Court File No. CV-16-11582-00CL

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 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.

(Applicants)

MOTION RECORD
(Returnable January 10, 2017)
(Re: KERP and KEIP Approval)

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

Peter Howard LSUC#: 22056F
Tel: (416) 869-5613
E-mail: phoward@stikeman.com

Kathryn Esaw LSUC#: 58264F
Tel: (416) 869-6820
E-mail: kesaw@stikeman.com

Lee Nicholson LSUC#66412I
Tel: (416) 869-5604
E-mail: leenicholson@stikeman.com
Fax: (416) 947-0866

Lawyers for the Applicants

INDEX

Court File No. CV-16-11582-00CL

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 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.

(Applicants)

INDEX

TAB 1

Court File No. CV-16-11582-00CL

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 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.

(Applicants)

NOTICE OF MOTION
(Returnable January 10, 2017)
(Re: KERP AND KEIP Approval)

Performance Sports Group Ltd. ("**PSG**"), Bauer Hockey Corp., Bauer Hockey Retail Corp., Bauer Performance Sports Uniform 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 Sport Inc., BPS US Holdings Inc., Easton Baseball/Softball Inc., Performance Lacrosse Group Inc., and PSG Innovation Inc. (collectively, the "**Applicants**" or the "**PSG Entities**"), will make a motion to a judge presiding over the Commercial List at 10:00 a.m. on January 10, 2017 or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING:

The motion is to be heard orally.

THE MOTION IS FOR:

1. An Order substantially in the form of the draft Order included at Tab 3 of the Applicants' Motion Record approving the Key Employee Retention Plan (the "**KERP**") and Key Employee Incentive Plan (the "**KEIP**"), which provides for retention or incentive bonuses, respectively, to certain highly skilled and experienced employees of the PSG Entities (the "**Key Employees**"), all of which is to be secured by a priority charge (the "**Key Employee Charge**") on the Applicants' current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof (the "**Property**").

2. Such further and other relief as this Court deems just.

THE GROUNDS FOR THE MOTION ARE:

Background

3. On October 31, 2016, the Applicants sought and obtained an Order (the "**Initial Order**") of this Court (the "**Canadian Court**") providing creditor protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") to facilitate a going-concern sale transaction for the benefit of the Applicants' stakeholders. On the same date, the PSG Entities also filed for creditor protection (the "**Chapter 11 Proceedings**") in the United States Bankruptcy Court for the District of Delaware (the "**U.S. Court**" and together with the Canadian Court, the "**Courts**") under Chapter 11 of Title 11 of the U.S. Code;

4. Pursuant to the Initial Order, Ernst & Young Inc. was appointed as monitor (the "**Monitor**") of the Applicants in these CCAA proceedings (the "**CCAA Proceedings**" and together with the Chapter 11 Proceedings, the "**Restructuring Proceedings**");

5. On November 30, 2016, the Courts approved the Applicants' entering into a stalking horse asset purchase agreement and bidding procedures to govern the marketing process to occur during the Restructuring Proceedings (the "**Sales Process**");

<u>The Key Employee Retention Plan and Key Employee Incentive Plan</u>

6. The PSG Entities' restructuring depends upon the Key Employees as the group is comprised of skilled and experienced employees who perform roles critical to advancing the PSG Entities' restructuring goals;

7. During the Sales Process, the Applicants' ability to preserve the value of their assets, and continue normal operations hinges, in part, upon their ability to successfully retain Key Employees and incentivize their performance;

8. The KERP and the KEIP are necessary to ensure the Key Employees continue their employment with the Applicants throughout the Restructuring Proceedings. Without the KERP, there is a significant risk that certain Key Employees will resign. The KEIP, which offers incentives tied to generating additional value through the Sales Process, will assist with generating the greatest possible recovery for all stakeholders;

9. The Applicants developed the KERP and KEIP programs in the period leading up to the commencement of the Restructuring Proceedings with the assistance and advice of their legal counsel and professional advisors who have experience designing executive and employee incentive, retention and severance plans;

10. The Applicants also engaged with and solicited feedback from the statutory committee of the unsecured creditors and the statutory committee of equity security holders (collectively, the "**Committees**"). Following intensive arm's length negotiations and modifications made to the KERP and KEIP by the Applicants, the KERP and KEIP are supported by Committees;

11. The Applicants seek to secure the amounts owing under the KERP and the KEIP through the Key Employee Charge on the Applicants' Property up to the maximum amount of US$3.4 million (the "**Key Employee Charge**");

12. Without the KERP, the KEIP and the security provided by the Key Employee Charge, there is risk that the Key Employees would leave their employment prior to the completion of the Restructuring Proceedings, to the clear detriment of all stakeholders involved;

Sealing Order

13. To protect the privacy of the KERP participants and preserve company morale, the PSG Entities are seeking a sealing order in respect of certain details of the KERP, including the names of the KERP participants, as well as their positions within the company, wage information, and KERP payments calculated as a percentage of base salary;

General

14. The provisions of the CCAA, including sections 11 and 11.02(2) thereof, and the inherent and equitable jurisdiction of this Court;

15. Rules 1.05, 2.03, 3.02 and 37 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended;

16. Section 137(2) of the Ontario *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended; and

17. Such further and other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

18. The Affidavit of Brian J. Fox sworn January 3, 2016 and the Exhibits attached thereto;

19. The Fourth Report of the Monitor, to be filed; and

20. Such further and other materials as counsel may advise and this Court may permit.

December 30, 2016

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

Peter F.C. Howard LSUC#: 22056F
Tel: (416) 869-5613
e-mail: phoward@stikeman.com

Kathryn Esaw LSUC#: 58264F
Tel: (416) 869-6820

e-mail: kesaw@stikeman.com

Lee Nicholson LSUC#66412I
Tel: (416) 869-5604
Fax: (416) 947-0866
e-mail: leenicholson@stikeman.com

Lawyers for the Applicants

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

Court File No: CV-16-11582-00CL

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

NOTICE OF MOTION
(RETURNABLE JANUARY 10, 2017)
(RE: KERP AND KEIP APPROVAL)

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

Peter Howard LSUC#: 22056F
Tel: (416) 869-5613
e-mail: phoward@stikeman.com

Kathryn Esaw LSUC#: 58264F
Tel: (416) 869-6820
e-mail: kesaw@stikeman.com

Lee Nicholson LSUC#66412I
Tel: (416) 869-5604
Fax: (416) 947-0866
e-mail: leenicholson@stikeman.com

Lawyers for the Applicants

6657252 v1

TAB 2

Court File No. CV-16-11582-00CL

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 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.

(Applicants)

AFFIDAVIT OF BRIAN J. FOX
(Sworn January 3, 2016)

I, BRIAN J. FOX, of the City of Port Washington, in the State of New York, MAKE OATH AND SAY:

1. I am a Managing Director with Alvarez & Marsal North America LLC ("**A&M**") and the Court-appointed Chief Restructuring Officer of Performance Sports Group Ltd. ("**PSG**"), 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., and PSG Innovation Inc. (collectively, the "**Applicants**" or the "**PSG Entities**").

2. As a result of my engagement with the Applicants I have knowledge of the Applicants' business, operations, properties and finances and as such have knowledge of the matters to which I hereinafter depose. I have also reviewed the books and records of the

Applicants and have spoken with certain of the directors, officers, employees and/or advisors of the Applicants as necessary and applicable, and where I have relied upon such information, I have set forth the source and believe such information to be true.

3. This affidavit is sworn in support of the Applicants' motion seeking an order substantially in the form of the draft order included at Tab 3 of the Applicants' Motion Record approving the Key Employee Retention Plan (the "**KERP**") and Key Employee Incentive Plan (the "**KEIP**"), which provides for retention or incentive bonuses, respectively, to certain highly skilled and experienced employees of the PSG Entities (the "**Key Employees**"), all of which is to be secured by a priority charge (the "**Key Employee Charge**") on the Applicants' current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof (the "**Property**").

4. As of the date of this affidavit, the Applicants' motion for approval of the KERP and KEIP enjoy the support of the statutory committee of the unsecured creditors and the statutory committee of equity security holders (collectively, the "**Committees**"), both appointed under Chapter 11 of Title 11 of the U.S. Code (the "**U.S. Bankruptcy Code**").

A. Background

5. The PSG Entities design, develop, manufacture, market and sell performance sports equipment and accessories for ice hockey, roller hockey, lacrosse, baseball and softball, as well as related apparel.

6. On October 31, 2016, the Applicants sought and obtained an Order (the "**Initial Order**") of this Court (the "**Canadian Court**") providing creditor protection under the *Companies' Creditors Arrangement Act,* R.S.C. 1985, c. C-36, as amended (the "**CCAA**") to facilitate a going-concern sale transaction for the benefit of the Applicants' stakeholders. On the same date, the PSG Entities also filed for creditor protection (the "**Chapter 11 Proceedings**") in the United States ("**U.S.**") Bankruptcy Court for the District of Delaware (the "**U.S. Court**" and together with the Canadian Court, the "**Courts**") under U.S. Bankruptcy Code.

7. Pursuant to the Initial Order, Ernst & Young Inc. was appointed as monitor (the "**Monitor**") of the Applicants in these CCAA proceedings (the "**CCAA Proceedings**" and together with the Chapter 11 Proceedings, the "**Restructuring Proceedings**"). A copy of the Initial Order (as amended and restated) is attached hereto and marked as Exhibit "A". The Initial Order and the other filings in the CCAA Proceedings have been posted on the Monitor's website at: www.ey.com/ca/psg.

8. On November 30, 2016, the Courts approved the Applicants' entering into the asset purchase agreement dated October 31, 2016 (the "**Stalking Horse Agreement**") for the sale of substantially all of their assets to 9938982 Canada Inc. (the "**Stalking Horse Purchaser**"), a company co-owned by Sagard Holdings Inc. and Fairfax Financial Holdings Limited and approving bidding procedures (the "**Bidding Procedures**") to govern the marketing process in a court-approved stalking horse sales process to occur during the Restructuring Proceedings (the "**Sales Process**").

9. The Sales Process and Bidding Procedures establish a bid deadline of January 25, 2017, an auction date of January 30, 2017 (if necessary) and a sale hearing on February 6, 2017 for approval of the winning bid and related transaction.

10. Further background on the Restructuring Proceedings is set out in the affidavit of Mark Vendetti sworn October 31, 2016 in support of the Initial Order and my affidavits sworn November 13, 2016 (with respect to the proposed sales process) and November 21, 2016 (with respect to certain ancillary relief necessary for the success of the Restructuring Proceedings).

B. Key Employee Retention Plan and Key Employee Incentive Plan

a. Overview

11. The PSG Entities' restructuring depends upon the Key Employees as the group is comprised of skilled and experienced employees who perform roles critical to advancing the PSG Entities' restructuring goals. The Key Employees perform important management or operational roles and have knowledge of the PSG Entities' business and their continued employment is vital to providing stability to the PSG Entities' strategic direction and/or day-to-day operations.

12. The Key Employees represent a cross-section of various functions at the Applicants' business, including senior management, business development, product/brand management, research and development, design, sales/marketing, finance, human resources, legal, IT, supply chain and operations.

13. During the Sales Process, the Applicants' ability to preserve the value of their assets, and continue normal operations hinges, in part, upon their ability to successfully retain Key Employees and incentivize their performance. The dedicated assistance of the Key Employees during the Sale Process is a critical component to the ultimate objective of maximizing the value received for the Applicants' business and assets upon conclusion of the Sales Process.

14. In order to ensure that the 60 Key Employees subject to the KERP are retained, the board of directors of PSG (the "**PSG Board**"), with the assistance of their legal and other professional advisors, developed the KERP. Each of the Key Employees that are KERP participants are considered "non-insiders" under the U.S. Bankruptcy Code.

15. The PSG Board, with the assistance of their legal and other professional advisors, also developed the KEIP for six additional Key Employees to ensure these Key Employees were incented to pursue value maximizing restructuring alternatives. The Key Employees that are KEIP participants are senior executives that are considered "insiders" under the U.S. Bankruptcy Code. There is no overlap between the members of the KEIP and KERP. Further, while the relief sought is with respect to all of the Applicants, the KEIP participants are all employed by entities incorporated in the U.S. (which entities will also be responsible for any amounts earned under the KEIP).

16. As discussed below, the Committees' were also consulted on the design of the KERP and KEIP.

17. The details of the KERP and KEIP are described in a summary attached hereto as Confidential Exhibit "B".

b. Development of the KERP and KEIP

18. Prior to and independent of the commencement of the Restructuring Proceedings, the PSG Entities implemented a two-year retention program geared towards ensuring that select employees remained with the PSG Entities until June 2018 (the "**Retention Program**"). PSG underwent a rigorous selection process when developing the Retention Program, whereby retention risk and business impact were analyzed for each employee to determine the appropriate scope for participation in the Retention Program. Only employees with a high business impact and a high level of retention risk were included in the Retention Program.

19. However, even with the Retention Program, PSG had a number of resignations prior to the commencement of the Restructuring Proceedings. Accordingly, the Applicants and their advisors determined it was in the PSG Entities' best interest to convert the Retention Program to the KERP. The KERP program ensures the Key Employees will receive retention payments after completion of the Sales Process and expands the Retention Program to other individuals who are deemed to be critical to the PSG Entities' ongoing operations and who present retention risk and would be difficult to replace.

20. The PSG Board also believed the KEIP was critical to align senior management with the success of the Sales Process and properly incent senior executives that have control and oversight of the Sale Process. Incenting their performance will ensure that the Sale Process takes place efficiently, diligently and in a value-maximizing manner.

21. The Applicants developed the KERP and KEIP programs in the period leading up to the commencement of the Restructuring Proceedings with the assistance and advice of A&M as well as their legal and other professional advisors. A&M has experience in designing executive and employee incentive, retention and severance plans in Chapter 11 Proceedings and access to extensive industry compensation data. A&M also reviewed and utilized the general market compensation benchmarking prepared by Pearl Meyer & Partners LLC, a leading executive compensation firm, to determine the reasonableness of the KEIP program.

22. In designing the KEIP and KERP, the PSG Entities worked closely with A&M to ensure that the terms of the KEIP and KERP were comparable to what has been approved in other restructurings and to ensure that the incentives set out therein were appropriate. To that end, A&M reviewed 15 recent incentive programs for comparable companies undergoing insolvency proceedings. The payouts in each comparable program depended in whole or in part on the successful going concern sale of the debtor companies' assets. In my opinion, the KEIP and KERP are comparable to incentive plans similar in design and scope that have been approved in the U.S. and Canada.

23. The Applicants also engaged with and solicited feedback from the Committees appointed in the Chapter 11 Proceedings on the design of the KERP and KEIP. Management of the Applicants, together with the Applicants' advisors, gave presentations to the Committees' advisors setting forth the proposed terms of the KERP and the KEIP, discussed the business rationale and comparables supporting the KERP and KEIP, and answered questions on the proposals. Following the discussions, the Applicants negotiated with the Committees and offered material modifications to the proposed terms of the KERP and KEIP. The current KERP and KEIP reflect those modifications. Ultimately, following these intensive arm's length negotiations, the Applicants were able to obtain the consensus of the Committees and as of the date of this affidavit, the KERP and KEIP are supported by both Committees.

24. The terms of the KERP and the KEIP have been approved by the PSG Board including all independent directors. In designing the terms of the KERP and the KEIP, the PSG Entities considered a variety of factors including: (a) the potential costs of the KERP and the KEIP; (b) identification of appropriate employees who should benefit from the KERP or the KEIP; and (c) individual existing compensation levels. In particular:

(a) The KERP provides retention payments to 60 employees based on a percentage of their annual base salary. The KERP payments will be made on the earlier of: (i) termination without cause; or (ii) the closing of the transaction contemplated by the Stalking Horse Agreement or an alternative sale transaction by way of asset purchase agreement and/or plan of arrangement.

(b) The KEIP payouts are based on proceeds from the sale of the PSG Entities' business and assets. KEIP payments are not earned unless the Applicants close a transaction that generates at least US$5 million more in Sale Proceeds (defined below) than the consideration provided under the Stalking Horse Agreement. Further, the KEIP has multiple tiers where the payout increases as proceeds from any sale rise.

25. The KERP and KEIP provide assurance to the Key Employees that they will be compensated for their work while supporting the Applicants' restructuring efforts beyond their regular compensation. Through the Sales Process, the Applicants intend to sell substantially all of their assets. The Applicants presently have a stalking horse bid to purchase all of their assets for aggregate consideration of US$575 million. The KERP and KEIP are designed to:

(a) Facilitate a successful Sale Process and implementation of a value-maximizing sale transaction;

(b) Maximize recoveries for the Applicants' stakeholders;

(c) Motivate and preserve essential personnel through the Sales Process and the closing of the sale transaction; and

(d) With respect to the KEIP, reward certain Key Employees if certain restructuring goals are met.

26. Without the KERP, the Applicants likely will lose key non-executive personnel who are critical to the success of the Restructuring Proceedings and the Sale Process. Since the commencement of the Restructuring Proceedings, three employees originally slated for participation in the KERP have resigned to pursue other employment opportunities, in each instance citing uncertainty and instability in the PSG Entities' operations as one of the reasons for departing. In addition, fifteen other employees have resigned since commencement of the Restructuring Proceedings, and there have been thirty-six employee resignations since June, 2016. These departures have put substantial additional demands and pressures on the proposed KERP participants and are illustrative of the issues the Applicants face in retaining Key Employees.

c. The Eligible Employees

27. The Applicants have identified six senior executives to receive payments under the KEIP and 60 non-insider employees to receive payments under the KERP.

28. The KERP participants include employees from various functions, including, but not limited, to sales, human resources, accounting and finance, engineering, products/brand management, research and development, design, marketing, legal and operations functions. The KEIP participants are all senior executives that have critical roles on PSG's senior management team.

29. All Key Employees covered by the KEIP and the KERP were determined by management and the PSG Board to be essential to the successful operation of the Applicants through the Sales Process. Being a retail and consumer driven business, the Applicants' vendor, customer and employee relationships are central to the value of the enterprise. Attrition of employees – particularly the Key Employees – erodes value to the detriment of the Applicants' stakeholders. Further, in addition to everyday responsibilities in connection with the Applicants' operations, the Key Employees have assumed, and will continue to assume, considerable added responsibilities in connection with the Restructuring Proceedings and the Sale Process, such as ensuring compliance of the Applicants' operations with the Stalking Horse Agreement, facilitating and conducting management presentations for potential bidders and responding to bidder information requests.

d. The Terms of the KEIP and KERP

i. The KEIP

30. The KEIP provides for incentive payments to six senior executives, all of whom are "insiders" for the purposes of the U.S. Bankruptcy Code, based on a single performance metric: the sales proceeds realized from the Sales Process, after payment of any applicable bid protections (the "**Sales Proceeds**"). The Applicants chose this metric because the Key Employees selected for the KEIP have control and oversight of the Sales Process.

31. If the Sale Proceeds exceed the consideration provided under the Stalking Horse Agreement by US$5,000,000 (i.e. the cash consideration realized by the Applicants from the

purchase price is US$580,000,000 after payment of any applicable bid protections), the KEIP participants will be entitled to Tier 1 "target" payouts of 100% of their target bonuses. The total incentive pool under the Tier 1 "target" level is US$1,776,753, which amounts to an average of US$296,125 per KEIP participant. If Sale Proceeds exceed the consideration provided under the Stalking Horse Agreement by at least US$50,000,000 (i.e. the cash consideration realized by the Applicants from the purchase price reaches US$625,000,000 after payment of any applicable bid protections), the KEIP participants will be entitled to Tier 2 "stretch" compensation of 200% of their target bonuses. If the Tier 2 "stretch" level is met, the KEIP will have a total plan cost of US$3,553,505, which amounts to an average of US$592,251 per KEIP participant. For Sales Proceeds falling between the Tier 1 "target" level and the Tier 2 "stretch" level, the total incentive pool available to KERP participants will be determined by linear interpolation. A table provided on page 5 of Confidential Exhibit "B" illustrates how the payouts under the KEIP will be determined.

32. If the Sale Proceeds realized by Applicants exceed US$625,000,000, the KEIP participants will be entitled to an aggregate payout which equals 3% of the total consideration above US$625,000,000 as an additional bonus on top of the Tier 2 "stretch" bonuses.

33. Achieving the Tier 1 "target" level for the KEIP will require significant efforts by the KEIP participants, and achieving the Tier 2 "stretch" level would require "above and beyond" effort and be considered an excellent result for the Applicants' stakeholders given the consideration offered under the Stalking Horse Agreement.

34. The KEIP payouts will be funded with Sale Proceeds following closing of the sale transaction resulting from the Sales Process and paid within 30 days.

35. Participants in the KEIP will forfeit their share of the incentive pool if they are terminated for cause – or voluntarily terminate their employment – prior to the closing date of the sale transaction. The forfeited allocation will not be made available to the remaining KEIP participants. In the event of an involuntarily termination not for cause, participants are entitled to the same share of the KEIP as if they had not been terminated.

ii. The KERP

36. The KERP provides retention payments to 60 non-insider employees (as classified by the U.S. Bankruptcy Code), with such payments comprising 12.5% to 25% of each participants' annual base salary, with an average of approximately 21%. The level of compensation was based upon the relative importance of each KERP participant to the Sale Process together with the Applicants' perceived retention risk assigned to such participant.

37. The estimated cost of the KERP, assuming all KERP participants remain employed through the Sales Process, is US$1,652,209, which represents an average of US$27,537 per KERP participant.

38. To protect the privacy of the KERP participants and preserve company morale, the names of the KERP participants, as well as their positions within the company, wage information, and KERP payments calculated as a percentage of base salary, will only be provided to the Courts and has already been provided to the Monitor, the United States Trustee for the District of Delaware, counsel to the Creditors' Committee, proposed counsel to the Equity Committee, and counsel to the PSG Entities' pre-filing and post-filing secured lenders. The names, titles, wage information, and KERP payments as a percentage of base salary for each KERP participant have been redacted in Confidential Exhibit "B".

39. The termination provisions in the KERP are identical to the termination provisions in the KEIP.

e. The Key Employee Charge

40. The PSG Entities contemplate that amounts owing under the KERP and the KEIP would be secured by a charge on the Property up to the maximum amount of US$3.4 million (the "**Key Employee Charge**"). Each Key Employee will only obtain the benefit of the Key Employee Charge up to their respective individual entitlements under the KERP or the KEIP.

41. The priority of the Key Employee charge will vary depending on the class of collateral in respect of which it is applied. Generally, the Key Employee Charge will rank subordinate to the Administration Charge, ABL DIP Charge and the Term Loan DIP Charge

but in priority to the Directors' Charge and the Intercompany Charge (as those terms are defined in the Initial Order). The final proposed priority scheme being sought by the PSG Entities is set out at Schedule "A" to this affidavit.

C. Conclusion

42. I believe and have been advised by members of PSG's management that the Key Employees are likely to consider other employment options if the KERP and KEIP are not approved. The KERP will incentivize certain Key Employees to remain with the Applicants throughout the Restructuring Proceedings and the KEIP will incentivize other Key Employees to attempt to maximize the Sale Proceeds realized through the Sales Process. If the Key Employees were to resign during the Restructuring Proceedings, it would be necessary to replace them. Finding qualified replacements would be disruptive and very difficult, in light of the Applicants' Restructuring Proceedings and their financial position.

43. The approval of the KERP and KEIP is an urgent matter for the PSG Entities' business. As mentioned, since the commencement of these Restructuring Proceedings, three critical employees have resigned and fifteen other employees have also left to pursue other opportunities. These departures illustrate that the approval of the KERP and KEIP are critical to the success of the Applicants' restructuring and their ability to retain the Key Employees. Without the implementation of the KERP and KEIP, the Key Employees are likely to pursue other employment and may not be motivated to perform to their highest level.

44. I am of the view that the terms of the proposed KERP and KEIP are fair and reasonable in the circumstances, will provide an incentive for the Key Employees to continue to perform their critical roles throughout the Applicants' restructuring, and are, therefore, in the best interests of the Applicants and their stakeholders. Further, the KERP and KEIP are supported by a number of key stakeholders in the Restructuring Proceedings, including the Committees, and were designed with their input.

45. The Applicants are seeking equivalent relief with respect to the KEIP and KERP in the Chapter 11 Proceedings. Attached hereto as Exhibit "C" is a redacted copy of the Applicants' motion for equivalent relief filed with the U.S. Court.

46. Confidential Exhibit "B" contains individually identifiable personal and financial information of the Key Employees participating in the KERP. The participants and details of the KEIP have been publicly disclosed. In order to protect the identity of the Key Employees participating in the KERP and to minimize disruption during the CCAA proceedings, the PSG Entities seek an order sealing the unredacted version of the exhibit pending further order of this Court.

47. The Key Employees are critical to a successful restructuring of the Applicants for the benefit of all stakeholders. Their institutional knowledge and experience cannot easily be replaced. Without the KERP, the KEIP and the security provided by the Key Employee Charge, there is risk that the Key Employees would leave their employment prior to the completion of the Applicants' restructuring proceedings. I believe that the KERP, KEIP and the Key Employee Charge are necessary to provide the Applicants with the greatest chance of achieving a successful going-concern outcome from these Restructuring Proceedings.

SWORN BEFORE ME at the City of Exeter, State of New Hampshire, on January 3, 2017. Commissioner for Taking Affidavits KATHLEEN A. JEWKES, Notary Public My Commission Expires April 6, 2021	BRIAN J. FOX

Schedule "A"

Charges Priority Waterfall[1]

		US	Canada
		Final Order	Amended and Restated Initial Order
1.	ABL Priority Collateral	1. Carve-Out[2] 2. ABL DIP Facility 3. Prepetition ABL Facility / adequate protection liens of Prepetition ABL lenders 4. Term Loan DIP Facility 5. Continuing adequate protection liens of the Prepetition Term Loan Lenders (if any), including any liens that are reinstated[3]	1. Administrative Charge 2. ABL DIP Charge 3. Pre-Filing ABL Facility Security 4. Term Loan DIP Charge 5. Key Employee Charge 6. Directors' Charge 7. Intercompany Charge 8. Pre-Filing Term Loan Charge 9. Bid Protection Charge
2.	Fixed Asset (Term) Priority Collateral	1. Carve-Out (subject to FN 3) 2. Term Loan DIP Facility 3. Continuing adequate protection liens of the Prepetition Term Loan Lenders (if any), including any liens that are reinstated 4. ABL DIP Facility 5. Prepetition ABL Facility / adequate protection liens of Prepetition ABL Lenders	1. Administration Charge 2. Term Loan DIP Charge 3. Pre-Filing Term Loan Charge 4. ABL DIP Charge 5. Pre-Filing ABL Facility Security 6. Key Employee Charge 7. Bid Protection Charge 8. Directors' Charge 9. Intercompany Charge
3.	PSG Innovation Collateral[4]	1. Carve-Out (subject to FN 3) 2. Term Loan DIP Facility 3. Continuing adequate protection liens of the Prepetition Term Loan Lenders (if any), including any liens that are reinstated 4. ABL DIP Facility 5. Prepetition ABL Facility / adequate protection liens of Prepetition ABL Lenders	1. Administrative Charge 2. Term Loan DIP Charge 3. ABL DIP Charge 4. Key Employee Charge 5. Bid Protection Charge 6. Directors' Charge 7. Intercompany Charge

[1] Capitalized terms used in this summary have the same meaning used in the Final Order and the Amended and Restated Initial Order.

[2] Upon entry of the Final Order, the ABL DIP Obligations and the Term Loan DIP Obligations shall each be subordinated to 50% of the Carve-Out Trigger Notice Cap.

[3] The Prepetition Term Loan Facility liens are to be released upon entry of the Final Order, subject to continuing adequate protection liens under the Final Order, and any Adequate Protection Superpriority Claims of the Prepetition Term Loan Lenders shall be senior to the Break-Up Fee and Expense Reimbursement granted pursuant to and defined in the *Debtors' Motion for (I) an Order (A) Establishing Bidding Procedures for the Sale of All, or Substantially All, of the Debtors' Assets; (B) Approving Bid Protections; (C) Establishing Procedures Relating to the Assumption and Assignment of Executory Contracts and Unexpired Leases; (D) Approving Form and Manner of the Sale, Cure and Other Notices; and (E) Scheduling an Auction and a Hearing to Consider the Approval of the Sale; (II) an Order (A) Approving the Sale of the Debtors' Assets Free and Clear of Claims, Liens and Encumbrances; (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) Granting Related Relief* [Docket No. 16] filed in the Chapter 11 Proceedings.

[4] To the extent these assets would otherwise constitute ABL Priority Collateral, they shall be treated as such. Otherwise, they shall be treated as Fixed Asset Priority Collateral as reflected above. In addition, these assets will not be available as adequate protection under the CCAA order.

		US	Canada
		Final Order	**Amended and Restated Initial Order**
4.	**Other Unencumbered Collateral (other than avoidance actions)[5]**	1. Carve-Out (subject to FN 2) 2. Term Loan DIP Facility 3. Continuing adequate protection liens of the Prepetition Term Loan Lenders (if any), including any liens that are reinstated 4. ABL DIP Facility 5. Prepetition ABL Facility / adequate protection liens of Prepetition ABL Lenders	1. Administration Charge 2. Term Loan DIP Charge 3. ABL DIP Charge 4. Key Employee Charge 5. Bid Protection Charge 6. Directors' Charge 7. Intercompany Charge
5.	**Proceeds of Avoidance Actions[6]**	1. Carve-Out (subject to FN 2) 2. ABL DIP Facility/Term Loan DIP Facility 3. Prepetition ABL Facility / Continuing adequate protection liens of the Prepetition Term Loan Lenders (if any), including liens that are reinstated	N/A

[5] To the extent these assets would otherwise constitute ABL Priority Collateral, they shall be treated as such. Otherwise, they shall be treated as Fixed Asset Priority Collateral as reflected above. In addition, these assets will not be available as adequate protection under the CCAA order.

[6] Liens on proceeds of avoidance actions are subject to entry of the Final Order (other than liens on proceeds of avoidance actions brought under section 549 of the U.S. Bankruptcy Code, which are authorized upon entry of the Interim Order.

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

Court File No: CV-16-11582-00CL

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

AFFIDAVIT OF BRIAN J. FOX
(SWORN JANUARY 3, 2017)

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

Peter Howard LSUC#: 22056F
Tel: (416) 869-5613
e-mail: phoward@stikeman.com

Kathryn Esaw LSUC#: 58264F
Tel: (416) 869-6820
e-mail: kesaw@stikeman.com

Lee Nicholson LSUC#66412I
Tel: (416) 869-5604
Fax: (416) 947-0866
e-mail: leenicholson@stikeman.com

Lawyers for the Applicants

6657555 v8

EXHIBIT "A"

Exhibit "A" to the Affidavit

Of Brian J. Fox, sworn

January 3, 2017

Commissioner for taking affidavits

KATHLEEN A. JEWKES, Notary Public
My Commission Expires April 6, 2021

Court File No. CV-16-11582-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.	)	MONDAY, THE 31ST
	)	
JUSTICE NEWBOULD	)	DAY OF OCTOBER, 2016

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.

(Applicants)

SECOND AMENDED AND RESTATED 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 affidavit of Brian J. Fox sworn November 13, 2016 and the Exhibits thereto, the affidavit of Brian J. Fox sworn November 21, 2016, the prefiling report of Ernst & Young Inc. ("**EY**") in its capacity as proposed monitor (the "**Monitor**") to the Applicants dated October 31, 2016, and the first report of the Monitor dated November 28, 2016 and on hearing the submissions of counsel for the Applicants, the Monitor, the ABL DIP Lenders (as defined below), Sagard Capital Ltd. ("**Sagard**"), Fairfax Financial Holdings Limited ("**Fairfax**"), the ad hoc committee of certain Pre-Filing Term Lenders (as defined below) (the "**Ad Hoc Committee of Pre-Filing Term Lenders**"), the directors of Performance Sports Group Ltd. ("**PSG**"), the Official Committee of Unsecured Creditors (the "**UCC**"), the ad hoc committee of certain equityholders of PSG (the "**Ad Hoc Committee of Equityholders**"), Q30 Sports, LLC and Q30 Sports Science, LLC and MIPS AB, no one appearing for any other party although duly served as appears from the affidavits of service, filed, 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 situated 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 defined below) 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 Term Loan DIP Credit 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 USD $4,000,000, if, in the opinion of the Applicants, it is necessary to prevent the possibility of liens, whether possessory or non-possessory, being asserted against any Property and to continue their business uninterrupted;

(iv) by non-United States 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;

(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; and

(f) amounts owing to employees or former employees of the Applicants on account of termination or severance obligations in connection with the termination of such employees' employment with Applicants, up to the amount of USD $12,850.

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, in accordance with the terms of the lease, 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), including the payments necessary to complete the Refinancing (as defined in the Term Loan DIP Credit Agreement) and (iii) all payments of interest (at the applicable default rate), fees, costs, expenses (including professional advisor fees and expenses) indemnities and other amounts owing under the term loan credit agreement dated April 15, 2014 (as amended, restated and otherwise modified, the

"**Term Loan Agreement**") between PSG, as borrower, and a syndicate of lenders, as lenders, (the "**Pre-Filing Term Lenders**"); provided that the lenders ("**Pre-Filing ABL Lenders**") under the Applicants' revolving ABL credit facility dated as of April 15, 2014 (the "**Pre-Filing 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 ABL 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. Court (as defined below) 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 defined below), 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 57 and 60 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 defined below) in respect of any obligations of the Applicants under the CRO Engagement Letter, whether for payment of compensation, fees, expenses, indemnities or otherwise.

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.

BID PROTECTION CHARGE

28. **THIS COURT ORDERS** that 9938982 Canada Inc. shall be entitled to the benefits of and are hereby granted a charge on the Property for the Break Fee and the expense reimbursement payable under the Stalking Horse Agreement as those terms are defined and referred to in paragraph 161 of the Vendetti Affidavit (the "**Bid Protection Charge**"), which charge shall not exceed USD $20.75 million in respect of all the Property. The Bid Protection Charge shall have the priority set out in paragraphs 57 and 60 herein.

ABL ESCROW

29. **THIS COURT ORDERS** that the Applicants shall pay to the Pre-Filing ABL Lenders the sum of USD $250,000 to be held in segregated account to secure contingent indemnification obligations arising under or related to the Pre-Filing ABL Facility (the "**ABL Escrow**"), which shall be released to the Applicants promptly following the expiration of the Challenge Period (as that term is defined in paragraph 53 herein).

APPOINTMENT OF MONITOR

30. **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.

31. **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, the Term Loan DIP Lenders, the Pre-Filing ABL Lenders, the Pre-Filing Term Lenders (until the Refinancing been completed), the UCC and Ad Hoc Committee of Equityholders and their respective counsel, financial and other information as agreed to between the Applicants and the ABL DIP Lenders, the Term Loan DIP Lenders, the Pre-Filing ABL Lenders, and the Pre-Filing Term Lenders (until the Refinancing has been completed) which may be used in these proceedings including reporting on a basis to be agreed with the ABL DIP Lenders, the Term Loan DIP Lenders, and the Pre-Filing ABL Lenders and the UCC;

(d) advise the Applicants in their preparation of the Applicants' cash flow statements and reporting required by the ABL DIP Lenders and the Term Loan DIP Lenders, which information shall be reviewed with the Monitor and delivered to the ABL DIP Lenders, the Term Loan DIP Lenders, the Pre-Filing ABL Lenders, the UCC and the Ad Hoc Committee of Equityholders and their respective 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.

32. **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.

33. **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.

34. **THIS COURT ORDERS** that that the Monitor shall provide any creditor of the Applicants, including the Pre-Filing ABL Lenders, the Pre-Filing Term Lenders, the ABL DIP Lenders and the 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.

35. **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.

36. **THIS COURT ORDERS** that the Monitor, United States and Canadian counsel to the Monitor, United States and Canadian counsel to the Applicants, and counsel to the directors of PSG (the "**Case Professionals**") shall be paid their reasonable fees and disbursements in respect of work done in relation to these CCAA proceedings, 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 United States counsel, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

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

38. **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 USD $3.75 million in respect of the Fixed Asset (Term) Priority Collateral (as defined in the Vendetti Affidavit), USD $3.75 million in respect of the ABL Priority Collateral (as defined in the Vendetti Affidavit) for an aggregate amount of USD $7.5 million on all Property (including the Fixed Asset (Term) Priority Collateral and the ABL Priority Collateral), in each case 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 the Chapter 11 Proceedings (as defined in the Vendetti Affidavit) requiring the Applicants to fund the Carve-Out, 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 57 and 60 herein. For greater

certainty, the Administration Charge includes the funds in the Carve-Out and may be satisfied, in whole or in part, from such funds.

ABL DIP FINANCING

39. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to obtain and borrow under a credit facility (the "**ABL DIP 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.

40. **THIS COURT ORDERS** that the ABL DIP Facility shall be on the terms and subject to the conditions set forth in the Superpriority Debtor-In-Possession ABL Credit Agreement dated as of October 31, 2016 between the Applicants and the ABL DIP Lenders (the "**ABL DIP Agreement**") as modified by the US Final DIP Order (defined below).

41. **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.

42. **THIS COURT ORDERS** that the ABL DIP Lenders shall be entitled to the benefit of and are hereby granted a charge (the "**ABL DIP Charge**") on the Property, which ABL DIP Charge shall not secure an obligation that exists before the date of this Order. The ABL DIP Charge shall have the priority set out in paragraphs 57 and 60 herein.

43. **THIS COURT ORDERS** that, subject to the ABL/Term Intercreditor Agreement dated as of October 31, 2016 (the "**Post-Filing ICA**"), 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 the Monitor and the UCC, may , unless this Court orders otherwise, 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.

44. **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 Agreement and the ABL DIP Definitive Documents.

TERM LOAN DIP FINANCING

45. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to obtain and borrow under a credit facility (the "**Term Loan DIP 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**") in order to complete the Refinancing (as defined below) and to finance the Business and general corporate purposes and capital expenditures of the Applicants, provided that (a) the Applicants shall not be permitted to borrow under any Delayed Draw Term Loans (as defined in the Term Loan DIP Credit Agreement) until the Refinancing has been completed; and (b) borrowing under such credit facility shall not exceed USD $361.3 million unless permitted by further order of this Court.

46. **THIS COURT ORDERS** that the Term Loan DIP Facility shall be on the terms and subject to the conditions set forth in the Superpriority Debtor-In-Possession Term Loan Credit Agreement dated as of October 31, 2016 between the Applicants and the Term Loan DIP Lenders (the "**Term Loan DIP Credit Agreement**") as modified by the U.S. Final DIP order.

47. **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, amendments 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.

48. **THIS COURT ORDERS** that the Term Loan DIP Lenders shall be entitled to the benefit of and are hereby granted a charge (the "**Term Loan DIP Charge**") on the Property, which Term Loan DIP Charge shall not secure an obligation that existed before the date of this Order. The Term Loan DIP Charge shall have the priority set out in paragraphs 57 and 60 herein.

49. **THIS COURT ORDERS** that, subject to the Post-Filing ICA, 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 or the Term Loan DIP Charge, Term Loan DIP Lenders, upon 7 days' notice to the Applicants, the Monitor and the UCC, 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 or the Term Loan DIP Charge, 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 or the Term Loan 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 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.

50. **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 Credit Agreement and the Term Loan DIP Definitive Documents.

51. **THE COURT ORDERS** that the Company in consummating the transactions contemplated by the Term Loan DIP Agreement, which is a "related party transaction" for purposes of Multilateral Instrument 61-101 – *Protection of Minority Security Holders in Special Transactions* ("**MI 61-101**") and subject to a court order under applicable bankruptcy or insolvency laws, is not required to comply with both the formal valuation and minority approval requirements under Sections 5.4 and 5.6, respectively, of MI 61-101.

REFINANCING

52. **THIS COURT ORDERS** that the Refinancing is hereby approved and the Applicants are authorized and directed to carry out the Refinancing in accordance with the terms of the Term Loan DIP Credit Agreement and are further authorized and empowered to complete all transactions and take all actions necessary or desirable to complete the Refinancing.

53. **THIS COURT ORDERS** that, subject to the terms of the Term Loan DIP Credit Agreement and paragraph 54 hereof, the Applicants shall (a) repay in full the obligations outstanding under the Term Loan Agreement (the "**Pre-Filing Term Loan**

Obligations") by distributing the proceeds of the applicable refinancing loans advanced under the Term Loan DIP Facility pursuant to the Term Loan DIP Credit Agreement to the administrative agent under the Term Loan Agreement (the "**Pre-Filing Term Loan Agent**"), and (b) pay in full all of the reasonable and documented fees and expenses of the Pre-Filing Term Loan Agent and of the professional advisors retained by the Ad Hoc Committee of Pre-Filing Term Lenders or the Pre-Filing Term Loan Agent, and (c) upon receipt of the Applicants' payment in satisfaction of the Pre-Filing Term Loan Obligations contemplated in subparagraph (a) above, the Pre-Filing Term Loan Agent shall be authorized and directed to make distributions to the Pre-Filing Term Lenders in accordance with the Term Loan Agreement.

54. **THIS COURT ORDERS** that notwithstanding:

(a) the pendency of these proceedings

(b) any assignment in bankruptcy or any petition for a bankruptcy order now or hereafter issued pursuant to the BIA and any order issued pursuant to any such petition;

(c) any application for a receivership order; or

(d) any provisions of any federal or provincial legislation;

the payments, distributions, and disbursements to or for the account of the Pre-Filing Term Lenders, the Pre-Filing Term Loan Agent and the professionals retained by the Ad Hoc Committee of Pre-Filing Term Lenders or the Pre-Filing Term Loan Agent in connection with the Refinancing, shall be made indefeasibly, free and clear of any Encumbrances (as defined below), including the Charges, shall be binding on any trustee in bankruptcy, interim receiver or receiver that may be appointed in respect of any of the Applicants, and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, as against the Applicants, the Monitor, the Term Loan DIP Lenders and the Pre-Filing Term Lenders and shall not constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation; provided, however, that nothing in this paragraph 54 shall derogate from any rights which a Challenge Party may have to commence a Challenge during the Challenge Period (as such terms are defined in the *Final Order (I) Authorizing the Debtors to Obtain Post-Petition Secured Financing Pursuant to 11 U.S.C. § 364, (II) Authorizing the Debtors' Use of Cash Collateral Pursuant to 11 U.S.C. § 363; (III) Granting Adequate Protection to Prepetition Secured Creditors Pursuant to 11 U.S.C. § § 361, 362, 363 and 364; and (IV) Granting Related Relief, issued by the U.S. Court dated November 30, 2016* (the "**U.S. Final DIP Order**")), but strictly and solely pursuant to paragraph 31 of the U.S. Final DIP Order, or from the ability of this Court or the U.S. Court to fashion an appropriate remedy in respect of a successful Challenge, and provided further that nothing herein or in the U.S. Final DIP Order shall derogate from the rights of the Pre-Filing Term Lenders and the Pre-Filing Term Loan Agent in response to any such Challenge and the Pre-Filing Term Loan Agent and the Pre-Filing Term Lenders reserve all such rights. Any stakeholder may also reserve its rights with respect to the allocation of any property of the Applicants between jurisdictions.

55. **THIS COURT ORDERS** that, upon completion of the Refinancing, the Pre-Filing Term Loan Agent and the Pre-Filing Term Lenders shall be entitled to and are hereby granted a charge (the "**Pre-Filing Term Loan Charge**") on the Property, which Pre-Filing Term Loan Charge shall secure any indemnification or other obligations (including as to the payment of reasonable and documented legal fees) which may arise under the Term Loan Agreement in the period from and after the Refinancing and throughout the Challenge Period and any related Challenge proceedings, and which Pre-Filing Term Loan Charge shall have the priority set out in paragraphs 57 and 60 herein.

INTERCOMPANY FINANCING

56. **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 of any 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 57 and 60 herein.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

57. **THIS COURT ORDERS** that, until further Order of this Court and subject to paragraph 58 of this Order, the priorities of the Directors' Charge, the Administration Charge, the ABL DIP Charge, Term Loan DIP Charge, the Bid Protection Charge, the Pre-Filing Term Loan 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 to the Fixed Asset (Term) Priority Collateral:

First – the Administration Charge (to the maximum amount of USD $3.75 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 the Chapter 11 Proceedings requiring the Applicants to fund the Carve-Out in respect of the Property specifically in respect of the Fixed Asset (Term) Priority Collateral);

Second – the Term Loan DIP Charge;

Third- the Pre-Filing Term Loan Facility Security (as defined in the Vendetti Affidavit) prior to the completion of the Refinancing, and the Pre-Filing Term Loan Charge from and after the completion of the Refinancing;

Fourth – the ABL DIP Charge;

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

Sixth – the Bid Protection Charge;

Seventh – the Directors' Charge; and

Eighth – the Intercompany Charge.

(b) With respect to the ABL Priority Collateral:

First – the Administration Charge (to the maximum amount of USD $3.75 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 the Chapter 11 Proceedings requiring the Applicants to fund the Carve-Out in respect of the Property specifically in respect of the ABL Priority Collateral);

Second – the ABL DIP Charge;

Third – the Pre-Filing ABL Facility Security;

Fourth – the Pre-Filing Term Loan Facility Security (prior to the Refinancing);

Fifth – the Term Loan DIP Charge;

Sixth – the Bid Protection Charge;

Seventh – the Directors' Charge; and

Eighth – the Intercompany Charge.

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

First – the Administration Charge;

Second – the Term Loan DIP Charge;

Third – the ABL DIP Charge;

Fourth – the Bid Protection Charge;

Fifth – the Directors' Charge; and

Sixth – 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;

Second – the Term Loan DIP Charge;

Third – the ABL DIP Charge;

Fourth – the Bid Protection Charge;

Fifth – the Directors' Charge; and

Sixth – the Intercompany Charge.

provided, however, that (i) as between the Pre-Filing ABL Lenders, the ABL DIP Lenders and the Term Loan DIP Lenders, nothing in this Order shall derogate from the priorities agreed to by them in the Post-Filing ICA; and (ii) to the extent the PSG Innovation Collateral or the Property described in Paragraph 57(d) above would otherwise constitute ABL Priority Collateral, it shall be treated as such (and otherwise shall be treated as Fixed Asset (Term) Priority Collateral as reflected above).

58. **THIS COURT ORDERS** that, upon completion of the Refinancing, until further Order of this Court, the priorities of the Directors' Charge, the Administration Charge, the ABL DIP Charge, Term Loan DIP Charge the Bid Protection Charge, the Pre-Filing Term Loan Charge, and the Intercompany Charge, as among them and certain existing encumbrances, shall be, with respect to the ABL Priority Collateral:

> First – the Administration Charge (to the maximum amount of USD $3.75 million specifically in respect of the ABL Priority Collateral);
>
> Second – the ABL DIP Charge;
>
> Third – the Pre-Filing ABL Facility Security;
>
> Fourth – the Term Loan DIP Charge;
>
> Fifth – the Directors' Charge (to the maximum amount of USD $7.5 million);
>
> Sixth – the Intercompany Charge;
>
> Seventh – the Pre-Filing Term Loan Charge; and
>
> Eighth – the Bid Protection Charge.

59. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge, the ABL DIP Charge, the Term Loan DIP Charge, the Bid

Protection Charge, the Pre-Filing Term Loan 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.

60. **THIS COURT ORDERS** that each of the Charges 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 57.

61. **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 Charges 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.

62. **THIS COURT ORDERS** that the Directors' Charge, the Administration Charge, the Term Loan DIP Credit Agreement, the Term Loan DIP Definitive Documents, the Term Loan DIP Charge, 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 and Term Loan DIP Definitive 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' execution, delivery or performance of 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 subject to paragraph 54 hereof.

63. **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.

CROSS BORDER PROTOCOL

64. **THIS COURT ORDERS** that the cross border protocol, in the form attached as Schedule "1" hereto, is hereby approved and shall become effective upon its approval by the U.S. Court and the parties to these proceedings and any other Person shall be governed by it and shall comply with same.

MARSHALLING

65. **THIS COURT ORDERS THAT** none of the Term Loan DIP Lenders, the ABL DIP Lenders, Pre-Filing Term Lenders or the Pre-Filing ABL Lenders shall be subject to the equitable doctrine of "marshaling" or any other similar doctrine; provided, however, that, notwithstanding the foregoing, (i) at any time, upon the occurrence or continuation of an Event of Default under either DIP Facility, any stakeholder retains the right to argue, and the Court retains the right to so order, that the proceeds of assets, property and undertakings which are not Fixed Asset (Term) Priority Collateral or ABL Priority Collateral (the "**Unencumbered Assets**") should only be used to satisfy the obligations under the ABL DIP Facility or Term Loan DIP Facility to the extent such obligations cannot be satisfied in full first from other collateral and/or to argue that such Unencumbered Assets should be sold separately and no earlier than the sale, transfer, foreclosure or other disposition of such other collateral; and (ii) the Applicants, Term Loan DIP Lenders, the ABL DIP Lenders, the Pre-Filing Term Lenders and the Pre-Filing ABL Lenders each reserve their rights to oppose such arguments.

SERVICE AND NOTICE

66. **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.

67. **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 Case Website (as defined below) 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.

68. **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 (the "**Case Website**") shall be established in accordance with the Protocol with the following URL: www.ey.com/ca/psg.

69. **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.

70. **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.

71. **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.

GENERAL

72. **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.

73. **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.

74. **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.

75. **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.

76. **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.

77. **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:

DEC 19 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-16-11582-00CL

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

SECOND AMENDED AND RESTATED 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
Email: phoward@stikeman.com

Maria Konyukhova LSUC#: 52880V
Tel: (416) 869-5230
Email: mkonyukhova@stikeman.com

Kathryn Esaw LSUC#: 58264F
Tel: (416) 869-5230
Email: kesaw@stikeman.com
Fax: (416) 947-0866

Lawyers for the Applicants

CONFIDENTIAL
EXHIBIT "B"

Exhibit "B" to the Affidavit

Of Brian J. Fox, sworn

January 3, 2017

Commissioner for taking affidavits

KATHLEEN A. JEWKES, Notary Public
My Commission Expires April 6, 2021

EXECUTIVE SUMMARY

KEIP & KERP – Overall Cost

- The chart below shows a summary of the KEIP and KERP including the number of participants, the total plan cost, and the average cost per participant. All references to dollars are in USD currency unless otherwise noted.

			Tier 1 ("Target")		Tier 2 ("Stretch")	
Plan	Location of Employer	Number of Participants	Total Plan Cost	Average Cost Per Participant	Total Plan Cost	Average Cost Per Participant
KEIP	U.S.	6	$1,776,753	$296,125	$3,553,505	$592,251
	Total	**6**	**$1,776,753**	**$296,125**	**$3,553,505**	**$592,251**
KERP	U.S.	43	$1,247,287	$29,007		
	Canada	13	$291,550	$22,427		
	Europe	4	$113,372	$28,343		
	Total	**60**	**$1,652,209**	**$27,537**		

KEIP & KERP – Plan Provisions

KEIP

- The KEIP payouts are based on total consideration from the Sale. No KEIP payments are earned unless the Company closes a transaction with Sale proceeds to the Company (i.e., after bid protection (break-up fee and expense reimbursements) amounts have been deducted) equal to or greater than $580,000,000. The KEIP has multiple tiers where the payout increases as proceeds from the Sale rise. The table below illustrates the potential KEIP payouts based on various levels of Sale proceeds:

	Price Paid by Prevailing Bidder[1]		Aggregate
	Stalking Horse	Non-Stalking Horse	KEIP Payout
	$575,000,000	n/a	$0
Tier 1	n/a	$600,750,000	$1,776,753
	$585,000,000	$605,750,000	$1,974,170
	$590,000,000	$610,750,000	$2,171,587
	$595,000,000	$615,750,000	$2,369,004
	$600,000,000	$620,750,000	$2,566,421
	$605,000,000	$625,750,000	$2,763,837
	$610,000,000	$630,750,000	$2,961,254
	$615,000,000	$635,750,000	$3,158,671
	$620,000,000	$640,750,000	$3,356,088
Tier 2	$625,000,000	$645,750,000	$3,553,505
Above Tier 2	$625,000,000 +	$645,750,000	$3,553,505 + 3% of > $645,750,000

[1] Showing $5m increments for illustrative purposes. However, actual bid increment is $1m.

KERP

- The KERP provides retention payments to sixty (60) employees ranging from 12.5% to 25% of annual base salary. The average retention payment is equal to 21% of annual base salary.
- The KERP payments will be made to KERP participants on the earlier of:
  - Termination without cause; or
  - Closing of the Stalking Horse or alternative Sale transaction by way of asset purchase and/or plan of arrangement.

A&M

KEY EMPLOYEE INCENTIVE PLAN (KEIP)

Key Terms

Participation

- PSG has limited participation in the KEIP to six (6) senior employees (the "KEIP Participants"). All employees covered by the KEIP have been carefully selected by management because they are essential to the successful operation of the Company through the Sale process. All of the KEIP Participants are employed by a U.S. legal entity. Any earned KEIP amounts will be paid by U.S./Canadian entities based on proceeds allocation. The KEIP Participants are listed below:

Name	Title	Legal Entity Organization Employer
Kent, Harlan	Chief Executive Officer	Bauer Hockey Inc.
Vendetti, Mark	EVP/Chief Financial Officer	Bauer Hockey Inc.
Gibson, Paul	EVP/Chief Supply Chain Officer	Bauer Hockey Inc.
Wall, Michael	EVP/General Counsel/Corp Secretary	Bauer Hockey Inc.
Bass, Angela	EVP Global Human Resources	Bauer Hockey Inc.
Dachsteiner, Paul	VP Information Technology & Services	Bauer Hockey Inc.

KEY EMPLOYEE INCENTIVE PLAN (KEIP)

Key Terms (continued)

Determination of KEIP Bonuses

- The performance metric is based on total consideration from the Sale. No KEIP payments are earned unless the Company closes a transaction with Sale proceeds to the Company (i.e., after bid protection (break-up fee and expense reimbursements) amounts have been deducted) equal to or greater than $580,000,000. Payouts were determined based on a percentage of the KEIP Participant's pre-petition target bonus. If proceeds exceed the Tier 2 Sale Proceeds, 3% of consideration above Tier 2 Sale Proceeds will be paid as additional bonus. The chart below summarizes the potential KEIP payouts based on various levels of Sale proceeds:

	Price Paid by Prevailing Bidder[1]		Aggregate KEIP Payout
	Stalking Horse	Non-Stalking Horse	
	$575,000,000	n/a	$0
Tier 1	n/a	$600,750,000	$1,776,753
	$585,000,000	$605,750,000	$1,974,170
	$590,000,000	$610,750,000	$2,171,587
	$595,000,000	$615,750,000	$2,369,004
	$600,000,000	$620,750,000	$2,566,421
	$605,000,000	$625,750,000	$2,763,837
	$610,000,000	$630,750,000	$2,961,254
	$615,000,000	$635,750,000	$3,158,671
	$620,000,000	$640,750,000	$3,356,088
Tier 2	$625,000,000	$645,750,000	$3,553,505
Above Tier 2	$625,000,000 +	$645,750,000 +	$3,553,505 + 3% of > $645,750,000

[1] Showing $5m increments for illustrative purposes. However, actual bid increment is $1m.

Key Terms (continued)

- The table below shows the potential payments under the KEIP for each KEIP Participant at the Tier 1 and Tier 2 levels:

Asset Sale				
Name	Title	Annual Salary [USD]	Tier 1	Tier 2
Kent, Harlan[1]	Chief Executive Officer	$1,500,000	$750,000	$1,500,000
Vendetti, Mark	EVP/Chief Financial Officer	$410,000	$266,500	$533,000
Gibson, Paul	EVP/Chief Supply Chain Officer	$375,984	$244,390	$488,779
Wall, Michael	EVP/General Counsel/Corp Secretary	$320,000	$208,000	$416,000
Bass, Angela	EVP Global Human Resources	$300,000	$195,000	$390,000
Dachsteiner, Paul	VP Information Technology & Services	$225,726	$112,863	$225,726
Total	n/a	n/a	$1,776,753	$3,553,505

[1] Although Mr. Kent's salary is currently $1,500,000, his original salary of $750,000 was used for purposes of determining his KEIP tier 1 and tier 2 amounts.

- If Tier 1 performance is not achieved, no KEIP amounts will be earned. Payout for performance between Tier 1 and Tier 2 levels will be interpolated on a linear basis.
- All of the KEIP Participants except the new CEO currently have a retention bonus in place that will not be assumed during the bankruptcy proceedings.

A&M

KEY EMPLOYEE RETENTION PLAN (KERP)

KEY EMPLOYEE RETENTION PLAN (KERP)

Key Terms

- The Company currently has a 2 year retention program in place through June 2018 for select employees. The Company underwent a rigorous selection process when developing the current program whereby retention risk and business impact were analyzed for each employee to determine participation. Only employees with a high business impact were included in the program. Those employees deemed critical were further divided into 3 Tiers based on retention risk as shown in the table below.

Business Impact	Lower	Retention Risk (Risk employee will leave)	Highest
High	**TIER 3** *[High Impact + Lower Retention Risk] ELIGIBLE*	**TIER 2** *[High Impact + Less Retention Risk] ELIGIBLE*	**TIER 1** *[High Impact + Highest Retention Risk] ELIGIBLE*
	NO ACTION *[Medium Impact + Lower Retention Risk]*	NO ACTION *[Medium Impact + Less Retention Risk]*	NO ACTION *[Medium Impact + Highest Retention Risk]*
Low	NO ACTION *[Low Impact + Lower Retention Risk]*	NO ACTION *[Low Impact + Less Retention Risk]*	NO ACTION *[Low Impact + Highest Retention Risk]*

- The retention amount as a percentage of base salary for each tier was set as follows:

	Tier 1	Tier 2	Tier 3
Payout (as % of Base Salary)	25.00%	18.75%	12.50%

KEY EMPLOYEE RETENTION PLAN (KERP)

Key Terms (continued)

- Participation in the KERP is limited to sixty (60) employees (the "KERP Participants"). Nineteen (19) of the KERP Participants were not included in the Company's original retention plan. Some of these individuals have since taken on expanded roles due to attrition (i.e., finance) while others have responsibilities that are especially critical for executing the Sale process. Accordingly, since these individuals are deemed essential to the successful operation of the Company, they were included in the KERP. The KERP Participants' roles include sales, human resources, accounting and finance, engineering, development, marketing, and operations functions.
- The KERP payments represent amounts that are 12.5% to 25% of the KERP Participants' annual base salaries (average of approximately 21%).
- The estimated total cost of the KERP assuming all KERP Participants remain employed through the closing of the Sale is $1,652,209. Any earned KERP amounts will be paid by the employing entity.
- The KERP Participants' titles, employing legal entities, base salaries and proposed KERP amounts are shown in the table below and on the following page:

KERP Participant	Title	Legal Entity Organization Employer	Tier	Base Salary	KERP Amount	Percentage of Base Salary
		Hockey Division				
[redacted]	[redacted]	[redacted]	Tier 1	[redacted]	$53,198	[redacted]
[redacted]	[redacted]	[redacted]	Tier 1	[redacted]	$48,569	[redacted]
[redacted]	[redacted]	[redacted]	Tier 1	[redacted]	$28,978	[redacted]
[redacted]	[redacted]	[redacted]	Tier 1	[redacted]	$31,000	[redacted]
[redacted]	[redacted]	[redacted]	Tier 1	[redacted]	$25,000	[redacted]
[redacted]	[redacted]	[redacted]	Tier 1	[redacted]	$32,400	[redacted]
[redacted]	[redacted]	[redacted]	Tier 1	[redacted]	$28,431	[redacted]
[redacted]	[redacted]	[redacted]	Tier 1	[redacted]	$50,000	[redacted]
[redacted]	[redacted]	[redacted]	Tier 2	[redacted]	$23,624	[redacted]
[redacted]	[redacted]	[redacted]	Tier 2	[redacted]	$18,982	[redacted]
[redacted]	[redacted]	[redacted]	Tier 2	[redacted]	$16,153	[redacted]
[redacted]	[redacted]	[redacted]	Tier 2	[redacted]	$28,725	[redacted]
[redacted]	[redacted]	[redacted]	Tier 2	[redacted]	$26,074	[redacted]
[redacted]	[redacted]	[redacted]	Tier 2	[redacted]	$20,054	[redacted]
[redacted]	[redacted]	[redacted]	Tier 2	[redacted]	$18,750	[redacted]
[redacted]	[redacted]	[redacted]	Tier 2	[redacted]	$16,497	[redacted]
[redacted]	[redacted]	[redacted]	Tier 2	[redacted]	$28,125	[redacted]
[redacted]	[redacted]	[redacted]	Tier 3	[redacted]	$11,250	[redacted]
[redacted]	[redacted]	[redacted]	Tier 3	[redacted]	$14,053	[redacted]

[1] Additions from prior retention plan.

KEY EMPLOYEE RETENTION PLAN (KERP)

Key Terms (continued)

KERP Participant	Title	Legal Entity Organization Employer	Tier	Base Salary	KERP Amount	Percentage of Base Salary
		Easton Division				
[redacted]	[redacted]	[redacted]	Tier 1	[redacted]	$48,036	[redacted]
[redacted]	[redacted]	[redacted]	Tier 1	[redacted]	$58,054	[redacted]
[redacted]	[redacted]	[redacted]	Tier 1	[redacted]	$45,000	[redacted]
[redacted]	[redacted]	[redacted]	Tier 1	[redacted]	$38,531	[redacted]
[redacted]	[redacted]	[redacted]	Tier 1	[redacted]	$39,687	[redacted]
[redacted]	[redacted]	[redacted]	Tier 1	[redacted]	$39,410	[redacted]
[redacted]	[redacted]	[redacted]	Tier 2	[redacted]	$26,009	[redacted]
[redacted]	[redacted]	[redacted]	Tier 2	[redacted]	$35,625	[redacted]
[redacted]	[redacted]	[redacted]	Tier 2	[redacted]	$33,715	[redacted]
[redacted]	[redacted]	[redacted]	Tier 2	[redacted]	$16,875	[redacted]
[redacted]	[redacted]	[redacted]	Tier 2	[redacted]	$13,293	[redacted]
[redacted]	[redacted]	[redacted]	Tier 2	[redacted]	$11,559	[redacted]
[redacted]	[redacted]	[redacted]	Tier 3	[redacted]	$26,250	[redacted]
[redacted]	[redacted]	[redacted]	Tier 3	[redacted]	$8,260	[redacted]
		Lacrosse Division				
[redacted]	[redacted]	[redacted]	Tier 1	[redacted]	$44,205	[redacted]
[redacted]	[redacted]	[redacted]	Tier 1	[redacted]	$36,250	[redacted]
[redacted]	[redacted]	[redacted]	Tier 1	[redacted]	$50,100	[redacted]
[redacted]	[redacted]	[redacted]	Tier 3	[redacted]	$12,250	[redacted]
		Corporate				
[redacted]	[redacted]	[redacted]	Tier 1	[redacted]	$36,250	[redacted]
[redacted]	[redacted]	[redacted]	Tier 1	[redacted]	$33,231	[redacted]
[redacted]	[redacted]	[redacted]	Tier 1	[redacted]	$46,250	[redacted]
[redacted]	[redacted]	[redacted]	Tier 1	[redacted]	$43,750	[redacted]
[redacted]	[redacted]	[redacted]	Tier 2	[redacted]	$17,008	[redacted]
[redacted]	[redacted]	[redacted]	Tier 2	[redacted]	$24,375	[redacted]
[redacted]	[redacted]	[redacted]	Tier 2	[redacted]	$30,938	[redacted]
[redacted]	[redacted]	[redacted]	Tier 2	[redacted]	$27,750	[redacted]
[redacted]	[redacted]	[redacted]	Tier 2	[redacted]	$22,500	[redacted]
[redacted]	[redacted]	[redacted]	Tier 2	[redacted]	$33,715	[redacted]
[redacted]	[redacted]	[redacted]	Tier 2	[redacted]	$18,750	[redacted]
[redacted]	[redacted]	[redacted]	Tier 2	[redacted]	$25,313	[redacted]
[redacted]	[redacted]	[redacted]	Tier 2	[redacted]	$35,625	[redacted]
[redacted]	[redacted]	[redacted]	Tier 2	[redacted]	$27,188	[redacted]
[redacted]	[redacted]	[redacted]	Tier 2	[redacted]	$22,500	[redacted]
[redacted]	[redacted]	[redacted]	Tier 2	[redacted]	$16,680	[redacted]
[redacted]	[redacted]	[redacted]	Tier 2	[redacted]	$28,250	[redacted]
[redacted]	[redacted]	[redacted]	Tier 3	[redacted]	$16,840	[redacted]
[redacted]	[redacted]	[redacted]	Tier 3	[redacted]	$7,300	[redacted]
[redacted]	[redacted]	[redacted]	Tier 3	[redacted]	$9,375	[redacted]
[redacted]	[redacted]	[redacted]	Tier 3	[redacted]	$9,287	[redacted]
[redacted]	[redacted]	[redacted]	Tier 3	[redacted]	$10,864	[redacted]
[redacted]	[redacted]	[redacted]	Tier 3	[redacted]	$7,500	[redacted]
TOTAL					$1,652,209	
			Dollar-Weighted Average:		$27,537	21%

[1] Additions from prior retention plan.

EXHIBIT "C"

Exhibit "C" to the Affidavit

Of Brian J. Fox, sworn

January 3, 2017

Commissioner for taking affidavits

KATHLEEN A. JEWKES, Notary Public
My Commission Expires April 6, 2021

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
BPS US Holdings Inc., *et al.*,[1]	Case No. 16-12373 (KJC)
Debtors.	Jointly Administered
	Objection Deadline: January 3, 2017 at 4:00 p.m. (ET) **Hearing Date: January 10, 2017 at 10:00 a.m. (ET)**

NOTICE OF MOTION

TO: (I) THE UST; (II) THOSE PARTIES SERVED WITH NOTICE OF THE COMEBACK HEARING IN THE CANADIAN PROCEEDINGS; (III) COUNSEL TO THE CREDITORS' COMMITTEE AND PROPOSED COUNSEL TO THE EQUITY COMMITTEE; (IV) COUNSEL TO THE DEBTORS' PREPETITION AND POSTPETITION LENDERS; (V) THE MONITOR; (VI) COUNSEL TO THE DEBTORS' STALKING HORSE PURCHASER; AND (VII) ALL PARTIES REQUESTING NOTICE PURSUANT TO BANKRUPTCY RULE 2002

PLEASE TAKE NOTICE that BPS US Holdings Inc. and its above-captioned affiliated debtors and debtors in possession (collectively, the "Debtors") have filed the attached *Debtors' Motion for Order, Pursuant to Sections 363(b) and 503(c) of the Bankruptcy Code, Approving Debtors' (I) Key Employee Incentive Plan and (II) Key Employee Retention Plan* (the "Motion").

PLEASE TAKE FURTHER NOTICE that any objections to the Motion must be filed on or before **January 3, 2017 at 4:00 p.m. (ET)** (the "Objection Deadline") with the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801. At the same time, you must serve a copy of the objection upon the undersigned proposed counsel to the Debtors so as to be received on or before the Objection Deadline.

PLEASE TAKE FURTHER NOTICE THAT A HEARING TO CONSIDER THE MOTION WILL BE HELD ON **JANUARY 10, 2017 AT 10:00 A.M. (ET)** BEFORE THE HONORABLE KEVIN J. CAREY AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 NORTH MARKET STREET, FIFTH FLOOR, COURTROOM NO. 5, WILMINGTON, DELAWARE 19801.

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number or Canadian equivalent, are as follows: BPS US Holdings Inc. (8341); Bauer Hockey, Inc. (3094); Easton Baseball / Softball Inc. (5670); Bauer Hockey Retail Inc. (6663); Bauer Performance Sports Uniforms Inc. (1095); Performance Lacrosse Group Inc. (4200); BPS Diamond Sports Inc. (5909); PSG Innovation Inc. (9408); Performance Sports Group Ltd. (1514); KBAU Holdings Canada, Inc. (5751); Bauer Hockey Retail Corp. (1899); Easton Baseball / Softball Corp. (4068); PSG Innovation Corp. (2165); Bauer Hockey Corp. (4465); BPS Canada Intermediate Corp. (4633); BPS Diamond Sports Corp. (8049); Bauer Performance Sports Uniforms Corp. (2203); and Performance Lacrosse Group Corp. (1249). The Debtors' headquarters are located at 100 Domain Drive, Exeter, New Hampshire 03833.

PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR A HEARING.

Dated: December 20, 2016
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Pauline K. Morgan

Pauline K. Morgan (No. 3650)
Sean T. Greecher (No. 4484)
Justin H. Rucki (No. 5304)
Shane M. Reil (No. 6195)
Rodney Square
1000 North King Street
Wilmington, Delaware 19801
Telephone: (302) 571-6600
Facsimile: (302) 571-1253

-and-

PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
Kelley A. Cornish
Alice Belisle Eaton
Claudia R. Tobler
Christopher Hopkins
1285 Avenue of the Americas
New York, New York 10019
Telephone: (212) 373-3000
Facsimile: (212) 757-3990

Co-Counsel to the Debtors and Debtors in Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
BPS US Holdings Inc., *et al.*,[1]	)	Case No. 16-12373 (KJC)
Debtors.	)	(Jointly Administered)
	)	**Hearing Date: January 10, 2017 at 10:00 a.m. (ET)** **Obj. Deadline: January 3, 2017 at 4:00 p.m. (ET)**

DEBTORS' MOTION FOR ORDER, PURSUANT TO SECTIONS 363(b) AND 503(c) OF THE BANKRUPTCY CODE, APPROVING DEBTORS' (I) KEY EMPLOYEE INCENTIVE PLAN AND (II) KEY EMPLOYEE RETENTION PLAN

BPS US Holdings Inc. and its above-captioned affiliated debtors and debtors in possession (collectively, the "Debtors" or the "Company") hereby file this motion (this "Motion") for entry of an order approving the Debtors' key employee incentive plan for certain senior executives (the "KEIP") and key employee retention plan for certain employees (the "KERP"), and authorizing the payments contemplated thereunder. In support of this Motion, the Debtors respectfully represent as follows:

PRELIMINARY STATEMENT

1. Retaining key employees and incentivizing senior management to undertake the extraordinary efforts necessary at this most critical juncture of the Debtors' Sale

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number or Canadian equivalent, are as follows: BPS US Holdings Inc. (8341); Bauer Hockey, Inc. (3094); Easton Baseball / Softball Inc. (5670); Bauer Hockey Retail Inc. (6663); Bauer Performance Sports Uniforms Inc. (1095); Performance Lacrosse Group Inc. (4200); BPS Diamond Sports Inc. (5909); PSG Innovation Inc. (9408); Performance Sports Group Ltd. (1514); KBAU Holdings Canada, Inc. (5751); Bauer Hockey Retail Corp. (1899); Easton Baseball / Softball Corp. (4068); PSG Innovation Corp. (2165); Bauer Hockey Corp. (4465); BPS Canada Intermediate Corp. (4633); BPS Diamond Sports Corp. (8049); Bauer Performance Sports Uniforms Corp. (2203); and Performance Lacrosse Group Corp. (1249). The Debtors' headquarters are located at 100 Domain Dr., Exeter, New Hampshire 03833.

Process[2] are essential to maximizing recoveries to stakeholders in these Bankruptcy Proceedings. Having focused at the outset on obtaining Court approval of the bid procedures governing the Sale Process and DIP financing to fund these cases, the Debtors' immediately turned their attention to putting in place suitable KEIP and KERP programs.

2. Rather than seek Court approval for the KEIP and the KERP without input from their Creditors' and Equity Committees, the Debtors first solicited feedback from advisors to both Committees. The Debtors, through their professionals and Chief Executive Officer, provided the Committees' advisors with presentations setting forth the proposed terms of the KEIP and the KERP, along with the detailed business rationale and comparables supporting the proposals, answered questions and engaged in discussions with the advisors, entertained several rounds of counterproposals and responded with material modifications to the Debtors' initial proposal, ultimately obtaining consensus with both Committees.

3. Thus, the KEIP and the KERP ***enjoy the support of both the Creditors' Committee and the Equity Committee*** upon the filing of this Motion. Given the critical roles played by the Eligible Employees in the Debtors' Sale Process, as recognized by the Committees in supporting the implementation of the KEIP and the KERP described herein, the Debtors submit that the relief sought herein is not only in the estates' best interest, but also appropriately tailored and critical to the Debtors' ability to maximize value for all interested parties. Accordingly, for the reasons set forth herein and with the support of the Committees, the Debtors seek approval of the KEIP and the KERP on the terms described below.

[2] Capitalized terms used in this Preliminary Statement but not otherwise defined herein shall have the meanings ascribed to such terms in this Motion.

JURISDICTION AND VENUE

4. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

5. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

6. The statutory bases for the relief requested herein are sections 363(b) and 503(c) of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code") and Rule 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

BACKGROUND

A. General Background

7. The Debtors are headquartered in the U.S., but conduct substantial business in both the U.S. and Canada. The Debtors incorporated in the U.S. are referred to herein collectively as the "U.S. Debtors."[3] The Debtors incorporated in Canada are referred to herein collectively as the "Canadian Debtors."[4]

---

[3] The U.S. Debtors are: BPS US Holdings Inc.; Bauer Hockey, Inc.; Easton Baseball / Softball Inc.; Bauer Hockey Retail Inc.; Bauer Performance Sports Uniforms Inc.; Performance Lacrosse Group Inc.; BPS Diamond Sports Inc.; and PSG Innovation Inc.

[4] The Canadian Debtors are: Performance Sports Group Ltd.; KBAU Holdings Canada, Inc.; Bauer Hockey Retail Corp.; Easton Baseball / Softball Corp.; PSG Innovation Corp.; Bauer Hockey Corp.; BPS Canada Intermediate Corp.; BPS Diamond Sports Corp.; Bauer Performance Sports Uniforms Corp.; and Performance Lacrosse Group Corp.

8. On October 31, 2016 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. Each of the Debtors also made application for protection from their creditors under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), in the Ontario Superior Court of Justice (Commercial List) (the "Canadian Court," and the filing, the "Canadian Proceedings"). Unless specifically noted to the contrary, the relief in this Motion applies to all of the Debtors. However, all KEIP Participants (as defined below) are employed by a U.S. Debtor, and any amounts earned under the KEIP will be paid by such employing entity based on an appropriate allocation of Sale Proceeds.

9. The Debtors are authorized to continue managing their properties and operating their business as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these chapter 11 cases.

10. On November 10, 2016, the Office of the United States Trustee for the District of Delaware (the "UST") appointed the statutory committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code (the "Creditors' Committee"). On November 28, 2016, the UST also appointed a statutory committee of equity security holders pursuant to section 1102 of the Bankruptcy Code (the "Equity Committee" and, together with the Creditors' Committee, the "Committees"). A monitor (the "Monitor")[5] has been appointed in the Canadian Proceedings.

11. Additional information about the Debtors' business and the events leading to the commencement of these chapter 11 cases and the Canadian Proceedings (together, the

[5] A monitor in Canada is an independent party appointed by the CCAA Court to monitor the company's operations and to assist with the restructuring of the company. The Monitor reports to the CCAA Court on any material matters and often provides recommendations about a proposed action to the CCAA Court.

"Bankruptcy Proceedings") can be found in the *Declaration of Brian J. Fox in Support of Debtors' Chapter 11 Petitions and First-Day Motions* [D.I. 15] (the "First Day Declaration"), which is incorporated herein by reference.

B. The Debtors' Business

12. As further detailed in the First Day Declaration, the Company designs, develops, manufactures, markets and sells performance sports equipment and accessories for ice hockey, roller hockey, lacrosse, baseball and softball, as well as related apparel, under the brand names of Bauer, Easton, Mission, Maverik, Cascade, Inaria and Combat.

13. For the twelve months ending September 30, 2016, the Debtors generated approximately $569 million in revenue on a consolidated basis. In addition, the Debtors had approximately $594 million in assets and approximately $607 million in liabilities based upon the book value of these assets and liabilities.

C. The Sale Process

14. The Debtors initiated these Bankruptcy Proceedings to stabilize their business operations and maximize the value of their assets through a going-concern sale process (the "Sale Process," and the underlying sale, the "Sale") that was commenced prior to the Petition Date. Accordingly, the Debtors entered into an agreement (the "Stalking Horse Agreement") for the going-concern sale of substantially all of the Company's assets (the "Stalking Horse Sale") to a group of investors led by Sagard Capital Partners, L.P., which holds approximately 17% of the Company's equity (collectively, the "Stalking Horse Purchaser"), subject to a Court-supervised auction process. The Debtors, in consultation with their advisors, determined that entering into the Stalking Horse Agreement and commencing these Bankruptcy Proceedings was the optimal course to maximize the value of the Company's business. In

furtherance thereof, the Debtors filed that certain *Debtors' Motion for (I) an Order (A) Establishing Bidding Procedures for the Sale of All, or Substantially All, of the Debtors' Assets; (B) Approving Bid Protections; (C) Establishing Procedures Relating to the Assumption and Assignment of Executory Contracts and Unexpired Leases; (D) Approving Form and Manner of the Sale, Cure and Other Notices; and (E) Scheduling an Auction and a Hearing to Consider the Approval of the Sale; (II) an Order (A) Approving the Sale of the Debtors' Assets Free and Clear of Claims, Liens and Encumbrances; (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) Granting Related Relief* [D.I. 16] (the "Bid Procedures Motion"). A hearing on the Bid Procedures Motion was held on November 30, 2016, after which the Debtors submitted, and the Court approved, a revised form of order approving the Bid Procedures Motion which consensually resolved objections filed by the UST and the Committees [D.I. 233] (the "Bid Procedures Order"). Pursuant to the Bid Procedures Order, the Court established a bid deadline of January 25, 2017, scheduled an auction on January 30, 2017, and scheduled a hearing on February 6, 2017 to consider the Sale.

15. Pursuant to the Stalking Horse Agreement, the Stalking Horse Purchaser has agreed to acquire substantially all of the Debtors' assets for the base purchase prices of U.S. $575 million, plus the assumption of related operating liabilities, and serve as a "stalking horse" bidder in the Bankruptcy Proceedings (collectively, the "Stalking Horse Consideration"). Based on the purchase price in the Stalking Horse Agreement, the proceeds received on closing of the acquisition—if ultimately consummated—will be well in excess of the Company's outstanding secured indebtedness and are expected to provide meaningful recoveries to the Company's remaining stakeholders.

16. Like all retail and consumer products businesses, the Debtors' vendor, customer and employee relationships are critical to the value of the enterprise. Central to maintaining those relationships is facilitating a well-funded sale process with a stalking horse that provides a clear path through and out of these Bankruptcy Proceedings. The Sale Process will allow the Debtors ample time to run a robust marketing process for the Debtors' assets and maximize value for stakeholders, while ensuring that the business emerges from the Bankruptcy Proceedings in a reasonable time frame.

17. Upon the commencement of these Bankruptcy Proceedings, the Debtors and their advisors began immediately marketing the Company to alternative would-be purchasers, and have been diligently circulating marketing materials, a confidential information memorandum and non-disclosure agreements to potential buyers. Towards that end, the Debtors' investment bankers identified the most likely buyers prior to the Petition Date, and have been extensively engaging with potential interested bidders, and have received several preliminary indications of interest from potential bidders.

18. In sum, the Stalking Horse Sale provides for, among other things, (1) the repayment in full of all of the Debtors' secured creditors, (2) the assumption by the Stalking Horse Purchaser of certain prepetition liabilities, (3) meaningful distributions to the Company's remaining stakeholders under a plan, and (4) the continued operation of the Debtors' business as a going concern under new ownership post-closing. Given the Debtors' challenged operating performance and ongoing accounting investigation detailed in the First Day Declaration, among other factors, the Stalking Horse Sale sets an excellent starting point for the Sale Process and presents the best pathway for maximizing the value of the Debtors' estates and stakeholder recoveries.

19. That said, the Stalking Horse Agreement is merely the starting point for the now-unfolding Sale Process. Indeed, the Debtors' ability to preserve the value of their assets, continue normal operations, and maximize recovery through the Sale Process hinges, in part, upon their ability to successfully retain key employees and incentivize employee performance. The dedicated assistance of the Debtors' executives, officers, and managers during the marketing and Sale Process is a critical component of the Debtors' ultimate objective: to continue business operations in compliance with requirements in the Stalking Horse Agreement, obtain viable and competing offers for the Debtors' assets that will generate more value through the auction process than the bid presently put forth by the Stalking Horse Purchaser and, ultimately, position themselves to close on the winning bid in an efficient and expeditious manner.

20. The Debtors seek authority to implement the KEIP and KERP, respectively, to enable them to prosecute and complete an orderly and value-maximizing Sale Process in the optimal manner. As described further herein, the goals of these programs are as follows:

- to incentivize and retain essential personnel through the closing of a sale of substantially all of the Debtors' assets and operations;
- to facilitate the successful sale of the Company;
- to reward essential employees if critical goals are satisfied; and
- to maximize the value of the Debtors' estates for the benefit of all stakeholders.

RELIEF REQUESTED

21. By this Motion, the Debtors seek entry of an order approving the KEIP and KERP and authorizing the payments thereunder.

A. The Eligible Employees

22. The Debtors have identified six (6) senior executives to receive payments under the KEIP and sixty (60) non-insider employees to receive payments under the KERP (collectively, the "Eligible Employees"), all of whom possess institutional knowledge and skills that are essential to the Debtors' restructuring efforts.[6] In addition to responsibilities related to the Debtors' everyday operations, the Eligible Employees have assumed, and will continue to assume, considerable added responsibilities in connection with these Bankruptcy Proceedings and the Sale Process, such as continuing business operations with all of the challenges attendant to being in bankruptcy to ensure compliance with the Stalking Horse Agreement, facilitating and conducting management presentations for potential bidders, responding to bidder information requests, and otherwise taking whatever steps are necessary to obtain the highest and best bid for the Debtors' assets. The Debtors submit that payments made under the KEIP program are necessary to incentivize key executives to perform these duties in an optimal manner, and reward them for their efforts during the Sale Process. Relatedly, without the KERP program, the Debtors likely will lose non-executive personnel who are critical to the success of these chapter 11 cases and the Sale Process. In fact, in the last few months, three employees originally slated for participation in the KERP have resigned to pursue other employment opportunities, in each instance citing uncertainty and instability in the Debtors' operations as one of the reasons for

[6] A summary overview of the KEIP and the KERP, including a list of Eligible Employees participating respectively therein, is attached hereto as Exhibit B. With respect to Eligible Employees participating in the KERP, both the names and titles for those individuals have been redacted and filed under seal.

departing. In addition, five other employees have resigned since the Petition Date, and there have been thirty-six employee resignations since June. These departures have put substantial additional demands and pressures on the proposed KERP participants.

B. Development of the KEIP and KERP

23. The Debtors enlisted the services of Alvarez & Marsal North America, LLC ("A&M"), a leading global consulting firm specializing in turnaround management for large companies experiencing financial difficulty, to help develop the KEIP and the KERP in the first instance. The Debtors selected A&M because, among other things, the consulting firm specializes in designing executive and employee incentive, retention, and severance plans for companies in chapter 11 and has access to extensive industry compensation data. The Debtors, their counsel and A&M reviewed the Debtors' employment requirements during these chapter 11 cases, and the attendant necessary features of incentive and retention plans. A&M assisted the Debtors in designing the KEIP and KERP, keeping in mind the Debtors' goals of maximizing the value of the Debtors' assets through the Sale Process, enhancing the Debtors' financial condition, and ensuring effective management throughout these Bankruptcy Proceedings. The KEIP and KERP were designed in a reasonable, cost-effective way to promote the appropriate incentives and to retain personnel essential to the success of these Bankruptcy Proceedings.

24. A&M also worked closely with the Debtors to ensure that the KEIP and KERP were competitive within the industry, and that the incentives set for the executives participating in the KEIP were appropriate. The Debtors and A&M based the plans' initial proposed payments upon market comparisons within a bankruptcy context, historical compensation levels at the Debtors, and general market compensation studies conducted by Pearl Meyer & Partners, LLC ("Pearl Meyer"), a leading executive compensation consulting firm.

With regard to the market comparisons within the bankruptcy context, A&M reviewed fifteen incentive-based programs that have been approved for other large companies going through chapter 11 in recent years (collectively, the "Comparable KEIPs"). The Comparable KEIPs were selected because they each included payouts that were wholly or partially dependent upon the sale of a company as a going concern or, in the alternative, a significant portion of its assets. Each Comparable KEIP contained no more than fifteen participants.

25. Accordingly, the Debtors and A&M developed the plans to be comparable to plans similar in design and scope which have been recently approved by bankruptcy courts. A&M and the Debtors used this market research in preparing proposals for the KEIP and KERP which underwent several rounds of revisions before being submitted for consideration to the Debtors' board of directors (the "Board of Directors"). The Board of Directors reviewed the proposed plans, and commented and asked questions before approving the initial versions of each plan on the evening prior to the commencement of these Bankruptcy Proceedings, October 30, 2016.

26. The Debtors and their advisors focused all of their efforts at the outset of these cases on obtaining approval of "First Day" relief, the bid procedures governing the Sale Process and DIP financing to fund these cases. With these matters successfully concluded, the Debtors immediately approached the advisors to both the Creditors' and Equity Committees in an attempt to obtain consensus with respect to the KEIP and the KERP. Following extensive discussions and several rounds of counterproposals with both Committees, the Debtors made significant modifications and clarifications to the KEIP and KERP, and obtained the support of both Committees. Thus, the proposed terms of the KEIP and the KERP set forth herein reflect consensus among the Debtors and their two statutory committees.

C. Description of the KEIP

27. The KEIP provides incentive payments to six senior executives, all of whom are insiders (collectively, the "KEIP Participants"), based on a single performance metric: the level of proceeds of the sale of the Debtors' assets (the "Sale Proceeds"). The Debtors selected Sale Proceeds as the exclusive metric because the KEIP Participants have control and oversight of the Sale Process. Accordingly, incentivizing their performance will ensure that the Sale Process takes place efficiently, diligently and in a value-maximizing manner. At this early stage of the Bankruptcy Proceedings, with the Sale Process still unfolding, the KEIP Participants are not guaranteed any payments and must meet specific targets which, notably, go above and beyond closing a transaction that only secures the Stalking Horse Consideration. An overview of the KEIP structure is provided below and in Exhibit B attached hereto.

> **Key Terms**
>
> The Debtors have limited participation in the KEIP to six (6) senior executives who will share in an incentive pool funded from the proceeds of the proposed Sale. The Company believes that all of the KEIP Participants have the ability to materially impact the Sale Process, including the ability to maximize the recovery to stakeholders by effectuating the Sale at the highest possible price.
>
> The incentive pool is determined by the amount of the Sale Proceeds. The level of performance (i.e., Tier 1 "Target", Tier 2 "Stretch", and Tier 3) will be determined based on a performance metric that measures the cash consideration obtained for the Debtors' assets.
>
> **Determination of Sale Proceeds Incentive**
>
> The Sale Proceeds incentive (the "Sale Proceeds Incentive") is designed to increase as gross proceeds realized through the Sale Processes escalate. If the Stalking Horse Sale closes on the terms presently contemplated, the KEIP Participants will not receive any payouts under the KEIP. If the Sale Proceeds exceed the Stalking Horse Consideration by $5,000,000 (i.e. the cash consideration realized by the estates from the purchase price

is $580,000,000 after payment of any applicable bid protections), the KEIP Participants will be entitled to Tier 1 "Target" payouts (i.e. 100% of their target bonuses). If Sale Proceeds exceed the Stalking Horse Consideration by at least $50,000,000 (i.e. the cash consideration realized by the estates from the purchase price reaches $625,000,000), KEIP Participants will be entitled to "Tier 2" compensation of 200% of their target bonuses. If cash consideration realized by the estates from the purchase of the available assets exceeds $625,000,000, the KEIP Participants will be entitled to an aggregate payout which equals 3% of the total consideration above $625,000,000 as additional bonus on top of the Tier 2 "Stretch" bonuses. The table below illustrates how the Sale Proceeds Incentive will be determined.

	Price Paid by Prevailing Bidder(1)		Aggregate KEIP Payout
	Stalking Horse	Non-Stalking Horse	
	$575,000,000	n/a	$0
Tier 1	n/a	$600,750,000	$1,776,753
	$585,000,000	$605,750,000	$1,974,170
	$590,000,000	$610,750,000	$2,171,587
	$595,000,000	$615,750,000	$2,369,004
	$600,000,000	$620,750,000	$2,566,421
	$605,000,000	$625,750,000	$2,763,837
	$610,000,000	$630,750,000	$2,961,254
	$615,000,000	$635,750,000	$3,158,671
	$620,000,000	$640,750,000	$3,356,088
Tier 2	$625,000,000	$645,750,000	$3,553,505
Above Tier 2	$625,000,000 +	$645,750,000 +	$3,553,505 + 3% of >$645,750,000

(1) Showing $5m increments for illustrative purposes. However, actual bid increment is $1m.

For gross proceeds falling between the Tier 1 "Target" level and the Tier 2 "Stretch" level, the Sale Proceeds Incentive will be determined by linear interpolation. In the event gross proceeds from the Sale Process exceed the Tier 2 "Stretch" level ($625,000,000), the Sale Proceeds Incentive will be $3,553,505 plus 3% of the excess gross sale proceeds over Tier 2 consideration.

Allocation of the Sale Incentive Pool

The KEIP payouts will be funded with Sale Proceeds following closing of the Sale (the "Closing Date") and paid within thirty (30) days of closing of the Sale. The Incentive Pool will be allocated among the KEIP Participants as set forth in Exhibit B.

If the Tier 1 "Target" level is met, the KEIP will have a total plan cost of $1,776,753, which amounts to an average of $296,125 per KEIP Participant. If the Tier 2 "Stretch" level is met, the KEIP will have a total plan cost of $3,553,505, which amounts to an average of $592,251 per KEIP Participant.

Payouts were determined based on a percentage of each KEIP Participant's target bonus. If the Tier 1 "Target" level is met, no KEIP Participant will receive more than $750,000; if the Tier 2 "Stretch" level is met, no KEIP Participant will receive more than $1,500,000.

Termination Provisions

Upon voluntary termination or termination for cause prior to the closing of the Sale, a KEIP Participant's share of the Sale Incentive Pool will be forfeited. Such forfeited allocation will not be made available to other employees.

In the event of an involuntary termination not for cause prior to the Closing Date, the KEIP Participant will be paid his or her share of the Sale Incentive Pool at the same time and in the same amount had he or she not been terminated.

Miscellaneous Terms

Any earned KEIP payouts will be paid by the appropriate U.S. and Canadian Debtor based on the allocation of Sale Proceeds.

KEIP payments will not be credited against any severance payments otherwise due to KEIP Participants.

KEIP Participants will not receive any payments under retention plans implemented prior to the Petition Date.

28. Achieving the Tier 1 "Target" level for the Sale Proceeds Incentive will require significant efforts by the KEIP Participants, and achieving the Tier 2 "Stretch" level would be an extraordinary achievement given the level of the Stalking Horse Bid. With respect

to the Sale Process, the Debtors' advisors have successfully negotiated a Stalking Horse Agreement and are continuing to market the Debtors' assets to ensure that the highest and best offer is received. Maximizing value, however, will require extensive and devoted assistance from the KEIP Participants, all of whom are needed to continue operating the business under challenging circumstances, meet diligence requests, facilitate and conduct management presentations to foster and attract higher and better bids and, ultimately, to facilitate the closing of the winning bid. Moreover, these obligations will be compounded by the already-extraordinary pressures and demands of running the Company and dealing with the day-to-day demands of the Bankruptcy Proceedings.

E. Description of the KERP

29. The KERP provides retention payments to sixty (60) non-insider employees (collectively, the "KERP Participants"), with such payments comprising 12.5% to 25% of each KERP Participants' annual base salary, with an average of approximately 21%.[7]

30. It is essential to the Debtors that the KERP Participants remain employed until, at a minimum, the closing of the Sale. The KERP Participants include employees from various functions, including, but not limited, to sales, human resources, accounting and finance, engineering, products/brand management, research and development, design, marketing, legal and operations functions.

31. Prior to the Petition Date, the Company implemented a two-year retention program geared towards ensuring that select employees remained with the Company until June 2018 (the "Prepetition Retention Program"). The Company underwent a rigorous selection

[7] To protect the privacy of the KERP participants and preserve company morale, the names of the KERP participants, as well as their positions within the Company, will only be provided to the Court, the UST, counsel to the Creditors' Committee, proposed counsel to the Equity Committee, and counsel to the Debtors' prepetition and postpetition lenders.

process when developing the Prepetition Retention Program, whereby retention risk and business impact were analyzed for each employee to determine the appropriate scope for participation in the Prepetition Retention Program. Only employees with a high business impact and some level of retention risk were included in the Prepetition Retention Program. Depending on the level of retention risk, eligible employees were to receive a retention amount equal to approximately 25% (highest retention risk), 18.75% (less retention risk), or 12.5% (lower retention risk) of such Prepetition Retention Program participants' base salary.

32. As noted above, the Company has lost three critical employees that were participants in the Prepetition Retention Program, and five other employees since the Petition Date. Accordingly, the Debtors and their advisors determined that it was in the estates' best interest to convert the Prepetition Retention Program into the KERP during these Bankruptcy Proceedings (and expand its reach) for those individuals who are deemed to be critical to the Debtors' ongoing operations and who present retention risk and would be difficult to replace, and seek Court approval thereof.

33. Forty-one (41) KERP Participants were participants in the Prepetition Retention Program, and nineteen (19) previous non-participants have been added to further secure the Debtors' critical workforce during this pivotal stage of the Bankruptcy Proceedings. As with the Prepetition Retention Program participants, each KERP Participant was carefully selected and deemed critical to the Debtors' ability to maximize value for the benefit of all interested parties. Without payments under the proposed KERP, the Debtors believe that the KERP Participants are likely to pursue alternative employment, harming the value of the estates and affecting the implementation of the Sale Process.

34. While several KERP Participants have titles that include words such as "vice president" or "director" which may suggest officer status, none of the KERP Participants are in reality "insiders." Although the KERP Participants are important to the Debtors' business and are particularly vital during these Bankruptcy Proceedings, their titles do not reflect that such employees have access to inside information or otherwise control the Debtors' operations. None of the KERP Participants was appointed by, or reports to, the Company's Board of Directors. Each KERP Participant reports to intermediate managers, the scope of his or her authority is limited, and no KERP Participant reports directly to the Chief Executive Officer. Tellingly, the Debtors did not include every employee with an official-sounding title to participate in the KERP. The Company has a total of 76 "vice presidents" and "directors", but only 36 of these employees were selected as KERP Participants.

35. Following is an overview of the proposed KERP:

Key Terms

<u>Participation</u>

The Debtors have limited participation in the KERP to sixty (60) employees, forty-one (41) of which were participants in the Prepetition Retention Program. The KERP Participants represent a cross-section of various functions of the Company, including business development, product/brand management, research and development, design, sales/marketing, finance, human resources, legal, IT, supply chain and operations.

Average salary: $133,754.83

Average tenure: approximately 10 years

Cost

The estimated cost of the KERP, assuming all KERP Participants remain employed through the closing of the Sale, is $1,652,209, which represents an average of $27,537 per KERP Participant.

KERP Payment and Payment Schedule

KERP payments will be equal to 12.5%, 18.75% or 25% of base salary, depending on the relative importance of each KERP Participant to the Sale Process and, more directly, the Company's perceived retention risk assigned to such Participants. On a dollar-weighted average basis, the KERP payments will average 21% of KERP Participants' individual base salary.

KERP payments will be paid as soon as administratively possible following the closing of the Sale, provided that the KERP Participant is still employed by, and in good standing with, the Company.

Termination Provisions

The KERP payments are earned upon the earlier of termination without cause or closing of the Stalking Horse Agreement (or alternative Sale transaction by way of asset purchase agreement and/or plan arrangement).

Miscellaneous Provisions

KERP Participants will not receive any payments under the Prepetition Retention Program to the extent they were previously eligible to do so.

BASIS FOR RELIEF REQUESTED

36. A company's decision to file for chapter 11 necessarily creates difficulties for its employees and can lead to retention problems, low morale, and low productivity. Unfortunately, these negative consequences affect the company's ability to continue its normal business operations, maintain vendor and consumer support, and impair the company's ability to maximize sale values and achieve the highest possible recovery for its stakeholders. For this reason, bankruptcy courts and stakeholders have long authorized incentive and retention plans

designed to reduce disruption to employees while improving morale and incentivizing job performance. Courts have routinely approved payments under these plans pursuant to section 363(b) of the Bankruptcy Code as a prudent exercise of a debtor's business judgment. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 did not eliminate the use of these plans, and continues to permit payments and added protections that are offered to employees.

37. The Debtors seek approval of the KEIP and KERP to maintain their business operations, preserve their financial condition, sell their assets as a going concern at the highest and best price and meet their debtor-in-possession duties during the pendency of these Bankruptcy Proceedings. These goals cannot be met without the support of the Eligible Employees. Each Eligible Employee faces an uncertain future and there is no guarantee of employment from the Stalking Horse Purchaser or any other potential buyer of the Debtors' businesses. Thus, it is crucial that the Debtors retain certain key employees and incentivize certain senior executives to deliver their best performance throughout the Sale Process. The Eligible Employees were selected after tremendous scrutiny and only after it was determined that each Participant was critical to the maintenance of the Debtors' operations and the success of the Sale Process. To that end, each Eligible Employee is highly skilled, and their skill, institutional knowledge and work ethic are critical to the Debtors' sale efforts. Without the implementation of the KEIP and KERP, the Eligible Employees are likely to pursue other employment and may not be incentivized to perform optimally. In the last few months, three employees who otherwise would have been KERP Participants resigned to pursue other opportunities, and the departure of five other employees has placed additional pressures and demands on the Eligible Employees.

For these reasons and others, the Debtors believe that implementation of the KEIP and KERP, on the terms approved by the Committees, is critical at this juncture of the Bankruptcy Proceedings.

I. THE KEIP AND KERP SHOULD BE APPROVED AS A REASONABLE EXERCISE OF THE DEBTORS' BUSINESS JUDGMENT

38. The KEIP and KERP have been designed by the Debtors and A&M, and modified with the input of the Committees, to incentivize performance and ensure continued employment within the parameters of sections 363(b) and 503(c) of the Bankruptcy Code.[8] The prohibitions and restrictions in section 503(c)(1) and (2) do not apply here, as those provisions restrict the ability of "insiders" to receive payments as part of retention or severance plans. As described below, the KEIP is an incentive plan (rather than a retention or severance plan), and the KERP applies solely to non-insiders.

---

[8] (c) Notwithstanding subsection (b), there shall neither be allowed, nor paid –

> (1) a transfer made to, or an obligation incurred for the benefit of, an insider of the debtor for the purpose of inducing such person to remain with the debtor's business, absent a finding by the court based on evidence in the record that-
>
> (A) the transfer or obligation is essential to retention of the person because the individual has a bona fide job offer from another business at the same or greater rate of compensation;
>
> (B) the services provided by the person are essential to the survival of the business; and
>
> (C) either-
>
> (i) the amount of the transfer made to, or obligation incurred for the benefit of, the person is not greater than an amount equal to 10 times the amount of the mean transfer or obligation of a similar kind given to nonmanagement employees for any purpose or obligation of a similar kind given to nonmanagement employees for any purpose during the calendar year in which the transfer is made or the obligation is incurred; or
>
> (ii) if no such similar transfers were made to, or obligations were incurred for the benefit of, such management employees during such calendar year, the amount of the transfer or obligation is not greater than an amount equal to 25 percent of the amount of any similar transfer or obligation made to or incurred for the benefit of such insider for any purpose during the calendar year before the year in which such transfer is made or obligation is incurred;
>
> (2) a severance payment to an insider of the debtor, unless-
>
> (A) the payment is part of a program that is generally applicable to all full-time employees; and
>
> (B) the amount of the payment is not greater than 10 times the amount of the mean severance pay given to nonmanagement employees during the calendar year in which the payment is made; or
>
> (3) other transfers or obligations that are outside the ordinary course of business and not justified by the facts and circumstances of the case, including transfers made to, or obligations incurred for the benefit of, officers, managers, or consultants hired after the date of the filing of the petition.

11 U.S.C. § 503(c).

A. The KEIP is an Incentive Plan Justified by the Facts and Circumstances of these Bankruptcy Proceedings

39. The KEIP is an incentive plan with appropriate performance targets that will be challenging to meet and, if met, will maximize constituent recoveries. The KEIP is not simply a retention plan meant to ensure continued employment for insiders, which is prohibited by section 503(c)(1) of the Bankruptcy Code, nor a severance plan prohibited by section 503(c)(2) of the Bankruptcy Code. To the contrary, the KEIP is an incentive plan for several key senior executives that is designed to motivate them to achieve a successful going-concern, value maximizing sale. Consequently, the KEIP is not prohibited under section 503(c)(1) or (2), but, rather, is permitted under section 503(c)(3) of the Bankruptcy Code.

40. Although the KEIP might encourage the KEIP Participants to remain with the Company through the closing of the Sale, that effect does not mean that the KEIP is solely a retention-driven plan. *See In re Global Home Prods., LLC*, 369 B.R. 778, 786 (Bankr. D. Del. 2007) (finding that proposed incentive plans were "primarily incentivizing and only coincidentally retentive" and noting, "The fact that . . . all compensation has a retention element" did "not reduce the Court's conviction" that the debtors' primary goal in approving the incentive plans was "to create value by motivating performance"). A plan that indirectly causes its participants to remain employed does not detract from the KEIP's primary purpose, which is to motivate the KEIP Participants to maximize value for the Debtors' estates and, in turn, motivate the workforce at large to ensure that recoveries are maximized.

41. This Court has approved similar plans tied to sales goals. *See, e.g., In re Furniture Brands International, Inc., et al.*, No. 13-12329 (Bankr. D. Del. Oct. 11, 2013) (approving incentive plan where amount increased as sale proceeds increased); *In re Trident Microsystems, Inc., et al.*, No. 12-10069 (Bankr. D. Del. Feb. 24, 2012) (approving incentive

plan where amount and number of participants increased as sale proceeds increased, including 4.46% of total consideration in excess of $70 million for top three executives). Other courts in this district have similarly approved incentive plans designed to meet specific restructuring targets. *See, e.g., In re Evergreen Solar*, No. 11-12590 (Bankr. D. Del. 2012) (approving incentive plan where participants received 5% of gross cash proceeds from sale); *In re Eddie Bauer Holdings, Inc*., No. 09-12099, 2010 WL 3493027 (Bankr. D. Del. Mar. 18, 2010) (approving incentive payments of 5% of gross sale proceeds in excess of $202.5 million up to $252.5 million); *In re Radnor Holdings Corp., et al*., No. 06-10894 (Bankr. D. Del. Oct. 4, 2006) (approving incentive plan based on net sale proceeds with a minimum incentive pool of $700,000, to increase by 4% of sale proceeds in excess of $118.5 million).

42. The ruling in *Global Home Products* is particularly instructive. There, the Court conducted a detailed analysis of the debtor's requested employee incentive plan within the construct of the business judgment standard. The court balanced a number of different factors to determine whether the incentive plan was permitted under section 503(c) of the Bankruptcy Code, including:

> (a) whether the plan is calculated to achieve the desired performance;
>
> (b) whether the costs of the plan are reasonable within the context of the debtor's assets;
>
> (c) whether the scope of the plan is fair and reasonable;
>
> (d) whether the plan is consistent with industry standards;
>
> (e) whether the debtor engaged in due diligence related to the need for the plan, the employees that needed to be incentivized, and what type of plans are generally available in a particular industry; and
>
> (f) whether the debtor received independent counsel in performing due diligence and creating and authorizing incentive compensation.

See, e.g., In re Global Home Prods., 369 B.R. at 786 (citing *In re Dana Corp*., 358 B.R. 567,576-77 (Bankr. S.D.N.Y. 2006)). The KEIP which the Debtors seek to implement is a reasonable exercise of the Debtors' sound business judgment because it was carefully designed with expert assistance from A&M, reflects the well-informed considerations raised by the Committees, and seeks to incentivize certain senior executives' performance to continue the Debtors' day-to-day operations and ensure the consummation of a successful Sale Process, which is the Debtors' highest priority during these Bankruptcy Proceedings.

43. First, the KEIP is calculated to achieve desired performance. Payments from the Sale Incentive Pool are directly linked to clear sales objectives and the achievement thereof.

44. Second, the incentive payments contemplated in the KEIP are reasonable and fair because the Sale Incentive Pool constitutes only a small percentage of the contemplated Sale Proceeds. A threshold achievement—the successful closing of a transaction that materially surpasses the Stalking Horse Bid by at least $5 million in cash consideration—must be met for the KEIP Participants to receive any distribution under the KEIP. The payments are reasonable because they are directly tied to increased sale proceeds that would be the direct result of the KEIP Participants' performance. Further, the total KEIP payments and base salary are actually *lower* than the amount of compensation that the KEIP Participants would have expected to earn in the absence of these Bankruptcy Proceedings.[9] As noted above, Pearl Meyer conducted an extensive executive compensation competition analysis prior to the Petition Date, which A&M, in turn, compared to projected total target direct compensation for each KEIP Participant provided Tier 1 "Target" payouts are made. After conducting that comparison, A&M

---

[9] The proposed KEIP, when combined with fixed compensation (base salary), will produce levels of total direct compensation that are approximately 46% lower than Fiscal Year 2016 target total direct compensation assuming KEIP payout at the target level of performance. Even at the Tier 2 "Stretch" level of performance, total direct compensation under the proposed KEIP would also fall below Fiscal Year 2016 target total direct compensation for all of the KEIP Participants. The group as a whole would be 25% lower than the Fiscal Year 2016 target total direct compensation.

determined that each KEIP Participant's total direct compensation for Fiscal Year 2017 would fall below the 25th percentile of market comparables.

45. Third, the KEIP is reasonable in scope because it only applies to six (6) executives and officers. The Debtors must rely on the efforts of those six KEIP Participants, and their performance will have the greatest impact on the sales value that the Debtors achieve through the Sale Process.

46. Fourth, the Debtors hired A&M to, among other things, provide its expert advice in designing the KEIP. A&M made its initial recommendations based upon a thoughtful and thorough review of bankruptcy comparables, the market comparable analysis of Pearl Meyer and historical compensation at the Company. The Debtors discussed their options with A&M and only arrived at the first iteration of the KEIP after several revisions. The KEIP then underwent an effective market test prior to filing this Motion when the Debtors solicited comments from both Committees, a process that resulted in a modified plan that further incentivizes maximum performance from the KEIP Participants. Therefore, the Debtors' consultation with A&M, ensuing approval by the Company's Board of Directors, and negotiation with the Committees demonstrate a reasonable exercise of sound business judgment by the Debtors that has been approved by their two statutory committees.

47. Fifth, A&M reviewed multiple incentive plans implemented in chapter 11 upon receiving the list of proposed executives who would have the greatest impact on the restructuring and Sale Process, as determined by the Debtors' senior management and approved by the Debtors' compensation committee and Board of Directors. In conjunction therewith, A&M designed the KEIP and assessed the reasonableness of its structure, keeping in mind the Comparable KEIPs and the incentive objectives that the Debtors hereby seek to establish. The

Committees had an opportunity to consider the Debtors' initial proposals, ask questions and provide comments and make counterproposals.

48. Sixth, the Debtors consulted with A&M in designing the KEIP, analyzing objectives related to Sale Proceeds and establishing targeted thresholds within that construct. These efforts, combined with the Debtors' review of A&M's industry studies and expert advice, and the constructive input provided by the Committees, constitute sufficient due diligence to meet the business judgment standard.

49. Finally, the Debtors submit that maintaining business operations and closing a sale that exceeds the offer put forth by the Stalking Horse Purchaser by at least $5 million would warrant Tier 1 "Target" payouts under the KEIP. The KEIP Participants must be incentivized to continue business operations in a manner that will both ensure compliance with the requirements of the Stalking Horse Agreement through closing, and simultaneously generate significant interest from would-be alternative buyers. Indeed, Courts have approved incentive plans that are triggered upon the closing of a stalking horse bid, alone.[10] In this instance, closing the Stalking Horse Agreement, on the terms contemplated, will not entitle any KEIP Participants to payouts under the KEIP, and only in the event Sale Proceeds *exceed* the Stalking Horse Bid by $5,000,000 or more will KEIP Participants receive a KEIP payout. As a result, KEIP

[10] *See* in *In re Diamond Glass*, Case No. 08-10601 (Bankr. D. Del. 2009) ("even if the only thing management has to do and the covered employees have to do is hold this company together for the stalking horse bidder to close, [the Court doesn't] find that in and of itself primarily retentive. . .. Stalking horse cases, stalking horse bidders walk away. There are material adverse changes that occur . . . [and] I don't find that just getting to a plan or just getting to a closing by a stalking horse bidder in and of itself is retentive. I think there's a lot that can go wrong." Tr. of Hr'g before the Honorable Christopher S. Sontchi at 89: 5-23 (*In re Diamond Glass, Inc.*, Case No. 08-10601) (Bankr. D. Del. May 8, 2008). *See also* Tr. of Hr'g before the Honorable Brendan S. Shannon at 61: 1-24 (*In re Coldwater Creek, Inc.*, Case No. 14-10867) (Bankr. D. Del. June 2, 2014) (approving incentive program where "much of the work has already been done"); *In re RadioShack Corp.*, Case No. 15-10197 (Bankr. D. Del. Mar. 4, 2015) (D.I. 811] (approving incentive plan that contemplated payment upon metric driven by approval of stalking horse bid).

Participants have a strong incentive to drive value over and above the value of the Stalking Horse Bid.

50. For all these reasons, the Debtors submit that the KEIP is justified by the facts and circumstances of these Bankruptcy Proceedings and, therefore, should be approved.

B. The KERP Applies Only to Non-Insiders, and is Not Prohibited by Sections 503(c)(1) or 503(c)(2) of the Bankruptcy Code

51. In addition, the KERP is not subject to section 503(c)(1) or (c)(2) of the Bankruptcy Code, both of which apply to insiders exclusively. Section 101(31)(B) of the Bankruptcy Code defines an "insider" as any director, officer, person in control of the debtor, partnership where the debtor is a general partner, general partner of the debtor, or relative of a general partner, director, officer, or person in control of the debtor. *See* 11 U.S.C. § 101(31)(B). None of the KERP Participants meet this definition of "insider."

52. Although any person holding an officer's title is presumptively an officer and, thus, an insider, that presumption can be rebutted. *In re Foothills Texas, Inc.*, 408 B.R. 573 (Bankr. D. Del. 2009). Specifically, "[a] party seeking to rebut that presumption must present evidence sufficient to establish that the person holds the title of an officer in name only and, in fact, does not meet the substantive definition of the same, *i.e.*, he or she is not taking part in the management of the debtor." *Id.* at 574-75.

53. As demonstrated above, the KERP Participants do not report to the CEO or to the Company's Board of Directors; rather, they report to intermediate managers or, in one instance, the Chief Financial Officer and Audit Committee of the Board of Directors. *See In re Global Aviation Holdings Inc.*, 478 B.R. 142, 148 (Bankr. E.D.N.Y. 2012) (finding that director-level employees were not "officers" because none of them were members of board, participated in corporate governance, attended board meetings or reported to board). Many of the KERP

Participants' duties are limited to sales or account management and may be restricted to a particular division. Courts have declined to find insider status where the scope of authority is similarly limited. *See In re Borders Group, Inc*., 453 B.R. 459, 469 (Bankr. S.D.N.Y. 2011) (employees in retention plan were not insiders because none of them had authority to implement company policy, did not report to board of directors, and were subordinate to actual officers). The titles of the KERP Participants reflect their individual functions and roles, but do not reflect "insider" status as the Court discussed in *Foothills*. *See In re NMI Systems, Inc.*, 179 B.R. 357, 370 (Bankr. D.D.C. 1995) (finding that vice president was not an insider because he was conferred title "for purposes of marketing" only and was not "in the inner circle making the company's critical financial decisions.").

54. Accordingly, the Debtors submit that certain KERP Participants are officers in name only, do not take part in the management of the Debtors, and therefore are not "insiders."[11] For the balance of the KERP Participants, the Debtors submit that both their titles and roles played dictate that they are not "insiders" and, therefore, not precluded from participating in the KERP.

C. The KEIP and KERP Should be Approved Pursuant to Sections 363(b) and 503(c)(3) of the Bankruptcy Code

55. Because the KEIP and KERP are not prohibited by sections 503(c)(1) or 503(c)(2) of the Bankruptcy Code, the Debtors submit that the Court should authorize the Debtors to implement the plans under sections 363(b)(1) and 503(c)(3) of the Bankruptcy Code.

56. The standard for approving payments under section 503(c)(3) is essentially the same "business judgment" standard for approving similar transactions under

[11] To the extent required by constituents' objections or the Court, the Debtors are prepared to submit at the hearing on this Motion additional evidence necessary to rebut any presumption of insider status conferred by the KERP Participants' titles. Should the Court find that any presumption of insider status has not been overcome, the Debtors reserve the right to move any such KERP participant from the KERP to the KEIP.

section 363(b)(l) of the Bankruptcy Code. *See, e.g., In re Nellson Nutraceutical, Inc.,* 369 B.R. 787, 804 (Bankr. D. Del. 2007) (holding that, because bonus plan's primary motivation was not retentive, section 503(c)(l) did not apply and business judgment standard was to be used to assess plan); *In re Global Home Products, LLC,* 369 B.R. 778, 787 (Bankr. D. Del. 2007) (same).

57. Section 363(b)(1) of the Bankruptcy Code allows a debtor-in-possession to use property of the estate "other than in the ordinary course of business" after notice and a hearing, in the exercise of the Debtors' business judgment. 11 U.S.C. § 363(b)(1); *see also, e.g., In re Martin*, 91 F.3d 389, 395 (3d. Cir. 1996) (stating that under normal circumstances, courts will defer to debtor's judgment in using property under section 363(b) if there is legitimate business justification). Therefore, the estate's property may be used other than in the ordinary course of business if the debtor can show a "sound business purpose" for such use. *See In re Lionel Corp*., 722 F.2d 1063, 1071 (2d Cir. 1983) ("[t]he rule we adopt requires that a judge determining a §363(b) application expressly find from the evidence presented before him [supports a] good business reason to grant the application."); *In re Delaware Hudson Ry. Co*., 124 B.R. 169, 179 (Bankr. D. Del. 1991). If a debtor shows a valid business purpose, the court applies the "business judgment rule," a presumption "that in making a business decision, the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interest of the company." *Smith v. Van Gorkom,* 488 A.2d 858, 872 (Del. 1985).

58. Applying the business judgment rule in chapter 11 cases, courts have routinely permitted employee payments that are outside the normal course of business. *See, e.g*., *Dai-Ichi Kangyo Bank Ltd. v. Montgomery Ward Holding Corp*. (*In re Montgomery Ward Holding Corp*.), 242 B.R. 147, 153-55 (D. Del. 1999) (affirming bankruptcy court's

authorization of key employee compensation program, holding "[i]n determining whether to authorize the use, sale, or lease of property of the estate under [section 363(b)], courts require the debtors to show that a sound business purpose justifies such actions"); *In re Global Home Products*, 369 B.R. at 784 ("The reasonable use of incentives and performance bonuses are considered the proper exercise of a debtor's business judgment."); *see also In re Martin*, 91 F.3d 389, 395 (3d Cir. 1996) (citing *Fulton State Bank v. Schipper* (*In re Schipper*), 933 F.2d 513, 515 (7th Cir. 1991)).

59. The KEIP and KERP each represent a sound business purpose and satisfy the business judgment rule. The KEIP and KERP will facilitate the Debtors' Sale Process by incentivizing, retaining, and protecting crucial employees to ensure that regular business operations continue and Sale Proceeds are maximized. These goals cannot be met if skilled key employees depart prematurely or if executives are not incentivized. Payments under the KEIP directly incentivize key executives to achieve the highest sale consideration and maximize recovery for the Debtors' estates. The KERP serves another important purpose by offering non-insider employees with security and a reward for remaining loyal to the Debtors during this critical period.

60. Moreover, the Debtors submit that by obtaining the consent of both Committees to implement the KEIP and the KERP (subject to Court approval), the reasonableness of the Debtors' business judgment is further affirmed.

61. For the foregoing reasons, the Debtors submit that approval of the KEIP and KERP is in the best interest of the Debtors' estates, their creditors, and all parties in interest, and should therefore be granted.

II. RELIEF UNDER BANKRUPTCY RULE 6004 IS WARRANTED

62. The Debtors request that the Court waive the 14-day stay period under Bankruptcy Rule 6004(h) and approve the relief requested herein to be effective immediately. Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale, or lease of property … is stayed until the expiration of fourteen days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h).

63. As demonstrated above, approval of the KEIP and KERP is essential to incentivizing key senior executives, and retaining certain critical employees, so that the outcome of the Debtors' Sale Process can be optimized. The Debtors submit that the Court should waive the 14-day stay under Bankruptcy Rule 6004(h), so that the crucial incentive and retentive effects of the KEIP and KERP can be realized immediately in the challenging and uncertain circumstances presented by these Bankruptcy Proceedings.

NOTICE

64. Notice of this Motion has been provided to: (i) the UST; (ii) those parties served with notice of the Comeback Hearing in the Canadian Proceedings; (iii) counsel to the Creditors' Committee and proposed counsel to the Equity Committee; (iv) counsel to the Debtors' prepetition and postpetition lenders; (v) the Monitor; (vi) counsel to the Debtors' Stalking Horse Purchaser; and (vii) all parties requesting notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: December 20, 2016
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Pauline K. Morgan

Pauline K. Morgan (No. 3650)
Sean T. Greecher (No. 4484)
Justin H. Rucki (No. 5304)
Shane M. Reil (No. 6195)
Rodney Square
1000 North King Street
Wilmington, Delaware 19801
Telephone: (302) 571-6600
Facsimile: (302) 571-1253

-and-

PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
Kelley A. Cornish
Alice Belisle Eaton
Claudia R. Tobler
Christopher Hopkins
1285 Avenue of the Americas,
New York, New York 10019
Telephone: (212) 373-3000
Facsimile: (212) 757-3990

Co-Counsel to the Debtors and Debtors in Possession

<u>EXHIBIT A</u>

Proposed Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
BPS US Holdings Inc., *et al.*,[1]	)	Case No. 16-12373 (KJC)
Debtors.	)	(Jointly Administered)
	)	**Ref Docket No. ___**

ORDER APPROVING DEBTORS' (I) KEY EMPLOYEE INCENTIVE PLAN AND (II) KEY EMPLOYEE RETENTION PLAN

Upon consideration of the motion (the "Motion")[2] of BPS US Holdings, Inc. and its affiliated debtors and debtors in possession (collectively, the "Debtors") for entry of an order, pursuant to sections 363 and 503 of the Bankruptcy Code, approving the KEIP and the KERP, each as described in the Motion; and the Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and the Court having found that venue of these cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and the Court having found that notice of the Motion has been given as set forth in the Motion and that such notice is adequate and no other or further

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number or Canadian equivalent, are as follows: BPS US Holdings Inc. (8341); Bauer Hockey, Inc. (3094); Easton Baseball / Softball Inc. (5670); Bauer Hockey Retail Inc. (6663); Bauer Performance Sports Uniforms Inc. (1095); Performance Lacrosse Group Inc. (4200); BPS Diamond Sports Inc. (5909); PSG Innovation Inc. (9408); Performance Sports Group Ltd. (1514); KBAU Holdings Canada, Inc. (5751); Bauer Hockey Retail Corp. (1899); Easton Baseball / Softball Corp. (4068); PSG Innovation Corp. (2165); Bauer Hockey Corp. (4465); BPS Canada Intermediate Corp. (4633); BPS Diamond Sports Corp. (8049); Bauer Performance Sports Uniforms Corp. (2203); and Performance Lacrosse Group Corp. (1249). The Debtors' headquarters are located at 100 Domain Dr., Exeter, New Hampshire 03833.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion.

notice need be given; and the Court having determined that it may enter a final order consistent with Article III of the United States Constitution; and a hearing having been held to consider the relief requested in the Motion; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors and all other parties in interest; and that the legal and factual bases set forth in the Motion and at the hearing on the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.

2. The KEIP and the KERP are each approved on the terms described in the Motion.

3. The Debtors are authorized to take all actions necessary to implement the KEIP and the KERP, and to make all payments provided under such plans.

4. All amounts earned and payable under the KEIP and the KERP shall have administrative expense priority under sections 503(a) and 507(a)(2) of the Bankruptcy Code for all purposes in these chapter 11 cases and in any other cases under the Bankruptcy Code to which these cases may be converted.

5. This Order shall be effective and enforceable immediately upon entry, and any stay applicable under the Bankruptcy Rules or the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware is hereby expressly waived and shall not apply.

6. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

7. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: January ___, 2017
Wilmington, Delaware

____

Kevin J. Carey
United States Bankruptcy Judge

TAB 3

Court File No. CV-16-11582-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.	)	TUESDAY, THE 10th
	)	
JUSTICE NEWBOULD	)	DAY OF JANUARY, 2017

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.

(**Applicants**)

ORDER
(Re: KERP and KEIP Approval)

THIS MOTION, made by Performance Sports Group Ltd. ("**PSG**"), 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., and PSG Innovation Inc. (collectively, the "**Applicants**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order approving the Key Employee Retention Plan and Key Employee Incentive Plan and granting a priority charge on the Applicants' property securing amounts payable under the KERP and KEIP, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Brian J. Fox sworn January 3, 2016 (the "**Fox Affidavit**") and the Exhibits thereto and the fourth report of Ernst & Young Inc. in its capacity as Court-appointed monitor (the "**Monitor**") to the Applicants, and on hearing the submissions of counsel for the Applicants, the Monitor, Sagard Capital Ltd., Fairfax Financial Holdings Limited, and the Official Committee of Unsecured Creditors, the Official Committee of Equityholders of Performance Sports Group Ltd., no one appearing for any other party although duly served as appears from the affidavit of service of ●, filed.

KEY EMPLOYEE RETENTION PLAN AND KEY EMPLOYEE INCENTIVE PLAN

1. **THIS COURT ORDERS** that the Key Employee Retention Plan (the "**KERP**") and Key Employee Incentive Plan (the "**KEIP**"), as described in the Fox Affidavit, the details of which are included in the Confidential Exhibit "B" of Fox Affidavit, are hereby approved and the Applicants are authorized and directed to make payments in accordance with the terms thereof.

2. **THIS COURT ORDERS** that each Key Employee (as such term is defined in the Fox Affidavit), subject their entitlements under the KERP or KEIP, shall be entitled to the benefit of and is hereby granted a charge (the "**Key Employee Charge**") on the Applicants' current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the "**Property**"), which charge shall not exceed an aggregate amount of USD $3.4 million, to secure the individual amounts payable to each Key Employee pursuant the KERP and KEIP pursuant to paragraph 1 of this Order.

3. **THIS COURT ORDERS** that all capitalized terms contained in this paragraph not otherwise defined herein shall have the meaning ascribed to them in the Second Amended and Restated Initial Order dated October 31, 2015 (the "**Initial Order**") and that the priorities of the Key Employee Charge, as among the other Court-ordered priority charges granted under the Initial Order shall from this date forth be as follows:

(a) With respect to the Fixed Asset (Term) Priority Collateral:

First – the Administration Charge (to the maximum amount of USD $3.75 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 the

Chapter 11 Proceedings requiring the Applicants to fund the Carve-Out in respect of the Property specifically in respect of the Fixed Asset (Term) Priority Collateral);

Second – the Term Loan DIP Charge;

Third - the Pre-Filing Term Loan Charge;

Fourth – the ABL DIP Charge;

Fifth – the Pre-Filing ABL Facility Security;

Sixth – the Key Employee Charge;

Seventh – the Bid Protection Charge;

Eight – the Directors' Charge; and

Ninth – the Intercompany Charge.

(b) With respect to the ABL Priority Collateral:

First – the Administration Charge (to the maximum amount of USD $3.75 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 the Chapter 11 Proceedings requiring the Applicants to fund the Carve-Out in respect of the Property specifically in respect of the ABL Priority Collateral);

Second – the ABL DIP Charge;

Third – the Pre-Filing ABL Facility Security;

Fourth – the Term Loan DIP Charge;

Fifth – the Key Employee Charge;

Sixth – the Directors' Charge (to the maximum amount of USD $7.5 million);

Seventh – the Intercompany Charge;

Eighth – the Pre-Filing Term Loan Charge; and

Ninth – the Bid Protection Charge.

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

First – the Administration Charge;

Second – the Term Loan DIP Charge;

Third – the ABL DIP Charge;

Fourth – the Key Employee Charge;

Fifth – the Bid Protection Charge;

Sixth – the Directors' Charge; and

Seventh – 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;

Second – the Term Loan DIP Charge;

Third – the ABL DIP Charge;

Fourth – the Key Employee Charge;

Fifth – the Bid Protection Charge;

Sixth – the Directors' Charge; and

Seventh – the Intercompany Charge.

provided, however, that (i) as between the Pre-Filing ABL Lenders, the ABL DIP Lenders and the Term Loan DIP Lenders, nothing in this Order shall derogate from the priorities agreed to by them in the Post-Filing ICA; and (ii) to the extent the PSG Innovation Collateral or the Property described in Paragraph 57(d) of the Initial Order would otherwise constitute ABL Priority Collateral, it shall be treated as such (and otherwise shall be treated as Fixed Asset (Term) Priority Collateral as reflected above).

4. **THIS COURT ORDERS** that the Key Employee Charge shall rank in priority to all other security interests, trusts (including constructive trusts), liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (including any deemed trust created under the Ontario *Pension Benefits Act*) (collectively, the "**Encumbrances**"), other than (a) any individual, form, corporation, governmental body or agency, or any other entity with a properly perfected purchase money security interest under the *Personal Property Security Act* (Ontario) or such other applicable provincial legislation that has not been served with notice of this Order; and (b) statutory super-priority deemed trusts and liens for unpaid employee source deductions.

5. **THIS COURT ORDERS** that the filing, registration or perfection of the Key Employee Charge shall not be required, and that the Key Employee Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Key Employee Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.

6. **THIS COURT ORDERS** that the Key Employee Charge shall not be rendered invalid or unenforceable and the rights and remedies of the Key Employees entitled to the benefit of the Key Employee Charge 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 the *Bankruptcy and Insolvency Act* (Canada) (the "**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) the creation of the Key Employee Charge shall not create or be deemed to constitute a breach by the Applicants of any Agreement to which it is a party; and

(b) none of the Key Employees shall have any liability to any person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Key Employee Charge.

7. **THIS COURT ORDERS** that payments made by the Applicant pursuant to this Order do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

SEALING

8. **THIS COURT ORDERS** that the unredacted version of Confidential Exhibit "B" to the Fox Affidavit be sealed in its entirety, kept confidential and not form part of the public record, unless otherwise ordered by this Court.

GENERAL

9. **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, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

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

Court File No. CV-16-11582-00CL

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

ORDER
(RE: KERP AND KEIP APPROVAL)

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

Peter Howard LSUC#: 22056F
E-mail: phoward@stikeman.com
Tel: (416) 869-5613

Kathryn Esaw LSUC#: 58264F
E-mail: kesaw@stikeman.com
Tel: (416) 869-5230

Lee Nicholson LSUC#: 66412I
Tel: (416) 869-5604
E-mail: leenicholson@stikeman.com
Fax: (416) 947-0866

Lawyers for the Applicants

Court File No. CV-16-11582-00CL

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. ET. AL.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERICAL LIST

Proceeding commenced at Toronto

MOTION RECORD
(Returnable January 10, 2016)
(Re: KERP and KEIP Approval)

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

Peter Howard LSUC#: 22056F
Tel: (416) 869-5613
E-mail: phoward@stikeman.com

Kathryn Esaw LSUC#: 58264F
Tel: (416) 869-6820
E-mail: kesaw@stikeman.com

Lee Nicholson LSUC#66412I
Tel: (416) 869-5604
E-mail: leenicholson@stikeman.com
Fax: (416) 947-0866

Lawyers for the Applicants

6661115 v2