

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.

)

MONDAY, THE 31ST

JUSTICE NEWBOULD

)

DAY OF OCTOBER, 2016

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF PERFORMANCE SPORTS GROUP LTD., BAUER
HOCKEY CORP., BAUER HOCKEY RETAIL CORP., BAUER
PERFORMANCE SPORTS UNIFORMS CORP., BPS CANADA
INTERMEDIATE CORP., BPS DIAMOND SPORTS CORP., EASTON
BASEBALL/SOFTBALL CORP., KBAU HOLDINGS CANADA, INC.,
PERFORMANCE LACROSSE GROUP CORP., PSG INNOVATION
CORP., BAUER HOCKEY RETAIL INC., BAUER HOCKEY, INC., BAUER
PERFORMANCE SPORTS UNIFORMS INC., BPS DIAMOND SPORTS
INC., BPS US HOLDINGS INC., EASTON BASEBALL/SOFTBALL INC.,
PERFORMANCE LACROSSE GROUP INC., PSG INNOVATION INC.

(the "Applicants")

INITIAL ORDER

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Mark Vendetti sworn October 31, 2016 (the "Vendetti Affidavit") and the Exhibits thereto, the prefiling report of Ernst & Young Inc. ("EY") in its capacity as proposed monitor (the "Monitor") to the Applicants dated

October 31, 2016, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants, the proposed Monitor, the ABL DIP Lenders (as that term is defined below), Sagard Capital Ltd. ("**Sagard**"), Fairfax Financial Holdings Limited ("**Fairfax**"), the Ad Hoc Committee of certain Term Lenders of Performance Sports Group Ltd., and the directors of the Applicants, no one appearing for any other party and on reading the consent of EY to act as the Monitor,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies.

PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property. The Applicants are authorized and empowered to continue

to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. **THIS COURT ORDERS** that the Applicants shall be entitled to continue to utilize the central cash management system currently in place as described in the Vendetti Affidavit or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. **THIS COURT ORDERS** that, subject to the terms of the ABL DIP Agreement (as defined below) and the Budget (as defined in the ABL DIP Agreement), the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each

case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;

- (b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges;
- (c) amounts owing for goods and services actually supplied to the Applicants, or to obtain the release of goods contracted for prior to the date of this Order:
 - (i) by common carriers, dedicated carriers, freight-forwarders, ocean and lake carriers, parcel carriers, consolidators, brokers and customs agents, with the prior consent of the Monitor for any amounts in excess of \$5,000 per transaction, if, in the opinion of the Applicants, it is necessary to prevent the possibility of possessory liens being asserted against any raw materials or finished products ("**Merchandise**") and to continue their business uninterrupted;
 - (ii) by third-party warehousers, distributors and logistics providers, based at various locations, with the prior consent of the Monitor for any amounts in excess of \$5,000, if, in the opinion of the Applicants, it is necessary to prevent the possibility of possessory liens being asserted against any Merchandise and to continue their business uninterrupted;
 - (iii) by third parties such as contractors, builders, and repairers, who may potentially assert liens under applicable law against the Applicants, with the prior consent of the Monitor and in the aggregate maximum amount of \$3,000,000, if, in the opinion of the Applicants, it is necessary to prevent the possibility of possessory

liens being asserted against any Property and to continue their business uninterrupted;

- (iv) by non-U.S. or Canadian suppliers from which the Applicants source their manufacturing operations who the Applicants have determined to be critical to the continued operations of the their business, with the prior consent of the Monitor for any amounts in excess of \$10,000;
 - (v) with the prior consent of the Monitor for amounts in excess of \$5,000, by any suppliers who delivered goods to the U.S. PSG Entities (as defined in the Vendetti Affidavit) in the twenty days before their filing date in the United States, provided that such suppliers are entitled to be paid pursuant to section 503(9) of Chapter 11 of Title 11 of the United States Code ("U.S. Code");
 - (vi) by any other suppliers, with the prior consent of the Monitor for any amounts in excess of \$10,000, if, in the opinion of the Applicants, the supplier is critical to the business and ongoing operations of the Applicants;
- (d) any amounts owing in connection with the Applicants' customer programs, which include gift cards, loyalty programs, discounts, warranties allowing refunds and exchanges, and other offers or accommodations the Applicants, in their business judgment, provide to their wholesale customers and/or directly to retail customers; and
- (e) any province, state or federal taxes or fees up to an individual amount of \$1,000 and up to \$15,000 in the aggregate.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses

incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicants following the date of this Order.

8. **THIS COURT ORDERS** that the Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sale Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to

claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

9. **THIS COURT ORDERS** that until a real property lease in respect of property located in Canada is disclaimed or resiliated in accordance with the CCAA, the Applicants shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicants and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

10. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court:

- (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of this date, provided however that the Applicants are hereby authorized and directed to make: (i) all such payments under the ABL DIP Agreement (as defined below), including amounts under the pre-filing asset-based revolving credit facility and interest thereon; and (ii) all payments authorized under the Term Loan DIP Credit Agreement (as defined below) and (iii) all payments of interest (at the applicable default rate), fees, costs, expenses (including professional advisor fees and expenses) indemnities and other amounts under the Term Loan Facility; provided that the lenders ("**Pre-Filing ABL Lenders**") under the Applicants' revolving asset based credit facility ("**ABL Facility**") shall be entitled to apply receipts and deposits (not including any deposits on account of any advances made under any DIP facility) made to

the Applicants' bank accounts against the indebtedness of the Applicants pursuant to their pre-filing credit agreement, whether such indebtedness arose before or after the date of this order;

- (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property other than as may be contemplated by the U.S. Bankruptcy Court in respect of the Applicants' proceedings under Chapter 11 of the U.S. Code; and
- (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

11. **THIS COURT ORDERS** that the Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the ABL DIP Definitive Documents or Term Loan DIP Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding \$250,000 in any one transaction or \$1,000,000 in the aggregate;
- (b) terminate the employment of such of their employees or temporarily lay off such of its employees as it deems appropriate; and
- (c) pursue all avenues of refinancing of their Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the "**Restructuring**").

12. **THIS COURT ORDERS** that the Applicants shall provide each of the relevant landlords with notice of the Applicants' intention to remove any fixtures from any leased premises in Canada at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the Canadian leased premises to observe such removal and, if the landlord disputes the Applicants' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicants on at least two (2) days notice to such landlord and any such secured creditors. If the Applicants disclaim or resiliate the lease governing such Canadian leased premises in accordance with Section 32 of the CCAA, they shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the Applicants' claim to the fixtures in dispute.

13. **THIS COURT ORDERS** that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

14. **THIS COURT ORDERS** that until and including November 30, 2016, or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**” and collectively “**Proceedings**”) shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

16. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or

held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

19. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

20. **THIS COURT ORDERS** that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

21. **THIS COURT ORDERS** that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of USD \$7.5 million, as security for the indemnity provided in paragraph 20 of this Order. The Directors' Charge shall have the priority set out in paragraphs 49 and 51 herein.

22. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent

that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 20 of this Order.

APPROVAL OF ENGAGEMENT OF CHIEF RESTRUCTURING OFFICER

23. **THIS COURT ORDERS** that the agreement dated as of October 24, 2016 (the “**CRO Engagement Letter**”) pursuant to which the Applicants have engaged the services of Brian J. Fox to act as the chief restructuring officer of the Applicants (the “**CRO**”), is hereby approved as of the date of the CRO Engagement Letter, including, without limitation, the payment of fees and expenses contemplated thereby, and the Applicants are authorized to continue the engagement of the CRO on the terms set out in the CRO Engagement Letter.

24. **THIS COURT ORDERS** that the CRO shall be entitled to the benefit of the Administration Charge (as hereinafter defined) in respect of any obligations of the Applicants under the CRO Engagement Letter, whether for payment of compensation, fees, expenses, indemnities or otherwise to the extent not paid pursuant to the Carve Out (as defined in the ABL DIP Agreement).

25. **THIS COURT ORDERS** that any claims of the CRO under the CRO Engagement Letter shall be treated as unaffected and may not be compromised in any Plan or proposal filed under the *Bankruptcy and Insolvency Act* of Canada (the “**BIA**”) in respect of the Applicants.

26. **THIS COURT ORDERS** that the CRO shall incur no liability or obligations as a result of its engagement or the carrying out of its mandate under the CRO Engagement Letter, save and except for gross negligence or willful misconduct on its part.

APPROVAL OF CLAIMS AND NOTICING AGENT

27. **THIS COURT ORDERS** that the agreement dated as of September 29, 2016 (the “**Prime Clerk Engagement Letter**”), pursuant to which the Applicants have engaged

Prime Clerk LLC to act claims and noticing agent in the United States (the “**Claims and Noticing Agent**”) is hereby approved as of the date of the Prime Clerk Engagement Letter, including without limitation, the payment of fees and expenses contemplated thereby, and the Applicants are authorized to continue the engagement of the Claims and Noticing Agent on the terms set out in the Prime Clerk Engagement Letter.

APPOINTMENT OF MONITOR

28. **THIS COURT ORDERS** that EY is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

29. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicants, to the extent required by the Applicants, in their dissemination, to the ABL DIP Lenders and, Term Loan DIP Lenders, ABL Lenders, Term Lenders and their respective counsel, financial and other information as agreed to between the Applicants and the ABL DIP Lenders and, Term Loan DIP Lenders, ABL Lenders and Term Lenders, which may be used in these proceedings including reporting on a basis to be agreed with

the ABL DIP Lenders and, Term Loan DIP Lenders, ABL Lenders and Term Lenders;

- (d) advise the Applicants in their preparation of the Applicants' cash flow statements and reporting required by the ABL DIP Lenders and Term Loan DIP Lenders, which information shall be reviewed with the Monitor and delivered to the ABL DIP Lenders and, Term Loan DIP Lenders, ABL Lenders and Term Lenders and their counsel;
- (e) advise the Applicants in their development of the Plan and any amendments to the Plan;
- (f) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform their duties arising under this Order;
- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (i) monitor and have full access to and transparent and timely information regarding the sale process of the Applicants; and
- (j) perform such other duties as are required by this Order or by this Court from time to time.

30. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

31. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

32. **THIS COURT ORDERS** that that the Monitor shall provide any creditor of the Applicants and, including the ABL Lenders, Term Lenders, ABL DIP Lenders and Term Loan DIP Lenders, with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall

not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

33. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

34. **THIS COURT ORDERS** that the Monitor, U.S. and Canadian counsel to the Monitor, U.S. and Canadian counsel to the Applicants, and counsel to the directors of the Applicants (the “**Case Professionals**”) shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Case Professionals on a weekly basis and, in addition, the Applicants are hereby authorized to pay to the Case Professionals retainers in amounts of CAD \$100,000 for each Canadian Counsel and for the Monitor and USD \$100,000 for each U.S. Counsel, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

35. **THIS COURT ORDERS** that the Monitor and its U.S. and Canadian legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal U.S. and Canadian counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

36. **THIS COURT ORDERS** that the Case Professionals and the CRO shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount of USD \$7.5 million plus all accrued and unpaid fees, disbursements, costs and expenses incurred by the Case Professionals and the CRO as at the date on which notice is

delivered in Chapter 11 Proceedings requiring the Applicants to fund the Carve-Out (as defined in the ABL DIP Agreement), as security for their professional fees and disbursements incurred at the standard rates and charges of the Case Professionals and the CRO. The Administration Charge shall have the priority set out in paragraphs 49 and 51 hereof.

ABL DIP FINANCING

37. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to obtain and borrow under a credit facility from the lenders party to the ABL DIP Agreement (as defined below) (collectively, the "**ABL DIP Lenders**") in order to finance the Applicants' working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed USD \$ 200 million unless permitted by further Order of this Court.

38. **THIS COURT ORDERS** that such credit facility shall be on the terms and subject to the conditions set forth in the asset-based lending facility agreement dated as of October 31, 2016 between the Applicants and the ABL DIP Lenders (the "**ABL DIP Agreement**").

39. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**ABL DIP Definitive Documents**"), as are contemplated by the ABL DIP Agreement or as may be reasonably required by the ABL DIP Lenders pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the ABL DIP Lenders under and pursuant to the ABL DIP Agreement and the ABL DIP Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

40. **THIS COURT ORDERS** that the ABL DIP Lenders shall be entitled to the benefit of and is hereby granted a charge (the “**ABL DIP Charge**”) on the Property, which ABL DIP Charge shall not secure an obligation that exists before this Order is made. The ABL DIP Charge shall have the priority set out in paragraphs 49 and 51 hereof.

41. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the ABL DIP Lenders may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the ABL DIP Charge or any of the ABL DIP Definitive Documents;
- (b) upon the occurrence of an event of default under the ABL DIP Definitive Documents or the ABL DIP Charge, the ABL DIP Lenders, upon [7] days' notice to the Applicants and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the ABL DIP Agreement, ABL DIP Definitive Documents and the ABL DIP Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the ABL DIP Lenders to the Applicants against the obligations of the Applicants to the ABL DIP Lenders under the ABL DIP Agreement, the ABL DIP Definitive Documents or the ABL DIP Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and
- (c) the foregoing rights and remedies of the ABL DIP Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

42. **THIS COURT ORDERS AND DECLARES** that the ABL DIP Lenders shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the BIA, with respect to any advances made under the ABL DIP Definitive Documents.

TERM LOAN DIP FINANCING

43. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to obtain and borrow under a credit facility from 9938982 Canada Inc. and the other lenders party to the Term Loan DIP Credit Agreement (as defined below) (collectively, the “**Term Loan DIP Lenders**”) subject to the terms and conditions thereunder, provided no loans shall be requested by or made to the Applicants until further Order of this Court and provided that borrowing under such credit facility shall not exceed USD \$361 million unless permitted by further order of this Court.

44. **THIS COURT ORDERS** that such credit facility shall be on the terms and subject to the conditions set forth in the Term Loan Superpriority Debtor-In-Possession Credit Agreement (the “**Term Loan DIP Credit Agreement**”) between the Applicants and the Term Loan DIP Lenders dated October 31, 2016.

45. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the “**Term Loan DIP Definitive Documents**”), as are contemplated by the Term Loan DIP Credit Agreement or as may be reasonably required by the Term Loan DIP Lenders pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the Term Loan DIP Lenders under and pursuant to the Term Loan DIP Credit Agreement and the Term Loan DIP Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

46. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the Term Loan DIP Lenders may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect or any of the Term Loan DIP Definitive Documents;
- (b) upon the occurrence of an event of default under the Term Loan DIP Definitive Documents, the Term Loan DIP Lenders, upon 7 days' notice to the Applicants and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the Term Loan DIP Credit Agreement and Term Loan DIP Definitive Documents, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the Term Loan DIP Lenders to the Applicants against the obligations of the Applicants to the Term Loan DIP Lenders under the Term Loan DIP Credit Agreement, the Term Loan DIP Definitive Documents, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and
- (c) the foregoing rights and remedies of the Term Loan DIP Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

47. **THIS COURT ORDERS AND DECLARES** that the Term Loan DIP Lenders shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the BIA, with respect to any advances made under the Term Loan DIP Definitive Documents.

INTERCOMPANY FINANCING

48. **THIS COURT ORDERS** that to the extent that any one or more of the Applicants (the “**Lending Applicant**”) after the date of this Order, makes any payment or incurs or discharges any obligation that is a payment or obligation any of one or more of the other Applicants or otherwise transfers value to or for the benefit of one or more of the other Applicants, each of the Lending Applicants are hereby granted a charge (the “**Intercompany Charge**”) on all of the Property in the amount of such payment or obligation or transfer. The Intercompany Charge shall have the priority set out in paragraphs 49 and 51 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

49. **THIS COURT ORDERS** that, until further Order of this Court, the priorities of the Directors’ Charge, the Administration Charge, the ABL DIP Charge and the Intercompany Charge, as among them and certain existing encumbrances, shall be, with respect to the type of collateral at issue, as follows:

- (a) With respect the Fixed Asset (Term) Priority Collateral (as defined in the Vendetti Affidavit):

First – the Administration Charge (to the maximum amount of USD \$7.5 million;

Second – the Pre-Filing Term-Loan Facility Security (as defined in the Vendetti Affidavit);

Third – the ABL DIP Charge;

Fourth – the Pre-Filing ABL Facility Security (as defined in the Vendetti Affidavit);

Fifth - the Directors' Charge (to the maximum amount of USD \$7.5 million); and

Sixth - the Intercompany Charge.

- (b) With respect to the ABL Priority Collateral (as defined in the Vendetti Affidavit):

First - the Administration Charge (to the maximum amount of USD \$7.5 million);

Second - the ABL DIP Charge;

Third - the Pre-Filing ABL Facility Security;

Fourth - the Pre-Filing Term-Loan Facility Security;

Fifth - the Directors' Charge (to the maximum amount of USD \$7.5 million); and

Sixth - the Intercompany Charge.

- (c) With respect to the assets, property and undertakings of PSG Innovation Corp. and PSG Innovation Inc. ("**PSG Innovation Collateral**"):

First - the Administration Charge (to the maximum amount of USD \$7.5 million);

Second - the ABL DIP Charge;

Third - the Directors' Charge (to the maximum amount of USD \$7.5 million); and

Fourth - the Intercompany Charge.

- (d) With respect to all other Property that is not Fixed Asset (Term) Priority Collateral or ABL Priority Collateral or PSG Innovation Collateral:

First – the Administration Charge (to the maximum amount of USD \$7.5 million);

Second – the ABL DIP Charge;

Third – the Directors’ Charge (to the maximum amount of USD \$7.5 million); and

Fourth – the Intercompany Charge.

50. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge, the ABL DIP Charge, the Intercompany Charge or the Director’s Charge (collectively, the “**Charges**”) shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

51. **THIS COURT ORDERS** that each of the Directors’ Charge, the Administration Charge, the ABL DIP Charge, and the Intercompany Charge shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any Person except as specifically as set out in paragraph 49 hereof.

52. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors’ Charge, the Administration Charge, the Intercompany Charge or the ABL DIP Charge

unless the Applicants also obtain the prior written consent of the Monitor, the ABL DIP Lenders, the Term Loan DIP Lenders and the beneficiaries of the Intercompany Charge, the Directors' Charge and the Administration Charge, or further Order of this Court.

53. **THIS COURT ORDERS** that the Directors' Charge, the Administration Charge, the Term Loan DIP Credit Agreement, the Term Loan DIP Definitive Documents, the ABL DIP Agreement, the ABL DIP Definitive Documents and the ABL DIP Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the ABL DIP Lenders and the Term Loan DIP Lenders thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the ABL DIP Agreement, the ABL DIP Definitive Documents, the Term Loan DIP Credit Agreement, Term Loan DIP Definitive Documents and the Term Loan DIP Documents, shall create or be deemed to constitute a breach by the Applicants of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants entering into the ABL DIP Agreement, the Term Loan DIP Credit

Agreement, the creation of the Charges, or the execution, delivery or performance of the ABL DIP Definitive Documents or the Term Loan DIP Definitive Documents; and

- (c) the payments made by the Applicants pursuant to this Order, ABL DIP Agreement, the ABL DIP Definitive Documents, the Term Loan DIP Credit Agreement and the Term Loan DIP Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

54. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

SERVICE AND NOTICE

55. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in the national edition of *The Globe and Mail*, the *Wall Street Journal* and *Le Devoir* a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than \$5,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that, for the purposes of this list, the Monitor shall not make the names and addresses of creditors who are individuals publicly available.

56. **THIS COURT ORDERS** that the Applicants shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the

"Service List"). The Monitor shall post the Service List, as may be updated from time to time, on the Website as part of the public materials to be recorded thereon in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

57. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: www.ey.com/ca/psg.

58. **THIS COURT ORDERS** that the Claims and Noticing Agent is entitled to serve and distribute all motion materials and other notices in these proceedings on behalf of the Applicants and the Monitor (when and if so instructed by the Applicants or the Monitor) by electronic service in accordance with the Protocol.

59. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicants, the Monitor and the Claims and Noticing Agent are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery or facsimile transmission shall be

deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

60. **THIS COURT ORDERS** that, except with respect to urgent motions, all motions in this proceeding are to be brought on not less than seven (7) days' notice to all persons on the Service List and shall specify a date and time for the hearing of the motion.

COMEBACK MOTION

61. **THIS COURT ORDERS** that any interested party (including the Applicants and the Monitor) that wishes to amend or vary this Order shall be entitled to appear or bring a motion on a date to be set by the Court (the "**Comeback Motion**"), and any such interested party shall give notice to the Service List and any other party or parties likely to be affected by the Order sought in advance of the date of the Comeback Motion.

GENERAL

62. **THIS COURT ORDERS** that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of their powers and duties hereunder.

63. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

64. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant

representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

65. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

66. **THIS COURT ORDERS** that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

67. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.



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

OCT 31 2016

PER / PAR:



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

Court File No. ● CV-16-11582-0006

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF PERFORMANCE SPORTS GROUP LTD ET. AL.

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

Proceeding commenced at Toronto

INITIAL ORDER

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Peter Howard LSUC#: 22056F
Tel: (416) 869-5613

Maria Konyukhova LSUC#: 52880V
Tel: (416) 869-5230

Kathryn Esaw LSUC#: 58264F
Tel: (416) 869-5230
Fax: (416) 947-0866

Lawyers for the Applicants