of Claim or D&O Proof of Claim, as applicable, on or before 5:00 p.m. on August 4, 2023 (the “**Claims Bar Date**”).

80. The Nordstrom Canada Entities propose that any Person asserting a Restructuring Period Claim or a Restructuring Period D&O Claim be required to deliver to the Monitor a Proof of Claim or D&O Proof of Claim, as applicable, before the later of: (i) 30 days after the date on which the Monitor sends a Negative Notice Claims Package or General Claims Package, as appropriate, with respect to a Restructuring Period Claim or Restructuring Period D&O Claim and (ii) the Claims Bar Date (the “**Restructuring Period Claims Bar Date**”).

81. The Claims Bar Date and the Restructuring Period Claims Bar Date were selected by the Nordstrom Canada Entities, in consultation with the Monitor. The Nordstrom Canada Entities believe that the Claims Bar Date and the Restructuring Period Claims Bar Date are reasonable in that they provide sufficient time for potential Claimants to evaluate and submit any Proof of Claim/D&O Proof of Claim or Notice of Dispute of Negative Notice Claim in respect of any Claim

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they may have against the Nordstrom Canada Entities or their Directors and Officers. Employee Representative Counsel supports the Bar Dates with respect to Employee Claims.

82. The proposed Claims Procedure Order provides that:

- (a) any Negative Notice Claimant who does not submit a completed Notice of Dispute of Negative Notice Claim by the applicable Bar Date is deemed to have accepted the amount (if any) and Characterization of its Claim as set out in its Statement of Negative Notice Claim or referred to in its Employee Letter, as applicable, for voting and distribution purposes, and any and all rights of the Negative Notice Claimant to dispute the Claim(s) or otherwise assert or pursue the Claim(s) other than as set out in the Statement of Negative Notice Claim or Employee Letter are extinguished and barred; and
- (b) any potential Claimant (other than a Negative Notice Claimant) that does not file a Proof of Claim or D&O Proof of Claim by the Claims Bar Date or Restructuring Period Claims Bar Date, as applicable, is: (i) forever barred, estopped and enjoined from asserting or enforcing such Claim against the Nordstrom Canada Entities and/or their former or current Directors and Officers, as applicable, and all such Claims shall be forever extinguished; (ii) not permitted to vote at any Meeting on account of such Claim; (iii) not entitled to receive further notice with respect to the Claims Process or these CCAA Proceedings with respect to such Claim; and (iv) not permitted to participate in any distribution made under any Plan or otherwise on account of such Claim.

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83. Pursuant to the proposed Claims Procedure Order, the Monitor, in consultation with the Nordstrom Canada Entities, may use its reasonable discretion to determine whether to agree to accept a Claim submitted after the applicable Bar Date.

**(d) Adjudication and Resolution of Claims Other than Intercompany Claims**

84. In respect of any Proof of Claim or D&O Proof of Claim submitted by a Claimant, the proposed Claims Procedure Order provides that the Nordstrom Canada Entities, in consultation with the Monitor, the applicable Directors and Officers named in respect of such D&O Claim and/or their counsel, will accept, revise, or reject each Claim set out in each Proof of Claim or D&O Proof of Claim for voting and/or distribution purposes. In addition, the proposed Claims Procedure Order provides:

- (a) if the Nordstrom Canada Entities, in consultation with the Monitor with respect to a Proof of Claim, and in consultation with both the Monitor and the applicable Directors and Officers with respect to a D&O Proof of Claim, agree with the amount and Characterization of a Claim as set out in any Proof of Claim or D&O Proof of Claim, the Monitor will notify such Claimant of the acceptance of its Claim by the Nordstrom Canada Entities;
- (b) if the Nordstrom Canada Entities, in consultation with the Monitor, disagree with the amount or Characterization of a Claim as set out in any Proof of Claim or D&O Proof of Claim, the Nordstrom Canada Entities, the Monitor, and any applicable Directors and Officers will attempt to resolve such dispute and settle the purported Claim with the Claimant for voting and/or distribution purposes;

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- (c) if the Nordstrom Canada Entities, in consultation with the Monitor, intend to revise or reject a Claim for voting and/or distribution purposes, the Monitor will notify the applicable Claimant that its Claim has been revised or rejected, and the reasons for such revision or rejection, by sending a Notice of Revision or Disallowance to the Claimant;
- (d) any Claimant who wishes to dispute a Notice of Revision or Disallowance for voting and/or distribution purposes must deliver a completed Notice of Dispute of Revision or Disallowance, along with the reasons for its dispute, to the Monitor by no later than 30 days after the date on which the Claimant is deemed to receive the Notice of Revision or Disallowance, or such other date as may be agreed to in writing by the Monitor, in consultation with the Nordstrom Canada Entities. Failure to deliver a Notice of Dispute of Revision or Disallowance within the required time period will result in the Claimant's Claim being deemed to be as determined in the Notice of Revision or Disallowance for voting and/or distribution purposes;
- (e) upon receipt of a Notice of Dispute of Revision or Disallowance, the Nordstrom Canada Entities, in consultation with the Monitor and any applicable Directors or Officers and/or their counsel, will attempt to resolve such dispute and settle the purported Claim with the Claimant; and
- (f) in the event that a dispute raised in a Notice of Dispute of Revision or Disallowance is not settled, the Nordstrom Canada Entities will at their election, in consultation

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with the Monitor, refer the dispute to a Claims Officer or the Court for adjudication, and the Monitor will send written notice of such referral to the Claimant.

85. Pursuant to the proposed Claims Procedure Order, the Nordstrom Canada Entities are not permitted to accept or revise any portion of a D&O Claim absent the consent of the applicable Directors and Officers, or further Order of the Court.

86. In respect of any Notices of Dispute of Negative Notice Claim submitted by a Negative Notice Claimant:

- (a) if the Nordstrom Canada entities, in consultation with the Monitor, disagree with the Claim(s) as set out in the Notice of Dispute of Negative Notice Claim, the Nordstrom Canada Entities and the Monitor will attempt to resolve such dispute and settle the purported Claim with the Negative Notice Claimant for voting and/or distribution purposes; and
- (b) in the event the dispute is not settled, the Nordstrom Canada Entities will, in consultation with the Monitor, refer the dispute to a Claims Officer or the Court for adjudication, and the Monitor will send written notice of such referral to the Negative Notice Claimant.

87. The Claims Procedure Order also provides that the Nordstrom Canada Entities, in consultation with the Monitor and any applicable Directors or Officers and/or their counsel, may, at their election, refer any Claim to a Claims Officer or the Court for adjudication at any time, and the Monitor shall send written notice of such referral to the applicable parties.

(e) **Claims Officers**

88. The proposed Claims Procedure Order contemplates the appointment of two claims officers to adjudicate any unresolved Claims (“**Claims Officers**”). The proposed Claims Procedure Order would appoint the Honourable Mr. Dennis O’Connor, K.C. and Mr. Kevin McElcheran as Claims Officers, and would allow the Nordstrom Canada Entities, the Monitor, a Claimant, and the Directors and Officers and/or their counsel to agree to any other Person acceptable to all such parties to act as a Claims Officer with respect to the adjudication of such Claimant’s Claim(s). The Honourable Mr. Dennis O’Connor, K.C. was a judge of the Ontario Court of Appeal and the Associate Chief Justice of Ontario, and has acted as a Claims Officer in previous CCAA proceedings, including Target Canada and Just Energy. Justice O’Connor is associated with the law firm Borden Ladner Gervais LLP (“**BLG**”). He has conducted a conflicts search at BLG, and although BLG has retainers involving certain stakeholders in these CCAA proceedings, Justice O’Connor has advised that he has not been involved in any such retainers. Justice O’Connor also advises that he would establish a confidentiality wall around himself and anybody working with him on this matter. Mr. Kevin McElcheran is a senior member of the insolvency bar in Ontario, and has acted as a Claims Officer in previous CCAA proceedings, including Forever 21 Canada.

89. Where the assessment of a Claim is disputed by a Claimant, the proposed Claims Procedure Order gives the Nordstrom Canada Entities, in consultation with the Monitor, the discretion to determine whether a disputed Claim should be adjudicated by the Court or by a Claims Officer. If referred to a Claims Officer, the proposed Claims Procedure Order provides that the Claims Officer shall: (i) determine the amount (if any) and Characterization of the disputed Claim in accordance with the Claims Procedure Order; (ii) determine whether any Claim or part thereof constitutes an

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Excluded Claim; (iii) provide written reasons for its determination of the matter; and (iv) determine all procedural matters which may arise in respect of the Claims Officer's determination of the disputed Claim, including any participation rights for any stakeholder and the manner in which any evidence may be adduced. In addition, the Claims Procedure Order provides the Claims Officer with the discretion to mediate any dispute and to determine by whom and to what extent the costs of any hearing or mediation before a Claims Officer shall be paid. The applicable Nordstrom Canada Entity, the Monitor, the Claimant, and the relevant Directors or Officers (in respect of any D&O Claim) may appeal any determination by the Claims Officer to the Court within 10 days of such party receiving notice of the Claims Officer's determination.

**(f) Intercompany Claims**

90. The proposed Claims Procedure Order provides that the Monitor is required to review all Claims that may be asserted against any Nordstrom Canada Entity by or on behalf of any other Nordstrom Canada Entity or other members of the Nordstrom Group (collectively, the "**Intercompany Claims**"). The proposed Claims Procedure Order requires the Monitor to prepare a report detailing its review of all Intercompany Claims identified by the Monitor and assessing the amount and Characterization of such Claims (the "**Monitor's Intercompany Claims Report**"). Each Intercompany Claim identified in the Monitor's Intercompany Claims Report shall be deemed to have been properly submitted through a Proof of Claim by the relevant Nordstrom Group entity as if such Claim was a Pre-Filing Claim or Restructuring Period Claim, as applicable.

91. The Monitor's Intercompany Claims Report will contain a recommendation on next steps, if any, to be taken with respect to the Intercompany Claims. The proposed Claims Procedure Order

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requires the Monitor to serve and file the Monitor's Intercompany Claims Report on or before the Claims Bar Date.

**(g) Summary of Timeline for Claims Process**

92. A summary of key dates in the proposed Claims Process is as follows:

<b>Timeframe</b>	<b>Activity</b>
May 30, 2023	Motion for approval of Claims Procedure Order
As soon as practicable after the date of the Claims Procedure Order	Monitor to cause the Notice to Claimants to be published in <i>The Globe and Mail</i> (National Edition)
As soon as practicable after the date of the Claims Procedure Order and no later than 5:00 p.m. on the tenth (10 <sup>th</sup> ) Business Day following the date of the Claims Procedure Order	Deadline for Monitor to (a) cause the Notice to Claimants, the General Claims Package, and a blank form of Notice of Dispute of Negative Notice Claim to be posted on the Monitor's Website; (b) cause a Negative Notice Claims Package to be sent to every Negative Notice Claimant other than Employees; and (c) cause a General Claims Package to be sent to applicable Persons
On the fifteenth (15 <sup>th</sup> ) Business Day following the date of the Claims Procedure Order or as soon as practicable thereafter	Monitor to cause a Negative Notice Claims Package or the Employee Letter, as applicable, to be sent to Employees
August 4, 2023	Monitor to serve and file Monitor's Intercompany Claims Report
August 4, 2023	Claims Bar Date
Later of the following: (i) August 4, 2023; or (ii) 30 days after the date on which the Monitor sends a Negative Notice Claims Package or General Claims Package, as appropriate, with respect to a Restructuring Period Claim or Restructuring Period D&O Claim	Restructuring Period Claims Bar Date

**C. Extension to the Stay Period**

93. The Initial Order granted a Stay Period until and including March 12, 2023. The Stay Period, including for the Parent Stay, was subsequently extended to March 20, 2023, and later, to June 30, 2023.

94. The Applicants are seeking to extend the Stay Period, including the Parent Stay, up to and including September 29, 2023. This will allow the processes described above to unfold and allow the Nordstrom Canada Entities to focus on the orderly wind down, with the assistance of the Monitor, for the benefit of all their stakeholders. An extension of the Parent Stay is also necessary to allow the Nordstrom Canada Entities the breathing space and necessary time to complete the Claims Process while continuing to engage with vendors and Landlords who may be affected by the Parent Stay. The Liquidation Sale will be completed before September 29, 2023, and the Nordstrom Canada Entities, in consultation with the Monitor, will have had an opportunity to review and consider creditor Claims filed by the Claims Bar Date and report to the Court regarding same.

95. The Nordstrom Canada Entities have confirmed, in consultation with the Monitor, that they have sufficient cash resources to continue their wind down through to September 29, 2023. I understand that the Monitor will be filing its third report with the Court prior to the hearing of this motion which will include an updated cash flow forecast for the Nordstrom Canada Entities.

96. I believe that the Nordstrom Canada Entities have acted, and continue to act, in good faith and with due diligence in pursuing a controlled and orderly wind down. I believe that the proposed extension of the Stay Period is in the best interests of the Nordstrom Canada Entities and their

stakeholders. I am also informed by the Monitor that it supports the request to extend the Stay Period.

**SWORN BEFORE ME** over  
videoconference this 19<sup>th</sup> day of May, 2023 in  
accordance with O. Reg. 431/20,  
Administering Oath or Declaration Remotely.  
The affiant is located in the City of Renton, in  
the State of Washington and the commissioner  
is located in the City Toronto, in the Province  
of Ontario.



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Commissioner for Taking Affidavits  
(or as may be)  
**HANNAH DAVIS**  
**LSO# 85047N**

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**MISTI HECKEL**

**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

**AFFIDAVIT OF MISTI HECKEL**

**OSLER, HOSKIN & HARCOURT LLP**

100 King Street West  
1 First Canadian Place  
Suite 6200, P.O. Box 50  
Toronto ON M5X 1B8

**Tracy C. Sandler** (LSO# 32443N)

Tel: 416.862.5890  
Email: tsandler@osler.com

**Jeremy Dacks** (LSO# 41851R)

Tel: 416.862.4923  
Email: jdacks@osler.com

**Martino Calvaruso** (LSO# 57359Q)

Tel: 416.862.5960  
Email: mcalvaruso@osler.com

**Marleigh Dick** (LSO# 79390S)

Tel: 416.862.4725  
Email: mdick@osler.com

Lawyers for the Applicants

This is Exhibit "A" referred to in the Affidavit of Misti  
Heckel sworn May 19, 2023.

A handwritten signature in blue ink, appearing to read "Misti Heckel".

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*Commissioner for Taking Affidavits (or as may be)*

**HANNAH DAVIS**

Court File No.

**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

**AFFIDAVIT OF MISTI HECKEL  
(Sworn March 1, 2023)**

I, Misti Heckel, of the City of Renton, in the State of Washington, President of Nordstrom Canada Retail, Inc., and President and Treasurer of Nordstrom Canada Holdings, LLC and Nordstrom Canada Holdings II, LLC MAKE OATH AND SAY:

1. This affidavit is made in support of an application by Nordstrom Canada Retail, Inc., Nordstrom Canada Holdings, LLC and Nordstrom Canada Holdings II, LLC (together, the “**Applicants**”) for an initial order (the “**Initial Order**”) and related relief under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). This affidavit is also made in support of an amended and restated Initial Order (the “**Amended and Restated Initial Order**”) that will be sought at a hearing within 10 days of an Initial Order under the CCAA being granted (the “**Comeback Hearing**”). Although the limited partnership Nordstrom Canada Leasing LP (“**Canada Leasing LP**”) is not an applicant in this proceeding, the Applicants seek to have the stay of proceedings and other benefits of an Initial Order under the CCAA extend to

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Canada Leasing LP, which is wholly-owned by certain of the Applicants and performs functions integral to the Applicants' business. Together, the Applicants and Canada Leasing LP are defined herein as the "**Nordstrom Canada Entities**".

2. In addition to my role as President of Nordstrom Canada Retail, Inc. ("**Nordstrom Canada**"), and President and Treasurer of Nordstrom Canada Holdings, LLC and Nordstrom Canada Holdings II, LLC, I am currently the Vice President - Tax of Nordstrom, Inc. ("**Nordstrom US**"), the indirect parent of the Nordstrom Canada Entities. In my role, I have oversight of the tax function for the Nordstrom Canada Entities together with Nordstrom US and its subsidiaries ("**Nordstrom Group**") and am involved in the financial and tax matters related to the Nordstrom Canada Entities. I am familiar with the business, and have relied upon the books and records of the Nordstrom Canada Entities. As such, I have personal knowledge of the matters deposed to herein. Where I have relied on other sources of information, I have so stated and I believe them to be true. In preparing this affidavit, I have also consulted with members of the senior management teams of the Applicants and Nordstrom US, as applicable, and Nordstrom US' and the Applicants' financial and legal advisors. The Nordstrom Canada Entities and Nordstrom US do not waive or intend to waive any applicable privilege by any statement herein.

3. As described in greater detail below, the Nordstrom Canada Entities are seeking, among other relief, the following as part of the proposed Initial Order: (i) a stay of proceedings against the Nordstrom Canada Entities, the Monitor (defined below), and their respective employees, directors, advisors, officers and representatives acting in such capacities; (ii) a temporary stay of proceedings against Nordstrom US and its direct and indirect subsidiaries (other than the Nordstrom Canada Entities) relating to claims in connection with any indebtedness, indemnity, liability or obligation of Nordstrom US in respect of obligations of or related to the Nordstrom

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Canada Entities, including indemnities granted by Nordstrom US under any Canadian real property leases; (iii) a stay of potential rights, including termination rights and claims for rent reduction or abatement, asserted by third-party tenants and occupants in commercial properties where Nordstrom Canada stores are located that arise as a result of the making of the proposed Initial Order; (iv) authorization (but not the requirement) to pay certain pre-filing amounts with the consent of the Monitor to key participants in the Nordstrom Canada Entities' distribution network, payment processing systems, and to other critical suppliers, if required to ensure an orderly wind down of the Nordstrom Canada Entities' business; (v) the creation of an Employee Trust and the appointment of Employee Representative Counsel (each defined below); and (vi) the granting of an Administration Charge (defined below) of \$750,000 and a Directors' Charge (defined below) of \$10.75 million.

4. If the proposed Initial Order is granted, at the Comeback Hearing the Applicants intend to seek this Court's approval of:

- (a) a key employee retention program and related KERP Charge (defined below);
- (b) an increase in the Administration Charge to \$1.5 million;
- (c) an increase in the Directors' Charge to \$13.25 million; and
- (d) an extension of the stay of proceedings, including an extension of the stay of proceedings against Nordstrom US and its direct and indirect subsidiaries (other than the Nordstrom Canada Entities), until June 30, 2023.

5. All references to monetary amounts in this affidavit are in Canadian dollars unless noted otherwise, and do not represent amounts or measures prepared in accordance with US GAAP.

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## A. Introduction

7. Nordstrom Canada operates six Nordstrom-branded full-line stores and seven off-price Nordstrom Rack-branded stores in Ontario, Alberta and British Columbia, and the Nordstrom.ca website. Each store operated by Nordstrom Canada is leased by a third-party landlord to Canada Leasing LP and subleased by Canada Leasing LP to Nordstrom Canada by a separate sublease (each a “**Sublease**” and collectively, the “**Subleases**”) in accordance with the applicable lease. Nordstrom US, the indirect and ultimate parent of the Nordstrom Canada Entities, through its subsidiaries and affiliates, operates 358 stores in the US and Canada, and the Nordstrom.com and NordstromRack.com websites in the US. The Nordstrom Group had net consolidated sales of USD \$10.9 billion for the first three quarters of fiscal year 2022 (as of October 29, 2022). The Nordstrom Group employs approximately 59,000 individuals on a full or part-time basis, of which approximately 2,330 are employed in Canada.

8. Since entering the Canadian marketplace in September 2014, the Nordstrom Canada Entities have embarked on a program of slowly and strategically expanding their footprint and operations in Canada, with the goal of achieving long-term sustainability and profitability. However, the Nordstrom Canada Entities’ stores have not performed as anticipated for a number of reasons, including lower than expected sales and gross margin, and high operating costs. Brand awareness and customer spending remain lower than expected among Canadian consumers, and unfavourable exchange rates, including their impact on customs payments when importing products from the US, have put and continue to put an enormous strain on the Canadian business.

9. Absent the financial support of Nordstrom US, the Nordstrom Canada Entities have experienced losses during each year of operation, and the majority of their locations have posted

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losses each year. The Nordstrom Canada Entities generated an approximate USD \$55 million operating loss in fiscal year 2022. The Nordstrom Canada Entities have only been able to sustain operations over the past eight years because of the significant financial and operational support and efforts of their US parent, Nordstrom US. Without this support, as described in greater detail below, the Nordstrom Canada Entities cannot continue operating as a going concern.

10. Since 2014, Nordstrom US has absorbed most of the Nordstrom Canada Entities' cumulative losses through intercompany payments under its Transfer Pricing Policy (defined and described below). In essence, the Nordstrom Canada Entities rely on strategic management, design and product development, procurement, sourcing, manufacturing, and sales and pricing services provided by Nordstrom US, as well as on administrative and other services. Nordstrom US and its US-based affiliates have provided the Nordstrom Canada Entities with approximately USD \$950 million in funding through various means since inception, and such funding net of distributions received from the Nordstrom Canada Entities is approximately USD \$775 million.

11. The Nordstrom Canada Entities' performance has in fact declined over the years. Compared to pre-pandemic fiscal year 2019, sales decreased by 2% in fiscal year 2022, driven primarily by a 20% decrease in sales at the Nordstrom full-line stores, flat sales at Nordstrom Rack stores despite opening one additional store in 2020, and a partial offset by sales from Nordstrom.ca which had no sales in 2019. Excluding the transfer pricing payments from Nordstrom US, the Nordstrom Canadas Entities' earnings before interest and taxes ("EBIT") have remained consistently negative over the years, only improving slightly from a negative \$86 million in fiscal year 2019 to a negative \$72 million for fiscal year 2022 despite the growth of Nordstrom.ca and the opening of one additional Nordstrom Rack store.

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12. Given the Nordstrom Canada Entities' poor financial performance and resulting negative cash flow, Nordstrom US has determined, after considering all reasonably available options and a thorough and exhaustive review process, that it is in the best interests of its stakeholders to cease the significant financial and operational support that Nordstrom US has been providing to the Nordstrom Canada Entities while it focuses on its core business and strategic imperatives in the US. As a result, the Nordstrom Canada Entities cannot continue to operate as a going concern. The Nordstrom Canada Entities have accordingly determined that they must cease operations in Canada and as a result of such decision, are insolvent and are seeking protection from their creditors under the CCAA.

13. Further, Nordstrom US' decision to discontinue its operational and financial support of the Nordstrom Canada Entities and the Nordstrom Canada Entities' corresponding decision to cease operations will render Canada Leasing LP and Nordstrom Canada unable to satisfy their obligations in respect of each lease to which Canada Leasing LP is a party (collectively including amendments, extensions, assignments and restatements thereto, the "**Leases**" and each, a "**Lease**"). This will result in the ability of the landlords under the Leases (the "**Landlords**") to enforce certain rights and remedies, including accelerating all rents due under the Leases. The net present value of the remaining obligations, as recorded in the Nordstrom Canada Entities' summarized trial balance, over the term of the Leases are approximately \$136 million for Nordstrom full-line retail store Leases, and approximately \$45 million for Nordstrom Rack retail store Leases as of January 2023. Even after taking into account the obligation of the Landlords to mitigate their damage claims, the aggregate amounts owing to the Landlords under the Leases far surpasses \$5 million. Further, the Landlord claims arising from defaults under the Leases, together with the Nordstrom Canada Entities' other debts, exceed the realizable value of the Nordstrom

Canada Entities' assets and the Nordstrom Canada Entities have insufficient funds to satisfy all such claims. The Nordstrom Canada Entities are therefore insolvent.

14. To wind down operations in a responsible, controlled, and orderly manner, and to maximize value for their stakeholders, the Nordstrom Canada Entities require the flexibility of the CCAA and breathing space from the exercise of creditor remedies as they prepare to liquidate their remaining inventory with assistance from a third-party professional liquidator, and vacate their leased retail stores.

15. An orderly wind down requires the involvement of many stakeholders and Court supervision. The Nordstrom Canada Entities, in consultation with Alvarez & Marsal Canada Inc. (“A&M”) (the “**Proposed Monitor**”, and if appointed, in such capacity, the “**Monitor**”), plan to solicit bids from a number of professional third-party liquidators and then select, subject to Court approval, the party that they believe will best assist in maximizing the potential proceeds from the sale of their remaining inventory and furniture, fixtures, and equipment. If an Initial Order is granted, the Nordstrom Canada Entities intend to serve a motion in the near term seeking this Court's approval of an orderly Realization Process (defined below) and of the selection of a liquidator to assist with this process.

16. I believe that the Nordstrom Canada Entities' active participation in this orderly wind down process, along with the support of Nordstrom US discussed further below, is essential to maximizing recoveries for the benefit of the stakeholders of the Nordstrom Canada Entities, as a whole. In turn, this engages:

- (a) Nordstrom Canada's employees, including employees who have expertise in the operations of Nordstrom stores – Nordstrom Canada proposes to implement a key

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employee retention program (described below), and, in an effort to provide a measure of financial security during the orderly wind down and to diminish the financial hardship Nordstrom Canada's employees may suffer, Nordstrom US has agreed to fund an Employee Trust for the benefit of eligible employees of Nordstrom Canada to ensure payment of statutory termination and severance pay in a timely manner, should this Court grant the Nordstrom Canada Entities CCAA protection. The Nordstrom Canada Entities are also asking the Court to appoint representative counsel (funded by the estate) to represent eligible Nordstrom Canada employees in the CCAA proceedings ("**Employee Representative Counsel**") to ensure their interests are adequately protected throughout, including by assisting with eligible claims under the Employee Trust;

- (b) The Landlords – to maximize recovery, the Nordstrom Canada Entities are seeking to complete the realization phase of this proceeding within 3 to 4 months. The Nordstrom Canada Entities will need to engage with the Landlords to understand their concerns with respect to the Realization Process, including in respect of signage and the removal of furniture, fixtures and equipment, with a view to arriving at a consensual process that benefits the stakeholders of the Nordstrom Canada Entities, as a whole;
- (c) The Nordstrom Canada Entities' concession parties, merchandise and other suppliers – as stated above, to maximize recovery, the Nordstrom Canada Entities are seeking to complete the realization phase of this proceeding within 3 to 4 months and intend to work with the merchandise suppliers to mitigate the effects

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of the wind down of the Canadian business on such suppliers, many of which also supply merchandise to Nordstrom US; and

- (d) Nordstrom US, which provides back-office business and management support services and financial support to the Nordstrom Canada Entities – as set out above, without these services, the Nordstrom Canada Entities could not operate and would be forced to immediately shut down in a chaotic and uncontrolled process, to the detriment of its stakeholders. Nordstrom Canada also licenses all trademarks and other intellectual property (“IP”) associated with the “NORDSTROM” brand-name from Nordstrom US, who in turn licenses certain of the IP from NIHC, Inc. to conduct its business. Thus, without Nordstrom US’ agreement to continue providing critical services and licensing IP during the wind down process, the Realization Process would be impeded, ineffective and disorderly.

17. In connection with the decision to exit the Canadian marketplace, Nordstrom US elected to terminate its intercompany agreement with each of the Nordstrom Canada Entities that provided for, among other things, the provision of management services, financial support and IP, as applicable, by Nordstrom US to the Nordstrom Canada Entities. Following the delivery of the applicable notices of termination by Nordstrom US in accordance with their terms, the Nordstrom Canada Entities determined that it was in their best interests to waive the 30-day notice termination periods under the intercompany agreements, agree to an immediate termination of such agreements, and enter into the Wind-Down Agreement (defined below) to allow for an orderly wind down of the Canadian operations. I am advised by senior management of Nordstrom US, and believe, that Nordstrom US will only agree to continue providing these crucial services and licensing IP on the condition that the orderly wind down is supervised by the Court in accordance

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with the CCAA. As President of Nordstrom Canada and President and Treasurer of Nordstrom Canada Holdings, LLC and Nordstrom Canada Holdings II, LLC, in consultation with advisors to the Nordstrom Canada Entities, I have concluded that this application under the CCAA and the proposed Initial Order is the best alternative that is available to the Nordstrom Canada Entities, and will maximize realizations and result in the best possible outcome for stakeholders of the Nordstrom Canada Entities in the circumstances.

18. Nordstrom US and the Nordstrom Canada Entities have diligently explored a number of strategies to improve the financial and operational challenges facing the Canadian business, including licensing full operations to another Canadian retailer or retail operator with market expertise, closing certain underperforming stores, and/or investing to grow Nordstrom.ca, build loyalty, and optimize inventory. None of these alternatives provide realistic solutions to the current difficulties facing the Canadian business and achieving profitability. Despite considerable effort and the exploration of all reasonable possibilities in conjunction with legal and financial advisors, the business in Canada is no longer financially sustainable.

19. A significant contributor to the lack of viability of the Nordstrom Canada Entities' business is high operating costs, in particular, rent and other payments to Landlords. Nordstrom Canada's occupancy costs as a percentage of sales are trending in the range of 7% for Nordstrom full-line stores compared to 1% in the US, and 12% for Nordstrom Rack stores compared to 6-7% in the US. In addition, a significant amount of Nordstrom Canada's inventory is purchased in USD, with merchandise necessarily being priced competitively in Canadian dollars, which negatively impacts its profit margin.

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20. Recently, in light of the poor operating results in fiscal year 2022, Nordstrom US and the Nordstrom Canada Entities again reviewed all potential options for the Canadian business which has been less profitable than the US business. However, with cumulative and ongoing losses generated by the Canadian business, the unfavourable exchange rate, high operating costs, the effect of the COVID-19 pandemic, and lack of brand awareness, it was determined that the only reasonable option is for Nordstrom US to cease its operational and financial support of the Nordstrom Canada Entities and for the Nordstrom Canada Entities to wind down operations.

21. Each of the Leases of the full-line Nordstrom stores requires continuous operation in the leased premises, and all Leases contain restrictions that relate to liquidation sales, including in most cases blanket prohibitions of such sales. The Nordstrom Canada Entities have taken these restrictions into account in their decision to wind down operations pursuant to the CCAA; given that, the exercise of any contractual remedies by any of the Landlords would affect the time-sensitive Realization Process. The Nordstrom Canada Entities believe that the flexibility of the CCAA and the assistance of this Court and the Proposed Monitor is required to provide a platform for a consensual resolution of any issues with the Landlords and to achieve maximum recoveries.

22. In summary, the Nordstrom Canada Entities require a stay of proceedings and related relief under the CCAA in order to continue operating throughout the contemplated orderly wind down and Realization Process. The stay will provide the Nordstrom Canada Entities with the flexibility to implement a cessation of operations in a responsible and controlled manner, with the ultimate goal of developing a plan of arrangement for the benefit of all of their stakeholders.

**B. Corporate Structure****(a) Nordstrom Canada**

23. Nordstrom Canada is a corporation incorporated pursuant to the laws of British Columbia, and is an indirect subsidiary of Nordstrom US. Nordstrom Canada is the operating entity in Canada and serves as the customer retail sales entity for the Nordstrom Group in the Canadian market. Nordstrom Canada is a wholly-owned subsidiary of Nordstrom International Limited (“NIL”). NIL is in turn a wholly-owned subsidiary of Nordstrom US. Nordstrom Canada employed approximately 2,330 full and part-time employees as of January 31, 2023, and had revenues of \$515 million for fiscal year 2022 (its year ended January 28, 2023). A corporate chart depicting the structure of the Nordstrom Canada Entities is set out below with the solid lines showing a direct parent-subsidiary relationship:



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**(c) Nordstrom Canada Holdings II, LLC**

25. Nordstrom Canada Holdings II, LLC (“NCHII”) is a US single member limited liability company and is a non-resident of Canada. NCHII owns 0.1% of Canada Leasing LP, as its limited partner. NCHII thereby carries on business in Canada through a permanent establishment for Canadian tax purposes. NCHII is also a dual status company meaning it is a disregarded entity in the US, but is treated as a corporation in Canada, and files Canadian tax returns.

**(d) Canada Leasing LP**

26. Canada Leasing LP is an Alberta limited partnership responsible for the Nordstrom Canada Entities’ real estate activities, such as leasing retail space from third-party property owners, committing capital to build and furnish the stores, and subleasing the retail space to Nordstrom Canada, who operates the stores. Canada Leasing LP is owned 99.9% and 0.1% by US limited liability companies, NCH and NCHII, respectively.

**C. Chief Place of Business**

27. The chief place of business of the Applicants is Ontario. Eight of the 13 Nordstrom Canada retail stores are located in Ontario. During fiscal year 2022, store sales in Ontario, British Columbia, and Alberta totaled \$220 million, \$148 million and \$77 million, respectively. Nordstrom Canada therefore has more retail stores and sales in Ontario than in any of the other provinces in which it operates. Further, approximately 1,330 out of Nordstrom Canada’s approximate 2,330 full and part-time employees work in Ontario.

## **D. The Business of the Applicants**

### **(a) Overview**

28. Nordstrom US is one of the leading fashion retailers in the US, providing its customers with a differentiated and seamless experience through a robust e-commerce platform and high-quality store portfolio. Nordstrom US was founded in 1901 as a retail shoe business in Seattle, Washington and was later incorporated under the laws of the state of Washington in 1946. Nordstrom US became public in 1971 and is currently traded on the New York Stock Exchange under the ticker “JWN”. Nordstrom US and Nordstrom Canada operate in one primary business segment, Retail, which offers a variety of products and services.

29. The Retail segment includes 94 Nordstrom-branded full-line stores and 241 off-price Nordstrom Rack stores, seven Nordstrom Local Stores, one ASOS | Nordstrom store, and two Last Chance clearance stores in the US, six Nordstrom-branded full-line stores and seven off-price Nordstrom Rack stores in Canada, and online operations through various online platforms and mobile applications. Nordstrom full-line stores provide different lines of products and services in addition to retail goods including, but not limited to, tailoring and gift wrapping. Nordstrom Rack stores offer lower price point merchandise from many of the same vendors as the full-line stores, and operate as outlets for clearance merchandise from nearby Nordstrom full-line stores and the website. Nordstrom Local Stores are service hubs for Nordstrom full-line online order pickups and returns, alterations, and other styling advice services to enhance customers’ shopping experience with shorter wait times and personalized services. Overall, the Retail segment offers a wide selection of premium brand name and private label merchandise focused on apparel, shoes, cosmetics, accessories, and home goods.

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30. Purchases in full-line stores are typically fulfilled through each store’s inventory, but unavailable inventory may also be shipped to customers from Nordstrom US or Nordstrom Canada’s fulfillment centres or from other full-line stores with available inventory. Merchandise inventories are also kept either in distribution centres or omni-channel centres located in the US or Canada.

31. As of October 29, 2022, Nordstrom US’ consolidated balance sheets show total assets of approximately USD \$9.4 billion, total liabilities of approximately USD \$8.8 billion and shareholders’ equity of USD \$606 million. The Nordstrom Group’s net earnings for the first three quarters of fiscal year 2022 (as of October 29, 2022) totaled USD \$126 million, and the adjusted earnings before interest, taxes, depreciation and amortization (“**EBITDA**”) for the first three quarters of fiscal year 2022 (as of October 29, 2022) were approximately USD \$714 million.

32. As set out above, the Nordstrom Canada Entities’ operations include the Nordstrom.ca website, six Nordstrom-branded full-line stores and seven off-price Nordstrom Rack Stores.

**(b) Leases and Retail Stores**

**(i) Store Formats and Locations**

33. Nordstrom Canada conducts business through 13 retail locations in Ontario, Alberta and British Columbia. The following chart sets out Nordstrom Canada’s current store locations by store type and geographical region:

<b>Province</b>	<b>Full-Line</b>	<b>Rack</b>
<i>Ontario</i>	4	4
<i>Alberta</i>	1	2
<i>British Columbia</i>	1	1

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<b>Province</b>	<b>Full-Line</b>	<b>Rack</b>
<b><i>Total</i></b>	6	7

34. All of the Nordstrom Canada Entities' retail operations are conducted in leased facilities. Canada Leasing LP, the lessee of all of the Leases, is, to the best of its knowledge, current on all of its lease obligations.

35. The Leases for Nordstrom Canada's full-line retail stores are generally for initial terms of approximately 15 years plus the time from the 15<sup>th</sup> anniversary of the commencement date to the last day of the following February. Nordstrom Canada's full-line Leases have between 7 and 10 years remaining on their respective terms, and Nordstrom Canada's Rack Leases have between 5 and 8 years remaining on their respective terms.

36. For the Nordstrom full-line store Leases, Canada Leasing LP generally has 12 successive options to extend the term of such Leases, each for an additional period of five years, with the exception of the Lease at Yorkdale Shopping Centre which provides Canada Leasing LP with seven renewal options, with the first and last being for five years each and the second through sixth being for 10 years each.

37. For the Nordstrom Rack Leases, Canada Leasing LP generally has four successive options to extend the term of such Leases each for additional five-year terms.

38. The Nordstrom Canada Entities do not have any office, warehouse, or industrial leases in Canada.

**(ii) Landlords**

39. Canada Leasing LP leases stores across Canada from third-party landlords. Canada Leasing LP's Leases are generally with large retail landlords who own malls, strip malls, and shopping centres across Canada.

40. The legal entities that are Landlords vary within landlord groups, often because special purpose corporations within the landlord groups have title to the real property with a portion of it leased to Canada Leasing LP. Canada Leasing LP's Leases can be organized among eight landlord groups:

<b>Landlord Group</b>	<b>Number of Nordstrom Canada Locations</b>
Cadillac Fairview	5 Full-Line
Oxford Properties Group	1 Full-Line
Cameron Development Corporation	1 Rack
Ivanhoe Cambridge	2 Rack
Orlando Corporation	1 Rack
First Capital	1 Rack
Ottawa Train Yards Inc.	1 Rack
bcIMC Realty Corporation & QuadReal Property Group Limited Partnership	1 Rack

**(iii) Lease Provisions**

41. Typical of retail store leases in Canada, many of the Leases contain provisions that impact Nordstrom Canada's store operations, including:

- (a) *Going-Out-of-Business Sale Restrictions*: The majority of Nordstrom Canada's retail Leases contain prohibitions on liquidation or going out of business sales. The

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three Leases which do not contain such blanket prohibitions instead include restrictions that all uses must be consistent with the operation of a first-class shopping centre.

- (b) *Operating Covenants*: All of the Leases for Nordstrom Canada full-line stores contain operating covenants that require such stores to be continuously, diligently, and actively operated for specified periods of time. All of the Nordstrom Canada Rack Leases contain “go dark rights” permitting the occupant to cease operations following their initial opening, provided that the Landlords under all Rack Leases have the right to recapture the Premises (defined in the Leases) in the event that operations within the Premises cease for a period of 60 consecutive days, subject to force majeure.

**(iv) Nordstrom US Indemnities**

42. Ten of Nordstrom Canada’s retail Leases (all six of the full-line retail stores, and four Nordstrom Rack stores) are the subject of an indemnity granted by Nordstrom US in favour of the applicable Landlord. Each of these indemnities expires upon the achievement of certain specific milestones or events. It is the view of Nordstrom Canada that the four Nordstrom Rack retail Lease indemnities have been released in accordance with their terms, given that Canada Leasing LP has either opened five or 10 stores and, with respect to the One Bloor Lease, the \$50 million tangible net worth threshold for Canada Leasing LP was previously met.

43. The six Nordstrom full-line retail Lease indemnities have not been released, as they expire either 15 or 20 years following the applicable store opening date. Each of these unexpired indemnities contain provisions to the effect that Nordstrom US’ obligations are not affected by the

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bankruptcy, winding down, liquidation, or other creditors' proceedings in respect of Nordstrom Canada or the disclaimer of the applicable Lease. Attached to my affidavit as **Exhibits "A"** and **"B"** are copies of the indemnities with respect to the full-line stores leased from Cadillac Fairview and Oxford Properties Group, respectively.

**(v) Lease Payments**

44. The amounts paid by Nordstrom Canada to Canada Leasing LP under the Subleases include amounts in respect of (i) amounts payable by Canada Leasing LP to the Landlord under the corresponding Lease, including basic rent, operating/common area maintenance costs and realty taxes, and (ii) an amount being on account of a percentage of all costs incurred by Canada Leasing LP in constructing, fixturing and furnishing the retail premises after executing the Lease (such costs referred to herein as "**Premises Fixturing Costs**"). Nordstrom Canada pays to Canada Leasing LP an aggregate of approximately \$3.2 million, including real estate taxes, in rent under the Subleases per month, which Canada Leasing LP in turn pays as rent to the Landlords under the Leases. Nordstrom Canada also pays Canada Leasing LP approximately \$5.5 million per month under the Subleases as rent on account of the Premises Fixturing Costs.

45. Canada Leasing LP provides Subleases for two different types of stores to Nordstrom Canada (full-line stores and Nordstrom Rack stores), with each having separate construction, fixturing, and furnishing requirements, and different initial lease terms, being 15 years and 10 years, respectively. Accordingly, the percentage of Premises Fixturing Costs paid by Nordstrom Canada to Canada Leasing LP under Subleases is 12.8% per annum for full-line stores and 15% per annum for Nordstrom Rack stores (except in respect of the Nordstrom Rack store at One Bloor St. Toronto, ON, for which Nordstrom Canada pays 12.8% of the Premises Fixturing Costs per

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annum). These differentiated percentages were calculated based on a financial model that considers Sublease revenue, depreciation, interest expense, and tax expense for each type of Lease.

46. Based on a summary of the January 2023 trial balance for the Nordstrom Canada Entities, there is an intercompany amount owing from Nordstrom Canada to Canada Leasing LP of approximately USD \$54 million for historical rent under the Subleases. However as stated above, Canada Leasing LP is current on amounts payable under the Leases to the third-party Landlords.

**(c) Merchandising and Sourcing**

47. The sourcing and purchasing of goods sold by Nordstrom Canada is conducted on behalf and at the cost of Nordstrom Canada at Nordstrom US' head office in Seattle by the merchandise buying and corporate procurement teams. Nordstrom Canada purchases its merchandise from a number of North American and international suppliers, many of which have long-standing relationships with Nordstrom US. Some of this merchandise is then transferred by Nordstrom Canada between their full-line and Nordstrom Rack retail stores. In addition, certain of the contracts or purchase orders involving Nordstrom Canada merchandise and concession operations were entered into or issued by Nordstrom US on behalf of, or jointly with, Nordstrom Canada. To facilitate the distribution of merchandise to Canadian stores, Nordstrom Canada uses a distribution centre in Etobicoke, Ontario which is managed and operated by a third-party, National Logistics Services (2006) Inc. ("NLS") (the "**Distribution Centre**").

48. In addition to sourcing merchandise from vendors, Nordstrom Canada stores carry brand-name merchandise sold by Concession Vendors (defined and described below). Nordstrom Canada also sells private-label merchandise ("**NPG**") in Nordstrom full-line and Nordstrom Rack retail stores and online at Nordstrom.ca.

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49. Merchandise sold in Nordstrom Canada stores and online at Nordstrom.ca is generally sourced in two ways:

- (a) Approximately 62% of merchandise is purchased by Nordstrom Canada from a vendor that handles transportation, including customs and taxes. The fee for these services paid by Nordstrom Canada is included in the cost of the goods. The goods are delivered to the Distribution Centre and then distributed to stores or held in the Distribution Centre for later distribution to stores; and
- (b) Approximately 38% of merchandise that Nordstrom Canada purchases from a vendor requires Nordstrom Canada itself to handle transportation and logistics. Nordstrom Canada hires a carrier to transport the goods from the vendor location to the Distribution Centre, as well as manage customs and taxes for the goods. The goods are then distributed to the stores or held in the Distribution Centre for later distribution to stores.

50. Nordstrom Canada stores are dependent upon a significant number of products that are imported from non-Canadian markets. Approximately 60% to 70% of the merchandise sold in Nordstrom Canada stores is imported from the US into Canada (irrespective of where the merchandise is manufactured). The remaining merchandise is either obtained from within Canada or internationally.

51. Merchandise obtained internationally, the majority of which is NPG, usually involves the merchandise first entering into the US. Where the product enters the US through a Foreign Trade Zone before coming to Canada, it does not go through US customs, but rather goes through customs in Canada. Where the product is imported directly from the US, US customs are paid for

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by the US supplier upon import, and Nordstrom Canada pays Canadian customs. Nordstrom Canada has also issued a bond with customs brokers in the approximate amount of \$1.3 million. This amount has been deposited with the surety to cover any amounts drawn down under the bond.

52. Generally, commitments to suppliers are made three to nine months in advance and secured with a purchase order (“**PO**”) number. The POs are then usually sent to the suppliers 45 days in advance of the shipment window commencing.

53. A significant amount of Nordstrom Canada’s merchandise is purchased in USD. As a result, exchange rate fluctuations between the Canadian and US dollars have contributed to the losses experienced by Nordstrom Canada’s business, including as a result of the customs payments described above.

**(i) Merchandise Vendors**

54. Most of the merchandise sold in Nordstrom Canada stores is obtained from vendors located in Canada and the US. For fiscal year 2022, Nordstrom Canada made approximately \$254 million in payments for merchandise obtained from vendors in Canada and the US. For fiscal year 2022, Nordstrom Canada made approximately \$36 million in payments for merchandise imported from vendors outside Canada and the US. In addition, NPG, which makes up approximately 9% of Nordstrom Canada’s sales, is sourced through Nordstrom US (in the name of and cost to Nordstrom Canada) and is primarily imported from outside North America. Nordstrom Canada made approximately \$16 million in payments to third-party vendors for NPG in fiscal year 2022.

55. Upon commencement of this CCAA proceeding, to the extent possible, Nordstrom Canada, under supervision of the Monitor, intends to immediately cancel all POs that have been placed but where title has not yet transferred to Nordstrom Canada or payment has not yet been made. PO

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adjustments would occur in three different ways: (1) POs that are active in the Nordstrom system and have not registered any shipping activity against them would be automatically cancelled; (2) POs that are active in the Nordstrom system and have shipping activity registered would continue to flow to the Distribution Centre and be sold in the contemplated Realization Process; and (3) orders where a PO commitment has been provided to the supplier but no PO has been systematically issued will be considered cancelled.

56. Upon commencement of this CCAA proceeding, to the extent possible, Nordstrom Canada intends to immediately cancel all POs that have been placed with overseas vendors but have not been paid for or not yet resulted in the transfer of title to Nordstrom Canada. For any POs already paid for or where title has transferred to Nordstrom Canada (in the case of both North American and overseas vendors), Nordstrom Canada intends to receive the merchandise and include it in the contemplated Realization Process.

**(d) Distribution**

57. The Distribution Centre supplies and replenishes products sold in Nordstrom Canada's stores and is managed and operated by NLS pursuant to a master warehousing and distribution agreement effective October 28, 2013. NLS is responsible for all services required to operate the warehouse and Distribution Centre, including receiving, audit, storage, and value added services; pick/packing, flow through cross dock transfer and RTV shipping; verifying and inspecting shipments; preparing outbound shipments for tender to third-party transportation providers for transportation to Nordstrom Canada's stores; and inventory management. Fulfillment options are handled by individual stores and local transportation companies.

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58. Until December 31, 2022, Nordstrom Canada also engaged a third-party logistics business, Interhold Distribution (“**Interhold**”) for the Vancouver full-line store so that inbound loads from NLS were first delivered to Vancouver, and then delivered to the store by a smaller truck. Interhold was replaced by Raven Force Carriers (“**Raven Force**”), who provides warehouse space, and secure yard, receiving, auditing, inspection, storage, loading, and monitoring store delivery services. Quick as a Wink Courier Service Ltd. is the carrier who takes goods from Raven Force to the store, utilizing one of four custom Nordstrom Canada-owned trailers. Deliveries are scheduled with the stores based on set schedules and can be adjusted based on demand.

59. Merchandise arrives at the Distribution Centre and is either stored temporarily in the Distribution Centre or immediately transported to Nordstrom Canada’s stores. As of January 28, 2023, there was approximately \$15 million retail value of inventory located at the Distribution Centre.

60. Nordstrom Canada engages third-party logistics companies to transport merchandise from vendor or manufacturer origins around the globe to and between distribution centres, consolidators and stores in the US and Canada. Expeditors International of Washington, Inc. and United Parcel Service Canada Ltd. (“**UPS**”) are engaged for international-origin and US-origin shipments. Livingston International is engaged for US-origin shipments, to import and clear all goods through the required customs agencies, which includes all necessary duties, taxes and importation fees. Savino Del Bene, BTX Global Logistics (“**BTX**”), Hercules Forwarding Inc. and UPS are third-party logistics companies engaged as carriers or brokers to facilitate transportation to Nordstrom Canada locations. Bison Transportation, Canada Cartage, UPS, TForce Final Mile, LLC and BTX handle Canada-origin merchandise transportation.

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61. The Nordstrom Canada Entities believe that, given the quantity and value of merchandise at the Distribution Centre and other title transferred goods in transit not yet at the Distribution Centre, the continued services of NLS and certain other transportation providers are critical to the success of the contemplated wind down and Realization Process for the benefit of all stakeholders.

62. Nordstrom Canada also must pay customs brokers and government customs agencies, clearing houses, freight forwarders and other supply chain providers for costs incurred in transporting products from outside of Canada to the Distribution Centre and ultimately to the stores. Nordstrom Canada estimates that as of February 27, 2023, merchandise at the cost of approximately \$8.4 million was in transit to Canada or from Canadian ports to the Distribution Centre. The Nordstrom Canada Entities are seeking the authority (but not the requirement) to pay, with the consent of the Monitor, transportation and logistics providers, customs brokers and other supply chain providers for amounts incurred before the commencement of these proceedings, if required, to ensure the continued flow of inventory through their supply chain during the contemplated wind down and to best maximize recoveries to the Canadian estate during the Realization Process.

63. Title generally passes to Nordstrom Canada when merchandise is loaded on Nordstrom-directed transportation. If the vendor takes its own carrier to deliver merchandise to NLS in the Distribution Centre, Nordstrom Canada takes title of the merchandise once the merchandise arrives at the destination and is received and loaded at the Distribution Centre. If Nordstrom Canada directs a third-party carrier to deliver merchandise, title for Canada- and United States-origin merchandise passes to Nordstrom Canada at origin, after loading with the carrier.

(e) **Concession Vendors**

64. Nordstrom Canada (and in certain limited cases, Nordstrom US) is a party to agreements with 17 concession vendors (the “**Concession Vendors**”). The majority of the Concession Vendors operate in Vancouver, while some operate in Toronto (at both the Yorkdale and Eaton Centre store locations).

65. Most of the Concession Vendors operate branded fixtured premises, which are the property of Nordstrom Canada, although the Concession Vendors retain rights to their brand IP. Most Concession Vendors operating in Nordstrom Canada provide and pay for their own employees. There are approximately 140 Concession Vendor employees who work in Nordstrom Canada’s stores.

66. All Concession Vendors are paid on a monthly settlement schedule (based on fiscal months). Point of Sale (“**POS**”) sales for Concession Vendors are held in a Nordstrom Canada liabilities account, separate from wholesale POS sales which are posted to Nordstrom Canada’s general ledger. The Concession Vendor POS sales plus services (including deposits) are posted to this account. At the end of each month, the revenue share retained by Nordstrom Canada is manually moved from the liabilities account to Nordstrom Canada’s general ledger to be recorded as a sale. For Concession Vendors that remit Canadian federal and provincial taxes on their own, the tax collected by Nordstrom Canada is returned to the vendor as part of the settlement process. Nordstrom Canada remits Canadian federal and provincial taxes on behalf of certain Concession Vendors. The tax collected remains with Nordstrom Canada until it is paid via the applicable agency filing and payment date.

67. The Nordstrom Canada Entities intend on immediately engaging with the Concession Vendors to determine the most efficient way to wind down their concessions in Canada.

**(f) Beauty Hardshops**

68. Nordstrom Canada is also party to agreements with “beauty vendors”, whose product is sold to Nordstrom Canada on a wholesale basis such that the beauty inventory is owned by Nordstrom Canada. The product is generally sold at counters or kiosks in Nordstrom Canada full-line stores (referred to as hardshops). These agreements also generally provide that all fixtures and assets are owned proportionately by each brand and Nordstrom Canada based on each brand’s financial contribution made at the time of build out. In certain cases, Nordstrom Canada fully owns the fixtures and assets as it has paid the entirety of the build out cost. Unlike the Concession Vendors, the employees involved with the beauty hardshops are employed by Nordstrom Canada. In certain cases, some beauty vendors may provide some financial reimbursement to Nordstrom Canada for employees dedicated to representing their brand.

69. Nordstrom Canada also has a blow-dry bar called “Dry Bar” in its full-line store in Vancouver. Dry Bar is staffed with Nordstrom Canada employees and is operated pursuant to a licensing agreement.

**(g) Restaurants and Licensed Operations**

70. Nordstrom Canada owns and operates restaurants and cafes in some full-line retail stores. These restaurants and cafes are staffed with Nordstrom Canada employees. The Nordstrom Canada Entities intend that the restaurant and cafe operations will remain open until just before the commencement of the Realization Process.

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71. In addition to Nordstrom Canada-owned and operated restaurants and cafes, Nordstrom US is party to a trademark license and services agreement with MomoMilk, LLC (“**Milk Bar**”), dated as of November 18, 2022. The parties opened and operate a Milk Bar-branded department in the Nordstrom full-line Vancouver store and are in the process of negotiating a contract specific to the Vancouver store at the time of filing. This department is staffed entirely by Nordstrom Canada employees.

**(h) Support Services Provided by Nordstrom US and Transfer Pricing Policy**

72. The Nordstrom Canada Entities’ business is dependent on Nordstrom US for administrative and business support services, including legal, finance, accounting, bill processing, payroll, human resources, merchandising, strategy, and information technology project support (collectively, the “**Shared Services**”) and for their ability to use the IP. Prior to the commencement of these proceedings, Nordstrom US provided these Shared Services and license for the IP under an inter-affiliate license and services agreement, effective as of February 3, 2019, between Nordstrom US and Nordstrom Canada (the “**License and Services Agreement**”). Nordstrom Canada cannot operate or function without the provision of the Shared Services from Nordstrom US, and if the Shared Services are not continuously provided, Nordstrom Canada would be required to immediately cease operations. Attached to my affidavit as **Exhibit “C”** is a copy of the License and Services Agreement.

73. Under the License and Services Agreement, Nordstrom US provided the Shared Services and license or sublicense, as applicable, of IP to Nordstrom Canada, and Nordstrom Canada agreed to operate the Canadian retail stores and Nordstrom.ca. The transfer pricing policy, as reflected in the License and Services Agreement (the “**Transfer Pricing Policy**”) between Nordstrom Canada

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and Nordstrom US is set up such that Nordstrom Canada and Nordstrom US each agreed to pay the other the USD amount necessary such that Nordstrom Canada realized an arm's-length Rate of Return (operating profit divided by net sales) within the range of 4.5% to 6.5%.

74. As of January 28, 2023, a transfer pricing payment of approximately USD \$20 million had been made for fiscal year 2022. The remainder of the annual transfer pricing payment to achieve the aforementioned Rate of Return for fiscal year 2022 in the amount of approximately USD \$55 million is discussed further below.

75. In addition to the License and Services Agreement, Nordstrom US entered into inter-affiliate services agreements with the other Nordstrom Canada Entities relating to Shared Services, as follows:

- (a) Inter-affiliate services agreement between Nordstrom US and Canada Leasing LP, dated as of December 10, 2014, in which Nordstrom US provided legal, finance, accounting and tax, bill processing, payroll, human resources, property maintenance, operations, strategy, IT project support, site selection, and construction management services to Canada Leasing LP;
- (b) Inter-affiliate services agreement between Nordstrom US and NCH, dated as of October 10, 2016, in which Nordstrom US provided payroll, finance, accounting, treasury, and legal services to NCH; and
- (c) Inter-affiliate services agreement between Nordstrom US and NCHII, dated as of October 10, 2016, in which Nordstrom US provided payroll, finance, accounting, treasury, and legal services to NCHII.

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76. These previous inter-affiliate services agreements are attached to this affidavit as **Exhibits “D”, “E”, and “F”** (collectively, with the License and Services Agreement, the “**Intercompany Agreements**”).

77. The intercompany payments owing under these agreements are set out below.

78. On March 1, 2023, Nordstrom US notified Nordstrom Canada that it would be terminating the Intercompany Agreements in accordance with their respective terms. Following the delivery of the applicable notices of termination by Nordstrom US in accordance with their terms, the Nordstrom Canada Entities determined that it was in their best interests to waive the 30-day notice termination periods under the Intercompany Agreements, agreed to an immediate termination of such agreements, and entered into a new administrative services agreement effective March 1, 2023 (the “**Wind-Down Agreement**”) to allow for an orderly wind down of the Canadian operations. Pursuant to the Wind-Down Agreement, Nordstrom US agreed to continue providing Shared Services and grant a limited license or sublicense, as applicable, to use the IP to the Nordstrom Canada Entities solely for the purposes of effecting an orderly wind down as part of a CCAA proceeding. In addition, pursuant to the Wind-Down Agreement, Nordstrom US has also agreed to provide the Nordstrom Canada Entities with up to \$15 million in debtor-in-possession financing, on reasonable terms, should such financing be required in these proceedings. A copy of the Wind-Down Agreement is attached to this affidavit as **Exhibit “G”**.

79. Under the Wind-Down Agreement, Nordstrom Canada, on behalf of the Nordstrom Canada Entities, has agreed to pay an arm’s-length fee to Nordstrom US for the provision of Shared Services, which fee shall be net of the arm’s-length fee payable by Nordstrom US to Nordstrom Canada, on behalf of the Nordstrom Canada Entities, for any services provided by employees of

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the Nordstrom Canada Entities to Nordstrom US pursuant to the Wind-Down Agreement. It is anticipated that the total net cost to Nordstrom Canada under the Wind-Down Agreement during the orderly wind down will be approximately \$6.3 million. The Wind-Down Agreement provides for a lessening of the monthly payments over the course of the proceedings to reflect the gradual reduction in the level of support required by the Nordstrom Canada Entities. The amounts payable under the Wind-Down Agreement were developed in consultation with the Proposed Monitor and are subject to the consent of the Monitor. As the Transfer Pricing Policy no longer applies, the related intercompany payments described above will cease.

80. Nordstrom Canada and Canada Leasing LP also entered into an inter-affiliate services agreement, dated as of December 10, 2014, in which Canada Leasing LP provides property management services to Nordstrom Canada, and Nordstrom Canada provides payroll, finance, and accounting services to Canada Leasing LP through its shared services arrangements with Nordstrom US. The Wind-Down Agreement provides for the continuation of this agreement. The inter-affiliate services agreement between Nordstrom Canada and Canada Leasing LP is attached to this affidavit as **Exhibit “H”**.

81. Nordstrom US is not prepared to provide the Shared Services to the Nordstrom Canada Entities outside of a CCAA proceeding or to a third-party operator of the business, and will only provide such services in accordance with the terms of the Wind-Down Agreement.

**(i) Intellectual Property**

82. Prior to the commencement of these proceedings, all IP relating to the “NORDSTROM” brands were licensed by Nordstrom US to Nordstrom Canada for Nordstrom Canada’s use to conduct its business. Pursuant to the License and Services Agreement, Nordstrom US (who

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licenses certain of the IP from NIHC, Inc.) granted Nordstrom Canada a non-exclusive, non-transferable right to use the (1) trademarks, service marks, and trade names, and (2) any information, data, process, method technique, technology, standard, documentation, idea, discovery, invention, know-how or trade secrets listed in Exhibit A to the License and Services Agreement.

83. As described above, on March 1, 2023, Nordstrom US notified Nordstrom Canada that it would be terminating the License and Services Agreement. The Wind-Down Agreement provides for Nordstrom US to grant Nordstrom Canada a license or sublicense, as applicable, to use the essential IP for the duration, and limited purposes, of the wind down and Realization Process as part of the CCAA proceedings. The liquidator selected to assist with the Realization Process will be entitled, through Nordstrom Canada, to also use the IP on a limited basis for the sole purposes of the liquidation sale. Nordstrom US is not prepared to license the IP to a third-party operator of the business, and will only provide such limited license in accordance with the terms of the Wind-Down Agreement.

**(j) Employees**

**(i) General**

84. As of January 31, 2023, Nordstrom Canada employed approximately 1,830 full-time employees and 505 part-time employees, which includes 2,010 Nordstrom full-line employees and 320 Nordstrom Rack employees. A typical full-line Nordstrom Canada store is staffed by approximately 230-350 employees, with the exception of Vancouver Pacific Centre, which has approximately 600 employees. Nordstrom Rack stores in Canada are each staffed by approximately 30-60 employees. The staff includes both full and part-time store employees and

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store management (including the store manager, department managers, and assistant department managers, among others). Nordstrom Canada also employs visual merchandisers, asset protection personnel, stylists, employee relations advisors, baristas, bartenders, and beauty stylists, among others. Department managers and other store employees report to and work under the supervision of the store manager. The store manager oversees and is responsible for operations in their store, and ultimately reports to the regional manager.

85. There are approximately 70 employees across Nordstrom Canada full-line stores who are employed by Nordstrom Canada pursuant to designated selling associate (“**DSA**”) agreements. The DSAs are responsible for promoting sales of merchandise sold by a particular Concession Vendor. The DSA agreements provide that the applicable Concession Vendor will reimburse Nordstrom Canada for certain salary contributions, side pay, bonuses, and other benefits of the DSA.

86. In addition to Nordstrom Canada’s store level employees, Nordstrom Canada also employs certain hybrid employees (who work both in-store and remotely), including human resources and regional operations directors and managers. There are also a small number of employees who work fully remotely, including technology employees, contact centre employees, and recruiters.

87. There are also 19 contingent workers who provide services to Nordstrom Canada but are not employed by Nordstrom Canada.

88. Nordstrom US and the Nordstrom Canada Entities are proposing a number of measures as part of these CCAA proceedings to assist the Nordstrom Canada employees to deal with the loss of employment caused by the cessation of the Nordstrom Canada Entities’ operations. These measures are discussed further below, and include the formation of an Employee Trust funded by

Nordstrom US, the appointment of Employee Representative Counsel, and a key employee retention program.

**(ii) Retirement and Benefit Plans**

89. Nordstrom Canada sponsors a group registered retirement savings plan issued by Canada Life Assurance Company (Policy No. 67650) effective January 1, 2014 (“RRSP”), a deferred profit-sharing plan (Registration No. 1272202) amended effective January 1, 2021 (“DPSP” and with the RRSP, the “**Nordstrom Canada Retirement Plans**”), and a full suite of group health and welfare benefits for certain eligible employees (the “**Canadian Group Benefits**”). Assets of the DPSP are held and invested pursuant to a trust agreement with Investors Group Trust Co. Ltd.

90. Nordstrom Canada employees who are considered full-time are eligible to participate in the Nordstrom Canada Retirement Plans immediately upon their hire date. A full-time employee is defined as an employee who has been designated a full-time employee by Nordstrom Canada and works an average of 28 hours per week. Part-time employees of Nordstrom Canada are not eligible to participate in these plans. Participants are able to contribute to the RRSP up to the lesser of 18% of earnings and the maximum permitted under the *Income Tax Act* (Canada), and Nordstrom Canada will match employee contributions up to 4% of an employee’s eligible earnings through contributions to the DPSP.

91. Nordstrom Canada provides Canadian Group Benefits to its full-time employees. Full-time employees generally receive the following benefits, which are fully paid for by Nordstrom Canada: short-term disability for certain full-time employees, Basic Life Insurance, Basic AD&D, a supplemental unemployment benefit plan for certain full-time employees, EAP, Talkspace (virtual therapy), Bright Horizons (child care support), Rethink (which provides support for parents,

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household members, and caretakers of children with learning, social, or behavioral challenges or developmental disabilities) and the Nordstrom Wellbeing Program (which includes a discount program among other benefits). Employees share the costs of Extended Health, Vision and Dental coverage. Long-term disability insurance and optional life insurance are fully paid for by employees.

92. Other benefits offered to full-time employees include two floating holidays and five sick days. All employees are eligible for Nordstrom Canada's vacation plan at hire.

### **(iii) Stock Plans**

93. Certain Canadian employees have received a non-qualified stock option award (the "Option") and/or a restricted stock unit award (the "RSU") that can be converted into the publicly traded shares of Nordstrom US. The Option and the RSU are governed by the terms of their respective award agreements and the terms of the Nordstrom US 2019 Equity Incentive Plan. There are six Canadian employees who are eligible for such benefits. Nordstrom Canada also has outstanding options under the 2010 Equity Incentive Plan for one Canadian employee.

94. As of February 9, 2023, there were 9,965 outstanding Options granted to two Nordstrom Canada employees: one employee has 678 Options which are vested and unexercised, and the other employee has 9,287 Options which are unvested.

95. Such Options were issued in two separate awards in 2021 and 2022. The 2021 Option vests over a four-year vesting period, with 50% vesting on March 10, 2024, and 50% on March 10,

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2025. The 2022 Option also vests over a four-year period, with 50% vesting on March 10, 2025, and 50% on March 10, 2026.<sup>1</sup>

96. The RSUs vest over a four-year vesting period with 25% being vested after one year, 50% being vested after two years, 75% being vested after 3 years and 100% being vested after 4 years of continuous service following the vesting commencement date. Upon a recipient's Termination Date, any portion of the RSU which has not yet vested shall be forfeited.

97. There are 19,517 outstanding RSUs that have been granted to Canadian employees.

98. The Options and RSUs are subject to a Clawback Policy adopted by the Board of Directors of Nordstrom US, as amended from time to time.

99. It is anticipated that employees will continue to have health, dental and other benefits coverage while they are working during the CCAA proceedings and that such benefits coverage will continue thereafter for at least the period required by statute. Nordstrom Canada also anticipates coordinating with local governments on job search assistance programs for impacted employees.

**(k) Nordy Club Rewards, Notes, Credit Card Program and Gift Cards**

100. Nordstrom US and Nordstrom Canada each provide customers with access to a variety of customer enhancement experiences, payment products and services, including gift cards and a selection of Nordstrom-branded Visa credit cards in the US and Canada, as well as a Nordstrom-branded private label credit card for Nordstrom purchases. Customers may also participate in The

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<sup>1</sup> Previous option grants had different vesting periods, but are all completely vested.

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Nordy Club to receive benefits that vary depending on the level of spend, including early access to the Anniversary Sale, enhanced alteration and stylist benefits, and incremental accumulation of points toward Nordstrom Notes.

**(i) Nordy Club Rewards**

101. Nordy Club Rewards is a rewards program offered by both Nordstrom US and Nordstrom Canada. In Canada, membership in the Nordy Club Rewards program is free and is available to any Canadian resident who is 18 years of age or older. Customers can sign up for the Nordy Club Rewards program in store or online, and once signed up, members earn one Nordy Club point per dollar spent at Nordstrom. Nordy Club points do not have a cash value; they are automatically converted to a Nordstrom Note once a certain Nordy Club point total is reached. Nordy Club members may also receive additional benefits depending on status (member, influencer, ambassador), including priority access to events and free basic alterations. Nordy Club points may expire if the Nordy Club account has had no activity for 12 consecutive months. In most cases, the points associated with inactive accounts expire on a quarterly basis – that is, in any calendar year, at the end of each quarter, the points associated with all accounts that have not had any points or Nordstrom Notes earned or redeemed for 12 or more consecutive months will expire.

102. As of January 28, 2023, approximately 840,000 Canadian customers had net outstanding Nordy Club points, worth approximately \$2.5 million should they be converted to Nordstrom Notes. It is contemplated that Nordy Club points will stop accruing should the proposed Initial Order be granted, any Nordy Club points in an amount sufficient to convert to Nordstrom Notes will be converted, and those not converted to Nordstrom Notes at such time will automatically expire.

**(ii) Nordstrom Notes**

103. A Nordstrom Note is generally awarded under both the US and Canadian programs upon reaching certain Nordy Club point accumulation thresholds, or by meeting certain other qualification requirements during special promotions. In Canada, Nordstrom Notes can be used to purchase qualifying items at Nordstrom Canada full-line or Nordstrom Canada Rack stores, and at Nordstrom.ca. Nordstrom Notes issued in Canada are denominated in Canadian dollars; however, as a convenience, a customer can redeem their Nordstrom Notes in a US Nordstrom full-line or Nordstrom Rack store, subject to a currency exchange rate. The Canadian Dollar to US Dollar exchange rate that will be applied to Nordstrom Note redemption in the US will be the rate provided to Nordstrom by Thomson Reuters at the time of purchase. Nordstrom Notes will expire if the customer's related Nordy Club account has had no activity for 12 consecutive months. In most cases, the points associated with inactive accounts expire on a quarterly basis. Nordstrom Notes have no cash value other than at a Nordstrom store or at Nordstrom.ca, and therefore cannot be cashed out.

104. As of January 28, 2023, approximately 178,000 Canadian customers had outstanding Nordstrom Notes worth a total value of approximately \$5.6 million. It is contemplated that no new Nordstrom Notes will be available to customers should the proposed Initial Order be granted; however, it is anticipated that existing Nordstrom Notes will be honoured in Canadian stores during the Realization Process. The notes will not be honoured on Nordstrom.ca from the date of commencement of the proceedings. In the view of Nordstrom Canada, honouring existing Nordstrom Notes in store through the orderly wind down period will promote goodwill among customers during the proceedings and will assist in maximizing value for stakeholders as a whole by, among other factors, attracting customers to the Canadian retail stores.

**(iii) Nordstrom Credit Card Program**

105. Nordstrom Canada offers customers an MBNA co-branded Nordstrom Credit Card Program. Cardholders who use the Nordstrom credit card for purchases at Nordstrom Canada full-line or Nordstrom Canada Rack stores are entitled to receive Nordstrom reward points, which are then automatically converted to a Nordstrom Rewards Note (different from Nordstrom Notes, discussed above). Cardholders earn two Nordstrom reward points for every dollar spent using the Nordstrom credit card in Nordstrom Canada retail stores or online at Nordstrom.ca, and one Nordstrom reward point for every dollar spent using the Nordstrom credit card elsewhere. The terms of the Nordstrom Rewards Notes given to cardholders indicate that such Nordstrom Rewards Notes can only be used in Canada; however, stores have the discretion to accept the Nordstrom Rewards Notes in the US, subject to a currency conversion rate. MBNA handles all acquisition and servicing of the credit card program, including tracking spend for points accrual, and sending information on points to Nordstrom Canada so that Nordstrom Canada can send a Nordstrom Rewards Note to the cardholder. As of October 2022, there were approximately 7,000 enrolled customers in Canada, of which 2,169 are active users of the card. MBNA owns the list of customers holding the credit cards and communicates with them directly.

106. MBNA gave notice to Nordstrom Canada under the agreement in November 2022 that it does not intend to renew the credit card program. Nordstrom Canada intends to work with MBNA to address the termination of the program and appropriate communications to cardholders.

**(iv) Nordstrom Gift Cards**

107. Nordstrom customers can purchase gift cards in Canada to be redeemed for merchandise in Nordstrom Canada stores or through Nordstrom.ca. Nordstrom gift cards are sold in Nordstrom

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Canada stores and on Nordstrom.ca. When purchased directly from Nordstrom Canada or on Nordstrom.ca, these gift cards are activated when purchased in store or online. Pursuant to agreements with certain third-party gift card resellers, gift cards are also sold at third-party retailers. The gift cards are inactive when distributed to resellers and activated at the reseller's POS when purchased. At this time, the reseller is obliged to make payment to the appropriate entity in the Nordstrom Group.

108. As of January 28, 2023, Canadian customers had outstanding gift cards worth a total value of approximately \$16 million. It is contemplated that no new gift cards will be available to customers at Nordstrom Canada's stores should the proposed Initial Order be granted. It is anticipated that existing gift cards will be honoured in Canadian stores during the Realization Process.

109. Nordstrom intends to forthwith direct its third-party service providers responsible for activating gift cards to cease doing so as of the filing of this Application. This will not affect outstanding gift cards. In the view of Nordstrom Canada, honouring outstanding gift cards will promote goodwill among customers during the orderly wind down and will assist in maximizing value for stakeholders as a whole by, among other factors, attracting customers to the Canadian retail stores.

**(l) Nordstrom.ca Website**

110. The Nordstrom Canada e-commerce business has been conducted through the Nordstrom.ca website which is owned by Nordstrom Canada. As part of the orderly wind down of the Nordstrom Canada Entities' business, it is contemplated that all transactional functionality will be removed from the Nordstrom.ca website should the proposed Initial Order be granted.

Thereafter, the site will only serve as a messaging page for customers outlining store locations and frequently asked questions in relation to these proceedings. It will also provide a link to the Monitor's website for these proceedings.

**(m) Other Suppliers**

111. The Nordstrom Canada Entities rely on the following service providers to operate: (i) logistics or supply chain providers, including transportation providers, customs brokers, freight forwarders and security and armoured truck carriers; (ii) providers of information, internet, telecommunications and other technology, including e-commerce providers and related services; and (iii) providers of payment, credit, debit and gift card processing related services. It is therefore proposed that the Nordstrom Canada Entities be entitled, but not required, to pay amounts owing for certain goods or services supplied to the Nordstrom Canada Entities prior to the date of the proposed Initial Order, with the consent of the Monitor. In order for the Nordstrom Canada Entities to continue to operate during the proposed stay period, it is also proposed that these services, and others including utility services, continue to be supplied and paid for pursuant to the proposed Initial Order.

**(n) Banking and Cash Management System**

112. The Nordstrom Canada Entities maintain a centralized cash management system which is administered by Nordstrom US from its head office in Seattle to collect, transfer and disburse funds generated by the operations of the Nordstrom Canada Entities (the "**Cash Management System**").

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113. The Nordstrom Canada Entities are dependent upon Nordstrom US for treasury, banking and related services that were provided through the License and Services Agreement with Nordstrom US and will be provided going forward pursuant to the Wind-Down Agreement.

114. The Nordstrom Canada Entities have 13 active bank accounts, with 10 maintained at the Bank of Nova Scotia (“**Scotiabank**”), two at Wells Fargo Bank, and one at Toronto-Dominion Bank. Store receipts are deposited into the depository account at Scotiabank and debit/credit card receipts are deposited into the main Nordstrom Canada cash account at Scotiabank on a daily basis. The Canadian bank accounts at each entity are as follows:

- (a) Nordstrom Canada: 7 bank accounts
- (b) Canada Leasing LP: 4 bank accounts
- (c) NCH: 1 bank account
- (d) NCHII: 1 bank account

115. The Nordstrom Canada Entities maintain six accounts that process all outgoing wires, Automatic Clearing House, and cheque payments for disbursements to landlords, vendors, employees, taxes and Nordstrom US for intercompany charges. These accounts are funded by the main cash account in the respective Canadian entity. In addition, the Nordstrom Canada Entities hold nominal cash to ensure sufficient float at stores. Excess cash is deposited into the Nordstrom Canada Entities’ main cash account as needed, which is typically twice a week.

116. The Nordstrom Canada Entities utilize the Nordstrom Group’s US bank corporate card relationship primarily for travel, store, and other miscellaneous expenses, which is paid by Nordstrom Canada. The Nordstrom Canada Entities estimate that, on average, approximately

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\$300,000 is charged to Canadian credit cards on a monthly basis. The obligations of the Nordstrom Canada Entities under these credit cards have been guaranteed by Nordstrom US pursuant to a guaranty made and entered into by Nordstrom US in favour of US Bank National Association dated June 17, 2022.

117. The proposed Initial Order contemplates continuation of the Nordstrom Canada Entities' Cash Management System during the CCAA proceedings, which is necessary for a controlled and orderly wind down.

#### **E. Financial Position of the Nordstrom Canada Entities**

118. As a publicly traded company, Nordstrom US files consolidated financial statements with the US Securities and Exchange Commission. These financial statements include the consolidated results of operations in the US and Canada. A copy of Nordstrom US' audited financial statements for the year ended January 29, 2022 is attached as **Exhibit "I"** to this affidavit. A copy of Nordstrom US' financial statements for the quarter ending October 29, 2022 is attached as **Exhibit "J"** to this affidavit.

119. Although the Canadian operations do not prepare stand-alone financial statements, the Nordstrom Canada Entities have prepared a summarized trial balance as of January 28, 2023, a copy of which is attached as **Exhibit "K"** to this affidavit. The summarized trial balance reflects the consolidated financial position of all of the Nordstrom Canada Entities and has not been audited. Certain information contained in the summarized trial balance is outlined below.

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120. As of October 29, 2022, the Nordstrom Canada Entities made up the following approximate percentages of the Nordstrom Group's total assets, inventory, and accounts receivable:

- (a) 4.0% of total assets;
- (b) 3.1% of total inventory; and
- (c) 2.7% of total accounts receivable.

**(a) Assets**

121. As of January 28, 2023, the Nordstrom Canada Entities had combined total assets with a book value of approximately \$500,784,000, consisting of approximately \$208,636,000 in current assets and approximately \$292,147,000 in long-term assets.

122. The Nordstrom Canada Entities' summarized trial balance reflects that, as of January 28, 2023, Nordstrom Canada had paid approximately USD \$10.3 million to Nordstrom US to reduce or pay off intercompany balances in fiscal year 2022. This amount includes payment for the provision of Shared Services by Nordstrom Canada, net of the amounts Nordstrom Canada received through the Transfer Pricing Policy. The intercompany balances are described more fully below.

**(i) Current Assets**

123. As of January 28, 2023, the Nordstrom Canada Entities' current assets consisted of the following (approximate values):

- (a) Cash – \$44,068,000

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- (b) Accounts Receivable – \$4,797,000
- (c) Intercompany Receivables – \$60,911,000
- (d) Inventory (owned) – \$92,826,000
- (e) Prepaid Expenses – \$4,043,000
- (f) Income Tax Receivable – \$1,992,000

124. The majority of the Nordstrom Canada Entities' current assets are therefore comprised of cash, cash equivalents, intercompany receivables, and inventories.

125. The Cash Flow Forecast (described below) indicates that the Nordstrom Canada Entities are expected to have an opening combined consolidated cash position of approximately \$36 million after adjusting for March rents and other amounts scheduled to be paid in the ordinary course prior to the commencement of the CCAA proceedings.

**(ii) Non-Current Assets**

126. As of January 28, 2023, the Nordstrom Canada Entities' non-current assets consisted of the following (approximate values):

- (a) Right of Use Asset (asset representing a lessee's right to use the asset over the life of the lease) – \$118,784,000
- (b) Property, Plant and Equipment – \$159,668,000
- (c) Other Assets – \$13,696,000

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127. Given the fact that certain IP had been licensed or sublicensed, as applicable, by Nordstrom US to Nordstrom Canada pursuant to the License and Services Agreement, Nordstrom Canada has no non-current assets or goodwill related to tradenames or trademarks on its summarized trial balance.

**(b) Liabilities**

128. As of January 28, 2023, the Nordstrom Canada Entities' total liabilities were approximately \$561,024,000, consisting of current liabilities of approximately \$377,499,000 (excluding operating leases) and long-term liabilities of approximately \$183,526,000.

**(i) Current Liabilities**

129. As of January 28, 2023, the Nordstrom Canada Entities' current liabilities (excluding operating leases) included (approximate values):

- (a) Intercompany Payables – \$302,556,000 (discussed below)
- (b) Accounts Payable – \$45,630,000
- (c) Accrued Wages – \$6,058,000
- (d) Accrued Other – \$23,255,000

**(ii) Long-Term Liabilities**

130. As of January 28, 2023, the Nordstrom Canada Entities' long-term liabilities included (approximate values):

- (a) Operating Leases (current and noncurrent) – \$180,763,000

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(b) Other Liabilities – \$2,763,000

131. The realizable value of the Nordstrom Canada Entities' assets will be insufficient to satisfy the claims of their creditors. These claims include the claims of the Landlords resulting from payment and other defaults under their respective Leases, which will be unavoidable following the cessation of operational and financial support from Nordstrom US to the Nordstrom Canada Entities, even after taking into account the mitigation obligation of the Landlords. The Nordstrom Canada Entities have insufficient financial resources to satisfy all of their obligations which will result from the cessation of such support for the business from Nordstrom US, and are therefore insolvent.

(c) **Stockholders' Equity**

132. As of January 28, 2023, the stockholders' equity in respect of the Nordstrom Canada Entities was negative \$60,241,000, consisting of the following (approximate values):

(a) Common Stock – \$110,000

(b) Retained Earnings – negative \$236,658,000

(c) Contributed Surplus – \$176,308,000

133. Nordstrom US' losses from the expansion into Canada are much higher than the negative retained earnings entry on the balance sheet. Excluding the intercompany payments (which are built into the retained earnings entry), the retained earnings would reflect additional losses of approximately \$511 million.

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**(d) The Nordstrom Canada Entities' Financial Performance**

134. Since 2014, the Nordstrom Canada Entities have experienced yearly losses across the majority of their 13 Canadian locations.

135. For the year ended January 28, 2023, the Nordstrom Canada Entities generated revenue of \$515,046,000. These results lag behind Nordstrom US' operations and are insufficient to absorb the Nordstrom Canada Entities' occupancy and other operating costs, including Shared Service costs.

136. Reflecting the Nordstrom Canada Entities' high occupancy and other operating costs (described in more detail below), its EBITDA for the year ended January 28, 2023 was negative \$34,563,000, prior to taking into account the intercompany payments.

137. Most of the Nordstrom Canada Entities' losses were absorbed by Nordstrom US through the intercompany payments under the Transfer Pricing Policy. As Nordstrom US has terminated its support of the Nordstrom Canada Entities' losses, the Nordstrom Canada Entities cannot continue operating. As noted above, notwithstanding Nordstrom US absorbing most of the losses, the Nordstrom Canada Entities have still accumulated negative retained earnings exceeding \$237 million as reflected on its summarized trial balance.

138. Nordstrom Canada's gross occupancy costs are currently trending in the range of 7% of its sales for full-line stores compared to 1% in the US, and 12% for Nordstrom Rack stores compared to 6-7% in the US.

139. The continued appreciation of the US dollar relative to the Canadian dollar has also added substantial strain on the business. A significant amount of Nordstrom Canada's inventory is

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purchased in USD, with merchandise necessarily being priced competitively in Canadian dollars. Accordingly, given the weakness of the Canadian dollar, Nordstrom Canada must pay relatively more for its inventory which is purchased in USD, negatively impacting its profit margin.

**(e) Intercompany Balance**

140. As of January 28, 2023, the Nordstrom Canada Entities, Nordstrom US, and NIL have a number of intercompany balances, summarized below. No intercompany transfers, including the projected USD \$55 million transfer pricing amount due to Nordstrom Canada as contemplated by the Transfer Pricing Policy, have been made since October 24, 2022 while the Nordstrom Group considered its options with respect to the Canadian business. A summary of the intercompany balances is below:

- (a) NCH is the only company with a large payable to NIL, in the amount of USD \$226 million. This represents the USD \$223 million loan made from NIL to NCH pursuant to the Master Loan Agreement, effective as of April 18, 2014, and accrued, unpaid interest through January 28, 2023. The loan was utilized to fund equity contributions from NCH to Canada Leasing LP for the initial build out of the Canadian stores between May 2014 and February 2020.
- (b) Intercompany rent is charged by Canada Leasing LP to Nordstrom Canada and is generally settled on a quarterly basis. The companies have settled more recent outstanding amounts, but Nordstrom Canada still owes Canada Leasing LP USD \$54 million for historic unsettled rent and real estate taxes. After the commencement of these proceedings, Nordstrom Canada intends to make the basic rent payments under the Subleases that are then paid to the third-party Landlords

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under the Leases. Nordstrom Canada does not intend to make the intercompany rent payments in respect of the Premises Fixturing Costs.

- (c) Nordstrom Canada owes Nordstrom US USD \$9.3 million for Shared Services provided from Nordstrom US to Nordstrom Canada.
- (d) The fiscal year 2022 transfer pricing payment from Nordstrom US to Nordstrom Canada pursuant to the former Transfer Pricing Policy of USD \$55 million.
- (e) Canada Leasing LP, NCH, and NCHII have small payables to Nordstrom US relating to Shared Service allocations (e.g., payroll, finance, accounting, etc.).

141. At any given time, the intercompany balances reflect unpaid amounts due from Nordstrom Canada to Nordstrom US, such as amounts owing for Shared Services, purchases of inventory, and other adjustments to reimburse Nordstrom US where it has incurred costs on behalf of Nordstrom Canada. The intercompany balance also reflects the intercompany payments made or reconciled by Nordstrom US in favour of Nordstrom Canada (which effectively reduced the amounts Nordstrom Canada owes to Nordstrom US for Shared Services).

142. The estimated transfer pricing adjustment needed for Nordstrom Canada to arrive at the target Rate of Return of 4.5% to 6.5% for the month of February 2023 (prior to the termination of the agreement) is approximately USD \$6 million.

**(f) Secured Debt**

143. Nordstrom US (as Borrower), the Lenders named therein, and Wells Fargo Bank, National Association (“**Wells Fargo**”), as Agent, Swing Line Lender and an L/C Issuer<sup>2</sup>, are parties to a revolving credit agreement, dated as of May 6, 2022, providing for Nordstrom US to borrow revolving loans, bid loans, and request letters of credit in the aggregate amount of USD \$800,000,000 (the “**Credit Agreement**”). The Credit Agreement matures on May 6, 2027. Attached to my affidavit as **Exhibit “L”** is a copy of the Credit Agreement without schedules and exhibits. There are no loans or letters of credit currently outstanding under the Credit Agreement.

144. The Credit Agreement requires that each Loan Party cause all property of such Loan Party that constitutes Collateral to be subject at all times to a first priority, perfected Lien in favour of the Agent to secure the Obligations (pursuant to the terms of Section 5.11 of the Credit Agreement).

145. Pursuant to a guaranty agreement among Nordstrom US, NIHC, Inc., Nordstrom Card Services, Inc., and Nordstrom Canada, as guarantors, and Wells Fargo, as Agent, dated as of May 6, 2022 (the “**Guaranty Agreement**”), Nordstrom Canada guaranteed to each Lender, each L/C Issuer, each other Secured Party and the Agent the prompt payment of the Obligations in full when due. Attached to my affidavit as **Exhibit “M”** is the Guaranty Agreement.

146. Pursuant to a Canadian security agreement between Nordstrom Canada and Wells Fargo, as Agent, dated as of May 6, 2022 (“the **Canadian Security Agreement**”), to secure the prompt payment and performance in full when due of the Obligations and costs and expenses incurred in

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<sup>2</sup> All capitalized terms in this section not otherwise defined have the meaning given to them in the Credit Agreement.

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connection with enforcement and collection of the Obligations, Nordstrom Canada granted a continuing security interest in all of its present and after-acquired undertakings, property and assets in favour of the Agent for the benefit of the Secured Parties. Attached to my affidavit as **Exhibit “N”** is the Canadian Security Agreement.

147. Prior to the Credit Agreement Amendment (defined below), pursuant to Section 7.1(g) of the Credit Agreement, it would have been an Event of Default under the Credit Agreement for Nordstrom Canada, as a Loan Party, to voluntarily commence proceedings under the CCAA and any such voluntary commencement would have resulted in the automatic acceleration of payment of the Loans and all other Obligations. Pursuant to a First Amendment to the Credit Agreement dated and effective as of March 1, 2023 (the “**Credit Agreement Amendment**”), Nordstrom US, the Guarantors, Wells Fargo and the Lenders party thereto amended the Credit Agreement to, among other things: (i) remove Nordstrom Canada as a Loan Party thereunder; (ii) irrevocably release Nordstrom Canada from its guaranty provided pursuant to the Guaranty Agreement; (iii) irrevocably release and discharge the security interest granted by Nordstrom Canada to the Agent pursuant to the Canadian Security Agreement; (iv) remove each of the Nordstrom Canada Entities from the definitions of Subsidiary and/or Affiliate (each defined in the Credit Agreement) except in limited circumstances; and (v) otherwise amend the Loan Documents to ensure that the wind down and any acts taken by Nordstrom US under agreements related to the wind down, including with respect to the Employee Trust and potential DIP facility, do not create a Default or Event of Default under any Loan Document. Accordingly, the Agent and the other Secured Parties are no longer secured creditors of Nordstrom Canada. Attached to my affidavit as **Exhibit “O”** is a copy of the Credit Agreement Amendment without schedules and exhibits.

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148. The remaining debt agreements of the Nordstrom Group – an Indenture, dated as of March 11, 1998, and an Indenture, dated as of December 3, 2007 – constitute senior unsecured debt obligations of Nordstrom US. The Nordstrom Canada Entities do not have any commitments under, and have not granted any guarantees or security in connection with, these agreements.

149. There are no other creditors that hold general security over the assets of the Nordstrom Canada Entities. PPSA search results dated as of February 23, 2023, for Ontario, and February 24, 2023, for Alberta and British Columbia are attached as **Exhibit “P”**.

#### **F. Urgent Need for Relief**

150. To support the Nordstrom Group’s expansion into Canada since 2014, Nordstrom US and its US-based affiliates have provided the Nordstrom Canada Entities with approximately USD \$950 million, including USD \$439 million in capital contributions, USD \$99.5 million in waived intercompany charges, USD \$102.7 million in market support payments, USD \$16.8 million in market penetration payments, and USD \$292 million in transfer pricing payments. The Nordstrom Canada Entities have made distributions to Nordstrom US and its US-based affiliates of USD \$175.5 million to arrive at net funding from Nordstrom US and its US-based affiliates of USD \$775 million. However, after considering all reasonable alternatives, Nordstrom US has determined that it will no longer invest resources in the Nordstrom Canada Entities, and it will no longer support the continued operations of Nordstrom Canada.

151. As set out above, Nordstrom US and the Nordstrom Canada Entities have explored other strategies to avoid winding down the Canadian operations, including licensing full operations to another Canadian retailer or retail operator with market expertise, closing certain underperforming stores, and/or investing to grow Nordstrom.ca, build loyalty, and optimize inventory. None of these

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alternatives would provide realistic solutions to the current difficulties facing the Canadian business and achieving profitability.

152. Following a thorough review of Nordstrom Canada's operations and financial performance, and after the careful consideration of all reasonably available options, I am informed by senior management of Nordstrom US that its board of directors determined that, in an exercise of its business judgment, and after consulting with legal and financial advisors, it is in the best interests of Nordstrom US to discontinue its operational and financial support of the Nordstrom Canada Entities and to focus on its core business and strategic imperatives in the US.

153. Due to its operational and financial dependence on Nordstrom US, the Nordstrom Canada Entities cannot continue operations without the full support of Nordstrom US, including a license to use Nordstrom US' IP relating to the "NORDSTROM" brand name. As that support on a going concern basis is no longer available, the Nordstrom Canada Entities have no choice but to cease operations in Canada and to conduct an immediate orderly and responsible wind down of operations for the benefit of their stakeholders.

154. As set out above, the collective corporate actions of the Nordstrom Canada Entities, including discontinuing operations, the conducting of "store closing" sales and the discontinuing of the payment of rent after the conclusion of such sales are defaults under the Leases and may result in the acceleration of some or all rents due under the Leases or the ability of the Landlords to accelerate all rents due thereunder. I am aware that the Landlords have contingent claims for future rent payments and the unamortized value of tenant allowances paid by the Landlords, and possibly other claims, including for damages they may incur under other leases with third-parties due to the Nordstrom Canada Entities discontinuing operations under the Leases, far exceed \$5

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million and which, together with the Nordstrom Canada Entities' other liabilities, exceed the realizable value of the Nordstrom Canada Entities' total assets. As a result, without the funding and financial support from Nordstrom US required to keep Nordstrom Canada operational, the Nordstrom Canada Entities have insufficient assets to satisfy their debts, cannot meet their obligations as they become due, and are insolvent.

155. The Nordstrom Canada Entities have determined that an orderly and controlled wind down under the supervision of the Court and the Monitor would be in the best interests of all stakeholders. However, the continued support, assistance and cooperation of Nordstrom US is still required to conduct an orderly and controlled wind down of the Nordstrom Canada Entities' operations. The continued provision of Shared Services by Nordstrom US is essential for the Nordstrom Canada Entities to operate. Nordstrom Canada also requires a license from Nordstrom US to use the "NORDSTROM" name and other IP to conduct an orderly realization of its remaining merchandise. I am informed by senior management of Nordstrom US that Nordstrom US is only willing to continue to support Nordstrom Canada through the provision of Shared Services and IP pursuant to the Wind-Down Agreement, if: (1) it is for limited purposes of an orderly wind down; and (2) the wind down is court-supervised under the CCAA.

156. The Intercompany Agreements were terminated on March 1, 2023, pursuant to notices of termination delivered by Nordstrom US, including the License and Services Agreement that formalized the former Transfer Pricing Policy. Nordstrom US and the Nordstrom Canada Entities subsequently entered into the Wind-Down Agreement to be effective as of March 1, 2023, to provide for, among other things, the immediate termination of the Intercompany Agreements, and the provision of Shared Services and restricted use of IP during this CCAA proceeding.

157. On March 1, 2023, after being informed of the decision of Nordstrom US to discontinue its support of the Canadian operations, the board of directors of Nordstrom Canada resolved to commence this CCAA proceeding.

### **G. Relief Sought**

158. The Applicants believe that this CCAA proceeding is the most practical method to ensure a fair and orderly wind down of the Nordstrom Canada Entities' business, which will maximize recoveries in the interests of all stakeholders. The Applicants are hopeful that the proposed CCAA proceedings will culminate in a consensual plan of compromise or arrangement, with broad support among stakeholders.

#### **(a) Stay of Proceedings**

159. The Nordstrom Canada Entities urgently require a stay of proceedings and other protections provided by the CCAA so that they will have the breathing space to develop and conduct a controlled and orderly wind down of operations for the benefit of their stakeholders. It would be detrimental to the Nordstrom Canada Entities' ability to conduct a responsible wind down and Realization Process in the best interests of its stakeholders if proceedings were commenced or rights or remedies executed against the Nordstrom Canada Entities in the short period available to maximize recoveries for all stakeholders.

160. The Applicants request a stay in favour of, and an extension of the protections and authorizations of the Initial Order to, Canada Leasing LP, a limited partnership closely intertwined with the operations of the Applicants in respect of Canadian real estate activities, including (i) leasing retail space from third-party property owners; (ii) committing capital for store construction and remodel activities; and (iii) subleasing retail space to Nordstrom Canada. The extension of the

benefit of the stay to Canada Leasing LP is necessary to maintain stability and value in the CCAA process. Any proceedings commenced against Canada Leasing LP would necessarily involve key personnel of the Applicants, who collectively hold a 100% interest in Canada Leasing LP. For example, to respond to any claim, the Applicants would need to provide evidentiary support through witnesses or documents. The need to provide such support could be a significant distraction for the Applicants' key personnel and would distract from the paramount goal of achieving an orderly and controlled wind down. As counterparty to the store Leases, Canada Leasing LP also needs the breathing space of a stay to prevent the exercise of Landlord remedies during the pendency of the Realization Process.

161. Having regard to the circumstances, the granting of a CCAA stay is in the best interests of the Nordstrom Canada Entities and their stakeholders. The stay will provide the Nordstrom Canada Entities with the breathing space required to develop and oversee an orderly wind down process, which in turn will help to protect the interests of the Nordstrom Canada Entities' stakeholders, including employees, suppliers, landlords, and customers, all with the eventual goal of developing and implementing a plan of arrangement to distribute recoveries to unsecured creditors.

**(b) Request for a Co-Tenancy Stay**

162. Many retail leases provide that tenants or occupants have certain rights against their landlords upon an anchor tenant's insolvency or upon an anchor tenant ceasing operations. In order to assist the Landlords in dealing with the effects of the wind down of the Canadian operations on an orderly basis, the Applicants are also seeking to stay rights, including but not limited to termination rights and reduction or abatement of rent, that tenants or occupants may have against the landlords, owners, operators or managers of the commercial properties where Nordstrom

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Canada's stores are located that arise as a result of the Nordstrom Canada Entities' insolvency, cessation of business in Nordstrom Canada's stores or as a result of any steps taken by the Nordstrom Canada Entities pursuant to the proposed Initial Order.

**(c) Stay of Related Litigation Against Nordstrom US**

163. The draft Initial Order proposes, subject to certain exceptions regarding the Cash Management System, a temporary stay of any proceeding against or in respect of Nordstrom US arising out of or in connection with any obligation of Nordstrom US that is derivative of the primary liability of or related to any of the Nordstrom Canada Entities, including in respect of indemnities granted by Nordstrom US in respect of any Leases.

164. Each of the full-line store retail Leases is subject to an indemnity provided by Nordstrom US in favour of the Landlord. All of these indemnities contain language providing that the indemnifiers' obligations are not affected by the bankruptcy or insolvency of the tenant or disclaimer of the Lease. The draft Initial Order also provides that no attempt shall be made to compromise or otherwise release the Landlord indemnity claims as part of the CCAA proceedings.

165. Nordstrom US is also party to a number of other agreements with, or on behalf of, the Nordstrom Canada Entities, which will be dealt with in these CCAA proceedings.

166. The Nordstrom Canada Entities believe that this relief is necessary to allow the Nordstrom Canada Entities to have sufficient breathing space under the CCAA to focus their resources on a fair and orderly wind down process. Any litigation against Nordstrom US in respect of indemnities granted by Nordstrom US pursuant to any Leases or otherwise relating to the Nordstrom Canada Entities would necessarily require the participation of the Nordstrom Canada Entities and would result in a significant distraction of senior management from the goals of this proceeding. Further,

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it is crucial that Nordstrom US be focused on providing the Shared Services to support the wind down process over the next several months and not be distracted by litigation in respect of Nordstrom US indemnities or other potential claims related to the Nordstrom Canada Entities at this time. Moreover, such litigation would be duplicative of the process involved in Canada to determine the amount of the claims.

167. It is the intention of the Nordstrom Canada Entities to establish a CCAA claims process during these CCAA proceedings. The amount of these claims against Nordstrom US, if any, will not be known until a claims process with respect to such claims has been completed.

**(d) Proposed Monitor**

168. A&M is the Proposed Monitor. I am advised by Alan Hutchens of A&M that A&M is a “trustee” within the meaning of section 2 of the *Bankruptcy and Insolvency Act*, and is not subject to any of the restrictions on who may be appointed as monitor set out in section 11.7(2) of the CCAA. I understand that A&M has extensive experience acting as monitor or financial advisor to debtor companies in large retail insolvencies under the CCAA, including Bed Bath & Beyond Canada, Toys “R” Us Canada, Forever 21, Comark Holdings (Ricki’s, cleo and Bootlegger) and Target Canada.

169. The Proposed Monitor has consented to act as the Monitor of the Nordstrom Canada Entities under the CCAA. A copy of the Proposed Monitor’s consent to act as Monitor is attached to my affidavit as **Exhibit “Q”**.

170. I understand that the Proposed Monitor will file a pre-filing report with the Court as Proposed Monitor in conjunction with the Applicants’ request for relief under the CCAA.

**(e) Administration Charge**

171. Pursuant to the proposed Initial Order, it is proposed that the Proposed Monitor, along with its counsel, counsel to the Nordstrom Canada Entities, Employee Representative Counsel (up to the maximum amount of \$75,000), and counsel to the directors and officers of the Nordstrom Canada Entities will be granted a Court-ordered charge on the present and future assets, property and undertakings of the Nordstrom Canada Entities (“**Property**”), as security for their respective fees and disbursements relating to services rendered in respect of the Nordstrom Canada Entities up to a maximum of \$750,000 (the “**Administration Charge**”) until the Comeback Hearing. The Applicants propose that the Administration Charge be increased to \$1.5 million at the Comeback Hearing. The Administration Charge is proposed to have first priority over all other charges and security interests.

**(f) Directors’ and Officers’ Protection**

172. I am advised by Tracy Sandler of Osler, Hoskin & Harcourt LLP, counsel for the Nordstrom Canada Entities, and believe that, in certain circumstances, directors can be held liable for certain obligations of a company owing to employees and government entities, which may include unpaid accrued wages and unpaid accrued vacation pay, together with unremitted sales, goods and services, and harmonized sales taxes.

173. It is my understanding that the Applicants’ present and former directors and officers who are or were in office or employed by any of the Applicants are among the potential beneficiaries under a liability insurance policy that covers the directors and officers of the entire Nordstrom Group that has an aggregate limit of USD \$10 million. This policy covers directors’ statutory liabilities for taxes imposed on a Company for which Insured Persons (each defined therein) are

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legally obligated to pay as a result of the Company's insolvency. In addition, the policy covers taxes assessed on an Insured Person under s. 227.1 of the *Income Tax Act* (Canada) and related fines or penalties and certain other statutory liabilities. The USD \$10 million limit under the policy covers both Nordstrom US and its subsidiaries (referred to collectively as the "**Company**" in the policy). I do not believe that this insurance policy provides sufficient coverage against the potential liability that the directors could incur in relation to this CCAA proceeding, in particular, in light of the extensive operations and hence potential liabilities associated with Nordstrom US.

174. In light of the potential liabilities and the insufficiency of available insurance, I, as President of Nordstrom Canada and President and Treasurer of NCH and NCHII, and the other directors and officers of the Nordstrom Canada Entities, have indicated that our continued service and involvement in this proceeding is conditional upon the granting of an Order under the CCAA which grants a charge in favour of the directors and officers of the Nordstrom Canada Entities in the amount of \$10.75 million on the Property of the Nordstrom Canada Entities (the "**Directors' Charge**") until the Comeback Hearing. The Applicants propose that the Directors' Charge be increased to \$13.25 million at the Comeback Hearing. The Directors' Charge would be subordinate to the proposed Administration Charge and in priority to all other security interests. The Directors' Charge would act as security for the indemnification obligations for directors' potential liabilities, as set out above. The Directors' Charge is necessary so that the Nordstrom Canada Entities may benefit from the directors and officers' experience with the business during the realization and wind down efforts. The Directors' Charge would only be relied upon to the extent of the insufficiency of existing insurance.

**(g) Cash Flow Forecast**

175. The Applicants, with the assistance of the Proposed Monitor, have prepared 13-week cash flow projections as required by the CCAA. A copy of the cash flow projections is attached as **Exhibit “R”**. The cash flow projections demonstrate that the Nordstrom Canada Entities have sufficient liquidity to continue going concern operations during the proposed stay period should an Initial Order be granted. It is not currently contemplated that the Nordstrom Canada Entities will require debtor-in-possession financing; however, Nordstrom US has agreed in the Wind-Down Agreement to provide up to \$15 million of such financing on reasonable terms if needed.

176. The Applicants anticipate that the Monitor will provide oversight and assistance and will report to the Court in respect of the Nordstrom Canada Entities’ actual results relative to cash flow forecast during this proceeding. Existing accounting procedures and the proposed continuation of the Cash Management System will provide the Monitor with the ability to accurately track the flow of funds and assist with any issues that may arise.

**(h) Payments During the CCAA Proceedings**

177. During the course of this proceeding, the Nordstrom Canada Entities intend to make payments for goods and services supplied to it post-filing in the ordinary course, as set out in the cash flow projections described above and as permitted by the proposed Initial Order.

178. The proposed Initial Order provides that the Nordstrom Canada Entities be authorized, with the consent of the Monitor, but not required, to make certain payments for goods and services actually supplied to the Nordstrom Canada Entities prior to the date of the Initial Order, to: (i) logistics or supply chain providers, including transportation providers, customs brokers, freight forwarders and security and armoured truck carriers, and including amounts payable in respect of

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customs and duties for goods; (ii) providers of information, internet, telecommunications and other technology, including e-commerce providers and related services; and (iii) providers of payment, credit, debit and gift card processing related services. These categories of suppliers are fundamental to continuing operations and the proposed liquidation sale, and any disruptions of their services could jeopardize the orderly wind down, given the expedited timelines for the proposed Realization Process. Accordingly, the Applicants seek additional flexibility in ensuring the supply of required services remains uninterrupted. For third-party suppliers or service providers other than those listed above, the draft Initial Order also proposes permitting payments in respect of pre-filing amounts up to a maximum aggregate amount of \$1 million with the consent of the Monitor (proposed to be increased to \$1.5 million in the Amended and Restated Initial Order), if, in the opinion of the Nordstrom Canada Entities, the supplier is critical to the orderly wind down of the Nordstrom Canada Entities' business.

**(i) Liquidation Consultant and Realization Process**

179. As part of the overall wind down process for the Canadian business, the Applicants intend to seek the Court's approval to, in consultation with the Monitor, implement a proposed realization process ("**Realization Process**") to liquidate Nordstrom Canada's remaining inventory, and furniture, fixtures and equipment (collectively, the "**Merchandise & FF&E**"). The Applicants intend to, in consultation with the Monitor, explore the possibility of monetizing the Leases as part of the Realization Process.

180. The Applicants intend to file a motion seeking approval of the Realization Process and an agreement with a third-party liquidator as soon as possible should the proposed Initial Order be

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granted. The Nordstrom Canada Entities intend to propose the following timeline for the first stage of the CCAA proceedings subject to the direction of this Honourable Court:

<b>Proposed Date</b>	<b>Step</b>
March 2, 2023	Hearing of application for Initial Order
March 10, 2023	Hearing for CCAA comeback motion and Amended and Restated Initial Order, including stay extension and approval of Key Employee Retention Program
March 13, 2023	Serve motion seeking approval of Realization Process and sale guidelines
March 20, 2023	Hearing to approve the Realization Process and sale guidelines
March 21, 2023	Commence liquidation of Canadian stores
June 30, 2023	Projected liquidation sale end date and Nordstrom Canada to vacate leased premises
TBD	Claims process motion to be brought at the appropriate time, likely when the liquidation is close to complete

181. The Nordstrom Canada Entities believe that engaging an experienced professional liquidator to undertake a sale of the Merchandise & FF&E will produce better sales results than an attempt by the Nordstrom Canada Entities to sell the Merchandise & FF&E without such professional assistance. At the same time, I believe that the involvement of the Nordstrom Canada Entities in the Realization Process is essential to maximizing the proceeds. The Applicants accordingly believe that it is crucial to seek Court approval of the Realization Process as soon as possible to maximize the amounts available to their stakeholders.

**(j) Key Employee Retention Program**

182. The Applicants propose in connection with this Application to provide Nordstrom Canada's store employees and store management with working notice of termination, effective at

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the outset of the Realization Process. Given the essential role that employees would play in the Realization Process, Nordstrom Canada in consultation with the Proposed Monitor has developed a key employee retention program (the “**KERP**”) to incentivize certain key active employees to remain in their positions through the CCAA proceedings. I understand that the Proposed Monitor and Employee Representative Counsel (as discussed below) support the KERP. It is intended that approval of the KERP and related KERP Charge will be sought as part of the proposed Amended and Restated Initial Order at the Comeback Hearing.

183. The proposed KERP provides for a one-time lump sum payment to eligible employees who have been identified by Nordstrom Canada, in consultation with the Proposed Monitor, as critical for a successful CCAA proceeding. In particular, the vast majority of KERP participants and KERP funds are directed towards store-level employees, with a view to maximizing value through the Realization Process.

184. The proposed KERP payments are to be calculated as a percentage of the employee’s base salary to help ensure that the proposed KERP amounts reflect the individual’s level of duties and responsibilities. The maximum proposed KERP payments would total approximately \$2.6 million, to be divided as follows:

- (a) Up to 13 Store Managers to be eligible for a KERP payment of 20% of base salary, for a total maximum payout of approximately \$359,000;
- (b) Up to 117 Department Managers to be eligible for a KERP payment of 15% of base salary, for a total maximum payout of approximately \$1.2 million;

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- (c) Up to 42 Assistant Department Managers in Nordstrom full-line stores to be eligible for a KERP payment of 10% of base salary, for a total maximum payout of approximately \$193,000;
- (d) Up to 56 Asset Protection personnel to be eligible for a KERP payment of 10% of base salary, for a total maximum payout of approximately \$263,000; and
- (e) 37 non-store personnel to be eligible for a KERP payment of between 5% and 25% of base salary, for a total maximum payout of approximately \$532,000, as detailed in **Redacted Exhibit “S”**.

185. It is proposed in the Amended and Restated Initial Order that a KERP Charge in an aggregate amount not exceeding \$2.6 million will be granted as security on the Property for amounts payable to the key employees pursuant to the KERP.

186. Payments to employees under the proposed KERP would be in lieu of any other incentive compensation arrangements to which the participants may claim to be entitled and would be conditional upon the terms and conditions set out in the KERP award letter to be provided to eligible employees, including that such employees have not resigned or been terminated due to misconduct prior to the KERP payment date. If a KERP eligible employee resigns or is terminated due to misconduct prior to payment of the KERP, Nordstrom Canada, in consultation with the Monitor, may select another employee to occupy their role, in which case the new incumbent shall be eligible for a KERP payment on the same terms and conditions as the former employee.

**(k) Employee Trust**

187. The Applicants are also asking the Court to approve a trust established for the benefit of employees of Nordstrom Canada (the “**Employee Trust**”) and funded outside of the estate by Nordstrom US.

188. The Nordstrom Canada Entities and Nordstrom US have always considered team members to be integral to Nordstrom’s business. However, given that Nordstrom Canada will be winding down its operations and ceasing to carry on business, it will be providing notice of termination to the vast majority of its employees at the outset of the Realization Process. The Nordstrom Canada Entities and Nordstrom US wish to provide Nordstrom Canada employees with a measure of financial security during the wind down process. Nordstrom US has therefore agreed to fund the Employee Trust to ensure that all Nordstrom Canada employees receive the full amount of termination and severance pay owed to them under applicable employment standards legislation as soon as possible without having to await the results of a claims process and implementation of a plan with distributions on account of proven claims. If approved, the Employee Trust will provide funding for payment to employees of at least their full statutory termination entitlements even if they are not required to work for their entire notice period.

189. The Employee Trust provides Nordstrom US with a right of subrogation against Nordstrom Canada in respect of amounts paid to Eligible Employees (defined below) pursuant to the Employee Trust.

190. The Employee Trust was established in consultation with the Proposed Monitor and is supported by Employee Representative Counsel (as described below). The agreement establishing the Employee Trust (the “**Trust Agreement**”) provides that the Proposed Monitor is the

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administrator (the “**Administrator**”) and Gale Rubenstein, in her personal capacity, is the trustee (the “**Trustee**”). A copy of the proposed Trust Agreement is attached as **Exhibit “T”** to this affidavit. All defined terms in this section are as set out in the Trust Agreement.

191. The Trust Agreement provides:

- (a) The beneficiaries of the Employee Trust (“**Eligible Employees**”) include all active and inactive employees of Nordstrom Canada as of the filing date, other than those who have given or received notice of termination or who are terminated for cause post-filing;
- (b) The distribution by the Employee Trust to Nordstrom Canada for payment to an Eligible Employee will be equal to  $A - B$  (the “**Eligible Employee Claim**”) where:
  - (i) A is such Eligible Employee’s statutory minimum termination entitlement under applicable employment standards legislation (as applicable, “**ESA**”); and
  - (ii) B is all amounts earned by such Eligible Employee up to their Regular Wages for a Regular Work Week in respect of actual post-filing services provided following the effective date of notice of termination;
- (c) Payments to employees of funds distributed by the Employee Trust will be made directly by Nordstrom Canada’s third-party payroll provider pursuant to Nordstrom Canada’s existing payroll system. The Employee Trust will distribute funds to Nordstrom Canada on a pay period by pay period basis, based on estimates jointly developed by Nordstrom Canada and the Monitor, as Administrator of the Employee Trust. Any surplus or deficiency from the previous pay period(s) will be reconciled in the next pay period. On or after the final distribution, Nordstrom Canada and the Monitor will consult and perform a final “true up”;

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- (d) Nordstrom US will provide an initial contribution of \$14 million (the “**First Contribution**”) to fund the Employee Trust. Nordstrom US will make additional contributions to fund Eligible Employee Claims as requested by the Administrator and Trustee, up to a total maximum contribution of \$25 million;
- (e) A deemed release by each Eligible Employee of Nordstrom Canada, Nordstrom US and other Releasees (defined in the Trust Agreement) will be effective on the payment of a distribution from the Employee Trust in respect of an Eligible Employee Claim, to the extent of such distribution (the “**Deemed Release**”). This is proposed to operate as a “rolling release”; that is, for each distribution funded from the Employee Trust, the employee will be deemed to release all Releasees in respect of the Eligible Employee Claim for the amount the individual receives plus appropriate remittances or withholdings (the “**Payment Release**”). Once the final distribution has been made by the Employee Trust and paid by Nordstrom Canada, the Eligible Employee will be deemed to have released Nordstrom Canada, Nordstrom US and the other Releasees in respect of the full amount of the Eligible Employee Claim, subject to any dispute, as described below; and
- (f) For the appointment of the Trustee, including the role and responsibilities of the Trustee and certain protections and indemnities in favour of the Trustee.

192. For additional clarity, other than Eligible Employee Claims, the Employee Trust does not cover damages or claims by Nordstrom Canada employees against Nordstrom Canada, Nordstrom US or any related entities from any existing or potential litigation or other proceedings in respect

of their employment. Any other employee claims or potential claims against the Nordstrom Canada Entities will be dealt with through the claims process, once established.

193. Nordstrom Canada is proposing that any dispute with respect to an Eligible Employee Claim must be made within 45 days of the final payment thereof by notice to the Administrator (Proposed Monitor) and Employee Representative Counsel (discussed below), specifying the grounds and particulars of the dispute. The Deemed Release will not come into effect for any Eligible Employee who commences a dispute until the dispute is finally resolved. The directions of this Court for dispute resolution will be sought if necessary.

194. The Employee Trust will be fully revocable until certain conditions set out below are fulfilled, as detailed in the Trust Agreement:

- (a) the Court grants an Initial Order that:
  - (i) approves and authorizes the creation of the Employee Trust on the terms and conditions set out in the Trust Agreement;
  - (ii) provides for a deemed release of claims by Eligible Employees no less favourable to Nordstrom Canada, Nordstrom US and their affiliates than the Deemed Release summarized above;
  - (iii) appoints the Monitor to act in such capacity, and in addition to the other powers granted to the Monitor therein, authorizes and directs the Monitor to act as Administrator of the Employee Trust;
  - (iv) provides that no action or proceeding may be commenced against the Trustee in respect of the Employee Trust without leave of the Court;
  - (v) declares that Nordstrom US shall not be, and shall not be deemed to be, an employer or a common, related or successor employer with respect to any Nordstrom Canada employee by virtue of settling the Trust or the payments made thereunder;
  - (vi) deems that Nordstrom US shall have full subrogation rights against Nordstrom Canada in respect of any and all amounts paid by the Trust to Eligible Employees pursuant to this Trust Agreement; and

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- (vii) establishes a stay of proceedings on substantially the terms and conditions requested by the Applicants;
- (b) the Initial Order becomes a final order; and
- (c) notices of termination of employment by Nordstrom Canada have been sent to Eligible Employees.

195. In summary, Nordstrom Canada is of the view the Employee Trust is of great benefit to its employees, estate, and stakeholders because:

- (a) It will provide for a timely payment and satisfaction of all statutory termination and severance claims of Eligible Employees;
- (b) no funds from any of the Nordstrom Canada Entities will be used to fund the Employee Trust;
- (c) Nordstrom US is the settlor of the Employee Trust and will provide all funds required for payment under the Employee Trust, subject to the conditions of the Trust Agreement; and
- (d) the Employee Trust will bear the costs of its establishment and administration.

**(l) Employee Representative Counsel**

196. The Nordstrom Canada Entities propose that the Court appoint Ursel Phillips Fellows Hopkinson LLP (“**Ursel Phillips**”) as Employee Representative Counsel, with Susan Ursel acting as senior counsel, to represent all Nordstrom Canada’s store-level employees and all non-KERP eligible non-store employees (which combined represents approximately 98.5% of all Nordstrom Canada’s employees), including, but not limited to, assisting with questions regarding Eligible

Employee Claims and other issues with respect to the Employee Trust. The fees and expenses of Employee Representative Counsel will be funded by the Nordstrom Canada Entities on the terms of a retainer to be entered into between Employee Representative Counsel and Nordstrom Canada.

197. I am advised by Mr. Poysa and believe that Ursel Phillips has been appointed by the court as representative counsel in other CCAA proceedings and restructurings, including Sears Canada and Essar Steel Algoma. I am advised by Mr. Poysa and believe that Ursel Phillips has extensive experience representing large groups of employees and former employees in matters involving employment-based claims in respect of termination entitlements and benefits in insolvency matters. I am advised by Mr. Poysa and believe that Ursel Phillips also has extensive experience in establishing and advising members and trustees of employee benefit and retirement plans across Canada, and is well qualified to represent Nordstrom Canada employees in the CCAA proceeding.

198. I am advised by Mr. Poysa and believe that Ursel Phillips has been consulted regarding the Employee Trust and supports the Court's approval of the Employee Trust.

199. To the best of my knowledge, the employees proposed to be represented by Ursel Phillips have a common interest in these CCAA proceedings. I am not aware of any material conflict existing between the interests of such employees or groups of employees at this time. If any material conflict does arise in the future, Employee Representative Counsel may attend before the Court to seek directions at that time.

200. The Applicants are proposing that:

- (a) Employee Representative Counsel be appointed immediately, before the appointment of any employees as Court-appointed representatives (the "**Employee Representatives**"), because of the importance of establishing the Employee Trust

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at the earliest possible time for the benefit of the employees, the estate and other stakeholders;

- (b) Employee Representative Counsel be authorized, but not required, to identify no more than three employees to be nominated to the Court as Employee Representatives as soon as practicable, with the goal of one employee being selected from each of the three groups or regions in which Nordstrom Canada is organized – British Columbia, Alberta and Ontario; and
- (c) Employees who do not wish to be represented by Ursel Phillips will be entitled to opt-out of representation and will be notified of such entitlement.

201. Nordstrom Canada recognizes that the employees are an important stakeholder group and deserve adequate and meaningful representation in the CCAA proceeding that is funded by the estate at no cost to the employees.

202. I am advised by Mr. Poysa and believe that Ursel Phillips intends to (i) establish a toll-free dedicated phone line and a dedicated email address through which Nordstrom Canada employees can obtain information about the CCAA proceeding; and (ii) post information for Nordstrom Canada employees on the Ursel Phillips website, which will be regularly updated with information dedicated to Nordstrom Canada employees about the CCAA process, including a section for frequently asked questions.

203. Nordstrom Canada believes that Employee Representative Counsel will contribute to overall costs savings and a streamlining of the CCAA process by serving as a single point of contact between thousands of employees, the Nordstrom Canada Entities, the Monitor, and the Court.

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**H. Conclusion**

204. I believe that the Nordstrom Canada Entities and Nordstrom US have made every reasonable effort, and assessed every available option in their extensive efforts to find a way to succeed in Canada. However, no way was identified that could stop the significant losses projected for the foreseeable future.

205. I am confident that granting the Initial Order sought by the Applicants is in the best interests of the Nordstrom Canada Entities and their stakeholders, generally. Without the stay of proceedings, the Nordstrom Canada Entities face an immediate cessation of operations rather than an orderly and responsible wind down. I believe that the CCAA proceeding is the only viable method to effect a fair and orderly wind down process for the benefit of all stakeholders.

**SWORN BEFORE ME** at the City of  
Toronto in the Province of Ontario, on March  
1, 2023.



Commissioner for Taking Affidavits  
(or as may be)

**HANNAH DAVIS**  
**LSO# 85047N**



**MISTI HECKEL**

This is Exhibit "B" referred to in the Affidavit of Misti  
Heckel sworn May 19, 2023.

A handwritten signature in blue ink, appearing to read "Misti Heckel".

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*Commissioner for Taking Affidavits (or as may be)*

**HANNAH DAVIS**



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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. )

FRIDAY, THE 10<sup>TH</sup>

JUSTICE MCEWEN )

DAY OF MARCH, 2023

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

**AMENDED AND RESTATED INITIAL ORDER  
(amending the Initial Order dated March 2, 2023)**

**THIS APPLICATION**, made by Nordstrom Canada Retail, Inc. ("**Nordstrom Canada**"), Nordstrom Canada Holdings, LLC and Nordstrom Canada Holdings II, LLC (collectively, the "**Applicants**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Misti Heckel sworn March 1, 2023, and the Exhibits thereto (the "**Initial Heckel Affidavit**"), the affidavit of Misti Heckel sworn March 8, 2023, and the Exhibits thereto, the pre-filing report dated March 1, 2023, of Alvarez & Marsal Canada Inc. ("**A&M**"), in its capacity as proposed monitor of the Nordstrom Canada Entities (as hereinafter defined), and the first report dated March 8, 2023, of A&M, in its capacity as monitor of the Nordstrom Canada Entities (in such capacity, the "**Monitor**"), and on hearing the submissions of counsel to the Applicants and Nordstrom Canada Leasing LP ("**Canada Leasing LP**", and together with the Applicants, the "**Nordstrom Canada Entities**"), the Monitor, Employee Representative Counsel (as hereinafter defined) and such other counsel present, and on reading the consent of A&M to act as Monitor.

## SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

## DEFINITIONS

2. **THIS COURT ORDERS** that unless otherwise indicated or defined herein, capitalized terms have the meanings given to them in the Initial Heckel Affidavit.

## PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “**Plan**”).

## APPLICATION

4. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies. Although not an Applicant, Canada Leasing LP shall have the benefits of the protections and authorizations provided by this Order.

## POSSESSION OF PROPERTY AND OPERATIONS

5. **THIS COURT ORDERS** that the Nordstrom Canada Entities shall remain in possession and control of their respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, the Nordstrom Canada Entities shall continue to carry on business in a manner consistent with the preservation of their business (the “**Business**”) and Property. The Nordstrom Canada Entities shall each be authorized and empowered to continue to retain and employ the employees, contractors, advisors, consultants, agents, experts, appraisers, valuers, brokers, accountants, counsel and such other persons (collectively, “**Assistants**”) currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. **THIS COURT ORDERS** that the Nordstrom Canada Entities shall be entitled to continue to use the central cash management system currently in place as described in the Initial Heckel Affidavit or, with the consent of the Monitor, replace it with another substantially similar central cash management system (the “**Cash Management System**”) and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Nordstrom Canada Entities of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Nordstrom Canada Entities, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under any Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

7. **THIS COURT ORDERS** that the Nordstrom Canada Entities shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the date of this Order to the extent that such expenses are incurred and payable by the Nordstrom Canada Entities:

- (a) all outstanding and future wages, salaries, employee benefits (including, without limitation, employee medical, dental, registered retirement savings plan contributions and similar benefit plans or arrangements), vacation pay and expenses, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements, and all other payroll and benefits processing and servicing expenses;
- (b) all outstanding or future amounts owing in respect of customer rebates, refunds, discounts or other amounts on account of similar customer programs or obligations;
- (c) all outstanding or future amounts related to honouring customer obligations, including customer pre-payments, deposits, gift cards, programs (including, The Nordy Club rewards program and the redemptions of Nordstrom Notes) and other customer loyalty programs, offers and benefits, in each case incurred in the ordinary course of business and consistent with existing policies and procedures;

- (d) the fees and disbursements of any Assistants retained or employed by the Nordstrom Canada Entities at their standard rates and charges;
- (e) with the consent of the Monitor, amounts owing for goods or services supplied to the Nordstrom Canada Entities prior to the date of this Order, by:
  - (i) logistics or supply chain providers, including transportation providers, customs brokers, freight forwarders and security and armoured truck carriers, and including amounts payable in respect of customs and duties for goods;
  - (ii) providers of information, internet, telecommunications and other technology, including e-commerce providers and related services;
  - (iii) providers of payment, credit, debit and gift card processing related services; and
  - (iv) other third-party suppliers or service providers up to a maximum aggregate amount of \$1.5 million, if, in the opinion of the Nordstrom Canada Entities following consultation with the Monitor, such supplier or service provider is critical to the Orderly Wind-down (as hereinafter defined).

8. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Nordstrom Canada Entities shall be entitled but not required to pay all reasonable expenses incurred by them in carrying on the Business in the ordinary course during the Orderly Wind-down after this Order, and in carrying out the provisions of this Order and any other Order of this Court, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and

- (b) payment for goods or services actually supplied to the Nordstrom Canada Entities following the date of this Order or, with the consent of the Monitor, payments to obtain the release or delivery of goods contracted for prior to the date of this Order.

9. **THIS COURT ORDERS** that the Nordstrom Canada Entities shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from the Nordstrom Canada Entities' employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services taxes, harmonized sales taxes or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Nordstrom Canada Entities in connection with the sale of goods and services by the Nordstrom Canada Entities, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not remitted until on or after the date of this Order;
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business, workers' compensation or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Nordstrom Canada Entities; and
- (d) taxes under the *Income Tax Act* (Canada) or other relevant taxing statute giving rise to any statutory deemed trust amounts in favour of the Crown in right of Canada or any Province thereof or any political subdivision thereof or any other taxation authority.

10. **THIS COURT ORDERS** that, until a real property lease, including a sublease and related documentation (each, a "**Lease**") to which any Nordstrom Canada Entity is a party is disclaimed in accordance with the CCAA or otherwise consensually terminated, such Nordstrom Canada Entity shall pay, without duplication, all amounts constituting rent or payable as rent under such

Lease (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the applicable landlord (each, a “**Landlord**”) under such Lease, but for greater certainty, excluding accelerated rent or penalties, fees or other charges arising as a result of the insolvency of the Nordstrom Canada Entities or the making of this Order) or as otherwise may be negotiated between such Nordstrom Canada Entity and the Landlord from time to time (“**Rent**”), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid. Without in any way impairing, limiting or lessening the priority, protections, rights or remedies of Canada Leasing LP, any Rent in respect of Premises Fixturing Costs payable by Nordstrom Canada to Canada Leasing LP under a Lease shall be stayed and suspended until further Order of this Court.

11. **THIS COURT ORDERS** that, except as specifically permitted herein, the Nordstrom Canada Entities are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by any one of the Nordstrom Canada Entities to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of the Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business for the purpose of the Orderly Wind-down or pursuant to this Order or any other Order of the Court.

### **ORDERLY WIND-DOWN**

12. **THIS COURT ORDERS** that the Nordstrom Canada Entities shall, subject to such requirements as are imposed by the CCAA, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of the Business or operations, and to dispose of redundant or non-material assets not exceeding \$250,000 in any one transaction or \$1 million in the aggregate in any series of related transactions; provided that, with respect to leased premises, the Nordstrom Canada Entities may, subject to the requirements of the CCAA and paragraphs 10, 13 and 14 herein, vacate, abandon or quit the whole (but not part of) and may permanently (but not temporarily) cease, downsize or shut down any of the Business or operations in respect of any leased premises;

- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as the applicable Nordstrom Canada Entity deems appropriate;
- (c) pursue all offers for sales of material parts of the Business or the Property, in whole or part, subject to prior approval of this Court being obtained before any sale (except as permitted by paragraph 12(a) above);
- (d) perform their obligations under the Wind-Down Agreement, including with respect to the provision of and payment for shared services;
- (e) in consultation with, and with the oversight of the Monitor, (i) engage in discussions with, and solicit proposals and agreements from, third parties in respect of the liquidation of the inventory, furniture, equipment and fixtures located in and/or forming part of the Property (the “**Liquidation Solicitation Process**”), and return to Court for the approval of any such agreement, and (ii) with the assistance of any real estate advisor or other Assistants as may be desirable, pursue all avenues and offers for the sale, transfer or assignment of the Leases to third parties, in whole or in part, and return to Court for approval of any such sale, transfer or assignment; and
- (f) apply to this Court for such approval, vesting or other Orders as may be necessary to consummate sale transactions for all or any part of the Property, including, without limitation, approval of a consulting or agency agreement concerning the liquidation of inventory, furniture, fixtures, and equipment forming part of the Property, and any related relief,

all of the foregoing to permit the Nordstrom Canada Entities to proceed with an orderly wind-down of the Business (the “**Orderly Wind-down**”).

13. **THIS COURT ORDERS** that the Nordstrom Canada Entities shall provide each of the relevant Landlords with notice of the Nordstrom Canada Entities’ intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant Landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the Landlord disputes the Nordstrom Canada Entities’ entitlement to remove any such fixture under the provisions of the applicable Lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such

Landlord and the Nordstrom Canada Entities, or by further Order of this Court upon application by the Nordstrom Canada Entities on at least two (2) days notice to such Landlord and any such secured creditors. If the Nordstrom Canada Entities disclaim the Lease governing such leased premises in accordance with Section 32 of the CCAA, the Nordstrom Canada Entities shall not be required to pay Rent under such Lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the Lease shall be without prejudice to the Nordstrom Canada Entities' claim to the fixtures in dispute.

14. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the Landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Nordstrom Canada Entities and the Monitor at least twenty-four (24) hours' prior written notice; and (b) at the effective time of the disclaimer, the relevant Landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such Landlord may have against the Nordstrom Canada Entities in respect of such Lease or leased premises; provided that, nothing herein shall relieve such Landlord of its obligation to mitigate any damages claimed in connection therewith.

### **STAY OF PROCEEDINGS**

15. **THIS COURT ORDERS** that until and including March 20, 2023, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Nordstrom Canada Entities or the Monitor, or their respective employees, directors, advisors, officers and representatives acting in such capacities, or affecting the Business or the Property, except with the prior written consent of the Nordstrom Canada Entities and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Nordstrom Canada Entities, or their employees, directors, officers or representatives acting in such capacities, or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

16. **THIS COURT ORDERS** that during the Stay Period, no Person having any agreements or arrangements with the owners, operators, managers or landlords of commercial shopping

centres or other commercial properties (including retail, office and industrial (warehouse) properties) in which there is located a store, office or warehouse owned or operated by the Nordstrom Canada Entities shall take any Proceedings or exercise any rights or remedies under such agreements or arrangements that may arise upon and/or as a result of the making of this Order, the declarations of insolvency by the Nordstrom Canada Entities or as a result of any steps taken by the Nordstrom Canada Entities pursuant to this Order and, without limiting the generality of the foregoing, no Person shall terminate, accelerate, suspend, modify, determine or cancel any such arrangement or agreement or be entitled to exercise any rights or remedies in connection therewith.

17. **THIS COURT ORDERS** that, until and including March 20, 2023, no Proceeding shall be commenced or continued against or in respect of Nordstrom, Inc. and its direct and indirect subsidiaries (other than the Nordstrom Canada Entities) (collectively, “**Nordstrom US**”) arising out of or in connection with any right, remedy or claim of any Person against Nordstrom US in connection with any indebtedness, indemnity, liability or obligation of any kind whatsoever of Nordstrom US under contract, statute or otherwise, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or unknown, by indemnity, guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including the right or ability of any Person to advance a claim for contribution, indemnity or otherwise, with respect to any matter, action, cause or chose in action, whether existing at present or commenced in future, which indebtedness, indemnity, liability or obligation is derivative of the primary liability of or related to the Nordstrom Canada Entities, except with the written consent of the Nordstrom Canada Entities, Nordstrom US and the Monitor, or with leave of this Court; provided that, this paragraph shall not apply to any present or future bank providing the Cash Management System in connection with any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

18. **THIS COURT ORDERS** that, without in any way altering, increasing, creating or eliminating any obligation or duty to mitigate losses or damages of any Landlord: (a) any Landlord claim pursuant to an indemnity, guarantee or surety executed by Nordstrom US in relation to any Nordstrom Canada Entity shall be unaffected and shall not be released or affected in any way in any Plan filed by the Applicants under the CCAA, or any proposal filed by the Nordstrom Canada

Entities under the Bankruptcy and Insolvency Act (Canada) (“**BIA**”); and (b) any Landlord claim pursuant to an indemnity, guarantee or surety executed by Nordstrom US in relation to any Nordstrom Canada Entity shall be unaffected by any determination of any rights, remedies and claims of such Landlords as against the Nordstrom Canada Entities, whether made in the within proceedings under the CCAA or in any subsequent proposal or bankruptcy proceedings under the BIA, other than that any recoveries under such proceedings received by such Landlords shall constitute a reduction and offset to such claim.

19. **THIS COURT ORDERS** that, to the extent any prescription, time or limitation period relating to any Proceeding against or in respect of any Nordstrom Canada Entity that is stayed pursuant to this Order may expire, the term of such prescription, time or limitation period shall hereby be deemed to be extended by a period equal to the Stay Period.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

20. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Nordstrom Canada Entities or the Monitor, or their respective employees, directors, officers, advisors and representatives acting in such capacities, or affecting the Business or the Property, are hereby stayed and suspended except with the prior written consent of the Nordstrom Canada Entities and the Monitor, or leave of this Court, provided that nothing in this Order shall (a) empower the Nordstrom Canada Entities to carry on any business which they are not lawfully entitled to carry on; (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (c) prevent the filing of any registration to preserve or perfect a security interest; or (d) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH RIGHTS**

21. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence or permit in favour of or held by the Nordstrom Canada Entities, except with the prior written consent of the Nordstrom Canada Entities and the Monitor, or leave of this Court. Without limiting the foregoing, no right, option, remedy, and/or

exemption in favour of the relevant Nordstrom Canada Entities shall be or shall be deemed to be negated, suspended, waived and/or terminated as a result of this Order.

### **CONTINUATION OF SERVICES**

22. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Nordstrom Canada Entities or statutory or regulatory mandates for the supply or license of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, cash management services, payment processing services, payroll and benefit services, insurance, freight services, transportation services, customs clearing, warehouse and logistics services, utility or other services to the Business or the Nordstrom Canada Entities, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply or license of such goods or services as may be required by the Nordstrom Canada Entities, and that the Nordstrom Canada Entities shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case, that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Nordstrom Canada Entities in accordance with normal payment practices of the Nordstrom Canada Entities or such other practices as may be agreed upon by the supplier or service provider and the applicable Nordstrom Canada Entities and the Monitor, or as may be ordered by this Court.

### **NON-DEROGATION OF RIGHTS**

23. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Nordstrom Canada Entities. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

### **EMPLOYEE TRUST**

24. **THIS COURT ORDERS** that the creation of the Employee Trust, as described in the Initial Heckel Affidavit, is hereby approved on substantially the terms and conditions set out in the Trust Agreement attached as Exhibit "T" to the Initial Heckel Affidavit, including, without

limitation, the appointment of Gale Rubenstein, as trustee (the “**Trustee**”), and the Monitor, as administrator (the “**Administrator**”), of the Employee Trust, and authorizes and directs the Monitor to act in such capacity, and the parties thereto to execute the Trust Agreement.

25. **THIS COURT ORDERS** that the Nordstrom Canada Entities are authorized to process or cause to be processed all amounts received from the Employee Trust, including making payments to the Beneficiaries (as defined in the Trust Agreement), subject to and in accordance with the terms and conditions of the Trust Agreement.

26. **THIS COURT ORDERS** that the amounts received by the Nordstrom Canada Entities from the Employee Trust, (a) when in the hands of the Nordstrom Canada Entities; and (b) when paid to any payment processor, shall be deemed to be held in trust for and on behalf of the Beneficiaries, subject to and in accordance with the Trust Agreement and shall not constitute property of the Nordstrom Canada Entities including, without limitation, under the CCAA and BIA, and shall not be subject to the claims of any Person other than as provided under the Trust Agreement.

27. **THIS COURT ORDERS** that the creation, establishment, funding and administration of the Employee Trust shall not, in whole or in part, directly or indirectly, (a) cause Nordstrom US to be or be deemed to be; or (b) in any way be relied upon to claim or assert that Nordstrom US is or is deemed to be, either (i) an employer, or (ii) a joint, common or related employer under contract, statute, common law or otherwise of any employee of the Nordstrom Canada Entities.

28. **THIS COURT ORDERS** that:

- (a) each Beneficiary shall be deemed to release the Releasees (as defined in the Trust Agreement) on the payment of a distribution from the Employee Trust in respect of such Beneficiary’s Eligible Employee Claim (as defined in the Trust Agreement), to the extent of such distribution (the “**Payment Release**”);
- (b) each Beneficiary shall be deemed to release the Releasees in respect of the full amount of such Beneficiary’s Eligible Employee Claim, sixty (60) days after the final payment to such Beneficiary under the Employee Trust or such later date as the Monitor, in its sole discretion, may designate; provided that, such Beneficiary has not delivered a notice of dispute to the Monitor and Employee Representative Counsel, substantially

in the manner and form attached as Schedule “A” hereto, within forty-five (45) days of the final payment to such Beneficiary; provided further that, in the event of any insufficiency of funds in the Employee Trust to cover a Beneficiary’s total Eligible Employee Claim, only the Payment Release shall be effective and there shall be no deemed full and final release of the full Eligible Employee Claim; and

- (c) the Settlor (as defined in the Trust Agreement) shall be deemed to be fully and completely subrogated to all rights of recovery of the Beneficiaries against Nordstrom Canada, in an amount equal to the aggregate gross amount paid to such Beneficiaries directly or indirectly from the Employee Trust.

29. **THIS COURT ORDERS** that without limiting the authorizations, protections and indemnities in favour of the Trustee set forth in the Trust Agreement, no action or proceeding may be commenced against the Trustee in respect of the Employee Trust without leave of this Court.

#### **EMPLOYEE REPRESENTATIVE COUNSEL**

30. **THIS COURT ORDERS** that Ursel Phillips Fellows Hopkinson LLP (“**Employee Representative Counsel**”) is hereby appointed as employee representative counsel to represent the interests of (a) all store-level employees; (b) all non-store level employees, other than (i) non-store level employees who will be eligible for a KERP payment, (ii) directors and officers of the Nordstrom Canada Entities, and (iii) the Senior Vice President, Regional Manager for Canada (collectively, the “**Represented Employees**”) in these CCAA proceedings, in any proceedings under the BIA or in any other proceedings respecting the insolvency of the Nordstrom Canada Entities which may be brought before this Court (collectively, the “**Insolvency Proceedings**”), for any employment, human rights or other workplace law issues affecting such Represented Employees in the Insolvency Proceedings, including, without limitation, with respect to the Trust Agreement, the Claims Process (as defined in the Trust Agreement) and the settlement or compromise of any rights, entitlements or claims of the Represented Employees (the “**Purpose**”).

31. **THIS COURT ORDERS** that the Employee Representative Counsel shall be entitled but not required to commence the process of identifying no more than three (3) Represented Employees to be nominated as Court-appointed representatives (the “**Employee Representatives**”) as soon as practicable following the date hereof. The Employee

Representatives shall, upon appointment, represent all Represented Employees (excluding the Opt-Out Individuals (as hereinafter defined), if any) in the Insolvency Proceedings, to act in the overall best interests of the Represented Employees and to advise and where appropriate instruct Employee Representative Counsel, in each case, solely for the Purpose. Employee Representative Counsel may rely upon the advice, information and instructions received from the Employee Representatives in carrying out its mandate without further communications with or instructions from the Represented Employees, except as may be recommended by Employee Representative Counsel or ordered by this Court.

32. **THIS COURT ORDERS** that, with the exception of Opt-Out Individuals, (a) the Employee Representatives and Employee Representative Counsel shall represent all Represented Employees in the Insolvency Proceedings; (b) the Represented Employees shall be bound by the actions of the Employee Representatives and Employee Representative Counsel in the Insolvency Proceedings; and (c) the Employee Representatives shall be entitled, on the advice of Employee Representative Counsel, to reach any settlement agreements, advocate on behalf of the Represented Employees for the Purpose and settle or compromise any rights, entitlements or claims of the Represented Employees, subject to approval of this Court.

33. **THIS COURT ORDERS** that the Nordstrom Canada Entities shall provide Employee Representative Counsel, the Employee Representatives and their respective advisors, subject to confidentiality arrangements acceptable to the Nordstrom Canada Entities and the Monitor, without charge, the following information, documents and data (the “**Information**”) to only be used for the Purpose in the Insolvency Proceedings: (a) the names, last known addresses and last known telephone numbers and e-mail addresses (if any) of the Represented Employees (excluding Opt-Out Individuals, if any, who have opted out prior to delivery of the Information); and (b) upon request of Employee Representative Counsel, such documents and data as may be reasonably relevant to matters relating to the issues affecting the Represented Employees in the Insolvency Proceedings, and that, in so providing all such Information, the Nordstrom Canada Entities are not required to obtain express consent from such Represented Employees authorizing disclosure of Information to Employee Representative Counsel for the Purpose and, further, in accordance with section 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, section 18(1)(i) of the *British Columbia Personal Information Protection Act* and section 20 of the *Alberta Personal Information Protection Act*, this Order shall be sufficient to authorize the

disclosure of the Information for the Purpose, without the knowledge or consent of the individual Represented Employees.

34. **THIS COURT ORDERS** that notice of the appointment of Employee Representative Counsel shall be provided by (a) the Nordstrom Canada Entities delivering a letter on behalf of Employee Representative Counsel to the Represented Employees explaining the terms of such appointment; (b) the inclusion of the details of such appointment in the CCAA Notice (as hereinafter defined); and (c) the posting of notice of such appointment on the Monitor's Website (as hereinafter defined) and on Employee Representative Counsel's website.

35. **THIS COURT ORDERS** that any individual Represented Employee who does not wish to be represented by the Employee Representatives and Employee Representative Counsel in the Insolvency Proceedings shall, within thirty (30) days of the date of the letter pursuant to paragraph 34 above, notify the Monitor, in writing that such Represented Employee is opting out of representation by the Employee Representatives and Employee Representative Counsel by delivering to the Monitor an opt-out notice in the form attached as Schedule "B" hereto (each an "**Opt-Out Notice**"), and shall thereafter not be bound by the actions of the Employee Representatives or Employee Representative Counsel and shall represent themselves or be represented by any counsel that such Represented Employee may retain exclusively at their own expense (any such Represented Employee that delivers an Opt-Out Notice in compliance with the terms hereof, an "**Opt-Out Individual**"). The Monitor shall deliver copies of all Opt-Out Notices received to the Nordstrom Canada Entities and Employee Representative Counsel as soon as reasonably practicable.

36. **THIS COURT ORDERS** that, subject to the terms of the engagement letter between Nordstrom Canada and Employee Representative Counsel, Employee Representative Counsel shall be paid its reasonable and documented fees and disbursements by the Nordstrom Canada Entities on a monthly basis, promptly upon rendering its accounts to the Nordstrom Canada Entities for fulfilling its mandate in accordance with this Order, and subject to such redactions to the invoices as are necessary to maintain solicitor-client privilege between Employee Representative Counsel and the Represented Employees. In the event of any disagreement with respect to such fees and disbursements, such disagreement may be remitted to this Court for determination.

37. **THIS COURT ORDERS** that no action or proceeding may be commenced against Employee Representative Counsel or the Employee Representatives in respect of the performance of their duties under this Order, without leave of this Court on seven (7) days' notice to Employee Representative Counsel or the Employee Representatives, as the case may be, the Nordstrom Canada Entities and the Monitor.

38. **THIS COURT ORDERS** that Employee Representative Counsel is authorized to take all steps and to do all acts necessary or desirable to carry out the terms of this Order, including dealing with any Court, regulatory body or other government ministry, department or agency, and to take all such steps as are necessary or incidental thereto. Employee Representative Counsel and Employee Representatives shall have no liability as a result of their appointment or the fulfilment of their duties in carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on their part.

#### **KEY EMPLOYEE RETENTION PLAN**

39. **THIS COURT ORDERS** that the Key Employee Retention Plan (the "**KERP**"), as described in the Initial Heckel Affidavit, is hereby approved and the Nordstrom Canada Entities are authorized to make payments contemplated thereunder in accordance with the terms and conditions of the KERP.

40. **THIS COURT ORDERS** that the key employees referred to in the KERP (the "**Key Employees**") shall be entitled to the benefit of and are hereby granted a charge on the Property, which charge shall not exceed an aggregate amount of \$2.6 million (the "**KERP Charge**"), as security for amounts payable to the Key Employees pursuant to the KERP. The KERP Charge shall have the priority set out in paragraphs 54 and 56 hereof.

#### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

41. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Nordstrom Canada Entities with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Nordstrom Canada Entities whereby the directors or officers are alleged under

any law to be liable in their capacity as directors or officers for the payment or performance of such obligations.

### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

42. **THIS COURT ORDERS** that the Nordstrom Canada Entities shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Nordstrom Canada Entities after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

43. **THIS COURT ORDERS** that the directors and officers of the Nordstrom Canada Entities shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$13.25 million, as security for the indemnity provided in paragraph 42 of this Order. The Directors' Charge shall have the priority set out in paragraphs 54 and 56 herein.

44. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge; and (b) the Nordstrom Canada Entities' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 42 of this Order.

### **APPOINTMENT OF MONITOR**

45. **THIS COURT ORDERS** that A&M is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Nordstrom Canada Entities with the powers and obligations set out in the CCAA or set forth herein and that the Nordstrom Canada Entities and their shareholders, partners, members, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Nordstrom Canada Entities pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

46. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Nordstrom Canada Entities' receipts and disbursements;
- (b) assist the Nordstrom Canada Entities with the Orderly Wind-down;
- (c) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, certain shared services provided to and by the Nordstrom Canada Entities under the Wind-Down Agreement during the Orderly Wind-down and such other matters as may be relevant to the proceedings herein;
- (d) advise the Nordstrom Canada Entities in their preparation of the Nordstrom Canada Entities' cash flow statements and the dissemination of other financial information;
- (e) advise the Nordstrom Canada Entities in their development of the Plan and any amendments to the Plan;
- (f) assist the Nordstrom Canada Entities, to the extent required by the Nordstrom Canada Entities, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Nordstrom Canada Entities, to the extent that is necessary to adequately assess the Nordstrom Canada Entities' business and financial affairs or to perform its duties arising under this Order;
- (h) liaise and consult with any Assistants and any liquidator selected through the Liquidation Solicitation Process, to the extent required, with respect to all matters relating to the Property, the Business, the Orderly Wind-down and such other matters as may be relevant to the proceedings herein;
- (i) administer the Employee Trust, in its role as Administrator, in consultation with the Trustee thereof, the Nordstrom Canada Entities and Employee Representative Counsel;

- (j) be at liberty to engage independent legal counsel, advisors or such other persons, or utilize the services of employees of its affiliates, as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (k) be at liberty to serve as a “foreign representative” of the Nordstrom Canada Entities in any proceeding outside of Canada;
- (l) assist the Nordstrom Canada Entities, to the extent required by the Nordstrom Canada Entities, with any matters relating to any foreign proceeding commenced in relation to any of the Nordstrom Canada Entities; and
- (m) perform such other duties as are required by this Order or by this Court from time to time.

47. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

48. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, the *Ontario Occupational Health and Safety Act*, the *British Columbia Environmental Management Act*, the *British Columbia Riparian Areas Protection Act*, the *British Columbia Workers Compensation Act*, the *Alberta Environmental Protection and Enhancement Act*, the *Alberta Water Act*, and the *Alberta Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall

not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

49. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Nordstrom Canada Entities with information provided by the Nordstrom Canada Entities in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Nordstrom Canada Entities is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Nordstrom Canada Entities may agree.

50. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, including, for greater certainty, in the Monitor's capacity as Administrator of the Employee Trust, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

51. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, counsel to the Nordstrom Canada Entities, and counsel to the directors and officers of the Nordstrom Canada Entities, shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to, on or subsequent to the date of this Order, by the Nordstrom Canada Entities as part of the costs of these proceedings. The Nordstrom Canada Entities are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor, counsel to the Nordstrom Canada Entities and counsel to the directors and officers of the Nordstrom Canada Entities, on such terms as such parties may agree and is hereby authorized to pay to the Monitor, counsel to the Monitor, counsel to the Nordstrom Canada Entities, counsel to the directors and officers of the Nordstrom Canada Entities and Employee Representative Counsel, retainers, *nunc pro tunc*, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

52. **THIS COURT ORDERS** 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.

#### **ADMINISTRATION CHARGE**

53. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, counsel to the Nordstrom Canada Entities, Employee Representative Counsel (up to the maximum amount of \$75,000) and counsel to the directors and officers of the Nordstrom Canada Entities, shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$1.5 million, as security for their professional fees and disbursements incurred at their standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 54 and 56 hereof.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

54. **THIS COURT ORDERS** that the priorities of the Administration Charge, the Directors’ Charge and the KERP Charge (collectively, the “**Charges**”), as among them, shall be as follows:

- (a) First – Administration Charge (to the maximum amount of \$1.5 million);
- (b) Second – KERP Charge (to the maximum amount of \$2.6 million); and
- (c) Third – Directors’ Charge (to the maximum amount of \$13.25 million).

55. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

56. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts (including deemed or constructive trusts), liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any Person.

57. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Nordstrom Canada Entities shall not grant any Encumbrances over any Property that rank in priority to, or pari passu with, any of the Charges unless the Nordstrom Canada Entities also obtain the prior written consent of the Monitor and the beneficiaries of the Charges (collectively, the “**Chargees**”), or further Order of this Court.

58. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) or receivership order(s) issued pursuant to the BIA or otherwise, or any bankruptcy order or receivership order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Nordstrom Canada Entities, and notwithstanding any provision to the contrary in any Agreement:

- (i) the creation of the Charges shall not create or be deemed to constitute a breach by the Nordstrom Canada Entities of any Agreement to which they are a party,
- (ii) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges, and
- (iii) the payments made by the Nordstrom Canada Entities pursuant to this Order and the granting of the Charges do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

59. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Nordstrom Canada Entities’ interests in such real property leases.

## SERVICE AND NOTICE

60. **THIS COURT ORDERS** that the Monitor shall (a) without delay, publish in the Globe & Mail a notice containing the information prescribed under the CCAA (the “**CCAA Notice**”); and (b) within five (5) days after the date of this Order, (i) make this Order publicly available in the manner prescribed under the CCAA, (ii) send, or cause to be sent, in the prescribed manner (including by electronic message to the e-mail addresses as last shown in the Nordstrom Canada Entities’ books and records), a notice to all known creditors having a claim against the Nordstrom Canada Entities of more than \$1,000, and (iii) prepare a list showing the names and addresses of such creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of individuals who are creditors publicly available, unless otherwise ordered by the Court.

61. **THIS COURT ORDERS** that any employee of any of the Nordstrom Canada Entities who is sent a notice of termination of employment or any other communication by the Nordstrom Canada Entities after the date hereof shall be deemed to have received such communication by no later than 8:00 a.m. Eastern Standard/Daylight Time on the fourth (4<sup>th</sup>) day following the date any such notice is sent, if such notice is sent by ordinary mail, expedited parcel or registered mail to the individual’s address as reflected in the Nordstrom Canada Entities’ books and records; provided, however, that any communication that is sent to an employee of the Nordstrom Canada Entities by electronic message to the individual’s corporate email address and/or the individual’s personal email address as last shown in the Nordstrom Canada Entities’ books and records shall be deemed to have been received twenty-four (24) hours after the time such electronic message was sent, notwithstanding the mailing of any notices of termination of employment or other employee communication.

62. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca//scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to

Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a case website shall be established in accordance with the Protocol with the following URL: <http://www.alvarezandmarsal.com/NordstromCanada> (the “**Monitor’s Website**”).

63. **THIS COURT ORDERS** that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in these proceedings (the “**Service List**”). The Monitor shall post the Service List, as may be updated from time to time, on the Monitor’s Website, provided that the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

64. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol or the CCAA and the regulations thereunder is not practicable, the Nordstrom Canada Entities and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile transmission or electronic message to the Nordstrom Canada Entities’ creditors or other interested parties at their respective addresses (including e-mail addresses) as last shown in the books and records of the Nordstrom Canada Entities and that any such service or distribution shall be deemed to be received on the earlier of (a) the date of forwarding thereof, if sent by electronic message on or prior to 5:00 p.m. Eastern Standard/Daylight Time (or on the next business day following the date of forwarding thereof if sent on a non-business day); (b) the next business day following the date of forwarding thereof, if sent by courier, personal delivery, facsimile transmission or electronic message sent after 5:00 p.m. Eastern Standard/Daylight Time; or (c) on the third (3<sup>rd</sup>) business day following the date of forwarding thereof, if sent by ordinary mail.

65. **THIS COURT ORDERS** that the Nordstrom Canada Entities and the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding copies thereof by electronic message to the Nordstrom Canada Entities creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements

within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS).

## **GENERAL**

66. **THIS COURT ORDERS** that the Nordstrom Canada Entities or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their respective powers and duties hereunder.

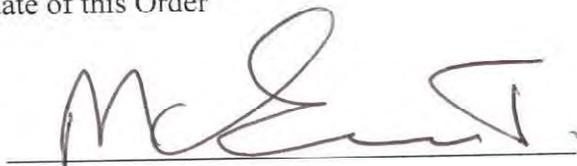
67. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Nordstrom Canada Entities, the Business or the Property.

68. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, or regulatory or administrative body having jurisdiction in Canada, the United States or in any other jurisdiction, to give effect to this Order and to assist the Nordstrom Canada Entities, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Nordstrom Canada Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Nordstrom Canada Entities and the Monitor and their respective agents in carrying out the terms of this Order.

69. **THIS COURT ORDERS** that the Nordstrom Canada Entities and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

70. **THIS COURT ORDERS** that any interested party (including the Nordstrom Canada Entities and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) calendar days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

71. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order

A handwritten signature in black ink, appearing to be "McEust", is written over a horizontal line. The signature is cursive and somewhat stylized.

**SCHEDULE "A"**

**NOTICE OF DISPUTE REGARDING ELIGIBLE EMPLOYEE CLAIM**

I, \_\_\_\_\_ (insert name and employee number if known), am disputing that I have been paid in full in respect of my Eligible Employee Claim, as such term is defined in the Trust Agreement. *\*\*Please see the Monitor's website at [www.alvarezandmarsal.com/NordstromCanada](http://www.alvarezandmarsal.com/NordstromCanada) or Employee Representative Counsel's website at [www.upflaw.ca](http://www.upflaw.ca) for further information. \*\**

I am a \_\_\_\_\_ (insert position) in the store located at \_\_\_\_\_ (insert address/location).

The basis for my objection is:  
(insert full particulars regarding dispute, including all facts and calculations on which you are relying)

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Based on the foregoing, I claim that I am owed the sum of \$ \_\_\_\_\_.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

Signature: \_\_\_\_\_

Address: \_\_\_\_\_

Tel: \_\_\_\_\_

Email: \_\_\_\_\_

## METHOD OF DELIVERY

This notice of dispute must be sent to Employee Representative Counsel and to the Monitor at the following addresses:

To Employee Representative Counsel:

Ursel Phillips Fellows Hopkinson LLP  
555 Richmond Street West  
Suite 1200  
Toronto, ON M5V 3R1

Attention: Employee Representative Counsel  
Email: [NordstromCanada@upfhlaw.ca](mailto:NordstromCanada@upfhlaw.ca)

To the Monitor at:

Alvarez & Marsal Canada Inc., in its  
capacity as Court-appointed Monitor of the  
Nordstrom Canada Entities  
Royal Bank Plaza, South Tower  
200 Bay Street, Suite 2900  
P.O. Box 22  
Toronto, ON M5J 2J1

Attention: Nordstrom Canada Monitor  
Email: [NordstromCanada@alvarezandmarsal.com](mailto:NordstromCanada@alvarezandmarsal.com)

**NOTE: THIS MUST BE SENT TO EMPLOYEE REPRESENTATIVE COUNSEL  
AND THE MONITOR NO LATER THAN FORTY-FIVE (45) DAYS AFTER  
YOU RECEIVE YOUR LAST PAYMENT FROM NORDSTROM  
CANADA'S PAYROLL**

**SCHEDULE "B"**

**FORM OF REPRESENTED EMPLOYEE OPT-OUT NOTICE**

To: Alvarez & Marsal Canada Inc., in its capacity as Court-appointed  
Monitor of the Nordstrom Canada Entities  
Royal Bank Plaza, South Tower  
200 Bay Street, Suite 2900  
P.O. Box 22  
Toronto, ON M5J 2J1

Attention : Nordstrom Canada Monitor  
Email : [NordstromCanada@alvarezandmarsal.com](mailto:NordstromCanada@alvarezandmarsal.com)

I hereby provide written notice that I do not wish to be represented by Ursel Phillips Fellows Hopkinson LLP, employee representative counsel (the "**Employee Representative Counsel**") for the Represented Employees of Nordstrom Canada Retail, Inc., Nordstrom Canada Holdings, LLC, Nordstrom Canada Holdings II, LLC and Nordstrom Canada Leasing LP (collectively, the "**Nordstrom Canada Entities**") in their proceedings under the *Companies' Creditors Arrangement Act* (the "**CCAA Proceedings**"). I understand that by opting out of this representation, if I wish to take part in the CCAA Proceedings, then I would need to do so as an independent party. I am responsible for retaining my own legal counsel should I choose to do so, and that I would be personally liable for the costs of my own legal representation.

I understand that a copy of this Opt-Out Form will be provided to the Employee Representative Counsel and to the Nordstrom Canada Entities.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Signature

Name [please print]: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

**Note: To opt out, this form must be completed and received at the above address on or before \_\_\_\_\_, 2023.**

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

**Ontario  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**AMENDED AND RESTATED INITIAL ORDER**

**OSLER, HOSKIN & HARCOURT LLP**

1 First Canadian Place, P.O. Box 50  
Toronto, ON M5X 1B8  
Fax: 416.862.6666

Tracy C. Sandler (LSO# 32443N)  
Tel: 416.862.5890  
Email: [tsandler@osler.com](mailto:tsandler@osler.com)

Jeremy Dacks (LSO# 41851R)  
Tel: 416.862.4923  
Email: [jdacks@osler.com](mailto:jdacks@osler.com)

Martino Calvaruso (LSO# 57359Q)  
Tel: 416.862.6665  
Email: [mcalvaruso@osler.com](mailto:mcalvaruso@osler.com)

Marleigh Dick (LSO# 79390S)  
Tel: 416.862.4725  
Email: [mdick@osler.com](mailto:mdick@osler.com)

Lawyers for the Applic

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

**MOTION RECORD OF THE APPLICANTS  
(Motion for Claims Procedure Order and Stay Extension)  
Volume 1 of 2**

**OSLER, HOSKIN & HARCOURT LLP**

100 King Street West  
1 First Canadian Place  
Suite 6200, P.O. Box 50  
Toronto ON M5X 1B8

Tracy C. Sandler (LSO# 32443N)  
Tel: 416.862.5890  
Email: [tsandler@osler.com](mailto:tsandler@osler.com)

Jeremy Dacks (LSO# 41851R)  
Tel: 416.862.4923  
Email: [jdacks@osler.com](mailto:jdacks@osler.com)

Martino Calvaruso (LSO# 57359Q)  
Tel: 416.862.5960  
Email: [mcalvaruso@osler.com](mailto:mcalvaruso@osler.com)

Marleigh Dick (LSO# 79390S)  
Tel: 416.862.4725  
Email: [mdick@osler.com](mailto:mdick@osler.com)

Lawyers for the Applicants