

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.

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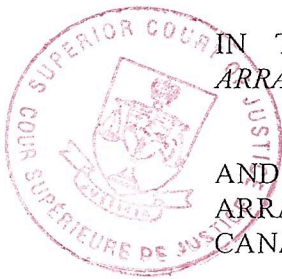
THURSDAY, THE 4th

JUSTICE HAINEY

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DAY OF MAY, 2017

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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 EXPRESS FASHION APPAREL
CANADA INC. AND EXPRESS CANADA GC GP, INC.

INITIAL ORDER

THIS APPLICATION, made by Express Fashion Apparel Canada Inc. ("**Express Canada**") and Express Canada GC GP, Inc. (together with Express Canada, 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 Todd Painter sworn May 3, 2017 and the Exhibits thereto (the "**Painter Affidavit**") and the pre-filing report dated May 3, 2017 of Alvarez & Marsal Canada Inc. in its capacity as proposed Monitor of the Applicants (in such capacity, the "**Proposed Monitor**"), and on hearing the submissions of counsel for the Applicants and Express Canada GC, LP (the "**Partnership**", and collectively with the Applicants, the "**Express Canada Entities**"), Express, LLC and the Proposed Monitor and on reading the consent of the Proposed Monitor to act as the 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.

APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicants are companies to which the CCAA applies. Although not an Applicant, the Partnership shall enjoy the benefits of the protections and authorizations provided by this Order.

PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that the Applicants, individually or collectively, 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**”).

POSSESSION OF PROPERTY AND OPERATIONS

4. THIS COURT ORDERS that the Express 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 Express Canada Entities shall continue to carry on business in a manner consistent with the preservation of the value of their business (the “**Business**”) and Property. The Express Canada Entities shall each be authorized and empowered to continue to retain and employ the employees, 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.

5. THIS COURT ORDERS that the Express Canada Entities shall be entitled to continue to utilize the central cash management system currently in place as described in the Painter 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 (or other similar entity) providing the Cash Management System (including, without limitation, Fifth Third Bank and Bank of America Merchant Services Canada Corp.) 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 Express 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 Express Canada Entities, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in their capacity as provider of the Cash Management System, an unaffected creditor in these proceedings and under the Plan with regard to any claims or expenses they may suffer or incur in connection with the provision of the Cash Management System.

6. THIS COURT ORDERS that the Express Canada Entities shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee benefits (including, without limitation, employee medical, dental and similar benefit plans or arrangements), amounts owing under the Credit Card (as defined in the Painter Affidavit), vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements, and all other payroll processing expenses;
- (b) all outstanding or future amounts owing in respect of existing return policies, refunds, discounts or other amounts on account of similar customer programs or obligations;
- (c) all outstanding or future amounts related to honouring gift cards issued before or after the date of this Order;
- (d) the fees and disbursements of any Assistants retained or employed by the Express Canada Entities at their standard rates and charges;
- (e) with the consent of the Monitor, amounts owing for goods or services actually supplied to the Express Canada Entities prior to the date of this Order by:

- (i) providers of credit, debit and gift card processing related services;
- (ii) logistics or supply chain providers, including customs brokers and freight forwarders and security and armoured truck carriers; and
- (iii) other third party suppliers up to a maximum aggregate amount of \$50,000, if, in the opinion of the Express Canada Entities, the supplier is critical to the Orderly Wind-down (as hereinafter defined).

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Express 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 value 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 Express Canada Entities following the date of this Order.

8. THIS COURT ORDERS that the Express 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 Express 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 Express Canada Entities in connection with the sale of goods and services by the Express 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 required to be 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 Express 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.

9. THIS COURT ORDERS that, except as specifically permitted herein, the Express 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 Express 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 or pursuant to this Order or any other Order of the Court.

ORDERLY WIND-DOWN

10. THIS COURT ORDERS that the Express 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 their respective businesses or operations, and to dispose of redundant or non-material assets not exceeding \$50,000 in any one transaction or \$250,000 in the aggregate;
- (b) terminate the employment of such of their employees or temporarily lay off such of their employees as the relevant Express Canada Entity deems appropriate;

- (c) pursue all offers for sales of material parts of the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any sale (except as permitted by paragraph 10(a) above); and
- (d) 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 liquidation 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 Express Canada Entities to proceed with an orderly wind-down of the Business (the “**Orderly Wind-down**”).

REAL PROPERTY LEASES

11. THIS COURT ORDERS that until a real property lease to which Express Canada is a party is disclaimed in accordance with the CCAA or otherwise consensually terminated, Express Canada shall pay, without duplication, all amounts constituting rent or payable as rent under such real property lease (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the 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 Express Canada Entities or the making of this Initial Order) or as otherwise may be negotiated between Express Canada 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.

12. THIS COURT ORDERS that Express Canada shall provide each of the relevant landlords with notice of its 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 Express Canada’s entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any

applicable secured creditors, such landlord and Express Canada, or by further Order of this Court upon application by Express Canada on at least two (2) days' notice to such landlord and any such secured creditors. If Express Canada disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it 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 Express Canada's claim to the fixtures in dispute.

13. THIS COURT ORDERS that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA by Express Canada, 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 Express Canada and the Monitor 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 Express Canada 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

14. THIS COURT ORDERS that until and including June 3, 2017, 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 Express Canada Entities or the Monitor, or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the written consent of the Express 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 Express Canada Entities or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. 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 Express Canada Entities or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the prior written consent of the Express Canada Entities and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Express Canada Entities to carry on any business which the Express Canada Entities are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

16. 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 Express Canada Entities, except with the prior written consent of the Express 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 Express Canada Entity shall be or shall be deemed to be negated, suspended, waived and/or terminated as a result of this Order.

CONTINUATION OF SERVICES

17. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Express Canada Entities or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, cash management services, payroll and benefits services, insurance, warranty services, freight services, transportation services, customs clearing, warehouse and logistics services, utility or other services to the Business or the Express Canada Entities, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Express Canada Entities, and that the Express 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 Express Canada Entities in

accordance with normal payment practices of the Express Canada Entities or such other practices as may be agreed upon by the supplier or service provider and each of the Express Canada Entities and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. 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 Express Canada Entities. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

EMPLOYEE RETENTION PLAN

19. THIS COURT ORDERS that the Employee Retention Plan (the “ERP”), as described in the Painter Affidavit, is hereby approved and the Express Canada Entities are authorized to make the payments contemplated by the ERP.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

20. 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 Express 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 Express 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, until a compromise or arrangement in respect of the Express Canada Entities, if one is filed, is sanctioned by this Court or is refused by the creditors of the Express Canada Entities or this Court.

DIRECTORS’ AND OFFICERS’ INDEMNIFICATION AND CHARGE

21. THIS COURT ORDERS that the Express Canada Entities shall jointly and severally indemnify their directors and officers against obligations and liabilities that they may incur as

directors or officers of the Express 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.

22. THIS COURT ORDERS that the directors and officers of the Express 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 \$500,000, as security for the indemnity provided in paragraph 21 of this Order. The Directors' Charge shall have the priority set out in paragraphs 33 and 35 herein.

23. 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 Express 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 21 of this Order.

APPOINTMENT OF MONITOR

24. THIS COURT ORDERS that Alvarez & Marsal Canada Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Express Canada Entities with the powers and obligations set out in the CCAA or set forth herein and that the Express Canada Entities and their affiliates, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Express 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.

25. 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 Express Canada Entities' receipts and disbursements;

- (b) assist with the Orderly Wind-down of the Business and operations of the Express Canada Entities;
- (c) liaise with Assistants, to the extent required, with respect to all matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (d) 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 the Applicants by Express U.S. during the Orderly Wind-down and such other matters as may be relevant to the proceedings herein;
- (e) advise the Applicants in their development of the Plan and any amendments to the Plan;
- (f) assist the Applicants in their preparation of their cash flow statements and the dissemination of other financial information;
- (g) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (h) 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 Express Canada Entities, wherever located and to the extent that is necessary to adequately assess the Express Canada Entities' business and financial affairs or to perform its duties arising under this Order;
- (i) oversee and consult with the Express Canada Entities, any liquidation agent, and any Assistants retained (including brokers), to the extent required, with respect to any and all wind-down activities and/or any marketing or sale of the Property and the Business or any part thereof;
- (j) be at liberty to engage independent legal counsel 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 Express Canada Entities in any proceeding outside Canada; and
- (l) perform such other duties as are required by this Order or by this Court from time to time.

26. 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.

27. 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*, or the *Ontario 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.

28. THIS COURT ORDERS that the Monitor shall provide any creditor of the Express Canada Entities with information provided by the Express 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 Express 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 Express Canada Entities may agree.

29. 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 "foreign representative", 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.

30. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Express Canada Entities shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to or subsequent to the date of this Order, by the Express Canada Entities as part of the costs of these proceedings. The Express Canada Entities are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Express Canada Entities on a weekly basis and, in addition, the Express Canada Entities are hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Express Canada Entities, retainers in the aggregate amount of \$250,000 to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

31. 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.

32. THIS COURT ORDERS that the Monitor, counsel to the Monitor, and counsel to the Express 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 \$650,000, as security for their professional fees and disbursements incurred at their respective standard rates, 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 33 and 35 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

33. THIS COURT ORDERS that the priorities of the Directors' Charge and the Administration Charge, as between them, shall be as follows:

First – Administration Charge (to the maximum amount of \$650,000); and

Second – Directors' Charge (to the maximum amount of \$500,000);

34. THIS COURT ORDERS that the filing, registration or perfection of the Administration Charge and the Directors' Charge (collectively, 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.

35. THIS COURT ORDERS that each of the Administration Charge and the Directors' Charge shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**"), except for (a) any Person with a properly perfected purchase money security interest under the *Personal Property Security Act* (Ontario) or any other personal property registry system, or (b) any Person who is a "secured creditor" as defined in the CCAA that has not been served with notice of the application for this Order.

36. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Express Canada Entities shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Administration Charge and the Directors' Charge, unless the Express Canada Entities also obtain the prior written consent of the Monitor and the beneficiaries of the Administration Charge and the Directors' Charge, or further Order of this Court.

37. THIS COURT ORDERS that the Administration Charge and the Directors' Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") 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) issued pursuant to BIA, or any

bankruptcy 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 Express Canada Entities, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the Express Canada Entities of any Agreement to which it is a party;
- (b) 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
- (c) the payments made by the Express 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.

38. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Express Canada Entities’ interest in such real property leases.

SERVICE AND NOTICE

39. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send or cause to be sent, in the prescribed manner, a notice to every known creditor who has a claim against the Express Canada Entities of more than \$1000, and (C) prepare a list showing the names and addresses of those 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.

40. THIS COURT ORDERS that any employee of any of the Express Canada Entities that receives a notice of termination from any of the Express Canada Entities by electronic transmission or electronic mail shall be deemed to have received such notice of termination at the time that the notice of termination is sent.

41. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at: 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(1)(d) of the Rules of Civil Procedure and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL: www.alvarezandmarsal.com/expresscanada (the “**Monitor’s Website**”).

42. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Guide is not practicable, the Express 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 true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Express Canada Entities’ creditors or other interested parties at their respective addresses as last shown on the records of the Express Canada Entities and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

43. THIS COURT ORDERS that the Express Canada Entities and the Monitor and their 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 true copies thereof by electronic message to the Express 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

44. THIS COURT ORDERS that the Express Canada Entities or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

45. 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 Express Canada Entities, the Business or the Property.

46. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Express Canada Entities, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Express 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 Express Canada Entities and the Monitor and their respective agents in carrying out the terms of this Order.

47. THIS COURT ORDERS that each of the Express 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.

48. THIS COURT ORDERS that any interested party (including the Express Canada Entities and the Monitor) may apply to this Court to vary or amend this Order at the comeback motion scheduled for May 25, 2017, 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.

49. 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.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

MAY 04 2017

PER / PAR:

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A. Anissimova
Registrar

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

Court File No: CV-17-11785-00CL

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF EXPRESS FASHION APPAREL CANADA INC. and EXPRESS
CANADA GC GP, INC.**

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

PROCEEDING COMMENCED AT TORONTO

ORDER

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