

**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 PAYLESS HOLDINGS LLC, PAYLESS SHOESOURCE
CANADA INC., PAYLESS SHOESOURCE CANADA GP INC. AND THOSE OTHER
ENTITIES LISTED ON SCHEDULE "A" HERETO**

**APPLICATION OF PAYLESS HOLDINGS LLC UNDER SECTION 46 OF THE
COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**

FACTUM OF THE APPLICANT

July 26, 2017

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PART I - NATURE OF THE MOTION

1. This factum is filed in support of a motion by Payless Holdings LLC (the "**Applicant**"), in its capacity as foreign representative (the "**Foreign Representative**") of itself as well as Payless ShoeSource Canada Inc., Payless ShoeSource Canada GP Inc., Payless ShoeSource Canada LP (collectively, the "**Payless Canada Group**") and those other entities listed in Schedule "A" that filed voluntary petitions for relief pursuant to Chapter 11 of the U.S. Bankruptcy Code (collectively with the Applicant, the "**Chapter 11 Debtors**", and with their non-debtor affiliated companies, "**Payless**").
2. The Applicant is seeking an Order (the "**Plan Recognition Order**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") which, among other things, recognizes and enforces an Order dated July 26, 2017 (the "**Confirmation Order**") of the United States Bankruptcy Court for the Eastern District of Missouri (the "**U.S. Court**") which gave final confirmation for the *Fifth Amended Joint Plan of Reorganization of Payless Holdings LLC and its Debtor affiliates pursuant to Chapter 11 of the Bankruptcy Code* dated July 21, 2017 (the "**Plan**"), and the Plan Supplement dated July 10, 2017, as amended, modified or supplemented (as so amended, the "**Plan Supplement**" and, together with the Plan, the "**Confirmed Plan**").

3. Capitalized terms used herein and not otherwise defined have the meanings given to them in the Confirmed Plan, or the affidavits of Michael Schwindle sworn April 6, 2017 (the “**Initial Affidavit**”), June 19, 2017 (the “**Second Schwindle Affidavit**”), or July 25, 2017 (the “**Third Schwindle Affidavit**”). All monetary amounts are in U.S. dollars unless stated otherwise.

PART II - THE FACTS

A. Background and History of Proceedings

4. Payless is an iconic American footwear retailer. It had approximately \$2.3 billion in net sales in fiscal year 2016. It is the largest specialty family footwear retailer in the Western hemisphere and is the second largest footwear retailer by unit sales in the United States. If the Chapter 11 Debtors can restructure their balance sheet, Payless is well-positioned for continued success in the budget-conscious family footwear market.¹

5. The Payless Canada Group’s operations are closely integrated with those of the Chapter 11 Debtors, and the Chapter 11 Debtors are the Payless Canada Group’s sole source of inventory.² As a result, a successful restructuring of the Chapter 11 Debtors is essential for the Payless Canada Group’s survival as a going concern.³

6. On April 4, 2017, each of the Chapter 11 Debtors filed voluntary petitions for relief pursuant to Chapter 11 of the U.S. Bankruptcy Code with the U.S. Court (the “**Chapter 11 Proceedings**”).⁴

¹ Initial Affidavit at para 12.

² Initial Affidavit at paras 36-40 and 42.

³ Initial Affidavit at para 68.

⁴ Third Schwindle Affidavit at para 4.

7. By Order dated April 7, 2017, this Court recognized the Chapter 11 Proceedings as a foreign main proceeding and the appointment of the Foreign Representative, and established related stays of proceedings in favour of the Chapter 11 Debtors.⁵

B. Background to the Chapter 11 Debtors' Plan

8. The Chapter 11 Debtors filed the most recent version of their Plan on July 21, 2017, and the most recent version of their related disclosure statement (the "**Disclosure Statement**") on June 23, 2017.⁶ The Plan Supplement was filed on July 10, 2017, and was amended on a number of occasions. The documents contained in the Plan Supplement are integral to, part of, and incorporated by reference into the Plan.⁷

9. On June 23, 2017, the U.S. Court entered an amended order (as so amended, the "**Disclosure Statement Order**") approving the Chapter 11 Debtors' Disclosure Statement, as well as approving the Chapter 11 Debtors' solicitation and voting procedures for voting on the Plan (the "**Solicitation and Voting Procedures**").⁸

10. Under the terms of the Plan, only certain impaired classes were permitted to vote on the Plan (the "**Voting Classes**").⁹ Every Voting Class has voted to accept the Plan, with over 99.2% in value and 96.1% in number of creditors who voted on the Plan voting to accept it.¹⁰

⁵ Third Swindle Affidavit at para 5.

⁶ Third Swindle Affidavit at paras 14 and 16.

⁷ Third Swindle Affidavit at para 15.

⁸ Third Swindle Affidavit at paras 12-13.

⁹ Third Swindle Affidavit at paras 18-19.

¹⁰ Third Swindle Affidavit at para 21.

11. On July 24, 2017, the U.S. Court confirmed the Plan.¹¹ The Confirmation Order was entered on July 26, 2017.¹² The key terms of the Confirmation Order are as follows:¹³

- (a) All requirements for the confirmation of the Plan have been satisfied, and the Plan is confirmed in its entirety.
- (b) Any reservations of rights, statements or joinders to confirmation not resolved before entry of the Confirmation Order or otherwise resolved at the confirmation hearing are overruled on their merits.
- (c) The Chapter 11 Debtors have complied with the Disclosure Statement Order and the Solicitation and Voting Procedures in all respects.
- (d) The Chapter 11 Debtors have been and will be acting in good faith if they proceed to
 - (i) consummate the Plan and the agreements, settlements, transactions, and transfers contemplated therein; and
 - (ii) take the actions authorized and directed by the Confirmation Order to reorganize their businesses.
- (e) The Plan is fair, equitable and reasonable, and the Plan does not discriminate unfairly against and is fair and equitable to the Classes who did not vote in favor of the Plan.¹⁴
- (f) The debtor release, third party releases, exculpations, injunctions and discharges set out in Article IX of the Plan were within the Court's jurisdiction; an essential means of implementing the Plan, and integral to and non-severable from the Plan; conferred

¹¹ Third Schwindle Affidavit at para 22.

¹² Supplementary Affidavit of Michael S. Shakra, sworn July 26, 2017 (the "**Supplementary Shakra Affidavit**"). A copy of the Confirmation Order as entered is attached as Exhibit A to the Supplementary Shakra Affidavit.

¹³ Third Schwindle Affidavit at para 23.

¹⁴ While all of the Voting Classes voted in favour of the Plan, a number of classes were deemed to have voted against the Plan because they will not receive any distribution or property or retain any claim against a debtor as a result of the Plan: Third Schwindle Affidavit at para 18.

a material benefit on the Chapter 11 Debtors, their Estates, and their creditors; and were fair, equitable and reasonable, and in exchange for good and valuable consideration.

C. Overview of the Confirmed Plan

12. When the Chapter 11 Debtors commenced the Chapter 11 Proceedings, they did so with a restructuring support agreement supported by approximately two-thirds of their first and second lien term loan holders. The restructuring support agreement contemplated a restructuring of approximately \$850 million of debt. The Chapter 11 Debtors have moved expeditiously through the Chapter 11 Proceedings and have obtained support from the overwhelming majority of voting creditors. The Plan will allow the Chapter 11 Debtors to emerge from the Chapter 11 Proceedings and CCAA protection with a simplified and sustainable capital structure that consists of approximately 50% less debt than on April 4, 2017.¹⁵

13. According to a recovery analysis prepared by Alvarez & Marsal North America, LLC, all classes of claims or interests will receive property of a value that is not less than the amount that any holder of a claim or interest would have received if the Chapter 11 Debtors were to be liquidated.¹⁶

14. The Plan provides that the claims of unsecured creditors of the Payless Canada Group are unaffected and will be reinstated on or following the effective date of the Plan (the “**Effective Date**”), along with any defences the Payless Canada Group may have in respect of such claims.¹⁷ All unsecured, non-priority claims against the Payless Canada Group (the “**Canadian General**

¹⁵ Third Schwindle Affidavit at para 8; Third Report of the Information Officer, Alvarez & Marsal Canada Inc. dated July 26, 2017 (the “**Third Report**”) at para 4.2.

¹⁶ Third Report at Appendix B.

¹⁷ Third Schwindle Affidavit at paras 25-26.

Unsecured Claims”) are an unimpaired Class under the Plan. As a result, they were deemed to vote in favour of the Plan, and were not entitled to cast votes in favour of or against the Plan.¹⁸

15. The reinstatement of the Canadian General Unsecured Claims under the Plan includes the reinstatement of any claims related to the assumption or rejection of an executory contract, including but not limited to the cure amount specified in the Plan Supplement, along with all rights and defenses of the Payless Canada Group in respect of any Canadian General Unsecured Claims (including any right of counterclaim or set off).¹⁹

16. Under the Confirmed Plan, the Chapter 11 Debtors will be entering into agreements for two exit financing facilities. The first is a (i) \$250 million senior secured revolving facility; and (ii) \$10 million senior secured first-in, last out term loan facility (the “**New ABL Facility**”), while the second is a term loan of up to \$280 million with two tranches (the “**New First Lien Term Loan Facility**” and, with the New ABL Facility, the “**New Credit Facilities**”).²⁰ Members of the Payless Canada Group will be guarantors under both of the New Credit Facilities.²¹

17. The Plan Supplement also addresses the contracts that will be assumed or rejected by the Chapter 11 Debtors, including the Payless Canada Group, after the Effective Date. The Plan Supplement provides that all contracts where any member of the Payless Canada Group is a counterparty will be assumed by the applicable Reorganized Debtor, unless it is expressly rejected.²²

18. The vast majority of the contracts to which members of the Payless Canada Group are a party will be assumed and will continue after the Effective Date.²³ In relation to such assumed contracts,

¹⁸ Third Swindler Affidavit at para 24.

¹⁹ Third Swindler Affidavit at para 25.

²⁰ Third Swindler Affidavit at paras 29-32. The key terms of the New Credit Facilities are discussed in the Third Report at paras 4.20 and 4.21.

²¹ Third Swindler Affidavit at para 32.

²² Third Swindler Affidavit at para 37.

²³ Third Swindler Affidavit at para 36.

the Plan provides that they will re-vest in and be fully enforceable by the Reorganized Debtor assuming them, in accordance with their terms, unless otherwise agreed by such Reorganized Debtor and the counterparty and except as such terms are expressly modified by any order of the U.S. Court authorizing and providing for its assumption under applicable federal law and where such order is recognized by the applicable Canadian court.²⁴

19. However, approximately 25 contracts to which a member of the Payless Canada Group is a party are being rejected pursuant to the Confirmed Plan. In general, the contracts being rejected are already inactive or have been terminated on their own terms, and are being rejected as a cleanup exercise.²⁵

PART III - ISSUES AND LAW

20. The issue on this motion is whether this Court should grant the Plan Recognition Order.

A. This Court has Jurisdiction to grant the Plan Recognition Order under Part IV of the CCAA

21. When a foreign main proceeding has been recognized under Part IV of the CCAA, section 49 empowers this Court to make any order that it considers appropriate if satisfied that such an order is necessary for the protection of the debtor's property or the interests of one or more creditors.²⁶ Section 50 provides that an order under Part IV "may be made on any terms and conditions that the Court considers appropriate in the circumstances."²⁷

²⁴ Third Swindle Affidavit at para 38.

²⁵ Third Swindle Affidavit at para 40.

²⁶ CCAA, s 49(1).

²⁷ CCAA, s 50.

22. This Court has previously granted a number of orders similar to the Plan Recognition Order that recognize and give effect to a plan of reorganization under the U.S. Bankruptcy Code.²⁸ Therefore, it is clear that the Court has the jurisdiction to grant the Plan Recognition Order.

23. The central principle guiding the exercise of the Court's jurisdiction under Part IV is comity. This is reflected in section 52(1) of the CCAA: if an order recognizing a foreign proceeding is made, the Court must "cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding" (emphasis added).²⁹ Canadian courts have emphasized the importance of comity, cooperation, and accommodation between courts in cross-border insolvency proceedings in order to enable enterprises to restructure on a cross-border basis.³⁰

24. Therefore, it has been customary for Canadian CCAA courts to recognize orders made by courts in foreign main proceedings, so long as those orders are not contrary to public policy or the purposes of the CCAA, in deference to the judgment of the court charged with overseeing a restructuring.³¹ Coordination of international insolvency proceedings is particularly critical in ensuring the equal and fair treatment of creditors regardless of their locations.³²

25. Significantly, this Court has previously concluded that recognizing and implementing a plan of reorganization confirmed by a U.S. bankruptcy court promotes the purposes of Part IV of the CCAA. In *Xerium*, Campbell J. stated that he was "satisfied that the implementation of the Plan in Canada not only helps to ensure the orderly completion of the Chapter 11 Debtors' restructuring process, but avoids what otherwise might have been a time-consuming and costly process were the

²⁸ See, for example, *Re Lightsquared Inc*, 2015 ONSC 2309; *Re Lightsquared Inc* (April 9, 2015), Ont Sup Ct, CV-12-9719-00CL (Order (Plan Confirmation)); *Re Xerium Technologies Inc*, 2010 ONSC 3974 [*Xerium*].

²⁹ CCAA, s 52(1).

³⁰ *Re Payless Holdings Inc LLC*, 2017 ONSC 2242 at para 35; *Re Lear Canada*, 2009 CarswellOnt 4232 (Sup Ct) at para 11.

³¹ *Re Hartford Computer Hardware Inc*, 2012 ONSC 964 at paras 14-17; *Re Massachusetts Elephant & Castle Group Inc*, 2011 ONSC 4201 at para 39.

³² *Re Matlack Inc*, 2001 CarswellOnt 1830 (Sup Ct) [*Matlack*] at para 3.

Canadian part of the Applicant itself to make a separate restructuring application under the CCAA in Canada.”³³ The same considerations apply in this case.

26. The significance of comity is particularly acute where, as here, there is interdependence between operations of a company in the United States and Canada. Under such circumstances, exercising discretion granted under Part IV in co-operation with the restructuring proceedings in the U.S. Court is particularly important.³⁴

27. With these principles in mind, this Court should exercise its discretion granted under Part IV of the CCAA to recognize the Confirmation Order of the U.S. Court.

B. This Court should Recognize the Confirmation Order

28. The Applicant submits that recognition of the Confirmation Order is necessary for protecting the property of the Chapter 11 Debtors and the interests of their creditors, and is appropriate in the circumstances.³⁵

29. The Confirmation Order provides that the Plan satisfies the requirements of and is consistent with the objectives of the Bankruptcy Code. In particular, the Confirmation Order provides that:

- (a) the Confirmed Plan is fair, reasonable and proposed in good faith;³⁶
- (b) votes to accept the Confirmed Plan were solicited and tabulated fairly, in good faith, and in a manner consistent with the Disclosure Statement Order, the U.S. Bankruptcy Code and the rules pursuant to the U.S. Bankruptcy Code;³⁷
- (c) the Confirmed Plan will not likely be followed by the need for liquidation or further financial reorganization of the Chapter 11 Debtors;³⁸ and

³³ *Xerium*, at para 29; see also *Re Ultra Petroleum Corp*, 2017 YKSC 23 at para 15.

³⁴ *Matlack*, at para 8; *Re Caesars Entertainment Operating Company Inc*, 2015 ONSC 712 at para 38.

³⁵ Third Schwindle Affidavit at para 41.

³⁶ Confirmation Order at paras 48, 61, 68, 78, and 103.

³⁷ Confirmation Order at para 46.

³⁸ Confirmation Order at para 57.

- (d) the transactions effectuating the Chapter 11 Debtors' restructuring, and the resulting terms of the agreements contemplated by the Confirmed Plan, are in the best interests of the Chapter 11 Debtors, their estates, and the holders of claims and interests.³⁹

30. In *Xerium*, this Court noted that "[t]hese are principles which also underlie the CCAA, and thus dictate in favour of the Plan's recognition and implementation in Canada."⁴⁰

31. In addition, the specific factors considered by this Court in *Xerium* when recognizing and giving effect to a plan of reorganization under Chapter 11 of the Bankruptcy Code support recognizing the Confirmation Order in this case as well.

32. First, the Confirmed Plan is essential for the restructuring of the Chapter 11 Debtors and Payless as a global enterprise.⁴¹ This is significant for Canadian stakeholders as the Payless Canada Group's operations are closely integrated with those of the Chapter 11 Debtors,⁴² and a successful restructuring of the Chapter 11 Debtors is essential for the Payless Canada Group's ability to continue as a going concern.⁴³

33. Second, the Confirmed Plan was confirmed by the U.S. Court in accordance with standard and well established procedures and practices, including the court-approved Disclosure Statement, and the Solicitation and Voting Procedures.⁴⁴

34. Third, by granting the Initial Recognition Order recognizing the Chapter 11 Proceedings as Foreign Main Proceedings, this Court acknowledged that Canada is an ancillary jurisdiction in the reorganization of the Chapter 11 Debtors.⁴⁵

³⁹ Confirmation Order at para 35.

⁴⁰ *Xerium*, at para 28.

⁴¹ *Xerium*, at paras 27(a).

⁴² *Xerium*, at paras 27(b).

⁴³ Initial Affidavit at paras 36-40 and 42.

⁴⁴ *Xerium*, at paras 27(c).

⁴⁵ *Xerium*, at para 27(d).

35. Fourth, Payless carries on business in Canada through its Canadian subsidiaries, the Payless Canada Group, who were debtors in the Chapter 11 Proceedings as well, and had the same access and participation in the Chapter 11 Proceedings as the other Chapter 11 Debtors.⁴⁶

36. Fifth, the Confirmed Plan reinstates all of the Canadian General Unsecured Claims and such claims are unimpaired.

37. Finally, recognition of the Confirmation Order is necessary for ensuring the fair and efficient administration of this cross-border insolvency, and for ensuring that all stakeholders are treated equitably.⁴⁷ It is in the interests of all stakeholders that there be a co-ordinated cross-border approach to ensure that the Chapter 11 Debtors can emerge from Chapter 11 and continue operating as a stronger and well-capitalized company.

38. The Information Officer supports the granting of the Plan Recognition Order,⁴⁸ including recognizing the Confirmation Order. In its report, the Information Officer has stated that the relief sought by the Applicant is reasonable in the circumstances, and has noted that the Plan Recognition Order “will allow for the Confirmed Plan to be implemented in Canada resulting in payment of Canadian General Unsecured Claims in full in the ordinary course and emergence of a reorganized Payless from the Restructuring Proceedings.”⁴⁹

39. For these reasons, this Court should exercise its discretion under section 49 to recognize the Confirmation Order.

⁴⁶ *Xerium*, at para 27(e).

⁴⁷ *Xerium*, at para 27(f).

⁴⁸ Third Report at para 7.2.

⁴⁹ Third Report at para 7.1.

C. The Court should Authorize the Members of the Payless Canada Group to enter into the New Credit Facilities

40. The Applicants submit that this Court should authorize the members of the Payless Canada Group to enter into the New Credit Facilities and recognize the provisions of the Confirmation Order relating to the New Credit Facilities.

41. The Confirmation Order provides that the New Credit Facilities are an essential element of the Plan, in the best interests of the Chapter 11 Debtors and all holders of Claims, and are necessary for the confirmation and consummation of the Plan. In addition, the Confirmation Order also provides that the terms and conditions of the New Credit Facilities are fair and reasonable, and that the New Credit Facilities had been negotiated at arm's length. As a result, the Confirmation Order authorizes the Chapter 11 Debtors, including the members of the Payless Canada Group, to enter into the New Credit Facilities.⁵⁰

42. The New Credit Facilities are essential for a successful restructuring of the Chapter 11 Debtors. Among other things, they will provide the funds for the Chapter 11 Debtors' working capital and to pay the various claims assumed by them under the Plan,⁵¹ including the amounts outstanding on the DIP ABL Facility and the DIP Term Facility.⁵²

43. Approving the New Credit Facilities is consistent with the policy objectives animating the CCAA. CCAA courts have approved exit facilities in domestic Canadian proceedings, both in and before the approval of a plan of arrangement.⁵³ As noted by Hoy J.A. (as she then was) in *Re Crystallex*, "[e]xit or post-plan financing is often a key element, or a pre-requisite, of the plan voted

⁵⁰ Third Schwindle Affidavit at paras 33-34; Confirmation Order at para 74.

⁵¹ Third Schwindle Affidavit at para 33.

⁵² Third Report at para 4.20; Third Schwindle Affidavit at para 31.

⁵³ See, for example, *Re Air Canada*, 2004 CarswellOnt 469 (Sup Ct) at paras 10 and 15; *Re Boutique Jacob inc.*, 2011 QCCS 6030 at para 26.

on by creditors.”⁵⁴ The New Credit Facilities are an essential component of and necessary to successfully consummate the Plan. Therefore, approving the New Credit Facilities is consistent with one of the primary objectives of the CCAA – avoiding the social and economic losses resulting from liquidation of an insolvent company, and promoting the prospects of a plan of compromise or arrangement that will lead to a continuation of a debtor enterprise, albeit in restructured form, after plan approval.⁵⁵

44. Further, the U.S. Court has approved the New Credit Facilities and authorized the members of the Payless Canada Group to enter into these facilities. As a result, the principle of comity – the significant consideration under Part IV of the CCAA – encourage this Court to approve the Payless Canada Group entering into the New Credit Facilities as well.

45. As noted above, the Information Officer supports the Payless Canada Group’s motion for recognition of the Confirmation Order, which includes authorizing the Payless Canada Group to enter into the New Credit Facilities.

D. The Other Terms of the Plan Recognition Order Should also be Approved

46. The other components of the Plan Supplement, including the assumption and rejections of contracts, are an essential component of the Plan as found by the U.S. Court in the Confirmation Order.⁵⁶ Similarly, the Confirmation Order provides that the debtor release, third party releases, exculpations, injunctions and discharges set out in the Plan are an essential means of implementing the Plan, and integral to and non-severable from the Plan; confer a material benefit on the Chapter 11 Debtors, their Estates, and their creditors; and are fair, equitable and reasonable, and in exchange for

⁵⁴ *Re Crystallex International Corp*, 2012 ONCA 404 [*Crystallex*] at para 68.

⁵⁵ *Crystallex*, at paras 63 and 66.

⁵⁶ Third Schwindle Affidavit at para 15; Confirmation Order at paras 14 and 79.

good and valuable consideration.⁵⁷ Finally, the Plan Recognition Order contemplates the termination of the Stay following the Effective Date, which is consistent with the Confirmation Order.⁵⁸

47. In these circumstances, the Applicant submits that recognizing the Confirmation Order and granting the other relief contained in the Plan Recognition Order is appropriate, promotes the objectives of Part IV of the CCAA, and is in the best interests of all of the Chapter 11 Debtors (including the Payless Canada Group) and their creditors.

PART IV - RELIEF REQUESTED

48. The Applicant requests that this Court grant the Plan Recognition Order in the form of the draft Order contained at Tab 2 of the Motion Record, as amended.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 26th day of July, 2017.



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⁵⁷ Third Swindle Affidavit at para 23; Confirmation Order at para 38.

⁵⁸ Confirmation Order at para 149.

SCHEDULE "A"

LIST OF CHAPTER 11 DEBTORS

Payless Holdings LLC
Payless Intermediate Holdings LLC
WBG PSS Holdings LLC
Payless Inc.
Payless Finance, Inc.
Collective Brands Services, Inc.
PSS Delaware Company 4, Inc.
Shoe Sourcing, Inc
Payless ShoeSource, Inc
Eastborough, Inc.
Payless Purchasing Services, Inc.
Payless ShoeSource Merchandising, Inc.
Payless Gold Value CO, Inc.
Payless ShoeSource Distribution, Inc.
Payless ShoeSource LP
Payless ShoeSource Worldwide, Inc.
Payless NYC, Inc.
Payless ShoeSource of Puerto Rico, Inc.
Payless Collective GP, LLC
Collective Licensing, LP
Collective Licensing International LLC
Clinch, LLC
Collective Brands Franchising Services, LLC
Payless International Franchising, LLC
Collective Brands Logistics, Limited
Dynamic Assets Limited
PSS Canada, Inc.

SCHEDULE "B"

LIST OF AUTHORITIES

1. *Re Air Canada*, 2004 CarswellOnt 469 (Sup Ct)
2. *Re Boutique Jacob inc.*, 2011 QCCS 6030
3. *Re Caesars Entertainment Operating Company Inc*, 2015 ONSC 712
4. *Re Crystallex International Corp*, 2012 ONCA 404
5. *Re Hartford Computer Hardware Inc*, 2012 ONSC 964
6. *Re Lear Canada*, 2009 CarswellOnt 4232 (Sup Ct)
7. *Re Lightsquared Inc*, 2015 ONSC 2309
8. *Re Lightsquared Inc* (April 9, 2015), Ont Sup Ct, CV-12-9719-00CL (Order (Plan Confirmation))
9. *Re Massachusetts Elephant & Castle Group Inc*, 2011 ONSC 4201
10. *Re Matlack Inc*, 2001 CarswellOnt 1830 (Sup Ct)
11. *Re Payless Holdings Inc LLC*, 2017 ONSC 2242
12. *Re Ultra Petroleum Corp*, 2017 YKSC 23
13. *Re Xerium Technologies Inc*, 2010 ONSC 3974

SCHEDULE "C"

RELEVANT STATUTES

Companies' Creditors Arrangement Act, RSC 1985, c C-36

Other orders

49. (1) If an order recognizing a foreign proceeding is made, the court may, on application by the foreign representative who applied for the order, if the court is satisfied that it is necessary for the protection of the debtor company's property or the interests of a creditor or creditors, make any order that it considers appropriate, including an order

(a) if the foreign proceeding is a foreign non-main proceeding, referred to in subsection 48(1);

(b) respecting the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor company's property, business and financial affairs, debts, liabilities and obligations; and

(c) authorizing the foreign representative to monitor the debtor company's business and financial affairs in Canada for the purpose of reorganization.

Restriction

(2) If any proceedings under this Act have been commenced in respect of the debtor company at the time an order recognizing the foreign proceeding is made, an order made under subsection (1) must be consistent with any order that may be made in any proceedings under this Act.

Application of this and other Acts

(3) The making of an order under paragraph (1)(a) does not preclude the commencement or the continuation of proceedings under this Act, the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act* in respect of the debtor company.

[...]

Terms and conditions of orders

50. An order under this Part may be made on any terms and conditions that the court considers appropriate in the circumstances.

[...]

Cooperation

52. (1) If an order recognizing a foreign proceeding is made, the court shall cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding.

IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended

Court File No: CV-17-11758-00CL

AND IN THE MATTER OF PAYLESS HOLDINGS LLC, PAYLESS SHOESOURCE CANADA INC., PAYLESS SHOESOURCE CANADA GP INC. AND THOSE OTHER ENTITIES LISTED ON SCHEDULE "A" HERETO

APPLICATION OF PAYLESS HOLDINGS LLC, UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36 AS AMENDED

Applicant

Ontario
**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**
Proceeding commenced at Toronto

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