

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

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

SEPTEMBER 20, 2017

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1.0 INTRODUCTION

- 1.1 On May 4, 2017 (the “**Filing Date**”), Express Fashion Apparel Canada Inc. (“**Express Canada**”) and Express Canada GC GP, Inc. (collectively, the “**Applicants**”) applied for and were granted protection by this Court under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). Pursuant to an Order of this Court dated May 4, 2017 (the “**Initial Order**”), these CCAA proceedings (the “**CCAA Proceedings**”) were commenced and Alvarez & Marsal Canada Inc. (“**A&M**”) was appointed as monitor of the Applicants in the CCAA Proceedings (in such capacity and not in its personal or corporate capacity, the “**Monitor**”).
- 1.2 In connection with the CCAA Proceedings, the Monitor provided to this Court its First Report of the Monitor dated May 8, 2017 (the “**First Report**”) and its Second Report of the Monitor dated May 25, 2017 (the “**Second Report**”). A&M has also, in its capacity as the proposed monitor of the Applicants, provided to this Court the Pre-Filing Report of the Proposed Monitor dated May 3, 2017 (the “**Pre-Filing Report**”, and together with the First Report and the Second Report, the “**Prior Reports**”). The Prior Reports and Initial Order, and the other Orders, Court-filed documents and notices in these CCAA Proceedings, including the Sale Approval Order and Claims Procedure Order (as each term is defined below) are available on the Monitor’s website at www.alvarezandmarsal.com/ExpressCanada (the “**Monitor’s Website**”).
- 1.3 Capitalized terms used but not defined in this Third Report of the Monitor (the “**Third Report**”) have the meaning ascribed to them in the Second Report.

- 1.4 Pursuant to the Initial Order, the stay of proceedings and other benefits of the Initial Order were extended to Express Canada GC, LP (“**Express Canada LP**” and together with the Applicants, the “**Express Canada Entities**”). Express Canada LP is wholly owned by the Applicants and as described in the Pre-Filing Report performed functions integral to the Applicants’ business.
- 1.5 On May 10, 2017, this Court issued an Order (the “**Sale Approval Order**”) which, among other things: (i) approved the Consulting Agreement, the Sale Guidelines and the transactions contemplated thereunder; and (ii) authorized Express Canada, with the assistance of the Consultant, to conduct a liquidation sale of all of Express Canada’s Merchandise and FF&E in accordance with the Sale Approval Order, the Consulting Agreement and the Sale Guidelines (the “**Sale**”).
- 1.6 On May 29, 2017, this Court issued an Order (the “**Claims Procedure Order**”) which, among other things: (i) approved a procedure for the identification and quantification of claims against the Express Canada Entities and their directors and officers (the “**Claims Process**”); and (ii) authorized, empowered and directed the Monitor to implement the Claims Procedure Order in consultation with the Express Canada Entities.
- 1.7 The purpose of this Third Report is to provide this Court with:
 - (i) information regarding the following:
 - (a) the status of the CCAA Proceedings generally and the outcome of the Sale;
 - (b) the outcome of the Claims Process;

- (c) the proposed Joint Plan of Compromise and Arrangement dated September 27, 2017 (the “**Plan**”);
- (d) the Applicant’s motion for an Order (the “**Sanction and Vesting Order**”) which, among other things: (i) authorizes the Express Canada Entities to call the Unsecured Creditors’ Meeting and the Landlord Creditors’ Meeting (as each term is defined in the Plan) that will be deemed to occur on September 27, 2017; (ii) deeming every Unsecured Creditor (as defined in the Plan) to have voted in favour of a resolution to approve the Plan; (iii) deeming the Monitor to have voted each Landlord Proxy (as defined below) at the Landlord Creditors’ Meeting, in favour of a resolution to approve the Plan in accordance with the voting instructions contained therein; (iv) declaring that the Plan is approved unanimously by the Affected Creditors (as defined in the Plan) at the Unsecured Creditors’ Meeting and the Landlord Creditors’ Meeting; and (v) sanctioning and approving the Plan;
- (e) the receipts and disbursements of the Express Canada Entities;
- (f) the proposed extension of the Stay Period (as defined in the Initial Order) to December 15, 2017;
- (g) the Monitor’s activities since the date of the Second Report; and

- (ii) the Monitor's conclusions and recommendations in connection with the proposed Plan, the proposed Sanction and Vesting Order and the proposed extension of the Stay Period.

2.0 TERMS OF REFERENCE AND DISCLAIMER

2.1 In preparing this Third Report, the Monitor has been provided with and has relied upon unaudited financial information and the books and records prepared by the Express Canada Entities and Express, LLC ("**Express US**" and collectively, the "**Express Entities**") and has held discussions with the Express Entities' management (the "**Management**") and legal counsel for the Express Canada Entities (collectively, the "**Information**").

2.2 Except as otherwise described in this Third Report:

- (i) the Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards ("**CASs**") pursuant to the *Chartered Professional Accountants Canada Handbook* (the "**CPA Handbook**") and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under CASs in respect of the Information; and
- (ii) some of the information referred to in this Third Report consists of forecasts and projections. An examination or review of the financial forecasts and projections, as outlined in the CPA Handbook, has not been performed.

2.3 Future oriented financial information referred to in this Third Report was prepared based on the Express Entities' estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.

2.4 This Third Report should be read in conjunction with the Affidavit of Todd Painter, the President and sole director of each of the Applicants, sworn September 20, 2017 (the "**Fourth Painter Affidavit**"), filed in connection with the Applicants' motion for the granting of: (i) the proposed Sanction and Vesting Order; and (ii) the requested extension of the Stay Period.

2.5 Unless otherwise stated, all monetary amounts contained in this Third Report are expressed in Canadian dollars.

3.0 OVERVIEW OF THE STATUS OF THE CCAA PROCEEDINGS

3.1 Pursuant to the Sale Approval Order, the Express Canada Entities, with the assistance of the Consultant and the Monitor, carried out the Sale in accordance with the Sale Guidelines and the Sale Approval Order. The Sale was completed on or before June 15, 2017.

3.2 As described in the Fourth Painter Affidavit, the results of the Sale were significantly better than anticipated. As at the conclusion of the Sale, total receipts were approximately \$9.8 million, approximately 58% greater than the approximately \$6.2 million projected in the Cash Flow Forecast attached as Appendix "B" to the Pre-Filing Report.

- 3.3 As described in the Second Report: (i) Express Canada, with the consent of the Monitor, issued Lease Disclaimers to each of the Landlords on May 16, 2017, which disclaimers were, absent any objection by the Landlords, to become effective as of June 15, 2017; and (ii) the Express Canada Entities, with the consent of the Monitor, issued certain Non-Lease Disclaimers, which were, absent any objection by the applicable counterparties, effective 30 days after delivery thereof.
- 3.4 The Monitor did not receive any formal objections to the Lease Disclaimers or the Non-Lease Disclaimers or any requests for reasons for such disclaimers and counsel to the Express Canada Entities has advised the Monitor that the Express Canada Entities have also not received any such objections or requests for reasons. As such, all of the Lease Disclaimers became effective on June 15, 2017 and all of the Non-Lease Disclaimers became effective 30 days after delivery thereof.
- 3.5 As described in the Pre-Filing Report and the Second Report, prior to the date of the Initial Order, Express Canada was party to a number of intercompany agreements with Express US (collectively, the “**Prior Intercompany Agreements**”) which were terminated prior to the Filing Date and replaced with new agreements to be effective during the CCAA Proceedings. In accordance with the Prior Intercompany Agreements, Express US supplied Express Canada with all of its inventory and Shared Services. The costs and fees associated with inventory purchases and Shared Services prior to the Filing Date were charged through the intercompany ledger (the “**Intercompany Account**”).
- 3.6 On January 5, 2017, Express Canada granted a security interest in its property to Express US pursuant to a general security agreement dated January 5, 2017 (the “**GSA**”). As set

out in the Pre-Filing Report, counsel to the Monitor conducted an independent review of the GSA and provided the Monitor with an opinion that, among other things (and subject to the standard qualifications contained therein), the GSA creates a valid, legal and binding obligation of Express Canada, enforceable against Express Canada in accordance with its terms. Accordingly, any amounts due and owing by Express Canada to Express US from and after January 5, 2017 are secured by the GSA (the “**Secured Intercompany Claim**”).

3.7 As described in the Second Report, as at the Filing Date, the Intercompany Account was in a payable position and, as at the date of the Second Report, there were certain additional transactions to be recorded through the Intercompany Account and reconciled.

3.8 As set out in greater detail in the Fourth Painter Affidavit, as at the date hereof, the Intercompany Account has been fully updated and reconciled and reflects a Secured Intercompany Claim in the amount of \$188,267.67, which, as described below, was filed by Express US in the Claims Process.

4.0 OUTCOME OF THE CLAIMS PROCESS

Overview

4.1 Capitalized terms used in this Section 4 of the Third Report but not otherwise defined herein have the meaning ascribed to them in the Claims Procedure Order.

4.2 Following the granting of the Claims Procedure Order, the Monitor:

- (i) posted a copy of the Notice to Claimants and the Claims Package on the Monitor’s Website;

- (ii) caused the Notice to Claimants to be published in *The Globe and Mail* (National Edition) on June 1 and 7, 2017;
- (iii) caused a Claims Package to be sent to: (a) each party that appeared on the service list in the CCAA Proceedings (the “**Service List**”) or that had requested a Claims Package; and (b) all known Claimants, other than Employees, as evidenced by the books and records of the Express Canada Entities, at their respective last known municipal or e-mail addresses as recorded in the Express Canada Entities’ books and records; and
- (iv) caused the Statements of Employee Claims to be sent to all Employees at their respective last known municipal or e-mail addresses as recorded in the Express Canada Entities’ books and records,

in each case, pursuant to and in accordance with the requirements of the Claims Procedure Order.

4.3 Pursuant to the Claims Procedure Order:

- (i) the Claims Bar Date for filing any Pre-Filing Claims and/or Intercompany Claims against any of the Express Canada Entities was July 28, 2017;
- (ii) the Claims Bar Date for filing any Pre-Filing Claims against any of the Directors and Officers of the Applicants was July 28, 2017;
- (iii) the Restructuring Period Claims Bar Date for filing any Restructuring Period Claims against any of the Express Canada Entities was the later of: (a) 30 days

after the date on which the Monitor sent a Claims Package with respect to a Restructuring Period Claim; and (b) July 28, 2017; and

- (iv) any Employee that wished to dispute the quantum of his or her Claim as set out in their respective Statement of Employee Claim was required to submit a Notice of Dispute of Statement of Employee Claim by no later than July 28, 2017.

4.4 The Claims received by the Monitor in the Claims Process and the accepted amounts of such Claims are summarized, by category, in the table below.

Summary of Claims Filed				
Claim Type	Claim as Originally Filed		Settled Claim Amounts as Accepted by the Monitor	
	#	\$	#	\$
Third Party Claims	7	665,741	7	784,697 ¹
Employee Claims	93	72,808	93	72,808
Landlord Claims	17	37,493,552	17	29,798,658
Total Unsecured Claims	117	38,232,101	117	30,656,163
Secured Intercompany Claim ²	1	188,268	1	188,268

4.5 Prior to the Claims Bar Date, the Landlords agreed with the Monitor, in consultation with the Express Canada Entities, that each Landlord would be permitted to file a placeholder Claim so as to comply with the Claims Procedure Order and preserve its rights thereunder, while pursuing a consensual resolution of its Claim. This would allow each

¹ The Canada Revenue Agency initially filed a \$1.00 placeholder claim and, following an audit and discussions with the Monitor, revised its claim for a greater amount, which revised claim was accepted by the Monitor.

² As described below, Express US is supporting the Plan by, among other things, permitting the balance of the Secured Intercompany Claim (following a partial reduction as consideration for the Airstream and related marketing materials) to be an Unaffected Claim, which will not be paid under the Plan.

Landlord to avoid the expense of marshalling comprehensive evidence for its Claim to the extent that a consensual resolution thereof could be reached.

4.6 Following the Claims Bar Date, the Monitor and Express Canada engaged in discussions and negotiations with each Landlord and arrived at an agreed upon value of each Landlord's respective Claim. In accordance with the Claims Procedure Order, on or before September 15, 2017, the Monitor issued a Notice of Revision or Disallowance to each Landlord accepting such Landlord's Claim in the agreed amount.

4.7 As shown in the table above, excluding the Secured Intercompany Claim, 117 Unsecured Claims were submitted to the Monitor in the Claims Process, summarized as follows:

(i) 100 Claims have been proven by Creditors (other than Landlords), totalling approximately \$857,505; and

(ii) 17 Claims have been proven by Landlords totalling, approximately \$29.8 million.

4.8 As at the date hereof, there are no unresolved Claims. In particular, no Employee Creditors disputed their Claims.

Director/Officer Claims

4.9 The Monitor did not receive any Claims against the Directors and Officers of the Express Canada Entities.

5.0 THE PROPOSED PLAN

5.1 Capitalized terms used but not defined in this Section 5 of the Third Report have the meaning ascribed to them in the Plan.

5.2 The Plan was developed by the Express Canada Entities and their counsel, in consultation with the Monitor and the Landlords and their respective counsel. Readers are cautioned that the terms and conditions of the Plan and the Sanction and Vesting Order summarized herein are an overview only and are not meant to be exhaustive descriptions. As such, interested parties should refer to and review the Plan and the Sanction and Vesting Order in their entirety.

Overview of the Plan and Key Features

5.3 The purpose of the Plan is to:

- (i) complete the controlled, orderly and timely wind down of the Express Canada Entities and the CCAA Proceedings;
- (ii) provide for distributions in an amount that is sufficient to pay the Proven Claims of Unsecured Creditors (being all Third Party Creditors and Employee Creditors) in full; and
- (iii) provide for distributions to holders of Landlord Claims in the amount of their respective *pro rata* share of the Landlord Cash Pool.

5.4 The Plan provides for two classes of Affected Creditors, composed as follows: (i) a class composed of all of the Unsecured Creditors; and (ii) a class composed of all of the Landlords.

5.5 As set out in greater detail below: (i) the Plan provides that the Unsecured Creditor Claims of all Unsecured Creditors are satisfied in full; and (ii) the Landlords whose

claims are subject to compromise, are supportive of the Plan and the Sanction and Vesting Order.

- 5.6 Express US is supporting the Plan by, among other things, permitting the Secured Intercompany Claim and any Express US Subrogated Claim to be Unaffected Claims, which will not be paid under the Plan.

Unaffected Claims

- 5.7 The Plan does not compromise any Unaffected Claims which are comprised of: (i) Claims secured by any Charges (as defined in the Initial Order); (ii) Claims enumerated in Sections 5.1(2) and 19(2) of the CCAA, of which none were filed in the Claims Process; and (iii) the Secured Intercompany Claim or any subrogated claim by Express US against Express Canada in respect of any amounts paid by Express US under a Landlord Guarantee Claim.

- 5.8 Unaffected Claims will remain as claims against the Express Canada Entities, although funds will only be available for Claims secured by the Charges.

- 5.9 Landlord Guarantee Claims are unaffected by the Plan and the Sanction and Vesting Order.

Notice to Creditors

- 5.10 As at the date hereof, the Applicants have served a Motion Record containing, among other things, the proposed Plan and the Sanction and Vesting Order on: (i) each party that appears on the Service List; and (ii) all known Claimants (including Employees), as evidenced by the books and records of the Express Canada Entities, at their respective

last known municipal or e-mail addresses as recorded in the Express Canada Entities' books and records.

Landlord Support and Proxies

- 5.11 As set out above and in greater detail in the Fourth Painter Affidavit, the Landlords are supportive of the Plan and the Sanction and Vesting Order.
- 5.12 As at the date hereof, each Landlord has provided the Monitor with a proxy (each, a "**Landlord Proxy**") irrevocably directing the Monitor to: (i) act as such Landlord's proxyholder at the Landlord Creditors' Meeting; and (ii) vote the entire amount of such Landlord's Landlord Claim in favour of a resolution to approve the Plan.

Administrative Reserve and Cash Pools

Administrative Reserve

- 5.13 On the Plan Implementation Date, Express Canada will establish an Administrative Reserve Account to hold the Administrative Reserve in the amount of \$1,465,000.
- 5.14 The Administrative Reserve is to be used to pay all costs, professional fees and other amounts related to, incurred and payable in connection with:
- (i) implementing the Plan;
 - (ii) Post-Filing Trade Payables, if any;
 - (iii) winding-down the CCAA Proceedings;

- (iv) any dissolution or bankruptcy of any one or more of the Express Canada Entities including a retainer in the amount of \$50,000 to any proposed trustee in bankruptcy (the “**Bankruptcy Trustee Retainer**”), to the extent that the Express Canada Entities take steps to bankrupt any of the Express Canada Entities; and
- (v) any Tax Claims,

including, without limitation, professional fees and disbursements of the Monitor and counsel to the Monitor (which shall be subject to Court approval in accordance with the Initial Order), professional fees and disbursements of counsel to the Express Canada Entities, and any Shared Services costs, employee-related costs and fees incurred by the Express Canada Entities or the Monitor in connection with foregoing clauses (i) to (v).

5.15 The Monitor is not aware of the existence of any Government Priority Claims or Employee Priority Claims and no such Claims were filed pursuant to the Claims Procedure Order.

5.16 The Monitor is of the view that \$1,465,000 is an appropriate reserve to fund the Administrative Reserve Costs and includes amounts for post-filing rent payments owed to a Landlord, professional fees (invoiced but not paid, unbilled work-in-process and estimates to complete the CCAA Proceedings) and estimated Shared Services costs to complete the CCAA Proceedings.

5.17 A plan of compromise and arrangement proposed in accordance with the CCAA must provide for the payment or provision of Government Priority Claims and Employee Priority Claims pursuant to Section 6(3) of the CCAA. The Plan complies with Section

6(3) by requiring Express Canada, on behalf of the Express Canada Entities, to pay in full, all amounts on account of Government Priority Claims (if any) and Employee Priority Claims (if any), within six (6) months from the Plan Sanction Date.

Unsecured Creditor Cash Pool

5.18 On the Plan Implementation Date, Express Canada will establish the Unsecured Creditor Cash Pool Account to hold the Unsecured Creditor Cash Pool, which shall be in an amount which is sufficient to satisfy in full all Unsecured Creditor Claims. Unsecured Creditor Claims are approximately \$857,505.

Landlord Cash Pool

5.19 On the Plan Implementation Date, after funding the Administrative Reserve and the Unsecured Creditor Cash Pool, Express Canada will establish the Landlord Cash Pool Account to hold the Landlord Cash Pool, which shall be in an amount that is not less than \$16,643,000.

5.20 Following the Plan Implementation Date, the Landlord Cash Pool shall be increased by: (i) any additional Available Funds acquired by any of the Express Canada Entities (whether as a result of the liquidation of any remaining Property, Tax refund or otherwise); and (ii) any Cash held by Express Canada in relation to any Undelivered Distribution with respect to which an Undelivered Distribution Notification has not been received before the Distribution Notification Deadline; and (iii) any amounts remaining in the Administrative Reserve following the payment of any outstanding Administrative Reserve Costs on the Final Distribution Date.

- 5.21 The Landlord Cash Pool is to be used to pay the holder of each Landlord Claim, its *pro rata* share of the Landlord Cash Pool based on the amount of its Landlord Claim.

Initial Distribution

- 5.22 Pursuant to the Plan, the Initial Distribution Date is to occur as soon as reasonably practicable following the Plan Implementation Date and in any event, no later than October 31, 2017, unless otherwise agreed to by Express Canada, the Monitor and each Landlord.
- 5.23 On the Initial Distribution Date, Express Canada will pay, (i) Unsecured Creditors the amount of their respective Proven Claims in full by way of cheque sent by pre-paid ordinary mail; and (ii) each holder of a Landlord Claim an amount equal to its *pro rata* share of the Landlord Cash Pool, by way of cheque or wire transfer (if requested by a Landlord).
- 5.24 If any cheque on account of the foregoing distributions is returned as undeliverable or not cashed: (i) neither Express Canada nor the Monitor are required to locate such Creditor; (ii) no further distributions will be made to such Creditor unless Express Canada receives an Undelivered Distribution Notification prior to the Undelivered Distribution Notification Deadline (December 1, 2017); and (iii) if Express Canada does not receive an Undelivered Distribution Notification prior to the Undelivered Distribution Notification Deadline, such Creditor's claim with respect to such Undelivered Distribution will be forever discharged and barred and the Cash held by Express Canada in relation to such Undelivered Distribution will be transferred to the Landlord Cash Pool Account.

5.25 All distributions on the Initial Distribution Date will be made by Express Canada under the supervision of the Monitor.

Final Distribution

5.26 Pursuant to the Plan, the Final Distribution Date is to occur following the issuance by this Court of a Discharge and Termination Order and prior to the filing of the Monitor's Plan Completion Certificate pursuant to such Discharge and Termination Order. The Final Distribution Date is to be determined by the Monitor, in consultation with Express Canada, or as otherwise ordered by the Court.

5.27 On the Final Distribution Date, Express Canada will pay: (i) each Affected Creditor that has provided Express Canada with an Undelivered Distribution Notification prior to the Undelivered Distribution Notification Deadline, an amount equal to such Affected Creditor's Undelivered Distribution, without interest; (ii) the Bankruptcy Trustee Retainer to the Monitor to be remitted to the proposed bankruptcy trustee as a retainer, provided that the dissolution or bankruptcy of any of the Express Canada Entities is to be effected in accordance with the Plan; (iii) any final Administrative Reserve Costs (with any excess amounts in the Administrative Reserve being transferred to the Landlord Cash Pool Account); and (iv) each holder of a Landlord Claim an amount equal to its *pro rata* share of the balance of the Landlord Cash Pool.

5.28 All distributions on the Final Distribution Date will be made by Express Canada under the supervision of the Monitor.

Conditions Precedent to Plan Implementation

5.29 The implementation of the Plan is conditional upon the fulfillment of the following conditions:

- (i) the proposed Sanction and Vesting Order shall have been granted by the Court by September 27, 2017, or such later date as shall be acceptable to Express Canada and each Landlord, in consultation with the Monitor;
- (ii) the Unsecured Creditors shall have been deemed to have unanimously voted in favour of the Plan at the Unsecured Creditors' Meeting;
- (iii) the Monitor shall have been deemed to have voted each Landlord Proxy at the Landlord Creditors' Meeting in favour of a resolution approving the Plan, in accordance with the voting instructions contained therein;
- (iv) the Plan shall have been sanctioned by the Court on the Plan Sanction Date; and
- (v) unless otherwise agreed to by the Express Canada Entities and the Monitor, the Sanction and Vesting Order shall have become a Final Order.

5.30 Upon satisfaction of the foregoing conditions precedent, Express Canada shall provide the Monitor with written notice confirming same and upon receipt of such notice, the Monitor shall deliver the Monitor's Plan Implementation Date Certificate to the Express Canada Entities and thereafter file it with the Court and post a copy on the Monitor's Website.

5.31 The date on which the Plan becomes effective (the Plan Implementation Date) is the Business Day on which the foregoing conditions precedent have been satisfied.

Plan Releases and Reviewable Transactions

5.32 As at the Effective Time (being 12:01 a.m. on the Plan Implementation Date), the Plan provides for certain full and final releases in favour of:

- (i) Express Canada Released Parties (being the Express Canada Entities and their respective Directors, Officers, current and former employees, advisors and agents);
- (ii) Third Party Released Parties (being A&M, the Monitor and their respective current and former affiliates, directors, officers and employees and all of their respective advisors, legal counsel and agents); and
- (iii) Express US Released Parties (being Express US and its current and former affiliates (other than the Express Canada Entities) and their current and former members, shareholders, directors, officers and employees, advisors, legal counsel and agents).

5.33 In addition to the foregoing releases, the Plan also provides that, among other things:

- (i) all Affected Claims shall be forever discharged and released; and
- (ii) Section 36.1 of the CCAA and Sections 38 and 95 to 101 of the *Bankruptcy and Insolvency Act* (Canada) (“**BIA**”) and any other federal or provincial law relating to preferences, fraudulent conveyances or transfers at undervalue, shall not apply

to the Plan or to any payments or distributions made in connection with transactions entered into by or on behalf of the Express Canada Entities, whether before or after the Filing Date, including to any and all of the payments, distributions and transactions contemplated by and to be implemented pursuant to the Plan.

- 5.34 As set out in the Pre-Filing Report and in the Affidavit of Todd Painter sworn May 3, 2017: (i) as at December 31, 2016, Express Canada owed Express US a net liability of approximately \$9.6 million for the delivery of merchandise and the cost of Shared Services provided to Express Canada at significantly discounted prices; and (ii) such liability was fully discharged by Express Canada on January 11, 2017 by way of a cash payment to Express US of the same amount (the “**January 2017 Intercompany Payment**”).
- 5.35 The Monitor has been advised by Express Canada that at the time of the January 2017 Intercompany Payment: (i) Express Canada was not in breach of any payment obligations to the Landlords or any Unsecured Creditors and was thus meeting its liabilities generally as they became due; and (ii) no decision had been made to cease operations in Canada and Express Canada was still exploring going concern restructuring alternatives.
- 5.36 On August 31, 2017, a conference call was held amongst the Monitor and its counsel, representatives of Triple Five (a landlord of Express Canada), counsel to all Landlords other than Triple Five, counsel to the Express Canada Entities and counsel to Express US to discuss the proposed Plan and the Sanction and Vesting Order and the releases contained therein. On that call, the Monitor’s counsel advised counsel to the Landlords

and representatives of Triple Five that the Monitor was supportive of the third party release in favour of Express US and the release of potential preference claims, among other reasons, because:

- (i) under the proposed Plan, the Unsecured Creditor Claims of all Unsecured Creditors are to be satisfied in full;
- (ii) although the Monitor had not conducted an in-depth investigation into the January 2017 Intercompany Payment, based on the information provided to the Monitor, Express Canada appeared to be solvent at the time that the January 2017 Intercompany Payment was made (establishing the insolvency of the debtor at the time of the impugned payment is a necessary prerequisite to successfully challenging a payment to a related party as a preference under the applicable provisions of the BIA incorporated by reference into the CCAA); and
- (iii) the Monitor understood that the Landlords (the only Creditors having their Claims compromised under the Plan) placed a premium on expediency and efficiency and the in-depth investigation and pursuit of any preference claim would have substantial litigation risk, materially increase costs through increased professional fees and significantly delay distributions.

5.37 The Monitor has reviewed certain other transactions by the Express Canada Entities prior to the Filing Date and is not aware of any that would constitute preferences, fraudulent conveyances or transactions at undervalue.

5.38 In the Monitor's opinion, the releases contained in the Plan (including those relating to Section 36.1 of the CCAA and Sections 38 and 95 to 101 of the BIA and any other federal or provincial law relating to preferences, fraudulent conveyances or transfers at undervalue) are fair and reasonable in the circumstances. In arriving at this opinion, the Monitor has taken into account, among other things, that:

- (i) the Plan provides for the Unsecured Creditor Claims of all Unsecured Creditors to be satisfied in full; and
- (ii) Landlords (a) were consulted in respect of the Plan and the Sanction and Vesting Order (including the releases contained therein) and the January 2017 Intercompany Payment; (b) have not requested that the Monitor conduct a investigation into the January 2017 Intercompany Payment or any other transactions; (c) have not raised any concerns or objections in respect of the proposed releases; and (d) are supportive of the Plan and the Sanction and Vesting Order.

6.0 THE PROPOSED SANCTION AND VESTING ORDER

6.1 Capitalized terms used in this Section 6 of the Third Report but not otherwise defined herein have the meaning ascribed to them in the Plan.

Deemed Meetings and Deemed Voting

6.2 The proposed Sanction and Vesting Order and Plan provide that both the Unsecured Creditors' Meeting and the Landlord Creditors' Meeting shall be deemed to have been

duly called and held on September 27, 2017 for the purpose of voting on a resolution to approve the Plan.

- 6.3 The proposed Sanction and Vesting Order and Plan provide that: (i) at the Unsecured Creditors' Meeting, every Unsecured Creditor shall be deemed to have voted in favour of a resolution to approve the Plan and the result of such deemed vote shall be binding on all Unsecured Creditors; and (ii) at the Landlord Creditors' Meeting, the Monitor shall have been deemed to have voted each Landlord Proxy in favour of a resolution approving the Plan, in accordance with the voting instructions contained therein and the result of such deemed vote shall be binding on all Landlords.
- 6.4 All Unsecured Creditors will have their Unsecured Creditor Claims satisfied in full under the Plan and every Landlord has provided the Monitor with a Landlord Proxy directing the Monitor to vote in favour of a resolution approving the Plan. Therefore, if the Unsecured Creditors Meeting and the Landlord Creditors Meeting were actually held (rather than deemed), such meetings would be a mere formality leading to additional costs and delay.
- 6.5 Further, all Affected Creditors will be given notice of the proposed Plan and the Sanction and Vesting Order and the efficient and cost-saving process described above. For the foregoing reasons, the Monitor is supportive of the deemed meetings which allow the Express Canada Entities to maximize recoveries for the Affected Creditors in as expedient a manner as possible.

Vesting of Airstream and Related Marketing Merchandise

- 6.6 The Monitor has been advised by the Express Canada Entities that they own an Airstream trailer which has been reconfigured and branded to market Express branded products.
- 6.7 Pursuant to the proposed Sanction and Vesting Order and in accordance with the Plan, all of the Express Canada Entities' right, title and interest in and to the Airstream and related marketing merchandise contained in the Airstream shall vest in Express US on the Plan Implementation Date.
- 6.8 The consideration being provided by Express US for the Airstream and related marketing merchandise will be a partial reduction of its Secured Intercompany Claim and the payment by Express US of any applicable transfer taxes payable upon such transfer.
- 6.9 The Monitor has been further advised by counsel to Express US that: (i) with the completion of the in-store liquidations, Express Canada does not have a license to sell or distribute the related marketing merchandise to any third parties, and (ii) it is a condition of Express US supporting the Plan, including permitting the Secured Intercompany Claim and any Express US Subrogated Claim to be Unaffected Claims (which will not be paid under the Plan), that the Airstream and related marketing merchandise are transferred to Express US pursuant to the Sanction and Vesting Order.
- 6.10 The Monitor has carried out high-level market research into the value of the reconfigured Airstream and the Consultant, a third party valuator, provided its high-level views on the value of the reconfigured Airstream. Based on the research conducted by the Monitor and its discussions with the Consultant, the Monitor is of the view that the consideration

being provided by Express US is fair and reasonable in the circumstances and the Airstream is worth significantly less than the amount of the Secured Intercompany Claim.

- 6.11 Accordingly, the Monitor supports the Express Canada Entities' request for the explicit approval of the transaction involving the Airstream and related marketing merchandise as it is of the view that the approval of such transaction is in the best interests of the stakeholders of the Express Canada Entities as it is a condition of a Plan that provides greater recovery to Creditors than they would achieve in a bankruptcy.

Treatment of Court Ordered Charges

- 6.12 Pursuant to the Initial Order, the following two Charges are currently in place: (i) the Administration Charge; and (ii) the Directors' Charge.
- 6.13 Pursuant to the Plan and the proposed Sanction and Vesting Order, on the Plan Implementation Date, the Administration Charge and the Directors' Charge shall continue (in the same priority provided for under the Initial Order), but shall attach solely to a portion of the Administrative Reserve in the amount of \$779,487, being the estimated amount of professional fees to complete the wind-down of the CCAA Proceedings (including unbilled work-in-process and estimates of fees to completion).

Sanction of the Plan

- 6.14 The proposed Sanction and Vesting Order provides that immediately following the Unsecured Creditors' Meeting and the Landlord Creditors' Meeting, the Plan is sanctioned and approved.

- 6.15 As described above, the Unsecured Creditor Claims of all Unsecured Creditors will be satisfied in full under the Plan, and the Landlords are supportive of the Plan and the Sanction and Vesting Order.
- 6.16 The Monitor is of the view that the Express Canada Entities have acted and continue to act in good faith and with due diligence and have complied with the requirements under the CCAA and Orders of the Court in the CCAA Proceedings.
- 6.17 Accordingly, the Monitor is of the view that the Plan is fair and reasonable and recommends that this Honourable Court sanction the Plan in accordance with the terms of the proposed Sanction and Vesting Order.

7.0 CASH FLOW RESULTS RELATIVE TO FORECAST

- 7.1 Receipts and disbursements for the period May 20 to July 28, 2017 (the “**Reporting Period**”), as compared to the Cash Flow Forecast attached as Appendix “B” to the Pre-Filing Report of the Monitor are summarized in the table below (an updated and extended cash flow forecast was not included with the Second Report as the Express Canada Entities had approximately \$16.4 million of cash on hand at the that time, which together with net realizations anticipated to be generated from the Sale through June 15, 2017 were projected to provide sufficient liquidity through the remainder of the CCAA Proceedings).

Cash Flow Results for the Reporting Period			\$000's
	<u>Actual</u>	<u>Forecast</u>	<u>Variance</u>
Receipts	6,663	4,644	2,019
Disbursements			
Intercompany payments	(115)	(289)	(173)
Salaries and benefits	(836)	(860)	(24)
Rent and occupancy	(786)	(767)	19
Store expenses	(86)	(225)	(139)
HST remittance	(857)	(797)	61
Professional fees	(860)	(958)	(98)
Liquidation agent fees	(286)	(100)	186
Other expenses	(15)	(100)	(85)
Total Disbursements	(3,841)	(4,095)	(254)
Net cash flow	2,822	549	2,273
Beginning Cash balance	16,448	14,090	2,359
Net cash flow	2,822	549	2,273
Ending cash balance	19,270	14,639	4,631

Receipts and disbursements for the period July 29 to September 15, 2017 are further updated below.

- 7.2 During the Reporting Period, the Express Canada Entities experienced the following:
- (i) the beginning cash balance was approximately \$2.4 million greater than projected in the Cash Flow Forecast. Management attributes this variance primarily to better than anticipated performance of the Sale;
 - (ii) total receipts were approximately \$2.0 million greater than projected in the Cash Flow Forecast. Management also attributes this to better than anticipated performance of the Sale; and
 - (iii) total disbursements were approximately \$254,000 less than projected in the Cash Flow Forecast. Management attributes this generally to better overall management of costs during the Sale.

- 7.3 Overall, during the Reporting Period, the Express Canada Entities experienced a positive net cash flow variance of approximately \$2.3 million relative to the Cash Flow Forecast.
- 7.4 The closing cash balance as at July 28, 2017 was approximately \$19.3 million (the “**July 28 Cash Balance**”), as compared to the projected cash balance of \$14.6 million. This variance was due to the positive net cash flow variances as described above.
- 7.5 In order to provide a further update with respect to the Express Canada Entities’ cash position beyond the period covered under the Cash Flow Forecast included with the Pre-Filing Report, receipts and disbursements for the period July 29 to September 15, 2017 (the most current week where actual results are available), are summarized in the table below.

Cash Flow Results July 29 to September 15, 2017	\$000’s
	<u>Actual</u>
Receipts	17
Disbursements	
Intercompany payments	-
Salaries and benefits	(1)
Rent and occupancy	(14)
Store expenses	(10)
HST remittance	-
Professional fees	(297)
Liquidation agent fees	-
Other expenses	-
Total Disbursements	(321)
Net cash flow	(304)
Beginning Cash balance	19,270
Net cash flow	(304)
Updated cash balance	18,966

7.6 The closing cash balance as at September 15, 2017 was approximately \$19.0 million (the “**Updated Cash Balance**”). The Updated Cash Balance will be utilized to fund the Administrative Reserve, Unsecured Creditor Cash Pool and Landlord Cash Pool under the Plan, as summarized below.

Utilization of the Updated Cash Balance to Fund the Administrative Reserve and Cash Pools Under the Plan	\$000's
Updated Cash Balance	18,966
Less: Administrative Reserve	(1,465)
Unsecured Creditor Cash Pool	(858)
Landlord Cash Pool	(16,643)
Net cash balance	\$nil

8.0 EXTENSION OF THE STAY PERIOD

8.1 The Stay Period currently expires on September 29, 2017.

8.2 The Monitor supports the Applicants’ motion to extend the Stay Period to December 15, 2017 for the following reasons:

- (i) subject to the Court granting the Sanction and Vesting Order, the extension of the stay of proceedings will facilitate the implementation of the Plan, including distributions thereunder and bringing the motion for the Termination and Discharge Order;

- (ii) the stay of proceedings is required to provide the necessary stability and certainty to enable the Express Canada Entities to complete the wind-down of the CCAA Proceedings;
- (iii) the Administrative Reserve is sufficient to fund the Administrative Reserve Costs and accordingly, the Express Canada Entities are projected to have sufficient liquidity through the remainder of these CCAA Proceedings; and
- (iv) the Applicants continue to act in good faith and with due diligence.

9.0 MONITOR'S ACTIVITIES TO DATE

9.1 In addition to those described above, the activities of the Monitor from the date of the Second Report (May 25, 2017) have included the following:

- (i) continuing to assist the Express Canada Entities with communications with employees, landlords and other parties;
- (ii) responding to inquiries from stakeholders, including addressing questions or concerns of parties who contacted the Monitor on the hotline number or email account established by the Monitor for these CCAA Proceedings;
- (iii) carrying out its duties and responsibilities pursuant to the Claims Procedure Order, including, reviewing Claims filed pursuant thereto in consultation with the Express Canada Entities;
- (iv) reconciling claims with the Landlords, and preparing a series of illustrative recoveries analyses to support discussions with the Landlords and attending

various meetings and teleconferences with counsel to certain of the Landlords and representatives of Triple Five to discuss elements of the Plan;

- (v) posting non-confidential materials filed with the Court to the Monitor's Website;
- (vi) attending the May 29, 2017 hearing for the granting of the Claims Procedure Order and the Stay Extension and Initial Order Amendment Order;
- (vii) reviewing and commenting on drafts of the Plan and the Sanction and Vesting Order; and
- (viii) drafting this Third Report.

10.0 MONITOR'S CONCLUSIONS AND RECOMMENDATIONS

10.1 For the reasons set out in this Third Report, the Monitor is of the view that the relief requested by the Applicants is reasonable and respectfully recommends that this Honourable Court grant the proposed Sanction and Vesting Order.

All of which is respectfully submitted to this Court this 20th day of September, 2017.

**Alvarez & Marsal Canada Inc., solely in its
capacity as Monitor of Express Fashion Apparel
Canada Inc. and Express Canada GC GP, Inc.,
and not in its personal or corporate capacity**

Per:



Name: Douglas R. McIntosh
Title: President

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

THIRD REPORT OF THE MONITOR

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