



No. S209201  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF 1077 HOLDINGS CO-OPERATIVE (FORMERLY, MOUNTAIN EQUIPMENT  
CO-OPERATIVE) AND 1314625 ONTARIO LIMITED

PETITIONERS

**FOURTH REPORT OF THE MONITOR  
ALVAREZ & MARSAL CANADA INC.**

**NOVEMBER 23, 2020**



ALVAREZ & MARSAL

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## 1.0 INTRODUCTION

- 1.1 On September 14, 2020, Mountain Equipment Cooperative (subsequently renamed 1077 Holdings Co-operative) and 1314625 Ontario Limited (together, the “**Petitioners**” or “**1077**”) were granted an initial order (the “**Initial Order**”) by the Supreme Court of British Columbia to commence proceedings (the “**CCAA Proceedings**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). Among other things, the Initial Order afforded 1077 an initial stay of proceedings up to and including September 24, 2020 (the “**Stay Period**”) and appointed Alvarez & Marsal Canada Inc. (“**A&M**”) as monitor of 1077 (the “**Monitor**”) during the CCAA Proceedings.
- 1.2 On September 22, 2020, the Petitioners filed an application (the “**Comeback Application**”) principally to seek an amended and restated initial order (the “**ARIO**”) and sale approval and vesting order (the “**SAVO**”) to approve the sale transaction (the “**Sale Transaction**”) contemplated by the asset purchase and sale agreement between the Petitioners and 1264686 B.C. Ltd. (the “**Original Purchaser**”) dated September 11, 2020 (the “**APA**”) for the sale of the Purchased Assets and to vest all of the Purchased Assets in the Original Purchaser’s permitted assignee free and clear of any Encumbrances other than Permitted Encumbrances, as such capitalized terms are defined in the APA.
- 1.3 On September 24, 2020, this Honourable Court granted an extension of the Stay Period from September 24, 2020 to September 28, 2020 to allow for the Comeback Application to be heard on September 28, 2020.
- 1.4 On October 2, 2020, this Honourable Court granted the ARIO, which included, among other things, an extension of the Stay Period to November 3, 2020, and the SAVO sought by the Petitioners.
- 1.5 On October 21, 2020, this Honourable Court granted an assignment order to assign all of the rights and obligations of the Petitioners under certain contracts to the Original Purchaser’s assignee, 1266524 B.C. Ltd. (subsequently renamed MEC Canada Inc. and referred hereinafter as the “**Purchaser**”). A second assignment order assigning all of the rights and obligations of the Petitioners under a certain property lease to the Purchaser was granted on October 26, 2020, along with an order further extending the Stay Period through to January 20, 2021.
- 1.6 On November 12, 2020, an application was filed by a former employee on behalf of certain other former employees of 1077 to be heard on November 24, 2020 (the “**Former Employees’ Application**”) seeking an order from this Honourable Court approving the appointment of

Victory Square Law Office (“**VSLO**”) as representative counsel to the Former Employees (as subsequently defined) in the CCAA Proceedings and granting a charge of \$85,000 over the property of the Petitioners in respect of VSLO’s anticipated fees, among other things.

1.7 On November 23, 2020, the Petitioners filed a notice of application with this Honourable Court (the “**November 23, 2020 Application**”), returnable on November 27, 2020, seeking approval of the following:

- a) an order (the “**Claims Process Order**”) setting a claims process (the “**Claims Process**”) by which creditors may present or confirm claim amounts against 1077;
- b) an order (the “**EMP Order**”) granting enhanced powers to the Monitor;
- c) an order (the “**Member Information Requests Order**”) providing advice and directions regarding requests for disclosure of membership information (the “**Member Information Requests**”); and
- d) an order (the “**Name Change Order**”) changing the name of one of the petitioners to “1077 Holdings Co-operative” in place of “Mountain Equipment Co-operative” and amending the style of cause in the CCAA Proceedings accordingly.

1.8 Further information regarding these CCAA Proceedings, including the Initial Order, the ARIO, affidavits, reports of the Monitor and all other Court-filed documents and notices are available on the Monitor’s website at [www.alvarezandmarsal.com/mec](http://www.alvarezandmarsal.com/mec) (the “**Monitor’s Website**”).

## **2.0 PURPOSE**

2.1 This Fourth Report has been prepared by the Monitor to provide information to this Honourable Court in respect of the following:

- a) an update of the Petitioners’ operations following the closing of the Sale Transaction;
- b) the activities of the Monitor since the Second Report;
- c) a comparison of the actual cash receipts and disbursements compared to the cash flow forecast for the period September 15, 2020 to January 20, 2021 (the “**Cash Flow Forecast**”) appended to the First Report and third report of the Monitor dated October 27, 2020 (the “**Third Report**”);
- d) an overview of the proposed Claims Process;
- e) the proposed order seeking enhancement of the Monitor’s powers;
- f) an overview of the Membership Information Requests;
- g) the background relating to the Name Change Order;
- h) the Former Employees’ Application; and

- i) the recommendations of the Monitor in respect of the foregoing, as applicable.
- 2.2 The Fourth Report should be read in conjunction with the second affidavit of Robert Wallis affirmed on November 23, 2020 (the “**Second Wallis Affidavit**”) and the November 23, 2020 Application materials. Background information, including capitalized terms not defined herein, are contained in the Initial Order, the ARIO, the SAVO, and the Monitor’s previous reports, and have not been repeated herein.

**3.0 TERMS OF REFERENCE**

- 3.1 In preparing this report, A&M has necessarily relied upon unaudited financial and other information supplied, and representations made to it, by certain former and current management of the Petitioners (“**Management**”). Although this information has been subject to review, A&M has not conducted an audit nor otherwise attempted to verify the accuracy or completeness of any of the information prepared by Management or otherwise provided by the Petitioners or other third parties. Accordingly, A&M expresses no opinion and does not provide any other form of assurance on the accuracy and/or completeness of any information contained in this Fourth Report, or otherwise used to prepare this Fourth Report.
- 3.2 Certain of the information referred to in this Fourth Report consists of financial forecasts and/or projections prepared by Management. An examination or review of financial forecasts and projections and procedures as outlined by the Chartered Professional Accountants of Canada has not been performed. Readers are cautioned that since financial forecasts and/or projections are based upon assumptions about future events and conditions that are not ascertainable, actual results will vary from those forecasts and/or projected and the variations could be significant.

**4.0 OPERATIONAL UPDATE**

- 4.1 The Sale Transaction contemplated by the APA closed on October 30, 2020 (the “**Closing Date**”) which effectively transferred substantially all of the assets and operations of the Petitioners to the Purchaser. The Purchaser retained over 90% of active employees and 21 of 22 retail stores. The employees that were not retained by the Purchaser (the “**Excluded Employees**”) have been terminated, with the exception of the CEO and CFO who remain in place to assist with certain transitional and remaining administrative and financial matters in respect of 1077. The CEO and CFO will be effectively terminated on November 30, 2020 pursuant to the terms of their employment contracts.
- 4.2 Since the Closing Date, the Petitioners, with the support of the Monitor, have attended to various post-closing transition matters relating to the management of cash, storage of books, records, and

data, vacating leased premises, disclaiming leases and terminating contracts, among other operational activities.

#### **Cash Management**

- 4.3 Subsequent to the Closing Date, the bank accounts of 1077 (the “**1077 Accounts**”) remained intact to ensure uninterrupted payment of post-closing disbursements and clearing of outstanding cheque disbursements in the normal course.
- 4.4 Following the closing of the Sale Transaction, the process for approving and processing disbursements have included weekly review of supplier and vendor invoices by the CFO in consultation with the Monitor. Approved disbursements are prepared for payment by wire by certain employees of the Purchaser assisting in the post-closing transition (the “**Transitional Employees**”) pursuant to the Transitional Services Agreement dated October 30, 2020 (the “**TSA**”) as appended to the APA. The release of the wire payments is only completed after approval by one of the two remaining signatories of the 1077 Accounts (the CEO and CFO) through the 1077 Accounts’ online payment processing system. Cheque processing has been discontinued post-closing and viewing access (with no authority to initiate or complete a banking transaction) of the 1077 Accounts has been granted to certain Transitional Employees to assist the Petitioners with post-closing matters.
- 4.5 Weekly variance reporting continues to be prepared by the CFO and is reviewed with the Monitor on an ongoing basis.
- 4.6 As further discussed in section 8.0 of this report, the Petitioners are bringing an application to enhance the Monitor’s powers, subject to the approval of this Honourable Court, at which point the Monitor expects to have sole and exclusive signing authority over the 1077 Accounts and will transfer the remaining funds from certain 1077 Accounts to accounts established by the Monitor.

#### **Books and Records**

- 4.7 Pursuant to the terms of the APA and applicable provincial privacy legislation, select data held by the Petitioners is not permitted to be accessed by or made available to the Purchaser, including but not limited to, certain data related to the members, Excluded Employees, Board of Directors minutes and related materials and the sale and investment solicitation process (collectively, the “**Prohibited Data**”). Accordingly, the Monitor, in consultation with the Petitioners and its legal counsel, has identified the Prohibited Data and in coordination with the Purchaser and the Petitioners, have arranged to segregate the Prohibited Data onto a cloud-based platform, SharePoint. Access to SharePoint has been provided to the Monitor, the Petitioners, counsel, and

certain Transitional Employees (who have executed non-disclosure agreements) whose assistance is necessary to complete the bifurcation of data. Once the segregation of data is complete and all Prohibited Data has been uploaded to SharePoint, the Monitor and counsel will retain sole control and access of SharePoint and all other users' access will be removed, subject to this Honourable Court granting the proposed EMP Order.

- 4.8 In addition to digital records stored on SharePoint, the Monitor has secured and is in the process of itemizing the following physical books and records:
- a) financial records located at a third-party off-site storage facility;
  - b) IT server backup tapes, which have been relocated from the Petitioners' third-party off-site storage facility to the Monitor's office for itemization and temporary storage; and
  - c) various corporate, finance and IT records, among others, currently located at the former head office premises. As at the date of this Fourth Report, the Petitioners have retained a former employee of 1077 to assist with itemization of approximately 1,000 boxes of records.
- 4.9 Once the itemization is completed, the books and records that are required to be maintained pursuant to the APA, statutory and other requirements will be relocated to a third-party off-site storage facility controlled by the Monitor.

#### **Remaining Premises**

- 4.10 The Petitioners continue to occupy certain leased locations, which were not assumed by the Purchaser, including:
- a) the head office premises located at 1077 Great Northern Way, Vancouver, British Columbia (the "**Head Office**");
  - b) the retail store located at 710 - 19587 Seton Crescent SE, Calgary, Alberta (the "**Calgary Store**"); and
  - c) the retail store located at 2615 Boulevard Daniel-Johnson, Laval, Quebec (the "**Laval Store**").
- 4.11 The Petitioners, in consultation with the Monitor, disclaimed the realty leases of the Calgary Store and the Laval Store on October 30, 2020, which became effective November 29, 2020 in accordance with subsection 32(1) of the CCAA. The Monitor is of the view that disclaiming the leases was in furtherance of the Sale Transaction and necessary to mitigate costs and no objections to the disclaimers have been received as of the date of this Fourth Report.

- 4.12 The Petitioners engaged an auctioneer to purchase the residual fixtures of the Calgary Store and the Calgary Store was vacated on November 20, 2020.
- 4.13 It is the understanding of the Monitor and the Petitioners that the Purchaser has negotiated and entered into a new lease agreement with the landlord of the Laval Store effective on or around November 29, 2020.
- 4.14 Pursuant to the terms of the TSA, the Petitioners are providing full access and use of the Head Office to the Purchaser through to at least December 31, 2020 to allow the Purchaser sufficient time to relocate certain administrative functions and certain office equipment to the Purchaser's new office space. It is anticipated that a notice of disclaimer will be issued to the landlord of the Head Office on or around December 1, 2020 and the Head Office will be vacated by December 31, 2020.

**Additional Activities**

- 4.15 In addition to operational activities as outlined above, the Monitor with the Petitioners, where applicable, continue to focus on other activities (the "**Additional Activities**") in these proceedings, including, among other things:
- a) preparing for the proposed Claims Process as further detailed in section 7.0;
  - b) disclaiming realty leases, agreements, and contracts as required;
  - c) clearing and vacating the Head Office;
  - d) making disbursements as required, including operating costs, key employee retention plan ("**KERP**") payments, and final payroll and related remittances;
  - e) attending to the collection of any outstanding receipts and refunds, including the Canada Emergency Wage Subsidy (the "**CEWS**");
  - f) marketing, selling, or disposing any remaining residual assets;
  - g) obtaining advice and direction with respect to distribution of member lists containing personal contact information of the 1077 co-operative members (the "**Member List**");
  - h) assisting with the determination of the net working capital adjustment relating to the Sale Transaction 60 days from the Closing Date and subsequent 45-day dispute resolution period as provided for under the APA;
  - i) attending to all remaining matters such as reconciling and filing of GST returns and corporate tax returns, completing statutory audits, resolving outstanding letters of credit and any other related matters; and
  - j) completing tasks necessary in the overall administration of the CCAA Proceedings.



## **5.0 ACTIVITIES OF THE MONITOR**

5.1 The activities of the Monitor since the Second Report have included the following:

### **Review of CCAA Court Materials**

- a) reviewing draft Court application materials and providing comments to the Petitioners' legal counsel;

### **Assisting with Advancing and Closing of the Sale Transaction**

- b) reviewing documentation, in consultation with the Petitioners and their legal counsel and the Monitor's legal counsel, in respect of assigned Real Property Leases, Material Contracts, Personal Property Leases and corresponding Cure Costs, as defined in the APA;
- c) holding discussions with the Petitioners' legal counsel, Management, the Special Committee, and the 1077 Board in respect of matters related to the Sale Transaction;
- d) reviewing the preliminary net working capital adjustments forecast at closing of the Sale Transaction and attending to discussions with Management regarding same;
- e) reconciling the cash to close and flow of funds as at the Closing Date;

### **Monitoring of Cash Receipts & Disbursements**

- f) reviewing and approving the weekly covenant threshold reporting required pursuant to the terms of the Restructuring Support Agreement between the Lenders and 1077 dated September 11, 2020 and attending to weekly meetings with FTI, advisor to the Agent, and Management;
- g) reviewing weekly funding requests under the Interim Financing Facility prepared by Management and attending to discussions regarding same. Subsequent to the Closing Date, the Monitor continues to review weekly payments as prepared by the CFO;
- h) setting up new bank accounts and ordering cheques for same as well as monitoring the 1077 Accounts;
- i) reviewing bank reconciliations of cash at the Closing Date;
- j) coordinating the cancellation and release of issued and outstanding letters of credit;

### **Statutory and Other Responsibilities**

- k) posting filed court materials and other relevant information as they become available to the Monitor's Website;
- l) preparing the Third Report and Fourth Report;

- m) coordinating the gathering of information in response to the Canada Revenue Agency's request for a payroll audit for the period January 1, 2019 to October 30, 2020;
- n) obtaining access to the Canada Revenue Agency payroll and tax accounts of the Petitioners;
- o) coordinating filing of the Petitioners' corporate tax returns;

#### **Books and Records and Data Management**

- p) holding numerous discussions with the Petitioners and their legal counsel as well as the Purchaser and its legal counsel and IT personnel on the segregation and retention of employee and member data while complying with relevant privacy laws and the *Cooperative Association Act*, SBC 1999, c 28;
- q) obtaining access to the cloud-based SharePoint storage of membership and financial information of the Petitioners and reviewing the data for completeness;
- r) retaining contractors to assist with indexing the physical books and records located at Head Office;
- s) setting up an Iron Mountain account for off-site facility storage of the Petitioners' physical books and records;

#### **Communications Matters**

- t) conducting discussions with the Monitor's legal counsel, Management, the Petitioners' legal counsel, financial advisor to the Agent, and other stakeholders, among others, regarding various matters;
- u) attending to various discussions with the members of the 1077 Board, Management, and the Petitioners' legal counsel regarding the process of communications to employees, vendors, 1077 members, and other interested parties;
- v) reviewing draft communications prepared by Management in respect of employee terminations as well as follow-up communications;
- w) posting to the Monitor's website communications to former employees;
- x) reviewing a newly set up website of the Petitioners (the "1077 Website") housing relevant co-operative information and communications as well as responding to enquiries directed through the 1077 Website;

#### **Creditor and Other Stakeholder Matters**

- y) receiving more than 400 telephone and email inquiries as of November 18, 2020 from trade creditors, members, employees and other parties. The Monitor continues to track and log these inquiries and has addressed the queries where required;

- z) holding discussions and liaising with Management, the 1077 Board, and the Special Committee in respect of the CCAA Proceedings and related matters generally;
- aa) holding discussions with Management, the Special Committee and counsel to 1077 to discuss handling of member and customer data in accordance with privacy laws and regulations;
- bb) reviewing severance calculations, in consultation with the Petitioners and their legal counsel, and prepared by the Petitioners;
- cc) developing the methodology of and preparing for a claims process to evaluate and adjudicate the potential claims of creditors;

**Other Matters**

- dd) coordinating the extension of certain insurance policies including property, commercial general liability, and cyber liability coverage;
- ee) issuing notices of disclaimer of certain property leases pursuant to subsection 32(1) of the CCAA; and
- ff) engaging with liquidators and auctioneers to sell and/or dispose of residual assets located at the Calgary Store and Head Office.

**6.0 ACTUAL CASH FLOW RESULTS COMPARED TO CASH FLOW FORECAST**

- 6.1 Consistent with the ongoing oversight and monitoring of the business and financial affairs of the Petitioners, the Monitor has established a weekly cash flow review protocol with the Petitioners and Management to compare actual cash flows against the Cash Flow Forecast.
- 6.1 The Petitioners' actual cash receipts and disbursements compared to the Cash Flow Forecast during the period from September 15, 2020 to November 20, 2020 (the "**Reporting Period**") is summarized in the table below:

**Mountain Equipment Co-operative**  
**Cash Flow Variance Analysis**  
**For the Ten Week Period from September 15, 2020 to November 20, 2020**  
**(In CAD\$000s)**

	For the Ten Weeks Ended November 20, 2020		
	Actual	Forecast	Variance
<b>Receipts</b>			
Sales	\$ 40,839	\$ 38,780	\$ 2,058
Canada Emergency Wage Subsidy	7,371	5,779	1,592
Other receipts	63	-	63
<b>Total receipts</b>	<b>48,273</b>	<b>44,560</b>	<b>3,713</b>
<b>Disbursements</b>			
Merchandise and/or vendor prepayments	33,502	32,288	(1,214)
Freight and other non-merchandise	3,142	3,980	838
Wages and salary	11,467	11,417	(50)
SG&A	2,889	5,128	2,239
Rent and property taxes	4,062	4,143	82
Sales tax	3,020	3,420	400
<b>Total disbursements</b>	<b>58,082</b>	<b>60,377</b>	<b>2,295</b>
<b>Net operating cash flow</b>	<b>(9,810)</b>	<b>(15,818)</b>	<b>6,008</b>
<b>Other disbursements</b>			
KERP payments	293	544	251
Professional fees	1,941	2,115	175
Debt service	971	1,201	230
Contingency	574	881	307
<b>Total other disbursements</b>	<b>3,779</b>	<b>4,741</b>	<b>962</b>
<b>Net proceeds from Sale Transaction</b>	<b>22,905</b>	<b>19,000</b>	<b>3,905</b>
<b>Net Cash Flow</b>	<b>\$ 9,317</b>	<b>\$ (1,559)</b>	<b>\$ 10,876</b>
<b>Opening Cash Balance (*)</b>	<b>\$ 4,707</b>	<b>\$ 4,606</b>	<b>\$ 101</b>
Net cash flow	9,317	(1,559)	10,876
Net draws on Existing and Interim Facilities	9,481	9,150	331
<b>Ending Cash Balance</b>	<b>\$ 23,505</b>	<b>\$ 12,197</b>	<b>\$ 11,308</b>
<b>Opening Borrowing Balance (*)</b>	<b>\$ 69,725</b>	<b>\$ 71,040</b>	<b>\$ 1,315</b>
Net draws on Existing and Interim Facilities	9,481	9,150	(331)
Repayments upon closing	(79,206)	(80,190)	(984)
<b>Ending Borrowing Balance</b>	<b>-</b>	<b>-</b>	<b>-</b>
LC / LG Utilization	2,204	2,371	(167)
Repayments upon closing	(2,204)	(2,371)	167
<b>Ending Borrowing Exposure</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>

(\*) Opening borrowing balances were previously presented net of cash on hand. The cash on hand has been separately presented in the table above.

6.2 During the Reporting Period, the Petitioners experienced a net favorable cash flow variance of \$10.9 million primarily as a result of a positive variance relating to sales and wage subsidies leading up to closing of the Sale Transaction and lower than anticipated selling, general and administrative costs as well as greater than forecast net proceeds from the closing of the Sale

Transaction. Specific variances in respect of the reported cash receipts and disbursements are as follows:

- a) net proceeds from the Sale Transaction were \$3.9 million higher than forecast as a result of lower than anticipated bank borrowings as at the Closing Date;
- b) total operating receipts were approximately \$3.7 million higher than forecast due to higher than forecast sales receipts and favorable timing differences with respect to receipt of the Canada Emergency Wage Subsidy;
- c) total operating disbursements were approximately \$2.3 lower than forecast primarily due to significant permanent favorable variances of \$2.2 million relating to SG&A and \$800,000 relating to freight and non-merchandise costs which were offset by an unfavorable variance of approximately \$1.2 million relating to merchandise prepayments for inventory; and
- d) total other disbursements were approximately \$960,000 lower than forecast due to a combination of permanent and timing differences in respect of KERP payments, professional fees, and debt servicing fees.

- 6.3 On the Closing Date, the proceeds from the Sale Transaction allowed the Petitioners to repay in full the total borrowings of \$79.2 million, consisting of the Existing Credit Facility totaling \$18.1 million and Interim Financing Facility totaling \$61.2 million, as well as related debt servicing fees, professional fees, and payment of cash collateral to Dentons Canada LLP (as escrow agent for the Lenders) relating to issued and outstanding letters of credits.
- 6.4 Pursuant to the APA, the net proceeds paid to the Petitioners of approximately \$22.9 million does not include the required escrow amount under the APA of \$7.5 million which is being held in trust by the Monitor's legal counsel (as escrow agent) pending final accounting of net working capital balances.
- 6.5 Since the Third Report, the Monitor has continued to review the cash receipts and disbursements of the Petitioners and has been involved in the weekly review and approval of disbursements and variance reporting. Nothing has come to the attention of the Monitor that causes the Monitor to believe that there have been material adverse changes in the cash flow of the Petitioners or that would financially prejudice the stakeholders of the Petitioners.

## 7.0 PROPOSED CLAIMS PROCESS ORDER

### Overview

- 7.1 Capitalized terms used but not defined in this section of the Fourth Report have the meaning ascribed to them in the proposed Claims Process Order.
- 7.2 The purpose of the proposed Claims Process is to establish the quantum of claims as at the date of the Initial Order that will be considered in respect of a distribution to affected creditors and/or a potential plan of compromise and/or arrangement (“**Plan**”) which may be presented to the creditors and stakeholders of the Petitioners.
- 7.3 Key steps and timelines described in the proposed Claims Process Order are summarized in the table below:

<b>Timeframe</b>	<b>Activity</b>
November 27, 2020	Scheduled date of hearing seeking approval of the proposed Claims Process Order.
No later than December 11, 2020	<ol style="list-style-type: none"><li>1. The Claims Packages and Employee Claims Packages are to be sent to each party on the Service List, each party who has requested a Claims Package and all other known Claimants and Employee Claimants.</li><li>2. The Claims Package and the Claims Process Order are to be posted to the Monitor’s Website.</li></ol>
No later than December 22, 2020	A Notice to Creditors is to be published for at least two (2) business days in the Globe and Mail (National Edition) and The Vancouver Sun.
February 15, 2021	Claims Bar Date for the filing of a Proof of Claim or D&O Proof of Claim relating to Pre-filing Claims or disputed Employee Claims.
The later of (i) 45 days after sending a Claims Package in respect of a Restructuring Period Claim; and (ii) the Claims Bar Date	Restructuring Period Claims Bar Date for the filing of a Proof of Claim or D&O Claim relating to a Restructuring Period Claim.
March 22, 2021	Deadline for the Monitor to send Notices of Revision or Disallowance to revise or reject a Proof of Claim.
No later than 30 days after the date on which the Claimant or Employee Claimant is deemed to receive the Notice of Revision or Disallowance	Deadline for any Claimant or Employee Claimant who intends to dispute the Notice of Revision or Disallowance to deliver a completed Notice of Dispute of Revision or Disallowance

## **Filing of Proof of Claims**

### Employee Claims

- 7.4 Employees will receive an Employee Claims Package including an Employee Letter setting out the assessment of the amount and classification of its Employee Claim. In the event of the following:
- a) the Employee agrees with the assessment and classification as set out in the Employee Letter, the Employee need not file a Proof of Claim or
  - b) the Employee objects to the assessment and/or classification as set out in the Employee Letter, the Employee must deliver a Proof of Claim setting out their Employee Claim by no later than February 15, 2021 (the “**Claims Bar Date**”).

### Pre-filing and D&O Claims

- 7.5 All Claimants with the exception of Claimants asserting a Restructuring Period Claim must file a Proof of Claim or D&O Proof of Claim on or before the Claims Bar Date or such later date as the Monitor may agree in writing or the Court may otherwise direct.

7.6 Restructuring Period Claims

Any Claimant asserting a Restructuring Period Claim or D&O Claim relating to a Restructuring Period Claim shall file a Proof of Claim or D&O Proof of Claim on or before the later of (i) 45 days after the date on which the Monitor sends a Claims Package with respect to the Restructuring Period Claim and (ii) the Claims Bar Date (together, the “**Restructuring Period Claims Bar Date**”).

### **Claims Bar Date and Restructuring Period Claims Bar Date**

- 7.7 Any Claimant or Employee Claimant that does not file a Pre-filing Claim, D&O Claim, Restructuring Period Claim, or Employee Claim such that the claim is received by the Monitor on or before the Claims Bar Date or the Restructuring Period Claims Bar Date or such later date as the Monitor may agree in writing or the Court may otherwise direct, as applicable, will:
- a) have its Claim forever barred and extinguished;
  - b) not be permitted to vote at any Meeting on account of claim;
  - c) with the exception of Employees, not be entitled to receive further notice with respect to the Claims Process or these proceedings unless the Monitor become aware that such Claimant has any other Claim; and
  - d) not be permitted to participate in any distribution to creditors.

### **Adjudication of Claims**

- 7.8 The Monitor, in consultation with the Petitioners, shall review all Proofs of Claim received on or before the Claims Bar Date or Restructuring Period Claims Bar Date, as applicable, and shall accept, revise or reject each Claim.
- 7.9 If the Monitor intends to revise or reject a Claim, the Monitor shall notify the Claimant or Employee Claimant that their Claim has been revised or rejected by sending a Notice of Revision or Disallowance to the Claimant by no later than March 22, 2021.
- 7.10 Where the Monitor does not send a Notice of Revision or Disallowance to a Claimant or Employee Claimant by such date, the Petitioners and the Monitor shall be deemed to have accepted such Claim as set out in that Claimant's Proof of Claim or D&O Proof of Claim.

### **Process for Disputed Claims**

- 7.11 Any Claimant or Employee Claimant who intends to dispute a Notice of Revision or Disallowance shall:
- a) deliver a completed Notice of Dispute of Revision or Disallowance to the Monitor by no later than thirty (30) days after the date on which the Claimant or Employee Claimant is deemed to receive the Notice of Revision or Disallowance, or such other date as may be agreed to by the Monitor in writing; and
  - b) in the event that a dispute raised in a Notice of Dispute of Revision or Disallowance is not settled within a time period or in a manner satisfactory to the Monitor, in consultation with the Petitioners, the Monitor shall refer the dispute raised in the Notice of Dispute of Revision or Disallowance to a Claims Officer or the Court for adjudication at its election.
- 7.12 Where a Claimant or Employee Claimant that receives a Notice of Revision or Disallowance does not file a completed Notice of Dispute of Revision or Disallowance by the time set out in the Claims Process Order, such Claimant's or Employee Claimant's Claim relating to such Claim shall be deemed to be as set out in the Notice of Revision or Disallowance and such Claimant or Employee Claimant shall have no further right to dispute same.
- 7.13 The Monitor may refer any Claim to a Claims Officer or the Court for adjudication at its election by sending written notice to the Claimant or Employee Claimant at any time.

### **Claims Officer**

- 7.14 The proposed Claims Process Order provides for the engagement of a Claims Officer in the event that a disputed Claim is unable to be resolved by the Monitor (in consultation with the former



personnel of the Petitioners) and the Claimant, and the Monitor elects to refer the matter to a Claims Officer. It is proposed that Mr. Herman Van Ommen, Q.C. be appointed as Claims Officer, with the flexibility for further Claims Officers to be appointed on motion to the Court.

- 7.15 In such circumstances, the Claims Officer will, among other things, (i) review and determine the validity and amount of disputed Claims in accordance with the terms of the Claims Process Order and, to the extent necessary, may determine whether any Claim or part thereof constitutes an Excluded Claim; and (ii) determine all procedural matters which may arise in respect of their determination of the foregoing matters, including the manner in which any evidence may be adduced.
- 7.16 The Monitor, the Claimant, Employee Claimant or the applicable Petitioner may, within ten (10) days (the “**Appeal Period**”) of such party receiving notice of a Claims Officer’s determination of the value of any Claim, appeal such determination to the Court by filing a notice of appeal.
- 7.17 If no party appeals the determination of value of a Claim by a Claims Officer within the Appeal Period, the decision of the Claims Officer in determining the value of the Claim shall be final and binding and there shall be no further right of appeal, review or recourse to the Court from the Claims Officer’s final determination of a Claim.
- 7.18 Claims Officers are commonly used in CCAA proceedings in order to expedite the resolution of disputed claims in a cost-effective manner. The Monitor views the use of a Claims Officer in these CCAA Proceedings, if necessary, as reasonable and appropriate given the objectives of completing the determination of Claims in an expeditious and cost-effective manner particularly the claims in respect of certain landlord creditors that were subject to lease disclaimers issued by 1077 within the CCAA Proceeding.

## **8.0 PROPOSED ORDER TO ENHANCE THE MONITOR’S POWERS**

- 8.1 The Petitioners are seeking the enhanced powers of the Monitor in the CCAA Proceedings. With substantially all of the assets and business sold, the Petitioners do not have any further active operations and it is anticipated that remaining Management personnel will be terminated effective November 30, 2020 and the Petitioners’ directors and officers (the “**Directors and Officers**”) will resign once the proposed EMP Order is granted, subject to approval by this Honourable Court.
- 8.2 In addition to its prescribed rights pursuant to the CCAA and the powers and duties set out in the ARIO or any other Court order granted in the CCAA Proceedings, the proposed EMP Order would provide for the Monitor is to be authorized and empowered, but not required, to, *inter alia*:

- a) receive, preserve and protect the property and to take possession of and exercise control over the Petitioners' property and business and any and all proceeds, receipts and disbursements arising out of or from the property and the business;
- b) take any and all steps in order to direct or cause the Petitioners to administer the property and operations of the Petitioners or to perform such other functions or duties as the Monitor considers necessary, including restructuring, wind-down, liquidation, disposal of assets, or other activities;
- c) control all of the Petitioners' existing accounts at any financial institution and monitor, review, and direct the Petitioners' receipts and disbursements and implement such measures of control as the Monitor deems reasonably necessary;
- d) initiate and administer any claims bar and/or claims resolution process, or protocol as may be approved by order of this Court within the CCAA Proceedings;
- e) to sell, convey, transfer, lease or assign the property or any part or parts thereof out of the ordinary course of business without the approval of this Court in respect of any transaction, provided that the aggregate consideration for all such transactions does not exceed \$250,000;
- f) receive and collect all monies and accounts now owed or hereafter owing to the Petitioners and to exercise all remedies of the Petitioners in collecting such monies, including, without limitation, to enforce any security held by the Petitioners;
- g) settle, extend or compromise any indebtedness owing to or by the Petitioners;
- h) engage or cause the Petitioners to engage consultants, assistants, advisors, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time;
- i) apply to this Court for any orders necessary or advisable to carry out its powers;
- j) to exercise any rights or obligations of 1077, or seek advice and directions, with respect to the *Cooperative Association Act*, SBC 1999, c 28 or the Rules of 1077; and
- k) prepare, negotiate and file with this Court a plan of compromise or arrangement in respect of the Petitioners including a to be determined future distribution to proven unsecured creditors.

8.3 The Monitor shall not be liable for any employee-related liabilities of the Petitioners, including wages, severance pay, termination pay, vacation pay and pension, benefit amounts, or any successor employer liabilities as provided for in Section 14.06(1.2) of the *Bankruptcy and Insolvency Act* (Canada), other than amounts the Monitor may specifically agree in writing to pay.

8.4 In light of the planned departure of the Directors and Officers and remaining Management personnel on or around November 30, 2020, it is the Monitor's view that the expanded powers and duties proposed to be conferred on the Monitor pursuant to the EMP Order are appropriate in the circumstances to effect a Claims Process as well as to address on-going administrative matters. The Monitor is prepared to accept the expanded role should the Court determine that it is in the best interest of the CCAA Proceedings and the Petitioners' stakeholders.

#### **9.0 MEMBER INFORMATION REQUESTS**

9.1 As described in the Second Wallis Affidavit, since the commencement of the CCAA Proceedings, there have been two requests directed to 1077 and the 1077 Board to obtain the Member List. The Petitioners, in consultation with their legal counsel, delivered letters in response to the Member Information Requests on or around October 20, 2020. In addition to requests made of the Petitioners directly, the Monitor has fielded a number of enquiries of affected 1077 cooperative members.

9.2 In light of the sensitivity surrounding the release of select personal information of millions of 1077 members, the Monitor is supportive of the Petitioners seeking advice and directions in regard to the dissemination of the Member List, given that there is no remaining corporate purpose or business enterprise remaining in respect of 1077 and all that remains to address within the context of the CCAA Proceedings is the administration of the proposed Claims Process as further described in section 7.0 and certain statutory reporting requirements and financial audits of the Canada Revenue Agency.

#### **10.0 NAME CHANGE TO 1077 HOLDINGS CO-OPERATIVE**

10.1 Pursuant to the APA, the Purchaser acquired the Petitioners' intellectual property rights and goodwill, including the rights to the names "Mountain Equipment Co-operative" and "MEC", among others. Accordingly, 1077 has registered a name change for Mountain Equipment Co-operative to "1077 Holdings Co-operative" with the B.C. Registrar of Companies effective November 17, 2020. A copy of the Certificate of Name Change is appended to the Second Wallis Affidavit. The Petitioners seek to amend the style of cause in this proceeding to reflect this change.

## **11.0 REPRESENTATIVE COUNSEL FOR FORMER EMPLOYEES**

### **Employee Terminations**

- 11.1 During the CCAA Proceedings, the Petitioners terminated approximately 210 employees consisting of approximately 103 head office staff and 107 retail staff (the “**Former Employees**”). All outstanding wages, vacation and benefits, with the exception of severance and termination pay, owing to the Former Employees were paid by the Petitioners.
- 11.2 Management have undertaken significant diligence in the preparation of preliminary calculations of the severance and termination amounts owing to the Former Employees based on applicable provincial statutory requirements and common law entitlement. It is the understanding of the Monitor that most of the employment contracts provide for statutory severance notice and approximately 34 employees may be entitled to contractual and/or common law claims. In conjunction with the Petitioners’ counsel, the Monitor is currently reviewing the severance and termination calculations and supporting documentation with its legal counsel.
- 11.3 As discussed in section 7.0 of this report, and if so authorized by this Honourable Court, the Petitioners are seeking a Claims Process, to be administered by the Monitor (in conjunction with the proposed EMP Order), which will include addressing and quantifying the claims of the Former Employees. All Former Employees with possible claims will be provided an Employee Claims Package, as defined in the proposed Claims Process Order, as prepared by the Monitor, with assistance from former Management, advising the Former Employees of their rights and obligations and will include an assessment of the nature and quantum of such Employee Claim based on the books and records of the Petitioners.

### **Monitor’s Comments on the Notice of Application by Former Employees**

- 11.4 The Former Employees’ are seeking an order to approve VSLO as representative counsel to the Former Employees in the CCAA Proceedings, as well as granting a charge of \$85,000 over the property of the Petitioners in respect of VSLO’s anticipated fees (the “**Employee Charge**”), which will be subordinate in priority only to the Administration Charge, the D&O Charge, and the KERP Charge, as defined in the ARIO.
- 11.5 The Monitor is of the view that appointing representative counsel for the Former Employees and granting the Employee Charge may be redundant in some respects and not be necessary in the circumstances after consideration of the following:

- a) of the remaining Additional Activities as described in section 4.15, the interest of the Former Employees in these CCAA Proceedings is limited to the Claims Process, which will be implemented by the Monitor under the supervision of the Court and will include all Former Employees with claims in these proceedings. The Monitor is not aware of any reason that the Former Employees will be unable to participate in the Claims Process without representative counsel;
- b) the Employee Claims consist of claims for severance and termination pay, which for the majority of claims (approximately 176) are based on statutory requirements as required under the applicable provincial regulations and approximately 34 employees may qualify for common law entitlement pursuant to their individual employment contract;
- c) significant time and expense have already been incurred by 1077 and its former HR personnel in determining the quantum of each Employee Claim;
- d) the Monitor, as an independent officer of the Court, will be adjudicating claims and any disputed claim that are unable to be settled will be referred to the independent Claims Officer and/or the Court for resolution. Any third-party legal counsel engaged to prepare and calculate the Former Employees' claims when a negative claims process is being administered by the Court's officer is duplicative and impacts potential recoveries to the estate and affected creditors including non-former employee claimants; and
- e) the Employee Claims are unsecured claims that should be treated equitably with other unsecured claims in the Claims Process, of which such claimants (primarily landlord claims in respect of disclaimed leases) have not been granted a charge for their respective legal counsel.

## **12.0 RECOMMENDATIONS**

12.1 The Monitor respectfully recommends that this Honourable Court grant the following:

- a) the Claim Process Order;
- b) the EMP Order;
- c) Member Information Requests Order; and
- d) the Name Change Order.

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All of which is respectfully submitted to this Honourable Court this 23<sup>rd</sup> day of November, 2020.

**Alvarez & Marsal Canada Inc.,  
in its capacity as Monitor of  
1077 and not in its personal or corporate capacity**

A handwritten signature in black ink, appearing to read 'Todd M. Martin', written in a cursive style.

Todd M. Martin  
Senior Vice President