



No. S-171026  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE RECEIVERSHIP OF  
SHOEME TECHNOLOGIES LIMITED.  
SHOES.COM TECHNOLOGIES INC.**

DEANS KNIGHT CAPITAL MANAGEMENT LTD.

PETITIONER

- and -

SHOEME TECHNOLOGIES LIMITED  
SHOES.COM TECHNOLOGIES INC.

RESPONDENT

**NOTICE OF APPLICATION**

**Name of Applicant:** Alvarez & Marsal Canada Inc. (the “**Receiver**”) in its capacity as Receiver of Shoeme Technologies Limited (“**Shoeme**”) and Shoes.com Technologies Inc. (“**Shoes.com**” and, together with Shoeme, the “**Debtors**”)

**On Notice To:** Deans Knight Capital Management Ltd.

**And To:** The parties listed on the Service List attached as **Schedule “A”**

TAKE NOTICE that an application will be made by the Receiver to the presiding Judge at the courthouse at 800 Smithe Street, in the City of Vancouver, in the Province of British Columbia on January 16, 2018 at 9:45 a.m. for the Orders set out in Part 1 below.

**Part 1: ORDERS SOUGHT**

1. An Order that the time for service of the Notice of Application and supporting materials is hereby abridged and properly returnable today, and the need for further service of the Notice of Application and supporting materials is hereby dispensed with;
2. An Order that the Receiver is hereby authorized to make payment to Caleres Investment Company, Inc. (“**Caleres**”) in the amount of \$682,000 (the “**Caleres Distribution**”), from certain cash held in the Receiver’s trust account in connection with the receivership

proceedings of the Debtors and in connection with certain post-filing GST receivables realized, or to be realized, by the Receiver (collectively, the “**Receivership Funds**”);

3. An Order that the Receiver is hereby authorized and directed to hold the balance of the Receivership Funds in trust pending further order of this Court, provided that the Receiver may make such expenditures and payments as are permitted pursuant to the Receivership Order pronounced by the Honourable Mr. Justice Macintosh on February 3, 2017 in respect of Shoeme (the “**Shoeme Receivership Order**”) and the Receivership Order pronounced by the Honourable Mr. Justice Grauer on February 15, 2017 in respect of Shoes.com (the “**Shoes.com Receivership Order**”);

4. An Order requesting the aid and recognition of any domestic or foreign court, tribunal, regulatory or administrative body, wherever located, to give effect to this Order and to assist the Receiver and its 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order;

5. An Order that the Receiver or any other party have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order; and

6. Such other relief as counsel may advise and this Honourable Court may grant.

## **Part 2: FACTUAL BASIS**

### **Receivership Proceedings**

7. On February 3, 2017, the Receiver was appointed as receiver over all of the assets, undertakings and properties of Shoeme pursuant to the Shoeme Receivership Order and on February 15, 2017, the Receiver was appointed as receiver over all of the assets, undertakings and properties of Shoeme’s parent company, Shoes.com, pursuant to the Shoes.com Receivership Order (collectively, the “**Canadian Receivership Proceedings**”);

8. On February 2, 2017, Oswego Group LLC, doing business as Inverness Group (the “**US Receiver**”) was appointed as general receiver for the estates of Shoes.com, Inc. and Onlineshoes.com, Inc. (collectively, the “**US Entities**”) pursuant to an Order entered by the Superior Court of Washington for King County (the “**US Receivership Proceedings**”);

9. The Debtors and the US Entities are related companies. The Receiver and the US Receiver have been cooperating and communicating with one another in order to administer the Canadian Receivership Proceedings and the US Receivership Proceedings in conjunction with one another.

### **Interim Distribution Order**

10. Pursuant to the Order (the “**Interim Distribution Order**”) pronounced by the Honourable Mr. Justice Voith on June 30, 2017, this Honourable Court directed and authorized that, following the payment in full to the senior secured creditor of Shoes.com, Wells Fargo

Bank, N.A. (“**Wells Fargo**”), from the proceeds of the concurrent US Receivership Proceedings, the Receiver distribute certain sale proceeds in respect of the Canadian Receivership Proceedings, as follows:

- (a) to Deans Knight Capital Management Limited (“**Deans Knight**”) in the amount of \$10,801,608, plus interest and other recoverable fees and expenses, in respect of its security interest in all present and after-acquired personal property of Shoeme and all present and after-acquired personal property of Shoes.com, subordinate to Wells Fargo;
- (b) to Geodis Logistics LLC (“**Geodis**”) in the amount of \$300,937, in satisfaction of its statutory lien claim in respect of Shoeme’s assets located at 300 Kennedy Road South, Unit B, Brampton, Ontario; and
- (c) that the Receiver hold the balance of the proceeds in connection with the Canadian Receivership Proceedings in trust pending further order of this Honourable Court, provided that the Receiver was permitted to make such expenditures and payments as were permitted pursuant to the Shoeme Receivership Order and the Shoes.com Receivership Order.

11. On June 13, 2017, the US Receiver confirmed that Wells Fargo’s claim was paid in full by the US Receiver, subject to an adjustment for certain recoverable fees and expenses and subject to a refund from Wells Fargo in due course related to certain expired letters of credit. As a result of such payment to Wells Fargo, there were no further claims from Wells Fargo against Shoes.com and; accordingly, Deans Knight was the senior secured creditor of both of the Debtors;

12. Following the confirmation from the US Receiver that Wells Fargo had been paid in full, on July 7, 2017 the Receiver paid the amount of \$10,801,608 plus interest and other recoverable fees and expenses to Deans Knight and the amount of \$300,937 to Geodis, in accordance with the Interim Distribution Order;

### **Outstanding Claims**

13. As a result of the payments to Wells Fargo, Deans Knight and Geodis, there are no further claims against the Debtors from those parties and Caleres is the senior secured creditor of both of the Debtors in respect of its secured convertible notes payable in the amount of US\$7,500,000, plus interest and costs, pursuant to a secured convertible note dated December 12, 2014 and executed by Shoes.com and Shoes.com Holdings (USA), Inc., in favour of Caleres and the guarantee and security agreement dated December 12, 2014 granted by, *inter alia*, the Debtors in favour of Caleres;

14. Caleres and Mr. Daniel Gerler, who is a senior secured creditor in connection with the US Receivership Proceedings, have each asserted objections to the other party’s claims and security interests, which could result in one or the other party receiving all remaining receivership proceeds in the Canadian Receivership Proceedings and the US Receivership Proceedings;

15. On October 31, 2017, Caleres and Mr. Gerler entered into a settlement agreement (the “**Settlement Agreement**”) as described in the Receiver’s Fourth Report to the Court dated January 3, 2018. The essential points of the Settlement Agreement are summarized as follows:

- (a) Mr. Gerler has agreed to waive any right or title to any proceeds in the Canadian Receivership Proceedings and to assign all of his right, title and interest in the same to Caleres;
- (b) Caleres has agreed to waive any right or title to any proceeds in the US Receivership Proceedings and to assign all of its right, title and interest in the same to Mr. Gerler, with the exception of US\$235,000 of the proceeds of the US Receivership Proceedings (the “**Caleres US Proceeds**”);
- (c) Mr. Gerler has agreed to waive any right or title to the Caleres US Proceeds and to assign all of his right, title and interest in the same to Caleres; and
- (d) the agreement is conditional upon the Receiver and the US Receiver administering their respective estates and distributing the proceeds in a manner consistent with the Settlement Agreement;

16. On December 11, 2017, the US Receiver filed a motion in the US Receivership Proceedings to be heard on January 16, 2018 (the “**US Interim Distribution Application**”) for an Order which provides for, among other things:

- (a) authorization for the US Receiver to make a final distribution of the Caleres US Proceeds to Caleres; and
- (b) authorization for the US Receiver to make an interim distribution to Mr. Gerler in the amount of US\$1,500,000;

17. The Receiver currently holds approximately \$752,000 in its trust accounts in connection with the Canadian Receivership Proceedings and expects to realize additional recoveries from post-filing GST accounts receivable of approximately \$30,000;

18. The Receiver intends on retaining cash in the amount of \$70,000, plus the GST receivable of \$30,000 to fund the remaining administration of the estate (the “**Holdback Funds**”) and, with the approval of this Honourable Court, the Receiver intends on paying the amount of \$682,000 to Caleres in accordance with the Settlement Agreement;

19. The Receiver estimates that the Holdback Funds will exceed the costs of administering the estates to their conclusion and the Receiver expects to seek authorization to make a final distribution to Caleres in due course; and

20. The Receiver proposes to have this Application heard on the same day as the US Interim Distribution Application in order to reduce any further delays in payment to the applicable secured creditors pursuant to the Settlement Agreement.

### **Part 3: LEGAL BASIS**

21. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3;
22. *Business Corporations Act*, S.B.C. 2002, c. 57; and
23. the inherent jurisdiction of this Court.

### **Part 4: MATERIAL TO BE RELIED ON**

24. The Receivership Order in respect of Shoeme granted on February 3, 2017;
25. The Receivership Order in respect of Shoes.com granted on February 15, 2017;
26. The Order of the US Court granted on June 12, 2017;
27. The Interim Distribution Order granted on June 30, 2017
28. The Receiver's Fourth Report dated January 3, 2018; and
29. Such other material as counsel may advise and this Honourable Court may permit.

The Applicant estimates that the application will take 15 minutes.

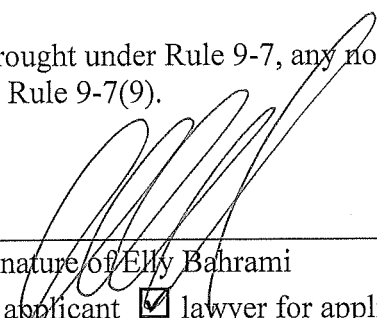
- ☐ This matter is within the jurisdiction of a master.
- ☒ This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
  - (i) a copy of the filed application response;
  - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;

- (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: 03 /JAN/2018

  
\_\_\_\_\_  
Signature of Elly Bahrami

☐ applicant ☒ lawyer for applicant(s)

***To be completed by the court only:***

Order made

☐ in the terms requested in paragraphs \_\_\_\_\_ of  
Part 1 of this notice of application

☐ with the following variations and additional terms:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

Signature of ☐ Judge ☐ Master

**SCHEDULE A**  
**SERVICE LIST**  
**(UPDATED ON JUNE 19, 2017)**

NO. S-171026  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN BANKRUPTCY AND INSOLVENCY**

BETWEEN:

DEANS KNIGHT CAPITAL MANAGEMENT LTD.

PETITIONER

AND:

SHOEME TECHNOLOGIES LIMITED

RESPONDENT

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| <p><b>Dentons Canada LLP</b><br/>20<sup>th</sup> Floor, 250 Howe Street<br/>Vancouver, BC V6C 3R8</p> <p><b>Attention: John R. Sandrelli<br/>Tevia Jeffries</b></p> <p>Telephone: 604-657-4460<br/>Fax: 604-683-5214</p> <p>Email: <a href="mailto:john.sandrelli@dentons.com">john.sandrelli@dentons.com</a><br/>Email: <a href="mailto:tevia.jeffries@dentons.com">tevia.jeffries@dentons.com</a><br/>Email: <a href="mailto:Miriam.dominguez@dentons.com">Miriam.dominguez@dentons.com</a></p> <p><i>Counsel for Deans Knight Capital Management Ltd.</i></p> | <p><b>Michael, Evrensel &amp; Pawar LLP</b><br/>Royal Ctr., 1055 Georgia St. W.,<br/>Suite 1750, Stn Royal Ctr.<br/>Vancouver, British Columbia V6E 3P3</p> <p><b>Attention: Andrew Hennigar</b><br/>Telephone: (604) 891-1184<br/>Email: <a href="mailto:ahennigar@meplaw.ca">ahennigar@meplaw.ca</a></p> <p><i>Counsel for Shoeme Technologies Limited</i></p>   |
| <p><b>Brown Shoe Investments Company Inc.</b><br/>8300 Maryland Avenue<br/>St. Louis MO 63105</p>  | <p><b>Gowling WLG (Canada) LLP</b><br/>Suite 2600, 160 Elgin Street<br/>Ottawa, ON K1P 1C3</p> <p><b>Attention: Lorne Segal</b><br/>Telephone: 613-786-0141<br/>Fax: 613-788-3435<br/>Email: <a href="mailto:lorne.segal@gowlingwlg.com">lorne.segal@gowlingwlg.com</a><br/>Email: <a href="mailto:Garrett.Hamel@gowlingwlg.com">Garrett.Hamel@gowlingwlg.com</a></p> <p><i>Counsel for Caleres Investment Company, Inc.</i></p> |

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| <p><b>Alvarez &amp; Marsal Canada Inc.</b><br/> 400 Burrard Street<br/> Suite 1680, Commerce Place<br/> Vancouver, BC V6C 3A6</p> <p><b>Attention:</b>    <b>Todd Martin</b><br/> <b>Tom Powell</b><br/> <b>Marianna Lee</b></p> <p>Telephone:    604-638-7440<br/> Fax:            604-638-7441<br/> E-mail: <a href="mailto:tmartin@alvarezandmarsal.com">tmartin@alvarezandmarsal.com</a><br/> E-mail: <a href="mailto:tpowell@alvarezandmarsal.com">tpowell@alvarezandmarsal.com</a><br/> E-mail: <a href="mailto:marianna.lee@alvarezandmarsal.com">marianna.lee@alvarezandmarsal.com</a></p> <p><i>Receiver</i></p> | <p><b>Borden Ladner Gervais LLP</b><br/> 1200 Waterfront Centre<br/> 200 Burrard Street<br/> Vancouver, BC V7X 1T2</p> <p><b>Attention:</b>    <b>Magnus C. Verbrugge</b><br/> <b>Elly Bahrami</b></p> <p>Telephone:    604.640.4198<br/> Fax:            604.622.5898</p> <p>Email:           <a href="mailto:MVerbrugge@blg.com">MVerbrugge@blg.com</a><br/> Email:           <a href="mailto:ebahrami@blg.com">ebahrami@blg.com</a></p> <p><i>Counsel for Alvarez &amp; Marsal Canada Inc.</i></p>                                  |
| <p><b>Sports Industry Credit Association</b><br/> 245 Victoria Ave., Suite 800<br/> Westmount, Quebec, H3Z 2M6</p> <p><b>Attention: Brian Dabarno</b><br/> Senior Credit Analyst<br/> Tel: (514) 931-5561<br/> Fax: (514) 931-2896</p> <p>Email: <a href="mailto:brian@sica.ca">brian@sica.ca</a></p>   | <p><b>Lawson Lundell LLP</b><br/> Suite 1600 Cathedral Place<br/> 925 West Georgia Street<br/> Vancouver British Columbia V6C 3L2</p> <p><b>Attention:</b>    <b>Heather M.B. Ferris</b></p> <p>Telephone:    604.631.9145<br/> Fax:            604.669.1620<br/> Email:           <a href="mailto:hferris@lawsonlundell.com">hferris@lawsonlundell.com</a><br/> Email:           <a href="mailto:asimister@lawsonlundell.com">asimister@lawsonlundell.com</a></p> <p><i>Counsel for Roger Hardy and Hardy Capital Corporation</i></p> |
| <p><b>RCAP Leasing Inc.</b><br/> 5575 North Service Rd, Ste 300<br/> Burlington, ON L7L 6M1</p>   | <p><b>National Leasing Group Inc.</b><br/> 1525 Buffalo Place<br/> Winnipeg, MB R3T 1L9</p>  |
| <p><b>Roynat Inc.</b><br/> Suite 1500, 4710 Kingsway St.<br/> Burnaby, BC V5H 4M2</p>   | <p><b>Blue Chip Leasing Corporation</b><br/> 156 Duncan Mill Rd, Unit 16<br/> Toronto, ON M3B 3N2</p>  |
|   | <p><b>Gowling WLG (Canada) LLP</b><br/> 550 Burrard Street, Suite 2300, Bentall 5<br/> Vancouver, BC, V6C 2B5</p> <p><b>Attention: Colin Brousson</b></p> <p>Telephone: 604.891.2286<br/> Fax:            613.683.3558<br/> Email:           <a href="mailto:colin.brousson@gowlingwlg.com">colin.brousson@gowlingwlg.com</a></p> <p><i>Counsel for Bank of Montreal</i></p>   |



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| <p><b>Bennett Jones LLP</b><br/>3400 One First Canadian Place,<br/>P.O. Box 130,<br/>Toronto, ON, M5X 1A4</p> <p><b>Attention: Mark S. Laugesen</b><br/>Telephone: 416 777 4802<br/>Fax: 416 863 1716<br/>Email: <a href="mailto:laugesenm@bennettjones.com">laugesenm@bennettjones.com</a></p> <p><i>Canadian Counsel for Wells Fargo</i></p> <p><b>Lane Powell</b><br/>1420 Fifth Ave, Suite 4200<br/>Seattle, WA 98111-9402</p> <p><b>Attention: Gregory Fox<br/>Annie Norby</b></p> <p>Telephone: 206.223.7129<br/>Email: <a href="mailto:foxg@lanepowell.com">foxg@lanepowell.com</a><br/>Email: <a href="mailto:NorbyA@LanePowell.com">NorbyA@LanePowell.com</a></p> <p><i>US Counsel for Wells Fargo</i></p> | <p><b>Chaitons LLP</b><br/>5000 Yonge Street, 10th Floor<br/>Toronto, Ontario M2N 7E9</p> <p><b>Attention: Harvey G. Chaiton</b><br/>Telephone: 416.218.1129<br/>Fax: 416.218.1849<br/>Email: <a href="mailto:harvey@chaitons.com">harvey@chaitons.com</a></p> <p><i>Counsel for Geodis</i></p>   |
| <p><b>Rosenthal &amp; Rosenthal, Inc.</b><br/>1370 Broadway, 3<sup>rd</sup> Floor<br/>New York, YU 10018</p> <p><b>Attention: Anthony DiTirro</b><br/>Telephone: 212.356.1452<br/>Fax: 212.356.3452<br/>Email: <a href="mailto:TDiTirro@rosenthalinc.com">TDiTirro@rosenthalinc.com</a></p> <p><i>Counsel for Dolce Vita Footwear, Report Footwear and Steve Madden</i></p>   | <p><b>Schwabe, Williamson &amp; Wyatt</b><br/>1211 SW Fifth Avenue<br/>Suite 1500<br/>Portland, OR 97204</p> <p><b>Attention: Alex Poust</b><br/>Telephone: 503-796-2913<br/>Cell: 503-381-4301<br/>Email: <a href="mailto:apoust@schwabe.com">apoust@schwabe.com</a></p> <p><i>US Counsel for Oswego Group, LLC d/b/a Inverness Group, Receiver</i></p> <p>Oswego Group LLC<br/>PO Box 861<br/>Lake Oswego, OR 97034</p> <p><b>Attn: John Davidson</b></p> |
| <p><b>Gall Legge Grant and Munroe LLP</b><br/>1000 – 1199 West Hastings Street<br/>Vancouver BC V6E 3T5</p> <p><b>Attention: Wendy Zhang</b><br/>Telephone: (604) 891-1166<br/>Fax: (604) 669-5101<br/>E-mail: <a href="mailto:wzhang@glgmlaw.com">wzhang@glgmlaw.com</a></p> <p><i>Counsel for 0999849 B.C. Ltd.</i></p>   | <p><b>McMillan LLP</b><br/>Royal Centre, 1055 W. Georgia Street, Suite 1500, PO Box 11117<br/>Vancouver BC V6E 4N7</p> <p><b>Attention: Peter Reardon</b><br/>Telephone: (604) 691.7460<br/>E-mail: <a href="mailto:peter.reardon@mcmillan.ca">peter.reardon@mcmillan.ca</a></p> <p><i>Counsel for Wal-Mart Stores, Inc.</i></p>  |

**Joli-Coeur Lacasse S.E.N.C.R.L.**

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E-mail: Bradley.duncan@hcmp.com

*US Counsel for Daniel Gerler*

## APPENDIX

### THIS APPLICATION INVOLVES THE FOLLOWING:

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matters concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts
- ☒ other

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RESPONDENT

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| MCV | 562423/000001 |
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