

**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 OLD PSG
WIND-DOWN LTD., OLD BHR WIND-DOWN CORP., OLD BPSU WIND-DOWN CORP.,
OLD BPSDS WIND-DOWN CORP., OLD EBS WIND-DOWN CORP., OLD PLG WIND-DOWN
CORP., OLD PSGI WIND-DOWN CORP., OLD BHR INC., OLD BH INC., OLD BPSU INC.,
OLD BPSCI INC., OLD BPSUSH INC., OLD EBS INC., OLD PLG INC., AND OLD PSGI INC.

(Applicants)

**MOTION RECORD
(Returnable October 16, 2017)
(Re: Disallowance of Putative Class Claim)**

September 21, 2017

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

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Lawyers for the Applicants

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AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF OLD PSG WIND-DOWN LTD., OLD BHR WIND-DOWN CORP., OLD BPSU WIND-DOWN CORP., OLD BPSDS WIND-DOWN CORP., OLD EBS WIND-DOWN CORP., OLD PLG WIND-DOWN CORP., OLD PSGI WIND-DOWN CORP., OLD BHR INC., OLD BH INC., OLD BPSU INC., OLD BPSCI INC., OLD BPSUSH INC., OLD EBS INC., OLD PLG INC., AND OLD PSGI INC.

(Applicants)

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TAB 1

**ONTARIO
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OLD BPSU INC., OLD BPSCI INC., OLD BPSUSH INC., OLD EBS INC., OLD PLG INC.,
AND OLD PSGI INC.

(Applicants)

**NOTICE OF MOTION
(Returnable October 16, 2017)
(Re: Disallowance of Putative Class Claim)**

Old PSG Wind-down Ltd. ("**PSG**"), Old BHR Wind-down Corp., Old BPSU Wind-down Corp., Old BPSDS Wind-down Corp., Old EBS Wind-down Corp., Old EBS Wind-down Corp., Old PLG Wind-down Corp., Old PSGI Wind-down Corp., Old BHR Inc., Old BH Inc., Old BPSU Inc., Old BPSCI Inc., Old BPSCI Inc., Old BPSUSH Inc., Old EBS Inc., Old PLG Inc., and Old PSGI Inc. (collectively, the "**Applicants**") will make a motion to a judge presiding over the Commercial List at 10:00 a.m. on October 16, 2017 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 Motion Record of the Applicants disallowing the proof of claim no. 444 (the "**Putative Class Claim**") filed by The Plumbers & Pipefitters National Pension Fund (the "**Individual Claimant**"), on behalf of an alleged class of unidentified claimants; and

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

THE GROUNDS FOR THE MOTION ARE:

Background

3. On May 13, 2016, plaintiff Juan Francisco Gonzales Nieves, as trustee of the Gonzalez Coronado Trust, filed a complaint (the “**Class Action**”), individually and purportedly on behalf of a class of similarly situated persons, against PSG, Kevin Davis (PSG’s former CEO), and Amir Rosenthal (PSG’s former President and Interim CEO/CFO) (Messrs. Davis and Rosenthal, together, the “**Individual Defendants**”, and, with PSG, the “**Defendants**”) in the United States District Court for the Southern District of New York (the “**District Court**”) (Case No. 16-03591);

4. The Class Action contains allegations that PSG and the Individual Defendants made materially false and misleading statements regarding the PSG’s financial performance. The Class Action has not been certified in the District Court and to date, no motion or other pleading requesting class certification has yet been filed with the District Court or any other court;

5. The Defendants deny allegations made in the Class Action. On October 13, 2016, the Defendants filed a motion with the District Court to dismiss the Class Action;

Bankruptcy Proceedings

6. On October 31, 2016, the Applicants sought and obtained protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) and an initial order (the “**Initial Order**”) was granted commencing proceedings under the CCAA (the “**CCAA Proceedings**”). On the same date, the Applicants also filed for creditor protection (together with the CCAA Proceedings, the “**Bankruptcy Proceedings**”) in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) under the Chapter 11 of Title 11 of the U.S. Code (the “**Bankruptcy Code**”). Pursuant to the Initial Order, Ernst & Young Inc. was appointed as monitor (the “**Monitor**”) of the Applicants in the CCAA Proceedings;

7. On December 19, 2016, the Applicants obtained an Order of this Court that (i) approved a process for soliciting claims against the Applicants, (ii) set certain claims bar dates for the submission of proofs of claim against the Applicants, and (iii) set out the form and manner of notice of such bar dates to creditors (the “**Claims Procedure Order**”). The Claims Procedure Order did not permit the filing of “class claims” and required that proofs of claims be submitted by individuals or their proper legal representative;

8. On February 6, 2017, the Individual Plaintiff submitted an individual proof of claim on behalf of itself (the “**Individual Claim**”) and the Putative Class Claim. No other individual claimant submitted a proof of claim in the Bankruptcy Proceedings alleging a claim against the Applicants on the basis that the Applicants’ made materially false and misleading statements regarding the PSG’s financial performance;

9. On February 6, 2017, after the conclusion of a Court-approved sales process, this Court and the Bankruptcy Court issued and entered Orders which, among other things, named Peak Achievement Athletics Inc. (f/k/a 9938982 Canada Inc.) or its designate as the successful bidder in the sales process and approved the Asset Purchase Agreement dated October 31, 2016, as amended and the contemplated sale transaction (the “**Sale**”). Following the Sale, the Applicants have been attempting to conclude the Bankruptcy Proceedings and distribute the proceeds from the Sale to their stakeholders;

10. On September 1, 2017, this Court granted an Order for the resolution of claims (the “**Claims Resolution Order**”). Pursuant to paragraph 13 of the Claims Resolution Order, the Putative Class Claim may be addressed by this Court jointly with the Bankruptcy Court;

11. On September 15, 2017, the Official Committee of Equity Security Holders (the “**Equity Committee**”) filed a motion in the Chapter 11 Proceedings objecting to the Putative Class Claim (the “**U.S. Objection Motion**”);

Joint Plan

12. On August 25, 2017, the Applicants’ filed a joint Chapter 11 Plan of Liquidation of Old BPSUSH Inc. and its affiliated debtors (the “**Joint Plan**”) with the Bankruptcy Court which contemplates, among other things, (i) a global settlement among the Applicants’

stakeholders; (ii) the payment in full of the Applicants' creditors (without post-filing interest); and (iii) potential distributions to PSG's equity holders;

13. The Joint Plan resulted from extensive negotiations between the Applicants and the Applicants' stakeholders, including the Equity Committee and the Applicants' Official Committee of Unsecured Creditors, with the assistance of the Monitor;

14. The Joint Plan contemplates that the Applicants will reserve for the payment of the Individual Claim and if ultimately allowed, the Individual Claim will be paid in full subject to the reserve amount specified in the Joint Plan;

Disallowance of the Putative Class Claim

15. The unliquidated and contingent Putative Class Claim is a roadblock to distributions being made to the Applicants' stakeholders under the Joint Plan. Delaying distributions to the Applicants' stakeholders while the merits of the Putative Class Claim are determined through costly litigation would reduce the recovery of all stakeholders, prevent distributions from being made to stakeholders in the near term and delay final resolution to these Bankruptcy Proceedings;

16. The Individual Claimant did not seek any authority from this Court or the Bankruptcy Court to file a proof of claim on behalf of alleged class of claimants. The Claims Procedure Order established a process by which such individuals could have filed proofs of claims against the Applicants. There is no need to establish a separate process through certification. Resolution of the Putative Class Claim would be uneconomical, duplicative and time consuming;

17. The Applicants support the position of the Equity Committee set forth in the U.S. Objection Motion that the Putative Class Claim ought to be disallowed;

General

18. The provisions of the CCAA, including sections 11 and 20, and the inherent and equitable jurisdiction of this Court;

19. The Claims Procedure Order and the Claims Resolution Order;
20. Rules 1.05, 2.03, 3.02, 5.04 and 37 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
21. 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:

1. The Affidavit of Keisha Lackpatiah-Sealy sworn September 20, 2017 and the Exhibits attached thereto;
2. The Twelfth Report of the Monitor, to be filed; and
3. Such further and other materials as counsel may advise and this Court may permit.

September 21, 2017

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

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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 OLD PSG WIND-DOWN LTD. ET. AL.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**NOTICE OF MOTION
(RETURNABLE OCTOBER 16, 2017)**

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

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Lawyers for the Applicants

TAB 2

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SUPERIOR COURT OF JUSTICE
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OLD BPSU INC., OLD BPSCI INC., OLD BPSUSH INC., OLD EBS INC., OLD PLG INC.,
AND OLD PSGI INC.

(Applicants)

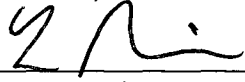
AFFIDAVIT OF KEISHA LACKPATIAH-SEALY
(Sworn September 20, 2017)

I, KEISHA LACKPATIAH-SEALY, of the City of Oshawa, in the Province of Ontario,
MAKE OATH AND SAY:

1. I am a legal assistant with Stikeman Elliott LLP, counsel to Old PSG Wind-down Ltd. ("**PSG**"), Old BHR Wind-down Corp., Old BPSU Wind-down Corp., Old BPSDS Wind-down Corp., Old EBS Wind-down Corp., Old EBS Wind-down Corp., Old PLG Wind-down Corp., Old PSGI Wind-down Corp., Old BHR Inc., Old BH Inc., Old BPSU Inc., Old BPSCI Inc., Old BPSCI Inc., Old BPSUSH Inc., Old EBS Inc., Old PLG Inc., and Old PSGI Inc. in their proceedings under the *Companies' Creditors Arrangement Act* (the "**CCAA Proceedings**").
2. Attached hereto as Exhibit "A" is a copy of the proof of claim no. 444 (the "**Putative Class Claim**") filed by Plumbers & Pipefitters National Pension Fund (the "**Individual Claimant**") on behalf of an alleged class of plaintiffs, which attaches the seconded amended complaint filed by the Individual Claimant with the United States District Court for the Southern District of New York (the "**District Court**") that forms the basis for the alleged Putative Class Claim.

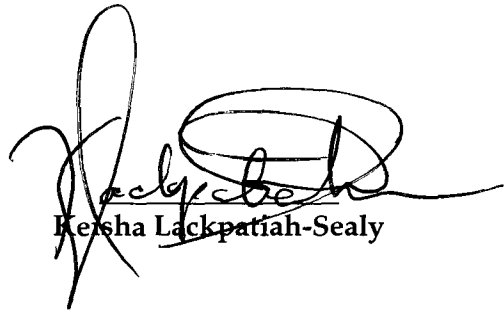
3. Attached hereto as Exhibit "B" is a copy of the proof of claim no. 494 filed by the Individual Claimant on behalf of itself.
4. Attached hereto as Exhibit "C" is a copy of PSG's motion to dismiss the Individual Claimant's complaint filed with the District Court, which was filed on October 13, 2016, prior to the commencement of the CCAA Proceedings.
5. Attached hereto as Exhibit "D" is a copy of the joint Chapter 11 Plan of Liquidation of Old BPSUSH Inc. and its affiliated debtors (the "**Joint Plan**") filed by the Applicants with the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**") on August 25, 2017.
6. Attached hereto as Exhibit "E" is a copy of the disclosure statement in respect of the Joint Plan filed by the Applicants with the Bankruptcy Court on August 25, 2017.
7. Attached hereto as Exhibit "F" is a copy of the motion of the Official Committee of Equity Holders (the "**Equity Committee**") objecting to the Putative Class Claim filed with the Bankruptcy Court on September 15, 2017.
8. Attached hereto as Exhibit "G" is a copy of the Claims Procedure Order of this Court dated December 19, 2016.
9. Attached hereto as Exhibit "H" is a copy of the Claims Resolution Order of this Court dated September 1, 2017.
10. Attached hereto as Exhibit "I" is excerpts from the [Affidavit of Georgia L. Faust](#) of Prime Clerk LLC demonstrating that the lawyers of the Individual Claimant and the Individual Claimant received a copy of the claims package distributed in accordance with the Claims Procedure Order.
11. I am informed by Lee Nicholson, a lawyer with Stikeman Elliott LLP, and believe that the Equity Committee is expected to file supplementary materials in support of this motion.

SWORN BEFORE ME at the City of
Toronto, Province of Ontario, on
September 20, 2017.



Commissioner for Taking Affidavits

Lee Nicholson



Keisha Lackpatiah-Sealy

EXHIBIT “A”

EXHIBIT "A"

referred to in the Affidavit of

KEISHA LACKPATIAH-SEALY

Sworn September 20, 2017

A handwritten signature in black ink, appearing to be 'Z. N.', written above a horizontal line.

Commissioner for Taking Affidavits

Fill in this information to identify the case (Select only one Debtor per claim form):

- | | | |
|--|--|---|
| ☐ BPS US Holdings Inc.
(Case No. 16-12373) | ☐ BPS Diamond Sports Inc.
(Case No. 16-12379) | ☐ PSG Innovation Corp.
(Case No. 16-12385) |
| ☐ Bauer Hockey, Inc.
(Case No. 16-12374) | ☐ PSG Innovation Inc.
(Case No. 16-12380) | ☐ Bauer Hockey Corp.
(Case No. 16-12386) |
| ☐ Easton Baseball / Softball Inc.
(Case No. 16-12375) | ☒ Performance Sports Group Ltd.
(Case No. 16-12381) | ☐ BPS Canada Intermediate Corp.
(Case No. 16-12387) |
| ☐ Bauer Hockey Retail Inc.
(Case No. 16-12376) | ☐ KBAU Holdings Canada, Inc.
(Case No. 16-12382) | ☐ BPS Diamond Sports Corp.
(Case No. 16-12388) |
| ☐ Bauer Performance Sports Uniforms Inc.
(Case No. 16-12377) | ☐ Bauer Hockey Retail Corp.
(Case No. 16-12383) | ☐ Bauer Performance Sports Uniforms Corp.
(Case No. 16-12389) |
| ☐ Performance Lacrosse Group Inc.
(Case No. 16-12378) | ☐ Easton Baseball / Softball Corp.
(Case No. 16-12384) | ☐ Performance Lacrosse Group Corp.
(Case No. 16-12390) |

Proof of Claim

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy/restructuring case. Other than a claim under 11 U.S.C. § 503(b)(9), this form should not be used to make a request for payment of an administrative expense or an expense relating to goods delivered or services rendered after the petition date. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be subject to severe penalties including significant monetary fines and /or imprisonment.

Fill in all the information about the claim as of October 31, 2016.

☐ The amounts set forth on this claim form are in US Dollars

☐ The amounts set forth on this claim form are in Canadian Dollars

Part 1: Identify the Claim

1. Who is the current creditor?	Plumbers & Pipefitters National Pension Fund, for itself and on behalf of the Putative Class Name of the current creditor (the person or entity to be paid for this claim) Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	☒ No ☐ Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent?	Where should notices to the creditor be sent? c/o Lowenstein Sandler LLP Attn: Michael S. Etkin and Andrew Behlmann 65 Livingston Avenue Roseland, New Jersey 07068	Where should payments to the creditor be sent? (if different) Contact phone <u>973-597-2500</u> Contact phone _____ Contact email <u>metkin@lowenstein.com, abehlmann@lowenstein.com</u> Contact email _____ Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____
4. Does this claim amend one already filed?	☒ No ☐ Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
5. Do you know if anyone else has filed a proof of claim for this claim?	☒ No ☐ Yes. Who made the earlier filing? _____	

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? ☒ No
☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ _

7. How much is the claim and in what currency? \$ See attached addendum. Does this amount include interest or other charges?
☒ USD ☒ No
☐ CDN ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges.

8. What is the basis of the claim?
Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, credit card, restructuring claim/disclaimed or resiliated contract, etc.
Attach redacted copies of any documents supporting the claim.
Limit disclosing information that is entitled to privacy, such as health care information.
Violations of federal securities laws. See attached addendum

9. Is all or part of the claim secured? ☒ No
☐ Yes. The claim is secured by a lien on property.
Nature of property:
☐ Real estate.
☐ Motor vehicle
☐ Other. Describe: _____
Basis for perfection: _____
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
Value of property: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)
Amount necessary to cure any default as of October 31, 2016: \$ _____
Annual Interest Rate (when case was filed) _____ %
☐ Fixed
☐ Variable

10. Is this claim based on a lease? ☒ No
☐ Yes. Amount necessary to cure any default as of the date of the petition or Initial Order. \$ _____

11. Is this claim subject to a right of setoff? ☒ No
☐ Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority or special treatment under US or Canadian law?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☒ No

☐ Yes. Check one:

Under U.S. law:

☐ Up to \$2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7). \$ _____

☐ Wages, salaries, or commissions (up to \$12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4). \$ _____

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8). \$ _____

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5). \$ _____

☐ Other. Specify subsection of 11 U.S.C. § 507(a)() that applies. \$ _____

Under Canadian law:

☐ Wages, salaries, or commissions (up to CDN \$2,000) earned within 6 months before the Initial Order or disbursements of a travelling salesperson (up to CDN \$1,000) incurred in the same period, as referred to in section 6(5) CCAA. \$ _____

☐ Amounts due in respect of a registered pension plan as referred to in section 6(6) CCAA. \$ _____

☐ Amounts due to the governments and referred to in section 6(3) CCAA. \$ _____

* Amounts are subject to adjustment on 4/01/16 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim entitled to administrative priority pursuant to 11 U.S.C. § 503(b)(9)?

☒ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the Debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim. \$ _____

Part 3: Sign Below

The person completing this proof of claim must sign and date it.

A person who files a fraudulent claim could be subject to severe penalties including significant monetary fines and/or imprisonment.

Check the appropriate box:

- ☐ I am the creditor.
- ☒ I am the creditor's attorney or authorized agent.
- ☐ I am the trustee, or the debtor, or their authorized agent.
- ☐ I am a guarantor, surety, endorser, or other codebtor.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 02/06/2017 (mm/dd/yyyy)

Signature: Andrew Behlmann
Andrew Behlmann (Feb 6, 2017)

Email: abehlmann@lowenstein.com

Print the name of the person who is completing and signing this claim:

Name Andrew David Behlmann
First name Middle name Last name

Title Counsel

Company Lowenstein Sandler LLP
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 65 Livingston Avenue
Number Street

Roseland NJ 07068
City State/Province ZIP/Postal Code Country

Contact phone 973-597-2332 Email abehlmann@lowenstein.com

Attach Supporting Documentation (limited to a single PDF attachment that is less than 5 megabytes in size and under 100 pages):

☒ I have supporting documentation.
(attach below)

☐ I do not have supporting documentation.



Attachment

PLEASE REVIEW YOUR PROOF OF CLAIM AND SUPPORTING DOCUMENTS AND REDACT ACCORDINGLY PRIOR TO UPLOADING THEM. PROOFS OF CLAIM AND ATTACHMENTS ARE PUBLIC DOCUMENTS THAT WILL BE AVAILABLE FOR ANYONE TO VIEW ONLINE.

IMPORTANT NOTE REGARDING REDACTING YOUR PROOF OF CLAIM AND SUPPORTING DOCUMENTATION When you submit a proof of claim and any supporting documentation you must show only the last four digits of any social-security, individual's tax-identification, or financial-account number, only the initials of a minor's name, and only the year of any person's date of birth. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information.

A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. The responsibility for redacting personal data identifiers (as defined in Federal Rule of Bankruptcy Procedure 9037) rests solely with the party submitting the documentation and their counsel. Prime Clerk and the Clerk of the Court will not review any document for redaction or compliance with this Rule and you hereby release and agree to hold harmless Prime Clerk and the Clerk of the Court from the disclosure of any personal data identifiers included in your submission. In the event Prime Clerk or the Clerk of the Court discover that personal identifier data or information concerning a minor individual has been included in a pleading, Prime Clerk and the Clerk of the Court are authorized, in their sole discretion, to redact all such information from the text of the filing and make an entry indicating the correction.

Instructions for Proof of Claim

United States Bankruptcy Court and Ontario Superior Court of Justice (Commercial List)

These instructions and definitions generally explain the law. In certain circumstances, exceptions to these general rules may apply. You should consider obtaining the advice of an attorney, especially if you are unfamiliar with the bankruptcy/insolvency process and privacy regulations.

Notice to claimant/creditor: A person who files a fraudulent claim could be subject to severe penalties, including monetary fines and/or imprisonment. It is your responsibility to prepare and file your claim accurately.

How to fill out this form

- ❑ **Fill in the caption at the top of the form:** You must indicate to which of the listed Debtor Companies your Claim relates. If your Claim is against several of the listed entities, you must prepare a *Proof of Claim* for each entity against which a Claim is asserted. If a Claim is made against more than one entity, you must indicate in a schedule accompanying the Claim the reasons why the entity is liable for the Claim (e.g. principal/guarantor) and provide the documentation supporting the guarantee, as the case may be.
- ❑ **Fill in all of the information about the claim as of October 31, 2016.**
- ❑ **Proceedings:** This *Proof of Claim* form is intended to be used in the Debtors' proceedings under the *Companies' Creditors Arrangement Act* (Canada) ("**CCAA**") as well as in the Debtors' concurrent proceedings under Chapter 11 of the *Bankruptcy Code*. Creditors are expected to complete a single *Proof of Claim* form in respect of the Restructuring Proceedings (see the definition on the next page) for a particular Debtor.
- ❑ **Identification:** Make sure the name of the creditor is properly identified on the *Proof of Claim* (in section 1) together with the addresses to be used for notices and payments (in section 3) and the name and address of the person completing the *Proof of Claim* form (in Part 3).
- ❑ **Make sure you indicate the currency used for the amounts referred to in the claim.** The amounts may be expressed in U.S. currency (U.S.\$) or in Canadian currency (CDN\$). If your Claim is expressed in a currency other than U.S.\$ or CDN\$, your Claim should be converted in U.S.\$ or in CDN\$ at the rate of exchange that prevailed on October 31, 2016. In such a case, Creditors must also provide particulars of the original currency of your Claim and of the foreign exchange rate used to convert the Claim, in a separate document.
- ❑ **If the claim has been acquired from someone else:** State the identity of the last party who owned the Claim or was the holder of the Claim and who transferred it to you before the initial Claim was filed.
- ❑ **Attach copies of any supporting documents to this form.** You may attach copies of any document you believe is necessary in order to establish your Claim. If the documents contain confidential information, the documents should be redacted to make the confidential information unrecognizable (see the definition of *redaction* on the next page). Attach copies of any documents that show that the debt exists, a lien secures the debt, or both. Also attach copies of any documents that show perfection of any security interest or any assignments or transfers of the debt. In addition to the documents, a summary may be added.
- ❑ **Do not send original documents because attachments may be destroyed after scanning.**
- ❑ **Confidential Information:** If the Claim is based on delivering health care goods or services, do not disclose confidential health care information. Leave out or redact confidential information both in the Claim and in the attached documents. A *Proof of Claim* form and any attached documents must show only the last 4 digits of any social security number, individual's tax identification number, or financial account number, and only the year of any person's date of birth.
- ❑ **For a minor child, fill in only the child's initials and the full name and address of the child's parent or guardian.** For example, write A.B., a minor child (John Doe, parent, 123 Main St., City, State).

Confirmation that the claim has been filed

To receive confirmation that the Claim has been filed, enclose a stamped (with appropriate stampage for a delivery from the United States) self-addressed envelope and a copy of this form. You may view a list of filed Claims in this case by visiting the Claims and Noticing Agent's website at <http://cases.primeclerk.com/psg>.

Understand the terms used in this form

Administrative expense: Generally, an expense that arises after a case is filed in connection with operating, liquidating, or distributing the estate, in the context of proceedings under the U.S. *Bankruptcy Code*.

Bankruptcy: Typically, the term "bankruptcy" refers to proceedings under the *Bankruptcy Code*, either as a voluntary or involuntary liquidation process or a restructuring process under Chapter 11 of the *Bankruptcy Code*, whether or not a trustee is appointed. In the present case, the term may also include the restructuring process initiated by the Debtors under the provisions of the CCAA, where the context so requires.

CCAA: *Companies' Creditors Arrangement Act* (Canada)

Claim: A Creditor's right to receive payment for a debt or liability that the Debtor owed on the Relevant Date, whether secured, preferred, unsecured priority, unsecured nonpriority, or otherwise entitled to special treatment under applicable U.S. or Canadian law in the context of the Restructuring Proceedings. A Claim may be secured or unsecured, fixed or contingent, and/or liquidated or unliquidated. A Claim must be an amount owed by Debtor on the Relevant Date, or an amount that becomes due after that date as a result of an obligation incurred before the Relevant Date.

Claim Pursuant to 11 U.S.C. §503(b)(9): A Claim arising from the value of any goods received by the Debtor within 20 days before the date of commencement of a case under the *Bankruptcy Code*, in which the goods have been sold to the Debtor in the ordinary course of the Debtor's business. Attach documentation supporting such Claim.

Creditor: A person, corporation, or other entity that has a Claim against a Debtor.

Debtor: A person, corporation, or other entity who is undergoing a Restructuring Proceeding. Use the Debtor's name and case number as shown in the bankruptcy notice you received.

Evidence of perfection: Evidence of perfection of a security interest may include documents showing that a security interest has been filed or recorded or published, such as a mortgage, lien, certificate of title, financing statement or hypothec.

Information entitled to privacy: A *Proof of Claim* form and any attached documents must show only the last 4 digits of any social security number, an individual's tax identification number, or a financial account number, only the initials of a minor's name, and only the year of any person's date of birth. If a Claim is based on delivering health care goods or services, limit the disclosure of the goods or services to avoid embarrassment or disclosure of confidential health care information. You may later be required to give more information if an objection is made regarding the Claim, or if the Debtor or the Monitor requests additional information to support the Claim.

Monitor: The Court appointed officer in the proceedings under the CCAA.

Priority claim: A Claim within a category of unsecured claims that is entitled to priority or otherwise entitled to special treatment under applicable U.S. or Canadian law in the context of the Restructuring Proceedings. These claims are paid from the available money or property before other unsecured claims are paid. Common priority unsecured claims include certain unpaid wages (up to prescribed limits), source deductions, certain governmental claims entitled to priority by statute, and certain amounts due to prescribed pension plans.

Proof of claim: A form that indicates the Claim asserted by a Creditor against a Debtor, as of the Relevant Date. The form must be filed in compliance with the procedures approved by the court in the context of the Restructuring Proceedings, and within the deadlines set by the orders of the Court.

Redaction of information: Masking, editing out, or deleting certain information to protect privacy. Filers must redact or leave out Information entitled to privacy on the *Proof of Claim* form and any attached documents.

Relevant Date: Used in this form, the expression Relevant Date means October 31, 2016, namely the date of the petition under the *Bankruptcy Code*, or the date of the Initial Order made under the CCAA, as the case may be.

Restructuring Proceedings: The proceedings commenced by the Debtors under Chapter 11 of the *Bankruptcy Code* and pending in the United States Bankruptcy Court for the District of Delaware, and the proceedings commenced by the Debtors under the CCAA and pending before the Ontario Superior Court of Justice (Commercial List), in Toronto, Ontario.

Secured claim: A Claim backed by a lien, a security instrument or other similar encumbrance on particular property of the Debtor. A Claim is secured to the extent that a Creditor has the right to be paid from the property before other creditors are paid. The amount of a secured claim usually cannot be more than the value of the particular encumbered property that secures the debt. Any amount owed to a Creditor that is more than the value of the encumbered property normally may be an unsecured claim. But exceptions exist. Examples of liens on property include a mortgage or hypothec on real estate or

a security interest in a car. A lien may be voluntarily granted by a Debtor, may arise by statute or other force of law, or may be obtained through a court proceeding.

Setoff: Occurs when a Creditor pays itself with money belonging to the Debtor that it is holding, or by canceling a debt it owes to the Debtor.

Unsecured claim: A Claim that does not meet the requirements of a secured claim. A Claim may be unsecured in part to the extent that the amount of the Claim is more than the value of the property on which a Creditor has a lien.

Offers to purchase a Claim

Certain entities purchase Claims for an amount that is less than the face value of the Claims. These entities may contact Creditors offering to purchase their Claims. Some written communications from these entities may easily be confused with official court documentation or communications from the Debtor. These entities do not represent the bankruptcy court, the bankruptcy trustee, the Debtor or the Monitor. A Creditor has no obligation to sell its Claim. However, if a Creditor decides to sell its Claim, any transfer of that Claim is subject to applicable U.S. or Canadian law in the context of the Restructuring Proceedings, and any orders of the U.S. Bankruptcy Court or of the Ontario Superior Court of Justice that apply in the context of the Restructuring Proceedings.

Please send completed Proof(s) of Claim to:

BPS US Holdings Inc. Claims Processing Center
c/o Prime Clerk LLC
830 3rd Avenue, 3rd Floor
New York, NY 10022

Do not file these instructions with your form
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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

BPS US Holdings, Inc., *et al.*,¹

Debtors.

Chapter 11

Case No. 16-12373 (KJC)

(Jointly Administered)

ADDENDUM TO CLASS PROOF OF CLAIM

1. This Class Proof of Claim is submitted against Performance Sports Group Ltd. (“PSG”), one of the above-captioned debtors (the “Debtors”), by Plumbers & Pipefitters National Pension Fund, the court-appointed lead plaintiff (“Lead Plaintiff”) in the securities class action styled as *Nieves v. Performance Sports Group Ltd., et al.*, Case No. 1:16-CV-3591-GHW (S.D.N.Y.) (the “Securities Litigation”), pending in the United States District Court for the Southern District of New York (the “SDNY District Court”), for itself and on behalf of the Putative Class (as defined below).

2. The Securities Litigation was commenced on May 13, 2016 against, among others, Amir Rosenthal (“Rosenthal”), the Debtors’ former Chief Executive Officer; Kevin Davis, the Debtors’ former Chief Financial Officer (collectively with Rosenthal, the “Individual Defendants”); and PSG (collectively with the Individual Defendants, the “Defendants”).

3. As set forth more fully in the *Second Amended Class Action Complaint for Violations of the Federal Securities Laws* (the “Second Amended Complaint”) filed in the

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.

Securities Litigation on November 3, 2016, a copy of which is annexed hereto as **Exhibit A** and incorporated herein by reference, the Securities Litigation is a class action brought on behalf of a proposed class of persons and entities (the “Putative Class”) who purchased or acquired common stock of PSG on the New York Stock Exchange (the “NYSE”) during the period from January 15, 2015 through March 14, 2016, inclusive (as may be amended from time to time, the “Class Period”).

4. By order dated June 7, 2016, a copy of which is annexed hereto as **Exhibit B**, the SDNY District Court appointed Lead Plaintiff to represent the Putative Class in the Securities Litigation.

5. On August 15, 2016, Lead Plaintiff filed an Amended Class Action Complaint (the “First Amended Complaint”) against PSG and the Individual Defendants, asserting claims under the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a *et seq.* (the “Exchange Act”) on behalf of itself and the Putative Class in connection with false and misleading statements and/or omissions by PSG and the Individual Defendants during the proposed class period. On that same day, PSG failed to file its annual financial report due to an ongoing internal Audit Committee investigation into the “Company’s financial statements and the related certification process.” On October 13, 2016, PSG and the Individual Defendants filed a joint motion to dismiss the First Amended Complaint.

6. On October 31, 2016 (the “Petition Date”), days before Lead Plaintiff’s deadline to respond to the Defendants’ motion to dismiss (or, alternatively, to file an amended class action complaint if, instead of responding to the motion, Lead Plaintiff chose to amend the First Amended Complaint pursuant to the applicable chambers rules in the SDNY District Court),

PSG filed these chapter 11 cases. As a result, the Securities Litigation was automatically stayed with respect to PSG under section 362(a) of the Bankruptcy Code.

7. On November 3, 2016, cognizant of PSG's status as a chapter 11 debtor and the impact of the automatic stay, Lead Plaintiff filed the Second Amended Complaint against the Individual Defendants, but not PSG.

8. On January 17, 2017, the SDNY District Court entered an order (the "Stay Order") granting Rosenthal's motion (which Davis joined at the time of filing and PSG joined on December 12, 2016, after Lead Plaintiff asserted, among other things, that the Individual Defendants lacked standing to seek such relief) for a temporary stay of the Securities Litigation with respect to the Individual Defendants. Pursuant to the Stay Order, the Securities Litigation is stayed with respect to the Individual Defendants until the automatic stay is terminated in these chapter 11 cases or the SDNY District Court orders otherwise.

9. As of the Petition Date and continuing up to and including the present, PSG was and is liable to Lead Plaintiff and the Putative Class for damages in an amount not yet determined, plus interest, costs, and attorneys' fees as allowed (the "Class Claim"). The allegations in the Second Amended Complaint, as may be further amended from time to time, form the basis of the Class Claim against PSG for damages resulting from violations of the federal securities laws by PSG and the Individual Defendants in connection with the purchase or other acquisition by Lead Plaintiff and the Putative Class of common stock of PSG on the NYSE during the Class Period.

10. Specifically, through the Securities Litigation, Lead Plaintiff seeks, for itself and on behalf of the Putative Class, damages against PSG and the Individual Defendants pursuant to Sections 10(b) and 20(a) of the Exchange Act, 15 U.S.C. §§ 78j(b) and 78t(a), and Rule 10b-5, ,

17 C.F.R. § 240.10b-5, promulgated under the Exchange Act by the Securities and Exchange Commission (the “SEC”)² The Second Amended Complaint alleges, among other things, that PSG and the Individual Defendants made a series of false and misleading statements and/or omissions during the Class Period, which artificially inflated and/or maintained the value of PSG’s stock, and that subsequent disclosures and/or materializations of undisclosed risks caused PSG’s stock price to decline, resulting in injury to Lead Plaintiff and the Putative Class.

11. Lead Plaintiff files this proof of claim on behalf of itself and the Putative Class and its members, individually and/or as a group, with a reservation of rights to identify additional members of the Putative Class in the future.

12. The Class Claim is not founded upon a specific writing, although certain documents, too voluminous and burdensome to annex hereto, which upon information and belief, relate to PSG’s violations of the federal securities laws from which the Class Claim arises, and which include, but are not limited to, documents filed with the SEC, are available. In addition, certain of these documents, as well as other documents, may become available through discovery with respect to the Class Claim.

13. No payments have been made on account of the Class Claim.

14. The Class Claim is not subject to any setoff or counterclaim.

15. No security interest is held for the Class Claim.

16. The Class Claim is asserted in addition to all other claims that Lead Plaintiff individually, the Putative Class, and/or any individual members of the Putative Class may have

² The description of the claims and causes of action asserted in the Second Amended Complaint is intended only as a summary, is qualified in all respects by the allegations in the Second Amended Complaint, and is submitted without prejudice to the rights of Lead Plaintiff to further amend the Second Amended Complaint to assert other and further claims and/or to amend or supplement this Proof of Claim.

against PSG, its affiliates, the Individual Defendants, and any other defendants to be named in the Securities Litigation.

17. Lead Plaintiff reserves all rights (including but not limited to arguments, counterarguments, and defenses) in connection with the Securities Litigation. Lead Plaintiff further reserves all rights with respect to the Class Claim and this Proof of Claim, including but not limited to the right to amend and/or supplement this Proof of Claim from time to time and/or move to withdraw the bankruptcy reference.

EXHIBIT A
Second Amended Complaint

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

JUAN FRANCISCO GONZALEZ NIEVES, AS
TRUSTEE OF THE GONZALEZ CORONADO
TRUST, Individually and on Behalf of All Others
Similarly Situated,

Plaintiff,

-v-

PERFORMANCE SPORTS GROUP LTD.,
KEVIN DAVIS AND AMIR ROSENTHAL,

Defendants.

Case No.: 1:16-CV-3591-GHW

**SECOND AMENDED CLASS
ACTION COMPLAINT FOR
VIOLATIONS OF THE FEDERAL
SECURITIES LAWS**

JURY TRIAL DEMANDED

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The allegations set forth in this Second Amended Class Action Complaint for Violations of the Federal Securities Laws (the “Complaint”) are based on the investigation undertaken by Lead Counsel on behalf of Lead Plaintiff Plumbers & Pipefitters National Pension Fund (“Lead Plaintiff”). Lead Plaintiff brings this Complaint against Kevin Davis (“Davis”), the former Chief Executive Officer (“CEO”), President, and director of Performance Sports Group Ltd. (“PSG” or the “Company”),¹ and Amir Rosenthal (“Rosenthal”), the Company’s former Chief Financial Officer (“CFO”). Lead Plaintiff’s allegations against PSG and Defendants are based on personal knowledge as to its own acts and on information and belief as to all other matters, such information and belief having been informed by the investigation conducted by and under the supervision of its counsel, which included, among other things: (i) review and analysis of PSG’s public filings with the U.S. Securities and Exchange Commission (“SEC”); (ii) review and analysis of the sports equipment industry and analyst reports and other publicly-available materials concerning PSG’s business practices and policies; (iii) review and analysis of other publicly-available information concerning PSG and its competitors; (iv) interviews with former PSG employees, Class Period customers of PSG and other persons with knowledge of the matters alleged herein (most of whom have provided information in confidence; these confidential witnesses (“CWs”) will be identified herein by number (CW1, CW2, etc.)), including W. Graeme Rouston (“Rouston”), the former Chairman of PSG; and (v) consultations with experts. Lead Plaintiff believes that substantial additional evidentiary support will exist for

¹ PSG was previously named as a defendant in the Amended Class Action Complaint for Violations of the Federal Securities Laws (Dkt. No. 62). PSG and seventeen of its affiliates (collectively with PSG, the “Debtors”) filed voluntary bankruptcy petitions in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) on October 31, 2016. Accordingly, by operation of the automatic stay under 11 U.S.C. § 362 (the “Automatic Stay”), PSG is no longer named as a defendant in this action. The Automatic Stay in the Debtors’ bankruptcy cases does not impact any Defendant other than PSG. Lead Plaintiff reserves the right to name PSG (or any of the other Debtors, as the circumstances may require) as a defendant in this or any other action in the future in the event the Automatic Stay is terminated, lifted, or modified.

its allegations after a reasonable opportunity for discovery. On behalf of itself and the Class it seeks to represent, Lead Plaintiff alleges as follows:

I. NATURE OF THE ACTION

1. Lead Plaintiff brings this federal securities class action on behalf of itself and a proposed class of persons and entities (the “Class”) who purchased or acquired PSG common stock on the New York Stock Exchange (“NYSE”) during the period from January 15, 2015 through March 14, 2016, inclusive (the “Class Period”). Lead Plaintiff seeks remedies under the Securities Exchange Act of 1934 (the “Exchange Act”). PSG and Defendants made a series of false and misleading statements and/or omissions during the Class Period which artificially inflated and/or maintained the value of PSG’s stock. Subsequent disclosures and/or materializations of undisclosed risks caused PSG’s stock price to decline, resulting in injury to Lead Plaintiff and the Class.

2. PSG is a developer and manufacturer of sports equipment and apparel that it sells to independent retailers internationally. Its most recognizable brands include Bauer Hockey (“Bauer”) and Easton. For years, PSG stuck to its winning sales formula of providing quality products to independent retailers for sale to consumers.

3. From 2012 to 2014, PSG witnessed substantial revenue and profit growth based on a series of acquisitions and its strong market position in the hockey, baseball and softball markets. In April 2014, PSG completed its sixth acquisition, acquiring Easton Baseball/Softball from BRG Sports.

4. On June 20, 2014, PSG, which had previously been called Bauer Performance Sports Ltd. and was publicly trading on the Toronto Stock Exchange since March 10, 2011, held

its initial public offering, issuing more than 7 million shares of stock to the public at a price of \$15.50 per share (the “U.S. IPO”).² Following the IPO, PSG’s stock also traded on the NYSE.

5. In an effort to sustain the perception of strong growth, PSG began an aggressive push, led by Defendants Rosenthal and Davis, to further increase the Company’s revenue and sales figures by any means necessary, including by the coercive, fraudulent sales practices described herein. Defendants and PSG then led investors to believe that the Company’s success during the Class Period was based on sustainable “organic” sales growth while omitting the true reasons for PSG’s growth and “record sales” from its public statements. In doing so, PSG and Defendants propped up the value of the Company’s stock based on false and misleading information.

6. In particular, from the Company’s U.S. IPO and throughout the Class Period, PSG and Defendants touted PSG’s “record” growth in sales and revenue, which was purportedly the result of PSG’s strong product line, high market demand and “organic sales.” However, this was not the full picture.

7. Indeed, “organic growth,” as the term is generally used, refers to growth based on increased output, customer base expansion, or new product development, as opposed to mergers and acquisitions. However, a company’s organic growth does not include growth that results from fraudulent or manipulated sales practices aimed at boosting a company’s earnings. *See* Edward Hess and Robert Kazanjian, A SEARCH FOR ORGANIC GROWTH, Cambridge University Press, 103-104 (2006). Such earnings are transitory and are not sustainable. As a result, earnings from PSG’s fraudulent sales practices, described *infra*, are not part of the Company’s core

² In connection with the U.S. IPO, the Company changed its name from Bauer Performance Sports Ltd. to Performance Sports Group Ltd.

earnings (*i.e.*, earnings from its principal business) or “organic growth,” nor would they have been expected by investors to be such.

8. In reality, PSG employed a progressive sales program that involved threatening customers with the removal of vital discounts and sales terms if they did not increase their orders each year. The offering of discounts and advantageous terms is not uncommon; however, as employed by PSG, this sales program was used in a coercive, strong-arm fashion to effectively force PSG retailers to continuously increase their purchases or risk losing valuable discounts, regardless of actual demand for the product by the retailers. In the words of one PSG retailer, “they did try to jam orders down our throat, to take orders early, to overstock, oversupply, over-inventory us. They said it would all work out, and then things hit a wall.”³

9. That “things hit a wall” for PSG was not surprising. According to statistics published by USA Hockey, hockey player membership grew by less than 2% during the Class Period, yet PSG insisted that its retailers increase orders by 10-15% every year in order for retailers to keep necessary discounts.

10. Moreover, the Company further propped up its financial results by shipping its products early to retailers, thereby pulling sales from later fiscal periods into earlier ones. In fact, many of PSG’s retailers, as the confidential witnesses set forth herein exemplify, knew that the Company regularly shipped its products early in order to meet its quarterly financial goals. Although shipping early and offering discounts to increase sales may not be inherently fraudulent in and of themselves, these practices were abused by PSG and, as utilized, created a known trend that PSG should have disclosed, but did not. Specifically, PSG’s sales were occurring in an already-saturated market; thus it was reasonably likely PSG would not sustain

³ Bob Sanders, *Questions Abound Over Performance Sports Group*, NEW HAMPSHIRE BUSINESS REVIEW, Sept. 1, 2016, <http://www.nhbr.com/September-2-2016/Questions-abound-over-Performance-Sports-Group/>.

“record growth” and that sales would decrease, which would have a material adverse impact on PSG’s financial condition.

11. Defendants and PSG were well aware of the Company’s manipulative sales practices, that such manipulative practices were not sustainable and, given their pervasiveness, were reasonably likely to have a material negative effect on the Company’s financial results. Indeed, these practices were developed and overseen by executives at the highest levels of the Company, including Davis and Rosenthal. Moreover, Defendants and the Company knew that PSG’s purportedly “record” figures during the Class Period were being propped up by manipulated and aggressive sales that had no reasonable means of continuing in the long-term but failed to disclose this known trend to the market until the end of the Class Period.

12. Moreover, PSG aggressively pushed its retailers to place their orders earlier and earlier, in some cases asking customers to order merchandise one year in advance in order to further grow its quarterly sales and revenue figures.

13. During the Class Period, PSG held sales meetings at least twice per year, which Defendant Rosenthal attended, encouraging its sales representatives to aggressively push PSG customers to buy more and more product earlier and earlier.

14. Furthermore, beginning in the summer of 2015, as PSG began filing its annual and quarterly reports with the SEC on Forms 10-K and 10-Q, Defendants submitted certifications pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (“SOX Certifications”) attesting to the truthfulness of those filings and the effectiveness of PSG’s internal controls. These filings were misleading because they failed to disclose the true nature of PSG’s sales practices and their manipulative effect on the Company’s financial results. PSG subsequently announced, after the filing of Plaintiffs’ Amended Complaint in August 2016, that an investigation had been

commenced by PSG's internal Audit Committee, and that the Company was the subject of investigations by the SEC and Canadian regulatory authorities. According to newspaper accounts, the Canadian regulatory authorities include the Ontario Securities Commission.⁴

15. PSG's fraudulent conduct was conducted by Defendants or with Defendants' knowledge and/or reckless disregard in order to conceal from the market that the Company's "record" revenues were the result of overly aggressive sales practices and manipulation. These sales practices were designed to maintain and inflate PSG's stock price by portraying the Company's "record" quarterly revenue and sales figures as sustainable and "organic" even though Defendants knew, or recklessly disregarded, that PSG would soon be faced with a lack of sales in later quarters as PSG ran out of transactions to pull forward and as retailers became over-supplied with inventory that exceeded market demand as a result of PSG's penalties on retailers if they did not increase their orders with PSG.

16. These sales tactics were not limited to just a handful of PSG sales representatives, or a handful of PSG's small clients, but constituted a systematic, company-wide program with the full knowledge of PSG and Defendants, that was applied to all of PSG's retail customers. These facts have been confirmed by a PSG sales representative who described how these sales tactics were discussed at full department meetings, and by multiple Easton and Bauer retail customers who have described a pervasive scheme to manipulate the Company's financial results with aggressive sales tactics. The scheme was also confirmed by PSG's former Chairman, Roustan, who, on two separate occasions – one with the assistance of accounting firm Grant Thornton and the other through the survey website "SurveyMonkey.com" – surveyed the largest

⁴ PSG became a publicly-traded U.S. company on June 20, 2014 and began filing domestic reports with the SEC, including Forms 10-Q and 10-K, in August 2015. Before August 2015, PSG filed its financial statements with the SEC on Form 6-K as a foreign issuer.

of PSG's customers and found that a majority of them had been asked by PSG to move sales into earlier quarters. Moreover, Defendants and PSG fraudulently withheld from the market the reasonably likely, adverse impact its undisclosed tactics would soon have on PSG's bottom line.

17. This scheme of withholding the truth behind the Company's "record revenue" met its inevitable demise in early 2016 as PSG ran out of customer orders to pull forward and the risks of PSG's and Defendants' fraudulent scheme began to materialize.

18. In January 2016, PSG and Defendants released the Company's financial results for the second quarter of PSG's 2016 fiscal year.⁵ In those results, Defendants and the Company announced for the first time during the Class Period that PSG had experienced a substantial decrease in all relevant financial metrics, including sales, revenue, profit, and EBITDA. However, in both the Company's SEC filings and in its conference call with industry analysts, Defendants concealed the true cause of the decline and blamed the worsening financial results on market consolidation among PSG's customers and currency exchange rate issues. PSG and Defendants did not disclose that these results were the consequence of manipulative practices – that PSG and Defendants knew were reasonably likely to be detrimental to the Company's financial results – involving pulling sales forward into earlier quarters and penalizing retailers who did not increase their bookings with PSG, without regard for market demand. As a result of this news, PSG's stock price fell more than 23% from \$7.71 per share to \$5.92 per share on heightened average daily trading volume of 1.29 million shares as the market absorbed this information.

19. On March 8, 2016, PSG and Defendants, faced with no way to hide the inevitable and foreseeable downturn of sales and demand, was forced to reduce the Company's earnings

⁵ PSG's fiscal year runs from June 1 to May 31.

per share guidance by nearly **80%**, citing an “*unexpected*” significant downturn in retail sell-through.” (Emphasis added.) On this news, shares of PSG fell \$5.75 per share or over 66% to close at \$2.91 per share on March 8, 2016, on trading volume of 18.6 million shares.

20. Shortly thereafter, on March 14, based on the information obtained by Roustan through his two surveys, the *New York Post* revealed to the market that questions had been raised regarding allegations that PSG had been misdating quarterly revenue as part of its fraudulent scheme to conceal the known risks that its aggressive sales tactics had produced. On this news, shares of PSG fell \$0.41 per share or over 10.35% to close at \$3.55 per share on March 15, 2016, on an average two-day trading volume of approximately 2.29 million shares, damaging investors. Approximately one week after the *New York Post* article and the end of the Class Period, PSG announced the abrupt departure of Defendant Davis.

21. However, throughout all of the Company’s disclosures in early 2016, Defendants tried to blame its newly-disclosed reality wholly on market factors, including bankruptcy filings by two of its customers, Team Express and Sports Authority. But this was not the full picture and only further obscured, hid, and omitted the truth from investors. By way of contrast, while PSG was announcing that Bauer’s sales were down 19% at the end of 2015, and revising its 2016 outlook, its rival Reebok-CCM Hockey, on January 13, 2016, reported an 8% increase in global equipment business and an **18% increase** in sales.⁶ Similarly, Amer Sports, owners of the Wilson and Louisville Slugger baseball brands, was reporting double digit increases in revenues and sales in its Q4 2015 results and stated that its “pipeline is strong and momentum is good behind Louisville Slugger.” Additionally, Newell Brands, owners of the Rawlings baseball brand, told the market that “[w]e are extremely pleased with our growth and financial results this quarter.”

⁶ CCM Hockey Announced Year End Results, BUSINESS WIRE, Jan. 13, 2016

22. The truth has caught up with PSG, and the undisclosed risks materialized. News has continued to emerge that PSG's failings were not exclusively the result of uncontrollable market factors but instead resulted, in large part, from the Company's own coercive and manipulative sales practices that were concealed from the market by Defendants. PSG has now found itself in utter turmoil. On August 15, 2015, the Company failed to file its annual financial report due to an ongoing internal Audit Committee investigation into the "Company's financial statements and the related certification process." Two days later, on August 17, 2016, the Company disclosed that both SEC and Canadian regulatory authorities were conducting their own investigations of PSG. Even after receiving a 60-day extension from creditors to file its Form 10-K, the Company was unable to do so and on October 31, 2016 was forced to file for bankruptcy protection in the U.S. and Canada. PSG also recently announced the departure of Defendant Rosenthal, while the Company is trying to save itself from Defendants' failed and fraudulent conduct through an asset sale and bankruptcy proceedings. As a result of the Company's bankruptcy, PSG's stock has been delisted from the NYSE and now trades on the over-the-counter ("OTC") market.

II. JURISDICTION AND VENUE

23. The federal securities claims asserted herein arise under Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§ 78j(b) and 78t(a), and Rule 10b-5 promulgated thereunder by the SEC [17 C.F.R. § 240.10b-5]).

24. This Court has jurisdiction over the subject matter of the federal securities claims pursuant to 28 U.S.C. § 1331 and Section 27 of the Exchange Act.

25. Venue is proper in the Southern District of New York pursuant to Section 27 of the Exchange Act and 28 U.S.C. § 1391(b), given that many of the acts and practices complained

of herein occurred in this District as the Company's stock was traded on the NYSE during the Class Period.

III. PARTIES AND RELEVANT NON-PARTIES

26. Lead Plaintiff **Plumbers & Pipefitters National Pension Fund** engaged in the transactions listed in the accompanying certification during the Class Period and was injured as a result of Defendants' false and misleading statements and omissions. Lead Plaintiff is a multi-employer plan that provides benefits to more than 150,000 participants associated with more than 4,600 employers. Lead Plaintiff's primary place of business is 103 Oronoco Street, Alexandria, Virginia 22314.

27. Bankrupt Non-Defendant **Performance Sports Group Ltd.** ("PSG") is a designer, developer and manufacturer of sports equipment and related apparel. PSG stock traded in an efficient market on the NYSE during the Class Period. Currently, in connection with PSG's bankruptcy, the Company's stock has been delisted from the NYSE and now trades on the OTC market. PSG headquarters are located at 100 Domain Drive, Exeter, New Hampshire 03833. PSG is liable under the Exchange Act, but is not named as a Defendant herein because on October 31, 2016, PSG petitioned for bankruptcy protection pursuant to Chapter 11 of the U.S. Bankruptcy Code which prohibits the commencement or continuation of an action against a debtor that was or could have been commenced before the commencement of the bankruptcy proceeding. *See* 11 U.S.C. § 362(a)(1). As stated above, Lead Plaintiff reserves the right to name PSG (or any of the other Debtors, as the circumstances may require) as a defendant in this or any other action in the future in the event the Automatic Stay is terminated, lifted, or modified.

28. During all relevant times, non-debtor defendant **Kevin Davis** ("Davis") served as President, CEO and a director of PSG. Davis was a signatory on each of the Company's publicly

filed documents during the Class Period and was directly responsible for overseeing the revenue recognition policies and progressive sales structure of PSG's business.

29. From the start of the Class Period through December 14, 2015, non-debtor defendant **Amir Rosenthal** ("Rosenthal") served as CFO and Executive Vice President ("EVP") of Finance and Administration of PSG. On May 28, 2015, Rosenthal was appointed to a newly created position of President, PSG Brands in which he became responsible for overseeing PSG's seven-brand portfolio, including Bauer, Mission, Maverik, Cascade, Inaria, Combat and Easton. Following his appointment as President, PSG Brands, Rosenthal retained the day-to-day responsibilities of CFO, including serving as a signatory on all of PSG's public filings, until December 14, 2015. Rosenthal, as CFO and EVP of Finance, was directly responsible for PSG's sales and revenue oversight and its credit procedures. On October 31, 2016, PSG announced Rosenthal's departure from the Company.

30. From December 14, 2015 through the present, non-party Mark Vendetti ("Vendetti") has served as CFO of PSG, taking over the duties from Defendant Rosenthal.

31. Defendants Davis and Rosenthal are collectively referred to as the "Defendants."

32. Because of the Defendants' positions with the Company, they had access to the adverse undisclosed information about the Company's business, operations, operational trends, financial statements, markets and present and future business prospects via access to internal corporate documents (including the Company's operating plans, budgets and forecasts and reports of actual operations compared thereto), conversations and connections with other corporate officers and employees, attendance at management and Board of Directors meetings and committees thereof and via reports and other information provided to them in connection therewith.

33. It is appropriate to treat the Defendants as a group for pleading purposes and to presume that the false, misleading and incomplete information conveyed in the Company's public filings, press releases and other public statements as alleged herein are the collective actions of the narrowly defined group of defendants defined above as the Defendants. Each of the Defendants, as officers of PSG, by virtue of their high-level positions with the Company, directly participated in the management of the Company, was directly involved in the day-to-day operations of the Company at the highest levels and was privy to confidential proprietary information concerning the Company and its business, operations, growth, financial statements and financial condition, as alleged herein. Davis and Rosenthal were both involved in drafting, producing, reviewing and/or disseminating the false and misleading statements and information alleged herein, were aware or recklessly disregarded that false and misleading statements were being issued regarding the Company and approved or ratified these statements, in violation of the federal securities laws.

34. As officers and controlling persons of a publicly held company whose common stock was and is registered with the SEC pursuant to the Exchange Act, and was traded on the NYSE during the Class Period and is governed by the provisions of the federal securities laws, Defendants Davis and Rosenthal each had a duty to disseminate prompt, accurate and truthful information with respect to the Company's financial condition and performance, growth, operations, financial statements, business, markets, management, earnings and present and future business prospects, and to correct any previously-issued statements that had become materially misleading or untrue, so that the market price of the Company's publicly-traded common stock would be based on truthful and accurate information. Defendants' misrepresentations and omissions during the Class Period violated these specific requirements and obligations.

35. Defendants participated in the drafting, preparation and/or approval of the various public, shareholder and investor reports and other communications complained of herein and were aware of, or recklessly disregarded, the misstatements contained therein and omissions therefrom, and were aware of their materially false and misleading nature. Because of their Board membership and/or executive and managerial positions with PSG, Davis and Rosenthal had access to the adverse undisclosed information about PSG's sales, financial condition and performance as particularized herein and knew (or recklessly disregarded) that these adverse facts rendered the positive representations made by or about PSG and its business issued or adopted by the Company materially false and misleading.

36. Defendants, because of their positions of control and authority as officers and/or directors of the Company, were able to and did control the content of the various SEC filings, press releases and other public statements pertaining to the Company during the Class Period. Davis and Rosenthal were each provided with copies of the documents alleged herein to be misleading, including the Company's quarterly and annual filings and the prepared remarks for each of the Company's quarterly earnings conference calls prior to or shortly after their issuance and had the ability or opportunity to prevent their issuance or cause them to be corrected. Accordingly, Defendants are responsible for the accuracy of the public reports and releases detailed herein and are therefore primarily liable for the representations contained therein.

37. Each of the Defendants is liable as a participant in a fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of PSG common stock by disseminating materially false and misleading statements and/or concealing material adverse facts. The scheme (i) deceived the investing public regarding PSG's business operations and financial health, namely the strength of its revenue figures and the accuracy of its yearly outlook;

(ii) enabled PSG to report purportedly “record” sales and demand growth before and during the Class Period; and (iii) caused Lead Plaintiff and other members of the Class to purchase PSG common stock at artificially inflated and/or maintained prices.

IV. SUBSTANTIVE ALLEGATIONS

38. The sources for Lead Plaintiff’s allegations regarding PSG’s and Defendants’ fraudulent conduct were derived from the investigation of counsel, which includes, among other things, an interview of W. Graeme Roustan (“Roustan”), the former Chairman of Bauer until 2008 and a current shareholder of PSG; review of statements made by Ronald Rugal, president of B&R Sports, a Bauer retailer, published in an article in the *New Hampshire Business Review*; and interviews of former PSG employees who worked at PSG during the Class Period and/or immediately before or after the Class Period and current and former customers of PSG with first-hand knowledge of PSG’s sales tactics, including the following:

- **CW1** was a sales representative and independent contractor at Bauer for 29 years until his contract was not renewed on February 1, 2016. CW1 reported to regional sales manager Matt Hayes (“Hayes”) who reported to Paul Healey (“Healey”), Bauer’s Vice President of Sales, North America. CW1 also reported to Bryan McDermott (“McDermott”), Bauer’s Business Director for North America.
- **CW2** is the store manager of a Bauer retail customer located in Summit, New Jersey. CW2’s store has purchased products from Bauer since the early 1990’s.
- **CW3** is the co-owner of a Bauer retail customer based in Salem, New Hampshire. CW3’s company has six additional locations in Massachusetts and New Hampshire.
- **CW4** is a franchise owner of an Easton Baseball/Softball retail customer based in Milwaukee, Wisconsin.

A. PSG's Growth and Progressive Sales Program

39. PSG is a leading developer and manufacturer of ice hockey, roller hockey, lacrosse, baseball and softball sports equipment, as well as related apparel and soccer apparel. According to its own website, the Company considers itself “the global leader in hockey with the strongest and most recognized brand” that “holds the No. 1 North American position in baseball and softball.” PSG markets its products under several brand names, including Bauer, Cascade and Easton. The Company's brand names are distributed by sales representatives and independent distributors throughout the world to all types of retailers, from “big-box” retailers like Dicks Sporting Goods to “mom and pop” stores.

40. PSG brands also use business-to-business portals on their websites that allow retailers to submit orders directly without the use of a PSG-affiliated sales representative.

41. In general, PSG sales personnel, who worked as either employees or independent contractors, would make initial sales to retailers. Once a sales order was sent to headquarters, the Company's credit department would review the terms of the sale and the credit-worthiness of the customer. PSG was driven by the bottom line and pushed its sales staff to increase its numbers without regard to market demand or customer sentiment.

42. According to CW1, during his time at PSG, including during the Class Period, the Company employed a progressive sales program designed by PSG executives that was intended to reward and encourage retail customers, regardless of their size. The program was designed and implemented by Healey, the head of PSG's Bauer North American Sales group, together with Defendants and other executives. Sales representatives were not involved in the design of the program. The program was simple; the greater the volume of equipment purchased, the greater the discount.

43. As the Company described it, PSG offered “various cooperative marketing incentive programs to assist our sales channels with the marketing and selling of our products...” 2015 Form 10-K, dated June 14, 2015, at 51.

44. But under Davis and Rosenthal, PSG’s cooperative marketing incentive programs were anything but cooperative incentive programs. Rather, using strong-arm tactics and penalties, PSG threatened customers with the loss of their discounts if they did not increase the size of their orders each year or if they did not agree to accept merchandise shipment early.

45. As a result of its incentive programs and the acquisitions of market competitors, PSG experienced substantial success from 2010 through 2014, recording positive growth in all relevant areas.

(in USD Millions)	2010	2011	2012	2013	2014
Net Revenue	257.4	306.1	374.8	399.6	446.2
Adjusted EBITDA	30.7	43.5	51.5	62.3	69
Gross Profit	89.1	119.1	142.6	147.2	154.3
Source: PSG Annual Reports 2010-2014.					

46. On April 15, 2014, PSG completed its acquisition of Easton Baseball/Softball from BRG Sports for \$330 million. The acquisition, according to the Company, added the number one brand of baseball and softball equipment and apparel to the PSG portfolio.

47. Shortly thereafter, on June 19, 2014, PSG filed its Amended Registration Statement on Form F-10/A with the SEC. The following day, PSG filed its final Prospectus Supplement for its initial public offering with the SEC.

48. On June 20, 2014, the Company issued its initial public offering in the United States, offering more than 7 million shares of PSG stock at \$15.50 per share. Thereafter, PSG’s stock traded on the NYSE.

49. On January 8, 2015, just prior to the start of the Class Period, PSG announced that it was changing its heretofore successful business strategy to put itself into direct competition with its customers by opening Bauer “Own the Moment” retail locations in 6-8 “key hockey markets” over the next 18-24 months. PSG’s press release stated:

Bauer Hockey to Open First-Ever Retail Experiences

*‘Own The Moment’ Consumer Experiences to Debut in Boston and Minneapolis;
20,000-Plus Square Foot Premium Stores To Offer Unmatched Fit Expertise and
Product Education*

EXETER, NH - January 8, 2015 - Bauer Hockey, the world’s leading manufacturer of ice hockey equipment and a subsidiary of Performance Sports Group Ltd. (NYSE:PSG) (TSX:PSG), announced today that it will open its first-ever Bauer Hockey retail experiences beginning this summer. A transformative and historic initiative for Bauer Hockey, the premium “Own the Moment” retail experiences will elevate the BAUER brand, deliver an unmatched consumer educational experience and serve as the ultimate BAUER brand and product showcase.

“We’ve been elevating player performance at every level of the game since 1927, and today we’re excited to take this innovation to new heights by giving consumers an in-store BAUER experience that they’ve never seen before in the industry,” said Rich Wuerthele, executive vice president, hockey. “Similar to other premium brands that have entered retail, offering the full depth and breadth of our products in one place allows us to tell our unique stories in a way that only we can and helps strengthen the surrounding hockey retail environment. The Bauer Hockey ‘Own The Moment’ retail experiences will be living representations of our brand.”

Bauer Hockey will open its first “Own The Moment” retail experience in the Boston suburb of Burlington, Mass., in late summer and its second location in the Minneapolis area in the fall. Future phases are currently expected to include the opening of an additional 6-8 BAUER retail experiences over the next several years in key hockey markets across the U.S. and Canada. The company expects its retail operations to grow its overall business and be profitable in the next 18-24 months.

50. PSG customers immediately made their displeasure with this decision known to PSG’s senior management. CW3 met in person with Healey, the head of PSG’s Bauer North American Sales group, to express his disagreement with PSG’s decision to compete with its

customers while at the same time, pushing customers to increase their orders significantly every year.

51. Roustan, as further detailed below, also made his concerns known to PSG's Board of Directors at a meeting in June 2015 in which he pleaded with the Board of Directors, including Defendant Davis, to "reverse [its] Bauer retail store strategy" but was ultimately "unable to convince them that retail partners would likely react negatively to the abrupt change in business strategy and reduce their purchase of Bauer, Easton and Cascade products."

52. In PSG's and Defendants' quest to keep the Company's purportedly "record-setting" growth going, and notwithstanding that demand for PSG products with the Company's retailers would likely ultimately drop as a result of the business decision to compete with them, PSG nevertheless continued to push its sales representatives to pressure retail customers to order larger and larger quantities of PSG-branded merchandise and to do so earlier and earlier in advance or be penalized if they did not. As CW2 recalled, there was strong pressure to go along with PSG's and Defendants' tactics if you wanted to sell Bauer's merchandise.

53. CW2 remembers being told frequently by Bauer representatives to either increase the size of orders or risk losing the store's wholesale discount. This same "threat" was made to CW3, who, in a meeting with Healey in the summer of 2015, was told that if CW3's store did not increase its retail bookings or purchase orders by at least 15%, CW3's store would lose its existing discount. CW2 knew that even if increasing the store's order was not necessary, it was cheaper to comply than lose the discount on the existing order.

54. As CW1 put it, "we were 'asked' through sales programs to ask [retail customers] for increased volume from the previous year to maintain current or increased discounts. Dealers

complained about the increase due to larger dealer shelf space already given to Bauer and the fact the dealer's business wasn't growing.”

55. However, PSG and Defendants disregarded these complaints, and pushed ahead throughout the Class Period with the Company's highly aggressive and bullying sales tactics.

56. Further compounding the issues caused by PSG's increasingly coercive progressive sales program, CW1 recalls instances where he was asked to work with retailers to accept early deliveries. For instance, if a product was scheduled to ship to a retailer in September, PSG would ask the retailer to accept the product in early August.

57. CW3 also remembers regularly receiving calls during the Class Period from PSG headquarters asking whether CW3 would accept shipments of orders early. CW3 stated that orders were shipped early “to make [PSG's] numbers in a certain quarter.”

58. This was confirmed by Ronald Rugal, president of B&R Sports, a PSG customer based in Detroit with 12 locations in Michigan and greater Chicago, in an interview with *New Hampshire Business Review* regarding PSG's present troubles with what the publication described as “charges of fraud, delayed financial filings, internal and federal investigations in two countries, management turmoil – including Davis' resignation in March – and a stock price that is just one-tenth of what it was at its peak.” Bob Sanders, *Questions Abound Over Performance Sports Group*, NEW HAMPSHIRE BUSINESS REVIEW, Sept. 1, 2016, <http://www.nhbr.com/September-2-2016/Questions-abound-over-Performance-Sports-Group/>.

59. Like CW3, Rugal described PSG's practice during the Class Period of “try[ing] to jam orders down our throat, to take orders early, to overstock, oversupply, over-inventory us. They said it would all work out, and then things hit a wall.” Rugal, too, stated that this was done to meet quarterly numbers. *Id.*

60. Things were no different for PSG's baseball/softball brand, Easton. As CW4, an Easton retail customer during the Class Period, recalls, CW4 agreed to accept early shipment of a large order in return for free shipping.

61. At one point, in October or November 2015, CW4 attempted to contact CW4's Easton representative to downsize a large baseball equipment order that was placed for 2016. However, the Easton representative ignored CW4's request, and instead the full order was delivered more than two months early.

62. Before the Class Period in or around 2013, according to CW3, executive vice president Edward Kinnaly challenged the Company's executive leadership, including Healy, Davis and Rosenthal, about the Company's sales and booking practices at a meeting of PSG's Board of Directors. As CW3 recalls, Kinnaly warned those in attendance, including Davis, who was a director of PSG at the time, that pulling orders forward or "trade loading" in order to make their numbers would eventually catch up with PSG. Soon after that Board of Directors meeting, according to CW3, Kinnaly was fired from PSG as a consequence of speaking out.

63. But not only did PSG coerce its retailers to order larger quantities or else incur penalties if they did not increase bookings by, for instance, 10 or 15%, it also demanded that stores place their orders earlier and earlier, as CW2 recalls. In recent years, including during the Class Period, Bauer insisted that CW2 place the store's order a full year early which was extremely difficult and unrealistic because CW2 would not know what degree of demand the product would have that far in advance.

64. CW3 corroborated this sales tactic. CW3 had to place the store's order whenever Bauer told him to, even if it was a year early. If CW3's shelves were already fully stocked, it was

impossible to forecast what would be needed the next year, but PSG did not care, according to CW3 – it just needed the order.

65. When product was pushed to retailers prior to its scheduled shipping date, retailers did not have to pay or initiate any scheduled payment plan until the agreed-upon payment date, as both CW3 and CW4 recalled.

66. As CW3, an experienced veteran hockey-equipment retailer recounted, Healey and Defendant Davis both knew that the hockey equipment market was fully saturated during the Class Period.

67. Also, according to statistics published by USA Hockey, player membership grew by less than 2% during the Class Period,⁷ yet PSG insisted that their retailers increase orders by 10-15% or more every year.

68. However, none of these coercive and aggressive tactics, which Defendants and PSG knew of and condoned, were ever disclosed to the market, nor was the reasonably likely impact of these tactics on long-term revenue earnings per share ever disclosed. In reality, due to PSG's sales practices and the material volume of early shipments (the degree of which was confirmed by CW1, CW2, CW3, and CW4, and Roustan's surveys described below), Defendants knew that PSG's sales figures, on the back of these tactics, were unsustainable.

B. PSG Customers Tell PSG's Former Chairman About PSG's Practice of Moving Orders to Earlier Periods

69. Further corroborating the CWs' accounts, during the Class Period in mid-2015, Roustan, the Company's Chairman prior to Defendant Davis' appointment as CEO, hired Grant Thornton to conduct a survey of PSG's 10 largest customers in the U.S. and Canada, which

⁷ According to USA Hockey, player membership in 2014-2015 was 533,172. In 2015-2016, that figure grew by just 9,411, or 1.7%, to 542,583. In fact, between the 2012-2013 and 2013-2014 seasons, the number of hockey players had actually decreased by 899 players.

represented 50-55% of PSG's business (the "GT Survey"). The GT Survey was intended to be disclosed to PSG's board and its shareholders.

70. The GT Survey asked, among other questions, about PSG's accounting practices and whether anyone, in the past two years at PSG, had asked the customers to move an order into an earlier quarter. According to Roustan, a majority of the surveyed customers responded "yes."

71. Furthermore, after the Company tried to block or delay Grant Thornton from disclosing the results of that survey to Roustan himself, Roustan conducted his own survey of the same customers on the survey website SurveyMonkey.com (the "SurveyMonkey Survey").

72. The SurveyMonkey Survey polled the same customers and asked the same questions. Again, a majority of the surveyed customers responded that they had been asked by PSG to move an order into an earlier quarter.

C. PSG Touts Revenue Growth and Strong Sales Performance

73. Instead of disclosing this ongoing scheme at any time during the Class Period, PSG and Defendants continued to tout the Company's record growth based on "strong performance" and "organic sales growth."

74. In general, "organic growth," as used in the corporate and investment context, refers to a company's growth based on increased outputs, customer base expansion, or new product development, as opposed to mergers and acquisitions, which are generally referred to as inorganic growth. However, a company's organic growth does not, and should not, include growth that results from fraudulent or aggressive sales practices aimed at boosting a company's earnings. Such earnings are transitory and not sustainable. As a result, earnings from PSG's fraudulent sales practices should not have been considered part of, or a contributing factor of, the Company's core earnings and purportedly "organic" growth.

75. As explained in Hess and Kazanjian's "*A Search for Organic Growth*:"

The interest and focus on organic growth in a meaningful way is a recent phenomenon, which grew out of the financial scandals of the late 1990s and early years of the following decade. What the public learned from these scandals was that (1) there are different types of earnings; (2) companies can create earnings in different ways; (3) earnings can be created by accounting recognition, accounting policies, accounting adjustments, accounting elections, and valuations; (4) ***earnings can be created by financially engineered transactions, pension fund gains, related party transactions, currency gains, cookie jar reserves, classification of investment transactions, channel stuffing, etc.***; (5) ***earnings management is more widespread than many thought***; and (6) ***yes, earnings management can turn into earnings manipulation***.

* * *

Historically, the definition of organic growth has not been the focus of academic or financial analysts. Academic researchers looked at increase in revenues or increase in head-count as evidence of growth. Organic growth was defined as the opposite of acquisitive growth. Almost all academic research counted or evaluated every cent of earnings equally. Academic research into corporate growth has generally focused on absolute sales growth or relative employment growth. Some have looked at market share, assets, and profits.... ***I respectfully submit that all earnings are not equal if you are trying to evaluate the strength, sustainability, and predictability of a business's core operations and processes.***

Edward Hess and Robert Kazanjian, *A SEARCH FOR ORGANIC GROWTH*, Cambridge University Press, 103-04 (2006) (emphasis added.)

76. Hess and Kazanjian also described the creation of an Organic Growth Index as a method to measure a company's organic growth, stating:

First, we wanted to expand the definition of growth to include not only sales growth but also growth in cash flow from operations (CFFO) because we thought it was harder to manipulate CFFO than sales volume. Secondly, we wanted a way to normalize results across industries, which negated industry bias in growth numbers. ***Thirdly, we wanted to include an accounting "shenanigans" test to highlight potential income manipulations and, lastly, we wanted to add a merger and acquisition test to discriminate between serial acquirers who repeatedly or significantly purchased revenues from those companies who grew internally or organically.***

* * *

The Organic Growth Index is explained in Table 7.1, while on the basis of our model, Table 7.2 lists the best organic growers in the period 1997-2002 using EVA adjusted by size, sales, and cash flow growth as compared to industry averages and as normalized by industry standard deviations. ***On a relative basis,***

these companies did not produce material financial results from non-core earnings, accounting manipulations, aggressive revenue recognition, or serial acquisitions. These companies outperformed their industry competition primarily by growing their businesses organically.

Id., at 105-06 (emphasis added).

77. Thus, reasonable investors could not have known, and could not have reasonably expected, that PSG's "organic" growth included growth resulting from manipulative, aggressive, and unsustainable sales tactics.

78. In any event, on January 14, 2015, PSG published a news release entitled "Performance Sports Group Reports Record Fiscal Second Quarter 2015" in which PSG reported "record" revenues and increases in Adjusted Gross Profit and Net Income.

79. The following day, on January 15, 2015, during PSG's Q2 2015 earnings conference call, CEO Davis stated, "***We experienced another record quarter for PSG, and our Q2 results were driven by the continued strong performance of the EASTON baseball/softball business and another quarter of more than 10% organic sales growth; significant adjusted gross margin expansion due to the addition of EASTON's product in Q2;*** and record adjusted EPS, even in the face of significant and increasing currency headwinds." Q2 2015 PSG Earnings Call Transcript, at 3, Thomson Reuters StreetEvents (January 15, 2015) (emphasis added).

80. During the same call, CFO Rosenthal explained that "[r]evenues in the second quarter of FY15 increased 47% to \$172.3 million compared to the same year ago period, or 51% without the impact of changes in foreign currencies."

81. PSG's and Defendants' January 2015 public statements were false and misleading because they omitted and failed to disclose that PSG's "record" revenues were the result of PSG's aggressive sales tactics that forced inventory on its retailers in excess and in advance of

retailers' demand, which inflated PSG's earlier quarterly sales and revenue such that it would leave the Company with weaker sales in later quarters.

82. In particular, as discussed in paragraphs 38 to 72, PSG maintained a practice of (a) pulling orders from later quarters into earlier quarters, as confirmed by Roustan's surveys and Rugal's statements to the *New Hampshire Business Review*; (b) asking customers to accept product before the scheduled ship date, as recalled by CW1, CW3, CW4 and Rugal; (c) penalizing customers by withdrawing their existing discounts if they did not increase the size of their orders in a market that could not sustain such increases; and (d) terminating employees who objected to these aggressive sales tactics, as CW3 remembers.

83. PSG and Defendants knew or recklessly disregarded the true facts known at the time regarding PSG's alleged "record" revenues because, *inter alia*, (a) CW3 met with Healey, the Company's head of North American Sales for Bauer, who told CW3 that CW3's store had to increase its sales by 15% or risk losing its discounts; (b) CW1 attended yearly sales meetings which Rosenthal attended where sales practices were openly discussed; (c) Davis attended PSG's Board of Directors meetings, as CEO and a PSG director, in 2013 when, according to CW3, Kinnaly told PSG's Board of Directors that the Company's practice of pulling orders forward to make its numbers would catch up with the Company, and was fired shortly thereafter for voicing his views; (d) Roustan had told Defendant Davis and several of PSG's directors at a June 2015 meeting that demand among the Company's retail customers would fall as a result of its decision to open "Own the Moment" stores and compete directly with its customers; and (e) hockey and baseball/softball merchandise sales represented the majority of PSG's revenues and was thus the core of PSG's business.

84. After the market closed on April 13, 2015, the Company and Defendants issued a

press release entitled, “Performance Sports Group Reports Record Fiscal Third Quarter 2015 Results.” The press release detailed PSG’s financial position for the third quarter of its fiscal 2015 including record revenues and increases in Adjusted Gross Profit and Net Income.

85. The following day, on April 14, 2015, PSG filed its Report of Foreign Private Issuer on Form 6-K, attaching PSG’s “Management’s Discussion and Analysis of Financial Condition and Results of Operations for the three and nine month periods ended February 28, 2015” (“Q3 2015 6-K”). The Q3 2015 6-K repeated the financial results set forth in PSG’s Q3 2015 press release. The Q3 2015 6-K further stated:

Fiscal Q3 2015 Financial Results

Revenues in the fiscal third quarter of 2015 increased 121% to \$137.7 million compared to \$62.2 million in the same year-ago quarter. On a constant currency basis, revenues were up 127%. The increase was primarily due to the addition of revenues generated by EASTON and solid growth in ice hockey equipment, partially offset by an unfavorable impact from foreign exchange. Excluding the results of EASTON, as well as the impact from foreign exchange, revenues grew organically by 16%.

Q3 2015 6-K, at 3.

86. On that same day, during PSG’s Q3 2015 earnings conference call, CEO Davis again attributed PSG’s record success to its strong performance and organic sales that were in reality based on fraudulent and aggressive sales practices that do not properly constitute “organic growth,” explaining:

We reported another record quarter due to the continued strong performance of Easton, the fifth consecutive quarter of double-digit hockey growth, and an overall 16% organic sales growth net of currency changes.

Easton continued to experience solid demand for its products, and our hockey business, which grew 16% on a constant currency basis, benefited from the highly successful launch of our Vapor IX stick, underscoring our well-defined strategy to grow our stick business, the largest hockey category. In fact, our stick category grew 92% in constant currency during the quarter and is up 26% year-to-date. Our hockey business also benefited from strong team apparel growth.

So far in 2015, we experienced an earlier loading of new products, particularly the Mako and Mako Torq bats, for some of our large retailers, resulting in a shift in demand from the third and fourth fiscal quarters of 2015 into the second and third quarters. As a result, we believe Easton will generate its highest sales volume in FY15 during the second and third quarters versus the third and fourth quarters historically, with Q3 being the most significant.

Q3 2015 PSG Earnings Call Transcript, at 2, Fair Disclosure Wire (April 14, 2015) (emphasis added).

87. However, PSG's and Defendant Davis' April 2015 public statements were false and misleading because they failed to disclose that PSG's "record" revenues were the result of aggressive sales practices and manipulation designed to inflate PSG's stock price by portraying the Company's quarterly revenue and quarterly sales figures as sustainable and "organic" even though the Company knew, or recklessly disregarded, the truth that PSG would soon be faced with a lack of sales in later quarters as the Company ran out of transactions to pull forward.

88. In fact, PSG's and Defendant Davis' April 2015 statements attributed the Company's "shift in demand" to market forces beyond its control. In reality, this "shift in demand" was the result of an explicit effort by PSG, with the express consent and knowledge of Davis and Rosenthal, to coerce PSG customers into accepting its products earlier shifting revenue to earlier quarters and penalizing retail customers that did not increase their equipment orders without regard to market demand.

89. In particular, as discussed in paragraphs 38 to 72, PSG and Defendants maintained a practice of (a) pulling orders from later quarters into earlier quarters, as confirmed by Roustan's surveys and Rugal's statements to the *New Hampshire Business Review*; (b) asking customers to accept product before the scheduled ship date, as recalled by CW1, CW3, CW4, and Rugal; (c) penalizing customers by withdrawing their existing discounts if they did not

increase the size of their orders in a market that could not sustain such increases; and (d) terminating employees who objected to these aggressive sales tactics, as CW3 remembers.

90. PSG and the Defendants knew or recklessly disregarded the true facts known at the time regarding the Company's alleged "record" revenues because, *inter alia*, (a) CW3 met with Healey, the Company's head of North American Sales for Bauer, who told CW3 that CW3's store had to increase its sales by 15% or risk losing its discounts; (b) CW1 attended yearly sales meetings which Rosenthal attended where sales practices were openly discussed; (c) Davis attended PSG's Board of Directors meetings, as CEO and a PSG director, in 2013 when, according to CW3, Kinnaly told PSG's Board of Directors that the Company's practice of pulling orders forward to make its numbers would catch up with the Company, and was fired shortly thereafter for voicing his views; (d) Roustan had told Defendant Davis and several of PSG's directors at a June 2015 meeting that demand among the Company's retail customers would fall as a result of the Company's decision to open "Own the Moment" stores and compete directly with its customers; and (e) hockey and baseball/softball merchandise sales represented the majority of PSG's revenues and was thus the core of PSG's business.

91. Then, after the market closed on July 7, 2015, the Company issued a press release entitled, "Performance Sports Group Provides Preliminary Fiscal Fourth Quarter and Full Year 2015 Results." The press release detailed PSG's preliminary financial position for the fourth quarter of its fiscal 2015.

92. The following day, on July 8, 2015, the Company again held a conference call with analysts regarding its fourth quarter and full year 2015 financial results. During the conference call, Davis explained:

As stated in our release last night our anticipated fourth-quarter and full-year revenue results are record-setting and expected to contribute to another fantastic

year for PSG delivering record returns for shareholders.

The key components of this message is that we continue to outpace the growth of the markets in which we participate by growing market share and profitability and we continue to leverage our Performance Sports platform which is improving efficiency and driving constant dollar currency profit growth rates that exceed our revenue growth. While the rapid strengthening of the US dollar will continue to impact our reported results, especially in the first half of 2016, we remain very well-positioned to continue our momentum into 2016 and beyond.

Preliminary Q4 2015 PSG Earnings Call Transcript, at 3, Thomson Reuters StreetEvents (July 8, 2015) (emphasis added).

93. Again, PSG and Davis’ public statements explicitly omitted any impact that the Company’s sales practices had or would be reasonably likely to have on its quarterly and yearly sales figures and financial data. In fact, the “outpaced” growth of PSG was not the result of “growing market share” or “leverag[ing the Company’s] Performance Sports platform” but was instead the result of a scheme to coerce its customers to purchase more and more product through the use of penalties and discounts and to accept the shipment of products earlier and earlier so that PSG could move revenue intended for later quarters into earlier quarters in order to claim “record revenues.”

94. In particular, as discussed in paragraphs 38 to 72, PSG and Defendants maintained a practice of (a) pulling orders from later quarters into earlier quarters, as confirmed by Roustan’s surveys and Rugal’s statements to the *New Hampshire Business Review*; (b) asking customers to accept product before the scheduled ship date, as recalled by CW1, CW3, CW4, and Rugal; (c) penalizing customers by withdrawing their existing discounts if they did not increase the size of their orders in a market that could not sustain such increases; and (d) terminating employees who objected to these aggressive sales tactics, as CW3 remembers.

95. Defendants and the Company knew or recklessly disregarded the true facts known

at the time regarding PSG's alleged "record" revenues because, *inter alia*, (a) CW3 met with Healey, the Company's head of North American Sales for Bauer, who told CW3 that CW3's store had to increase its sales by 15% or risk losing its discounts; (b) CW1 attended yearly sales meetings which Rosenthal attended where sales practices were openly discussed; (c) Davis attended PSG's Board of Directors meetings, as CEO and a PSG director, in 2013 when, according to CW3, Kinnaly told PSG's Board of Directors that the Company's practice of pulling orders forward to make its numbers would catch up with the Company, and was fired shortly thereafter for voicing his views; (d) Roustan had told Defendant Davis and several of PSG's directors at a June 2015 meeting that demand among the Company's retail customers would fall as a result of its decision to open "Own the Moment" stores and compete directly with its customers; and (e) hockey and baseball/softball merchandise sales represented the majority of PSG's revenues and was thus the core of PSG's business.

96. Continuing this trend, after the market closed on August 26, 2015, the Company issued a press release announcing its fourth quarter and full year 2015 financial results, which it again described as "record setting" ("August 26 Press Release").

97. Explaining the "record setting" figures, the Management Commentary stated:

"Our fourth quarter and full year revenue results were record-setting and contributed to market share gains in all of the sports we serve," said Kevin Davis, CEO of Performance Sports Group. "In fact, currency neutral hockey revenues grew 13% for the year, improving our estimated global equipment market share from 54% to 56%. Our Maverik Lacrosse revenues grew 28% in fiscal 2015, improving our estimated total equipment market share from 26% to 28%. Our baseball business, led by EASTON, had a record-setting year driven by solid demand for the MAKO family of products."

"These results reinforce that the fundamental building blocks of our shareholder value are continuing to perform quite strongly. Our Company continues to outpace the growth of the markets in which we participate by growing market share and profitability. We also continue to leverage our performance sports platform, which is driving cost efficiencies and, on a

currency neutral basis, profit growth rates that exceed our revenue growth. We remain very well positioned to continue our momentum into fiscal 2016 and beyond.”

98. PSG and Defendant Davis’ statement in the August 26 Press Release were false and misleading because they omitted and failed to disclose that the Company’s “record-setting” financial results were the result of an aggressive sales program whereby PSG was (a) pulling orders from later quarters into earlier quarters, as confirmed by Roustan’s surveys and Rugal’s statements to the *New Hampshire Business Review*; (b) asking customers to accept product before the scheduled ship date, as recalled by CW1, CW3, CW4, and Rugal; (c) penalizing customers by withdrawing their existing discounts if they did not increase the size of their orders in a market that could not sustain such increases; and (d) terminating employees who objected to these aggressive sales tactics, as CW3 remembers.

99. Defendants and the Company knew or recklessly disregarded the true facts known at the time regarding PSG’s alleged “record” revenues because, *inter alia*, (a) CW3 met with Healey, the Company’s head of North American Sales for Bauer, who told CW3 that CW3’s store had to increase its sales by 15% or risk losing its discounts; (b) CW1 attended sales meetings which Rosenthal attended where sales practices were openly discussed; (c) Davis attended PSG’s Board of Directors meetings, as CEO and a PSG director, in 2013 when, according to CW3, Kinnaly told PSG’s Board of Directors that the Company’s practice of pulling orders forward to make its numbers would catch up with the Company, and was fired shortly thereafter for voicing his views; (d) Roustan had told Defendant Davis and several of PSG’s directors at a June 2015 meeting that demand among the Company’s retail customers would fall as a result of its decision to open “Own the Moment” stores and compete directly with its customers; and (e) hockey and baseball/softball merchandise sales represented the majority of

PSG's revenues and was thus the core of PSG's business.

100. In fact, Defendants and PSG knew, at the time that these statements were made, that the increasing sales figures were not the result of "growing market share" or "cost efficiencies" but instead the result of front-loaded revenues caused by PSG's scheme, with the Defendants' knowledge and consent, of coercing its customers to accept earlier shipments of merchandise so that PSG could include those sales in earlier quarters and penalizing retailers that did not order additional product from PSG brands without regard for market demand.

101. The August 26 Press Release also provided guidance for the 2016 fiscal year ending May 31, 2016:

The strengthening U.S. dollar continues to impact the reported results of companies with meaningful business outside the U.S. For our Company, the impact is experienced most particularly in our hockey business, which represents nearly all of our revenues generated outside of the U.S. At today's foreign exchange rates, we currently expect Adjusted Net Income in fiscal 2016 to fall in a range between \$0.70 to \$0.73 per share, primarily due to the impact of foreign exchange on our reported results in the first quarter. Absent the year-over-year impact of foreign exchange, we currently expect our Adjusted Net Income per share for fiscal 2016 to be roughly flat compared to the \$1.02 per share reported in fiscal 2015.

102. This statement from the August 26 Press Release reaffirming the Company's expectation that Adjusted Net Income would remain the same for fiscal year 2016 was further false and misleading because the Company knew and/or recklessly disregarded, at the time the statement was made, that its sales practices propping up earnings could not be maintained forever, but fraudulently failed to disclose this known trend to investors.

103. In particular, as discussed in paragraphs 38 to 72, during the Class Period, PSG and Defendants maintained a practice of (a) pulling orders from later quarters into earlier quarters, as confirmed by Roustan's surveys and Rugal's statements to the *New Hampshire Business Review*; (b) asking customers to accept product before the scheduled ship date, as

recalled by CW1, CW3, CW4, and Rugal; (c) penalizing customers by withdrawing their existing discounts if they did not increase the size of their orders in a market that could not sustain such increases; and (d) terminating employees who objected to these aggressive sales tactics, as CW3 remembers.

104. Defendants and PSG knew or recklessly disregarded the true facts known at the time regarding PSG's alleged "record" revenues because, *inter alia*, (a) CW3 met with Healey, the Company's head of North American Sales for Bauer, who told CW3 that CW3's store had to increase its sales by 15% or risk losing its discounts; (b) CW1 attended yearly sales meetings which Rosenthal attended where sales practices were openly discussed; (c) Davis attended PSG's Board of Directors meetings, as CEO and a PSG director, in 2013 when, according to CW3, Kinnaly told PSG's Board of Directors that the Company's practice of pulling orders forward to make its numbers would catch up with the Company, and was fired shortly thereafter for voicing his views; (d) Roustan had told Defendant Davis and several of PSG's directors at a June 2015 meeting that demand among the Company's retail customers would fall as a result of its decision to open "Own the Moment" stores and compete directly with its customers; and (e) hockey and baseball/softball merchandise sales represented the majority of PSG's revenues and was thus the core of PSG's business.

105. Defendants and PSG knew or recklessly disregarded that it was reasonably likely that once customers stopped ordering PSG merchandise, such that there were no more orders that could be moved into earlier quarters, the Company's "record-setting" figures would quickly decline. As a result, the Company withheld from the market the truth that its sales and income in fiscal 2016 would fall by much larger amounts due to more than merely the impact of foreign exchange issues.

106. The following day, on August 27, 2016, the Company filed its annual report on Form 10-K with the SEC for the fiscal year ending May 31, 2015 (the “2015 10-K”). The 2015 10-K reported PSG’s financial highlights as follows:

- *A 51% increase in revenues on a constant currency basis, generating \$675.2 million in revenue in Fiscal 2015, compared to \$446.2 million in Fiscal 2014;*
- *Currency neutral Adjusted Net Income increased by 64.6%, to \$61.4 million or \$1.32 per diluted share, compared to \$37.3 million, or \$1.00 per diluted share in Fiscal 2014;*
- *We continued to outpace the growth of the markets in which we participate by growing market share and profitability and we continue to leverage our performance sports platform, which is improving efficiency and driving constant currency profit growth that exceeds revenue growth;*
- We announced a supply chain initiative that we expect to improve pretax profitability of \$30 million by Fiscal 2020;
- We announced a cash flow improvement initiative that is targeting an improvement in net cash flow from working capital of \$30 million in Fiscal 2016;
- Our leading hockey market share strengthened, growing from 54% to 56%;
- On a constant currency basis, our total apparel sales grew approximately 36% for the year, driven by a 50% growth in team uniforms and a 50% growth in performance apparel;
- Easton Baseball/Softball continued its dominant share at the NCAA level as 17 EASTON teams competed in the NCAA College World Series;
- Maverik continued to gain momentum, signing High Point University and Penn State as college partners. Maverik sales also increased by approximately 28% for the year; and
- In January 2015, we announced our plans to open 810 Bauer Hockey Own The Moment Hockey Experience retail stores. The first location opened in Burlington, Massachusetts on August 15, 2015.

2015 10-K, at 50-51 (emphasis added).

107. The 2015 10-K also continued to tout the Company’s organic growth:

We have repeatedly used our world-class performance sports product platform to grow our business into new performance equipment and apparel categories and sports markets. Our successful acquisition and integration of seven businesses since 2008 has demonstrated our ability to identify targets and integrate acquired businesses. *We are continuing to explore a number of potential near-term opportunities to complement our organic growth.* When evaluating potential targets, we look for the ability to leverage our world-class performance sports platform, existing or potential market leaders, authentic brand equity and heritage and sports that demand high quality, innovative performance products. We are disciplined in our approach and have foregone many acquisition opportunities that

did not satisfy our criteria.

2015 10-K, at 20 (emphasis added).

108. The statements above in the 2015 10-K touting PSG's "organic" and "outpaced" growth were false and misleading because they failed to disclose that PSG and Defendants were attaining these financial results as a result of the Company's aggressive and coercive sales practices pushing customers to accept merchandise deliveries earlier than needed so that PSG could count those sales in earlier quarters and penalizing customers by taking away vital discounts unless they increased their bookings with PSG. These practices, which Defendants knew were not sustainable, created a known trend that should have been disclosed pursuant to Regulation S-K. The statements were also false and misleading because they failed to disclose that the 2015 financial results were not the consequence of "organic" growth or the "leveraging" of PSG's brands, but instead the result of poor financial controls and a fraudulent scheme as described herein.

109. In particular, as discussed in paragraphs 38 to 72, during the Class Period, PSG and Defendants maintained a practice of (a) pulling orders from later quarters into earlier quarters, as confirmed by Roustan's surveys and Rugal's statements to the *New Hampshire Business Review*; (b) asking customers to accept product before the scheduled ship date, as recalled by CW1, CW3, CW4, and Rugal; (c) penalizing customers by withdrawing their existing discounts if they did not increase the size of their orders in a market that could not sustain such increases; and (d) terminating employees who objected to these aggressive sales tactics, as CW3 remembers.

110. Defendants and the Company knew or recklessly disregarded the true facts known at the time regarding PSG's alleged "record" revenues because, *inter alia*, (a) CW3 met with

Healey, the Company's head of North American Sales for Bauer, who told CW3 that CW3's store had to increase its sales by 15% or risk losing its discounts; (b) CW1 attended yearly sales meetings which Rosenthal attended where sales practices were openly discussed; (c) Davis attended PSG's Board of Directors meetings, as CEO and a PSG director, in 2013 when, according to CW3, Kinnaly told PSG's Board of Directors that the Company's practice of pulling orders forward to make its numbers would catch up with the Company, and was fired shortly thereafter for voicing his views; (d) Roustan had told Defendant Davis and several of PSG's directors at a June 2015 meeting that demand among the Company's retail customers would fall as a result of its decision to open "Own the Moment" stores and compete directly with its customers; and (e) hockey and baseball/softball merchandise sales represented the majority of PSG's revenues and was thus the core of PSG's business.

111. The 2015 10-K was signed by Defendants Davis and Rosenthal. Attached to the 2015 10-K were SOX Certifications signed by Defendants Davis and Rosenthal attesting to the accuracy of financial reporting and effectiveness of the Company's internal controls.

112. Rosenthal's and Davis' certifications both stated, in relevant part, that:

I have reviewed this Annual Report on Form 10K of Performance Sports Group Ltd. (the "registrant");

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in

Exchange Act Rules 13a15(e) and 15d15(e)) ***and internal control over financial reporting*** (as defined in Exchange Act Rules 13a15(f) and 15d15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) ***Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;***

(c) ***Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and***

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting;

2015 10-K, at Exs. 31.1, 31.2 (emphasis added).

113. Defendant Davis' and Rosenthal's certifications were false and misleading because in reality, (a) the 2015 10-K failed to disclose that PSG's sales and revenue figures were based on manipulated sales that resulted from PSG's practice of coercing customers to accept merchandise shipments in earlier quarters and penalizing customers that did not continue to increase their orders each year by removing vital and necessary discounts and sales terms regardless of whether market demand could support such increases; and (b) PSG lacked proper internal controls to prevent the manipulation of its sales revenues from occurring.

114. In particular, as discussed in paragraphs 38 to 72, during the Class Period, PSG maintained a practice of (a) pulling orders from later quarters into earlier quarters, as confirmed by Roustan's surveys and Rugal's statements to the *New Hampshire Business Review*; (b) asking customers to accept product before the scheduled ship date in order to prop up quarterly sales figures, as recalled by CW1, CW3, CW4, and Rugal; (c) penalizing customers by withdrawing their existing discounts if they did not increase the size of their orders in a market that could not sustain such increases; and (d) terminating employees who objected to these aggressive sales tactics, as CW3 remembers.

115. Defendants and the Company knew or recklessly disregarded the true facts known at the time regarding PSG's alleged "record" revenues because, *inter alia*, (a) CW3 met with Healey, the Company's head of North American Sales for Bauer, who told CW3 that CW3's store had to increase its sales by 15% or risk losing its discounts; (b) CW1 attended yearly sales meetings which Rosenthal attended where sales practices were openly discussed; (c) Davis attended PSG's Board of Directors meetings, as CEO and a PSG director, in 2013 when, according to CW3, Kinnaly told PSG's Board of Directors that the Company's practice of pulling orders forward to make its numbers would catch up with the Company, and was fired shortly thereafter for voicing his views; (d) Roustan had told Defendant Davis and several of PSG's directors at a June 2015 meeting that demand among the Company's retail customers would fall as a result of its decision to open "Own the Moment" stores and compete directly with its customers; and (e) hockey and baseball/softball merchandise sales represented the majority of PSG's revenues and was thus the core of PSG's business.

116. On October 14, 2015, PSG filed its financial results on Form 10-Q for the first quarter of the 2016 fiscal year ending August 31, 2015 ("Q1 2016 10-Q").

117. Like the 2015 10-K, the Q1 2016 10-Q was accompanied by SOX Certifications signed by Defendants Davis and Rosenthal which represented that the information included therein was true and correct and that the Company's internal controls were effective, stating in part:

I have reviewed this quarterly report on Form 10-Q of Performance Sports Group Ltd. (the "registrant");

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a15(e) and 15d15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a15(f) and 15d15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting;

Q1 2016 10-Q, at Exs. 31.1 and 32.2 (emphasis added).

118. Defendant Davis' and Rosenthal's certifications were false and misleading because (a) the Q1 2016 10-Q failed to disclose that PSG's sales and revenue figures were based on manipulated sales that resulted from PSG's practice of coercing customers to accept merchandise shipments in earlier quarters and penalizing customers that did not continue to increase their orders each year by removing vital and necessary discounts and sales terms regardless of whether market demand could support such increases; and (b) PSG lacked proper internal controls to prevent the manipulation of its sales revenues from occurring.

119. In particular, as discussed in paragraphs 38 to 72, during the Class Period, PSG and Defendants maintained a practice of (a) pulling orders from later quarters into earlier quarters, as confirmed by Roustan's surveys; (b) asking customers to accept product before the scheduled ship date, as recalled by CW1, CW3, CW4 and Rugal; (c) penalizing customers by withdrawing their existing discounts if they did not increase the size of their orders in a market that could not sustain such increases; and (d) terminating employees who objected to these aggressive sales tactics, as CW3 remembers.

120. Defendants and PSG knew or recklessly disregarded the true facts known at the time regarding PSG's alleged "record" revenues because, *inter alia*, (a) CW3 met with Healey, the Company's head of North American Sales for Bauer, who told CW3 that CW3's store had to increase its sales by 15% or risk losing its discounts; (b) CW1 attended yearly sales meetings which Rosenthal attended where sales practices were openly discussed; (c) Davis attended PSG's

Board of Directors meetings, as CEO and a PSG director, in 2013 when, according to CW3, Kinnaly told PSG's Board of Directors that the Company's practice of pulling orders forward to make its numbers would catch up with the Company, and was fired shortly thereafter for voicing his views; (d) Roustan had told Defendant Davis and several of PSG's directors at a June 2015 meeting that demand among the Company's retail customers would fall as a result of its decision to open "Own the Moment" stores and compete directly with its customers; and (e) hockey and baseball/softball merchandise sales represented the majority of PSG's revenues and was thus the core of PSG's business.

121. On the same day, the Company held a conference call to discuss PSG's first quarter 2016 financial results. On the conference call, Defendant Davis stated in relevant part:

Despite the ongoing impact of currency on our year-over-year results and the timing of product launches that impact quarterly comparison, ***we continue to see solid growth across our brand***, including continued market share gains in the recently completed back-to-hockey season, which runs from April to September.

Q1 2016 PSG Earnings Call Transcript, at 2, Seeking Alpha (October 15, 2015) (emphasis added).

122. Then, during the same call, in response to an analyst's question regarding sales performance, Defendant Davis explained:

There has been a little of consolidation in the U.S. hockey retail market over the past several months with two of the top three retailers in the U.S. hockey market making acquisitions of two other retailers who are in the top seven. To say it in another [way] the top seven are now the top five. I think also, there has been some remix of where our lacrosse product is being sold between specialty and mass retailers with [indiscernible] starting to take a little bit more share in the lacrosse base, as they dedicate more and more space to selling that product. ***But otherwise, we don't see any sort of decline in demand from consumers for those products.***

Id. at 5 (emphasis added).

123. PSG' and Davis' representations that the Company was still seeing "solid growth" and that it was not affected by "decline in demand from consumers" but instead was the victim

of “a little [] consolidation” in the hockey market were false and misleading because the Company was losing demand and was no longer growing at the same rate, but Defendants concealed those facts by (a) pulling orders from later quarters into earlier quarters, as confirmed by Roustan’s surveys; (b) asking customers to accept product before the scheduled ship date, as recalled by CW1, CW3, CW4 and Rugal; (c) penalizing customers by withdrawing their existing discounts if they did not increase the size of their orders in a market that could not sustain such increases; and (d) terminating employees who objected to these aggressive sales tactics, as CW3 remembers.

124. Defendants and PSG knew or recklessly disregarded the true facts known at the time regarding PSG’s alleged “record” revenues because, *inter alia*, (a) CW3 met with Healey, the Company’s head of North American Sales for Bauer, who told CW3 that CW3’s store had to increase its sales by 15% or risk losing its discounts; (b) CW1 attended yearly sales meetings which Rosenthal attended where sales practices were openly discussed; (c) Davis attended PSG’s Board of Directors meetings, as CEO and a PSG director, in 2013 when, according to CW3, Kinnaly told PSG’s Board of Directors that the Company’s practice of pulling orders forward to make its numbers would catch up with the Company, and was fired shortly thereafter for voicing his views; (d) Roustan had told Defendant Davis and several of PSG’s directors at a June 2015 meeting that demand among the Company’s retail customers would fall as a result of its decision to open “Own the Moment” stores and compete directly with its customers; and (e) hockey and baseball/softball merchandise sales represented the majority of PSG’s revenues and was thus the core of PSG’s business.

D. PSG Violated Item 303 of Regulation S-K

125. Item 303 of Regulation S-K, 17 C.F.R. 229.303, requires public companies, in

their Form 10-K filings, to:

Describe any known trends or uncertainties that have had or that the registrant reasonably expects will have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations. ***If the registrant knows of events that will cause a material change in the relationship between costs and revenues (such as known future increases in costs of labor or materials or price increases or inventory adjustments)***, the change in the relationship shall be disclosed.

Emphasis added.

126. PSG, and its senior executives, Davis and Rosenthal, knew PSG's success was due, at least in part, to PSG's practice of pressuring customers to accept orders before they were needed and place orders earlier and earlier; and penalizing customers that did not increase their PSG bookings by removing existing discounts regardless of whether market demand could support such increases, thereby frontloading and propping up the Company's sales and revenue reported in its financial statements.

127. PSG and the Defendants knew that the Company's sales practices were not sustainable and that they were reasonably likely to catch up with PSG, especially in light of the fact that its former Chairman (Roustan), an Executive Vice President (Kinnaly), and customers (including CW3) told PSG so in face-to-face meetings resulting in a significant drop in sales and revenue as PSG adjusted its financial outlook to accurately reflect true market demand.

128. These trends and circumstances were known to PSG and Defendants at the time when PSG filed its Form 10-K during the Class Period which failed to disclose these known trends.

129. As a result, Defendants caused PSG to violate Item 303 of Regulation S-K by failing to disclose this known trend and uncertainty to the marketplace.

E. PSG's Blind Aggression Catches Up with the Company

130. It was only a matter of time, however, before PSG's aggressive sales tactics would catch up to it and force the Company to disclose the truth about its sales practices. In fact, by the start of the 2016 calendar year, the risks concealed by PSG's and Defendants' fraudulent scheme were beginning to materialize.

131. After the market closed on January 13, 2016, the Company issued a press release announcing its financial results for the quarter ended November 30, 2015 and giving an overview of the different segments of PSG's business. The press release also lowered the previously issued guidance for the fiscal year ending May 31, 2016. The press release stated in part:

Performance Sports Group Reports Fiscal Second Quarter 2016 Results

* * *

Given the continued weakening of the Canadian dollar since our last stated guidance, we are revising our fiscal 2016 guidance and now expect Adjusted Net Income to range between \$0.66 and \$0.69 per share. Additionally, we expect Adjusted EPS to range between \$0.09 and \$0.10 in our fiscal 2016 third quarter and between \$0.31 and \$0.33 in our fourth quarter. These expectations assume current foreign exchange rates hold in the remainder of our year. In fiscal 2016, we continue to expect that, on a currency-neutral basis, our businesses will outpace the growth of the markets we serve, resulting in revenue gains and increased profitability. Looking to fiscal 2017, at current rates, we expect our results during the first half of the year to be impacted by year-over-year declines in exchange rates, partially offset by the execution of our cost saving initiatives.

* * *

Baseball/Softball EBITDA in the second quarter decreased 31% (including and excluding the impact of foreign currency) to \$7.9 million, which was largely driven by a bad debt write-off related to outstanding receivables for an internet baseball retailer that filed for bankruptcy reorganization, as well as the aforementioned product launch timing differences, EASTON product mix, and other SG&A investments in marketing and IT which were partially offset by a reduction in performance-based incentives.

132. The following day, on January 14, 2016, the Company filed its financial results on Form 10-Q for the second quarter of 2016, ending November 30, 2015 ("Q2 2016 10-Q"). The Company's Q2 2016 10-Q disclosed, for the first time, declines in revenue, declines in gross

profit and declines in adjusted EBITDA.

- Revenues totaled \$153.0 million, declining 11.2% (down 5.5% in constant currency)
- Adjusted Gross Profit was \$50.6 million, declining 18.6% (down 2.1% in constant currency)
- Adjusted Gross Profit margin was 33.1%, down 300 basis points (up 130 basis points in constant currency)
- Gross profit was \$45.7 million, declining 18.3% (down 0.5% in constant currency), and gross profit margin was 29.9%, down 260 basis points (up 160 basis points in constant currency)
- Adjusted EBITDA was \$15.3 million, down 36.3% (down 2.1% in constant currency)
- Adjusted Net Income totaled \$5.9 million or \$0.13 per share, compared to \$11.3 million or \$0.24 per share (Adjusted Net Income of \$11.8 million or \$0.25 per share in constant currency)
- Net loss totaled \$4.5 million or (\$0.10) per share, compared to net income of \$1.0 million or \$0.02 per share (net loss of \$0.5 million or (\$0.01) per share in constant currency)

Q2 2016 10-Q, at 16.

133. The Q2 2016 10-Q was accompanied by SOX Certifications signed by Defendant Davis and CFO Vendetti, who was appointed as CFO one month earlier on December 14, 2015.

134. That same day, PSG held a conference call with industry analysts to discuss its Q2 2016 results. Defendant Davis, speaking first, explained:

In the second quarter, our brands continued to take market share, and demonstrated strong resilience in some very challenging markets. During the quarter, Bauer continued to hold the number one market share, and its brand affinity remains very strong. Our Own the Moment hockey retail initiative, now with two open stores -- one in Massachusetts and the other in Minnesota -- are hitting or exceeding our financial and strategic expectations.

We recently conducted a thorough independent consumer study, which informed us that in these local markets, we are increasing brand awareness, engaging consumers, improving overall Bauer market share, and because of the great shopping experience for hockey gear, we are increasing consumers' likelihood of visiting local hockey retailers after shopping at Own the Moment.

Baseball sales growth was driven by Easton's non-bat categories, which were up 28%, while lacrosse sales, driven by strong growth in the Maverik line of heads and protective gear, were up 9%, leading up to its peak selling season.

We continue to execute on the initiatives put in place to improve our operations, which helps offset the impacts from the weakening Canadian dollar. In fact, our plan to improve working capital by \$30 million in FY16 is well on track, as year to date we have already reduced inventory by \$13 million. We've also experienced strong results from our supply chain initiatives, and we are increasing our expectations for the benefits from that initiative in FY17 to range from between \$8 million and \$12 million, compared to the \$5 million to \$7 million previously disclosed.

January 14, 2016 Earnings Call Transcript, at 2.

135. Following that, CFO Vendetti, omitting any reference to the Company's manipulation of its sales revenue by coercing customers to take merchandise shipments in earlier quarters than needed or by instituting penalties on customers that did not increase their bookings with PSG, sought to blame the Company's worsening figures on industry consolidation and a weakening currency:

Jumping right into our results for the fiscal second quarter, revenues decreased 11% to \$153 million, compared to the same year-ago quarter. On a constant-currency basis, however, revenues were down 6% to \$162.9 million. ***The 11% reported decline was primarily due to unfavorable impact from foreign exchange, variations in product launch cycles in our hockey segment, as well as retailer consolidation in the US and continued challenging market conditions for our hockey business in Russia and eastern Europe.*** Offsetting these revenue declines was a 4% sales growth from Easton and a 9% increase in lacrosse sales.

On a regional basis, revenues in North America were down 9%, while the rest of the world was down 23%. ***Again, this was due to the aforementioned factors in hockey.*** Despite these results, we remain encouraged about the long-term prospects of our business globally.

Now, moving on to our performance by segment. Hockey revenues decreased 19%, or 11% on a constant-currency basis to \$91.9 million, compared to the year-ago quarter, driven by the unfavorable impact from foreign exchange, variations in hockey equipment product launch cycles, the decline in performance apparel retail related to the prior year's launch of a complete line of 37.5 apparel, as well as consolidation among the largest retailers in the US, and lower sales to our Russian and European distributors.

To be specific, as it relates to the US consolidation, four of our top seven retailers have consolidated over the past several months. Baseball/softball

revenues in the second quarter increased 4% to \$50.9 million, compared to the year-ago quarter. As Kevin mentioned, this was due to a 28% sales growth in non-bat categories, partially offset by the launch of only one bat family for Easton, compared to a two-family launch last year. The growth in non-bat revenues is significant, as we have designated the expansion of the Easton brand outside of bats as a key strategic initiative.

Id. at 4 (emphasis added).

136. However, while PSG was announcing at the beginning of calendar year 2016 that Bauer's sales in late 2015 were down 19%, its rival Reebok-CCM Hockey reported an **18% increase** in sales for the same time period. In fact, it was not until much later than PSG that Reebok-CCM Hockey started to report any sort of negative results.

137. Thus, even though PSG was experiencing worsening sales figures on all fronts, PSG and the Defendants continued to conceal the true reason for PSG's lackluster financial results by offering reasons for the poor financial performance that were purportedly out of their control.

138. As a result of the Company's Q2 2016 disclosures, PSG's stock price experienced a 4-day fall from its opening price on January 14, 2016 of \$7.71 per share to a closing price on January 19, 2016 of \$5.92 per share on heightened average trading volume of 1.29 million shares per day. By comparison, on January 13, 2016, PSG's trading volume was approximately 420,000 shares.

139. Then, on March 8, 2016, before the market opened, the Company issued a press release revising guidance for the fiscal year ending May 31, 2016. The press release, entitled "Performance Sports Group Revises Fiscal 2016 Outlook and Reports Preliminary Fiscal Third Quarter Results," stated in relevant part:

EXETER, NH - March 8, 2016 - Performance Sports Group Ltd. (NYSE: PSG) (TSX: PSG) ("Performance Sports Group" or the "Company"), a leading developer and manufacturer of high performance sports equipment and apparel, has revised

its outlook for its 2016 fiscal year and reported preliminary results for its fiscal third quarter ended February 29, 2016. All figures are in U.S. dollars. Certain metrics, including those expressed on an adjusted and/or constant currency basis, are non-GAAP financial measures (see “Non-GAAP Financial Measures” below). All figures exclude the accounting gain the Company expects to record in the third quarter of fiscal 2016 associated with its acquisition of Easton Hockey in January 2016. The Company has reduced its fiscal year 2016 Adjusted EPS guidance by approximately \$0.55 per diluted share to approximately \$0.12 to \$0.14 per diluted share as compared to its prior publication of guidance (\$0.66 to \$0.69 per diluted share), primarily as a result of the following three factors: (i) a write down of the receivable balance from a U.S. national sporting goods retailer that has filed under chapter 11 and the related anticipated loss of sales from this retailer (\$0.09 per share); (ii) an anticipated reduction in sales, particularly due to weakness in the baseball/softball market (\$0.31 per share); and (iii) additional bad debt reserves primarily for certain U.S. hockey customers and the related anticipated loss of sales from such customers (\$0.19 per share). (Emphasis added).

140. About an hour after the press release, the Company held a conference call to discuss the revised fiscal year 2016 guidance and the preliminary third quarter 2016 results.

Defendant Davis stated in relevant part:

The second half of fiscal 2016 has been impacted by adverse market conditions and related customer credit issues. The baseball/softball market is experiencing an unexpected significant downturn in retail sales, including in our important bat category. This weakening of consumer demand, coupled with the chapter 11 filing by one of our largest US national sporting goods retailers, is reducing our sales for baseball and softball products. Additionally, the consolidation of hockey retail in the US has reduced our customers’ demand for products more than we previously anticipated as they continue to reduce their inventory levels.

In light of these events and challenges, including the bankruptcy of an Internet baseball retailer in the second quarter, we decided to increase our bad debt reserves for certain of our US hockey and baseball/softball customers. (Emphasis added).

141. Defendant Davis tried to blame PSG’s declining financial results on “weakening of consumer demand,” but in reality it was PSG’s own manipulation of sales that pushed revenue into earlier quarters and bullying of retailers to increase bookings without regard for the ability of market demand to support those increases that were the true causes of the decline. On the same conference call, CFO Vendetti, speaking on behalf of PSG, stated in relevant part:

We have reduced our fiscal year 2016 adjusted EPS guidance by approximately \$0.55 per diluted share to approximately \$0.12 to \$0.14 per diluted share as compared to prior publication of guidance of \$0.66 to \$0.69 per diluted share. On a constant currency basis, 2016 adjusted EPS is expected to range between approximately \$0.64 and \$0.66 per diluted share.

* * *

The weakness that we're seeing in baseball is coming not only from Sports Authority, as you point out. As we said a minute ago, the bankruptcy situation that they are going through caused us to not only write-down their receivable but also take their future sales out of our forecast. There's other weakness in sell-through in the market with other of our customers. There is also, as I noted in the comments that I made during the prepared remarks, there's little bit of a general CSA effect, which is discouraging and impacting orders from other customers, given that there is the possibility of a significant amount of inventory in the marketplace that would be on discounted terms, so it's all of those factors combined. And as I indicated, also there is a possibility that the wetter and colder weather that we've seen in many parts of the country had an impact as well. It's very hard to quantify that. (Emphasis added).

142. Defendant Rosenthal also tried to explain:

As Kevin mentioned in his remarks, we've seen an unexpected significant downturn in retail sell-through in the baseball/softball category, particularly in bat [sic]. Easton's market share in bat is larger than any other category, but the slowdown in sell-through for bat [sic] was a disproportionate impact on Easton's versus other competitors in the baseball/softball market.

There were some indications that customer demand was softer than expected coming out of the holiday season, but we did not expect this reduced demand to fall further as it did later in the third quarter. It was only toward the end of the third quarter that it became apparent the extent to which demand had fallen and how, in connection with the bankruptcy of a large US national sporting goods retailer that is filed under Chapter 11, this would reduce sales in the second half of fiscal 2016.

At this time, we do not believe that this weakening is related to the upcoming BBCOR standard change for youth bat. It is possible that the unusually cold and wet winter in certain parts of the United States has played a role in the market dynamics that we're experiencing. It is also worth noting that a meaningful amount of our baseball products were sold to retailers on an at-once basis. These customers tend to have more sophisticated point-of-sale analytics than our [] hockey customers, who were typically smaller. And that means we receive information about retailers purchasing decision much closer to their actual shipment and without as much advanced notice as we have in our hockey business.

We believe that the recent bankruptcy filing of a large US national sporting goods

retailer may also be affecting other baseball retailers, who have either cancelled orders or are hesitant to place orders in anticipation (technical difficulty). As we mentioned in our second quarter call, four of our Top 7 retailers in hockey have consolidated in the US over the past several months. This consolidation process reduced our customers' demand for products more than we previously anticipated, as they continue to reduce their inventory levels.

As Kevin mentioned, in light of the challenges we are facing and recent bankruptcy filings of an online baseball retailer in the second fiscal quarter and a large US national sporting goods retailer in the third fiscal quarter, we have increased our potential bad debt reserve for a limited number of our US customers, primarily in hockey, but also in baseball/softball.

* * *

So, to be clear, we have not seen any bankruptcies among our retailers, which has caused us to take the bad debt reserves that we have. It's not a bankruptcy that is [sic] caused it, but other developments with their earnings history and outstanding balances. The focus of that bad debt reserve is on a variety of customers in our US hockey market. So, we don't have much more that we can add to the points that we've said so far. But other than what we've previously talked about in the US market, four of our Top 7 retailers have emerged. And when that happens, it's not unusual to see a period of time where there is redundant inventory from those business combinations. And we experienced the similar situation in the Canadian hockey market several years ago, when three of our Top 5 customers combined over a two-year period. So we'll expect the consolidation in the US market to have a similar effect for us and we have every intention of working closely with those customers that are both impacted by the consolidation that's happening in the US and those who are outside of that group as they navigate through the current situation. (Emphasis added).

143. In sum, PSG's and Defendants' March 8, 2016 statements made clear that the risks concealed by PSG's and Defendants' fraudulent scheme of manipulating the Company's sales revenue were materializing. PSG and Defendants had known about this trend, which was reasonably likely to materially affect the Company's future financial results, before the start of the 2016 calendar year. Even with this knowledge, or their reckless disregard for the truth, PSG and Defendants promoted and condoned the Company's sales practices anyway. Further, instead of accurately disclosing that the Company had been coercing its customers to accept its products early to shift revenue to earlier quarters and bullying PSG's retailer customers to increase their

orders under threat of the loss of their discounts, PSG attributed its “purportedly” new-found decline to bankruptcies and market demand.

144. Similarly, PSG and Defendants continued to try to hide the true cause of the Company’s downturn by blaming it on “redundant inventory.” Again, in reality, they and caused the Company’s own demise by oversupplying its retail customers with product and delivering that product earlier than the product was needed.

145. On this news, shares of PSG fell \$5.75 per share or over 66% to close at \$2.91 per share on March 8, 2016, on trading volume of 18.6 million shares, thereby damaging investors. By comparison, the trading volume of PSG shares on March 7, 2016 was approximately 142,000 shares.

146. By this time, analysts were starting to pick up on the problems that PSG was truly facing. On March 14, 2016, analyst Jay Sole at Morgan Stanley downgraded PSG to “Equal Weight” from its previous rating of “Overweight,” stating that “the profit warning indicates visibility is much poorer than previously thought.” “Performance Sports Group downgraded to Equal Weight at Morgan Stanley,” *Theflyonthewall.com*, March 14, 2016.

147. On that same day, the *New York Post* published an article under the headline, “Bauer’s Parent Company Questioned About Misdating Earnings” in which the nationally circulated newspaper disclosed that PSG had been questioned about manipulating revenue. The article disclosed:

Customers told former PSG Chair Graeme Roustan that the company had asked them to misdate earnings, a source with direct knowledge of the situation said.

Roustan, PSG chair from 2008 to 2012, has been fighting his former company, trying to get back on the board.

Last year Roustan commissioned SurveyMonkey — an online survey platform —

to ask PSG customers if they were told to move future orders into an earlier quarter. Roustan presented his findings to the PSG board, sources said.

* * *

Roustan had first hired Grant Thornton to take a survey of PSG's customers. PSG persuaded Grant Thornton not to release those findings, including a question about misdating earnings, to Roustan. Now Roustan is suing Grant Thornton, court documents show. Roustan declined comment. (Emphasis added).

148. On this news, shares of PSG fell \$0.41 per share or over 10.35% to close at \$3.55 per share on March 15, 2016, on an average 2-day trading volume of approximately 2.29 million shares, damaging investors.

F. PSG Hides Behind Irrelevant Customer Bankruptcies

149. During the Class Period, two of PSG's retail customers filed for bankruptcy protection. On December 16, 2015, Team Express, an online sporting goods retailer, filed for protection under Chapter 11 of the U.S. Bankruptcy Code. Then, on March 2, 2016, Sports Authority, a national sporting goods retail chain, filed for protection under Chapter 11 of the U.S. Bankruptcy Code.

150. Although PSG and Defendants sought to hide the losses from its fraudulent scheme under the smoke screen of these bankruptcies, these were not the true cause of PSG's declining business. In fact, none of PSG's competitors even mentioned these bankruptcies as a cause or potential cause of business decline until months after PSG started using these bankruptcies as an excuse for its now faltering business.

G. PSG's Competitors Had No Issues with Market Demand or Retailer Bankruptcies in Late 2015

151. According to PSG's 2015 Annual Report, PSG's primary competitors in the baseball and softball space are Amer Sports (owners of the Wilson and Louisville Slugger baseball brands), Newell Brands (owner of Rawlings) and Mizuno. Nike is not listed in PSG's Annual Report as a primary competitor, but only as competitive in some "specific categories

such as batting gloves.” PSG 2015 Annual Report, at 9.

152. Contrary to PSG’s and Defendants’ claims of market conditions as the cause of the Company’s poor performance in late calendar year 2015, the CEO of Amer Sports stated on February 3, 2016 at Amer’s own Q4 2015 earnings conference call that its “pipeline is strong and momentum is good behind Louisville Slugger. As for our baseball overall, [] its fine. And we expect the year to be good.”

153. In its Q1 2016 earnings presentation, Amer also reported that its footwear revenue was up 16%, its apparel revenue was up 19%, its sports instruments revenue (including baseball bats) was up 14% and overall net sales were up 11%. In summary, Amer told the market that they were observing “broad-based growth in team sports further supported by Louisville Slugger.”

154. Similarly, Michael Polk, Newell Brand’s CEO, in that company’s own Q1 2016 earnings release, stated, “We are extremely pleased with our growth and financial results this quarter.”

155. In the hockey space, PSG competes with Reebok-CCM Hockey, which is owned by Adidas AG. In Adidas’ FY 2015 Annual Report, dated March 3, 2016, Adidas also explained that it was experiencing “high single-digit increases at Reebok-CCM Hockey and double-digit sales increases in other centrally managed businesses.” This was reported at the same time that PSG was reporting its own decreases as alleged herein.

H. Post Class Period Developments

156. On March 15, 2016, a day after the Class Period, PSG and Defendant Davis announced at a Bank of America Merrill Lynch Conference that PSG would suspend its “Own the Moment” store retail strategy until after fiscal year 2017.

157. In a press release of his own the following day, Roustan stated:

Toronto, Ontario, Canada – March 16, 2016 – W. Graeme Roustan, Chairman and CEO of Roustan Capital and Trustee of the Walter Graeme Roustan Trust today announced its pleasure with hearing the CEO of Performance Sports Group at the Bank of America Merrill Lynch Conference yesterday state that there will be no capital expenditures next (fiscal) year 2017 for Bauer retail store openings.

Mr. Roustan states; “Finally, Performance Sports Group has decided to not open any retail stores through FY 2017 after almost a year of warnings that these retail stores carry all kinds of risk.” Yesterday, Mr. Roustan learned for the first time from CEO, Kevin Davis’s statements that each store cost \$4 million to open but he offered up no clarity on how much each existing store lost based on their statement on January 8th, 2015 that they expect retail operations would be unprofitable for the first 18 - 24 months.

Mr. Roustan also stated; “In my June 5th, 2015 meeting with Chairman Bernie McDonell, Director Bob Nicholson, Director Karyn Barsa and the CEO and Director Kevin Davis, *I pleaded with them to abandon and reverse their Bauer retail store strategy. Without the Grant Thornton Survey Report that I contracted specifically for my June 5th meeting that Performance Sports Group lawyers and Chairman requested Grant Thornton withhold from me, I was unable to convince them that retail partners would likely react negatively to the abrupt change in business strategy and reduce their purchases of Bauer, Easton, Cascade products.*” Since the June 5th, 2015 meeting where Mr. Roustan did not have the Grant Thornton Survey Report to present, the stock has declined approximately \$20 CDN or 80% per share.

Roustan Capital Press Release, March 16, 2016 (emphasis added).

158. Then, just days later, and on the heels of the *New York Post*’s disclosure of the Company’s aggressive and manipulative sales practices, on March 22, 2016, following the markets’ close, the Company announced that Defendant Davis had abruptly resigned and was leaving the Company immediately. Defendant Rosenthal was appointed by the Company’s Board of Directors as interim CEO.

159. On June 8, 2016, PSG announced the appointment of Harlan Kent (“Kent”) as CEO. Once appointed, Kent attempted to fix the damage that Defendants’ conduct had caused, realizing losses that should have been realized earlier, restructuring divisions, and laying off

employees. However, Kent's attempts were to no avail as the Company has since been forced, as described herein, to file for bankruptcy protection in the United States and Canada.

160. On August 15, 2016, Lead Plaintiff filed its Amended Class Action Complaint for Violations of the Federal Securities Laws (the "First Amended Complaint") alleging that Defendants had fraudulently misstated and concealed during the Class Period the known trend of a material revenue reduction that had become inevitable as a result of Defendants' manipulative sales practices described in the First Amended Complaint.

161. That same day, PSG was expected and required to file its financial results for the fourth quarter and full year 2016 with the SEC on Form 10-K. However, rather than filing its Form 10-K, the Company filed a press release with the SEC on Form 8-K in which it announced "that its Annual Report on Form 10-K, including its annual audited financial statements for the fiscal year ended May 31, 2016 and the related management's discussion and analysis (collectively, the "Form 10-K"), will not be filed by the required filing date of August 15, 2016." The Company disclosed, in vague fashion, that the delay was the result of an internal investigation being conducted by PSG's Audit Committee into the Company's financial results. Specifically, the Company stated, "The delay is a result of the decision of Performance Sports Group's Audit Committee to conduct an internal investigation in connection with the finalization of the Company's financial statements and the related certification process." PSG explained that the failure to file its Form 10-K would result in a default under the Company's credit facilities which would force PSG into bankruptcy if an agreement could not be reached between PSG and its creditors. On August 30, 2016, the Company announced such an agreement with its creditors that gave the Company until October 28, 2016 to file its Form 10-K.

162. Two days later, on August 17, 2016, the Company again filed a Form 8-K with

the SEC, this time disclosing that, in addition to being the subject of the above-captioned class action lawsuit, the Company was also the subject of investigations by both Canadian securities regulators and the SEC. Although no further information was provided by the Company, the disclosure of the Company's internal investigation and investigations by the SEC and Canadian regulators all came within days of the filing of Lead Plaintiff's First Amended Complaint.

163. On October 28, 2016, however, the Company again failed to file any financial reports with the SEC. Instead, news outlets, including Reuters, announced that PSG was "preparing to file for protection from its creditors as early as Monday under chapter 11 in the United States and a similar court process in Canada."

164. On October 31, 2016, before the markets opened, PSG announced, on a Form 8-K filed with the SEC, that it had filed voluntary petitions in the United States Bankruptcy Court for the District of Delaware for relief under Chapter 11 of the United States Bankruptcy Code and had sought creditor protection in the Ontario Superior Court of Justice (Commercial List) under the Companies' Creditors Arrangement Act (the "CCAA").

165. In the same Form 8-K filing, PSG announced that it had entered into an asset purchase agreement for the sale of the Company with a group of investors led by Sagard Capital Partners, L.P. and Fairfax Financial Holdings Limited.

166. At the same time, PSG also announced the departure of Defendant Rosenthal from the Company.

V. THE FACTS GIVE RISE TO A STRONG INFERENCE THAT PSG AND THE DEFENDANTS ACTED WITH SCIENTER

167. As set forth above, Defendants and PSG knew or recklessly disregarded the truth about the Company's sales practices. Meetings involving the sales representatives, like CW1, were held twice per year. Defendant Rosenthal, as CFO and EVP of Finance, attended those

meetings. CW3 recounted that Kinnaly told PSG's Board of Directors, including Defendant Davis about the Company's aggressive and coercive sales practices as early as 2013 and warned them that those practices would catch up with the Company. Furthermore, according to Roustan's March 2016 press release, Roustan met with Defendant Davis and the Chairman of the PSG's Board during the Class Period and told them that demand was going to drop as a result of the Company's decision to proceed with the Bauer "Own the Moment" retail stores.

168. In addition to the foregoing facts, all of which support a strong inference of scienter on the part of Defendants and PSG, Defendants Davis and Rosenthal also had the motive and opportunity to foster PSG's aggressive and unsustainable sales practices and revenue manipulation. The opening of Bauer's "Own the Moment" retail stores in January 2015, which customers of PSG were resoundingly unsupportive of, put PSG directly into competition with its own customers, causing overall sales and revenue to decline.

169. Roustan made clear to PSG's Board of Directors, including Defendant Davis, that customer demand would decline as a result of this retail strategy.

170. PSG and Defendants pushed ahead with their retail stores during the Class Period anyway, and concealed the truth as the risks of their strategy materialized.

171. They were thus motivated to conceal the true lackluster performance of PSG's core business, *i.e.*, its hockey and baseball/softball sales and revenue figures, by persuading customers to move purchases to earlier quarters and bullying and coercing retailers to order more product that was needed in exchange for keeping their existing discounts. These sales practices were effective because they made the Company's retail strategy, which was otherwise unprofitable, appear to be profitable in the short term.

172. As CEO during the time PSG acquired Easton Baseball/Softball and Easton

Hockey, and at the time the “Own the Moment” store strategy (a strategy that was widely disliked by the Company’s customers) was created and announced to the market, Defendant Davis needed PSG to continue the success it had been experiencing before the Class Period and thus was further motivated to conceal the truth regarding PSG’s sales and demand.

173. As CFO and President of PSG Brands during the same period, Defendant Rosenthal also needed PSG to continue the success it had experienced before the Class Period and thus was motivated to conceal the truth regarding PSG’s “record-setting” financial results.

174. PSG and Defendants each acted with scienter in that, as set forth herein, each knew or recklessly disregarded that PSG’s public statements about the Company’s revenues, sales and profitability issued during the Class Period were materially false and misleading. These Defendants were the senior management of the Company, and thus at all times were the individuals with principal responsibility for ensuring that the Company’s statements were accurate and truthful, and spoke on the Company’s behalf.

A. Defendant Davis’ Abrupt Departure Just Days After the Truth Was Revealed Supports an Inference of Scienter

175. The suspension of PSG’s “Own the Moment” retail strategy and Defendant Davis’ departure from PSG all within one week of the materialization of the risks concealed by Defendants’ fraudulent scheme are highly indicative of scienter.

VI. LOSS CAUSATION

176. During the Class Period, as detailed herein, PSG and Defendants engaged in a scheme to deceive the market and a course of conduct that artificially inflated and/or maintained the price of PSG’s common stock and operated as a fraud or deceit on Class Period purchasers of PSG common stock by failing to disclose and misrepresenting the true reasons for the growth of the Company’s sales as detailed herein. As the risks of PSG’s and Defendants’ fraudulent

scheme materialized and the falsity of their prior misrepresentations and fraudulent conduct became apparent to the market, the artificial inflation embedded in the price of PSG stock dissipated and the price of PSG common stock declined significantly.

177. As a result of their purchases of PSG common stock during the Class Period, Lead Plaintiff and the other Class members suffered economic loss, *i.e.*, damages, under the federal securities laws. PSG's and Defendants' false and misleading statements and omissions had their intended effect and caused PSG common stock to trade at artificially-inflated and/or maintained levels throughout the Class Period, reaching as high as \$21.65 per share on May 18, 2015.

178. By concealing from investors the adverse facts detailed herein, PSG and Defendants presented a misleading picture of PSG's business, products and operations. As the truth about the Company materialized and began to be revealed to the market, the price of PSG common stock began to fall significantly. These declines removed the artificial inflation from the price of PSG common stock, causing real economic loss to investors who had purchased PSG common stock during the Class Period.

179. The declines in the price of PSG common stock after the truth came to light were a direct result of the nature and extent of Defendants' fraudulent misrepresentations and omissions being revealed to investors and the market. The timing and magnitude of the price decline in PSG common stock indicate that the losses suffered by Lead Plaintiff and Class members was not exclusively caused by changed market conditions, overall stock market and/or industry-specific factors, or Company-specific information unrelated to PSG's and Defendants' fraudulent conduct.

180. The economic loss, *i.e.*, damages, suffered by Lead Plaintiff and the other Class

members was a direct result of PSG's and Defendants' fraudulent scheme to artificially inflate and/or maintain the price of PSG common stock and the subsequent significant decline in the value of PSG common stock when the inherent risks of PSG's and Defendants' fraudulent scheme materialized toward the end of the Class Period.

VII. APPLICABILITY OF PRESUMPTION OF RELIANCE: FRAUD ON THE MARKET DOCTRINE

181. At all relevant times, the market for PSG's common stock was an efficient market for the following reasons, among others:

- i. PSG common stock met the requirements for listing and was listed and actively traded on the NYSE during the Class Period, a highly efficient and automated market;
- ii. As a regulated issuer during the Class Period, PSG filed periodic public reports with the SEC and the NYSE;
- iii. PSG regularly communicated with public investors via established market communications mechanisms, including through regular dissemination of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and
- iv. PSG was followed by several securities analysts employed by major brokerage firms who wrote the reports that were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

182. As a result of the foregoing, the market for PSG common stock promptly digested current information regarding PSG from all publicly available sources, including nationally circulated newspapers, and reflected such information in PSG's stock price. Under these circumstances, all purchasers of PSG common stock during the Class Period suffered similar

injury through their purchase of PSG common stock at artificially inflated and/or maintained prices and a presumption of reliance applies to Lead Plaintiff's allegations.

VIII. APPLICABILITY OF PRESUMPTION OF RELIANCE – *AFFILIATED UTE* DOCTRINE

183. Lead Plaintiff and the Class are also entitled to a presumption of reliance under *Affiliated Ute v. United States*, 406 U.S. 128 (1972), because the claims asserted herein against Defendants⁸ are primarily predicated upon the omission of material facts that PSG and Defendants had a duty to disclose, namely that PSG's financial results during the Class Period were the result of an undisclosed practice of coercing customers to pull sales into earlier quarters in order to inflate the Company's performance.

IX. NO SAFE HARBOR

184. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this complaint. Many of the specific statements pleaded herein were not identified as "forward-looking statements" when made. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein, Defendants are liable for those false forward-looking statements because at the time each of those purportedly forward-looking statements was made, the particular speaker knew that the particular forward-looking statement was false, and/or the forward-looking statement was

⁸ Again, because PSG has filed for bankruptcy protection and is covered by the Bankruptcy Code's Automatic Stay provision, the claims asserted herein are not asserted against PSG at this time.

authorized and/or approved by an executive officer of PSG who knew that those statements were false when made.

X. CLASS ACTION ALLEGATIONS

185. Lead Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(3) on behalf of a class consisting of all persons and entities that purchased or acquired PSG common stock on the New York Stock Exchange (“NYSE”) during the Class Period, seeking to pursue remedies under the Exchange Act. Excluded from the Class are Defendants; the officers and directors of the Company, at all relevant times; members of their immediate families and their legal representatives, heirs, successors, or assigns; and any entity in which any of the Defendants have or had a controlling interest.

186. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, PSG common stock was actively traded on the NYSE. While the exact number of Class members is unknown to Lead Plaintiff at this time and can only be ascertained through appropriate discovery, Lead Plaintiff believes that there are hundreds or thousands of members in the proposed Class. Millions of PSG shares were traded publicly during the Class Period on the NYSE. Record owners and other members of the Class may be identified from records maintained by PSG or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

187. Lead Plaintiff’s claims are typical of the claims of Class members, who were all similarly affected by Defendants’ wrongful conduct in violation of federal securities laws that is complained of herein. Further, Lead Plaintiff will fairly and adequately protect the interests of Class members and has retained counsel competent and experienced in class and securities litigation.

188. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- a) whether the federal securities laws were violated by PSG and Defendants' conduct alleged herein;
- b) whether statements made by PSG and Defendants to the investing public during the Class Period omitted or misrepresented material facts about the business, operations, known trends and prospects of PSG; and
- c) to what extent Class members have sustained damages and the proper measure of damages.

189. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Further, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation makes it impossible for Class members to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

XI. CAUSES OF ACTION

COUNT I

(Against Defendants for Violation of Section 10(b) of the Exchange Act and Rule 10b-5 of the Securities and Exchange Commission)

190. Lead Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

191. This Count is asserted against both Defendants and is based upon Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder.

192. During the Class Period, Defendants, singularly and in concert, directly made

various deceptive and untrue statements of material facts and omitted to state material facts in order to make the statements made, in light of the circumstances under which they were made, not misleading to Lead Plaintiff and the other members of the Class, including statements in SEC filings and other public statements that falsely touted the financial strength of the Company and strength and growth of the Company's sales and revenue streams. The purpose and effect of said scheme, plan, and unlawful course of conduct was, among other things, to induce Lead Plaintiff and the other members of the Class to purchase PSG common stock during the Class Period at artificially inflated and/or maintained prices.

193. During the Class Period, PSG and Defendants knowingly and/or recklessly issued, caused to be issued, or participated in the issuance of, the preparation and issuance of deceptive and materially false and misleading statements to the investing public as particularized above.

194. As a result of the dissemination of the false and misleading statements set forth above, the price of PSG common stock was artificially inflated and/or maintained during the Class Period. In ignorance of the false and misleading nature of the statements described above and the deceptive and manipulative devices and contrivances employed by PSG and Defendants, Lead Plaintiff and the other members of the Class relied, to their detriment, on the integrity of the price of the common stock of PSG. Had Lead Plaintiff and the other members of the Class known the truth, they would not have purchased said shares or would not have purchased them at the inflated prices that were paid.

195. Lead Plaintiff and the other members of the Class have suffered substantial damages as a result of the wrongs herein alleged in an amount to be proved at trial.

196. By reason of the foregoing, Defendants directly violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder in that they made untrue statements of

material facts or omitted to state material facts in order to make the statements made, in light of the circumstances under which they were made, not misleading during the Class Period.

COUNT II

(Against Defendants for Violation of Section 20(a) of the Exchange Act)

197. Lead Plaintiff repeats and realleges each and every allegation contained in each of the foregoing paragraphs as if set forth fully herein.

198. Defendants Davis and Rosenthal, by virtue of their positions and specific acts described above, were, at the time of the wrongs alleged herein, controlling persons of the Company within the meaning of Section 20(a) of the Exchange Act.

199. Defendants had the power and influence and exercised the same to cause the Company to engage in the illegal conduct and practices complained of herein.

200. By reason of the conduct alleged in Count I of this Complaint which also applies to the Company and for which the Company would be liable had it been named as a Defendant herein, Defendants are liable for the aforesaid wrongful conduct as control persons of the Company, and are liable to Lead Plaintiff and to the other members of the Class for the substantial damages which they suffered in connection with their purchases of PSG common stock during the Class Period.

WHEREFORE, Lead Plaintiff prays for relief and judgment, as follows:

(a) determining that this action is a proper class action and certifying Lead Plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure;

(b) awarding compensatory damages in favor of Lead Plaintiff and the other Class members against both Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

(c) awarding Lead Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

(d) such other and further relief as the Court may deem just and proper.

JURY DEMAND

Lead Plaintiff demands a trial by jury.

Dated: November 3, 2016

Respectfully submitted,

**COHEN MILSTEIN SELLERS
& TOLL PLLC**

/s/ Steven J. Toll

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- and -

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Facsimile: (312) 357-0369

- and -

Kenneth M. Rehns (KR-9822)
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***Attorneys for the Plumbers & Pipefitters
National Pension Fund and Lead Counsel
for the Class***

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Facsimile: (202) 362-2640

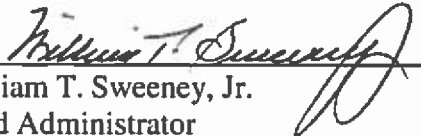
*Additional Attorneys for the Plumbers &
Pipefitters National Pension Fund*

CERTIFICATION

William T. Sweeney, Jr., Fund Administrator for the Plumbers & Pipefitters National Pension Fund ("Plumbers National Pension Fund"), declares, as to the claims asserted under the federal securities laws, that:

1. I am authorized to make this certification on behalf of Plumbers National Pension Fund.
2. I have reviewed a complaint filed in this matter and wish to serve as a lead plaintiff.
3. Plumbers National Pension Fund did not purchase the securities that are the subject of this action at the direction of its counsel or to participate in this action.
4. Plumbers National Pension Fund is willing to serve as a lead plaintiff and class representative on behalf of the Class, including providing testimony at deposition and trial if necessary.
5. Plumbers National Pension Fund's transactions in the securities of Performance Sports Group Ltd. that are the subject of this action are set forth in Schedule A, attached hereto.
6. During the three years prior to the date of this Certification, Plumbers National Pension Fund sought to serve as a representative party for a class under the federal securities laws in the following cases:
 - *Wallace v. IntraLinks Holdings, Inc.*, Civ. No. 11-8861-TPG (S.D.N.Y.);
 - *In re Questcor Sec. Litig.*, Civ. No. 12-1623-DMG (C.D. Cal);
 - *In re ITT Educ. Services, Inc. Sec. Litig.*, Civ. No. 13-cv-1620-JPO (S.D.N.Y.);
 - *Firefighters Pension & Relief Fund of the City of New Orleans v. Bulmahn, et al.*, Civ. No. 13-cv-03935 (E.D. La.);
 - *Singh v. Orthofix International et al.*, Civ. No. 13-cv-05696-JGK (S.D.N.Y.);
 - *Isolde v. Trinity Industries, Inc. et al.*, Civ. No. 15-cv-02093 (N.D. Tex.);
 - *Luna v. Marvell Technology Group, Ltd. et al.*, Civ. No. 15-cv-07214 (S.D.N.Y.);
 - *In re: Barclays Liquidity Cross and High Frequency Trading Litigation*, No. 14-md-2589 (JMF) (S.D.N.Y.);
 - *West Palm Beach Police Pension Fund v. DFC Global Corp., et al.*, Civ. No. 13-cv-06731 (E.D. Pa.)
7. Plumbers National Pension Fund will not accept any payment for serving as a class representative on behalf of the class beyond its *pro rata* share of any recovery, except such reasonable costs and expenses (including lost wages) relating to the representation of the class as ordered or approved by the court.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 17th day of May 2016.



William T. Sweeney, Jr.
Fund Administrator
Plumbers & Pipefitters National Pension Fund

SCHEDULE A

Trade Date	Transaction Type	# Shares	Share Price (\$)
8/28/2015	PURCHASES	8,700	12.94
8/28/2015	PURCHASES	5,000	12.88
8/31/2015	PURCHASES	6,800	12.93
9/1/2015	PURCHASES	4,900	12.52
9/2/2015	PURCHASES	1,400	12.15
9/2/2015	PURCHASES	1,000	12.15
9/3/2015	PURCHASES	2,095	12.95
9/8/2015	PURCHASES	7,473	13.81
9/25/2015	PURCHASES	11,300	13.97
9/29/2015	PURCHASES	1,800	13.89
10/1/2015	PURCHASES	2,900	12.58
11/3/2015	PURCHASES	6,450	11.87
11/4/2015	PURCHASES	10,049	11.87
11/10/2015	PURCHASES	7,825	11.1
11/30/2015	PURCHASES	8,700	11.62
12/7/2015	PURCHASES	4,300	11.46
12/8/2015	PURCHASES	7,700	11.18
12/9/2015	PURCHASES	4,740	10.96
1/20/2016	PURCHASES	1,650	5.83
3/8/2016	SALES	13,700	3.93
3/8/2016	SALES	49,700	3.18
3/9/2016	SALES	22,800	3.3
3/10/2016	SALES	18,582	3.8

CERTIFICATE OF SERVICE

I, Steven J. Toll, counsel for Lead Plaintiff, hereby certify that on November 3, 2016, I filed the foregoing Second Amended Class Action Complaint for Violations of the Federal Securities Laws on the United States District Court for the Southern District of New York's Electronic Case Filing System which caused a copy of this document to be served on counsel of record for all Parties.

/s/ Steven J. Toll

Steven J. Toll

EXHIBIT B
Lead Plaintiff Appointment Order

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: _____ DATE FILED: 06/07/2016

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
 JUAN FRANCISCO NIEVES, *as trustee of the* :
Gonzalez Coronado Trust, Individually and on behalf of all :
others similarly situated, :
 , :
 :
 Plaintiff, :
 :
 -v- :
 :
 PERFORMANCE SPORTS GROUP, LTD., :
 KEVIN DAVIS, MARK VENDETTI, and :
 AMIR ROSENTHAL, :
 Defendants. :
 ----- X

1:16-cv-3591-GHW

ORDER

GREGORY H. WOODS, United States District Judge:

Having considered the papers filed in support of the Motion of Plumbers & Pipefitters National Pension Fund (“Plumbers & Pipefitters” or “Movant”) for Appointment as Lead Plaintiff and Appointment of Lead Counsel, pursuant to Section 21D(a)(3)(B) of the Securities Exchange Act of 1934 (the “Exchange Act”), as amended by the Private Securities Litigation Reform Act of 1995 (“PSLRA”), at 15 U.S.C. § 78u-4, and for good cause shown, the Court hereby enters the following Order.

1. Plumbers & Pipefitters has moved the Court to be appointed Lead Plaintiff in this class action and to approve the counsel retained to be Lead Counsel.

2. Having considered the provisions of Section 21D(a)(3)(B) of the Exchange Act, 15 U.S.C. § 78u-4(a)(3)(B), the Court hereby determines that Plumbers & Pipefitters is the most adequate plaintiff and satisfies the requirements of the PSLRA. The Court hereby appoints Plumbers & Pipefitters as Lead Plaintiff to represent the interests of the class in this Action.

3. Pursuant to Section 21D(a)(3)(B)(v) of the Exchange Act, 15 U.S.C. § 78u-4(a)(3)(B)(v), Plumbers & Pipefitters has selected and retained the law firm of Cohen Milstein Sellers

& Toll PLLC to serve as Lead Counsel. The Court approves Movant's selection of Lead Counsel for this Action.

4. Lead Counsel shall have the following responsibilities and duties:

- a. the briefing and argument of any and all motions;
- b. the conduct of any and all discovery proceedings;
- c. the examination of any and all witnesses in depositions;
- d. the selection of counsel to act as spokesperson at all pretrial conferences;
- e. the organization of meetings of plaintiffs' counsel as they deem necessary and appropriate from time to time;
- f. settlement negotiations with counsel for defendants;
- g. the pretrial discovery proceedings and the preparation for trial and the trial of this matter, and delegation of work responsibilities to selected counsel as may be required;
- h. the preparation and filing of all pleadings; and
- i. the supervision of all other matters concerning the prosecution or resolution of the Action.

5. No motion, discovery request, or other pretrial proceedings shall be initiated or filed by any plaintiffs without the approval of Lead Counsel, so as to prevent duplicative pleadings or discovery by plaintiffs. No settlement negotiations shall be conducted without the approval of Lead Counsel.

6. Lead Counsel shall have the responsibility of receiving and disseminating Court orders and notices.

7. Lead Counsel shall be the contact between plaintiffs' counsel and defendants' counsel, as well as the spokespersons for all plaintiffs' counsel, and shall direct and coordinate the activities of plaintiffs' counsel. Lead Counsel shall be the contact between the Court and plaintiffs and their counsel.

The Clerk of Court is directed to terminate the motions pending at Dkt. Nos. 6, 8.

Movant is directed to serve a copy of this order on the defendants and to retain proof of service.

SO ORDERED.

Dated: June 7, 2016
New York, New York



GREGORY H. WOODS
United States District Judge

02/06/2017

Created: 02/06/2017

By: Prime Clerk (epoc@primeclerk.com)

Status: Signed

Transaction ID: CBJCHBCAABAA2FAYmn6pOtHny0BcK9hRdtKCxQ94SpK8

EXHIBIT “B”

EXHIBIT "B"

referred to in the Affidavit of

KEISHA LACKPATIAH-SEALY

Sworn September 20, 2017



Commissioner for Taking Affidavits

Fill in this information to identify the case (Select only one Debtor per claim form):

- | | | |
|--|--|---|
| ☐ BPS US Holdings Inc.
(Case No. 16-12373) | ☐ BPS Diamond Sports Inc.
(Case No. 16-12379) | ☐ PSG Innovation Corp.
(Case No. 16-12385) |
| ☐ Bauer Hockey, Inc.
(Case No. 16-12374) | ☐ PSG Innovation Inc.
(Case No. 16-12380) | ☐ Bauer Hockey Corp.
(Case No. 16-12386) |
| ☐ Easton Baseball / Softball Inc.
(Case No. 16-12375) | ☒ Performance Sports Group Ltd.
(Case No. 16-12381) | ☐ BPS Canada Intermediate Corp.
(Case No. 16-12387) |
| ☐ Bauer Hockey Retail Inc.
(Case No. 16-12376) | ☐ KBAU Holdings Canada, Inc.
(Case No. 16-12382) | ☐ BPS Diamond Sports Corp.
(Case No. 16-12388) |
| ☐ Bauer Performance Sports Uniforms Inc.
(Case No. 16-12377) | ☐ Bauer Hockey Retail Corp.
(Case No. 16-12383) | ☐ Bauer Performance Sports Uniforms Corp.
(Case No. 16-12389) |
| ☐ Performance Lacrosse Group Inc.
(Case No. 16-12378) | ☐ Easton Baseball / Softball Corp.
(Case No. 16-12384) | ☐ Performance Lacrosse Group Corp.
(Case No. 16-12390) |

Proof of Claim

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy/restructuring case. Other than a claim under 11 U.S.C. § 503(b)(9), this form should not be used to make a request for payment of an administrative expense or an expense relating to goods delivered or services rendered after the petition date. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be subject to severe penalties including significant monetary fines and /or imprisonment.

Fill in all the information about the claim as of October 31, 2016.

☐ The amounts set forth on this claim form are in US Dollars

☐ The amounts set forth on this claim form are in Canadian Dollars

Part 1: Identify the Claim

1. Who is the current creditor?	Plumbers & Pipefitters National Pension Fund Name of the current creditor (the person or entity to be paid for this claim) Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	☒ No ☐ Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent?	Where should notices to the creditor be sent? c/o Lowenstein Sandler LLP 65 Livingston Avenue Roseland, New Jersey 07068	Where should payments to the creditor be sent? (if different) Contact phone <u>973-597-2500</u> Contact phone _____ Contact email <u>metkin@lowenstein.com, abehlmann@lowenstein.com</u> Contact email _____ Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____
4. Does this claim amend one already filed?	☒ No ☐ Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
5. Do you know if anyone else has filed a proof of claim for this claim?	☒ No ☐ Yes. Who made the earlier filing? _____	

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? ☒ No
☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ _

7. How much is the claim and in what currency? \$ See attached addendum. Does this amount include interest or other charges?
☒ USD ☒ No
☐ CDN ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges.

8. What is the basis of the claim?
Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, credit card, restructuring claim/disclaimed or resiliated contract, etc.
Attach redacted copies of any documents supporting the claim.
Limit disclosing information that is entitled to privacy, such as health care information.
Violations of federal securities laws. See attached addendum

9. Is all or part of the claim secured? ☒ No
☐ Yes. The claim is secured by a lien on property.
Nature of property:
☐ Real estate.
☐ Motor vehicle
☐ Other. Describe: _____
Basis for perfection: _____
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
Value of property: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)
Amount necessary to cure any default as of October 31, 2016: \$ _____
Annual Interest Rate (when case was filed) _____ %
☐ Fixed
☐ Variable

10. Is this claim based on a lease? ☒ No
☐ Yes. Amount necessary to cure any default as of the date of the petition or Initial Order. \$ _____

11. Is this claim subject to a right of setoff? ☒ No
☐ Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority or special treatment under US or Canadian law?	☒ No ☐ Yes. <i>Check one:</i> Under U.S. law: ☐ Up to \$2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7). ☐ Wages, salaries, or commissions (up to \$12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4). ☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8). ☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5). ☐ Other. Specify subsection of 11 U.S.C. § 507(a)() that applies. Under Canadian law: ☐ Wages, salaries, or commissions (up to CDN \$2,000) earned within 6 months before the Initial Order or disbursements of a travelling salesperson (up to CDN \$1,000) incurred in the same period, as referred to in section 6(5) CCAA. ☐ Amounts due in respect of a registered pension plan as referred to in section 6(6) CCAA. ☐ Amounts due to the governments and referred to in section 6(3) CCAA.
--	--

Part 3: Sign Below

The person completing this proof of claim must sign and date it.

A person who files a fraudulent claim could be subject to severe penalties including significant monetary fines and/or imprisonment.

Check the appropriate box:

- ☐ I am the creditor.
☒ I am the creditor's attorney or authorized agent.
☐ I am the trustee, or the debtor, or their authorized agent.
☐ I am a guarantor, surety, endorser, or other codebtor.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 02/06/2017 (mm/dd/yyyy)

Signature: Andrew Behlmann
Andrew Behlmann (Feb 6, 2017)

Email: abehlmann@lowenstein.com

Print the name of the person who is completing and signing this claim:

Name	<u>Andrew David Behlmann</u>		
	First name	Middle name	Last name
Title	<u>Counsel</u>		
Company	<u>Lowenstein Sandler LLP</u>		
	Identify the corporate servicer as the company if the authorized agent is a servicer.		
Address	<u>65 Livingston Avenue</u>		
	Number	Street	
	<u>Roseland</u>	<u>NJ</u>	<u>07068</u>
	City	State/Province	ZIP/Postal Code
Contact phone	<u>973-597-2332</u>	Email	<u>abehlmann@lowenstein.com</u>

Attach Supporting Documentation (limited to a single PDF attachment that is less than 5 megabytes in size and under 100 pages):

☒ I have supporting documentation.
(attach below)

☐ I do not have supporting documentation.



Attachment

PLEASE REVIEW YOUR PROOF OF CLAIM AND SUPPORTING DOCUMENTS AND REDACT ACCORDINGLY PRIOR TO UPLOADING THEM. PROOFS OF CLAIM AND ATTACHMENTS ARE PUBLIC DOCUMENTS THAT WILL BE AVAILABLE FOR ANYONE TO VIEW ONLINE.

IMPORTANT NOTE REGARDING REDACTING YOUR PROOF OF CLAIM AND SUPPORTING DOCUMENTATION When you submit a proof of claim and any supporting documentation you must show only the last four digits of any social-security, individual's tax-identification, or financial-account number, only the initials of a minor's name, and only the year of any person's date of birth. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information.

A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. The responsibility for redacting personal data identifiers (as defined in Federal Rule of Bankruptcy Procedure 9037) rests solely with the party submitting the documentation and their counsel. Prime Clerk and the Clerk of the Court will not review any document for redaction or compliance with this Rule and you hereby release and agree to hold harmless Prime Clerk and the Clerk of the Court from the disclosure of any personal data identifiers included in your submission. In the event Prime Clerk or the Clerk of the Court discover that personal identifier data or information concerning a minor individual has been included in a pleading, Prime Clerk and the Clerk of the Court are authorized, in their sole discretion, to redact all such information from the text of the filing and make an entry indicating the correction.

Instructions for Proof of Claim

United States Bankruptcy Court and Ontario Superior Court of Justice (Commercial List)

These instructions and definitions generally explain the law. In certain circumstances, exceptions to these general rules may apply. You should consider obtaining the advice of an attorney, especially if you are unfamiliar with the bankruptcy/insolvency process and privacy regulations.

Notice to claimant/creditor: A person who files a fraudulent claim could be subject to severe penalties, including monetary fines and/or imprisonment. It is your responsibility to prepare and file your claim accurately.

How to fill out this form

- ❑ **Fill in the caption at the top of the form:** You must indicate to which of the listed Debtor Companies your Claim relates. If your Claim is against several of the listed entities, you must prepare a *Proof of Claim* for each entity against which a Claim is asserted. If a Claim is made against more than one entity, you must indicate in a schedule accompanying the Claim the reasons why the entity is liable for the Claim (e.g. principal/guarantor) and provide the documentation supporting the guarantee, as the case may be.
- ❑ **Fill in all of the information about the claim as of October 31, 2016.**
- ❑ **Proceedings:** This *Proof of Claim* form is intended to be used in the Debtors' proceedings under the *Companies' Creditors Arrangement Act* (Canada) ("**CCAA**") as well as in the Debtors' concurrent proceedings under Chapter 11 of the *Bankruptcy Code*. Creditors are expected to complete a single *Proof of Claim* form in respect of the Restructuring Proceedings (see the definition on the next page) for a particular Debtor.
- ❑ **Identification:** Make sure the name of the creditor is properly identified on the *Proof of Claim* (in section 1) together with the addresses to be used for notices and payments (in section 3) and the name and address of the person completing the *Proof of Claim* form (in Part 3).
- ❑ **Make sure you indicate the currency used for the amounts referred to in the claim.** The amounts may be expressed in U.S. currency (U.S.\$) or in Canadian currency (CDN\$). If your Claim is expressed in a currency other than U.S.\$ or CDN\$, your Claim should be converted in U.S.\$ or in CDN\$ at the rate of exchange that prevailed on October 31, 2016. In such a case, Creditors must also provide particulars of the original currency of your Claim and of the foreign exchange rate used to convert the Claim, in a separate document.
- ❑ **If the claim has been acquired from someone else:** State the identity of the last party who owned the Claim or was the holder of the Claim and who transferred it to you before the initial Claim was filed.
- ❑ **Attach copies of any supporting documents to this form.** You may attach copies of any document you believe is necessary in order to establish your Claim. If the documents contain confidential information, the documents should be redacted to make the confidential information unrecognizable (see the definition of *redaction* on the next page). Attach copies of any documents that show that the debt exists, a lien secures the debt, or both. Also attach copies of any documents that show perfection of any security interest or any assignments or transfers of the debt. In addition to the documents, a summary may be added.
- ❑ **Do not send original documents because attachments may be destroyed after scanning.**
- ❑ **Confidential Information:** If the Claim is based on delivering health care goods or services, do not disclose confidential health care information. Leave out or redact confidential information both in the Claim and in the attached documents. A *Proof of Claim* form and any attached documents must show only the last 4 digits of any social security number, individual's tax identification number, or financial account number, and only the year of any person's date of birth.
- ❑ **For a minor child, fill in only the child's initials and the full name and address of the child's parent or guardian.** For example, write A.B., a minor child (John Doe, parent, 123 Main St., City, State).

Confirmation that the claim has been filed

To receive confirmation that the Claim has been filed, enclose a stamped (with appropriate stampage for a delivery from the United States) self-addressed envelope and a copy of this form. You may view a list of filed Claims in this case by visiting the Claims and Noticing Agent's website at <http://cases.primeclerk.com/psg>.

Understand the terms used in this form

Administrative expense: Generally, an expense that arises after a case is filed in connection with operating, liquidating, or distributing the estate, in the context of proceedings under the U.S. *Bankruptcy Code*.

Bankruptcy: Typically, the term "bankruptcy" refers to proceedings under the *Bankruptcy Code*, either as a voluntary or involuntary liquidation process or a restructuring process under Chapter 11 of the *Bankruptcy Code*, whether or not a trustee is appointed. In the present case, the term may also include the restructuring process initiated by the Debtors under the provisions of the CCAA, where the context so requires.

CCAA: *Companies' Creditors Arrangement Act* (Canada)

Claim: A Creditor's right to receive payment for a debt or liability that the Debtor owed on the Relevant Date, whether secured, preferred, unsecured priority, unsecured nonpriority, or otherwise entitled to special treatment under applicable U.S. or Canadian law in the context of the Restructuring Proceedings. A Claim may be secured or unsecured, fixed or contingent, and/or liquidated or unliquidated. A Claim must be an amount owed by Debtor on the Relevant Date, or an amount that becomes due after that date as a result of an obligation incurred before the Relevant Date.

Claim Pursuant to 11 U.S.C. §503(b)(9): A Claim arising from the value of any goods received by the Debtor within 20 days before the date of commencement of a case under the *Bankruptcy Code*, in which the goods have been sold to the Debtor in the ordinary course of the Debtor's business. Attach documentation supporting such Claim.

Creditor: A person, corporation, or other entity that has a Claim against a Debtor.

Debtor: A person, corporation, or other entity who is undergoing a Restructuring Proceeding. Use the Debtor's name and case number as shown in the bankruptcy notice you received.

Evidence of perfection: Evidence of perfection of a security interest may include documents showing that a security interest has been filed or recorded or published, such as a mortgage, lien, certificate of title, financing statement or hypothec.

Information entitled to privacy: A *Proof of Claim* form and any attached documents must show only the last 4 digits of any social security number, an individual's tax identification number, or a financial account number, only the initials of a minor's name, and only the year of any person's date of birth. If a Claim is based on delivering health care goods or services, limit the disclosure of the goods or services to avoid embarrassment or disclosure of confidential health care information. You may later be required to give more information if an objection is made regarding the Claim, or if the Debtor or the Monitor requests additional information to support the Claim.

Monitor: The Court appointed officer in the proceedings under the CCAA.

Priority claim: A Claim within a category of unsecured claims that is entitled to priority or otherwise entitled to special treatment under applicable U.S. or Canadian law in the context of the Restructuring Proceedings. These claims are paid from the available money or property before other unsecured claims are paid. Common priority unsecured claims include certain unpaid wages (up to prescribed limits), source deductions, certain governmental claims entitled to priority by statute, and certain amounts due to prescribed pension plans.

Proof of claim: A form that indicates the Claim asserted by a Creditor against a Debtor, as of the Relevant Date. The form must be filed in compliance with the procedures approved by the court in the context of the Restructuring Proceedings, and within the deadlines set by the orders of the Court.

Redaction of information: Masking, editing out, or deleting certain information to protect privacy. Filers must redact or leave out Information entitled to privacy on the *Proof of Claim* form and any attached documents.

Relevant Date: Used in this form, the expression Relevant Date means October 31, 2016, namely the date of the petition under the *Bankruptcy Code*, or the date of the Initial Order made under the CCAA, as the case may be.

Restructuring Proceedings: The proceedings commenced by the Debtors under Chapter 11 of the *Bankruptcy Code* and pending in the United States Bankruptcy Court for the District of Delaware, and the proceedings commenced by the Debtors under the CCAA and pending before the Ontario Superior Court of Justice (Commercial List), in Toronto, Ontario.

Secured claim: A Claim backed by a lien, a security instrument or other similar encumbrance on particular property of the Debtor. A Claim is secured to the extent that a Creditor has the right to be paid from the property before other creditors are paid. The amount of a secured claim usually cannot be more than the value of the particular encumbered property that secures the debt. Any amount owed to a Creditor that is more than the value of the encumbered property normally may be an unsecured claim. But exceptions exist. Examples of liens on property include a mortgage or hypothec on real estate or

a security interest in a car. A lien may be voluntarily granted by a Debtor, may arise by statute or other force of law, or may be obtained through a court proceeding.

Setoff: Occurs when a Creditor pays itself with money belonging to the Debtor that it is holding, or by canceling a debt it owes to the Debtor.

Unsecured claim: A Claim that does not meet the requirements of a secured claim. A Claim may be unsecured in part to the extent that the amount of the Claim is more than the value of the property on which a Creditor has a lien.

Offers to purchase a Claim

Certain entities purchase Claims for an amount that is less than the face value of the Claims. These entities may contact Creditors offering to purchase their Claims. Some written communications from these entities may easily be confused with official court documentation or communications from the Debtor. These entities do not represent the bankruptcy court, the bankruptcy trustee, the Debtor or the Monitor. A Creditor has no obligation to sell its Claim. However, if a Creditor decides to sell its Claim, any transfer of that Claim is subject to applicable U.S. or Canadian law in the context of the Restructuring Proceedings, and any orders of the U.S. Bankruptcy Court or of the Ontario Superior Court of Justice that apply in the context of the Restructuring Proceedings.

Please send completed Proof(s) of Claim to:

BPS US Holdings Inc. Claims Processing Center
c/o Prime Clerk LLC
830 3rd Avenue, 3rd Floor
New York, NY 10022

Do not file these instructions with your form
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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

BPS US Holdings, Inc., *et al.*,¹

Debtors.

Chapter 11

Case No. 16-12373 (KJC)

(Jointly Administered)

ADDENDUM TO PROOF OF CLAIM

1. This Proof of Claim is submitted against Performance Sports Group Ltd. (“PSG”), one of the above-captioned debtors (the “Debtors”), by Plumbers & Pipefitters National Pension Fund in its individual capacity (the “Fund”).

2. The Fund is the court-appointed lead plaintiff in the securities class action styled as *Nieves v. Performance Sports Group Ltd., et al.*, Case No. 1:16-CV-3591-GHW (S.D.N.Y.) (the “Securities Litigation”), pending in the United States District Court for the Southern District of New York (the “SDNY District Court”).

3. The Securities Litigation was commenced on May 13, 2016 against, among others, Amir Rosenthal (“Rosenthal”), the Debtors’ former Chief Executive Officer; Kevin Davis, the Debtors’ former Chief Financial Officer (collectively with Rosenthal, the “Individual Defendants”); and PSG (collectively with the Individual Defendants, the “Defendants”).

4. As set forth more fully in the *Second Amended Class Action Complaint for Violations of the Federal Securities Laws* (the “Second Amended Complaint”) filed in the

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.

Securities Litigation on November 3, 2016, a copy of which is annexed hereto as **Exhibit A** and incorporated herein by reference, the Securities Litigation is a class action brought on behalf of a proposed class of persons and entities (the “Putative Class”) who purchased or acquired common stock of PSG on the New York Stock Exchange during the period from January 15, 2015 through March 14, 2016, inclusive (as may be amended from time to time, the “Class Period”).

5. On August 15, 2016, Lead Plaintiff filed an Amended Class Action Complaint (the “First Amended Complaint”) against PSG and the Individual Defendants, asserting claims under the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a *et seq.* (the “Exchange Act”), on behalf of itself and the Putative Class in connection with false and misleading statements and/or omissions by PSG and the Individual Defendants during the proposed class period. On that same day, PSG failed to file its annual financial report due to an ongoing internal Audit Committee investigation into the “Company’s financial statements and the related certification process.” On October 13, 2016, PSG and the Individual Defendants filed a joint motion to dismiss the First Amended Complaint.

6. On October 31, 2016 (the “Petition Date”), days before Lead Plaintiff’s deadline to respond to the Defendants’ motion to dismiss (or, alternatively, to file an amended class action complaint if, instead of responding to the motion, Lead Plaintiff chose to amend the First Amended Complaint pursuant to the applicable chambers rules in the SDNY District Court), PSG filed these chapter 11 cases. As a result, the Securities Litigation was automatically stayed with respect to PSG under section 362(a) of the Bankruptcy Code.

7. On November 3, 2016, cognizant of PSG’s status as a chapter 11 debtor and the impact of the automatic stay, Lead Plaintiff filed the Second Amended Complaint against the Individual Defendants, but not PSG.

8. On January 17, 2017, the SDNY District Court entered an order (the “Stay Order”) granting Rosenthal’s motion (which Davis joined at the time of filing and PSG joined on December 12, 2016, after Lead Plaintiff asserted, among other things, that the Individual Defendants lacked standing to seek such relief) for a temporary stay of the Securities Litigation with respect to the Individual Defendants. Pursuant to the Stay Order, the Securities Litigation is stayed with respect to the Individual Defendants until the automatic stay is terminated in these chapter 11 cases or the SDNY District Court orders otherwise.

9. As of the Petition Date and continuing up to and including the present, PSG was and is liable to the Fund for damages in an amount not yet determined, plus interest, costs, and attorneys’ fees as allowed (the “Claim”). The allegations in the Second Amended Complaint, as may be further amended from time to time, form the basis of the Claim for damages resulting from violations of the federal securities laws by PSG and the Individual Defendants in connection with the purchase or other acquisition of common stock of PSG by the Fund. A summary of the Fund’s purchases and sales of PSG’s common stock is annexed hereto as **Exhibit B**.

10. Specifically, through the Securities Litigation, the Fund seeks damages against PSG and the Individual Defendants pursuant to Sections 10(b) and 20(a) of the Exchange Act, 15 U.S.C. §§ 78j(b) and 78t(a), and Rule 10b-5, 17 C.F.R. § 240.10b-5, promulgated under the Exchange Act by the Securities and Exchange Commission (the “SEC”).² The Second Amended Complaint alleges, among other things, that PSG and the Individual Defendants made a series of false and misleading statements and/or omissions during the Class Period, which artificially

² The description of the claims and causes of action asserted in the Second Amended Complaint is intended only as a summary, is qualified in all respects by the allegations in the Second Amended Complaint, and is submitted without prejudice to the rights of Lead Plaintiff to further amend the Second Amended Complaint to assert other and further claims and/or to amend or supplement this Proof of Claim.

inflated and/or maintained the value of PSG's stock, and that subsequent disclosures and/or materializations of undisclosed risks caused PSG's stock price to decline, resulting in injury to, among others, the Fund.

11. The Claim is not founded upon a specific writing, although certain documents, too voluminous and burdensome to annex hereto, which upon information and belief, relate to PSG's violations of the federal securities laws from which the Claim arises, and which include, but are not limited to, documents filed with the SEC, are available. In addition, certain of these documents, as well as other documents, may become available through discovery with respect to the Claim.

12. No payments have been made on account of the Claim.

13. The Claim is not subject to any setoff or counterclaim.

14. No security interest is held for the Claim.

15. The Claim is asserted in addition to all other claims that the Fund may have against PSG, its affiliates, the Individual Defendants, and any other defendants to be named in the Securities Litigation.

16. The Fund reserves all rights (including but not limited to arguments, counterarguments, and defenses) in connection with the Securities Litigation. The Fund further reserves all rights with respect to the Claim and this Proof of Claim, including but not limited to the right to amend and/or supplement this Proof of Claim from time to time and/or move to withdraw the bankruptcy reference.

EXHIBIT A
Second Amended Complaint

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

JUAN FRANCISCO GONZALEZ NIEVES, AS
TRUSTEE OF THE GONZALEZ CORONADO
TRUST, Individually and on Behalf of All Others
Similarly Situated,

Plaintiff,

-v-

PERFORMANCE SPORTS GROUP LTD.,
KEVIN DAVIS AND AMIR ROSENTHAL,

Defendants.

Case No.: 1:16-CV-3591-GHW

**SECOND AMENDED CLASS
ACTION COMPLAINT FOR
VIOLATIONS OF THE FEDERAL
SECURITIES LAWS**

JURY TRIAL DEMANDED

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The allegations set forth in this Second Amended Class Action Complaint for Violations of the Federal Securities Laws (the “Complaint”) are based on the investigation undertaken by Lead Counsel on behalf of Lead Plaintiff Plumbers & Pipefitters National Pension Fund (“Lead Plaintiff”). Lead Plaintiff brings this Complaint against Kevin Davis (“Davis”), the former Chief Executive Officer (“CEO”), President, and director of Performance Sports Group Ltd. (“PSG” or the “Company”),¹ and Amir Rosenthal (“Rosenthal”), the Company’s former Chief Financial Officer (“CFO”). Lead Plaintiff’s allegations against PSG and Defendants are based on personal knowledge as to its own acts and on information and belief as to all other matters, such information and belief having been informed by the investigation conducted by and under the supervision of its counsel, which included, among other things: (i) review and analysis of PSG’s public filings with the U.S. Securities and Exchange Commission (“SEC”); (ii) review and analysis of the sports equipment industry and analyst reports and other publicly-available materials concerning PSG’s business practices and policies; (iii) review and analysis of other publicly-available information concerning PSG and its competitors; (iv) interviews with former PSG employees, Class Period customers of PSG and other persons with knowledge of the matters alleged herein (most of whom have provided information in confidence; these confidential witnesses (“CWs”) will be identified herein by number (CW1, CW2, etc.)), including W. Graeme Rouston (“Rouston”), the former Chairman of PSG; and (v) consultations with experts. Lead Plaintiff believes that substantial additional evidentiary support will exist for

¹ PSG was previously named as a defendant in the Amended Class Action Complaint for Violations of the Federal Securities Laws (Dkt. No. 62). PSG and seventeen of its affiliates (collectively with PSG, the “Debtors”) filed voluntary bankruptcy petitions in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) on October 31, 2016. Accordingly, by operation of the automatic stay under 11 U.S.C. § 362 (the “Automatic Stay”), PSG is no longer named as a defendant in this action. The Automatic Stay in the Debtors’ bankruptcy cases does not impact any Defendant other than PSG. Lead Plaintiff reserves the right to name PSG (or any of the other Debtors, as the circumstances may require) as a defendant in this or any other action in the future in the event the Automatic Stay is terminated, lifted, or modified.

its allegations after a reasonable opportunity for discovery. On behalf of itself and the Class it seeks to represent, Lead Plaintiff alleges as follows:

I. NATURE OF THE ACTION

1. Lead Plaintiff brings this federal securities class action on behalf of itself and a proposed class of persons and entities (the “Class”) who purchased or acquired PSG common stock on the New York Stock Exchange (“NYSE”) during the period from January 15, 2015 through March 14, 2016, inclusive (the “Class Period”). Lead Plaintiff seeks remedies under the Securities Exchange Act of 1934 (the “Exchange Act”). PSG and Defendants made a series of false and misleading statements and/or omissions during the Class Period which artificially inflated and/or maintained the value of PSG’s stock. Subsequent disclosures and/or materializations of undisclosed risks caused PSG’s stock price to decline, resulting in injury to Lead Plaintiff and the Class.

2. PSG is a developer and manufacturer of sports equipment and apparel that it sells to independent retailers internationally. Its most recognizable brands include Bauer Hockey (“Bauer”) and Easton. For years, PSG stuck to its winning sales formula of providing quality products to independent retailers for sale to consumers.

3. From 2012 to 2014, PSG witnessed substantial revenue and profit growth based on a series of acquisitions and its strong market position in the hockey, baseball and softball markets. In April 2014, PSG completed its sixth acquisition, acquiring Easton Baseball/Softball from BRG Sports.

4. On June 20, 2014, PSG, which had previously been called Bauer Performance Sports Ltd. and was publicly trading on the Toronto Stock Exchange since March 10, 2011, held

its initial public offering, issuing more than 7 million shares of stock to the public at a price of \$15.50 per share (the “U.S. IPO”).² Following the IPO, PSG’s stock also traded on the NYSE.

5. In an effort to sustain the perception of strong growth, PSG began an aggressive push, led by Defendants Rosenthal and Davis, to further increase the Company’s revenue and sales figures by any means necessary, including by the coercive, fraudulent sales practices described herein. Defendants and PSG then led investors to believe that the Company’s success during the Class Period was based on sustainable “organic” sales growth while omitting the true reasons for PSG’s growth and “record sales” from its public statements. In doing so, PSG and Defendants propped up the value of the Company’s stock based on false and misleading information.

6. In particular, from the Company’s U.S. IPO and throughout the Class Period, PSG and Defendants touted PSG’s “record” growth in sales and revenue, which was purportedly the result of PSG’s strong product line, high market demand and “organic sales.” However, this was not the full picture.

7. Indeed, “organic growth,” as the term is generally used, refers to growth based on increased output, customer base expansion, or new product development, as opposed to mergers and acquisitions. However, a company’s organic growth does not include growth that results from fraudulent or manipulated sales practices aimed at boosting a company’s earnings. *See* Edward Hess and Robert Kazanjian, A SEARCH FOR ORGANIC GROWTH, Cambridge University Press, 103-104 (2006). Such earnings are transitory and are not sustainable. As a result, earnings from PSG’s fraudulent sales practices, described *infra*, are not part of the Company’s core

² In connection with the U.S. IPO, the Company changed its name from Bauer Performance Sports Ltd. to Performance Sports Group Ltd.

earnings (*i.e.*, earnings from its principal business) or “organic growth,” nor would they have been expected by investors to be such.

8. In reality, PSG employed a progressive sales program that involved threatening customers with the removal of vital discounts and sales terms if they did not increase their orders each year. The offering of discounts and advantageous terms is not uncommon; however, as employed by PSG, this sales program was used in a coercive, strong-arm fashion to effectively force PSG retailers to continuously increase their purchases or risk losing valuable discounts, regardless of actual demand for the product by the retailers. In the words of one PSG retailer, “they did try to jam orders down our throat, to take orders early, to overstock, oversupply, over-inventory us. They said it would all work out, and then things hit a wall.”³

9. That “things hit a wall” for PSG was not surprising. According to statistics published by USA Hockey, hockey player membership grew by less than 2% during the Class Period, yet PSG insisted that its retailers increase orders by 10-15% every year in order for retailers to keep necessary discounts.

10. Moreover, the Company further propped up its financial results by shipping its products early to retailers, thereby pulling sales from later fiscal periods into earlier ones. In fact, many of PSG’s retailers, as the confidential witnesses set forth herein exemplify, knew that the Company regularly shipped its products early in order to meet its quarterly financial goals. Although shipping early and offering discounts to increase sales may not be inherently fraudulent in and of themselves, these practices were abused by PSG and, as utilized, created a known trend that PSG should have disclosed, but did not. Specifically, PSG’s sales were occurring in an already-saturated market; thus it was reasonably likely PSG would not sustain

³ Bob Sanders, *Questions Abound Over Performance Sports Group*, NEW HAMPSHIRE BUSINESS REVIEW, Sept. 1, 2016, <http://www.nhbr.com/September-2-2016/Questions-abound-over-Performance-Sports-Group/>.

“record growth” and that sales would decrease, which would have a material adverse impact on PSG’s financial condition.

11. Defendants and PSG were well aware of the Company’s manipulative sales practices, that such manipulative practices were not sustainable and, given their pervasiveness, were reasonably likely to have a material negative effect on the Company’s financial results. Indeed, these practices were developed and overseen by executives at the highest levels of the Company, including Davis and Rosenthal. Moreover, Defendants and the Company knew that PSG’s purportedly “record” figures during the Class Period were being propped up by manipulated and aggressive sales that had no reasonable means of continuing in the long-term but failed to disclose this known trend to the market until the end of the Class Period.

12. Moreover, PSG aggressively pushed its retailers to place their orders earlier and earlier, in some cases asking customers to order merchandise one year in advance in order to further grow its quarterly sales and revenue figures.

13. During the Class Period, PSG held sales meetings at least twice per year, which Defendant Rosenthal attended, encouraging its sales representatives to aggressively push PSG customers to buy more and more product earlier and earlier.

14. Furthermore, beginning in the summer of 2015, as PSG began filing its annual and quarterly reports with the SEC on Forms 10-K and 10-Q, Defendants submitted certifications pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (“SOX Certifications”) attesting to the truthfulness of those filings and the effectiveness of PSG’s internal controls. These filings were misleading because they failed to disclose the true nature of PSG’s sales practices and their manipulative effect on the Company’s financial results. PSG subsequently announced, after the filing of Plaintiffs’ Amended Complaint in August 2016, that an investigation had been

commenced by PSG's internal Audit Committee, and that the Company was the subject of investigations by the SEC and Canadian regulatory authorities. According to newspaper accounts, the Canadian regulatory authorities include the Ontario Securities Commission.⁴

15. PSG's fraudulent conduct was conducted by Defendants or with Defendants' knowledge and/or reckless disregard in order to conceal from the market that the Company's "record" revenues were the result of overly aggressive sales practices and manipulation. These sales practices were designed to maintain and inflate PSG's stock price by portraying the Company's "record" quarterly revenue and sales figures as sustainable and "organic" even though Defendants knew, or recklessly disregarded, that PSG would soon be faced with a lack of sales in later quarters as PSG ran out of transactions to pull forward and as retailers became over-supplied with inventory that exceeded market demand as a result of PSG's penalties on retailers if they did not increase their orders with PSG.

16. These sales tactics were not limited to just a handful of PSG sales representatives, or a handful of PSG's small clients, but constituted a systematic, company-wide program with the full knowledge of PSG and Defendants, that was applied to all of PSG's retail customers. These facts have been confirmed by a PSG sales representative who described how these sales tactics were discussed at full department meetings, and by multiple Easton and Bauer retail customers who have described a pervasive scheme to manipulate the Company's financial results with aggressive sales tactics. The scheme was also confirmed by PSG's former Chairman, Roustan, who, on two separate occasions – one with the assistance of accounting firm Grant Thornton and the other through the survey website "SurveyMonkey.com" – surveyed the largest

⁴ PSG became a publicly-traded U.S. company on June 20, 2014 and began filing domestic reports with the SEC, including Forms 10-Q and 10-K, in August 2015. Before August 2015, PSG filed its financial statements with the SEC on Form 6-K as a foreign issuer.

of PSG's customers and found that a majority of them had been asked by PSG to move sales into earlier quarters. Moreover, Defendants and PSG fraudulently withheld from the market the reasonably likely, adverse impact its undisclosed tactics would soon have on PSG's bottom line.

17. This scheme of withholding the truth behind the Company's "record revenue" met its inevitable demise in early 2016 as PSG ran out of customer orders to pull forward and the risks of PSG's and Defendants' fraudulent scheme began to materialize.

18. In January 2016, PSG and Defendants released the Company's financial results for the second quarter of PSG's 2016 fiscal year.⁵ In those results, Defendants and the Company announced for the first time during the Class Period that PSG had experienced a substantial decrease in all relevant financial metrics, including sales, revenue, profit, and EBITDA. However, in both the Company's SEC filings and in its conference call with industry analysts, Defendants concealed the true cause of the decline and blamed the worsening financial results on market consolidation among PSG's customers and currency exchange rate issues. PSG and Defendants did not disclose that these results were the consequence of manipulative practices – that PSG and Defendants knew were reasonably likely to be detrimental to the Company's financial results – involving pulling sales forward into earlier quarters and penalizing retailers who did not increase their bookings with PSG, without regard for market demand. As a result of this news, PSG's stock price fell more than 23% from \$7.71 per share to \$5.92 per share on heightened average daily trading volume of 1.29 million shares as the market absorbed this information.

19. On March 8, 2016, PSG and Defendants, faced with no way to hide the inevitable and foreseeable downturn of sales and demand, was forced to reduce the Company's earnings

⁵ PSG's fiscal year runs from June 1 to May 31.

per share guidance by nearly **80%**, citing an “*unexpected*” significant downturn in retail sell-through.” (Emphasis added.) On this news, shares of PSG fell \$5.75 per share or over 66% to close at \$2.91 per share on March 8, 2016, on trading volume of 18.6 million shares.

20. Shortly thereafter, on March 14, based on the information obtained by Roustan through his two surveys, the *New York Post* revealed to the market that questions had been raised regarding allegations that PSG had been misdating quarterly revenue as part of its fraudulent scheme to conceal the known risks that its aggressive sales tactics had produced. On this news, shares of PSG fell \$0.41 per share or over 10.35% to close at \$3.55 per share on March 15, 2016, on an average two-day trading volume of approximately 2.29 million shares, damaging investors. Approximately one week after the *New York Post* article and the end of the Class Period, PSG announced the abrupt departure of Defendant Davis.

21. However, throughout all of the Company’s disclosures in early 2016, Defendants tried to blame its newly-disclosed reality wholly on market factors, including bankruptcy filings by two of its customers, Team Express and Sports Authority. But this was not the full picture and only further obscured, hid, and omitted the truth from investors. By way of contrast, while PSG was announcing that Bauer’s sales were down 19% at the end of 2015, and revising its 2016 outlook, its rival Reebok-CCM Hockey, on January 13, 2016, reported an 8% increase in global equipment business and an **18% increase** in sales.⁶ Similarly, Amer Sports, owners of the Wilson and Louisville Slugger baseball brands, was reporting double digit increases in revenues and sales in its Q4 2015 results and stated that its “pipeline is strong and momentum is good behind Louisville Slugger.” Additionally, Newell Brands, owners of the Rawlings baseball brand, told the market that “[w]e are extremely pleased with our growth and financial results this quarter.”

⁶ CCM Hockey Announced Year End Results, BUSINESS WIRE, Jan. 13, 2016

22. The truth has caught up with PSG, and the undisclosed risks materialized. News has continued to emerge that PSG's failings were not exclusively the result of uncontrollable market factors but instead resulted, in large part, from the Company's own coercive and manipulative sales practices that were concealed from the market by Defendants. PSG has now found itself in utter turmoil. On August 15, 2015, the Company failed to file its annual financial report due to an ongoing internal Audit Committee investigation into the "Company's financial statements and the related certification process." Two days later, on August 17, 2016, the Company disclosed that both SEC and Canadian regulatory authorities were conducting their own investigations of PSG. Even after receiving a 60-day extension from creditors to file its Form 10-K, the Company was unable to do so and on October 31, 2016 was forced to file for bankruptcy protection in the U.S. and Canada. PSG also recently announced the departure of Defendant Rosenthal, while the Company is trying to save itself from Defendants' failed and fraudulent conduct through an asset sale and bankruptcy proceedings. As a result of the Company's bankruptcy, PSG's stock has been delisted from the NYSE and now trades on the over-the-counter ("OTC") market.

II. JURISDICTION AND VENUE

23. The federal securities claims asserted herein arise under Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§ 78j(b) and 78t(a), and Rule 10b-5 promulgated thereunder by the SEC [17 C.F.R. § 240.10b-5]).

24. This Court has jurisdiction over the subject matter of the federal securities claims pursuant to 28 U.S.C. § 1331 and Section 27 of the Exchange Act.

25. Venue is proper in the Southern District of New York pursuant to Section 27 of the Exchange Act and 28 U.S.C. § 1391(b), given that many of the acts and practices complained

of herein occurred in this District as the Company's stock was traded on the NYSE during the Class Period.

III. PARTIES AND RELEVANT NON-PARTIES

26. Lead Plaintiff **Plumbers & Pipefitters National Pension Fund** engaged in the transactions listed in the accompanying certification during the Class Period and was injured as a result of Defendants' false and misleading statements and omissions. Lead Plaintiff is a multi-employer plan that provides benefits to more than 150,000 participants associated with more than 4,600 employers. Lead Plaintiff's primary place of business is 103 Oronoco Street, Alexandria, Virginia 22314.

27. Bankrupt Non-Defendant **Performance Sports Group Ltd.** ("PSG") is a designer, developer and manufacturer of sports equipment and related apparel. PSG stock traded in an efficient market on the NYSE during the Class Period. Currently, in connection with PSG's bankruptcy, the Company's stock has been delisted from the NYSE and now trades on the OTC market. PSG headquarters are located at 100 Domain Drive, Exeter, New Hampshire 03833. PSG is liable under the Exchange Act, but is not named as a Defendant herein because on October 31, 2016, PSG petitioned for bankruptcy protection pursuant to Chapter 11 of the U.S. Bankruptcy Code which prohibits the commencement or continuation of an action against a debtor that was or could have been commenced before the commencement of the bankruptcy proceeding. *See* 11 U.S.C. § 362(a)(1). As stated above, Lead Plaintiff reserves the right to name PSG (or any of the other Debtors, as the circumstances may require) as a defendant in this or any other action in the future in the event the Automatic Stay is terminated, lifted, or modified.

28. During all relevant times, non-debtor defendant **Kevin Davis** ("Davis") served as President, CEO and a director of PSG. Davis was a signatory on each of the Company's publicly

filed documents during the Class Period and was directly responsible for overseeing the revenue recognition policies and progressive sales structure of PSG's business.

29. From the start of the Class Period through December 14, 2015, non-debtor defendant **Amir Rosenthal** ("Rosenthal") served as CFO and Executive Vice President ("EVP") of Finance and Administration of PSG. On May 28, 2015, Rosenthal was appointed to a newly created position of President, PSG Brands in which he became responsible for overseeing PSG's seven-brand portfolio, including Bauer, Mission, Maverik, Cascade, Inaria, Combat and Easton. Following his appointment as President, PSG Brands, Rosenthal retained the day-to-day responsibilities of CFO, including serving as a signatory on all of PSG's public filings, until December 14, 2015. Rosenthal, as CFO and EVP of Finance, was directly responsible for PSG's sales and revenue oversight and its credit procedures. On October 31, 2016, PSG announced Rosenthal's departure from the Company.

30. From December 14, 2015 through the present, non-party Mark Vendetti ("Vendetti") has served as CFO of PSG, taking over the duties from Defendant Rosenthal.

31. Defendants Davis and Rosenthal are collectively referred to as the "Defendants."

32. Because of the Defendants' positions with the Company, they had access to the adverse undisclosed information about the Company's business, operations, operational trends, financial statements, markets and present and future business prospects via access to internal corporate documents (including the Company's operating plans, budgets and forecasts and reports of actual operations compared thereto), conversations and connections with other corporate officers and employees, attendance at management and Board of Directors meetings and committees thereof and via reports and other information provided to them in connection therewith.

33. It is appropriate to treat the Defendants as a group for pleading purposes and to presume that the false, misleading and incomplete information conveyed in the Company's public filings, press releases and other public statements as alleged herein are the collective actions of the narrowly defined group of defendants defined above as the Defendants. Each of the Defendants, as officers of PSG, by virtue of their high-level positions with the Company, directly participated in the management of the Company, was directly involved in the day-to-day operations of the Company at the highest levels and was privy to confidential proprietary information concerning the Company and its business, operations, growth, financial statements and financial condition, as alleged herein. Davis and Rosenthal were both involved in drafting, producing, reviewing and/or disseminating the false and misleading statements and information alleged herein, were aware or recklessly disregarded that false and misleading statements were being issued regarding the Company and approved or ratified these statements, in violation of the federal securities laws.

34. As officers and controlling persons of a publicly held company whose common stock was and is registered with the SEC pursuant to the Exchange Act, and was traded on the NYSE during the Class Period and is governed by the provisions of the federal securities laws, Defendants Davis and Rosenthal each had a duty to disseminate prompt, accurate and truthful information with respect to the Company's financial condition and performance, growth, operations, financial statements, business, markets, management, earnings and present and future business prospects, and to correct any previously-issued statements that had become materially misleading or untrue, so that the market price of the Company's publicly-traded common stock would be based on truthful and accurate information. Defendants' misrepresentations and omissions during the Class Period violated these specific requirements and obligations.

35. Defendants participated in the drafting, preparation and/or approval of the various public, shareholder and investor reports and other communications complained of herein and were aware of, or recklessly disregarded, the misstatements contained therein and omissions therefrom, and were aware of their materially false and misleading nature. Because of their Board membership and/or executive and managerial positions with PSG, Davis and Rosenthal had access to the adverse undisclosed information about PSG's sales, financial condition and performance as particularized herein and knew (or recklessly disregarded) that these adverse facts rendered the positive representations made by or about PSG and its business issued or adopted by the Company materially false and misleading.

36. Defendants, because of their positions of control and authority as officers and/or directors of the Company, were able to and did control the content of the various SEC filings, press releases and other public statements pertaining to the Company during the Class Period. Davis and Rosenthal were each provided with copies of the documents alleged herein to be misleading, including the Company's quarterly and annual filings and the prepared remarks for each of the Company's quarterly earnings conference calls prior to or shortly after their issuance and had the ability or opportunity to prevent their issuance or cause them to be corrected. Accordingly, Defendants are responsible for the accuracy of the public reports and releases detailed herein and are therefore primarily liable for the representations contained therein.

37. Each of the Defendants is liable as a participant in a fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of PSG common stock by disseminating materially false and misleading statements and/or concealing material adverse facts. The scheme (i) deceived the investing public regarding PSG's business operations and financial health, namely the strength of its revenue figures and the accuracy of its yearly outlook;

(ii) enabled PSG to report purportedly “record” sales and demand growth before and during the Class Period; and (iii) caused Lead Plaintiff and other members of the Class to purchase PSG common stock at artificially inflated and/or maintained prices.

IV. SUBSTANTIVE ALLEGATIONS

38. The sources for Lead Plaintiff’s allegations regarding PSG’s and Defendants’ fraudulent conduct were derived from the investigation of counsel, which includes, among other things, an interview of W. Graeme Roustan (“Roustan”), the former Chairman of Bauer until 2008 and a current shareholder of PSG; review of statements made by Ronald Rugal, president of B&R Sports, a Bauer retailer, published in an article in the *New Hampshire Business Review*; and interviews of former PSG employees who worked at PSG during the Class Period and/or immediately before or after the Class Period and current and former customers of PSG with first-hand knowledge of PSG’s sales tactics, including the following:

- **CW1** was a sales representative and independent contractor at Bauer for 29 years until his contract was not renewed on February 1, 2016. CW1 reported to regional sales manager Matt Hayes (“Hayes”) who reported to Paul Healey (“Healey”), Bauer’s Vice President of Sales, North America. CW1 also reported to Bryan McDermott (“McDermott”), Bauer’s Business Director for North America.
- **CW2** is the store manager of a Bauer retail customer located in Summit, New Jersey. CW2’s store has purchased products from Bauer since the early 1990’s.
- **CW3** is the co-owner of a Bauer retail customer based in Salem, New Hampshire. CW3’s company has six additional locations in Massachusetts and New Hampshire.
- **CW4** is a franchise owner of an Easton Baseball/Softball retail customer based in Milwaukee, Wisconsin.

A. PSG's Growth and Progressive Sales Program

39. PSG is a leading developer and manufacturer of ice hockey, roller hockey, lacrosse, baseball and softball sports equipment, as well as related apparel and soccer apparel. According to its own website, the Company considers itself “the global leader in hockey with the strongest and most recognized brand” that “holds the No. 1 North American position in baseball and softball.” PSG markets its products under several brand names, including Bauer, Cascade and Easton. The Company’s brand names are distributed by sales representatives and independent distributors throughout the world to all types of retailers, from “big-box” retailers like Dicks Sporting Goods to “mom and pop” stores.

40. PSG brands also use business-to-business portals on their websites that allow retailers to submit orders directly without the use of a PSG-affiliated sales representative.

41. In general, PSG sales personnel, who worked as either employees or independent contractors, would make initial sales to retailers. Once a sales order was sent to headquarters, the Company’s credit department would review the terms of the sale and the credit-worthiness of the customer. PSG was driven by the bottom line and pushed its sales staff to increase its numbers without regard to market demand or customer sentiment.

42. According to CW1, during his time at PSG, including during the Class Period, the Company employed a progressive sales program designed by PSG executives that was intended to reward and encourage retail customers, regardless of their size. The program was designed and implemented by Healey, the head of PSG’s Bauer North American Sales group, together with Defendants and other executives. Sales representatives were not involved in the design of the program. The program was simple; the greater the volume of equipment purchased, the greater the discount.

43. As the Company described it, PSG offered “various cooperative marketing incentive programs to assist our sales channels with the marketing and selling of our products...” 2015 Form 10-K, dated June 14, 2015, at 51.

44. But under Davis and Rosenthal, PSG’s cooperative marketing incentive programs were anything but cooperative incentive programs. Rather, using strong-arm tactics and penalties, PSG threatened customers with the loss of their discounts if they did not increase the size of their orders each year or if they did not agree to accept merchandise shipment early.

45. As a result of its incentive programs and the acquisitions of market competitors, PSG experienced substantial success from 2010 through 2014, recording positive growth in all relevant areas.

(in USD Millions)	2010	2011	2012	2013	2014
Net Revenue	257.4	306.1	374.8	399.6	446.2
Adjusted EBITDA	30.7	43.5	51.5	62.3	69
Gross Profit	89.1	119.1	142.6	147.2	154.3
Source: PSG Annual Reports 2010-2014.					

46. On April 15, 2014, PSG completed its acquisition of Easton Baseball/Softball from BRG Sports for \$330 million. The acquisition, according to the Company, added the number one brand of baseball and softball equipment and apparel to the PSG portfolio.

47. Shortly thereafter, on June 19, 2014, PSG filed its Amended Registration Statement on Form F-10/A with the SEC. The following day, PSG filed its final Prospectus Supplement for its initial public offering with the SEC.

48. On June 20, 2014, the Company issued its initial public offering in the United States, offering more than 7 million shares of PSG stock at \$15.50 per share. Thereafter, PSG’s stock traded on the NYSE.

49. On January 8, 2015, just prior to the start of the Class Period, PSG announced that it was changing its heretofore successful business strategy to put itself into direct competition with its customers by opening Bauer “Own the Moment” retail locations in 6-8 “key hockey markets” over the next 18-24 months. PSG’s press release stated:

Bauer Hockey to Open First-Ever Retail Experiences

*‘Own The Moment’ Consumer Experiences to Debut in Boston and Minneapolis;
20,000-Plus Square Foot Premium Stores To Offer Unmatched Fit Expertise and
Product Education*

EXETER, NH - January 8, 2015 - Bauer Hockey, the world’s leading manufacturer of ice hockey equipment and a subsidiary of Performance Sports Group Ltd. (NYSE:PSG) (TSX:PSG), announced today that it will open its first-ever Bauer Hockey retail experiences beginning this summer. A transformative and historic initiative for Bauer Hockey, the premium “Own the Moment” retail experiences will elevate the BAUER brand, deliver an unmatched consumer educational experience and serve as the ultimate BAUER brand and product showcase.

“We’ve been elevating player performance at every level of the game since 1927, and today we’re excited to take this innovation to new heights by giving consumers an in-store BAUER experience that they’ve never seen before in the industry,” said Rich Wuerthele, executive vice president, hockey. “Similar to other premium brands that have entered retail, offering the full depth and breadth of our products in one place allows us to tell our unique stories in a way that only we can and helps strengthen the surrounding hockey retail environment. The Bauer Hockey ‘Own The Moment’ retail experiences will be living representations of our brand.”

Bauer Hockey will open its first “Own The Moment” retail experience in the Boston suburb of Burlington, Mass., in late summer and its second location in the Minneapolis area in the fall. Future phases are currently expected to include the opening of an additional 6-8 BAUER retail experiences over the next several years in key hockey markets across the U.S. and Canada. The company expects its retail operations to grow its overall business and be profitable in the next 18-24 months.

50. PSG customers immediately made their displeasure with this decision known to PSG’s senior management. CW3 met in person with Healey, the head of PSG’s Bauer North American Sales group, to express his disagreement with PSG’s decision to compete with its

customers while at the same time, pushing customers to increase their orders significantly every year.

51. Roustan, as further detailed below, also made his concerns known to PSG's Board of Directors at a meeting in June 2015 in which he pleaded with the Board of Directors, including Defendant Davis, to "reverse [its] Bauer retail store strategy" but was ultimately "unable to convince them that retail partners would likely react negatively to the abrupt change in business strategy and reduce their purchase of Bauer, Easton and Cascade products."

52. In PSG's and Defendants' quest to keep the Company's purportedly "record-setting" growth going, and notwithstanding that demand for PSG products with the Company's retailers would likely ultimately drop as a result of the business decision to compete with them, PSG nevertheless continued to push its sales representatives to pressure retail customers to order larger and larger quantities of PSG-branded merchandise and to do so earlier and earlier in advance or be penalized if they did not. As CW2 recalled, there was strong pressure to go along with PSG's and Defendants' tactics if you wanted to sell Bauer's merchandise.

53. CW2 remembers being told frequently by Bauer representatives to either increase the size of orders or risk losing the store's wholesale discount. This same "threat" was made to CW3, who, in a meeting with Healey in the summer of 2015, was told that if CW3's store did not increase its retail bookings or purchase orders by at least 15%, CW3's store would lose its existing discount. CW2 knew that even if increasing the store's order was not necessary, it was cheaper to comply than lose the discount on the existing order.

54. As CW1 put it, "we were 'asked' through sales programs to ask [retail customers] for increased volume from the previous year to maintain current or increased discounts. Dealers

complained about the increase due to larger dealer shelf space already given to Bauer and the fact the dealer's business wasn't growing.”

55. However, PSG and Defendants disregarded these complaints, and pushed ahead throughout the Class Period with the Company's highly aggressive and bullying sales tactics.

56. Further compounding the issues caused by PSG's increasingly coercive progressive sales program, CW1 recalls instances where he was asked to work with retailers to accept early deliveries. For instance, if a product was scheduled to ship to a retailer in September, PSG would ask the retailer to accept the product in early August.

57. CW3 also remembers regularly receiving calls during the Class Period from PSG headquarters asking whether CW3 would accept shipments of orders early. CW3 stated that orders were shipped early “to make [PSG's] numbers in a certain quarter.”

58. This was confirmed by Ronald Rugal, president of B&R Sports, a PSG customer based in Detroit with 12 locations in Michigan and greater Chicago, in an interview with *New Hampshire Business Review* regarding PSG's present troubles with what the publication described as “charges of fraud, delayed financial filings, internal and federal investigations in two countries, management turmoil – including Davis' resignation in March – and a stock price that is just one-tenth of what it was at its peak.” Bob Sanders, *Questions Abound Over Performance Sports Group*, NEW HAMPSHIRE BUSINESS REVIEW, Sept. 1, 2016, <http://www.nhbr.com/September-2-2016/Questions-abound-over-Performance-Sports-Group/>.

59. Like CW3, Rugal described PSG's practice during the Class Period of “try[ing] to jam orders down our throat, to take orders early, to overstock, oversupply, over-inventory us. They said it would all work out, and then things hit a wall.” Rugal, too, stated that this was done to meet quarterly numbers. *Id.*

60. Things were no different for PSG's baseball/softball brand, Easton. As CW4, an Easton retail customer during the Class Period, recalls, CW4 agreed to accept early shipment of a large order in return for free shipping.

61. At one point, in October or November 2015, CW4 attempted to contact CW4's Easton representative to downsize a large baseball equipment order that was placed for 2016. However, the Easton representative ignored CW4's request, and instead the full order was delivered more than two months early.

62. Before the Class Period in or around 2013, according to CW3, executive vice president Edward Kinnaly challenged the Company's executive leadership, including Healy, Davis and Rosenthal, about the Company's sales and booking practices at a meeting of PSG's Board of Directors. As CW3 recalls, Kinnaly warned those in attendance, including Davis, who was a director of PSG at the time, that pulling orders forward or "trade loading" in order to make their numbers would eventually catch up with PSG. Soon after that Board of Directors meeting, according to CW3, Kinnaly was fired from PSG as a consequence of speaking out.

63. But not only did PSG coerce its retailers to order larger quantities or else incur penalties if they did not increase bookings by, for instance, 10 or 15%, it also demanded that stores place their orders earlier and earlier, as CW2 recalls. In recent years, including during the Class Period, Bauer insisted that CW2 place the store's order a full year early which was extremely difficult and unrealistic because CW2 would not know what degree of demand the product would have that far in advance.

64. CW3 corroborated this sales tactic. CW3 had to place the store's order whenever Bauer told him to, even if it was a year early. If CW3's shelves were already fully stocked, it was

impossible to forecast what would be needed the next year, but PSG did not care, according to CW3 – it just needed the order.

65. When product was pushed to retailers prior to its scheduled shipping date, retailers did not have to pay or initiate any scheduled payment plan until the agreed-upon payment date, as both CW3 and CW4 recalled.

66. As CW3, an experienced veteran hockey-equipment retailer recounted, Healey and Defendant Davis both knew that the hockey equipment market was fully saturated during the Class Period.

67. Also, according to statistics published by USA Hockey, player membership grew by less than 2% during the Class Period,⁷ yet PSG insisted that their retailers increase orders by 10-15% or more every year.

68. However, none of these coercive and aggressive tactics, which Defendants and PSG knew of and condoned, were ever disclosed to the market, nor was the reasonably likely impact of these tactics on long-term revenue earnings per share ever disclosed. In reality, due to PSG's sales practices and the material volume of early shipments (the degree of which was confirmed by CW1, CW2, CW3, and CW4, and Roustan's surveys described below), Defendants knew that PSG's sales figures, on the back of these tactics, were unsustainable.

B. PSG Customers Tell PSG's Former Chairman About PSG's Practice of Moving Orders to Earlier Periods

69. Further corroborating the CWs' accounts, during the Class Period in mid-2015, Roustan, the Company's Chairman prior to Defendant Davis' appointment as CEO, hired Grant Thornton to conduct a survey of PSG's 10 largest customers in the U.S. and Canada, which

⁷ According to USA Hockey, player membership in 2014-2015 was 533,172. In 2015-2016, that figure grew by just 9,411, or 1.7%, to 542,583. In fact, between the 2012-2013 and 2013-2014 seasons, the number of hockey players had actually decreased by 899 players.

represented 50-55% of PSG's business (the "GT Survey"). The GT Survey was intended to be disclosed to PSG's board and its shareholders.

70. The GT Survey asked, among other questions, about PSG's accounting practices and whether anyone, in the past two years at PSG, had asked the customers to move an order into an earlier quarter. According to Roustan, a majority of the surveyed customers responded "yes."

71. Furthermore, after the Company tried to block or delay Grant Thornton from disclosing the results of that survey to Roustan himself, Roustan conducted his own survey of the same customers on the survey website SurveyMonkey.com (the "SurveyMonkey Survey").

72. The SurveyMonkey Survey polled the same customers and asked the same questions. Again, a majority of the surveyed customers responded that they had been asked by PSG to move an order into an earlier quarter.

C. PSG Touts Revenue Growth and Strong Sales Performance

73. Instead of disclosing this ongoing scheme at any time during the Class Period, PSG and Defendants continued to tout the Company's record growth based on "strong performance" and "organic sales growth."

74. In general, "organic growth," as used in the corporate and investment context, refers to a company's growth based on increased outputs, customer base expansion, or new product development, as opposed to mergers and acquisitions, which are generally referred to as inorganic growth. However, a company's organic growth does not, and should not, include growth that results from fraudulent or aggressive sales practices aimed at boosting a company's earnings. Such earnings are transitory and not sustainable. As a result, earnings from PSG's fraudulent sales practices should not have been considered part of, or a contributing factor of, the Company's core earnings and purportedly "organic" growth.

75. As explained in Hess and Kazanjian's "*A Search for Organic Growth*:"

The interest and focus on organic growth in a meaningful way is a recent phenomenon, which grew out of the financial scandals of the late 1990s and early years of the following decade. What the public learned from these scandals was that (1) there are different types of earnings; (2) companies can create earnings in different ways; (3) earnings can be created by accounting recognition, accounting policies, accounting adjustments, accounting elections, and valuations; (4) ***earnings can be created by financially engineered transactions, pension fund gains, related party transactions, currency gains, cookie jar reserves, classification of investment transactions, channel stuffing, etc.***; (5) ***earnings management is more widespread than many thought***; and (6) ***yes, earnings management can turn into earnings manipulation***.

* * *

Historically, the definition of organic growth has not been the focus of academic or financial analysts. Academic researchers looked at increase in revenues or increase in head-count as evidence of growth. Organic growth was defined as the opposite of acquisitive growth. Almost all academic research counted or evaluated every cent of earnings equally. Academic research into corporate growth has generally focused on absolute sales growth or relative employment growth. Some have looked at market share, assets, and profits.... ***I respectfully submit that all earnings are not equal if you are trying to evaluate the strength, sustainability, and predictability of a business's core operations and processes.***

Edward Hess and Robert Kazanjian, *A SEARCH FOR ORGANIC GROWTH*, Cambridge University Press, 103-04 (2006) (emphasis added.)

76. Hess and Kazanjian also described the creation of an Organic Growth Index as a method to measure a company's organic growth, stating:

First, we wanted to expand the definition of growth to include not only sales growth but also growth in cash flow from operations (CFFO) because we thought it was harder to manipulate CFFO than sales volume. Secondly, we wanted a way to normalize results across industries, which negated industry bias in growth numbers. ***Thirdly, we wanted to include an accounting "shenanigans" test to highlight potential income manipulations and, lastly, we wanted to add a merger and acquisition test to discriminate between serial acquirers who repeatedly or significantly purchased revenues from those companies who grew internally or organically.***

* * *

The Organic Growth Index is explained in Table 7.1, while on the basis of our model, Table 7.2 lists the best organic growers in the period 1997-2002 using EVA adjusted by size, sales, and cash flow growth as compared to industry averages and as normalized by industry standard deviations. ***On a relative basis,***

these companies did not produce material financial results from non-core earnings, accounting manipulations, aggressive revenue recognition, or serial acquisitions. These companies outperformed their industry competition primarily by growing their businesses organically.

Id., at 105-06 (emphasis added).

77. Thus, reasonable investors could not have known, and could not have reasonably expected, that PSG's "organic" growth included growth resulting from manipulative, aggressive, and unsustainable sales tactics.

78. In any event, on January 14, 2015, PSG published a news release entitled "Performance Sports Group Reports Record Fiscal Second Quarter 2015" in which PSG reported "record" revenues and increases in Adjusted Gross Profit and Net Income.

79. The following day, on January 15, 2015, during PSG's Q2 2015 earnings conference call, CEO Davis stated, "***We experienced another record quarter for PSG, and our Q2 results were driven by the continued strong performance of the EASTON baseball/softball business and another quarter of more than 10% organic sales growth; significant adjusted gross margin expansion due to the addition of EASTON's product in Q2;*** and record adjusted EPS, even in the face of significant and increasing currency headwinds." Q2 2015 PSG Earnings Call Transcript, at 3, Thomson Reuters StreetEvents (January 15, 2015) (emphasis added).

80. During the same call, CFO Rosenthal explained that "[r]evenues in the second quarter of FY15 increased 47% to \$172.3 million compared to the same year ago period, or 51% without the impact of changes in foreign currencies."

81. PSG's and Defendants' January 2015 public statements were false and misleading because they omitted and failed to disclose that PSG's "record" revenues were the result of PSG's aggressive sales tactics that forced inventory on its retailers in excess and in advance of

retailers' demand, which inflated PSG's earlier quarterly sales and revenue such that it would leave the Company with weaker sales in later quarters.

82. In particular, as discussed in paragraphs 38 to 72, PSG maintained a practice of (a) pulling orders from later quarters into earlier quarters, as confirmed by Roustan's surveys and Rugal's statements to the *New Hampshire Business Review*; (b) asking customers to accept product before the scheduled ship date, as recalled by CW1, CW3, CW4 and Rugal; (c) penalizing customers by withdrawing their existing discounts if they did not increase the size of their orders in a market that could not sustain such increases; and (d) terminating employees who objected to these aggressive sales tactics, as CW3 remembers.

83. PSG and Defendants knew or recklessly disregarded the true facts known at the time regarding PSG's alleged "record" revenues because, *inter alia*, (a) CW3 met with Healey, the Company's head of North American Sales for Bauer, who told CW3 that CW3's store had to increase its sales by 15% or risk losing its discounts; (b) CW1 attended yearly sales meetings which Rosenthal attended where sales practices were openly discussed; (c) Davis attended PSG's Board of Directors meetings, as CEO and a PSG director, in 2013 when, according to CW3, Kinnaly told PSG's Board of Directors that the Company's practice of pulling orders forward to make its numbers would catch up with the Company, and was fired shortly thereafter for voicing his views; (d) Roustan had told Defendant Davis and several of PSG's directors at a June 2015 meeting that demand among the Company's retail customers would fall as a result of its decision to open "Own the Moment" stores and compete directly with its customers; and (e) hockey and baseball/softball merchandise sales represented the majority of PSG's revenues and was thus the core of PSG's business.

84. After the market closed on April 13, 2015, the Company and Defendants issued a

press release entitled, “Performance Sports Group Reports Record Fiscal Third Quarter 2015 Results.” The press release detailed PSG’s financial position for the third quarter of its fiscal 2015 including record revenues and increases in Adjusted Gross Profit and Net Income.

85. The following day, on April 14, 2015, PSG filed its Report of Foreign Private Issuer on Form 6-K, attaching PSG’s “Management’s Discussion and Analysis of Financial Condition and Results of Operations for the three and nine month periods ended February 28, 2015” (“Q3 2015 6-K”). The Q3 2015 6-K repeated the financial results set forth in PSG’s Q3 2015 press release. The Q3 2015 6-K further stated:

Fiscal Q3 2015 Financial Results

Revenues in the fiscal third quarter of 2015 increased 121% to \$137.7 million compared to \$62.2 million in the same year-ago quarter. On a constant currency basis, revenues were up 127%. The increase was primarily due to the addition of revenues generated by EASTON and solid growth in ice hockey equipment, partially offset by an unfavorable impact from foreign exchange. Excluding the results of EASTON, as well as the impact from foreign exchange, revenues grew organically by 16%.

Q3 2015 6-K, at 3.

86. On that same day, during PSG’s Q3 2015 earnings conference call, CEO Davis again attributed PSG’s record success to its strong performance and organic sales that were in reality based on fraudulent and aggressive sales practices that do not properly constitute “organic growth,” explaining:

We reported another record quarter due to the continued strong performance of Easton, the fifth consecutive quarter of double-digit hockey growth, and an overall 16% organic sales growth net of currency changes.

Easton continued to experience solid demand for its products, and our hockey business, which grew 16% on a constant currency basis, benefited from the highly successful launch of our Vapor IX stick, underscoring our well-defined strategy to grow our stick business, the largest hockey category. In fact, our stick category grew 92% in constant currency during the quarter and is up 26% year-to-date. Our hockey business also benefited from strong team apparel growth.

So far in 2015, we experienced an earlier loading of new products, particularly the Mako and Mako Torq bats, for some of our large retailers, resulting in a shift in demand from the third and fourth fiscal quarters of 2015 into the second and third quarters. As a result, we believe Easton will generate its highest sales volume in FY15 during the second and third quarters versus the third and fourth quarters historically, with Q3 being the most significant.

Q3 2015 PSG Earnings Call Transcript, at 2, Fair Disclosure Wire (April 14, 2015) (emphasis added).

87. However, PSG's and Defendant Davis' April 2015 public statements were false and misleading because they failed to disclose that PSG's "record" revenues were the result of aggressive sales practices and manipulation designed to inflate PSG's stock price by portraying the Company's quarterly revenue and quarterly sales figures as sustainable and "organic" even though the Company knew, or recklessly disregarded, the truth that PSG would soon be faced with a lack of sales in later quarters as the Company ran out of transactions to pull forward.

88. In fact, PSG's and Defendant Davis' April 2015 statements attributed the Company's "shift in demand" to market forces beyond its control. In reality, this "shift in demand" was the result of an explicit effort by PSG, with the express consent and knowledge of Davis and Rosenthal, to coerce PSG customers into accepting its products earlier shifting revenue to earlier quarters and penalizing retail customers that did not increase their equipment orders without regard to market demand.

89. In particular, as discussed in paragraphs 38 to 72, PSG and Defendants maintained a practice of (a) pulling orders from later quarters into earlier quarters, as confirmed by Roustan's surveys and Rugal's statements to the *New Hampshire Business Review*; (b) asking customers to accept product before the scheduled ship date, as recalled by CW1, CW3, CW4, and Rugal; (c) penalizing customers by withdrawing their existing discounts if they did not

increase the size of their orders in a market that could not sustain such increases; and (d) terminating employees who objected to these aggressive sales tactics, as CW3 remembers.

90. PSG and the Defendants knew or recklessly disregarded the true facts known at the time regarding the Company's alleged "record" revenues because, *inter alia*, (a) CW3 met with Healey, the Company's head of North American Sales for Bauer, who told CW3 that CW3's store had to increase its sales by 15% or risk losing its discounts; (b) CW1 attended yearly sales meetings which Rosenthal attended where sales practices were openly discussed; (c) Davis attended PSG's Board of Directors meetings, as CEO and a PSG director, in 2013 when, according to CW3, Kinnaly told PSG's Board of Directors that the Company's practice of pulling orders forward to make its numbers would catch up with the Company, and was fired shortly thereafter for voicing his views; (d) Roustan had told Defendant Davis and several of PSG's directors at a June 2015 meeting that demand among the Company's retail customers would fall as a result of the Company's decision to open "Own the Moment" stores and compete directly with its customers; and (e) hockey and baseball/softball merchandise sales represented the majority of PSG's revenues and was thus the core of PSG's business.

91. Then, after the market closed on July 7, 2015, the Company issued a press release entitled, "Performance Sports Group Provides Preliminary Fiscal Fourth Quarter and Full Year 2015 Results." The press release detailed PSG's preliminary financial position for the fourth quarter of its fiscal 2015.

92. The following day, on July 8, 2015, the Company again held a conference call with analysts regarding its fourth quarter and full year 2015 financial results. During the conference call, Davis explained:

As stated in our release last night our anticipated fourth-quarter and full-year revenue results are record-setting and expected to contribute to another fantastic

year for PSG delivering record returns for shareholders.

The key components of this message is that we continue to outpace the growth of the markets in which we participate by growing market share and profitability and we continue to leverage our Performance Sports platform which is improving efficiency and driving constant dollar currency profit growth rates that exceed our revenue growth. While the rapid strengthening of the US dollar will continue to impact our reported results, especially in the first half of 2016, we remain very well-positioned to continue our momentum into 2016 and beyond.

Preliminary Q4 2015 PSG Earnings Call Transcript, at 3, Thomson Reuters StreetEvents (July 8, 2015) (emphasis added).

93. Again, PSG and Davis' public statements explicitly omitted any impact that the Company's sales practices had or would be reasonably likely to have on its quarterly and yearly sales figures and financial data. In fact, the "outpaced" growth of PSG was not the result of "growing market share" or "leverag[ing the Company's] Performance Sports platform" but was instead the result of a scheme to coerce its customers to purchase more and more product through the use of penalties and discounts and to accept the shipment of products earlier and earlier so that PSG could move revenue intended for later quarters into earlier quarters in order to claim "record revenues."

94. In particular, as discussed in paragraphs 38 to 72, PSG and Defendants maintained a practice of (a) pulling orders from later quarters into earlier quarters, as confirmed by Roustan's surveys and Rugal's statements to the *New Hampshire Business Review*; (b) asking customers to accept product before the scheduled ship date, as recalled by CW1, CW3, CW4, and Rugal; (c) penalizing customers by withdrawing their existing discounts if they did not increase the size of their orders in a market that could not sustain such increases; and (d) terminating employees who objected to these aggressive sales tactics, as CW3 remembers.

95. Defendants and the Company knew or recklessly disregarded the true facts known

at the time regarding PSG's alleged "record" revenues because, *inter alia*, (a) CW3 met with Healey, the Company's head of North American Sales for Bauer, who told CW3 that CW3's store had to increase its sales by 15% or risk losing its discounts; (b) CW1 attended yearly sales meetings which Rosenthal attended where sales practices were openly discussed; (c) Davis attended PSG's Board of Directors meetings, as CEO and a PSG director, in 2013 when, according to CW3, Kinnaly told PSG's Board of Directors that the Company's practice of pulling orders forward to make its numbers would catch up with the Company, and was fired shortly thereafter for voicing his views; (d) Roustan had told Defendant Davis and several of PSG's directors at a June 2015 meeting that demand among the Company's retail customers would fall as a result of its decision to open "Own the Moment" stores and compete directly with its customers; and (e) hockey and baseball/softball merchandise sales represented the majority of PSG's revenues and was thus the core of PSG's business.

96. Continuing this trend, after the market closed on August 26, 2015, the Company issued a press release announcing its fourth quarter and full year 2015 financial results, which it again described as "record setting" ("August 26 Press Release").

97. Explaining the "record setting" figures, the Management Commentary stated:

"Our fourth quarter and full year revenue results were record-setting and contributed to market share gains in all of the sports we serve," said Kevin Davis, CEO of Performance Sports Group. "In fact, currency neutral hockey revenues grew 13% for the year, improving our estimated global equipment market share from 54% to 56%. Our Maverik Lacrosse revenues grew 28% in fiscal 2015, improving our estimated total equipment market share from 26% to 28%. Our baseball business, led by EASTON, had a record-setting year driven by solid demand for the MAKO family of products."

"These results reinforce that the fundamental building blocks of our shareholder value are continuing to perform quite strongly. Our Company continues to outpace the growth of the markets in which we participate by growing market share and profitability. We also continue to leverage our performance sports platform, which is driving cost efficiencies and, on a

currency neutral basis, profit growth rates that exceed our revenue growth. We remain very well positioned to continue our momentum into fiscal 2016 and beyond.”

98. PSG and Defendant Davis’ statement in the August 26 Press Release were false and misleading because they omitted and failed to disclose that the Company’s “record-setting” financial results were the result of an aggressive sales program whereby PSG was (a) pulling orders from later quarters into earlier quarters, as confirmed by Roustan’s surveys and Rugal’s statements to the *New Hampshire Business Review*; (b) asking customers to accept product before the scheduled ship date, as recalled by CW1, CW3, CW4, and Rugal; (c) penalizing customers by withdrawing their existing discounts if they did not increase the size of their orders in a market that could not sustain such increases; and (d) terminating employees who objected to these aggressive sales tactics, as CW3 remembers.

99. Defendants and the Company knew or recklessly disregarded the true facts known at the time regarding PSG’s alleged “record” revenues because, *inter alia*, (a) CW3 met with Healey, the Company’s head of North American Sales for Bauer, who told CW3 that CW3’s store had to increase its sales by 15% or risk losing its discounts; (b) CW1 attended sales meetings which Rosenthal attended where sales practices were openly discussed; (c) Davis attended PSG’s Board of Directors meetings, as CEO and a PSG director, in 2013 when, according to CW3, Kinnaly told PSG’s Board of Directors that the Company’s practice of pulling orders forward to make its numbers would catch up with the Company, and was fired shortly thereafter for voicing his views; (d) Roustan had told Defendant Davis and several of PSG’s directors at a June 2015 meeting that demand among the Company’s retail customers would fall as a result of its decision to open “Own the Moment” stores and compete directly with its customers; and (e) hockey and baseball/softball merchandise sales represented the majority of

PSG's revenues and was thus the core of PSG's business.

100. In fact, Defendants and PSG knew, at the time that these statements were made, that the increasing sales figures were not the result of "growing market share" or "cost efficiencies" but instead the result of front-loaded revenues caused by PSG's scheme, with the Defendants' knowledge and consent, of coercing its customers to accept earlier shipments of merchandise so that PSG could include those sales in earlier quarters and penalizing retailers that did not order additional product from PSG brands without regard for market demand.

101. The August 26 Press Release also provided guidance for the 2016 fiscal year ending May 31, 2016:

The strengthening U.S. dollar continues to impact the reported results of companies with meaningful business outside the U.S. For our Company, the impact is experienced most particularly in our hockey business, which represents nearly all of our revenues generated outside of the U.S. At today's foreign exchange rates, we currently expect Adjusted Net Income in fiscal 2016 to fall in a range between \$0.70 to \$0.73 per share, primarily due to the impact of foreign exchange on our reported results in the first quarter. Absent the year-over-year impact of foreign exchange, we currently expect our Adjusted Net Income per share for fiscal 2016 to be roughly flat compared to the \$1.02 per share reported in fiscal 2015.

102. This statement from the August 26 Press Release reaffirming the Company's expectation that Adjusted Net Income would remain the same for fiscal year 2016 was further false and misleading because the Company knew and/or recklessly disregarded, at the time the statement was made, that its sales practices propping up earnings could not be maintained forever, but fraudulently failed to disclose this known trend to investors.

103. In particular, as discussed in paragraphs 38 to 72, during the Class Period, PSG and Defendants maintained a practice of (a) pulling orders from later quarters into earlier quarters, as confirmed by Roustan's surveys and Rugal's statements to the *New Hampshire Business Review*; (b) asking customers to accept product before the scheduled ship date, as

recalled by CW1, CW3, CW4, and Rugal; (c) penalizing customers by withdrawing their existing discounts if they did not increase the size of their orders in a market that could not sustain such increases; and (d) terminating employees who objected to these aggressive sales tactics, as CW3 remembers.

104. Defendants and PSG knew or recklessly disregarded the true facts known at the time regarding PSG's alleged "record" revenues because, *inter alia*, (a) CW3 met with Healey, the Company's head of North American Sales for Bauer, who told CW3 that CW3's store had to increase its sales by 15% or risk losing its discounts; (b) CW1 attended yearly sales meetings which Rosenthal attended where sales practices were openly discussed; (c) Davis attended PSG's Board of Directors meetings, as CEO and a PSG director, in 2013 when, according to CW3, Kinnaly told PSG's Board of Directors that the Company's practice of pulling orders forward to make its numbers would catch up with the Company, and was fired shortly thereafter for voicing his views; (d) Roustan had told Defendant Davis and several of PSG's directors at a June 2015 meeting that demand among the Company's retail customers would fall as a result of its decision to open "Own the Moment" stores and compete directly with its customers; and (e) hockey and baseball/softball merchandise sales represented the majority of PSG's revenues and was thus the core of PSG's business.

105. Defendants and PSG knew or recklessly disregarded that it was reasonably likely that once customers stopped ordering PSG merchandise, such that there were no more orders that could be moved into earlier quarters, the Company's "record-setting" figures would quickly decline. As a result, the Company withheld from the market the truth that its sales and income in fiscal 2016 would fall by much larger amounts due to more than merely the impact of foreign exchange issues.

106. The following day, on August 27, 2016, the Company filed its annual report on Form 10-K with the SEC for the fiscal year ending May 31, 2015 (the “2015 10-K”). The 2015 10-K reported PSG’s financial highlights as follows:

- *A 51% increase in revenues on a constant currency basis, generating \$675.2 million in revenue in Fiscal 2015, compared to \$446.2 million in Fiscal 2014;*
- *Currency neutral Adjusted Net Income increased by 64.6%, to \$61.4 million or \$1.32 per diluted share, compared to \$37.3 million, or \$1.00 per diluted share in Fiscal 2014;*
- *We continued to outpace the growth of the markets in which we participate by growing market share and profitability and we continue to leverage our performance sports platform, which is improving efficiency and driving constant currency profit growth that exceeds revenue growth;*
- We announced a supply chain initiative that we expect to improve pretax profitability of \$30 million by Fiscal 2020;
- We announced a cash flow improvement initiative that is targeting an improvement in net cash flow from working capital of \$30 million in Fiscal 2016;
- Our leading hockey market share strengthened, growing from 54% to 56%;
- On a constant currency basis, our total apparel sales grew approximately 36% for the year, driven by a 50% growth in team uniforms and a 50% growth in performance apparel;
- Easton Baseball/Softball continued its dominant share at the NCAA level as 17 EASTON teams competed in the NCAA College World Series;
- Maverik continued to gain momentum, signing High Point University and Penn State as college partners. Maverik sales also increased by approximately 28% for the year; and
- In January 2015, we announced our plans to open 810 Bauer Hockey Own The Moment Hockey Experience retail stores. The first location opened in Burlington, Massachusetts on August 15, 2015.

2015 10-K, at 50-51 (emphasis added).

107. The 2015 10-K also continued to tout the Company’s organic growth:

We have repeatedly used our world-class performance sports product platform to grow our business into new performance equipment and apparel categories and sports markets. Our successful acquisition and integration of seven businesses since 2008 has demonstrated our ability to identify targets and integrate acquired businesses. *We are continuing to explore a number of potential near-term opportunities to complement our organic growth.* When evaluating potential targets, we look for the ability to leverage our world-class performance sports platform, existing or potential market leaders, authentic brand equity and heritage and sports that demand high quality, innovative performance products. We are disciplined in our approach and have foregone many acquisition opportunities that

did not satisfy our criteria.

2015 10-K, at 20 (emphasis added).

108. The statements above in the 2015 10-K touting PSG's "organic" and "outpaced" growth were false and misleading because they failed to disclose that PSG and Defendants were attaining these financial results as a result of the Company's aggressive and coercive sales practices pushing customers to accept merchandise deliveries earlier than needed so that PSG could count those sales in earlier quarters and penalizing customers by taking away vital discounts unless they increased their bookings with PSG. These practices, which Defendants knew were not sustainable, created a known trend that should have been disclosed pursuant to Regulation S-K. The statements were also false and misleading because they failed to disclose that the 2015 financial results were not the consequence of "organic" growth or the "leveraging" of PSG's brands, but instead the result of poor financial controls and a fraudulent scheme as described herein.

109. In particular, as discussed in paragraphs 38 to 72, during the Class Period, PSG and Defendants maintained a practice of (a) pulling orders from later quarters into earlier quarters, as confirmed by Roustan's surveys and Rugal's statements to the *New Hampshire Business Review*; (b) asking customers to accept product before the scheduled ship date, as recalled by CW1, CW3, CW4, and Rugal; (c) penalizing customers by withdrawing their existing discounts if they did not increase the size of their orders in a market that could not sustain such increases; and (d) terminating employees who objected to these aggressive sales tactics, as CW3 remembers.

110. Defendants and the Company knew or recklessly disregarded the true facts known at the time regarding PSG's alleged "record" revenues because, *inter alia*, (a) CW3 met with

Healey, the Company's head of North American Sales for Bauer, who told CW3 that CW3's store had to increase its sales by 15% or risk losing its discounts; (b) CW1 attended yearly sales meetings which Rosenthal attended where sales practices were openly discussed; (c) Davis attended PSG's Board of Directors meetings, as CEO and a PSG director, in 2013 when, according to CW3, Kinnaly told PSG's Board of Directors that the Company's practice of pulling orders forward to make its numbers would catch up with the Company, and was fired shortly thereafter for voicing his views; (d) Roustan had told Defendant Davis and several of PSG's directors at a June 2015 meeting that demand among the Company's retail customers would fall as a result of its decision to open "Own the Moment" stores and compete directly with its customers; and (e) hockey and baseball/softball merchandise sales represented the majority of PSG's revenues and was thus the core of PSG's business.

111. The 2015 10-K was signed by Defendants Davis and Rosenthal. Attached to the 2015 10-K were SOX Certifications signed by Defendants Davis and Rosenthal attesting to the accuracy of financial reporting and effectiveness of the Company's internal controls.

112. Rosenthal's and Davis' certifications both stated, in relevant part, that:

I have reviewed this Annual Report on Form 10K of Performance Sports Group Ltd. (the "registrant");

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in

Exchange Act Rules 13a15(e) and 15d15(e)) ***and internal control over financial reporting*** (as defined in Exchange Act Rules 13a15(f) and 15d15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) ***Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;***

(c) ***Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and***

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting;

2015 10-K, at Exs. 31.1, 31.2 (emphasis added).

113. Defendant Davis' and Rosenthal's certifications were false and misleading because in reality, (a) the 2015 10-K failed to disclose that PSG's sales and revenue figures were based on manipulated sales that resulted from PSG's practice of coercing customers to accept merchandise shipments in earlier quarters and penalizing customers that did not continue to increase their orders each year by removing vital and necessary discounts and sales terms regardless of whether market demand could support such increases; and (b) PSG lacked proper internal controls to prevent the manipulation of its sales revenues from occurring.

114. In particular, as discussed in paragraphs 38 to 72, during the Class Period, PSG maintained a practice of (a) pulling orders from later quarters into earlier quarters, as confirmed by Roustan's surveys and Rugal's statements to the *New Hampshire Business Review*; (b) asking customers to accept product before the scheduled ship date in order to prop up quarterly sales figures, as recalled by CW1, CW3, CW4, and Rugal; (c) penalizing customers by withdrawing their existing discounts if they did not increase the size of their orders in a market that could not sustain such increases; and (d) terminating employees who objected to these aggressive sales tactics, as CW3 remembers.

115. Defendants and the Company knew or recklessly disregarded the true facts known at the time regarding PSG's alleged "record" revenues because, *inter alia*, (a) CW3 met with Healey, the Company's head of North American Sales for Bauer, who told CW3 that CW3's store had to increase its sales by 15% or risk losing its discounts; (b) CW1 attended yearly sales meetings which Rosenthal attended where sales practices were openly discussed; (c) Davis attended PSG's Board of Directors meetings, as CEO and a PSG director, in 2013 when, according to CW3, Kinnaly told PSG's Board of Directors that the Company's practice of pulling orders forward to make its numbers would catch up with the Company, and was fired shortly thereafter for voicing his views; (d) Roustan had told Defendant Davis and several of PSG's directors at a June 2015 meeting that demand among the Company's retail customers would fall as a result of its decision to open "Own the Moment" stores and compete directly with its customers; and (e) hockey and baseball/softball merchandise sales represented the majority of PSG's revenues and was thus the core of PSG's business.

116. On October 14, 2015, PSG filed its financial results on Form 10-Q for the first quarter of the 2016 fiscal year ending August 31, 2015 ("Q1 2016 10-Q").

117. Like the 2015 10-K, the Q1 2016 10-Q was accompanied by SOX Certifications signed by Defendants Davis and Rosenthal which represented that the information included therein was true and correct and that the Company's internal controls were effective, stating in part:

I have reviewed this quarterly report on Form 10-Q of Performance Sports Group Ltd. (the "registrant");

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a15(e) and 15d15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a15(f) and 15d15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting;

Q1 2016 10-Q, at Exs. 31.1 and 32.2 (emphasis added).

118. Defendant Davis' and Rosenthal's certifications were false and misleading because (a) the Q1 2016 10-Q failed to disclose that PSG's sales and revenue figures were based on manipulated sales that resulted from PSG's practice of coercing customers to accept merchandise shipments in earlier quarters and penalizing customers that did not continue to increase their orders each year by removing vital and necessary discounts and sales terms regardless of whether market demand could support such increases; and (b) PSG lacked proper internal controls to prevent the manipulation of its sales revenues from occurring.

119. In particular, as discussed in paragraphs 38 to 72, during the Class Period, PSG and Defendants maintained a practice of (a) pulling orders from later quarters into earlier quarters, as confirmed by Roustan's surveys; (b) asking customers to accept product before the scheduled ship date, as recalled by CW1, CW3, CW4 and Rugal; (c) penalizing customers by withdrawing their existing discounts if they did not increase the size of their orders in a market that could not sustain such increases; and (d) terminating employees who objected to these aggressive sales tactics, as CW3 remembers.

120. Defendants and PSG knew or recklessly disregarded the true facts known at the time regarding PSG's alleged "record" revenues because, *inter alia*, (a) CW3 met with Healey, the Company's head of North American Sales for Bauer, who told CW3 that CW3's store had to increase its sales by 15% or risk losing its discounts; (b) CW1 attended yearly sales meetings which Rosenthal attended where sales practices were openly discussed; (c) Davis attended PSG's

Board of Directors meetings, as CEO and a PSG director, in 2013 when, according to CW3, Kinnaly told PSG's Board of Directors that the Company's practice of pulling orders forward to make its numbers would catch up with the Company, and was fired shortly thereafter for voicing his views; (d) Roustan had told Defendant Davis and several of PSG's directors at a June 2015 meeting that demand among the Company's retail customers would fall as a result of its decision to open "Own the Moment" stores and compete directly with its customers; and (e) hockey and baseball/softball merchandise sales represented the majority of PSG's revenues and was thus the core of PSG's business.

121. On the same day, the Company held a conference call to discuss PSG's first quarter 2016 financial results. On the conference call, Defendant Davis stated in relevant part:

Despite the ongoing impact of currency on our year-over-year results and the timing of product launches that impact quarterly comparison, ***we continue to see solid growth across our brand***, including continued market share gains in the recently completed back-to-hockey season, which runs from April to September.

Q1 2016 PSG Earnings Call Transcript, at 2, Seeking Alpha (October 15, 2015) (emphasis added).

122. Then, during the same call, in response to an analyst's question regarding sales performance, Defendant Davis explained:

There has been a little of consolidation in the U.S. hockey retail market over the past several months with two of the top three retailers in the U.S. hockey market making acquisitions of two other retailers who are in the top seven. To say it in another [way] the top seven are now the top five. I think also, there has been some remix of where our lacrosse product is being sold between specialty and mass retailers with [indiscernible] starting to take a little bit more share in the lacrosse base, as they dedicate more and more space to selling that product. ***But otherwise, we don't see any sort of decline in demand from consumers for those products.***

Id. at 5 (emphasis added).

123. PSG' and Davis' representations that the Company was still seeing "solid growth" and that it was not affected by "decline in demand from consumers" but instead was the victim

of “a little [] consolidation” in the hockey market were false and misleading because the Company was losing demand and was no longer growing at the same rate, but Defendants concealed those facts by (a) pulling orders from later quarters into earlier quarters, as confirmed by Roustan’s surveys; (b) asking customers to accept product before the scheduled ship date, as recalled by CW1, CW3, CW4 and Rugal; (c) penalizing customers by withdrawing their existing discounts if they did not increase the size of their orders in a market that could not sustain such increases; and (d) terminating employees who objected to these aggressive sales tactics, as CW3 remembers.

124. Defendants and PSG knew or recklessly disregarded the true facts known at the time regarding PSG’s alleged “record” revenues because, *inter alia*, (a) CW3 met with Healey, the Company’s head of North American Sales for Bauer, who told CW3 that CW3’s store had to increase its sales by 15% or risk losing its discounts; (b) CW1 attended yearly sales meetings which Rosenthal attended where sales practices were openly discussed; (c) Davis attended PSG’s Board of Directors meetings, as CEO and a PSG director, in 2013 when, according to CW3, Kinnaly told PSG’s Board of Directors that the Company’s practice of pulling orders forward to make its numbers would catch up with the Company, and was fired shortly thereafter for voicing his views; (d) Roustan had told Defendant Davis and several of PSG’s directors at a June 2015 meeting that demand among the Company’s retail customers would fall as a result of its decision to open “Own the Moment” stores and compete directly with its customers; and (e) hockey and baseball/softball merchandise sales represented the majority of PSG’s revenues and was thus the core of PSG’s business.

D. PSG Violated Item 303 of Regulation S-K

125. Item 303 of Regulation S-K, 17 C.F.R. 229.303, requires public companies, in

their Form 10-K filings, to:

Describe any known trends or uncertainties that have had or that the registrant reasonably expects will have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations. ***If the registrant knows of events that will cause a material change in the relationship between costs and revenues (such as known future increases in costs of labor or materials or price increases or inventory adjustments)***, the change in the relationship shall be disclosed.

Emphasis added.

126. PSG, and its senior executives, Davis and Rosenthal, knew PSG's success was due, at least in part, to PSG's practice of pressuring customers to accept orders before they were needed and place orders earlier and earlier; and penalizing customers that did not increase their PSG bookings by removing existing discounts regardless of whether market demand could support such increases, thereby frontloading and propping up the Company's sales and revenue reported in its financial statements.

127. PSG and the Defendants knew that the Company's sales practices were not sustainable and that they were reasonably likely to catch up with PSG, especially in light of the fact that its former Chairman (Roustan), an Executive Vice President (Kinnaly), and customers (including CW3) told PSG so in face-to-face meetings resulting in a significant drop in sales and revenue as PSG adjusted its financial outlook to accurately reflect true market demand.

128. These trends and circumstances were known to PSG and Defendants at the time when PSG filed its Form 10-K during the Class Period which failed to disclose these known trends.

129. As a result, Defendants caused PSG to violate Item 303 of Regulation S-K by failing to disclose this known trend and uncertainty to the marketplace.

E. PSG's Blind Aggression Catches Up with the Company

130. It was only a matter of time, however, before PSG's aggressive sales tactics would catch up to it and force the Company to disclose the truth about its sales practices. In fact, by the start of the 2016 calendar year, the risks concealed by PSG's and Defendants' fraudulent scheme were beginning to materialize.

131. After the market closed on January 13, 2016, the Company issued a press release announcing its financial results for the quarter ended November 30, 2015 and giving an overview of the different segments of PSG's business. The press release also lowered the previously issued guidance for the fiscal year ending May 31, 2016. The press release stated in part:

Performance Sports Group Reports Fiscal Second Quarter 2016 Results

* * *

Given the continued weakening of the Canadian dollar since our last stated guidance, we are revising our fiscal 2016 guidance and now expect Adjusted Net Income to range between \$0.66 and \$0.69 per share. Additionally, we expect Adjusted EPS to range between \$0.09 and \$0.10 in our fiscal 2016 third quarter and between \$0.31 and \$0.33 in our fourth quarter. These expectations assume current foreign exchange rates hold in the remainder of our year. In fiscal 2016, we continue to expect that, on a currency-neutral basis, our businesses will outpace the growth of the markets we serve, resulting in revenue gains and increased profitability. Looking to fiscal 2017, at current rates, we expect our results during the first half of the year to be impacted by year-over-year declines in exchange rates, partially offset by the execution of our cost saving initiatives.

* * *

Baseball/Softball EBITDA in the second quarter decreased 31% (including and excluding the impact of foreign currency) to \$7.9 million, which was largely driven by a bad debt write-off related to outstanding receivables for an internet baseball retailer that filed for bankruptcy reorganization, as well as the aforementioned product launch timing differences, EASTON product mix, and other SG&A investments in marketing and IT which were partially offset by a reduction in performance-based incentives.

132. The following day, on January 14, 2016, the Company filed its financial results on Form 10-Q for the second quarter of 2016, ending November 30, 2015 ("Q2 2016 10-Q"). The Company's Q2 2016 10-Q disclosed, for the first time, declines in revenue, declines in gross

profit and declines in adjusted EBITDA.

- Revenues totaled \$153.0 million, declining 11.2% (down 5.5% in constant currency)
- Adjusted Gross Profit was \$50.6 million, declining 18.6% (down 2.1% in constant currency)
- Adjusted Gross Profit margin was 33.1%, down 300 basis points (up 130 basis points in constant currency)
- Gross profit was \$45.7 million, declining 18.3% (down 0.5% in constant currency), and gross profit margin was 29.9%, down 260 basis points (up 160 basis points in constant currency)
- Adjusted EBITDA was \$15.3 million, down 36.3% (down 2.1% in constant currency)
- Adjusted Net Income totaled \$5.9 million or \$0.13 per share, compared to \$11.3 million or \$0.24 per share (Adjusted Net Income of \$11.8 million or \$0.25 per share in constant currency)
- Net loss totaled \$4.5 million or (\$0.10) per share, compared to net income of \$1.0 million or \$0.02 per share (net loss of \$0.5 million or (\$0.01) per share in constant currency)

Q2 2016 10-Q, at 16.

133. The Q2 2016 10-Q was accompanied by SOX Certifications signed by Defendant Davis and CFO Vendetti, who was appointed as CFO one month earlier on December 14, 2015.

134. That same day, PSG held a conference call with industry analysts to discuss its Q2 2016 results. Defendant Davis, speaking first, explained:

In the second quarter, our brands continued to take market share, and demonstrated strong resilience in some very challenging markets. During the quarter, Bauer continued to hold the number one market share, and its brand affinity remains very strong. Our Own the Moment hockey retail initiative, now with two open stores -- one in Massachusetts and the other in Minnesota -- are hitting or exceeding our financial and strategic expectations.

We recently conducted a thorough independent consumer study, which informed us that in these local markets, we are increasing brand awareness, engaging consumers, improving overall Bauer market share, and because of the great shopping experience for hockey gear, we are increasing consumers' likelihood of visiting local hockey retailers after shopping at Own the Moment.

Baseball sales growth was driven by Easton's non-bat categories, which were up 28%, while lacrosse sales, driven by strong growth in the Maverik line of heads and protective gear, were up 9%, leading up to its peak selling season.

We continue to execute on the initiatives put in place to improve our operations, which helps offset the impacts from the weakening Canadian dollar. In fact, our plan to improve working capital by \$30 million in FY16 is well on track, as year to date we have already reduced inventory by \$13 million. We've also experienced strong results from our supply chain initiatives, and we are increasing our expectations for the benefits from that initiative in FY17 to range from between \$8 million and \$12 million, compared to the \$5 million to \$7 million previously disclosed.

January 14, 2016 Earnings Call Transcript, at 2.

135. Following that, CFO Vendetti, omitting any reference to the Company's manipulation of its sales revenue by coercing customers to take merchandise shipments in earlier quarters than needed or by instituting penalties on customers that did not increase their bookings with PSG, sought to blame the Company's worsening figures on industry consolidation and a weakening currency:

Jumping right into our results for the fiscal second quarter, revenues decreased 11% to \$153 million, compared to the same year-ago quarter. On a constant-currency basis, however, revenues were down 6% to \$162.9 million. ***The 11% reported decline was primarily due to unfavorable impact from foreign exchange, variations in product launch cycles in our hockey segment, as well as retailer consolidation in the US and continued challenging market conditions for our hockey business in Russia and eastern Europe.*** Offsetting these revenue declines was a 4% sales growth from Easton and a 9% increase in lacrosse sales.

On a regional basis, revenues in North America were down 9%, while the rest of the world was down 23%. ***Again, this was due to the aforementioned factors in hockey.*** Despite these results, we remain encouraged about the long-term prospects of our business globally.

Now, moving on to our performance by segment. Hockey revenues decreased 19%, or 11% on a constant-currency basis to \$91.9 million, compared to the year-ago quarter, driven by the unfavorable impact from foreign exchange, variations in hockey equipment product launch cycles, the decline in performance apparel retail related to the prior year's launch of a complete line of 37.5 apparel, as well as consolidation among the largest retailers in the US, and lower sales to our Russian and European distributors.

To be specific, as it relates to the US consolidation, four of our top seven retailers have consolidated over the past several months. Baseball/softball

revenues in the second quarter increased 4% to \$50.9 million, compared to the year-ago quarter. As Kevin mentioned, this was due to a 28% sales growth in non-bat categories, partially offset by the launch of only one bat family for Easton, compared to a two-family launch last year. The growth in non-bat revenues is significant, as we have designated the expansion of the Easton brand outside of bats as a key strategic initiative.

Id. at 4 (emphasis added).

136. However, while PSG was announcing at the beginning of calendar year 2016 that Bauer's sales in late 2015 were down 19%, its rival Reebok-CCM Hockey reported an **18% increase** in sales for the same time period. In fact, it was not until much later than PSG that Reebok-CCM Hockey started to report any sort of negative results.

137. Thus, even though PSG was experiencing worsening sales figures on all fronts, PSG and the Defendants continued to conceal the true reason for PSG's lackluster financial results by offering reasons for the poor financial performance that were purportedly out of their control.

138. As a result of the Company's Q2 2016 disclosures, PSG's stock price experienced a 4-day fall from its opening price on January 14, 2016 of \$7.71 per share to a closing price on January 19, 2016 of \$5.92 per share on heightened average trading volume of 1.29 million shares per day. By comparison, on January 13, 2016, PSG's trading volume was approximately 420,000 shares.

139. Then, on March 8, 2016, before the market opened, the Company issued a press release revising guidance for the fiscal year ending May 31, 2016. The press release, entitled "Performance Sports Group Revises Fiscal 2016 Outlook and Reports Preliminary Fiscal Third Quarter Results," stated in relevant part:

EXETER, NH - March 8, 2016 - Performance Sports Group Ltd. (NYSE: PSG) (TSX: PSG) ("Performance Sports Group" or the "Company"), a leading developer and manufacturer of high performance sports equipment and apparel, has revised

its outlook for its 2016 fiscal year and reported preliminary results for its fiscal third quarter ended February 29, 2016. All figures are in U.S. dollars. Certain metrics, including those expressed on an adjusted and/or constant currency basis, are non-GAAP financial measures (see “Non-GAAP Financial Measures” below). All figures exclude the accounting gain the Company expects to record in the third quarter of fiscal 2016 associated with its acquisition of Easton Hockey in January 2016. The Company has reduced its fiscal year 2016 Adjusted EPS guidance by approximately \$0.55 per diluted share to approximately \$0.12 to \$0.14 per diluted share as compared to its prior publication of guidance (\$0.66 to \$0.69 per diluted share), primarily as a result of the following three factors: (i) a write down of the receivable balance from a U.S. national sporting goods retailer that has filed under chapter 11 and the related anticipated loss of sales from this retailer (\$0.09 per share); (ii) an anticipated reduction in sales, particularly due to weakness in the baseball/softball market (\$0.31 per share); and (iii) additional bad debt reserves primarily for certain U.S. hockey customers and the related anticipated loss of sales from such customers (\$0.19 per share). (Emphasis added).

140. About an hour after the press release, the Company held a conference call to discuss the revised fiscal year 2016 guidance and the preliminary third quarter 2016 results.

Defendant Davis stated in relevant part:

The second half of fiscal 2016 has been impacted by adverse market conditions and related customer credit issues. The baseball/softball market is experiencing an unexpected significant downturn in retail sales, including in our important bat category. This weakening of consumer demand, coupled with the chapter 11 filing by one of our largest US national sporting goods retailers, is reducing our sales for baseball and softball products. Additionally, the consolidation of hockey retail in the US has reduced our customers’ demand for products more than we previously anticipated as they continue to reduce their inventory levels.

In light of these events and challenges, including the bankruptcy of an Internet baseball retailer in the second quarter, we decided to increase our bad debt reserves for certain of our US hockey and baseball/softball customers. (Emphasis added).

141. Defendant Davis tried to blame PSG’s declining financial results on “weakening of consumer demand,” but in reality it was PSG’s own manipulation of sales that pushed revenue into earlier quarters and bullying of retailers to increase bookings without regard for the ability of market demand to support those increases that were the true causes of the decline. On the same conference call, CFO Vendetti, speaking on behalf of PSG, stated in relevant part:

We have reduced our fiscal year 2016 adjusted EPS guidance by approximately \$0.55 per diluted share to approximately \$0.12 to \$0.14 per diluted share as compared to prior publication of guidance of \$0.66 to \$0.69 per diluted share. On a constant currency basis, 2016 adjusted EPS is expected to range between approximately \$0.64 and \$0.66 per diluted share.

* * *

The weakness that we're seeing in baseball is coming not only from Sports Authority, as you point out. As we said a minute ago, the bankruptcy situation that they are going through caused us to not only write-down their receivable but also take their future sales out of our forecast. There's other weakness in sell-through in the market with other of our customers. There is also, as I noted in the comments that I made during the prepared remarks, there's little bit of a general CSA effect, which is discouraging and impacting orders from other customers, given that there is the possibility of a significant amount of inventory in the marketplace that would be on discounted terms, so it's all of those factors combined. And as I indicated, also there is a possibility that the wetter and colder weather that we've seen in many parts of the country had an impact as well. It's very hard to quantify that. (Emphasis added).

142. Defendant Rosenthal also tried to explain:

As Kevin mentioned in his remarks, we've seen an unexpected significant downturn in retail sell-through in the baseball/softball category, particularly in bat [sic]. Easton's market share in bat is larger than any other category, but the slowdown in sell-through for bat [sic] was a disproportionate impact on Easton's versus other competitors in the baseball/softball market.

There were some indications that customer demand was softer than expected coming out of the holiday season, but we did not expect this reduced demand to fall further as it did later in the third quarter. It was only toward the end of the third quarter that it became apparent the extent to which demand had fallen and how, in connection with the bankruptcy of a large US national sporting goods retailer that is filed under Chapter 11, this would reduce sales in the second half of fiscal 2016.

At this time, we do not believe that this weakening is related to the upcoming BBCOR standard change for youth bat. It is possible that the unusually cold and wet winter in certain parts of the United States has played a role in the market dynamics that we're experiencing. It is also worth noting that a meaningful amount of our baseball products were sold to retailers on an at-once basis. These customers tend to have more sophisticated point-of-sale analytics than our [] hockey customers, who were typically smaller. And that means we receive information about retailers purchasing decision much closer to their actual shipment and without as much advanced notice as we have in our hockey business.

We believe that the recent bankruptcy filing of a large US national sporting goods

retailer may also be affecting other baseball retailers, who have either cancelled orders or are hesitant to place orders in anticipation (technical difficulty). As we mentioned in our second quarter call, four of our Top 7 retailers in hockey have consolidated in the US over the past several months. This consolidation process reduced our customers' demand for products more than we previously anticipated, as they continue to reduce their inventory levels.

As Kevin mentioned, in light of the challenges we are facing and recent bankruptcy filings of an online baseball retailer in the second fiscal quarter and a large US national sporting goods retailer in the third fiscal quarter, we have increased our potential bad debt reserve for a limited number of our US customers, primarily in hockey, but also in baseball/softball.

* * *

So, to be clear, we have not seen any bankruptcies among our retailers, which has caused us to take the bad debt reserves that we have. It's not a bankruptcy that is [sic] caused it, but other developments with their earnings history and outstanding balances. The focus of that bad debt reserve is on a variety of customers in our US hockey market. So, we don't have much more that we can add to the points that we've said so far. But other than what we've previously talked about in the US market, four of our Top 7 retailers have emerged. And when that happens, it's not unusual to see a period of time where there is redundant inventory from those business combinations. And we experienced the similar situation in the Canadian hockey market several years ago, when three of our Top 5 customers combined over a two-year period. So we'll expect the consolidation in the US market to have a similar effect for us and we have every intention of working closely with those customers that are both impacted by the consolidation that's happening in the US and those who are outside of that group as they navigate through the current situation. (Emphasis added).

143. In sum, PSG's and Defendants' March 8, 2016 statements made clear that the risks concealed by PSG's and Defendants' fraudulent scheme of manipulating the Company's sales revenue were materializing. PSG and Defendants had known about this trend, which was reasonably likely to materially affect the Company's future financial results, before the start of the 2016 calendar year. Even with this knowledge, or their reckless disregard for the truth, PSG and Defendants promoted and condoned the Company's sales practices anyway. Further, instead of accurately disclosing that the Company had been coercing its customers to accept its products early to shift revenue to earlier quarters and bullying PSG's retailer customers to increase their

orders under threat of the loss of their discounts, PSG attributed its “purportedly” new-found decline to bankruptcies and market demand.

144. Similarly, PSG and Defendants continued to try to hide the true cause of the Company’s downturn by blaming it on “redundant inventory.” Again, in reality, they and caused the Company’s own demise by oversupplying its retail customers with product and delivering that product earlier than the product was needed.

145. On this news, shares of PSG fell \$5.75 per share or over 66% to close at \$2.91 per share on March 8, 2016, on trading volume of 18.6 million shares, thereby damaging investors. By comparison, the trading volume of PSG shares on March 7, 2016 was approximately 142,000 shares.

146. By this time, analysts were starting to pick up on the problems that PSG was truly facing. On March 14, 2016, analyst Jay Sole at Morgan Stanley downgraded PSG to “Equal Weight” from its previous rating of “Overweight,” stating that “the profit warning indicates visibility is much poorer than previously thought.” “Performance Sports Group downgraded to Equal Weight at Morgan Stanley,” *Theflyonthewall.com*, March 14, 2016.

147. On that same day, the *New York Post* published an article under the headline, “Bauer’s Parent Company Questioned About Misdating Earnings” in which the nationally circulated newspaper disclosed that PSG had been questioned about manipulating revenue. The article disclosed:

Customers told former PSG Chair Graeme Roustan that the company had asked them to misdate earnings, a source with direct knowledge of the situation said.

Roustan, PSG chair from 2008 to 2012, has been fighting his former company, trying to get back on the board.

Last year Roustan commissioned SurveyMonkey — an online survey platform —

to ask PSG customers if they were told to move future orders into an earlier quarter. Roustan presented his findings to the PSG board, sources said.

* * *

Roustan had first hired Grant Thornton to take a survey of PSG's customers. PSG persuaded Grant Thornton not to release those findings, including a question about misdating earnings, to Roustan. Now Roustan is suing Grant Thornton, court documents show. Roustan declined comment. (Emphasis added).

148. On this news, shares of PSG fell \$0.41 per share or over 10.35% to close at \$3.55 per share on March 15, 2016, on an average 2-day trading volume of approximately 2.29 million shares, damaging investors.

F. PSG Hides Behind Irrelevant Customer Bankruptcies

149. During the Class Period, two of PSG's retail customers filed for bankruptcy protection. On December 16, 2015, Team Express, an online sporting goods retailer, filed for protection under Chapter 11 of the U.S. Bankruptcy Code. Then, on March 2, 2016, Sports Authority, a national sporting goods retail chain, filed for protection under Chapter 11 of the U.S. Bankruptcy Code.

150. Although PSG and Defendants sought to hide the losses from its fraudulent scheme under the smoke screen of these bankruptcies, these were not the true cause of PSG's declining business. In fact, none of PSG's competitors even mentioned these bankruptcies as a cause or potential cause of business decline until months after PSG started using these bankruptcies as an excuse for its now faltering business.

G. PSG's Competitors Had No Issues with Market Demand or Retailer Bankruptcies in Late 2015

151. According to PSG's 2015 Annual Report, PSG's primary competitors in the baseball and softball space are Amer Sports (owners of the Wilson and Louisville Slugger baseball brands), Newell Brands (owner of Rawlings) and Mizuno. Nike is not listed in PSG's Annual Report as a primary competitor, but only as competitive in some "specific categories

such as batting gloves.” PSG 2015 Annual Report, at 9.

152. Contrary to PSG’s and Defendants’ claims of market conditions as the cause of the Company’s poor performance in late calendar year 2015, the CEO of Amer Sports stated on February 3, 2016 at Amer’s own Q4 2015 earnings conference call that its “pipeline is strong and momentum is good behind Louisville Slugger. As for our baseball overall, [] its fine. And we expect the year to be good.”

153. In its Q1 2016 earnings presentation, Amer also reported that its footwear revenue was up 16%, its apparel revenue was up 19%, its sports instruments revenue (including baseball bats) was up 14% and overall net sales were up 11%. In summary, Amer told the market that they were observing “broad-based growth in team sports further supported by Louisville Slugger.”

154. Similarly, Michael Polk, Newell Brand’s CEO, in that company’s own Q1 2016 earnings release, stated, “We are extremely pleased with our growth and financial results this quarter.”

155. In the hockey space, PSG competes with Reebok-CCM Hockey, which is owned by Adidas AG. In Adidas’ FY 2015 Annual Report, dated March 3, 2016, Adidas also explained that it was experiencing “high single-digit increases at Reebok-CCM Hockey and double-digit sales increases in other centrally managed businesses.” This was reported at the same time that PSG was reporting its own decreases as alleged herein.

H. Post Class Period Developments

156. On March 15, 2016, a day after the Class Period, PSG and Defendant Davis announced at a Bank of America Merrill Lynch Conference that PSG would suspend its “Own the Moment” store retail strategy until after fiscal year 2017.

157. In a press release of his own the following day, Roustan stated:

Toronto, Ontario, Canada – March 16, 2016 – W. Graeme Roustan, Chairman and CEO of Roustan Capital and Trustee of the Walter Graeme Roustan Trust today announced its pleasure with hearing the CEO of Performance Sports Group at the Bank of America Merrill Lynch Conference yesterday state that there will be no capital expenditures next (fiscal) year 2017 for Bauer retail store openings.

Mr. Roustan states; “Finally, Performance Sports Group has decided to not open any retail stores through FY 2017 after almost a year of warnings that these retail stores carry all kinds of risk.” Yesterday, Mr. Roustan learned for the first time from CEO, Kevin Davis’s statements that each store cost \$4 million to open but he offered up no clarity on how much each existing store lost based on their statement on January 8th, 2015 that they expect retail operations would be unprofitable for the first 18 - 24 months.

Mr. Roustan also stated; “In my June 5th, 2015 meeting with Chairman Bernie McDonell, Director Bob Nicholson, Director Karyn Barsa and the CEO and Director Kevin Davis, *I pleaded with them to abandon and reverse their Bauer retail store strategy. Without the Grant Thornton Survey Report that I contracted specifically for my June 5th meeting that Performance Sports Group lawyers and Chairman requested Grant Thornton withhold from me, I was unable to convince them that retail partners would likely react negatively to the abrupt change in business strategy and reduce their purchases of Bauer, Easton, Cascade products.*” Since the June 5th, 2015 meeting where Mr. Roustan did not have the Grant Thornton Survey Report to present, the stock has declined approximately \$20 CDN or 80% per share.

Roustan Capital Press Release, March 16, 2016 (emphasis added).

158. Then, just days later, and on the heels of the *New York Post*’s disclosure of the Company’s aggressive and manipulative sales practices, on March 22, 2016, following the markets’ close, the Company announced that Defendant Davis had abruptly resigned and was leaving the Company immediately. Defendant Rosenthal was appointed by the Company’s Board of Directors as interim CEO.

159. On June 8, 2016, PSG announced the appointment of Harlan Kent (“Kent”) as CEO. Once appointed, Kent attempted to fix the damage that Defendants’ conduct had caused, realizing losses that should have been realized earlier, restructuring divisions, and laying off

employees. However, Kent's attempts were to no avail as the Company has since been forced, as described herein, to file for bankruptcy protection in the United States and Canada.

160. On August 15, 2016, Lead Plaintiff filed its Amended Class Action Complaint for Violations of the Federal Securities Laws (the "First Amended Complaint") alleging that Defendants had fraudulently misstated and concealed during the Class Period the known trend of a material revenue reduction that had become inevitable as a result of Defendants' manipulative sales practices described in the First Amended Complaint.

161. That same day, PSG was expected and required to file its financial results for the fourth quarter and full year 2016 with the SEC on Form 10-K. However, rather than filing its Form 10-K, the Company filed a press release with the SEC on Form 8-K in which it announced "that its Annual Report on Form 10-K, including its annual audited financial statements for the fiscal year ended May 31, 2016 and the related management's discussion and analysis (collectively, the "Form 10-K"), will not be filed by the required filing date of August 15, 2016." The Company disclosed, in vague fashion, that the delay was the result of an internal investigation being conducted by PSG's Audit Committee into the Company's financial results. Specifically, the Company stated, "The delay is a result of the decision of Performance Sports Group's Audit Committee to conduct an internal investigation in connection with the finalization of the Company's financial statements and the related certification process." PSG explained that the failure to file its Form 10-K would result in a default under the Company's credit facilities which would force PSG into bankruptcy if an agreement could not be reached between PSG and its creditors. On August 30, 2016, the Company announced such an agreement with its creditors that gave the Company until October 28, 2016 to file its Form 10-K.

162. Two days later, on August 17, 2016, the Company again filed a Form 8-K with

the SEC, this time disclosing that, in addition to being the subject of the above-captioned class action lawsuit, the Company was also the subject of investigations by both Canadian securities regulators and the SEC. Although no further information was provided by the Company, the disclosure of the Company's internal investigation and investigations by the SEC and Canadian regulators all came within days of the filing of Lead Plaintiff's First Amended Complaint.

163. On October 28, 2016, however, the Company again failed to file any financial reports with the SEC. Instead, news outlets, including Reuters, announced that PSG was "preparing to file for protection from its creditors as early as Monday under chapter 11 in the United States and a similar court process in Canada."

164. On October 31, 2016, before the markets opened, PSG announced, on a Form 8-K filed with the SEC, that it had filed voluntary petitions in the United States Bankruptcy Court for the District of Delaware for relief under Chapter 11 of the United States Bankruptcy Code and had sought creditor protection in the Ontario Superior Court of Justice (Commercial List) under the Companies' Creditors Arrangement Act (the "CCAA").

165. In the same Form 8-K filing, PSG announced that it had entered into an asset purchase agreement for the sale of the Company with a group of investors led by Sagard Capital Partners, L.P. and Fairfax Financial Holdings Limited.

166. At the same time, PSG also announced the departure of Defendant Rosenthal from the Company.

V. THE FACTS GIVE RISE TO A STRONG INFERENCE THAT PSG AND THE DEFENDANTS ACTED WITH SCIENTER

167. As set forth above, Defendants and PSG knew or recklessly disregarded the truth about the Company's sales practices. Meetings involving the sales representatives, like CW1, were held twice per year. Defendant Rosenthal, as CFO and EVP of Finance, attended those

meetings. CW3 recounted that Kinnaly told PSG's Board of Directors, including Defendant Davis about the Company's aggressive and coercive sales practices as early as 2013 and warned them that those practices would catch up with the Company. Furthermore, according to Roustan's March 2016 press release, Roustan met with Defendant Davis and the Chairman of the PSG's Board during the Class Period and told them that demand was going to drop as a result of the Company's decision to proceed with the Bauer "Own the Moment" retail stores.

168. In addition to the foregoing facts, all of which support a strong inference of scienter on the part of Defendants and PSG, Defendants Davis and Rosenthal also had the motive and opportunity to foster PSG's aggressive and unsustainable sales practices and revenue manipulation. The opening of Bauer's "Own the Moment" retail stores in January 2015, which customers of PSG were resoundingly unsupportive of, put PSG directly into competition with its own customers, causing overall sales and revenue to decline.

169. Roustan made clear to PSG's Board of Directors, including Defendant Davis, that customer demand would decline as a result of this retail strategy.

170. PSG and Defendants pushed ahead with their retail stores during the Class Period anyway, and concealed the truth as the risks of their strategy materialized.

171. They were thus motivated to conceal the true lackluster performance of PSG's core business, *i.e.*, its hockey and baseball/softball sales and revenue figures, by persuading customers to move purchases to earlier quarters and bullying and coercing retailers to order more product that was needed in exchange for keeping their existing discounts. These sales practices were effective because they made the Company's retail strategy, which was otherwise unprofitable, appear to be profitable in the short term.

172. As CEO during the time PSG acquired Easton Baseball/Softball and Easton

Hockey, and at the time the “Own the Moment” store strategy (a strategy that was widely disliked by the Company’s customers) was created and announced to the market, Defendant Davis needed PSG to continue the success it had been experiencing before the Class Period and thus was further motivated to conceal the truth regarding PSG’s sales and demand.

173. As CFO and President of PSG Brands during the same period, Defendant Rosenthal also needed PSG to continue the success it had experienced before the Class Period and thus was motivated to conceal the truth regarding PSG’s “record-setting” financial results.

174. PSG and Defendants each acted with scienter in that, as set forth herein, each knew or recklessly disregarded that PSG’s public statements about the Company’s revenues, sales and profitability issued during the Class Period were materially false and misleading. These Defendants were the senior management of the Company, and thus at all times were the individuals with principal responsibility for ensuring that the Company’s statements were accurate and truthful, and spoke on the Company’s behalf.

A. Defendant Davis’ Abrupt Departure Just Days After the Truth Was Revealed Supports an Inference of Scienter

175. The suspension of PSG’s “Own the Moment” retail strategy and Defendant Davis’ departure from PSG all within one week of the materialization of the risks concealed by Defendants’ fraudulent scheme are highly indicative of scienter.

VI. LOSS CAUSATION

176. During the Class Period, as detailed herein, PSG and Defendants engaged in a scheme to deceive the market and a course of conduct that artificially inflated and/or maintained the price of PSG’s common stock and operated as a fraud or deceit on Class Period purchasers of PSG common stock by failing to disclose and misrepresenting the true reasons for the growth of the Company’s sales as detailed herein. As the risks of PSG’s and Defendants’ fraudulent

scheme materialized and the falsity of their prior misrepresentations and fraudulent conduct became apparent to the market, the artificial inflation embedded in the price of PSG stock dissipated and the price of PSG common stock declined significantly.

177. As a result of their purchases of PSG common stock during the Class Period, Lead Plaintiff and the other Class members suffered economic loss, *i.e.*, damages, under the federal securities laws. PSG's and Defendants' false and misleading statements and omissions had their intended effect and caused PSG common stock to trade at artificially-inflated and/or maintained levels throughout the Class Period, reaching as high as \$21.65 per share on May 18, 2015.

178. By concealing from investors the adverse facts detailed herein, PSG and Defendants presented a misleading picture of PSG's business, products and operations. As the truth about the Company materialized and began to be revealed to the market, the price of PSG common stock began to fall significantly. These declines removed the artificial inflation from the price of PSG common stock, causing real economic loss to investors who had purchased PSG common stock during the Class Period.

179. The declines in the price of PSG common stock after the truth came to light were a direct result of the nature and extent of Defendants' fraudulent misrepresentations and omissions being revealed to investors and the market. The timing and magnitude of the price decline in PSG common stock indicate that the losses suffered by Lead Plaintiff and Class members was not exclusively caused by changed market conditions, overall stock market and/or industry-specific factors, or Company-specific information unrelated to PSG's and Defendants' fraudulent conduct.

180. The economic loss, *i.e.*, damages, suffered by Lead Plaintiff and the other Class

members was a direct result of PSG's and Defendants' fraudulent scheme to artificially inflate and/or maintain the price of PSG common stock and the subsequent significant decline in the value of PSG common stock when the inherent risks of PSG's and Defendants' fraudulent scheme materialized toward the end of the Class Period.

VII. APPLICABILITY OF PRESUMPTION OF RELIANCE: FRAUD ON THE MARKET DOCTRINE

181. At all relevant times, the market for PSG's common stock was an efficient market for the following reasons, among others:

- i. PSG common stock met the requirements for listing and was listed and actively traded on the NYSE during the Class Period, a highly efficient and automated market;
- ii. As a regulated issuer during the Class Period, PSG filed periodic public reports with the SEC and the NYSE;
- iii. PSG regularly communicated with public investors via established market communications mechanisms, including through regular dissemination of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and
- iv. PSG was followed by several securities analysts employed by major brokerage firms who wrote the reports that were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

182. As a result of the foregoing, the market for PSG common stock promptly digested current information regarding PSG from all publicly available sources, including nationally circulated newspapers, and reflected such information in PSG's stock price. Under these circumstances, all purchasers of PSG common stock during the Class Period suffered similar

injury through their purchase of PSG common stock at artificially inflated and/or maintained prices and a presumption of reliance applies to Lead Plaintiff's allegations.

VIII. APPLICABILITY OF PRESUMPTION OF RELIANCE – *AFFILIATED UTE* DOCTRINE

183. Lead Plaintiff and the Class are also entitled to a presumption of reliance under *Affiliated Ute v. United States*, 406 U.S. 128 (1972), because the claims asserted herein against Defendants⁸ are primarily predicated upon the omission of material facts that PSG and Defendants had a duty to disclose, namely that PSG's financial results during the Class Period were the result of an undisclosed practice of coercing customers to pull sales into earlier quarters in order to inflate the Company's performance.

IX. NO SAFE HARBOR

184. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this complaint. Many of the specific statements pleaded herein were not identified as "forward-looking statements" when made. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein, Defendants are liable for those false forward-looking statements because at the time each of those purportedly forward-looking statements was made, the particular speaker knew that the particular forward-looking statement was false, and/or the forward-looking statement was

⁸ Again, because PSG has filed for bankruptcy protection and is covered by the Bankruptcy Code's Automatic Stay provision, the claims asserted herein are not asserted against PSG at this time.

authorized and/or approved by an executive officer of PSG who knew that those statements were false when made.

X. CLASS ACTION ALLEGATIONS

185. Lead Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(3) on behalf of a class consisting of all persons and entities that purchased or acquired PSG common stock on the New York Stock Exchange (“NYSE”) during the Class Period, seeking to pursue remedies under the Exchange Act. Excluded from the Class are Defendants; the officers and directors of the Company, at all relevant times; members of their immediate families and their legal representatives, heirs, successors, or assigns; and any entity in which any of the Defendants have or had a controlling interest.

186. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, PSG common stock was actively traded on the NYSE. While the exact number of Class members is unknown to Lead Plaintiff at this time and can only be ascertained through appropriate discovery, Lead Plaintiff believes that there are hundreds or thousands of members in the proposed Class. Millions of PSG shares were traded publicly during the Class Period on the NYSE. Record owners and other members of the Class may be identified from records maintained by PSG or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

187. Lead Plaintiff’s claims are typical of the claims of Class members, who were all similarly affected by Defendants’ wrongful conduct in violation of federal securities laws that is complained of herein. Further, Lead Plaintiff will fairly and adequately protect the interests of Class members and has retained counsel competent and experienced in class and securities litigation.

188. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- a) whether the federal securities laws were violated by PSG and Defendants' conduct alleged herein;
- b) whether statements made by PSG and Defendants to the investing public during the Class Period omitted or misrepresented material facts about the business, operations, known trends and prospects of PSG; and
- c) to what extent Class members have sustained damages and the proper measure of damages.

189. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Further, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation makes it impossible for Class members to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

XI. CAUSES OF ACTION

COUNT I

(Against Defendants for Violation of Section 10(b) of the Exchange Act and Rule 10b-5 of the Securities and Exchange Commission)

190. Lead Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

191. This Count is asserted against both Defendants and is based upon Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder.

192. During the Class Period, Defendants, singularly and in concert, directly made

various deceptive and untrue statements of material facts and omitted to state material facts in order to make the statements made, in light of the circumstances under which they were made, not misleading to Lead Plaintiff and the other members of the Class, including statements in SEC filings and other public statements that falsely touted the financial strength of the Company and strength and growth of the Company's sales and revenue streams. The purpose and effect of said scheme, plan, and unlawful course of conduct was, among other things, to induce Lead Plaintiff and the other members of the Class to purchase PSG common stock during the Class Period at artificially inflated and/or maintained prices.

193. During the Class Period, PSG and Defendants knowingly and/or recklessly issued, caused to be issued, or participated in the issuance of, the preparation and issuance of deceptive and materially false and misleading statements to the investing public as particularized above.

194. As a result of the dissemination of the false and misleading statements set forth above, the price of PSG common stock was artificially inflated and/or maintained during the Class Period. In ignorance of the false and misleading nature of the statements described above and the deceptive and manipulative devices and contrivances employed by PSG and Defendants, Lead Plaintiff and the other members of the Class relied, to their detriment, on the integrity of the price of the common stock of PSG. Had Lead Plaintiff and the other members of the Class known the truth, they would not have purchased said shares or would not have purchased them at the inflated prices that were paid.

195. Lead Plaintiff and the other members of the Class have suffered substantial damages as a result of the wrongs herein alleged in an amount to be proved at trial.

196. By reason of the foregoing, Defendants directly violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder in that they made untrue statements of

material facts or omitted to state material facts in order to make the statements made, in light of the circumstances under which they were made, not misleading during the Class Period.

COUNT II

(Against Defendants for Violation of Section 20(a) of the Exchange Act)

197. Lead Plaintiff repeats and realleges each and every allegation contained in each of the foregoing paragraphs as if set forth fully herein.

198. Defendants Davis and Rosenthal, by virtue of their positions and specific acts described above, were, at the time of the wrongs alleged herein, controlling persons of the Company within the meaning of Section 20(a) of the Exchange Act.

199. Defendants had the power and influence and exercised the same to cause the Company to engage in the illegal conduct and practices complained of herein.

200. By reason of the conduct alleged in Count I of this Complaint which also applies to the Company and for which the Company would be liable had it been named as a Defendant herein, Defendants are liable for the aforesaid wrongful conduct as control persons of the Company, and are liable to Lead Plaintiff and to the other members of the Class for the substantial damages which they suffered in connection with their purchases of PSG common stock during the Class Period.

WHEREFORE, Lead Plaintiff prays for relief and judgment, as follows:

(a) determining that this action is a proper class action and certifying Lead Plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure;

(b) awarding compensatory damages in favor of Lead Plaintiff and the other Class members against both Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

(c) awarding Lead Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

(d) such other and further relief as the Court may deem just and proper.

JURY DEMAND

Lead Plaintiff demands a trial by jury.

Dated: November 3, 2016

Respectfully submitted,

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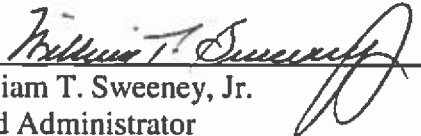
*Additional Attorneys for the Plumbers &
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CERTIFICATION

William T. Sweeney, Jr., Fund Administrator for the Plumbers & Pipefitters National Pension Fund ("Plumbers National Pension Fund"), declares, as to the claims asserted under the federal securities laws, that:

1. I am authorized to make this certification on behalf of Plumbers National Pension Fund.
2. I have reviewed a complaint filed in this matter and wish to serve as a lead plaintiff.
3. Plumbers National Pension Fund did not purchase the securities that are the subject of this action at the direction of its counsel or to participate in this action.
4. Plumbers National Pension Fund is willing to serve as a lead plaintiff and class representative on behalf of the Class, including providing testimony at deposition and trial if necessary.
5. Plumbers National Pension Fund's transactions in the securities of Performance Sports Group Ltd. that are the subject of this action are set forth in Schedule A, attached hereto.
6. During the three years prior to the date of this Certification, Plumbers National Pension Fund sought to serve as a representative party for a class under the federal securities laws in the following cases:
 - *Wallace v. IntraLinks Holdings, Inc.*, Civ. No. 11-8861-TPG (S.D.N.Y.);
 - *In re Questcor Sec. Litig.*, Civ. No. 12-1623-DMG (C.D. Cal);
 - *In re ITT Educ. Services, Inc. Sec. Litig.*, Civ. No. 13-cv-1620-JPO (S.D.N.Y.);
 - *Firefighters Pension & Relief Fund of the City of New Orleans v. Bulmahn, et al.*, Civ. No. 13-cv-03935 (E.D. La.);
 - *Singh v. Orthofix International et al.*, Civ. No. 13-cv-05696-JGK (S.D.N.Y.);
 - *Isolde v. Trinity Industries, Inc. et al.*, Civ. No. 15-cv-02093 (N.D. Tex.);
 - *Luna v. Marvell Technology Group, Ltd. et al.*, Civ. No. 15-cv-07214 (S.D.N.Y.);
 - *In re: Barclays Liquidity Cross and High Frequency Trading Litigation*, No. 14-md-2589 (JMF) (S.D.N.Y.);
 - *West Palm Beach Police Pension Fund v. DFC Global Corp., et al.*, Civ. No. 13-cv-06731 (E.D. Pa.)
7. Plumbers National Pension Fund will not accept any payment for serving as a class representative on behalf of the class beyond its *pro rata* share of any recovery, except such reasonable costs and expenses (including lost wages) relating to the representation of the class as ordered or approved by the court.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 17th day of May 2016.



William T. Sweeney, Jr.
Fund Administrator
Plumbers & Pipefitters National Pension Fund

SCHEDULE A

Trade Date	Transaction Type	# Shares	Share Price (\$)
8/28/2015	PURCHASES	8,700	12.94
8/28/2015	PURCHASES	5,000	12.88
8/31/2015	PURCHASES	6,800	12.93
9/1/2015	PURCHASES	4,900	12.52
9/2/2015	PURCHASES	1,400	12.15
9/2/2015	PURCHASES	1,000	12.15
9/3/2015	PURCHASES	2,095	12.95
9/8/2015	PURCHASES	7,473	13.81
9/25/2015	PURCHASES	11,300	13.97
9/29/2015	PURCHASES	1,800	13.89
10/1/2015	PURCHASES	2,900	12.58
11/3/2015	PURCHASES	6,450	11.87
11/4/2015	PURCHASES	10,049	11.87
11/10/2015	PURCHASES	7,825	11.1
11/30/2015	PURCHASES	8,700	11.62
12/7/2015	PURCHASES	4,300	11.46
12/8/2015	PURCHASES	7,700	11.18
12/9/2015	PURCHASES	4,740	10.96
1/20/2016	PURCHASES	1,650	5.83
3/8/2016	SALES	13,700	3.93
3/8/2016	SALES	49,700	3.18
3/9/2016	SALES	22,800	3.3
3/10/2016	SALES	18,582	3.8

CERTIFICATE OF SERVICE

I, Steven J. Toll, counsel for Lead Plaintiff, hereby certify that on November 3, 2016, I filed the foregoing Second Amended Class Action Complaint for Violations of the Federal Securities Laws on the United States District Court for the Southern District of New York's Electronic Case Filing System which caused a copy of this document to be served on counsel of record for all Parties.

/s/ Steven J. Toll

Steven J. Toll

EXHIBIT B
PLUMBERS & PIPEFITTERS NATIONAL PENSION FUND
PSG COMMON STOCK TRANSACTIONS

Trade Date	Transaction Type	# Shares	Share Price (\$)
8/28/2015	PURCHASES	8,700	12.94
8/28/2015	PURCHASES	5,000	12.88
8/31/2015	PURCHASES	6,800	12.93
9/1/2015	PURCHASES	4,900	12.52
9/2/2015	PURCHASES	1,400	12.15
9/2/2015	PURCHASES	1,000	12.15
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9/25/2015	PURCHASES	11,300	13.97
9/29/2015	PURCHASES	1,800	13.89
10/1/2015	PURCHASES	2,900	12.58
11/3/2015	PURCHASES	6,450	11.87
11/4/2015	PURCHASES	10,049	11.87
11/10/2015	PURCHASES	7,825	11.1
11/30/2015	PURCHASES	8,700	11.62
12/7/2015	PURCHASES	4,300	11.46
12/8/2015	PURCHASES	7,700	11.18
12/9/2015	PURCHASES	4,740	10.96
1/20/2016	PURCHASES	1,650	5.83
3/8/2016	SALES	13,700	3.93
3/8/2016	SALES	49,700	3.18
3/9/2016	SALES	22,800	3.3
3/10/2016	SALES	18,582	3.8

02/06/2017

Created: 02/06/2017

By: Prime Clerk (epoc@primeclerk.com)

Status: Signed

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EXHIBIT “C”

EXHIBIT "C"

referred to in the Affidavit of

KEISHA LACKPATIAH-SEALY

Sworn September 20, 2017

A handwritten signature in black ink, appearing to be 'Z. N.', written above a horizontal line.

Commissioner for Taking Affidavits

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUAN FRANCISCO GONZALEZ NIEVES AS
TRUSTEE OF THE GONZALEZ CORONADO
TRUST, Individually and on behalf of all others
similarly situated,

Plaintiff,

-against-

PERFORMANCE SPORTS GROUP LTD., KEVIN
DAVIS, and AMIR ROSENTHAL,

Defendants.

Case No. 1:16-cv-03591-GHW

**CONSOLIDATED MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS'
JOINT MOTION TO DISMISS THE AMENDED COMPLAINT**

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Defendants Performance Sports Group Ltd. (“PSG” or the “Company”), Amir Rosenthal, and Kevin Davis respectfully submit this memorandum in support of their motion, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, to dismiss the Amended Complaint for failure to state a claim upon which relief can be granted.

PRELIMINARY STATEMENT

This securities fraud case is premised on conduct that courts have consistently held to be neither wrongful nor fraudulent. Persuading customers to place large orders, book early, and accept delivery of merchandise ahead of schedule are hallmarks of a thriving enterprise and do not, standing alone, suggest that anything improper—much less fraudulent—is afoot. Yet these sales practices form the centerpiece of the Amended Complaint. Endeavoring to transform innocuous conduct into grounds for a fraud claim, Plaintiff Plumbers & Pipefitters National Pension Fund (the “Fund”) invokes the sinister-sounding term “channel stuffing” to describe PSG’s sales practices. But that sleight of hand does not obscure the widespread recognition that the practices described as “channel stuffing” can be either legitimate or illegitimate. And for it to be illegitimate, the Fund must plead with specificity that the alleged scheme entailed bogus sales, an unusually high volume of returns, or some other set of facts that would support an inference of deception. There are no such allegations here.

Instead, the Fund attempts to meet its burden by alleging that PSG aggressively pursued sales knowing that the market could not absorb the volume of goods sold and that it was only a matter of time before the lack of demand would result in a decline in revenue. As factual support for this claim, the Fund points to the alleged observations of “confidential witnesses” who are not in a position to know (i) the extent of the practice, (ii) the relative financial impact of

the practice, or (iii) whether anyone at PSG knew or was reckless in not knowing that the practice was both material and unsustainable.

To describe the Fund's allegations is to demonstrate why they cannot support a securities fraud claim. There is nothing inherently false or misleading about aggressive sales campaigns that yield, as the Fund concedes, only bona fide sales. For that practice to form the basis of a securities fraud claim, the Fund would have to plead with particularity that the volume of relevant sales was material to a company the size of PSG and that Defendants executed the strategy to intentionally deceive investors. The Fund's allegations on these two essential elements are woefully inadequate.

Nothing in the Amended Complaint suggests that the narrow experience of one former sales representative and three small retailers—*i.e.*, the numbered but unnamed confidential witnesses—would shed any light on the materiality of the so-called channel stuffing practices that they directly witnessed, relative to the gross sales of a publicly traded company the size of PSG. These witnesses are even less competent to opine on the knowledge of any of the Defendants, with whom they fail to allege any contact, about the deceptive nature of this practice. Nor do the allegations of PSG's former chairman cure that deficiency. Having left PSG in 2012, the former chairman has no basis to opine either on the materiality of any channel stuffing during the putative class period or on the knowledge of any of the Defendants about this sales practice. The former chairman's primary contribution to the Amended Complaint is his belief that PSG made a poor business decision when it chose to open two retail stores, but that belief, even if correct, is not actionable. And that allegedly bad business decision provides an independent explanation for the drop in sales. It does nothing to advance the Fund's cause as it relates to alleged channel stuffing.

Lacking any cogent allegations of deception, materiality, or scienter, the Amended Complaint fails to state a securities fraud claim and should be dismissed in its entirety.

STATEMENT OF FACTS

A. The Parties

The Fund held stock in PSG from August 28, 2015 to March 10, 2016. (Am. Compl. ¶ 20, Schedule A.)

Defendant PSG is a leading manufacturer of sports equipment and related apparel under different brand names, including Bauer Hockey (“Bauer”) and Easton Baseball/Softball (“Easton”). (*Id.* ¶¶ 2–3.) It is a public company with its headquarters located in New Hampshire. (*Id.* ¶ 21.) PSG stock is traded on the New York Stock Exchange. (*Id.* ¶ 4.) Defendant Kevin Davis served as the Company’s CEO throughout the putative class period and separated from PSG on March 22, 2016. (*Id.* ¶¶ 22, 147.) Defendant Amir Rosenthal held the roles of CFO and President of PSG Brands during the putative class period. (*Id.* ¶ 23.)

B. The Amended Complaint

The Amended Complaint proceeds in two counts. Count One alleges that all Defendants committed securities fraud in violation of Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated thereunder. (*Id.* ¶¶ 166–73.) Count Two alleges control person liability against Defendants Davis and Rosenthal (the “Individual Defendants”), pursuant to Section 20(a) of the Exchange Act, for the same fraudulent scheme alleged in Count One. (*Id.* ¶¶ 174–77.) The Fund presses these claims on its own behalf and on behalf of a putative class of shareholders who acquired PSG stock between January 15, 2015 and March 14, 2016. (*Id.* ¶ 1.)

According to the Amended Complaint, PSG misled the investing public by failing to disclose that its revenue growth was fueled by “aggressive” sales practices that would lead to

the Company's "inevitable demise." (*Id.* ¶¶ 1, 5–13.) Those sales practices allegedly included the use of "strong-arm tactics and penalties," such as the loss of price discounts, to coerce customers to purchase product in quantities that exceeded their present need. (*Id.* ¶¶ 5–13, 39.) To support these allegations of what it pejoratively terms "channel stuffing," the Fund relies on one named and four unnamed witnesses who claim to have personal knowledge of the scheme and its impact on PSG's earnings:

- Graeme Rouston served as chairman of PSG's Board of Directors until 2012, when he resigned. (*Id.* ¶¶ 33, 135.) Since his departure, he has been an outspoken critic of the Company, objecting vociferously to its "Own the Moment" ("OTM") initiative to open and operate retail stores. (*Id.* ¶¶ 44, 46). The Fund alleges that in June 2015, Rouston told PSG's Board of Directors, which included Defendant Davis, that the OTM initiative would have a negative impact on customer demand. (*Id.* ¶¶ 46, 150.) The Amended Complaint also contends that Rouston confirmed that PSG engaged in channel stuffing by surveying certain customers who responded that they were asked by PSG to accelerate orders on at least one occasion. (*Id.* ¶¶ 12, 61–64.) Finally, since his departure, Rouston has also "been fighting" with PSG to "try[] to get back on the [Company's] board," but these attempts have been unsuccessful. (*Id.* ¶ 135.)
- CW1¹ served as an independent sales representative of Bauer for 29 years, until his contract was not renewed in February 2016. (*Id.* ¶ 33.) According to CW1, PSG provided incentives for customers to increase their volume of purchases year-over-year, and he recalls instances where PSG asked customers to accept early deliveries of their orders. (*Id.* ¶¶ 37, 49, 51.) He does not allege that either of these practices was uncommon in the industry.
- CW2, a store manager of a retail customer, alleges that Bauer pressed CW2 to increase orders by conditioning certain discounts on increased volume and insisted that orders be placed a year in advance, but does not allege that placing orders well in advance is uncommon in this industry. (*Id.* ¶¶ 33, 47–48, 56.)
- CW3, a co-owner of a retail store that purchases product from Bauer, alleges that in 2013, Edward Kinnaly, a former PSG officer, "warned those in attendance" at a PSG board meeting that "pulling orders forward . . . in order to make their numbers would eventually catch up with PSG" and was fired as a "consequence of speaking out." (*Id.* ¶¶ 33, 55.) CW3 also allegedly expressed to Bauer his discontent with the Company's OTM initiative. (*Id.* ¶ 45.) According to CW3, Bauer (i) warned him that he would lose certain discounts if he did not increase

¹ "CW" refers to one of the four confidential witnesses identified by number in the Amended Complaint.

his purchases, even though the market was saturated with product, and (ii) asked him to accept shipments early, so that PSG could meet its quarterly sales targets. (*Id.* ¶¶ 48, 52, 58–59.)

- CW4, a franchise owner of a retailer that does business with Easton, alleges that on one occasion, he/she accepted early shipment of an order after the Easton salesperson offered CW4 free shipping in exchange for doing so. (*Id.* ¶¶ 33, 53.) CW4 also alleges that Easton ignored his/her request to reduce another order and delivered it more than two months early, while keeping the original payment terms unchanged. (*Id.* ¶¶ 54, 58.)

The Fund contends that these aggressive sales tactics collapsed under their own weight in the first quarter of 2016, when PSG “ran out of customer orders to pull forward.” (*Id.* ¶ 13.) On January 13, 2016, PSG reported that quarterly revenues, gross profit, and earnings had declined year-over-year, and it projected that its financial results would continue to underperform for the rest of the fiscal year. (*Id.* ¶¶ 118–19.) Two months later, PSG publicly announced that its forecasted results for the fiscal year would be even weaker than previously announced. (*Id.* ¶ 127.) Explaining the causes of the decline in revenue, PSG pointed to a number of unfavorable business developments, including (i) the weakening of the Canadian dollar relative to the U.S. dollar; (ii) the December 2015 bankruptcy filing of Team Express, a large Easton customer; (iii) consolidation among significant Bauer customers; (iv) the March 2016 bankruptcy filing of The Sports Authority, one of Easton’s largest customers; (v) general weakness in the baseball market; and (vi) financial difficulties at a significant Bauer customer which later filed for bankruptcy, creating significant losses for PSG. (*Id.* ¶¶ 118, 122–23, 127–30, 137–38.)

The Fund does not contest the truth of these statements or that they constituted material adverse developments for the Company. Instead, the Fund contends that it was so-called channel stuffing—not the bankruptcy of major customers, market consolidation, unfavorable exchange rates, and market softening—that was “the true cause” of the Company’s

decline in revenue. (*Id.* ¶¶ 123, 129, 131–32.) To support this theory, the Fund points to the experience of a former sales representative, three small retailers, and a vocal critic of the Company who resigned his Board chairmanship three years before the beginning of the putative class period and has since fought unsuccessfully to rejoin the Company’s Board. (*Id.* ¶¶ 33, 60, 135.) As described above, these witnesses claim to have experienced a concerted effort by PSG to book bona fide sales as early as possible. In addition, Roustan allegedly conducted a survey of PSG’s ten largest customers in North America that showed that a majority of those customers were asked to move an order into an earlier quarter sometime in the two years preceding the survey (*id.* ¶¶ 61–64), but provides no indication of the frequency of such requests, whether customers complied with them, the volume of product involved, or the revenue tied to the transactions that were made sooner. The Fund also contends that other sellers of sporting goods did not experience a similar sales decline (*id.* ¶¶ 124–25, 138–44), but those retailers actually did report financial difficulties in this time period.

To prove Defendants’ knowledge that their aggressive sales strategy would impair future earnings, the Fund relies on CW3’s allegation that a senior executive warned PSG’s Board of Directors in 2013 that “pulling orders forward to make its numbers would catch up with it.” (*Id.* ¶¶ 70, 148.) The Fund also implies that mere knowledge of aggressive sales practices would establish knowledge of a future decline in sales, but does not explain why that is so. (*Id.* ¶¶ 148–49.) In an even more convoluted logical progression, the Fund contends that the alleged underperformance of two retail stores that PSG opened provided Defendants with a motive to conceal the failure of the “retail strategy” by relying on a fraudulent form of channel stuffing. (*Id.* ¶¶ 150–54.) The Amended Complaint, however, does not provide the relative financial

impact of the retail stores' alleged underperformance, let alone suggest that it would be sufficiently significant to provide an incentive to engage in securities fraud.

ARGUMENT

I. The Securities Fraud Claim Should Be Dismissed.

A. The Fund Has Failed to Identify Any False or Misleading Statements.

Read in the light most favorable to the Fund, the Amended Complaint has adequately pleaded facts showing that some PSG salespeople engaged in aggressive sales tactics with some PSG customers. But there is nothing misleading about—much less wrong with—aggressive sales tactics, even when they are labeled “channel stuffing,” as the Fund does here, in an effort to make them seem improper. As the Supreme Court and courts in this District have recognized, so-called channel stuffing is not inherently fraudulent, and it is only deceptive channel stuffing that is the concern of the securities laws. The Fund’s mere invocation of the term “channel stuffing” does not excuse its inability to identify any false or deceptive statement that could give rise to a valid securities fraud claim.

To state a securities fraud claim, the Private Securities Litigation Reform Act (“PSLRA”) requires plaintiffs to identify statements that are false or misleading. *Wilson v. Merrill Lynch & Co., Inc.*, 671 F.3d 120, 128–29 (2d Cir. 2011); 15 U.S.C. § 78u-4(b)(1). Plaintiffs must also explain why each identified statement is misleading and must state with particularity all facts on which that belief is formed. *Merrill Lynch*, 671 F.3d at 128–29; 15 U.S.C. § 78u-4(b)(1). It is not sufficient for plaintiffs to simply say that statements were false or misleading; rather, plaintiffs “must demonstrate with specificity why and how that is so.” *Carpenters Pension Trust Fund of St. Louis v. Barclays PLC*, 750 F.3d 227, 236 (2d Cir. 2014). Where plaintiffs fail to specifically demonstrate “why and how” statements are false or misleading, their claims are routinely dismissed as insufficient to state a claim. *See, e.g., id.*

(finding plaintiffs' allegation that defendants lacked internal controls for LIBOR submission rates failed to show why defendants' general statements about internal controls, which did not make representations about LIBOR controls, were false); *Merrill Lynch*, 671 F.3d at 132, 134–35 (dismissing plaintiff's allegation that defendants' bid in their own securities auctions in order to fraudulently inflate demand as insufficient to state a claim because the practice was permissible and properly disclosed).

The Fund's fraud claim is premised on statements Defendants made about the source of PSG's earnings growth that were neither fraudulent nor misleading. According to the Amended Complaint, Defendants had an obligation to alert the public that PSG's revenue growth was supported by sales practices that were aggressive and unsustainable. (Am. Compl. ¶¶ 95, 114–16.) In the absence of such a warning, the Fund contends, investors were misled about PSG's prospects by the statements Defendants actually made. (*Id.* ¶¶ 60, 68, 74, 80, 85, 95, 110.) The Fund's theory of liability is mistaken in two fundamental ways. First, it misunderstands the significance of Defendants' statements, which in no way suggested that only passive sales practices were implemented at PSG. Second, it relies on the sinister-sounding term "channel stuffing" to create a false contradiction between those statements and the actual practices employed at PSG.

The Fund's fraud claim is based on statements allegedly suggesting that only passive sales practices were used by the Company. (*Id.* ¶¶ 5, 10, 65–66, 73, 94–95.) Most prominently, the Fund repeatedly alleges that it was misleading for Defendants to say that PSG's sales growth was "organic" because that term suggests a natural progression rather than one that was attributable to aggressive sales practices. (*E.g., id.* ¶¶ 5, 10, 94–95.) But that argument misunderstands the relevant meaning of the word. While "organic" might have a passive

connotation in the grocery aisle, it means something quite different in the securities markets. In the latter context, which is the only one relevant here, there are two sources of growth for publicly traded companies. When growth occurs through mergers and acquisitions, it is considered “inorganic” growth. All other growth is considered “organic.” *See* Edward D. Hess, *The Quest for Organic Growth*, CORP. FIN. REV., 2007 WL 8321806, at *4 (July/August 2007) (“Historically, academics define organic growth as nonacquiring growth.”); *see also In re Omnicom Grp., Inc. Sec. Litig.*, No. 02-cv-4483, 2005 WL 735937, at *1 (S.D.N.Y. Mar. 30, 2005) (defining “organic growth” as “a measure of a company’s growth from existing operations”). Any reasonable investor considering the Defendants’ statements about “organic” growth would understand them as references to growth that was not attributable to acquisitions. Whether that growth was attributable to aggressive sales practices, passive sales practices—or anything in between—would not have altered this conclusion. And that observation is particularly relevant here in light of PSG’s recent history of growth through acquisitions. (Am. Compl. ¶¶ 3, 94.) Understood in the proper context, nothing in Defendants’ statements created a misimpression among investors that only passive sales practices—and no aggressive sales practices—were employed by the Company.

The Fund attempts to cure that defect by insinuating that PSG’s sales practices were not simply aggressive, but fraudulent, and therefore misleading to investors. Pejoratively labeling the practices “channel stuffing,” the Fund announces that they amounted to a “fraudulent practice.” (*Id.* ¶ 7 n.2.) But the Fund’s *ipse dixit* does not transform a neutral practice into a fraudulent scheme. Aggressive sales practices, even when labeled “channel stuffing,” are not fraudulent unless they involve an element of deception. The Supreme Court recognized just such a distinction between “legitimate” and “illegitimate” channel stuffing in

Tellabs, Inc. v. Makor Issues & Rights, Ltd. (hereinafter, “*Tellabs*”). 551 U.S. 308, 325 (2007).

There, the Court noted that “offering customers discounts as an incentive to buy” was a “legitimate kind” of channel stuffing, while “writing orders for products customers had not requested” was the “illegitimate kind.” *Id.* On remand in that case, the Seventh Circuit held that a certain amount of channel stuffing “could be innocent and might not even mislead,” such as where a seller sought to “incite” distributors to make “more vigorous” sales efforts. *Makor Issues & Rights, Ltd. v. Tellabs Inc.*, 513 F.3d 702, 709 (7th Cir. 2008) (hereinafter, “*Makor Issues*”).

In this District, courts have found nothing fraudulent about aggressive sales practices that offered customers incentives for the purpose of meeting sales and earnings goals. In *In re Bristol-Myers Squibb Securities Litigation*, plaintiffs alleged that defendants improperly recognized revenue that was attained by offering incentives to customers, such as discounts and extended payment terms, toward the end of fiscal quarters in order to meet earnings estimates. 312 F. Supp. 2d 549, 566 (S.D.N.Y. 2004). Judge Loretta A. Preska dismissed those allegations, holding that there was nothing fraudulent about recognizing the sales as revenue because it was legitimate for a seller to offer incentives in order to meet sales or earnings goals, which she described as a “common practice.” *Id.* at 566, 568.

Likewise in *Gavish v. Revlon, Inc.*, the court found that there was “nothing inherently improper” about similar aggressive sales practices. No. 00-cv-7291, 2004 WL 2210269, at *17 (S.D.N.Y. Sept. 30, 2004) (quoting *Greebel v. FTP Software, Inc.*, 194 F.3d 185, 202 (1st Cir. 1999)). In *Revlon*, plaintiffs alleged that defendants inflated their revenue figures through undisclosed channel stuffing practices, such as offering discounts to induce large orders and shipping products to customers early. *Id.* at *18. Judge Sidney H. Stein dismissed

these allegations as “unspecific, innocuous, or both,” reasoning that “there may [have been] any number of legitimate reasons” behind the alleged channel stuffing practices. *Id.* at *18–19.

Courts outside of this District have reached similar conclusions. In *Greebel*, the First Circuit confronted allegations that defendants artificially inflated revenue through channel stuffing practices, such as offering large discounts toward the end of fiscal quarters. 194 F.3d at 189. The court in *Greebel* reasoned that there was “nothing inherently improper” about channel stuffing because there “may be any number of legitimate reasons for attempting to achieve sales earlier,” and held that channel stuffing allegations alone were insufficient to support a strong inference of fraudulent intent. *Id.* at 202–03. The Fifth, Ninth, and Eleventh Circuits have reached similar conclusions. *See Local 731 I.B. of T. Excavators & Pavers Pension Trust Fund v. Diodes, Inc.*, 810 F.3d 951, 959–60 (5th Cir. 2016) (holding that shipping orders early is a “legal practice that may be supported by ‘any number of legitimate reasons’”) (quoting *Greebel*, 194 F.3d at 203); *Broudo v. Dura Pharms., Inc.*, 339 F.3d 933, 940 (9th Cir. 2003) (finding “no fault” with district court’s reasoning that channel stuffing allegations involving price discounts were not inherently fraudulent due to “other legitimate reasons for attempting to achieve sales earlier”), *rev’d on other grounds*, 544 U.S. 336 (2005); *Garfield v. NDC Health Corp.*, 466 F.3d 1255, 1261 (11th Cir. 2006) (“Channel stuffing is not fraudulent *per se*.”).

By contrast, illegitimate channel stuffing typically involves an element of deception, such as fictitious sales or guaranteed returns. In *Makor Issues*, the Seventh Circuit opined that “[c]hannel stuffing becomes a form of fraud only when it is used . . . to book revenues on the basis of goods shipped but not really sold because the buyer can return them.” *Makor Issues*, 513 F.3d at 709. That court reasoned that with a guaranteed right of return, the risk of loss never passes from seller to buyer, and the shipment therefore cannot be properly

recorded as revenue. *Id.* Similarly, Judge Preska observed in *Bristol-Myers* that, where there is no guaranteed right of return and “real products were shipped to real customers who paid real money,” there was nothing fraudulent about the alleged channel stuffing practices.

312 F. Supp. 2d at 566, 568.

In light of this precedent, the Fund gains no traction from calling PSG’s sales practices “channel stuffing.” Even if that term applied here, it would not cause PSG’s sales practices to be fraudulent, much less cause Defendants’ statements about its sales efforts to be misleading. The Amended Complaint fails to identify any deceptive practice—such as booking bogus sales or offering a guaranteed right of return—that would cause PSG’s sales practices to be an illegitimate form of channel stuffing. The Fund alleges nothing more than that some PSG sales representatives, possibly in an effort to meet their own personal sales goals, offered certain customers incentives to buy products in greater quantities or to accept delivery ahead of schedule. (*Id.* ¶¶ 48, 51–53.) But that is the kind of channel stuffing that courts have found to be legitimate. *Bristol-Myers*, 312 F. Supp. 2d at 566 (“Offering incentives to meet sales or earnings goals is a common practice.”); *Diodes*, 810 F.3d at 959–960 (finding early shipments of orders without prior customer authorization was a “legal practice”); *see also Tellabs*, 551 U.S. at 325 (perceiving nothing illegitimate about “offering customers discounts as an incentive to buy”). Having failed to plead any actual deceptive practice, the Fund has failed to show that there was anything false or misleading about how Defendants presented their sales efforts to the public, and that alone is reason enough to dismiss the Amended Complaint.²

² While the vast majority of the Fund’s fraud claim is premised on Defendants’ statements about the Company’s earnings growth, the Fund also alleges that statements made in certifications pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (“SOX Certifications”) were false and misleading. (Am. Compl. ¶¶ 11, 100, 105.) The Fund alleges that, contrary to the representations in the SOX Certifications, PSG lacked the “proper internal controls to prevent the manipulation of its sales revenues”—*i.e.*, through channel stuffing. (*Id.* ¶¶ 100, 105.) This theory of liability is unavailing for two reasons. First, the Fund fails to plead why the channel stuffing—a practice that is not inherently fraudulent—was of the illegitimate, rather than the legitimate sort. Second, because the Fund

B. Even If the So-Called Channel Stuffing Could Be Considered False or Misleading, the Fund Has Failed to Show It Was Material.

The Fund's allegations about PSG's sales practices—the alleged channel stuffing—fail a second requirement of securities fraud suits: materiality. Even if there was something misleading about Defendants' public statements about their aggressive sales practices, those statements can give rise to a securities fraud claim only if the practices were material. But the Fund makes no effort whatsoever to quantify the effect of those sales practices on PSG's revenues or earnings. Rather than allege the volume of sales or the amount of revenue affected by the so-called channel stuffing, the Fund refers to only a handful of isolated instances of aggressive sales tactics, a survey that quantifies nothing, and the overall decline in value of PSG's stock. These allegations fall well short of the mark because they provide no insight on the degree to which PSG's revenues might have been inflated by the challenged practices. The Fund has, therefore, failed to carry its burden on materiality.

1. The Fund Must Plead Facts Showing the Materiality of an Allegedly Fraudulent Practice.

Materiality is an essential element of a securities fraud claim. To avoid dismissal, a plaintiff must plead facts showing that the alleged misstatement or omission was material. *See, e.g., ECA and Local 134 IBEW Joint Pension Trust of Chicago v. JP Morgan Chase Co.*, 553 F.3d 187, 197 (2d Cir. 2009). In claims involving omissions, the materiality requirement is satisfied if there is a “substantial likelihood that the disclosure of the omitted fact[s] would have been viewed by the reasonable investor as having significantly altered the ‘total mix’ of

has not alleged any facts whatsoever pertaining to the Company's internal structure for financial reporting, its allegations are conclusory assertions without any factual support. *See, e.g., In re Sanofi Sec. Litig.*, 155 F. Supp. 3d 386, 402 (S.D.N.Y. 2016) (dismissing allegations that SOX Certifications regarding internal controls were false and misleading because plaintiffs failed to allege any facts pertaining to the company's internal structure for financial reporting); *City of Monroe Emps.' Ret. Sys. v. Hartford Fin. Servs. Grp., Inc.*, No. 10-cv-2835, 2011 WL 4357368, at *22 (S.D.N.Y. Sept. 19, 2011) (same). Accordingly, this theory can be rejected out of hand.

information made available.” *Basic Inc. v. Levinson*, 485 U.S. 224, 231–32 (1988) (quoting *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976)).

Materiality cannot be pleaded in a conclusory manner. To satisfy the PSLRA and Rule 9(b) of the Federal Rules of Civil Procedure, a complaint must demonstrate materiality by placing the alleged omission within the context of a defendant’s “overall financial picture.” *Tabak v. Can. Solar Inc.*, 549 F. App’x 24, 26–27 (2d Cir. 2013) (citing *Decker v. Massey-Ferguson, Ltd.*, 681 F.2d 111, 116 (2d Cir. 1982)). Statements constituting opinion, puffery, or indefinite expressions of corporate optimism are too indefinite to meet this materiality requirement. *In re Int’l Bus. Machines Corporate Sec. Litig.*, 163 F.3d 102, 110 (2d Cir. 1998) (hereinafter “*In re IBM*”). In the context of a channel stuffing claim, plaintiffs must provide some measure of the impact of the practice on a corporation’s financials, or at least an approximation of the magnitude or degree of the supposedly problematic sales. *See, e.g., In re Oak Tech. Sec. Litig.*, No. 96-cv-20552, 1997 WL 448168, *8 (N.D. Cal. Aug. 1, 1997) (“To adequately plead financial fraud based on improper revenue recognition, Plaintiffs must allege, at a minimum, some particular transactions where revenues were improperly recorded, including the names of the customers, the terms of specific transactions, when the transactions occurred, and the approximate amount of the fraudulent transactions.”).

The Second Circuit has spoken clearly on this issue, providing guidance on the level of detail required to avoid dismissal. In *Employees’ Retirement System of Government of the Virgin Islands v. Blanford*, the plaintiffs alleged that the defendants fraudulently concealed the fact that they overproduced their products by, among other things, making phantom shipments to customers. 794 F.3d 297, 301–02 (2d Cir. 2015). Accepting the allegations as sufficient to establish materiality, the Second Circuit noted that the plaintiffs had specified the

name of a customer who was allegedly shipped phantom orders, the timing and amount of product tied to those orders, and the percentage of the orders that was ultimately returned by the customer. *Id.* at 302, 307. In doing so, the plaintiffs provided sufficient detail to allow the court to evaluate the impact of the phantom sales on the defendant company's overall financial picture. That court reached the same conclusion in *In re Scholastic Corp. Securities Litigation*, which involved allegations that the defendants fraudulently concealed adverse figures regarding the number of books that were ultimately returned by customers. 252 F.3d 63, 66–67 (2d Cir. 2001). The plaintiffs in that case satisfied the materiality requirement because they quantified the total amount of product that was returned during certain periods and provided detailed information about the total decline in sales, expressed both as a percentage and in terms of the quantity of product sold. *Id.* at 70–72.

Where plaintiffs fail to provide this level of specificity, courts routinely reject their claims for failing to establish materiality. In *Revlon*, for example, the plaintiffs made channel stuffing allegations similar to those at issue here. 2004 WL 2210269, at *2–4. But those allegations failed to establish materiality because they provided no context for the channel stuffing that would have shown its impact on Revlon's "total financial picture." *Id.* at *16. The court found that the plaintiffs did not make any effort to estimate the degree of the allegedly misleading financial statements, as "[n]one of the complaint's allegations of improper sales practices contain a specific allegation of monetary consequence at all, let alone one large enough to have been reflected in Revlon's financial statements." *Id.*³

³ Other courts have reached the same conclusion on similar facts. *See, e.g., Gross v. Summa Four, Inc.*, 93 F.3d 987, 996 (1st Cir. 1996) (affirming dismissal where plaintiff failed to allege amount of earnings inflated through improper accounting methods or net effect on company's earnings); *AIG Global Sec. Lending Corp. v. Banc of Am. Sec. LLC*, 254 F. Supp. 2d 373, 385 (S.D.N.Y. 2003) (finding allegations inadequate where plaintiffs "provided no indication of the amount by which the figures were supposedly under or overstated"); *City of Omaha Police and Fire Ret. Sys. v. Timberland Co.*, No. 11-cv-277, 2013 WL 1314426, at *13 (D.N.H. Mar. 28, 2013) (confidential witnesses provided no transactional details "from which to infer even a broad approximation of the

2. The Fund Has Failed to Plead Facts Showing Materiality.

The Fund has failed to plead facts demonstrating that the alleged channel stuffing was material. The Amended Complaint contains no allegations shedding any light on the impact of this practice on PSG's earnings. There is no estimate of how many sales were made pursuant to these practices or how much revenue was generated. The Fund does not even offer an estimate of the percentage of revenue attributable to aggressive sales practices. Instead, the Fund offers three data points: (i) a purported survey of PSG customers; (ii) the alleged anecdotes of four confidential witnesses about a handful of orders; and (iii) the fact that PSG's earnings fell during the putative class period. None of these allegations is sufficient to establish materiality.

First, the Fund relies on two duplicative and unsubstantiated surveys purportedly conducted by, or at the request of, Roustan. According to the Amended Complaint, these surveys state that PSG's ten largest customers had received at least *one request* during the previous two years to move orders to an earlier quarter. (Am. Compl. ¶¶ 61–64.) Although these customers allegedly, but implausibly, represented 50–55% of PSG's overall business (*id.* ¶ 61), the Fund does not specify, or even attempt to estimate, how much of PSG's business with these customers was attributable to the alleged channel stuffing scheme. The Fund's allegations that rely on the surveys, therefore, pale in comparison to the allegations found to be material in both *Blanford* and *Scholastic* because the surveys serve as neither an indicator of the scale of PSG's channel stuffing practice nor an estimate of the relative impact of those practices on

amount of sales affected by alleged channel stuffing tactics"); *In re Sawtek, Inc. Sec. Litig.*, No. 03-cv-294, 2005 WL 2465041, at *8 (M.D. Fla. Oct. 6, 2005) (dismissing channel stuffing claim where plaintiffs did not allege the approximate amounts of money or inventory at issue); *Orton v. Parametric Tech. Corp.*, 344 F. Supp. 2d 290, 308 (D. Mass. 2004) (dismissing channel stuffing claim where plaintiffs failed to provide amount of revenue misstated due to channel stuffing); *Johnson v. Tellabs, Inc.*, 262 F. Supp. 2d 937, 949 & n.12 (N.D. Ill. 2003) (dismissing channel stuffing claim where complaint merely alleged channel stuffing-based returns worth "millions" of dollars, which were not material in a company with fourth quarter sales of "more than a billion dollars"); *In re Trex Co., Inc. Sec. Litig.*, 212 F. Supp. 2d 596, 611 (W.D. Va. 2002) (dismissing channel stuffing claims where plaintiffs had not provided the amount or percentage of revenues generated by the allegedly problematic transactions).

PSG's overall financial picture. *See Blanford*, 794 F.3d at 302, 307; *Scholastic*, 252 F.3d at 70–72. In fact, neither the surveys nor the Amended Complaint even clarify whether any of the surveyed customers ultimately agreed to accept orders early, as opposed to merely being asked to do so by PSG. For these reasons, the Fund's allegations that are based on Roustan's surveys lack the particularity required to adequately plead materiality.

Second, the Fund offers the alleged testimony of four confidential witnesses who claim either to have been asked to participate in, or to have been targets of, PSG's alleged channel stuffing scheme. Yet, those witnesses do not help the Fund establish materiality whatsoever because they, too, fail to offer any level of specificity about the extent or financial consequences of PSG's allegedly improper sales.

CW1, who was an independent sales representative of Bauer, purportedly recalls instances where he was asked by PSG to work with customers to ship orders early. (*Id.* ¶ 51.) That is the extent of his allegation. CW1 does not identify, among other things: (i) the customers he was asked to work with for this purpose; (ii) the number of occasions in which he was asked to try to ship orders early; (iii) the number of occasions when he actually shipped orders early; or (iv) the quantity, monetary value, or timing of any orders that he ultimately shipped early.

CW2, a store manager at one of PSG's retail customers, alleges in a similarly vague manner that PSG insisted during the putative class period that orders be placed a year in advance. (*Id.* ¶ 56.) Again, there are no additional details to support this allegation. CW2 does not indicate whether he/she agreed to PSG's request, much less provide any details approximating the quantity or monetary value of the orders he/she was asked to place earlier.

CW3, a co-owner of a PSG retail customer, likewise claims to have received calls from PSG headquarters asking him to accept shipments early to allow PSG to meet its quarterly

targets. (*Id.* ¶ 52.) Like CW1 and CW2, CW3 provides no other facts to demonstrate the materiality of these allegedly improper transactions.

CW4, a franchise owner of an Easton retail customer, claims that he/she agreed on one occasion to accept early shipment of a “large order” in return for free shipping. (*Id.* ¶ 53.) While CW4 at least attempts to describe the magnitude of this one allegedly channel-stuffed order, he/she does so in an entirely vague manner that renders his/her allegation insufficient to establish materiality. There is no reason to believe that an order considered “large” by the owner of a small retail franchise in Milwaukee, Wisconsin (*id.* ¶ 33), would be considered material, much less “large,” to a publicly traded company like PSG. By excluding the quantity and monetary value of the order, it is impossible to determine the materiality of this one transaction in the context of PSG’s overall revenues.

The only other allegation in the Amended Complaint that could even remotely be interpreted to touch on materiality is similarly deficient. The Fund states that PSG’s earnings guidance was revised downward during the relevant period by approximately 80%, and, in entirely conclusory fashion, inexplicably attributes this solely to PSG’s alleged channel stuffing practices. (*Id.* ¶ 15; Pl.’s Pre-Mot. Letter at 2, ECF No. 77.) In doing so, the Fund ignores all of the other, more plausible, explanations offered by PSG as causes for the decline—the substantial weakening of the Canadian dollar, bankruptcy filings by Team Express and The Sports Authority, the consolidation of Bauer customers, general weakness in the baseball market, and financial difficulties at an important Bauer customer, which later filed for bankruptcy, creating significant losses for PSG. The Fund sets forth no facts to support the contention that this drop was attributable solely, or even primarily, to channel stuffing, and does not even attempt to identify what percentage *might* be attributable to channel stuffing. As is the case with the

allegations pertaining to Roustan’s surveys and the confidential witnesses, the Fund’s generalized allegation regarding the total decline in PSG’s earnings fails to provide any insight into the degree to which PSG’s alleged channel stuffing scheme inflated its revenues.⁴

Even if the Court were to find PSG’s alleged channel stuffing to be material, the majority of statements that the Fund identifies as fraudulent—consisting primarily of statements of Defendant Davis at earnings calls or in press releases—are, in fact, nonactionable statements of corporate optimism. These statements, reproduced below, are classic examples of corporate optimism about the Company’s results and prospects that investors do not rely upon when making investment decisions.

- “We experienced another record quarter for PSG, and our Q2 results were driven by the continued strong performance of the EASTON baseball/softball business” (Am. Compl. ¶ 66.);
- “We reported another record quarter due to the continued strong performance of Easton Easton continued to experience solid demand” (*Id.* ¶ 73.);
- “[W]e continue to outpace the growth of the markets We remain very well-positioned to continue our momentum into fiscal 2016 and beyond.” (*Id.* ¶¶ 79, 84.);
- “[W]e continue to see solid growth across our brand” (*Id.* ¶ 108.);
- “But otherwise, we don’t see any sort of decline in demand from consumers for those products.” (*Id.* ¶ 109.).

None of these statements is sufficiently material as a matter of law to give rise to a claim for securities fraud. *See In re IBM*, 163 F.3d at 107 (holding that statements regarding future performance may be actionable “if they are worded as guarantees or are supported by specific

⁴ The Fund also alleges a “pure omission” theory that is similarly deficient. The Fund alleges that Defendants are liable for failing to disclose, pursuant to Item 303 of Regulation S-K, the “known trend” of channel stuffing. (Am. Compl. ¶¶ 112–16.) This allegation fails because, as stated throughout this brief, the Fund has failed to allege that PSG’s channel stuffing was material. *See Stratte-McClure v. Morgan Stanley*, 776 F.3d 94, 103 (2d Cir. 2015) (concluding that “a violation of Item 303’s disclosure requirements can only sustain a claim under Section 10(b) and Rule 10b-5 if the allegedly omitted information satisfies *Basic*’s test for materiality”).

statements of fact”). Defendant Davis’s statements, by contrast, “are too general to cause a reasonable investor to rely upon them.” *JP Morgan Chase Co.*, 553 F.3d at 206. Moreover, the Fund has failed to allege any particularized facts that Defendant Davis did not believe these statements when made. *See In re MRU Holdings Sec. Litig.*, 769 F. Supp. 2d 500, 510–11 (S.D.N.Y. 2011) (“Because ‘the challenged statements regarding the future . . . were predictions or opinions, and not guarantees,’ and because ‘there is no evidence in the record indicating that [the Individual Defendants] did not genuinely believe’ in those predictions, ‘[P]laintiff[s] ha[ve] failed to identify any misstatements or omissions of material fact which would support a Section 10(b) or Rule 10b-5 claim.’”) (citation omitted) (alterations in original).

C. Even If the Fund Could Identify a Materially False or Misleading Statement, It Has Failed to Plead Scienter.

The Fund has also failed to plead facts showing that Defendants had any fraudulent intent in connection with the alleged channel stuffing. In an effort to meet that burden, the Fund asks this Court to infer scienter based on Defendants’ mere knowledge of PSG’s sales efforts, but knowledge of practices that are not inherently wrongful cannot support such an inference. Nor can scienter be inferred from the unsupported allegation that Defendants knew the alleged channel stuffing would lead to reduced sales in the future. Equally misguided is the Fund’s assertion that fraudulent intent can be found wherever there is a desire to maintain the appearance of corporate profitability—a theory that, if accepted, would transform all U.S. corporations into criminal enterprises. Finally, the Fund contends that it is fair to infer Defendants’ scienter because competitors did not perform as poorly as PSG did in early 2016. Even if PSG did underperform its competitors, there is no basis in law to conclude that a business’s poor performance is evidence of fraud.

In securities fraud cases, plaintiffs must plead specific facts that give rise to a “strong inference” of a defendant’s fraudulent intent. *Kalnit v. Eichler*, 264 F.3d 131, 138 (2d Cir. 2001); 15 U.S.C. § 78u-4(b)(2)(A). Applying that standard, the Supreme Court has held that an “inference of scienter must be more than merely plausible or reasonable—it must be cogent and at least as compelling as any opposing inference of nonfraudulent intent.” *Tellabs*, 551 U.S. at 314. Under *Tellabs*, courts “must take into account plausible opposing inferences” of nonfraudulent intent, *ATSI Commc’ns, Inc. v. Shaar Fund, Ltd.*, 493 F.3d 87, 99 (2d Cir. 2007), and if a fraudulent inference is not “at least as compelling” as a nonfraudulent one, it must be rejected, even in a “close case.” *Slayton v. Am. Express Co.*, 604 F.3d 758, 777 (2d Cir. 2010).

A plaintiff may satisfy the scienter requirement by pleading facts (i) showing that a defendant had “motive and opportunity to commit the fraud” or (ii) “constituting strong circumstantial evidence of conscious misbehavior or recklessness.” *Shaar*, 493 F.3d at 99. For conduct to be reckless under this standard, it must have been “highly unreasonable, representing an extreme departure from the standards of ordinary care to the extent that the danger was either known to the defendant or so obvious that the defendant must have been aware of it.” *Rothman v. Gregor*, 220 F.3d 81, 90 (2d Cir. 2000). While plaintiffs are not required to plead scienter based on a defendant’s motive, where motive cannot be shown, the strength of their circumstantial allegations regarding conscious misbehavior or recklessness “must be correspondingly greater.” *JP Morgan Chase Co.*, 553 F.3d at 198–99.

1. Mere Knowledge of Channel Stuffing Practices Fails to Support a Strong Inference of Scienter.

Knowledge of so-called channel stuffing, standing alone, does not give rise to a strong inference of scienter. But the Fund urges this Court to conclude that knowledge of channel stuffing, without more, is probative of scienter. The Fund contends that scienter can be

inferred from Defendants' mere knowledge of channel stuffing, relying on allegations that Defendant Rosenthal attended sales meetings where channel stuffing was discussed, the Individual Defendants attended a board meeting where channel stuffing was discussed, and others engaged personally in channel stuffing practices. (*See, e.g.*, Am. Compl. ¶¶ 55, 77, 82, 91, 97, 148.)

No such inference is reasonable because the channel stuffing practices described in the Amended Complaint are not inherently wrongful.⁵ There are legitimate reasons for pursuing aggressive sales tactics, such as meeting earnings goals and presenting distributors with an incentive to sell products more vigorously. *See, e.g., Bristol-Myers*, 312 F. Supp. 2d at 566; *Makor Issues*, 513 F.3d at 709. In light of those innocuous motivations, it is unreasonable to infer fraudulent intent from the mere fact that so-called channel stuffing has taken place. Aggressive sales practices, even when derogatorily labeled channel stuffing, cannot give rise to a strong inference of scienter.

That is why courts routinely reject as unfounded inferences of scienter based on nothing more than channel stuffing claims unmoored from any deception. *See Bristol-Myers*, 312 F. Supp. 2d at 566, 568 (finding that offering incentives to meet sales or earnings goals, without more, was an insufficient basis for scienter); *Revlon*, 2004 WL 2210269, at *17, 19 (finding aggressive sales practices, such as offering discounts and shipping products early, did not by themselves raise a strong inference of scienter); *Garfield*, 466 F.3d at 1265 (finding that promotion of channel stuffing at a series of meetings did not establish scienter); *Trex*, 212 F. Supp. 2d at 608–09 (collecting cases holding that channel stuffing does not support a strong inference of scienter).

⁵ As described in Section I.A, *supra*, the Fund has failed to allege any deception in connection with the so-called channel stuffing that would cause it to be anything but a legitimate practice.

In *Garfield*, the Eleventh Circuit addressed allegations similar to those against the Individual Defendants—*i.e.*, that channel stuffing was discussed at a series of meetings with company executives—and found such meetings insufficient to give rise to a strong inference of scienter. 466 F.3d at 1264–65. There, plaintiffs sought to demonstrate scienter by pleading that company officers attended monthly meetings where the company’s “aggressive channel stuffing and mounting problems with accounts receivable” were discussed in detail. *Id.* at 1264. The complaint further alleged that the officers were aware of the problem with accounts receivable but “decided to continue with aggressive discounting and credit terms because the company had to make its numbers.” *Id.* The scienter allegations here as to the Individual Defendants are far weaker than those in *Garfield*. First, Defendant Davis is alleged to have attended a single board meeting where a sales executive raised the issue of channel stuffing, not several meetings on a monthly basis where aggressive channel stuffing was discussed in depth. Defendant Rosenthal is alleged to have attended semi-annual sales meetings where channel stuffing was discussed, but there are no allegations that either of the Individual Defendants knew that PSG’s aggressive sales practices were creating any problems with the Company’s accounting or financial statements that might have given them cause to investigate further. Thus, scienter cannot be inferred from these alleged meetings because the allegations are not inconsistent with innocuous conduct.⁶

Judge Preska’s decision in *Bristol-Myers* is also particularly relevant here. In that case, plaintiffs alleged that scienter could be inferred because (1) management set aggressive targets, (2) incentives were given to customers to buy product before they needed it, (3) this was done in order to meet earnings estimates, and (4) it was known that customer inventories were high. *Bristol-Myers*, 312 F. Supp. 2d at 568. Judge Preska rejected these allegations, observing

⁶ In contrast to *Garfield*, the Fund alleges that Defendant Davis attended only one meeting where channel stuffing was discussed, and only by way of CW3’s highly unreliable statement. (Am. Compl. ¶ 55.)

that “[o]ffering incentives to meet sales or earnings goals is a common practice,” the defendant had recorded sales in accordance with its historical policy of recognizing revenue upon shipment, and there was an absence of any deceptive practices, such as a guaranteed right of return. *Id.* at 566, 568. Judge Preska concluded that these facts constituted an “insufficient basis” from which to infer scienter. *Id.* at 566.

The Amended Complaint seems to have been constructed using the *Bristol-Myers* allegations as a model, albeit a defective one. First, the Fund makes the same general allegation that PSG set “aggressive” sales targets. (Am. Compl. ¶ 5.) Second, the Fund points to the fact that Defendants offered incentives to customers, such as volume discounts and free shipping, to buy product before they needed it. (*Id.* ¶¶ 48–53.) Third, the Fund alleges that these practices were deployed to meet sales and earnings estimates. (*Id.* ¶¶ 52, 55.) Fourth, the Fund claims that customer inventories were high and Defendants “put more [product] into the market than the market could handle.” (*Id.* ¶ 59 (alterations in original).) And, as in *Bristol-Myers*, the Amended Complaint is devoid of allegations indicating that the alleged channel stuffing was of the illegitimate variety. In light of the similarity between these two actions, there is no more reason to find scienter here than there was in *Bristol-Myers*. The inference should be rejected as unsupported by the factual allegations.

To the extent the Fund seeks an inference of scienter from the alleged existence of a survey conducted by PSG’s former chairman purporting to show that certain of PSG’s retail customers had been asked by PSG to move an order into an earlier quarter, this allegation does not support an inference of scienter as to the Individual Defendants because the Amended Complaint alleges no facts tying the survey to Defendant Davis or Defendant Rosenthal.⁷ The

⁷ The Fund also does not adequately allege that the purported surveys are material. *See* Section I.B.2, *supra*.

Amended Complaint merely alleges that the survey existed; it does not allege that the Individual Defendants were made aware of its existence or its purported results, let alone how they were made aware, at what time, and by whom. The survey allegations, therefore, do not provide evidence of scienter as to the Individual Defendants because they are not pleaded with particularity. *See Novak v. Kasaks*, 216 F.3d 300, 311 (2d Cir. 2000) (“In order to plead scienter, plaintiffs must state *with particularity* facts giving rise to a strong inference that *the defendant* acted with the required state of mind.”) (emphasis added).

2. Unfounded Allegations of Defendants’ Knowledge about the Risks of Channel Stuffing Are Insufficient to Support Scienter.

The Fund also attempts to establish scienter by claiming that Defendants knew the so-called channel stuffing would result in lower sales in the future, thereby deceiving investors about the Company’s true prospects. (Am. Compl. ¶¶ 114–16, 148.) This claim fails on multiple levels, starting with logic. The Fund describes channel stuffing as a practice that is inevitably doomed to fail because it cannibalizes future sales. (*Id.* ¶ 13 (characterizing failure of channel stuffing as “inevitable”); Pl.’s Pre-Mot. Letter at 2, ECF No. 77 (alleging sales in channel stuffing cases “always” “dr[y] up”).) If the Fund’s characterization is correct, it strains credulity to believe that Defendants would act against their own economic self-interest in pursuing a failing strategy. It is implausible for anyone, let alone the leaders of a publicly traded company, to engage in a scheme that bears no chance of success. *See Shields v. Citytrust Bancorp., Inc.*, 25 F.3d 1124, 1130 (2d Cir. 1994) (finding plaintiff’s allegations that defendants inflated their stock price by concealing adverse facts could not show scienter because the alleged scheme would have provided only a “short respite” of several months, as adverse facts were uncovered anyway in the ordinary course of bank business); *In re GeoPharma, Inc. Sec. Litig.*, 399 F. Supp. 2d 432, 449 (S.D.N.Y. 2005) (finding scienter allegations insufficient where the “alleged scheme

could not possibly have succeeded”); *Gillis v. QRX Pharma Ltd.*, --- F. Supp. 3d ---, 2016 WL 3685095, at *30–31 (S.D.N.Y. July 6, 2016) (finding scienter allegations insufficient where “as pled, the scheme . . . lacks a coherent rational objective . . . [and] by its nature . . . could not have continued in perpetuity”).

The Amended Complaint simply pleads no facts that provide any reason why the Defendants would pursue a futile strategy. There are, for example, no allegations that Defendants benefitted in any way from the strategy, such as insider stock sales that took advantage of the strategy’s alleged inflationary effect on the Company’s stock price. Indeed, the opposite is true. Accepting the Fund’s version of events, Defendants have all suffered significant harm as a result of pursuing this strategy—Defendant Davis has lost his job and the Company’s stock price has fallen significantly. Absent any allegations as to how the Defendants benefitted from a strategy that was doomed to fail, it is difficult to understand why they would have pursued such a hopeless strategy in the first place. The predetermined futility of this alleged scheme thus undermines any claim that Defendants adopted sales practices knowing they would ultimately harm the Company, making an inference of scienter far from plausible. *See QRX Pharma*, 2016 WL 3685095, at *31 (finding that where “there would be no concrete benefit to defendants to justify these risks,” “[c]ourts regularly refuse to infer scienter . . . when confronted with such illogical allegations.”)

The inference is also inadequately supported by the factual allegations in the Amended Complaint. The Fund contends that the Individual Defendants’ knowledge of the harmful consequences of the sales practices is established by their “access to [] adverse undisclosed information” about PSG’s business as corporate officers. (Am. Compl. ¶ 27.) That allegation is insufficient to establish the relevant knowledge. Not only does it fail to specify

what information the Individual Defendants allegedly learned or its source, but it is also an impermissible means of establishing knowledge as a general matter. Courts in this District have “long held” that accusations of a defendant’s knowledge of adverse information “founded on nothing more than a defendant’s corporate position are entitled to no weight.” *Plumbers & Steamfitters Local 773 Pension Fund v. Can. Imperial Bank of Commerce*, 694 F. Supp. 2d 287, 300 (S.D.N.Y. 2010). Scierer cannot be inferred solely from the fact that a defendant, due to his executive position, had access to adverse information. *In re Sanofi Sec. Litig.*, 155 F. Supp. 3d 386, 407 (S.D.N.Y. 2016). Amounting to little more than a claim that the Individual Defendants “must have known,” the Fund’s arguments based on the Individual Defendants’ status within the Company should be rejected.

Elsewhere in the Amended Complaint, the Fund relies on similarly unsupported allegations regarding the Individual Defendants’ alleged knowledge of the harmful consequences of channel stuffing. (Am. Compl. ¶¶ 59–60.) The Fund contends that Defendant Davis “knew that the hockey equipment market was saturated,” yet “insisted” that retailers increase orders every year. (*Id.* ¶ 59.) The Fund further states that “due to PSG’s sales practices and the material volume of early shipments . . . Defendants knew that PSG’s sales figures, on the back of these tactics, were unsustainable.” (*Id.* ¶ 60.) These are precisely the types of conclusory, generalized allegations of channel stuffing that courts hold are not probative of scierer.

Judge Stein rejected a similar theory in *Revlon*, where plaintiffs alleged that knowledge of channel stuffing practices in and of themselves created the inference that defendants were “at least reckless to the fact that [the company’s] future sales were being sacrificed for short-term sales.” 2004 WL 2210269, at *18. Judge Stein rejected this argument, holding that to infer recklessness on channel stuffing allegations alone would improperly credit

“totally conclusory allegations regarding defendants’ omniscient awareness of traffic into and out of the channel.” *Id.* at *19. By contrast, the court noted that “detailed allegations as to what defendants knew on a daily, weekly and monthly basis about the retail trade” could show recklessness because that would shed light on what defendants knew about channel inflow relative to channel outflow. *Id.* (quoting *Scholastic*, 252 F.3d at 76). As in *Revlon*, the Amended Complaint does not contain any facts, let alone “detailed allegations,” as to what Defendants knew about channel inflow and outflow at any time during the putative class period.

The Fund also claims that Defendants were warned about the risks of the so-called channel stuffing by a former PSG executive. But there are several problems with this claim. The sole source of this allegation is CW3, identified in the Amended Complaint as the co-owner of one of Bauer’s retail customers based in Salem, New Hampshire. (Am. Compl. ¶ 33.) According to CW3, Edward Kinnaly, a former PSG officer, told the Individual Defendants at a 2013 meeting of PSG’s Board of Directors that the Company’s channel stuffing “would eventually catch up with PSG.” (*Id.* ¶ 55.) CW3 further alleges that Kinnaly was fired for raising this concern about PSG’s sales practices. (*Id.*)

Nothing in the Amended Complaint, however, provides a sound basis to credit CW3’s allegation. Importantly, courts are highly skeptical where, as here, confidential witnesses are used to comment on issues of which they have no personal knowledge. Courts in the Second Circuit have held that confidential witness allegations may be considered only if “they are described in the complaint with sufficient particularity to support the probability that a person in the position occupied by the source would possess the information alleged.” *Kasaks*, 216 F.3d at 314; *see also In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 308 F. Supp. 2d 249, 262 (S.D.N.Y. 2004) (discounting confidential witness allegations where “it is not apparent from the

informant's title that he or she would probably possess such information"); *In re Sierra Wireless, Inc. Sec. Litig.*, 482 F. Supp. 2d 365, 376 (S.D.N.Y. 2007) (same). This requires a plaintiff to describe the confidential witnesses' background "sufficiently to indicate a high likelihood that they actually knew facts underlying their allegations." *Glaser v. The9, Ltd.*, 772 F. Supp. 2d 573, 590 (S.D.N.Y. 2011); *see also Feasby v. Industri-Matematik Int'l, Corp.*, No. 99-cv-8761, 2003 WL 22976327, at *4 (S.D.N.Y. Dec. 19, 2003) (discounting confidential witness allegations where the complaint did not "describe the position held by or work assignments of the former employee or consultant sources, or any other information that would support an inference that the sources would possess the information attributable to them"). Alternatively, if the plaintiff pleads "independent [] factual allegations" that corroborate the confidential witness's allegations, the requirement of describing the source's position/job is loosened. *Glaser*, 772 F. Supp. 2d at 590.

Under this precedent, CW3's allegation should be set aside. The Amended Complaint provides no indication, let alone a "high likelihood," that CW3 would have been privy to Kinnaly's alleged statement at the 2013 PSG board meeting in question. The Fund does not allege that CW3—who is not described as having ever been a member of PSG's Board or employed by the Company—was present at this board meeting, nor does it indicate that CW3 had a relationship with Kinnaly, or any other basis for CW3 coming to learn of this alleged statement. Furthermore, the Fund does not otherwise allege a single fact that corroborates CW3's assertion that Kinnaly provided this conclusory opinion. We are, therefore, left guessing how CW3 learned of this alleged statement, and how many levels of hearsay are involved.

While a confidential witness's relaying of hearsay does not automatically disqualify his statement from consideration in the scienter analysis, the hearsay "may indicate

that a confidential witness' report is not sufficiently reliable.” *Zucco Partners, LLC v. Digimarc Corp.*, 552 F.3d 981, 997 n.4 (9th Cir. 2009). Here, where the layers of hearsay are unknowable because of the Fund's failure to substantiate CW3's awareness of this alleged statement, CW3's allegations in this respect are unreliable and cannot support a strong inference of scienter. *See In re Elan Corp. Sec. Litig.*, 543 F. Supp. 2d 187, 220 (S.D.N.Y. 2008) (rejecting CW's allegation that company's senior management had knowledge because plaintiffs failed to allege any facts indicating that the CW “was in a position to have knowledge regarding communications with [defendant company's] senior management”).

Even if the Court does not completely discredit CW3's allegation, the Court should assign it little weight when determining if the Fund has pleaded an inference of scienter that is at least as compelling as any opposing inference. Courts in this circuit have held that unreliable confidential witness testimony must not be considered “compelling” for the purpose of performing the comparative *Tellabs* scienter analysis. *See MRU Holdings*, 769 F. Supp. 2d at 516; *accord Campo v. Sears Holdings Corp.*, 371 F. App'x 212, 216 & n.4 (2d Cir. 2010) (“[T]he confidential witness testimony discussed precludes us from concluding that an inference of scienter is ‘cogent and at least as compelling as the opposing inference’”) (quoting *Tellabs*, 551 U.S. at 314).

In the event the Court accepts CW3's account as true, Kinnaly's alleged statement is insufficient to show that Defendants knew, or were at least reckless about, the future effects of the alleged channel stuffing. Courts in this District have held that differences of opinion, “even stark differences, between employees do not reveal scienter.” *City of Austin Police Ret. Sys. v. Kinross Gold Corp.*, 957 F. Supp. 2d 277, 299 (S.D.N.Y. 2013); *see also In re Cerner Corp. Sec. Litig.*, 425 F.3d 1079, 1085–86 (8th Cir. 2005) (finding allegation that regional sales manager

believed earnings forecasts were unattainable “sheds no light on the relevant issue of whether the Individual Defendants shared this view, or indeed of whether the forecasts were necessarily unattainable”). Kinnaly’s alleged general statement that the channel stuffing practices “would eventually catch up with” the Company is just such a difference of opinion that is insufficient to show that Defendants acted with the requisite fraudulent intent. (Am. Compl. ¶ 55.)

While courts have observed that allegations that an employee “persuaded” defendants or “notified [defendants] of facts” supporting his opinion may show conscious misbehavior or recklessness, there are no allegations here that Kinnaly was offering anything more than an uninformed lay opinion. *See Kinross*, 957 F. Supp. 2d at 299. The Amended Complaint does not allege that Kinnaly presented either of the Individual Defendants with any evidence supporting his conclusion that PSG’s sales practices would catch up with it, such as data that PSG’s sales channels were in fact oversaturated, or data that the rate of retail sell-through was slower than the rate at which PSG sold and shipped goods to its independent retail customers. *Cf. In re Salix Pharms., Ltd.*, No. 14-cv-8925, 2016 WL 1629341, at *14 (S.D.N.Y. Apr. 22, 2016) (finding strong inference of scienter because executives had access to specific reports indicating bloated wholesale inventory levels). In short, the alleged boardroom statement put forth by CW3 provides no evidence at all that the Individual Defendants had an intent to deceive. It therefore does not support an inference of scienter.

CW3’s allegation also does not help the Fund overcome the fundamental problem that infects and pervades the entire Amended Complaint; namely, that the Amended Complaint is completely silent as to how Defendants knew, or were reckless in not knowing, that PSG’s alleged channel stuffing was improper and would ultimately result in a sharp revenue decline. CW3’s allegation that the Individual Defendants were informed that the sales practice “would

catch up with PSG” does not remedy this fatal flaw because allegations such as CW3’s that are “consistent with innocent conduct are never sufficient for a strong inference [of scienter].” *SEC v. Espuelas*, 579 F. Supp. 2d 461, 474 (S.D.N.Y. 2008).

3. Defendant Davis’s Departure Is Not Probative of Scienter.

The Fund’s allegations regarding Defendant Davis’s departure do not support an inference of scienter because the Fund does not allege special circumstances surrounding the departure. The Fund attempts to show scienter through Defendant Davis’s departure in March 2016 after the Company had experienced months of decline. However, it is well established that an officer’s departure, without more, is not probative of scienter. Rather, for an officer’s departure to be probative of scienter, it must be “highly unusual and suspicious.” *Glaser*, 772 F. Supp. 2d at 598. The Fund has alleged no facts to establish that Defendant Davis’s departure was highly unusual and suspicious so the Court must give it no weight in its scienter analysis.

Courts are cautious to infer scienter from an officer’s resignation because resignations are commonplace among corporate executives and can be based on innumerable causes. A court will consider a resignation “highly unusual and suspicious” for purposes of inferring scienter when “independent facts indicate that the resignation was somehow tied to the fraud alleged, that the resignation somehow alerted defendants to the fraud, or that defendant’s scienter was otherwise evident.” *Id.* For example, in *Salix*, the court found officers’ resignations highly unusual and suspicious where the board had exercised the clawback provisions of the executives’ compensation agreements—which required a finding of intentional wrongdoing—and the company later restated its financial results. 2016 WL 1629341, at *15. On the other hand, mere temporal proximity of an officer’s resignation to a company’s corrective disclosures is not probative of scienter. *In re BISYS Sec. Litig.*, 397 F. Supp. 2d 430, 446–47 (S.D.N.Y. 2005) (mere temporal proximity of officer resignations to company’s disclosure of improper

accounting and financial statements was not probative of the officer's scienter); *C.D.T.S. No. 1 & A.T.U. Local 1321 Pension Plan v. UBS AG*, No. 12-cv-4924, 2013 WL 6576031, at *7 (S.D.N.Y. Dec. 13, 2013) (no strong inference of fraud from resignation where "there are a number of other, more plausible reasons why personnel may have been demoted and resigned"). In addition, a company's overall decline does not constitute a special circumstance that is probative of scienter. See *QRX Pharma*, 2016 WL 3685095, at *35 (citing *Owens v. Jastrow*, 789 F.3d 529, 541 n.9 (5th Cir. 2015), and explaining that in *Owens*, the court "not[ed] that [the] district court had rejected scienter allegation[s] on [the] ground that [the] company's overall decline, rather than securities fraud, was likely the impetus for the resignations").

Here, the Fund has alleged no special circumstances surrounding Defendant Davis's departure. The Fund merely alleges that Defendant Davis's departure occurred shortly after PSG's alleged channel stuffing was revealed to the marketplace. As explained above, this temporal proximity is not probative of scienter. The Fund has alleged no independent facts tying Defendant Davis's departure to the alleged fraud. There are a number of plausible independent reasons why Defendant Davis might have left PSG.

4. Defendants' Motive to Maintain Corporate Profitability Falls Well Short of Giving Rise to a Strong Inference of Scienter.

The Fund's efforts to establish scienter through Defendants' alleged motive and opportunity to commit fraud are equally unsuccessful. According to the Amended Complaint, Defendants had a motive to ensure that PSG "continue [its] success" as a public company. (Am. Compl. ¶¶ 153–54.) But that motive is insufficient to support a strong inference of fraudulent intent. To infer scienter based on motive, plaintiffs must allege that defendants could realize "concrete and personal" benefits through the alleged fraudulent statements. *Kasaks*, 216 F.3d at 307–08. For example, a motive to raise a company's stock price artificially so that an insider

defendant could sell shares at inflated prices might qualify as such a motive because it specifies a concrete and personal benefit that could be realized by the defendant as a result of the fraudulent statement. *Id.*

Here, all that the Fund offers is a generalized motive that could be “imputed to any publicly-owned, for-profit endeavor,” such as the “motive to maintain the appearance of corporate profitability”; that allegation is insufficient to show scienter. *Chill v. Gen. Elec. Co.*, 101 F.3d 263, 268 (2d Cir. 1996); *see also Kasaks*, 216 F.3d at 307; *Kalnit*, 264 F.3d at 139 (desire to make corporation appear profitable is not probative of scienter); *JP Morgan Chase, Co.*, 553 F.3d at 198 (same). The Second Circuit has reasoned that while such generalized motives naturally entail benefit to the corporation, they do not show the concrete and personal benefits necessary to satisfy the motive requirement. *Chill*, 101 F.3d at 268. This rule is also animated by a practical rationale because otherwise, “virtually every company in the United States that experiences a downturn in stock price could be forced to defend securities fraud actions.” *Id.*; *Kalnit*, 264 F.3d at 139–40. Inferring fraudulent intent from such a commonplace motive, as the Fund proposes, runs counter to well-established precedent and should be rejected.

It is no answer for the Fund to say that the Amended Complaint also contains allegations about Defendants’ motive to “conceal” their allegedly failing retail store strategy. (Am. Compl. ¶ 152.) The Fund contends that PSG’s retail store strategy depressed customer demand and took a toll on sales, which Defendants hoped to conceal through channel stuffing. (*Id.*) That is a distinction without a difference because it arrives at the same end—to maintain the appearance of profitability.⁸ The Second Circuit rejected precisely such a maneuver in

⁸ The inference of fraudulent intent the Fund would have the Court draw from this allegation is also negated by the Fund’s own pleadings. The Fund further alleges that Defendant Davis was in possession of an independent study that concluded that PSG’s strategy of opening its own retail stores *increased* the likelihood of consumers visiting local independent retailers. (Am. Compl. ¶ 122.)

Rombach v. Chang, 355 F.3d 164 (2d Cir. 2004). In *Chang*, plaintiffs alleged that defendants, who had been experiencing deteriorating finances over the course of several months, were motivated to make a series of corporate acquisitions in order to artificially inflate the price of the defendant's stock. *Id.* at 168, 177. The court rejected this motive as insufficient to show scienter, equating it with the same generalized desire to "maintain the appearance of corporate profitability" insufficient to show scienter. *Id.* at 177. The same result should follow here.

But even if the Fund's argument were not precluded by precedent, it would fail based on its own lack of specificity. The Fund does not allege any facts bearing on the degree to which the retail store strategy depressed customer demand and reduced revenues. (Am. Compl. ¶ 44.) To the contrary, there is good reason to doubt that the poor performance of retail stores—there were only two in 2015 (*id.*)—would have had any measurable effect on the performance of PSG, a large company that is listed on the New York and Toronto Stock Exchanges and sells its products throughout the world.⁹ It is therefore implausible, at a minimum, to infer that the weak performance of such a minor piece of PSG's business would provide a motive to execute a fraudulent, company-wide channel stuffing scheme.

Finally, the Fund also alleges that PSG's former chairman, Roustan, "made clear" to Defendant Davis that the retail store strategy would depress customer demand. (Am. Compl. ¶ 150.) It is surely true that Roustan believed what he said. But that amounts to little more than disagreement over the merits of pursuing this strategy in the first place. Even if Roustan had the better of the argument, "poor business judgment is not actionable" under the securities laws, nor does it give rise to a strong inference of fraudulent intent. *Rothman*, 220 F.3d at 90. Nothing

⁹ While it was also known at the time that PSG planned to open an additional six to eight retail stores "over the next several years," it is difficult to see how these future plans would have any impact on customer demand in 2015—which is when the Fund alleges that PSG implemented its channel stuffing scheme in response to Roustan's warning. (Am. Compl. ¶¶ 44–47.)

about Roustan’s opinion on the merits of this strategy provides a sound basis to infer that Defendants had a motive to engage in fraud. To the contrary, it provides yet another nonfraudulent explanation for the decline in sales that is the subject of this lawsuit.

5. The Financial Performance of PSG’s Competitors Fails to Support a Strong Inference of Scienter.

The Fund cannot cure its failure to plead facts showing a strong inference of scienter by arguing that PSG’s competitors appeared to better withstand the market factors that battered the Company in early 2016. Under the Fund’s theory, the perceived strength of PSG’s competitors demonstrates that the reasons PSG provided for its weak performance were mere pretexts designed to conceal a channel stuffing “scheme.” (Am. Compl. ¶¶ 137–44.) This leap of logic amounts to rank speculation, falling well short of the requirement that inferences be “cogent” and “compelling” in order to establish scienter. *Tellabs*, 551 U.S. at 324.

Defendants have disclosed several nonfraudulent causes for the Company’s financial struggles, including the bankruptcies of major customers, market consolidation, unfavorable exchange rates, and market softening. (Am. Compl. ¶¶ 123, 127–130.) The Fund does not contest that these events occurred during the relevant time period. And it is plain that any of these events, let alone all of them in concert, would take a toll on any company’s performance. The Fund, however, urges this Court to believe that the serious headwinds facing PSG were not the “real” reason for PSG’s poor performance; they were simply fig leaves for the alleged fraudulent channel stuffing. (Am. Compl. ¶¶ 13–15.) To support this claim, the Fund argues that PSG’s competitors did not experience similar financial difficulties, so Defendants’ disclosures must have been false. (*Id.* ¶¶ 138, 144.) This inference is unsustainable.

A competitor’s superior ability to withstand market forces does not suggest that less fortunate or less able companies were committing fraud. If it were otherwise, a plaintiff

could satisfy the scienter requirement simply by pointing to another company in the same industry that outperformed the target of the lawsuit. Recognizing as much, the Second Circuit has affirmed a district court's conclusion that scienter could not be shown simply because a defendant's losses were higher than those of its competitors during the collapse of the credit markets in the late 2000s. *Local No. 38 Int'l Broth. of Elec. Workers Pension Fund v. Am. Express Co.*, 430 F. App'x 63, 65 (2d Cir. 2011). In this context, rather than a fraudulent inference, the "more compelling inference" was that the defendants' "aggressive growth strategy was sideswiped" by factors that afflicted the entire market. *Id.* Similarly here, the Fund does not dispute that multiple negative factors were afflicting the market during the relevant time period. From *American Express*, it follows that the mere allegation that some competitors outperformed PSG during this time period is insufficient to transform the inference of scienter into something at least as compelling as the headwinds bearing on the market.

The Fund's simplistic approach also ignores that market factors may affect different companies in different ways. For example, PSG's significant presence in the Canadian market made it far more vulnerable to currency fluctuations that disfavored the Canadian dollar relative to the U.S. dollar. It is far from clear that any of its competitors shared that level of vulnerability. Likewise, there is no reason to believe that PSG and its competitors were equally harmed by the bankruptcies of customers that PSG considered significant. Those customers may have been less significant, or not significant at all, to PSG's competitors. In light of these obvious differences, courts have refused to infer fraudulent intent from the mere fact that a competitor outperforms the target of a securities fraud suit. *See, e.g., Am. Express*, 430 F. App'x at 65; *In re Network Assocs., Inc. Sec. Litig.*, No. 99-cv-1729, 2000 WL 33376577, at *13 (N.D. Cal. Sept. 5, 2000) (finding that although defendant's disclosed market-wide reason for its

financial underperformance “allegedly did not affect [its] competitors,” this was insufficient to show scienter). The Fund’s argument here should fare no better.

Even if the Fund could plead scienter by pointing to the success of a PSG competitor at a time when PSG struggled, its allegations should be rejected because they do not present fair and accurate comparisons. For example, the Fund alleges that during late 2015 and early 2016, Reebok-CCM Hockey “reported an 18% increase in sales” while PSG announced that Bauer’s sales were down 19%. (Am. Compl. ¶ 144.) This figure, however, applies to Reebok-CCM Hockey’s sales for calendar year 2015 only. (Adidas Grp. Annual Report 2015, Holland Decl. Ex. 1 at 2–3.) The Fund omits from the Amended Complaint that, during the relevant time period (the first half of 2016), CCM Hockey reported a 14.7% decline in sales year-over-year. (Adidas Grp. First Half Year Report Jan. – June 2016, Holland Decl. Ex. 2 at 2.) In addition, the fact that the CEO of Newell Brands (which owns PSG competitor Rawlings) was “extremely pleased” with its Q1 2016 results does not necessarily entail positive performance for its Rawlings division. (Am. Compl. ¶ 142.) Newell Brands is a multi-billion dollar company, and Rawlings, which is the only major PSG competitor owned by that conglomerate, accounts for only a portion of its revenues.¹⁰ (Newell Brands Q2 FY16 Press Release (July 29, 2016), Holland Decl. Ex. 3 at 1, 6.) And even if some of PSG’s competitors were successful during this period, that success could very well have come at PSG’s expense.

¹⁰ It is difficult to determine the proportion of Rawlings’ revenue relative to Newell Brands, but a rough approximation is possible. Within Newell Brands, Rawlings is housed within a business segment named Outdoor Solutions. *Newell Brands Outdoor Solutions* (2016), <http://www.newellbrands.com/OurBrands/OutdoorSolutions/Pages/OutdoorSolutions.aspx>. In Q2 of FY16, Outdoor Solutions constituted approximately 25% of Newell Brands’ net sales. (Newell Brands Q2 FY16 Press Release (July 29, 2016), Holland Decl. Ex. 3 at 1, 4.) Thus, Rawlings accounts for less than approximately 25% of Newell Brands’ net sales—and probably significantly less, given that the Outdoor Solutions business segment includes eight additional brands.

The Amended Complaint also omits information about PSG's competitors who experienced similar financial difficulties in the first half of 2016. Nike, for example, encountered an 11% year-over-year decrease in North America equipment sales for the quarter that ended in February 2016. (Nike, Inc. Divisional Revenues (Mar. 22, 2016), Holland Decl. Ex. 4 at 1.) The performance of PSG's competitors, insofar as they are even knowable from the allegations contained in the Amended Complaint, simply do not show a robust, thriving industry; nor do they provide a sound basis to infer that PSG's alleged underperformance is the result of fraud.

D. Events Occurring After the Fund Disposed of Its PSG Stock Are Irrelevant to Its Securities Fraud Claim.

The Amended Complaint contains allegations of events that occurred after the Fund had disposed of all its PSG stock. Those events could not have contributed to any injury the Fund suffered and, therefore, cannot support its securities fraud claim.

According to the Amended Complaint, the Fund no longer held any PSG stock after March 10, 2016. (Am. Compl. Schedule A.) The Amended Complaint nevertheless contains allegations about a 10.35% drop in PSG's stock price on March 15, 2016, the day after the *New York Post* published an article entitled "Bauer's Parent Company Questioned About Misdating Earnings." (*Id.* ¶¶ 16, 135–36.) Reductions in stock prices that occur after a plaintiff's complete disposition of holdings cannot support a fraud claim. Addressing just this situation, the Supreme Court noted that when a plaintiff had already sold its shares "before the relevant truth begins to leak out, the misrepresentation will not have led to any loss." *Dura Pharms, Inc. v. Broudo*, 544 U.S. 336, 342 (2005). "[A]n inflated purchase price will not itself constitute or proximately cause the relevant economic loss," since "at the moment the transaction takes place, the plaintiff has suffered no loss." *Id.*; see also *Lentell v. Merrill Lynch & Co., Inc.*,

396 F.3d 161, 173 (2d Cir. 2005) (holding that loss causation requires “that the misstatement or omission concealed something from the market that, when disclosed, negatively affected the value of the security”). Under this precedent, the Fund did not suffer any loss as a result of declines in PSG’s share price after March 10, 2016. Any claim for losses following March 10, 2016 should be dismissed.

II. The Claim of Control Person Liability Should Be Dismissed.

To state a claim for “control person” liability under Section 20(a) of the Exchange Act, a plaintiff must show (1) a primary violation by the controlled person, (2) control of the primary violator by the defendant, and (3) that the defendant was, in some meaningful sense, a culpable participant in the controlled person’s fraud. *Shaar*, 493 F.3d at 108. Where a plaintiff fails to state a primary violation under Section 10(b) of the Exchange Act, it cannot establish control person liability under Section 20(a). *E.g., In re Wachovia Equity Sec. Litig.*, 753 F. Supp. 2d 326, 379 (S.D.N.Y. 2011); *In re Centerline Holdings Co. Sec. Litig.*, 613 F. Supp. 2d 394, 404 (S.D.N.Y. 2009).

As described in Part I, the Fund has failed to state a claim for a primary violation of Section 10(b), which means the control person claim must fail as well. In addition, for the same reasons that the Fund has failed to plead facts giving rise to a strong inference of scienter, the Fund has not alleged culpable participation on the part of any Defendant. *See, e.g., In re Satyam Comp. Servs. Ltd. Sec. Litig.*, 915 F. Supp. 2d 450, 482–83 (S.D.N.Y. 2013) (finding that for the same reasons that plaintiff failed to allege scienter, plaintiffs also failed to allege that any of the defendants were culpable participants); *Janbay v. Can. Solar, Inc.*, No. 10-cv-4430, 2012 WL 1080306, at *17 (S.D.N.Y. Mar. 30, 2012) (same). Having failed to establish control person liability, Count Two of the Amended Complaint should be dismissed as well.

CONCLUSION

The Amended Complaint should be dismissed.

Dated: New York, New York
October 13, 2016

Respectfully submitted,

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EXHIBIT “D”

EXHIBIT "D"

referred to in the Affidavit of

KEISHA LACKPATIAH-SEALY

Sworn September 20, 2017

A handwritten signature in black ink, appearing to be 'Z. H.', written over a horizontal line.

Commissioner for Taking Affidavits

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

OLD BPSUSH INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 16-12373 (KJC)

(Jointly Administered)

**JOINT CHAPTER 11 PLAN OF LIQUIDATION
OF OLD BPSUSH INC. AND ITS AFFILIATED DEBTORS**

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Dated: August 25, 2017

¹ The Debtors in these cases, along with the last four digits of each Debtor's U.S. federal tax identification number, are: Old BPSUSH Inc. (f/k/a BPS US Holdings Inc.) (8341); Old BH Inc. (f/k/a Bauer Hockey, Inc.) (3094); Old EBS Inc. (f/k/a Easton Baseball / Softball Inc.) (5670); Old BHR Inc. (f/k/a Bauer Hockey Retail Inc.) (6663); Old BPSU Inc. (f/k/a Bauer Performance Sports Uniforms Inc.) (1095); Old PLG Inc. (f/k/a Performance Lacrosse Group Inc.) (4200); Old BPSCI Inc. (f/k/a BPS Diamond Sports Inc.) (5909); Old PSGI Inc. (f/k/a PSG Innovation Inc.) (9408); Old BHR Wind-down Corp. (f/k/a Bauer Hockey Retail Corp.) (1899); Old EBS Wind-down Corp. (f/k/a Easton Baseball / Softball Corp.) (4068); Old PSGI Wind-down Corp. (f/k/a PSG Innovation Corp.) (2165); Old BPSDS Wind-down Corp. (f/k/a BPS Diamond Sports Corp.) (8049); Old BPSU Wind-down Corp. (f/k/a Bauer Performance Sports Uniforms Corp.) (2203); Old PLG Wind-down Corp. (f/k/a Performance Lacrosse Group Corp.) (1249); and Old PSG Wind-down Ltd. (f/k/a Performance Sports Group Ltd., and also representing the estates of the Debtors formerly known as KBAU Holdings Canada, Inc., Bauer Hockey Corp., and BPS Canada Intermediate Corp., respectively) (1514). The Debtors' mailing address is 666 Burrard Street, Suite 1700, Vancouver, British Columbia, Canada, V6C 2X8.

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INTRODUCTION

Old BPSUSH Inc., and the other debtors and debtors in possession in the above-captioned cases, as set forth on Exhibit A hereto, propose the following joint chapter 11 plan of liquidation for, among other things, the resolution of the outstanding Claims against and Equity Interests in the Debtors. Reference is made to the Disclosure Statement for a discussion of the Debtors' history, business, and operations, projections, risk factors, a summary and analysis of this Plan, and certain related matters. Parties are encouraged to read this Plan and the Disclosure Statement and their respective exhibits and schedules in their entirety before voting to accept or reject this Plan. All such agreements, documents, exhibits, schedules and the Plan Supplement are incorporated into and are made a part hereof as if fully set forth herein. No materials other than the Disclosure Statement and the respective schedules and exhibits attached thereto and referenced therein have been authorized by the Bankruptcy Court for use in soliciting acceptances or rejections of this Plan.

I. DEFINED TERMS, RULES OF INTERPRETATION, COMPUTATION OF TIME, GOVERNING LAW AND OTHER REFERENCES

A. Defined Terms

The following terms have the meanings below when used in capitalized form in this Plan:

1. “Administrative Claim” means any right to payment constituting a cost or expense of administration of any of the Chapter 11 Cases under sections 503(b) and 507(a)(1) of the Bankruptcy Code, including, without limitation, any actual and necessary costs and expenses of preserving the Estates and operating the Debtors' businesses, and any indebtedness or obligations incurred or assumed by the Debtors in connection with the conduct of their business, but excluding Fee Claims, the Canadian Fee Claims, or U.S. Trustee Fees.
2. “Administrative Claims Bar Date” means the first Business Day that is thirty (30) days after the Effective Date (or any date(s) otherwise ordered by the Bankruptcy Court), except in the case of claims of the Canada Revenue Agency or any other Canadian or provincial taxing authority for which a post-petition tax return must be filed, in which cases the Administrative Claims Bar Date shall be the Business Day that is ninety (90) days after the filing of such return.
3. “Affiliate” and “Affiliated” means, with respect to any Person, any Person who is an “affiliate” as defined in section 101(2) of the Bankruptcy Code.
4. “Allowed” means, with reference to any Claim, Administrative Claim against, or Equity Interest in, the Debtors:
 - a. any Claim other than a Satisfied Claim that is scheduled in a liquidated, undisputed and not contingent amount in the Schedules as of the Claims Objection Deadline, as such Schedules have been or may be amended by

the Debtors from, time to time, in accordance with Bankruptcy Rule 1009, and for which no contrary Proof of Claim has been filed;

- b. any Claim or Administrative Claim allowed pursuant to this Plan;
- c. any Claim or Administrative Claim other than a Satisfied Claim that is not Disputed prior to the earlier of (a) the making of any distribution with respect thereto, or (b) the Claims Objection Deadline;
- d. any Claim, Administrative Claim or Equity Interest that is compromised, settled, resolved or otherwise allowed (i) pursuant to a Final Order of the Bankruptcy Court or the Canadian Court; (ii) by the Monitor as authorized in the CCAA Proceedings; or (iii) otherwise in accordance with this Plan;
- e. any Intercompany Claim or Intercompany Equity Interest;
- f. any Parent Equity Interest that is reflected as a current Equity Interest in the books and records of the Parent Debtor or in the books and records of the Depository Trust Company or Clearing and Depository Services Inc. on the Effective Date, including, but not limited to, those Parent Equity Interests held by those Holders who elect to receive Beneficial Trust Interests; or
- g. any Parent Equity Interest in respect of restricted share units having vested in the ordinary course of business prior to the Petition Date and deferred share units granted or owing (including, for greater certainty, those which were not granted due to the stay of proceedings in the Chapter 11 Cases and CCAA Proceedings) to a director of the Parent Debtor prior to the Effective Date, all of which shall be identified in the Plan Supplement.

Claims and Equity Interests allowed solely for the purpose of voting to accept or reject this Plan pursuant to an order of the Bankruptcy Court are not “Allowed” hereunder. An Allowed Claim shall be net of any setoff or recoupment amount of any Claim that may be asserted by any Debtor against the Holder of such Claim, which amount shall be deemed setoff or recouped pursuant to the terms of this Plan.

5. “Asset Apportionment” has the meaning ascribed to such term in Article V.B.3(b) of this Plan.
6. “Assets” means all of the Debtors’ right, title and interest in and to property of whatever type and nature (real, personal, mixed, intellectual, tangible or intangible).
7. “Avoidance Action” means any avoidance or equitable subordination or recovery action under sections 105, 502(d), 510, 542 through 551, and 553(b) of the Bankruptcy Code, or similar avoidance or fraudulent transfer actions under applicable non-bankruptcy law.
8. “Ballot” means the form distributed to each Holder of an Impaired Claim or Equity Interest that is entitled to vote to accept or reject this Plan and on which such Holder is entitled to indicate, among other things, acceptance or rejection of this Plan.
9. “Bankruptcy Code” means the Bankruptcy Reform Act of 1978, as codified in title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as in effect on the Petition Date, together with all amendments and modifications thereto that are subsequently made applicable to the Chapter 11 Cases.
10. “Bankruptcy Court” means the United States Bankruptcy Court for the District of Delaware.
11. “Bankruptcy Rules” means: (a) the Federal Rules of Bankruptcy Procedure, as amended and promulgated under section 2075 of title 28 of the United States Code; (b) the applicable Local Rules of Bankruptcy Practice and Procedure of the Bankruptcy Court; and (c) any general or specific chamber rules or procedures, or standing orders governing practice and procedure issued by the Bankruptcy Court, each as in effect on the Petition Date, and each of the foregoing together with all amendments and modifications thereto that are subsequently made applicable to the Chapter 11 Cases or proceedings therein, as the case may be.

12. “Bar Date” means the deadlines for filing proofs of Claim for a particular type of Claim or an Administrative Claim against a Debtor as established by either (a) the *Order (I) Establishing Bar Dates for Filing Claims and (II) Approving the Form and Manner of Notice Thereof* [Docket No. 327] and the Claims Procedure Order of the Canadian Court dated December 19, 2016 pursuant to which general Proofs of Claim were due by February 6, 2017 and Proofs of Claim by a Governmental Unit were due by May 1, 2017; (b) the *Order, Pursuant to Sections 365, 501, 502, and 503 of the Bankruptcy Code and Bankruptcy Rules 2002, 3002 and 3003, (I) Authorizing the Debtors to Reject Certain Employment Agreements, Nunc Pro Tunc to February 27, 2017 and (II)(A) Establishing a Bar Date for Employees to File Proofs of Claim and (B) Approving the Form and Manner of Notice Thereof* [Docket No. 1005] and that Order of the Canadian Court dated April 10, 2017, pursuant to which Proofs of Claim in respect of Claims of employees of the Debtors were due by May 17, 2017; (c) any other order of the Bankruptcy Court or the Canadian Court; and/or (d) this Plan.
13. “Beneficial Trust Interest” means a beneficial interest in the Liquidation Trust, which interest shall be uncertificated and which shall be non-transferable except as expressly provided otherwise in the Liquidation Trust Agreement to be included in the Plan Supplement.
14. “Board of Directors” means the board of directors of a Debtor.
15. “Business Day” means any day, other than a Saturday, Sunday, a “legal holiday,” as defined in Bankruptcy Rule 9006(a), or a “holiday” as defined in the Rules of Civil Procedure, R.R.O., 1990, Reg. 194.
16. “Canadian Approval Hearing” means the hearing by the Canadian Court to consider the motion for approval of the CCAA Approval Order, as such hearing may be adjourned or continued from time to time, and which shall be a joint hearing with the Confirmation Hearing before the Bankruptcy Court, if permitted by the Bankruptcy Court and the Canadian Court.
17. “Canadian Claims” means Claims filed against the Canadian Debtors other than Securities Law Claims and the SEC Claim.
18. “Canadian Court” means the Ontario Superior Court of Justice (Commercial List).

19. “Canadian Debtors” means the Debtors incorporated under the laws of Canada or its Provinces: Old BHR Wind-down Corp. (f/k/a Bauer Hockey Retail Corp.); Old EBS Wind-down Corp. (f/k/a Easton Baseball / Softball Corp.); Old PSGI Wind-down Corp. (f/k/a PSG Innovation Corp.); Old BPSDS Wind-down Corp. (f/k/a BPS Diamond Sports Corp.); Old BPSU Wind-down Corp. (f/k/a Bauer Performance Sports Uniforms Corp.); Old PLG Wind-down Corp. (f/k/a Performance Lacrosse Group Corp.); and Old PSG Wind-down Ltd. (f/k/a Performance Sports Group Ltd., and also representing the former estates of the Debtors formerly known as KBAU Holdings Canada Inc., Bauer Hockey Corp., and BPS Canada Intermediate Corp., respectively, which former estates shall constitute “Canadian Debtors,” as applicable).
20. “Canadian Fee Claims” means any Claim for compensation of fees and expenses of a Canadian Professional.
21. “Canadian Professionals” means the Canadian counsel to the Debtors, Canadian counsel to the directors of the Debtors, Canadian ordinary course professionals who were used by the Debtors after the Petition Date and exempted from retention by the Bankruptcy Court, the Monitor and counsel to the Monitor, whose retention and payment is determined by the Canadian Court in the CCAA Proceedings in accordance with the Cross-Border Protocol, as necessary.
22. “Canadian Sale Proceeds Account” means the Canadian account established by the Monitor pursuant to the Sale Orders into which certain Sale Proceeds (as defined in the U.S. Sale Order) were deposited in accordance with the Initial Allocation (as defined in the Purchase Agreement).
23. “Canadian Sale Order” means collectively (a) the Approval and Vesting Order dated February 6, 2017; (b) the Order (Re: Q30 Settlement Agreement) dated February 10, 2017; and (c) the Order (Re: Stay Extension and Other Relief) dated July 17, 2017, all issued by the Canadian Court in the CCAA Proceedings.
24. “Cash” means the legal tender of the United States of America or the equivalent thereof, including bank deposits and checks.

25. “Causes of Action” means, any and all of the Debtors’ actions, causes of action, Avoidance Actions, controversies, liabilities, obligations, rights, suits, damages, defenses, judgments, Claims, third-party claims, cross-claims, counterclaims and demands whatsoever, whether known or unknown, reduced to judgment, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, secured or unsecured, whether assertable by the Debtors directly, indirectly, derivatively or in any representative or other capacity, now existing or hereafter arising, in law, equity, or otherwise, based in whole or in part upon any act, failure to act, error, omission, transaction, occurrence or other event arising or occurring prior to the Petition Date or during the course of the Chapter 11 Cases and CCAA Proceedings, including through the Effective Date, other than those released, enjoined, exculpated, sold, or otherwise limited or prohibited under this Plan, the Purchase Agreement, the Confirmation Order or other Final Order. For the avoidance of doubt, Causes of Action include: (i) any right of setoff, counterclaim or recoupment and any Claim for breach of contract or for breach of duties imposed by law or in equity; (ii) the right to object to Claims or Equity Interests (subject to the provisions of this Plan); (iii) any Claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (iv) any Claim or defense including fraud, mistake, duress and usury and any other defenses set forth in section 558 of the Bankruptcy Code; and (v) any state law fraudulent transfer Claim.
26. “Cause of Action Net Proceeds” has the meaning ascribed to such term in Article V.B.4 of this Plan.
27. “CCAA” means the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended.

28. “CCAA Approval Order” means an order granted by the Canadian Court that shall be in a form substantially similar to that in the Plan Supplement and in form and substance reasonably satisfactory to the Debtors, the Monitor, and the Committees, that shall conform to and be fully integrated into the provisions of this Plan, and that shall be an order, among other things; (a) approving the Global Settlement; (b) authorizing the Debtors to enter into and consummate the Plan Transactions; (c) wholly or partially discharging and releasing the CCAA Charges; (d) authorizing the Monitor or the Distribution Agent to make the distributions to the Debtors’ stakeholders that are contemplated by this Plan and the CCAA Approval Order, as the case may be; (e) appointing the Liquidation Trustee as the Litigation Representative with sole power and authority, on behalf of the Liquidation Trust and the Debtors, to investigate, prosecute, abandon, settle, liquidate, or otherwise resolve the Retained Causes of Action and to exercise all of the powers, rights and privileges described in Article V.E.11 hereof without further order of the Canadian Court or the Bankruptcy Court; (f) enforcing such other aspects of this Plan as may be appropriate in the opinion of the Debtors and the Monitor; (g) granting protections reasonably satisfactory to the Monitor in respect of acting as a Distribution Agent and continuing to act as the Monitor after the Effective Date; (h) declaring that the distributions contemplated by the CCAA Approval Order and this Plan shall not constitute “distributions” for purposes of Canadian taxing statutes and the Debtors, their directors and officers and the Monitor shall not be “distributing” for purposes of any Canadian taxing statute and shall not incur any liability for any distributions or payments made pursuant to the CCAA Approval Order or this Plan; and (i) granting related relief.
29. “CCAA Approval Order Date” means the date on which the Canadian Court enters the CCAA Approval Order.
30. “CCAA Charge Claims” means any Claim secured by the CCAA Charges, other than Fee Claims and Canadian Fee Claims.
31. “CCAA Charges” means the charges and/or Liens on the Assets granted by the Canadian Court under the CCAA Initial Order.
32. “CCAA Initial Order” means the Initial Order of the Canadian Court dated October 31, 2016, as such order has been amended, modified, and extended from time to time.
33. “CCAA Proceedings” means the proceedings commenced by the Debtors’ under the CCAA and pending before the Canadian Court.
34. “Chapter 11 Case(s)” means the Debtors’ cases pending before the Bankruptcy Court under chapter 11 of the Bankruptcy Code that are jointly administered under the case caption *In re Old BPSUSH Inc.*, Ch. 11 Case No. 16-12373 (KJC) (Bankr. D. Del. Oct. 31, 2016).

35. “Chief Wind-Down Officer” means a Person designated by the Equity Committee, with the consent of the Debtors, Monitor and Creditors’ Committee (not to be unreasonably withheld), who will be identified in the Plan Supplement.
36. “Claim” means “claim” as defined in section 101(5) of the Bankruptcy Code.
37. “Claims and Solicitation Agent” means Prime Clerk LLC.
38. “Claims Objection Deadline” means, with respect to U.S. Claims, (a) one hundred eighty (180) days after the Effective Date, or (b) such other date as the Bankruptcy Court may order upon motion of the Reorganized Parent Debtor or the Liquidation Trustee, in consultation with the Monitor. The filing of a motion to extend the Claims Objection Deadline shall automatically extend the Claims Objection Deadline until the Bankruptcy Court enters a Final Order on such motion. If the Bankruptcy Court enters an order denying such motion, the Claims Objection Deadline shall be the later of the then-current Claims Objection Deadline or thirty (30) days after the Bankruptcy Court’s entry of such order.
39. “Claims Resolution Order” means an order of the Canadian Court, in form and substance reasonably satisfactory to the Committees, the Monitor and the Debtors, determining the process for determining, estimating or otherwise resolving the Canadian Claims.
40. “Claims Register” means the official register of Claims maintained by the Claims and Solicitation Agent.
41. “Class” means a class of Holders of Claims or Equity Interests pursuant to section 1122(a) of the Bankruptcy Code.
42. “Clearance Certificate” means an interim or final clearance certificate from the CRA or the applicable taxing authority of a provincial government or Governmental Unit to the Debtors, the Monitor or Liquidation Trustee, as applicable, confirming that as at the time of applicable distribution there are no unpaid liabilities owing to the CRA or such taxing authority or Governmental Unit and no such liabilities result from the applicable distribution made pursuant to this Plan or the CCAA Approval Order.
43. “Collateral” means any property or interest in property of an Estate subject to a Lien, not otherwise subject to avoidance under the Bankruptcy Code, to secure the payment or performance of a Claim.
44. “Comfort Letters” means letters delivered from each of the Quebec Revenue Agency and the CRA or the applicable taxing authority of a provincial government or Governmental Unit to the Monitor, in a form satisfactory to the Monitor, confirming that the Monitor may make distributions to the Debtors’ creditors without being considered a “legal representative” within the meaning under the *Income Tax Act*, R.S.C., 1985, c. 1., (5th Supp.), or under other applicable Canadian provincial or federal fiscal laws.

45. “Committees” means collectively, the Creditors’ Committee and the Equity Committee.
46. “Confirmation” or “Confirmed” means the entry of the Confirmation Order on the Docket of the Chapter 11 Cases by the Bankruptcy Court.
47. “Confirmation Date” means the date on which the Bankruptcy Court enters the Confirmation Order on the Docket of the Chapter 11 Cases within the meaning of Bankruptcy Rules 5003 and 9021.
48. “Confirmation Hearing” means the hearing held by the Bankruptcy Court to consider confirmation of this Plan pursuant to section 1129 of the Bankruptcy Code, as such hearing may be adjourned or continued from time to time and which shall be a joint hearing with the CCAA Approval Hearing before the Canadian Court, if permitted by the Bankruptcy Court and the Canadian Court.
49. “Confirmation Order” means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.
50. “Consumer Privacy Ombudsman” means Michael St. Patrick Baxter, the consumer privacy ombudsman appointed in the Chapter 11 Cases [Docket No. 523].
51. “Consummation” or “Consummated” means the occurrence of the Effective Date.
52. “Cost Sharing Agreement” has the meaning ascribed to such term in Article V.B.4 of this Plan.
53. “CRA” means the Canada Revenue Agency, also known as the Agence du revenu du Canada.
54. “Creditor” has the meaning set forth in section 101(10) of the Bankruptcy Code.
55. “Creditors’ Committee” means the statutory committee of unsecured creditors appointed in the Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code, as constituted from time to time [Docket No. 116].
56. “Cross-Border Protocol” means the cross-border protocol approved by the Bankruptcy Court in these Chapter 11 Cases [Docket No. 220] and approved by the Canadian Court on November 30, 2016.
57. “Cure Costs” means any and all amounts, costs or expenses that must be paid or actions that must be performed pursuant to sections 365 and 1123 of the Bankruptcy Code in connection with the assumption and/or assignment of Executory Contracts.
58. “Debtor” or “Debtors” means individually, or collectively, each of the debtors and debtors in possession listed on Exhibit A annexed hereto.

59. “Debtor Releasees” means:

- a. the Monitor;
- b. the U.S. Professionals;
- c. Alvarez & Marsal North America, LLC and Alvarez & Marsal Canada ULC, (including, for the avoidance of doubt, Brian J. Fox);
- d. the Canadian Professionals;
- e. in each case of the Debtor Releasees in (a) through (d) hereof, such Debtor Releasees’ partners, members, employees, attorneys, accountants, investment bankers, consultants, representatives and other professionals; and
- f. the other Debtors and the rank and file employees of the other Debtors who are not officers of any Debtor (*i.e.*, employees below the level of Vice President or similar title);

provided, however, that, for the avoidance of doubt, KPMG LLP and any Affiliate thereof is not and shall not be deemed to be a Debtor Releasee.

60. “Disallowed Election” shall have the meaning set forth in Article IV.B.7.

61. “Disclosure Statement” means the disclosure statement relating to this Plan, including, all exhibits and schedules thereto, as approved by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code.

62. “Disclosure Statement Order” means the order of the Bankruptcy Court approving the Disclosure Statement and solicitation procedures for this Plan.

63. “Disputed” means, with reference to any Claim, Administrative Claim or Equity Interest:

- a. any Claim or Administrative Claim proof of which was timely and properly filed and (i) which is disputed under this Plan; (ii) as to which the Debtors or any other party in interest have interposed or interpose a timely objection and/or request for estimation in accordance with section 502(c) of the Bankruptcy Code and Bankruptcy Rule 3018, which objection and/or request for estimation has not been withdrawn or determined by a Final Order; or (iii) as to which the Monitor has served a notice of disallowance and which notice of disallowance has not been withdrawn, resolved or determined by a Final Order, or the date to appeal such notice of disallowance (in accordance with the Claims Resolution Order) has not expired.
- b. any Claim or Administrative Claim, proof of which was required to be filed by the Bar Date, but as to which a Proof of Claim was not timely and/or properly filed by such applicable Bar Date;

- c. any Claim scheduled on the Schedules as unliquidated, disputed or contingent, and that is not superseded by a timely filed Proof of Claim; or
- d. any Claim or Equity Interest subject to an objection or a notice of disallowance or for which an adversary proceeding has been commenced seeking, among other things, entry of an order disallowing and/or subordinating such Claim or Equity Interest.

For the avoidance of doubt, any U.S. Claim that has not been allowed or disallowed by Final Order or under this Plan as of the Claims Objection Deadline is a Disputed Claim (solely for purposes of determining whether a distribution must be made on such Claim before the Claims Objection Deadline). To the extent an objection relates to the allowance of only a part of a Claim, such Claim is a Disputed Claim only to the extent of the objection, and is an Allowed Claim as to the portion of the Claim against which no objection was made.

64. “Distribution Agent” means (a) from the Effective Date to the Final Monitor Distribution Date, the Reorganized Parent Debtor as to the Reserves other than the Individual Securities Damages Claim Reserve, and otherwise the Monitor; and (b) following the Final Monitor Distribution Date, any Person(s) selected by the Monitor, Reorganized Parent Debtor or the Liquidation Trustee, as applicable, to make or to facilitate distributions required by this Plan, which Person(s) may include the Claims and Solicitation Agent, the Depository Trust Company, Clearing and Depository Services Inc., the Liquidation Trustee, the Monitor and/or the Reorganized Parent Debtor.
65. “Distribution Record Date” means, with respect to Allowed Claims, the record date for purposes of making distributions under this Plan and the CCAA Approval Order on account of Allowed Claims, which date shall be the later of the Confirmation Date and the CCAA Approval Order Date. There shall be no Distribution Record Date on account of Parent Equity Interests.
66. “Distribution Date” means any date selected by the Distribution Agent for making distributions required by this Plan.
67. “Docket” means the official docket of pleadings maintained by the clerk of the Bankruptcy Court for the Chapter 11 Cases.
68. “Effective Date” means the date that is the Business Day after which all conditions precedent to the occurrence of the Effective Date set forth in Article IX.B of this Plan have been satisfied or waived in accordance with Article IX.D of this Plan selected by the Debtors as set forth in the Notice of Effective Date.
69. “Entity” has the meaning set forth in section 101(15) of the Bankruptcy Code.
70. “Equity Committee” means the statutory committee of Holders of Equity Interests appointed in the Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code, as constituted from time to time [Docket No. 202].

71. “Equity Interest” means all issued, authorized, and outstanding common shares or other instrument evidencing a present ownership interest in any of the Debtors, whether or not transferable, including any restricted share units having vested in the ordinary course of business prior to the Petition Date and deferred share units granted or owing (including, for greater certainty, those which were not granted due to the stay of proceedings in the Chapter 11 Cases and CCAA Proceedings) to a director of the Parent Debtor prior to the Effective Date and are listed in the Plan Supplement. For the avoidance of doubt, an “Equity Interest” does include deferred shared units owing to directors of the Parent Debtor that may not have been granted due to the stay of proceedings in the Chapter 11 Cases and the CCAA Proceedings and are listed in the Plan Supplement, but does not include any other contingent or unexercised option, warrant, or right, contractual or otherwise, to acquire or be awarded any interest in any Debtor, including but not limited to unvested restricted share units or other forms of interest, all of which shall be cancelled by this Plan on the Effective Date.
72. “Estate(s)” means the bankruptcy estate(s) of the Debtors created under sections 301 and 541 of the Bankruptcy Code on the Petition Date.
73. “Exculpated Actions” has the meaning set forth in Article X.C of this Plan.
74. “Exculpated Parties” means the Debtors, the Monitor, the Consumer Privacy Ombudsman, the Creditors’ Committee, the Equity Committee and any of their respective members, partners, officers, directors, employees, advisors, professionals or agents and advisors of the foregoing (including any attorneys, financial advisors, investment bankers and other professionals retained by the Debtors, the Monitor, the Consumer Privacy Ombudsman, the Creditors’ Committee, and the Equity Committee) but solely in their capacities as such, and all Professionals; provided, however, that “Exculpated Parties” shall not include KPMG LLP or any Affiliates thereof.
75. “Executory Contract” means a contract to which one or more of the Debtors are party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.
76. “Federal Judgment Rate” means 0.98% per annum, which is the post-judgment interest rate in effect as of the Petition Date established by Section 1961(a) of Title 28 of the United States Code and provided by the Federal Reserve and published every Monday for the preceding week.

77. “Fee Claim” means an Administrative Claim under sections 328, 330(a), 331 or 503 of the Bankruptcy Code for compensation of a U.S. Professional for services rendered or expenses incurred in the Chapter 11 Cases on or prior to the Effective Date (including, but not limited to, transaction fees, other success fees and the reasonable expenses of the members of the Creditors’ Committee and Equity Committee incurred as members of the Creditors’ Committee or Equity Committee in discharge of their duties as such). For the avoidance of doubt, (i) the claims of Alvarez & Marsal North America, LLC for services performed and expenses incurred in accordance with its retention order entered in these Chapter 11 Cases [Docket No. 222] do not constitute Fee Claims, and are payable in accordance with such retention order; and (ii) in accordance with the Cross-Border Protocol, the Canadian Fee Claims are not Fee Claims and are payable as set forth in the Cross-Border Protocol.
78. “Fee Claims Bar Date” means the date that is forty-five (45) days after the Effective Date.
79. “Fee Examiner” means M.J. Renick & Associates LLC.
80. “Fee Examiner Order” means that certain Order Appointing Fee Examiner and Establishing Related Procedures for Compensation and Reimbursement of Expenses for Professionals and Consideration of Fee Applications [Docket No. 521].
81. “Final Decree” means the decree contemplated under Bankruptcy Rule 3022.
82. “Final Distribution Date” means the date selected by agreement of the Liquidation Trustee, Monitor and the Reorganized Parent Debtor, which date shall be no later than sixty (60) days after the date on which (i) all Retained Causes of Action shall have been settled, abandoned, or fully adjudicated; (ii) all Disputed Claims in the Chapter 11 Cases have been Allowed or disallowed; (iii) the Monitor shall have certified to the Canadian Court that all Disputed Canadian Claims against the Canadian Debtors have been finally resolved; and (iv) the Debtors or Monitor shall have obtained all applicable Clearance Certificates confirming that all applicable taxes have been paid in advance of final distributions to Holders of Allowed Parent Equity Interests.
83. “Final Monitor Distribution Date” means the date on which all Initial Cash Distributions have been made.

84. “Final Order” means an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction (including the Canadian Court as applicable), which has been entered on the Docket, and that has not been stayed, reversed, modified or amended and as to which the time to file an appeal, a motion for re-hearing, re-argument or reconsideration or a petition for writ of certiorari has expired or been waived, and as to which no appeal, petition for certiorari, or other proceedings for re-argument, reconsideration or re-hearing are then pending; provided, however, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or analogous rule under the Bankruptcy Rules, may be filed with respect to such order shall not preclude such order from being a Final Order.
85. “General Unsecured Claim” means an unsecured non-priority Claim against a Debtor that is not an Administrative Claim, Fee Claim, Canadian Fee Claim, U.S. Trustee Fee, CCAA Charge Claim, Secured Claim, Priority Tax Claim, Priority Non-Tax Claim, SEC Claim, Purported Securities Class Action Claim, Individual Securities Damages Claim, or Intercompany Claim.
86. “Global Settlement” means the settlement and compromise negotiated among the Debtors, Equity Committee and Creditors’ Committee and recommended by the Monitor and incorporated in this Plan and approved by the Canadian Court pursuant to the CCAA Approval Order.
87. “Governmental Unit” has the meaning set forth in section 101(27) of the Bankruptcy Code.
88. “Holdback Amount” means, with respect to Fee Claims, amounts held back pursuant to an order or orders of the Bankruptcy Court, including the Interim Compensation Order.
89. “Holdback Amount Reserve” means a reserve funded on or before the Effective Date for the payment of the Holdback Amount for Professionals and payment of any additional unpaid amounts asserted or estimated by the Professionals and Alvarez & Marsal North America, LLC as owing to any such firm for fees accrued prior to the Effective Date, which amount shall be determined by the Debtors prior to the Effective Date after consultation with the Committees and Monitor.
90. “Holder” means any Entity holding a Claim or Equity Interest.
91. “Impaired” means, with respect to any Claim or Equity Interest or Class thereof, a Claim or an Equity Interest or Class thereof that is “impaired” within the meaning of section 1124 of the Bankruptcy Code.
92. “Individual Securities Damages Claim” means Proof of Claim number 494 filed by the Plumbers & Pipefitters National Pension Fund, in its individual capacity, asserting Securities Law Claims against the Parent Debtor.

93. “Individual Securities Damages Claim Reserve” means a reserve in an aggregate amount not to exceed \$928,077 that will be funded on or before the Effective Date for the purposes of making distributions in respect of and satisfying the Allowed amount, if any, of the Individual Securities Damages Claim, subject to the rights of Holders of General Unsecured Claims to the prior Payment in Full of such Holders’ Allowed Claims under the Plan (including the Global Settlement).
94. “Initial Cash Distributions” has the meaning ascribed to such term in Article V.B.3(b) of this Plan.
95. “Initial CCAA Approval Order” has the meaning ascribed to such term in Article IX.A.2 of this Plan.
96. “Initial Distribution Date” means the first Business Day as soon as practicable after the later of (i) the Effective Date and (ii) the receipt by the Monitor of the Comfort Letters, or such other date as may be reasonably determined by the Distribution Agent, on which distributions to Holders of Allowed Claims shall be made.
97. “Insured Persons” means (a) any past or present directors or officers of any Debtor, (b) any Person who is or was a “defacto”, “shadow”, or “acting” director or officer, or is or was deemed to be a director or officer, of any Debtor, (c) any Person who is or was contracted to perform the duties of any officer of any Debtor, (d) any Person who is or was a trustee, governor, advisory board member, management committee member, management board member, general partner or equivalent position of any Debtor, (e) any Person who held or holds a title, position, or capability in any Debtor equivalent to a director or officer, and (f) any other Person that is determined to be an “Insured Person” as defined under the Liberty International Underwriters Public Advantage Liability Policy for Directors and Officers, Policy Number DOMOAA0JFA003 (as amended).
98. “Intercompany Claim” means any Claim held by a Debtor against another Debtor.
99. “Intercompany Equity Interest” means any Equity Interest held by a Debtor in another Debtor.
100. “Interim Compensation Order” means the Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals, dated November 29, 2016 [Docket No. 226].
101. “Interim Distribution Date” means any date after the Initial Distribution Date on which the Distribution Agent determines that an interim distribution should be made under this Plan in light of, among other things, resolutions of Disputed Claims and the administrative costs of such a distribution.
102. “Lien” has the meaning set forth in section 101(37) of the Bankruptcy Code.

103. “Liquidation Trust” means the trust created pursuant to this Plan and the Liquidation Trust Agreement.
104. “Liquidation Trust Advisory Board” means the advisory board of Persons appointed to oversee the administration of the Liquidation Trust, which shall have the powers and duties set forth in the Liquidation Trust Agreement and shall be designated by the Equity Committee with the consent of the Monitor and the Debtors, which consent is not to be unreasonably withheld, and after consultation with the Creditors’ Committee, as identified in the Plan Supplement.
105. “Liquidation Trust Agreement” means the agreement governing the administration of the Liquidation Trust, in form and substance acceptable to the Equity Committee, substantially in the form to be filed in the Plan Supplement.
106. “Liquidation Trust Assets” has the meaning set forth in Article V.E.1 of this Plan.
107. “Liquidation Trust Beneficiary” means a beneficial Holder of a Beneficial Trust Interest.
108. “Liquidation Trust Certification Bar Date” means the deadline established by the Disclosure Statement Order for the Debtors to receive valid Liquidation Trust Certification Forms through the Claims and Solicitation Agent, Depository Trust Company and/or Clearing and Depository Services Inc., which date shall be the same date as the Voting Deadline.
109. “Liquidation Trust Certification Form” means the form whereby a beneficial Holder of a Parent Equity Interest elects to receive Beneficial Trust Interests in exchange for its Parent Equity Interests through tender of its Parent Equity Interests effective as of the Effective Date.
110. “Liquidation Trustee” means the person selected by the Equity Committee and designated in the Plan Supplement as the trustee of the Liquidation Trust, or any successor thereto.
111. “Liquidation Trust Expense Reserve” means the reserve established on or before the Effective Date to hold Cash in an amount sufficient to satisfy the Wind-Down Expenses of the Liquidation Trust, Reorganized Parent Debtor and the Debtors in an amount not to exceed the amount permitted under Rev. Proc. 94-45 and to be set forth in the Plan Supplement, as proposed by the Equity Committee.
112. “Litigation Representative” means the Liquidation Trustee as representative of the Debtors and the Liquidation Trust in respect to the Retained Causes of Action, including, but not limited to, for the purposes set forth in Article V.E.12 hereof.
113. “Monitor” means Ernst & Young Inc., in its capacity as the Canadian Court-appointed monitor in the CCAA Proceedings.

114. “Notice of Effective Date” means the notice filed on the Docket by the Debtors, after consultation with the Monitor and the Committees, that the Effective Date has occurred.
115. “Opt-Out Notice” means the form distributed to each Holder of an Unimpaired Claim on which such Holder is to indicate whether it opts-out of granting the releases provided for in Article X.B of this Plan.
116. “Option 1” has the meaning ascribed to it in Article IV.C.7.b of this Plan.
117. “Option 2” has the meaning ascribed to it in Article IV.C.7.b of this Plan.
118. “Paid in Full” or “Payment in Full” or “Pay in Full” each mean, with respect to an Allowed Claim, payment in Cash in an aggregate amount equal to the Allowed amount thereof, whether paid by a Debtor, the Monitor, the Purchaser, the Distribution Agent or any other Person, and whether taking the form of a cure payment, payment by a Debtor on accounts payable, payment by Purchaser on accounts payable, or otherwise.
119. “Parent Debtor” means Old PSG Wind-down Ltd. (f/k/a Performance Sports Group Ltd.).
120. “Parent Equity Interest” means an Equity Interest in the Parent Debtor.
121. “Person” means a natural person, corporation, limited liability company, association, partnership (whether general, limited, or any other form of partnership entity), joint venture, proprietorship, estate, trust, labor union, Governmental Unit or any other individual or entity, whether acting in an individual, fiduciary, representative or other capacity, including the U.S. Trustee, within the meaning of section 101(15) of the Bankruptcy Code.
122. “Petition Date” means October 31, 2016.
123. “Plan” means this *Joint Chapter 11 Plan of Liquidation of Old BPUSH Inc. and its Affiliated Debtors* (as it may be altered, amended, modified or supplemented from time to time, and including the Plan Supplement, regardless of whether the Plan Supplement is also separately referenced in any given Article of this Plan).

124. “Plan Supplement” means the supplemental appendix to this Plan, to be filed by the Debtors on or prior to the date that is five (5) Business Days prior to the Voting Deadline, which will contain, among other things: (a) the names of the Director(s) that will serve on the Board of Directors of each of the Debtors after the Effective Date; (b) the name of the Chief Wind-Down Officer selected as of the Effective Date; (c) the name of the Liquidation Trustee selected as of the Effective Date; (d) the names of the members of the Liquidation Trust Advisory Board; (e) the proposed form of the Liquidation Trust Agreement; (f) the restricted stock units and deferred share units that will be treated as Parent Equity Interests under this Plan; and (g) any amendments to the Reorganized Parent Debtor’s organizational documents to be made on the Effective Date. The Plan Supplement will be in form and substance reasonably satisfactory to the Debtors and the Committees.
125. “Plan Transactions” has the meaning ascribed to such term in Article V.A of this Plan.
126. “Post-Petition Interest” means simple interest per annum at the Federal Judgment Rate, based on a three hundred sixty (360)-day year for the period from the Petition Date to, but excluding, the Effective Date.
127. “Priority Non-Tax Claim” means any Claim, other than an Administrative Claim or a Priority Tax Claim, entitled to priority in right of payment under section 507(a) of the Bankruptcy Code or otherwise entitled to priority under Canadian law, including Claims of employees or former employees of the Debtors of the kind described in subsection 6(5) of the CCAA.
128. “Priority Tax Claim” means any Claim of a Governmental Unit of the kind specified in sections 502(i) or 507(a)(8) of the Bankruptcy Code and any Claim of the Canadian federal and provincial governments of the kind described in subsection 6(3) of the CCAA.
129. “Privileges” shall have the meaning set forth in Article V.E.11 of this Plan.
130. “Professional” means a Canadian Professional or U.S. Professional.
131. “Proof of Claim” means a proof of Claim filed in the Chapter 11 Cases and CCAA Proceedings in accordance with the form that was jointly approved by the Bankruptcy Court and Canadian Court.
132. “Pro Rata” means the proportion that an Allowed Claim or an Allowed Equity Interest in a particular Class bears to the aggregate amount of all Allowed Claims or Allowed Equity Interests in that same Class.
133. “Purchase Agreement” means that certain *Asset Purchase Agreement* (as amended) dated as of October 31, 2016, between Performance Sports Group Ltd. and the other entities identified therein as sellers and the Purchaser and as approved by the Sale Orders.

134. “Purchased Assets” means the assets acquired by the Purchaser through the Purchase Agreement, as further described therein.
135. “Purchaser” means, collectively, Peak Achievement Athletics Inc. (f/k/a 9938982 Canada Inc.) or any Designated Purchaser (as defined in the Purchase Agreement).
136. “Purported Securities Class Action Claim” means the Proof of Claim number 444 (as may be amended) asserting Securities Law Claims filed by the Plumbers & Pipefitters National Pension Fund, purportedly on behalf of itself and a putative class of other claimants.
137. “Reinstated” or “Reinstatement” means, unless this Plan specifies a particular method pursuant to which a Claim or Interest shall be Reinstated, with respect to Claims and Interests, the treatment provided for in section 1124 of the Bankruptcy Code.
138. “Rejection Damages Claim” means a Claim for damages arising from the rejection of any Executory Contract pursuant to this Plan, sections 365 or 1123 of the Bankruptcy Code, or a notice of disclaimer or resiliation sent by the Debtors in the CCAA Proceedings pursuant to the CCAA.
139. “Released Claims” has the meaning set forth in Article X.A of this Plan.
140. “Releasing Party” means each Holder of a Claim that (i) affirmatively votes to accept this Plan; (ii) is Unimpaired pursuant to this Plan and therefore is deemed to accept this Plan pursuant to section 1126(f) of the Bankruptcy Code; or (iii) rejects this Plan or abstains from voting on this Plan and that does not mark its Ballot indicating its desire to opt out of the releases provided in Article X.B of this Plan. For the avoidance of doubt, “Releasing Party” shall not include Holders of Parent Equity Interests, or Holders of Claims that either: (a) are deemed to reject this Plan pursuant to section 1126(g) of the Bankruptcy Code; (b) are entitled to vote on this Plan and opt out of granting the releases provided in Article X.B of this Plan by checking the appropriate box on the Ballot; or (c) are deemed to accept this Plan pursuant to section 1126(f) of the Bankruptcy Code and opt out of granting the releases provided in Article X.B of this Plan by checking the appropriate box on the Opt-Out Notice.
141. “Reorganized Debtors” means the Reorganized Parent Debtor and any other Debtor from and after the Effective Date, pending its eventual dissolution.
142. “Reorganized Parent Debtor” means the Parent Debtor from and after the Effective Date, as reorganized pursuant to this Plan pending its eventual dissolution.
143. “Reserves” means, collectively, the Liquidation Trust Expense Reserve, the Holdback Amount Reserve and the Individual Securities Damages Claim Reserve.

144. “Retained Causes of Action” means all Causes of Action of the Parent Debtor or any Subsidiary Debtor as of the Effective Date other than any Cause of Action that has been (i) assigned to Purchaser pursuant to the Purchase Agreement or Sale Orders, or (ii) settled or released under this Plan or otherwise settled or released prior to the Effective Date, including but not limited to those settled or released 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, and (III) Granting Adequate Protection to Prepetition Secured Lenders Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364; and (IV) Granting Related Relief* [Docket No. 229], the *Order Approving Stipulation By and between the Debtors and 9938982 Canada Inc. and Affiliates Regarding Purchase Agreement Escrow* [Docket No. 1197], the CCAA Initial Order, the Order (Re: Stay Extension and Other Relief) dated July 17, 2017 of the Canadian Court in the CCAA Proceeding.
145. “Sale” means the sale of substantially all of the Debtors assets to Purchaser in accordance with and pursuant to the Sale Orders.
146. “Sale Orders” means collectively the U.S. Sale Order and Canadian Sale Order.
147. “Sale Proceeds” means, in aggregate, the proceeds from the Sale on deposit in the Canadian Sale Proceeds Account and the U.S. Sale Proceeds Account.
148. “Satisfied Claim” means any Claim that has been Paid in Full or otherwise satisfied after the Petition Date whether by the Debtors, Purchaser or otherwise, including any Cure Costs for executory contracts assumed and assigned in connection with the Sale.
149. “Schedule” or “Schedules” means collectively or individually, the schedules of assets and liabilities filed by the Debtors under section 521 of the Bankruptcy Code and Bankruptcy Rule 1007, as may be amended or modified from time to time pursuant to Bankruptcy Rule 1009.
150. “SEC” means the U.S. Securities and Exchange Commission.
151. “SEC Claim” means the claim filed by the U.S. Securities and Exchange Commission (as may be amended, Proof of Claim No. 599).
152. “Secured Claim” means any Claim, in each case as determined pursuant to sections 506(a) and 1111(b) of the Bankruptcy Code, that is: (a) secured by a valid, perfected and enforceable Lien on property in which the Estates have an interest and that is not subject to avoidance under applicable bankruptcy or non-bankruptcy law, to the extent of the value of the Claim Holder’s interest in such property as of the Confirmation Date; or (b) subject to setoff under section 553 of the Bankruptcy Code to the extent of the amount subject to setoff.

153. “Securities Law Claim” means any Claim, whether or not the subject of an existing lawsuit, that is subject to mandatory subordination pursuant to section 510(b) of the Bankruptcy Code or comparable principles of Canadian law.
154. “Shareholder Distributable Assets” has the meaning ascribed to such term in Article V.B.3(a) of this Plan.
155. “Subsidiary Debtor” means a Debtor other than the Parent Debtor, both before and after the Effective Date.
156. “Third-Party Releasees” means the Debtors, the Monitor, the Creditors’ Committee, the Equity Committee and the Consumer Privacy Ombudsman or any of their respective current members, partners, officers, directors, employees, advisors, professionals, or agents and advisors of any of the foregoing (including any attorneys, financial advisors, investment bankers and other professionals retained by such Persons) but solely in their capacities as such.
157. “U.S.” means the United States of America.
158. “U.S. Claims” means Claims filed against the U.S. Debtors and the SEC Claim.
159. “U.S. Debtors” means the Debtors incorporated in the United States: Old BPSUSH Inc. (f/k/a BPS US Holdings Inc.); Old BH Inc. (f/k/a Bauer Hockey, Inc.); Old EBS Inc. (f/k/a Easton Baseball / Softball Inc.); Old BHR Inc. (f/k/a Bauer Hockey Retail Inc.); Old BPSU Inc. (f/k/a Bauer Performance Sports Uniforms Inc.); Old PLG Inc. (f/k/a Performance Lacrosse Group Inc.); Old BPSCI Inc. (f/k/a BPS Diamond Sports Inc.); and Old PSGI Inc. (f/k/a PSG Innovation Inc.).
160. “U.S. Parent” means Old BPSUSH Inc. (f/k/a BPS US Holdings Inc.).
161. “U.S. Professional” means a Person: (a) retained by order of the Bankruptcy Court in connection with the Chapter 11 Cases pursuant to sections 327, 328, 330, or 1103 of the Bankruptcy Code, but excluding any ordinary course professionals retained pursuant to an order of the Bankruptcy Court, or (b) for which compensation or reimbursement is sought or has been Allowed by the Bankruptcy Court pursuant to section 503(b)(4) of the Bankruptcy Code, including, without limitation, all professionals retained by the Debtors, Creditors’ Committee, and Equity Committee.

162. “U.S. Sale Order” means collectively (a) the Order (A) Approving the Asset Purchase Agreement; (B) Approving the Sale to the Purchaser Substantially All of the Assets of the Debtor Pursuant to Section 363 of the Bankruptcy Code Free and Clear of All Liens, Interests, and Encumbrances; (C) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Pursuant to Section 363 of the Bankruptcy Code; (D) Authorizing the Debtors to Consummate Transaction Related to the Above; and (E) Granting Related Relief and [Docket No. 770]; and (b) the Order (Supplemental) Approving the Waiver and Consent Agreement Resolving the Q30 Parties’ Objection to the Debtors’ Sale of Substantially All of the Debtors’ Assets to the Stalking Horse Purchaser [Docket No. 799] and (c) the *Order Approving Stipulation By and between the Debtors and 9938982 Canada Inc. and Affiliates Regarding Purchase Agreement Escrow* [Docket No. 1197].
163. “U.S. Sale Proceeds Account” means the U.S. account established by the Debtors pursuant to the Sale Orders into which certain Sale Proceeds (as defined in the U.S. Sale Order) were deposited in accordance with the Initial Allocation (as defined in the Purchase Agreement).
164. “U.S. Trustee” means the United States Trustee for the District of Delaware.
165. “U.S. Trustee Fees” means fees arising under 28 U.S.C. § 1930(a)(6) or accrued interest thereon arising under 31 U.S.C. § 3717.
166. “Undeliverable Distribution” means any distribution under this Plan on account of an Allowed Claim or Parent Equity Interest to a Holder that has not: (a) accepted a particular distribution or, in the case of distributions made by check, negotiated such check; (b) responded to the Distribution Agent’s requests for information necessary to facilitate a particular distribution; or (c) taken any other action necessary to facilitate such distribution.
167. “Unimpaired” means with respect to a Claim or Equity Interest in a Debtor or a Class thereof, a Claim or Equity Interest or Class thereof that is not impaired within the meaning of section 1124 of the Bankruptcy Code.
168. “Voting Deadline” means the last date by which Holders of Claims or Equity Interests entitled to vote to accept or reject this Plan may submit their Ballots to accept or reject this Plan, as set by the Bankruptcy Court.
169. “Wind-Down Expenses” has the meaning set forth in Article V.B.4 of this Plan.

B. Rules of Interpretation

Wherever from the context it appears appropriate, each term stated in either the singular or the plural shall include both the singular and the plural and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and neuter. Unless otherwise specified, all section, article, schedule, or exhibit references in this Plan are to the respective Section in, Article of, Schedule to, or Exhibit to, this Plan. The words “herein,”

“hereof,” “hereto,” “hereunder,” and other words of similar import refer to this Plan as a whole and not to any particular section, subsection, or clause contained in this Plan. Except for the rule contained in section 102(5) of the Bankruptcy Code, which shall not apply, the rules of construction contained in section 102 of the Bankruptcy Code shall apply to the construction of this Plan. A term used herein that is not defined herein, but that is used in the Bankruptcy Code, shall have the meaning ascribed to that term in the Bankruptcy Code. The headings in this Plan are for convenience of reference only and shall not limit or otherwise affect the provisions of this Plan. The Plan Supplement and appendices to this Plan are incorporated into this Plan by reference and are a part of this Plan as if set forth in full herein. The documents contained in the exhibits and the Plan Supplement shall be approved by the Bankruptcy Court pursuant to the Confirmation Order. Holders of Claims and Equity Interests may inspect a copy of the Plan Supplement, once filed, in the Office of the Clerk of the Bankruptcy Court during normal business hours, or free of charge at <https://cases.primeclerk.com/PSG/> or <https://www.ey.com/ca/psg>.

C. Computation of Time

Bankruptcy Rule 9006(a) applies in computing any period of time prescribed or allowed herein. If the date on which a transaction may occur, or be required to be done, shall occur on a day that is not a Business Day, then such transaction shall instead occur on the next succeeding Business Day.

D. Governing Law

Except as otherwise set forth in this Plan (including as to the Canadian Debtors) and except to the extent the Bankruptcy Code or Bankruptcy Rules apply, and subject to the provisions of any contract, lease, instrument, release, or other agreement or document entered into expressly in connection herewith, the rights and obligations arising hereunder shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without giving effect to conflict-of-laws principles; provided, that the corporate governance matters shall be governed by the laws of the state or province of incorporation or formation of the applicable Debtor, the Monitor and matters related to the conduct of the CCAA Proceedings shall be governed by the CCAA and other applicable Canadian law, and the Canadian Claims shall be addressed in the CCAA Proceedings in a manner approved by the Canadian Court.

E. Reference to Monetary Figures

All references in this Plan to monetary figures refer to currency of the U.S., unless otherwise expressly provided.

F. Separate Plans

Although styled as a “joint” plan, this Plan consists of eighteen (18) separate Plans (one for each of the Debtors’ Chapter 11 Cases). If any Plan is not Confirmed, then the Debtors reserve the right to withdraw such Plan.

G. No Substantive Consolidation

The Estates of the Debtors have not been substantively consolidated. Nothing in this Plan shall constitute or be deemed to constitute an admission that one Debtor is subject to or liable for any Claim against any other Debtor, except as expressly provided through the Global Settlement.

II. GLOBAL SETTLEMENT

Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under this Plan, on the Effective Date, the provisions of this Plan constitute a good-faith compromise and settlement of all Claims against and Equity Interests in the Debtors and other disputes or potential disputes among the Debtors, and among the Debtors and any of the Creditors' Committee and Equity Committee as set forth in this Plan. The Monitor is prepared to recommend approval of the Global Settlement to the stakeholders and the Canadian Court.

This Global Settlement, among other things: (a) provides for the Payment in Full of Allowed General Unsecured Claims without Post-Petition Interest (to the extent it would have been allowable); (b) resolves the treatment of Intercompany Claims; (c) resolves the allocation of the Sale Proceeds among the Debtors and any disputes regarding the valuation of the Debtors; and (d) settles any question regarding substantive consolidation of some or all of the Estates.

In accordance with the Global Settlement, the Debtors, the Monitor and the Committees will not dispute or object to the allocation of the Sale Proceeds, or other Assets, in accordance with this Plan, and will not seek substantive consolidation of any or all of the Debtors. For the avoidance of doubt, any Reinstatement of Intercompany Claims and Intercompany Equity Interests shall not be deemed to impact, impair, affect, determine, release, waive, modify or limit the rights to distributions or payments on account of General Unsecured Claims under this Plan. All such Reinstated Intercompany Claims and Intercompany Equity Interests are subordinate in right of payment to payment of Allowed General Unsecured Claims under this Plan.

The Disclosure Statement and this Plan shall be deemed to be a motion requesting the Bankruptcy Court's approval of the Global Settlement. The Bankruptcy Court may approve the Global Settlement at the Confirmation Hearing and the Canadian Court may approve the Global Settlement at the Canadian Approval Hearing. In the event any objections to the Global Settlement are timely filed, the Debtors will request that the Bankruptcy Court and Canadian Court schedule a joint hearing with respect thereto, which may be the Confirmation Hearing/Canadian Approval Hearing.

For the avoidance of doubt, to the extent that this Plan is not Confirmed by Final Order, the Global Settlement is not approved by the Canadian Court by Final Order, or the Effective Date does not occur, then the Global Settlement will be void *ab initio* in all respects, and the rights of the Debtors, Monitor and the Committees with respect to the subject matter of the Global Settlement will be preserved, including, without limitation, the right to seek

confirmation of a Chapter 11 plan pursuant to Bankruptcy Code Section 1129(b) and right to seek sanctioning of a plan of compromise and arrangement under the CCAA.

III. TREATMENT OF UNCLASSIFIED CLAIMS

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, CCAA Charge Claims, Canadian Fee Claims, Fee Claims, U.S. Trustee Fees and Priority Tax Claims have not been classified and thus are excluded from the Classes of Claims set forth in Article IV of this Plan. The Plan provides for the following designation and treatment of unclassified Claims:

A. Administrative Claims

1. Administrative Claims Treatment

Except to the extent that (a) an Allowed Administrative Claim has been previously Paid in Full during the Chapter 11 Cases, (b) this Plan provides for other treatment of an Allowed Administrative Claim, or (c) the Holder of an Allowed Administrative Claim agrees to less favorable treatment, on or as soon as reasonably practicable after the later of (i) the Effective Date or (ii) the first Business Day after the date that is thirty (30) days after the date an Administrative Claim becomes an Allowed Claim, each Holder of an Allowed Administrative Claim shall be Paid in Full in Cash.

2. Administrative Claims Bar Date

The Holder of an Administrative Claim, other than: (a) a Fee Claim; (b) claims of Alvarez & Marsal North America, LLC for services performed and expenses incurred in accordance with its retention order entered in the Chapter 11 Cases [Docket No. 222]; (c) an Administrative Claim that has been Allowed on or before the Effective Date; (d) a claim for U.S. Trustee Fees, or (e) the Canada Revenue Agency or any other Canadian or provincial taxing authority for which a post-petition tax return must be filed, must submit to the Claims and Solicitation Agent a request for such Administrative Claim so as to be received by 5:00 p.m. (prevailing Eastern Time) on the date that is no more than thirty (30) days after service of the Notice of Effective Date. Such request must include at a minimum: (i) the name of the Debtor(s) that are purported to be liable for the Administrative Claim; (ii) the name of the Holder of the Administrative Claim; (iii) the amount of the Administrative Claim; (iv) the basis of the Administrative Claim; and (v) all supporting documentation for the Administrative Claim.

The Canada Revenue Agency or any other Canadian or provincial taxing authority for which a post-petition tax return must be filed must submit to the Claims and Solicitation Agent or the Monitor a request for such Administrative Claim so as to be received by 5:00 p.m. (prevailing Eastern Time) on the date that is no more than ninety (90) days after the applicable post-petition tax return has been filed.

FAILURE TO FILE AND SERVE SUCH REQUEST TIMELY AND PROPERLY SHALL RESULT IN THE ADMINISTRATIVE CLAIM BEING FOREVER BARRED AND UNABLE TO COLLECT FROM THE ASSETS OF THE DEBTORS.

B. Fee Claims

1. Fee Claims Generally

All Fee Claims must be filed with the Bankruptcy Court and served on (i) the Liquidation Trustee and its counsel, (ii) the U.S. Trustee, (iii) U.S. counsel to the Debtors, (iv) counsel to the Creditors' Committee, (v) counsel to the Equity Committee, and (vi) the Fee Examiner, no later than the Fee Claims Bar Date. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code and prior orders of the Bankruptcy Court in the Chapter 11 Cases, including Docket Nos. 226 and 521, the Bankruptcy Court shall determine the Allowed amounts of such Fee Claims. For the avoidance of doubt, (i) any Canadian Fee Claims shall be paid in accordance with the Cross-Border Protocol and do not need to be filed with the Bankruptcy Court on or before the Fee Claims Bar Date and (ii) the fees of any U.S. Professional retained pursuant of an order of the Bankruptcy Court shall be paid in accordance with the orders of the Bankruptcy Court and do not need to be filed with the Canadian Court.

FAILURE TO PROPERLY FILE AND SERVE FINAL FEE APPLICATIONS BY THE FEE CLAIMS BAR DATE SHALL RESULT IN THE UNDERLYING FEE CLAIMS BEING FOREVER BARRED AND UNABLE TO COLLECT FROM THE DEBTORS' ESTATES.

2. Objections to Fee Claims

Objections to Fee Claims, if any, must be filed and served on the party asserting the objectionable Fee Claim and each of the parties to be served with a Fee Claim under this Plan no later than twenty (20) days after the filing of the Fee Claim or such other date as may be established by the Bankruptcy Court. Additionally, the Fee Examiner shall review Fee Claims as set forth in the Fee Examiner Order.

3. Payment of Fee Claims

Upon entry of an order by the Bankruptcy Court Allowing a Fee Claim, the Distribution Agent shall promptly pay the applicable U.S. Professional the Allowed Fee Claim from the Holdback Amount to the extent necessary to pay the Allowed Fee Claim in full *less* any amounts previously received by such U.S. Professional pursuant to the Interim Compensation Order. If the Holdback Amount for any given U.S. Professional is less than the Allowed Fee Claim, the Distribution Agent shall promptly pay the difference to the U.S. Professional from the Sale Proceeds notwithstanding the insufficiency of the Holdback Amount. For the avoidance of doubt, (i) the Interim Compensation Order will govern the payment and allowance of any Fee Claim through the Effective Date and (ii) Canadian Fee Claims shall be paid by the Debtors in accordance with the Cross-Border Protocol and any procedures adopted by the Canadian Court.

4. Success and Transaction Fee Applications

Applications for the allowance and payment of success and transaction fees, unless approved by the Bankruptcy Court prior to the Confirmation Date, must be filed with the

Bankruptcy Court and served on (i) the Liquidation Trustee and its counsel, (ii) the U.S. Trustee, (iii) U.S. counsel to the Debtors, (iv) counsel to the Creditors' Committee, and (v) counsel to the Equity Committee no later than forty-five (45) days after the Effective Date. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code and prior orders of the Bankruptcy Court in the Chapter 11 Cases, the Bankruptcy Court shall determine the Allowed amounts of such success and transaction fees, if any, which Allowed amounts the Distribution Agent shall promptly pay.

FAILURE TO FILE AND SERVE A TRANSACTION FEE APPLICATION IN A TIMELY MANNER SHALL RESULT IN THE UNDERLYING CLAIM BEING FOREVER BARRED AND THE HOLDER THEREOF UNABLE TO COLLECT FROM THE ASSETS OF THE DEBTORS.

Objections to requests for allowance and payment of success and transaction fees, if any, must be filed and served on the party asserting the objectionable success or transaction fee claim and each of the parties to be served with such success or transaction fee request under this Article no later than twenty (20) days after the filing of the requests for allowance and payment of success and transaction fees or such other date as may be established by the Bankruptcy Court. Consistent with the terms of the Fee Examiner Order, the Fee Examiner shall not review success or transaction fee requests.

5. U.S. Trustee Fees

All fees payable pursuant to 28 U.S.C. § 1930(a) shall be paid by the Distribution Agent on behalf of each Debtor for each quarter (including any fraction thereof) until such Debtor's Chapter 11 Case is converted, dismissed, or a Final Decree is issued, whichever occurs first.

6. Canadian Fee Claims

All Canadian Fee Claims will be paid by the Debtors in consultation with the Monitor in accordance with and pursuant to the CCAA Approval Order and until the CCAA Approval Order Date, in the ordinary course in the CCAA Proceedings as such Canadian Fee Claims become due and payable.

C. Priority Tax Claims

To the extent not previously paid during the Chapter 11 Cases or the CCAA Proceedings, and except to the extent a Holder of an Allowed Priority Tax Claim agrees to less favorable treatment, a Holder of an Allowed Priority Tax Claim shall receive either (a) on or as soon as practicable after the later of (i) the Effective Date or (ii) the first Business Day after the date that is thirty (30) days after the date a Priority Tax Claim becomes an Allowed Claim, Cash in an amount equal to such Allowed Claim, or (b) deferred Cash payments following the Effective Date, over a period not exceeding five years from the Petition Date (provided, however, that, in accordance with the CCAA, Priority Tax Claims held by the CRA, the Canadian federal government or a Canadian provincial government shall instead be paid over the course of a period not to exceed six (6) months). Any Claim or demand for fines or penalties

related to a Priority Tax Claim assessed after the Petition Date shall be disallowed and the Holder of an Allowed Priority Tax Claim shall not assess or attempt to collect any such fine or penalty.

D. CCAA Charge Claims

To the extent not previously paid during the Chapter 11 Cases or the CCAA Proceedings, a Holder of an Allowed CCAA Charge Claim shall be paid in Cash in an amount equal to such Allowed Claim in accordance with the CCAA Approval Order or as otherwise agreed between the applicable Debtor, with the consent of the Monitor and the Holder.

IV. CLASSIFICATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS

A. Classification

This Plan constitutes a separate Plan for each Debtor. This Plan classifies Claims and Equity Interests for all purposes, including voting, confirmation and distribution, pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or Equity Interest shall be deemed classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and shall be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that such Claim or Equity Interest has not been previously Paid in Full.

Other than those Claims and Interests listed in Article III of this Plan, which are not required to be classified pursuant to section 1123(a)(1) of the Bankruptcy Code, all Claims against and Equity Interests in the Debtors are classified as follows:

1. Parent Debtor Plan: Claims Against and Equity Interests in Old PSG Wind-down Ltd. (f/k/a Performance Sports Group Ltd.)

Class	Claim or Equity Interest	Status	Voting Rights
P1	Secured Claims	Unimpaired; Deemed to Accept	Not Entitled to Vote
P2	Priority Non-Tax Claims	Unimpaired; Deemed to Accept	Not Entitled to Vote
P3	SEC Claim	To Be Determined ²	To Be Determined
P4	General Unsecured Claims	Impaired	Entitled to Vote
P5	Intercompany Claims	Unimpaired; Deemed to Accept	Not Entitled to Vote
P6	Individual Securities Damages Claim	Unimpaired	Not Entitled to Vote
P7	Parent Equity Interests	Impaired	Entitled to Vote

2. Subsidiary Debtor Plans: Claims Against and Equity Interests in Subsidiary Debtors

Class	Claim or Equity Interest	Status	Voting Rights
1	Secured Claims	Unimpaired; Deemed to Accept	Not Entitled to Vote
2	Priority Non-Tax Claims	Unimpaired; Deemed to Accept	Not Entitled to Vote
3	General Unsecured Claims	Impaired	Entitled to Vote
4	Intercompany Claims	Unimpaired; Deemed to Accept	Not Entitled to Vote
5	Intercompany Equity Interests	Unimpaired; Deemed to Accept	Not Entitled to Vote

B. Treatment of Claims and Interests in the Parent Debtor

This Plan provides the following treatment and voting rights for each Class of Claims against and Equity Interests in the Parent Debtor:

² At this time, there is no resolution of the SEC Claim, and the treatment of the SEC Claim is to be determined. Discussions among the SEC, the Debtors and the Equity Committee are ongoing. There can be no certainty as to the results of the discussions with the SEC and this Plan and the Disclosure Statement may need to be revised or supplemented, as appropriate, to reflect the status of discussions with the SEC or any resolution or settlement, or lack thereof, of the SEC Claim.

1. Class P1 –Secured Claims

- a. *Classification.* Class P1 consists of all Secured Claims.
- b. *Treatment:* On or as soon as practicable after the Effective Date, each Holder of a Class P1 Allowed Secured Claim, if any, shall receive in full and final satisfaction, settlement, and release of and in exchange for such Allowed Secured Claim: (a) the return of the Collateral securing such Allowed Secured Claim; (b) Cash equal to 100% of the amount of such Allowed Secured Claim and Post-Petition Interest required to be paid under section 506(b) of the Bankruptcy Code; (c) such other treatment as will render the Holder of such Allowed Secured Claim Unimpaired; or (d) such other treatment as to which the Holder of such Allowed Secured Claim has agreed to in writing.
- c. *Voting:* Class P1 is Unimpaired. The Holders of Class P1 Allowed Secured Claims are conclusively deemed to accept this Plan pursuant to section 1126(f) of the Bankruptcy Code, and are not entitled to vote to accept or reject this Plan.

2. Class P2 – Priority Non-Tax Claims

- a. *Classification.* Class P2 consists of all Priority Non-Tax Claims.
- b. *Treatment:* Unless the Holder agrees to a different treatment, on or as soon as practicable after the later of the Effective Date or the date a Priority Non-Tax Claim becomes an Allowed Priority Non-Tax Claim, each Holder of an Allowed Priority Non-Tax Claim shall receive Payment in Full in Cash with Post-Petition Interest, or such other treatment as will render the Allowed Priority Non-Tax Claim Unimpaired.
- c. *Voting:* Class P2 is Unimpaired. The Holders of Class P2 Priority Non-Tax Claims are conclusively deemed to accept this Plan pursuant to section 1126(f) of the Bankruptcy Code, and are not entitled to vote to accept or reject this Plan.

3. Class P3 – SEC Claim

- a. *Classification.* Class P3 consists of the SEC Claim.
- b. *Treatment:* To be determined.
- c. *Voting:* To be determined.

4. Class P4 – General Unsecured Claims

- a. *Classification.* Class P4 consists of all General Unsecured Claims.
- b. *Treatment:* To the extent not already Paid in Full or otherwise satisfied prior to the Effective Date, on or as soon as practicable after the later of (i) the Effective Date or (ii) the date a General Unsecured Claim becomes an Allowed General Unsecured Claim, each Holder of an Allowed General Unsecured Claim shall receive Payment in Full in Cash of the Allowed amount of its Claim. For the avoidance of doubt, in accordance with the Global Settlement, Holders of Allowed General Unsecured Claims shall not receive Post-Petition Interest on account of such Allowed General Unsecured Claims.
- c. *Voting:* Class P4 is Impaired because the Global Settlement governs the treatment of General Unsecured Claims under this Plan. The Holders of Class P4 General Unsecured Claims are entitled to vote to accept or reject this Plan.

5. Class P5 – Intercompany Claims

- a. *Classification.* Class P5 consists of all Intercompany Claims.
- b. *Treatment:* On or after the Effective Date, each Intercompany Claim shall be Reinstated, subject to the rights of Holders of General Unsecured Claims in Class P4 under this Plan (including the Global Settlement) and the CCAA Approval Order, and any Cash or Assets of the U.S. Debtors that are required to be distributed pursuant to this Plan (including the Retained Causes of Action and Liquidation Trust Expense Reserve) shall be transferred by the U.S. Debtors to the Reorganized Parent Debtor in satisfaction of the same amount of such applicable Intercompany Claims, and Intercompany Claims shall receive such additional or different treatment as will be set forth in the Plan Supplement.
- c. *Voting:* Class P5 is Unimpaired. Each Holder of a Class P5 Intercompany Claim is conclusively deemed to accept this Plan pursuant to section 1126(f) of the Bankruptcy Code, and is not entitled to vote to accept or reject this Plan.

6. Class P6 – Individual Securities Damages Claim

- a. *Classification.* Class P6 consists of the Individual Securities Damages Claim.

- b. *Treatment:* To the extent that the Individual Securities Damages Claim is Allowed by a Final Order, as soon as reasonably practicable thereafter, the Distribution Agent shall pay such Allowed Claim in Cash and solely from and up to the amount of the Individual Securities Damages Claim Reserve, subject to the rights of Holders of General Unsecured Claims to the prior Payment in Full of such Holders' Allowed Claims under the Plan (including the Global Settlement). For the avoidance of doubt, the Individual Securities Damages Claim shall not receive any distribution on account of any Allowed Individual Securities Damages Claim in excess of the Individual Securities Damages Claim Reserve, and such Claim shall not be treated as a Parent Equity Interest notwithstanding section 510(b) of the Bankruptcy Code and the CCAA.
- c. *Voting:* Class P6 is Unimpaired. The Holder of the Class P6 Individual Securities Damages Claim is conclusively deemed to accept this Plan pursuant to section 1126(f) of the Bankruptcy Code, and is not entitled to vote to accept or reject this Plan.

7. Class P7 – Parent Equity Interests

- a. *Classification.* Class P7 consists of all Parent Equity Interests.
- b. *Treatment.* Holders of Parent Equity Interests will receive their Pro Rata share of the Shareholder Distributable Assets under, and subject to, this Plan (including the Global Settlement) and the CCAA Approval Order. This Plan allows Holders of Parent Equity Interests to elect to receive certain of such Plan consideration in the form of either Beneficial Trust Interests (and a right to receive their Pro Rata share of any other Shareholder Distributable Assets in accordance with this Plan) in exchange for their Parent Equity Interests, or to retain their Parent Equity Interests. Holders of Beneficial Trust Interests and Holders of Parent Equity Interests will receive distributions of equal amounts of Cash under this Plan per Parent Equity Interests on a Pro-Rata basis (other than differences attributable to the differing tax treatment of the Liquidation Trust and the Reorganized Parent Debtor that may consequently result in more or less favorable recoveries to Holders of Parent Equity Interests after consideration of the potentially differing rates and basis of taxation of the individual Holders). Article V.B.3 of this Plan further describes the distributions that will be made to Holders of Parent Equity Interests and Beneficial Trust Interests.

This Plan provides the following two options for receiving Plan consideration to Holders of Allowed Parent Equity Interests:

Option 1: Beneficial Holders of Allowed Parent Equity Interests may elect to have their Parent Equity Interests mandatorily purchased and cancelled in exchange for their Beneficial Trust Interests (and a right to receive their Pro Rata share of any other Shareholder Distributable Assets in accordance with this Plan) ("Option 1").

To elect Option 1, beneficial Holders of Allowed Parent Equity Interests must submit a Liquidation Trust Certification Form on or before the Liquidation Trust Certification Bar Date using the instructions set forth therein. The Debtors shall cause the Liquidation Trust Certification Form to be mailed to Holders of Allowed Parent Equity Interests through the Holders of record at the same time as votes on this Plan are solicited from Holders of Parent Equity Interests, as set forth in the Disclosure Statement Order. Subject to the terms of this Plan and at the time prescribed by the Plan, the Holders of Allowed Parent Equity Interests who elect Option 1 shall have their Parent Equity Interests mandatorily purchased and cancelled in exchange for (i) a deemed distribution of the Liquidation Trust Assets attributable to them, (ii) a deemed distribution of their Pro Rata share of the Liquidation Trust Expense Reserve (followed immediately by a deemed contribution of such Pro Rata share to the Liquidation Trust) in accordance with this Plan, and (iii) a right to receive their Pro Rata share of any other Shareholder Distributable Assets in accordance with this Plan. The Holders of Parent Equity Interests electing to receive Beneficial Trust Interests as set forth in this Plan shall be deemed to immediately contribute their share of Liquidation Trust Assets to the Liquidation Trust.

Beneficial Holders of Allowed Parent Equity Interests may elect Option 1 or Option 2 only for all of their Allowed Parent Equity Interests. All beneficial Holders of Allowed Parent Equity Interests who fail to timely submit the Liquidation Trust Certification Form, who fail to properly make an election on the Liquidation Trust Certification Form, who make an election with respect to less than all of their Parent Equity Interests or who fail to take any action under this Plan shall be deemed to have elected Option 2 under this Plan.

Option 2: All Holders of Allowed Parent Equity Interests who do not elect Option 1 by the Liquidation Trust Certification Bar Date or who are deemed to have elected Option 2 shall retain their Allowed Parent Equity Interests through the Final Distribution Date ("Option 2"). On or after the Final Distribution Date, the

Reorganized Parent Debtor shall be dissolved and all remaining Allowed Parent Equity Interests shall be cancelled. If any Holder of Allowed Parent Equity Interests elects Option 1 and the Liquidation Trust is subject to adverse tax consequences in Canada as a result of such Holder holding Beneficial Trust Interests, any transfer to such Holder and the cancellation of such Holder's Parent Equity Interests shall be void ab initio and Reorganized Parent, the Holder and the Liquidation Trust shall treat such Holder at all times as if such Holder had elected Option 2 (the "Disallowed Election").

- c. *Voting.* Class P7 is Impaired under this Plan. The Holders of Class P7 Allowed Parent Equity Interests are entitled to vote to accept or reject this Plan.

C. Treatment of Claims and Interests in the Subsidiary Debtors

The Plan provides the following treatment and voting rights for each Class of Claims against and Equity Interests in each of the Subsidiary Debtors:

1. Class 1 – Secured Claims

- a. *Classification.* Class 1 consists of all Secured Claims.
- b. *Treatment:* On or as soon as practicable after the Effective Date, each Holder of a Class 1 Allowed Secured Claim, if any, shall receive in full and final satisfaction, settlement, and release of and in exchange for such Allowed Secured Claim: (a) the return of the Collateral securing such Allowed Secured Claim; (b) Cash equal to 100% of the amount of such Allowed Secured Claim and Post-Petition Interest required to be paid under section 506(b) of the Bankruptcy Code; (c) such other treatment as will render the Holder of such Allowed Secured Claim Unimpaired; or (d) such other treatment as to which the Holder of such Allowed Secured Claim has agreed to in writing.
- c. *Voting:* Class 1 is Unimpaired. The Holders of Class 1 Allowed Secured Claims are conclusively deemed to accept this Plan pursuant to section 1126(f) of the Bankruptcy Code, and are not entitled to vote to accept or reject this Plan.

2. Class 2 – Priority Non-Tax Claims

- a. *Classification.* Class 2 consists of all Priority Non-Tax Claims.
- b. *Treatment:* Unless the Holder agrees to a different treatment, on or as soon as practicable after the later of the Effective Date or the

date a Priority Non-Tax Claim becomes an Allowed Priority Non-Tax Claim, each Holder of an Allowed Priority Non-Tax Claim shall receive Payment in Full in Cash with Post-Petition Interest, or such other treatment as will render the Allowed Priority Non-Tax Claim Unimpaired.

- c. *Voting:* Class 2 is Unimpaired. The Holders of Class P2 Priority Non-Tax Claims are conclusively deemed to accept this Plan pursuant to section 1126(f) of the Bankruptcy Code, and are not entitled to vote to accept or reject this Plan.

3. Class 3 – General Unsecured Claims

- a. *Classification.* Class 3 consists of all General Unsecured Claims.
- b. *Treatment:* To the extent not already Paid in Full or otherwise satisfied prior to the Effective Date, on or as soon as practicable after the later of (i) the Effective Date or (ii) the date a General Unsecured Claim becomes an Allowed General Unsecured Claim, each Holder of an Allowed General Unsecured Claim shall receive Payment in Full in Cash of the Allowed amount of its Claim. For the avoidance of doubt, Holders of Allowed General Unsecured Claims shall not receive Post-Petition Interest on account of such Allowed General Unsecured Claims.
- c. *Voting:* Class 3 is Impaired because the Global Settlement governs the treatment of General Unsecured Claims under this Plan. The Holders of Class 3 General Unsecured Claims are entitled to vote to accept or reject this Plan.

4. Class 4 – Intercompany Claims

- a. *Classification.* Class 4 consists of all Intercompany Claims.
- b. *Treatment:* On or after the Effective Date, each Intercompany Claim shall be Reinstated, subject to the rights of Holders of General Unsecured Claims in Class 3 under this Plan (including the Global Settlement) and the CCAA Approval Order, and any Cash or Assets of the U.S. Debtors that are required to be distributed pursuant to this Plan (including the Retained Causes of Action and Liquidation Trust Expense Reserve) shall be transferred by the U.S. Debtors to the Reorganized Parent Debtor in satisfaction of the same amount of such applicable Intercompany Claims, and any other Intercompany Claims shall receive such additional or different treatment as will be set forth in the Plan Supplement.

- c. *Voting:* Class 4 is Unimpaired. Each Holder of a Class 4 Intercompany Claim is conclusively deemed to accept this Plan pursuant to section 1126(f) of the Bankruptcy Code, and is not entitled to vote to accept or reject this Plan

5. Class 5 – Intercompany Equity Interests

- a. *Classification.* Class 5 consists of all Intercompany Equity Interests.
- b. *Treatment.* On the Effective Date, the Holders of Class 5 Intercompany Equity Interests in each Subsidiary Debtor shall receive such treatment as set forth in the Plan Supplement, subject to the rights of Holders of General Unsecured Claims in Class 3 under this Plan (including the Global Settlement) and the CCAA Approval Order.
- c. *Voting:* Class 5 is Unimpaired under this Plan. Each Holder of an Intercompany Equity Interest is conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, each Holder of an Intercompany Equity Interest is not entitled to vote to accept or reject this Plan.

D. Elimination of Vacant Classes

Any Class of Claims that does not have a Holder of an Allowed Claim or a Claim temporarily Allowed by the Court for voting purposes as of the date of the Confirmation Hearing shall be deemed eliminated from this Plan for purposes of voting to accept or reject this Plan and for purposes of determining acceptance or rejection of this Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

E. Special Provision Governing Unimpaired Claims

Nothing under this Plan shall affect the Debtors', Monitor's or Liquidation Trust's rights in respect of any Unimpaired Claims, including all rights in respect of legal and equitable defenses to or setoffs or recoupment against any such Unimpaired Claims.

F. Acceptance by an Impaired Class

In accordance with section 1126(c) of the Bankruptcy Code and except as provided in section 1126(e) of the Bankruptcy Code, Impaired Classes of Claims entitled to vote shall have accepted this Plan as to a Debtor if it is accepted by the Holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the Allowed Claims that have timely and properly voted to accept or reject this Plan.

In accordance with section 1126(d) of the Bankruptcy Code and except as provided in section 1126(e) of the Bankruptcy Code, Impaired Classes of Equity Interests

entitled to vote under this Plan shall have accepted this Plan as to a Debtor if Holders of at least two-thirds (2/3) in number of the shares of Allowed Equity Interests that have timely and properly voted to accept or reject this Plan vote such shares to accept this Plan.

G. Nonconsensual Confirmation

The Debtors may request confirmation under section 1129(b) of the Bankruptcy Code with respect to (a) any Impaired Class of Claims and Equity Interests that have not accepted this Plan in accordance with sections 1126 and 1129(a)(8) of the Bankruptcy Code and (b) any Class that is deemed to reject this Plan pursuant to section 1126(g) of the Bankruptcy Code or the terms of this Plan or otherwise. The Debtors reserve the right to amend or modify this Plan in accordance with Article XI.A of this Plan to the extent, if any, that Confirmation of this Plan pursuant to section 1129(b) of the Bankruptcy Code requires such amendment or modification.

H. Voting Classes; Presumed Acceptance by Non-Voting Classes

If a Class contains Claims eligible to vote and no Holders of Claims eligible to vote in such Class vote to accept or reject this Plan, this Plan shall be presumed accepted by the Holders of such Claims in such Class.

I. Intercompany Equity Interests

To the extent they are deemed Reinstated under this Plan, distributions on account of Intercompany Equity Interests are being Reinstated solely for the purpose of maintaining the existing corporate structure of the Debtors pending dissolution. For the avoidance of doubt, any interest in non-Debtor subsidiaries owned by a Debtor shall continue to be owned by the applicable Debtor pending dissolution.

V. IMPLEMENTATION OF THIS PLAN

The transactions required to implement this Plan shall be implemented in accordance with this Article V.

A. Plan Transactions

From and after the Effective Date, the Monitor, the Liquidation Trustee or the Reorganized Debtors, as applicable, may take all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate this Plan (the “Plan Transactions”), including, without limitation: (1) the execution and delivery of any agreements or other documents of merger, consolidation, restructuring, conversion, disposition, transfer, dissolution or liquidation containing terms that are consistent with the terms of this Plan, or any other terms on which the applicable Entities may agree; (2) the execution and delivery of instruments of transfer, assignment, assumption or delegation of any asset, property, right, liability, debt or obligation on terms consistent with the terms of this Plan or having other terms for which the applicable parties agree; (3) the filing of certificates or articles of incorporation, amendment, reincorporation, merger, amalgamation, consolidation, conversion or

dissolution and bylaws reflecting the corporate governance changes and dissolutions contemplated by this Plan or as are otherwise appropriate to effectuate the intent of this Plan; (4) the execution and delivery of the applicable documents included in the Plan Supplement; and (5) all other actions that the applicable Persons determine to be necessary or appropriate. For the purposes of effectuating this Plan, none of the Plan Transactions contemplated herein shall constitute a change of control under any agreement, contract or document of the Debtors.

B. Sources of Consideration for Plan Distributions

Distributions under the Plan will be funded and made as set forth below.

1. Funding of the Reserves.

On the Effective Date, the Distribution Agent, on behalf of the Debtors shall fund the Reserves in Cash from the Sale Proceeds or any other Cash then in the Estates in accordance with and in the amounts set forth in Article VI.E of this Plan to be held in the Reorganized Parent Debtor, except with respect to the Individual Securities Damages Reserve, which shall be held by the Monitor, until (1) the issuance of a Clearance Certificate (except in the case of the Holdback Amount Reserve, which does not require a Clearance Certificate to be paid to Professionals); (2) the decision of the Board of Directors of the Reorganized Parent Debtor to disburse such Reserves that are held by the Reorganized Parent Debtor rather than the Monitor; or (3) other arrangements in form satisfactory to the Monitor for Reserves held by the Monitor; provided, however, that at least \$100,000 of the Liquidation Trust Expense Reserve shall be funded into the Liquidation Trust within 60 days of the Effective Date, unless the Board of Directors of the Reorganized Parent Debtor, with the consent of the Liquidation Trustee, which consent shall not be unreasonably withheld, reasonably determines that such funding should not be made. The Distribution Agent shall have the authority to make distributions from the Canadian Sale Proceeds Account and the U.S. Sale Proceeds Account or other Estate accounts, to transfer funds to or from the Canadian Sale Proceeds Account and the U.S. Sale Proceeds Account, and to close either or both of the Canadian Sale Proceeds Account and U.S. Sale Proceeds Account in accordance with this Plan and the CCAA Approval Order and to facilitate making distributions hereunder; provided however, that the Distribution Agent shall keep records of all disbursements from and deposits made into the Canadian Sale Proceeds Account and U.S. Sale Proceeds Account or such other Estate accounts and shall provide the Reorganized Parent Debtor, the Monitor and the Liquidation Trust with monthly reconciliations of such transactions; and provided further, however, that the Distribution Agent shall not close the Canadian Sale Proceeds Account or U.S. Sale Proceeds Account without thirty (30) calendar days' prior notice to the Reorganized Parent Debtor, the Monitor and the Liquidation Trustee.

2. Distributions to Holders of Allowed Claims.

The Distribution Agent shall Pay in Full in Cash all Allowed Claims under this Plan from the Sale Proceeds, other than the Individual Securities Damages Claim to the extent such Claim is Allowed after receipt of the Comfort Letters. The Distribution Agent shall pay the Allowed Amount, if any, of the Individual Securities Damages Claim in Cash solely from the Individual Securities Damages Claim Reserve.

3. Distributions to Holders of Allowed Parent Equity Interests.

a. *Shareholder Distributable Assets*

Holders of Allowed Parent Equity Interests will receive net proceeds from, or interests in, the following Assets under this Plan: (a) the interests in the Retained Causes of Action described in subparagraph 3(b) hereof; (b) the Liquidation Trust Expense Reserve (if not fully utilized for Wind-Down Expenses); (c) any Sale Proceeds remaining after the Reserves are funded, Holders of Allowed Claims are Paid in Full in Cash, and the Wind-Down Expenses are Paid in Full in Cash to the extent such expenses are paid from the Sale Proceeds; and (d) any other Assets, including investment income earned on any Cash Assets (items (a) through (d) collectively, the “Shareholder Distributable Assets”).

b. *Reorganized Parent Debtor and Liquidation Trust Assets*

As soon as practicable after the Effective Date, the Shareholder Distributable Assets other than any Cash (but including the interests in the Retained Causes of Action discussed herein) held by the Estates on the Effective Date shall vest in either the Reorganized Debtors or the Liquidation Trust. As soon as practicable after the Effective Date, proportionate interests in the Retained Causes of Action shall be vested in the Reorganized Debtors for the benefit of the Holders of Allowed Parent Equity Interests who have elected or are deemed to have elected Option 2 and in the Liquidation Trust for the benefit of those Holders of Allowed Parent Equity Interests who have elected Option 1 in proportion to the percentages of Allowed Parent Equity Interests held respectively by the Holders of such Parent Equity Interests who have elected Option 1 and Option 2, respectively, as of the Liquidation Trust Certification Bar Date (the “Asset Apportionment”). By way of illustration, if 40% of the Holders of Parent Equity Interests elect to receive Beneficial Trust Interests pursuant to Option 1 as of the Liquidation Trust Certification Bar Date, then 60% of the Shareholder Distributable Assets will vest in the Reorganized Debtors and 40% of the Shareholder Distributable Assets (other than Cash) will vest in the Liquidation Trust, subject to paragraph 3(iii) below. Notwithstanding anything to the contrary in this Plan, the Reorganized Debtors and the Liquidation Trust will cooperate with each other as necessary so that the Shareholder Distributable Assets will be owned by them in a manner that they determine in good faith will maximize the value of such assets under applicable law for all Holders of Allowed Parent Equity Interests, as mutually determined by the Debtors and Equity Committee or, after the Effective Date, the Liquidation Trustee and the Reorganized Debtors. The Debtors and the Liquidation Trust, or the Debtors and the Equity Committee prior to the Effective Date, reserve the right to take any action, and implement any structure as necessary to own the Shareholder Distributable Assets in such manner and as to effect the intent of this Plan.

From and after the Effective Date, the Cash (including the Sale Proceeds but excluding any Cash realized in respect of the Retained Causes of Action) shall vest in the Reorganized Debtors and shall be used by the Distribution Agent on behalf of the Debtors to (i) fund the Reserves; (ii) adequately reserve for or pay in Cash the Wind-Down Expenses; and (iii) Pay in Full the Allowed Claims (including all Allowed Fee Claims and Allowed Canadian Fee Claims to the extent such Claims exceed the Holdback Amount reserved for such Claims) in accordance with this Plan and the CCAA Approval Order (collectively, the “Initial Cash”).

Distributions”). After all such payments have been made or reserved for in full, as mutually determined by the Liquidation Trustee, the Monitor and the Reorganized Parent Debtor, and following receipt of a Clearance Certificate, the remaining Sale Proceeds shall constitute Shareholder Distributable Assets and the Distribution Agent, at the direction of the Liquidation Trustee and the Reorganized Parent Debtor, shall transfer (or allocate) in accordance with the Asset Apportionment such remaining Cash to an account of the Reorganized Debtors and, at the election of the Liquidation Trustee, an account of the Liquidation Trust to make interim and final distributions to Holders of Parent Equity Interests or, if elected, Beneficial Trust Interests, respectively, as provided in this Plan.

Beneficial Holders of Parent Equity Interests who elect Option 1 under this Plan shall be deemed to receive their Pro Rata share of the Liquidation Trust Assets (and a right to receive their Pro Rata share of any other Shareholder Distributable Assets in accordance with this Plan) in exchange for the mandatory purchase and cancellation of their Parent Equity Interests, which Liquidation Trust Assets will be deemed immediately contributed to the Liquidation Trust in exchange for Beneficial Trust Interests, and the Parent Equity Interests of Holders electing Option 1 shall be mandatorily purchased and cancelled under this Plan. The Liquidation Trustee will make distributions on account of the Beneficial Trust Interests to Holders of such Beneficial Trust Interests in accordance with this Plan and the Liquidation Trust Agreement.

Beneficial Holders of Parent Equity Interests who elect Option 2 under this Plan or who are deemed to elect Option 2 under this Plan shall retain their Parent Equity Interests under this Plan up to and through the Final Distribution Date. The Distribution Agent will make distributions to Holders of Parent Equity Interests in accordance with this Plan and the CCAA Approval Order.

c. *Pre-Dissolution Reconciliation*

Notwithstanding anything in this Plan to the contrary, on or before the Final Distribution Date, the Liquidation Trustee and the Reorganized Parent Debtor shall take any reasonably necessary actions to ensure that the beneficial Holders of Parent Equity Interests shall receive the same Pro Rata distributions of Cash from either the Reorganized Parent Debtor or Liquidation Trust pursuant to this Plan regardless of whether such Holders have elected Option 1 or Option 2 under this Plan (other than potential differences attributable to the differing tax treatment of the Liquidation Trust and Reorganized Parent Debtor under U.S. and Canadian tax laws or the individual tax circumstances of Holders of Parent Equity Interests or Beneficial Trust Interests). Such actions may include (i) a Cash transfer from the Liquidation Trust to the Reorganized Parent Debtor, (ii) a Cash transfer from the Reorganized Parent Debtor to the Liquidation Trust, or (iii) a direct payment by the Distribution Agent or the Liquidation Trustee, as applicable, to Holders of Allowed Parent Equity Interests or Beneficial Trust Interests in an amount necessary to effect such treatment; provided, however, such actions shall not consider or otherwise compensate for the time-value of money, interim fluctuations in currency value, or certain tax liabilities of the Debtors as may be set forth in the Plan Supplement.

4. Payment of Wind-Down Expenses

On or before the Effective Date, the Debtors, and after the Effective Date, the Reorganized Parent Debtor or the Liquidation Trust as the case may be, shall pay in Cash: (i) any fees, costs and expenses of the Liquidation Trust in accordance with the Liquidation Trust Agreement (including fees, costs and expenses related to the Retained Causes of Action incurred prior to the date the Liquidation Trust Expense Reserve is funded); (ii) any fees, costs and expenses of the Monitor; (iii) any fees, costs and expenses of the Distribution Agent; (iv) any fees, costs and expenses of the Estates incurred in connection with implementing this Plan and the CCAA Approval Order or winding down the Subsidiary Debtors, including payment of statutory fees and any taxes required to be paid in connection with dissolving the Debtors, including any fees, costs and expenses of the Subsidiary Debtors' Boards of Directors; and (v) any fees, costs and expenses of the Reorganized Parent Debtor, including any fees, costs and expenses of its Board of Directors (items (i) through (v) collectively, the "Wind-Down Expenses").

The Wind-Down Expenses shall be paid from the Sales Proceeds, the Holdback Amount Reserve and any other Cash in the Estates on the Effective Date to the extent paid or incurred on or before the Effective Date and from the Liquidation Trust Expense Reserve or amounts recovered in respect to the Retained Causes of Action if incurred after the Effective Date. In addition, to the extent any funds are recovered in respect of any Retained Causes of Action, such funds shall be applied first to pay any fees, costs, or expenses incurred in connection with the prosecution of such Retained Causes of Action (to the extent not previously paid out of the Liquidation Trust Expense Reserve as Wind-Down Expenses or otherwise) or otherwise incurred by the Liquidation Trust, the Reorganized Parent Debtor or the other Debtors and shall thereafter be deposited into the Liquidation Trust Expense Reserve to the extent necessary to bring the balance on deposit therein (after payment of all then outstanding fees and expenses) to its original amount (as set forth in the Plan Supplement), or such other amount as determined by the Liquidation Trustee necessary to pay reasonable fees and expenses then incurred or anticipated to be incurred for Wind-Down Expenses. For the avoidance of doubt, the initial amount of the Liquidation Trust Expense Reserve shall not be deemed to constitute a "cap" on fees and expenses incurred by the Liquidation Trust with respect to the Retained Causes of Action, the Chief Wind-Down Officer, or the Wind-Down Expenses with respect to required activity.

To the extent any funds recovered in respect of any Retained Causes of Action remain after payment of fees, costs, or expenses and deposit in the Liquidation Trust Expense Reserve as described in the immediately preceding paragraph (the "Cause of Action Net Proceeds"), then such Cause of Action Net Proceeds shall constitute Shareholder Distributable Assets and shall be apportioned between the Liquidation Trust and the Reorganized Parent Debtor for distribution to Holders of Allowed Parent Equity Interests or Beneficial Trust Interests, respectively, in accordance with the Asset Apportionment.

On or before the Effective Date but after the Confirmation Hearing and Canadian Approval Hearing, the Reorganized Parent Debtor and Liquidation Trust will enter into a cost sharing agreement (the "Cost Sharing Agreement") in form and substance acceptable to the Debtors, Monitor and the Committees, pursuant to which the Reorganized Parent Debtor and the

Liquidation Trust will each agree to pay for its share of the Wind-Down Expenses from the Shareholder Distributable Assets, (including the Sale Proceeds) or the Liquidation Trust Expense Reserve, as applicable. The Cost Sharing Agreement will allocate the Wind-Down Expenses in accordance with the Asset Apportionment. A form of Cost Sharing Agreement will be included in the Plan Supplement.

C. Corporate Existence; Vesting of Assets

After the Effective Date, the Reorganized Parent Debtor shall continue to exist under applicable corporate law for the sole purposes of (i) prosecuting the Retained Causes of Action, (ii) making distributions from time to time to Holders of Allowed Parent Equity Interests who do not elect Option 1, and (iii) making any other distributions of Shareholder Distributable Assets until the Final Distribution Date, after which time the Reorganized Parent Debtor shall be dissolved.

After the Effective Date, the Chief Wind-Down Officer shall dissolve the Subsidiary Debtors, unless the Subsidiary Debtors must continue to exist under applicable corporate law for the sole purposes of liquidating the Retained Causes of Action or making distributions in accordance with this Plan or for tax purposes. Prior to such dissolution, all Assets of the Subsidiary Debtors after Payment in Full of General Unsecured Claims, Intercompany Claims as applicable, and the Wind-Down Costs of such Subsidiary Debtors shall vest in the Reorganized Parent Debtor.

Each Debtor or the Chief Wind-Down Officer is authorized and empowered to merge or amalgamate with any of the other Debtors and is authorized and empowered to effect each such merger or amalgamation and to take and cause to be taken such actions in order to carry out such mergers or amalgamations, in each case, on such terms and conditions as it may deem necessary or desirable. Subject to applicable laws with respect to the Canadian Debtors, the foregoing dissolution and merger actions are authorized without the requirement to file any annual reports or pay related fees thereon, and without any requirement of further action by the stockholders, shareholders, directors or any other officer of the Debtors.

D. Corporate Governance

The existing officers and directors of each Debtor shall be deemed to have resigned on the Effective Date.

The Equity Committee will select the Board of Directors for the Reorganized Parent Debtor which shall consist of three (3) duly qualified directors. The Board of Directors selected by the Equity Committee will be identified in the Plan Supplement. The Reorganized Parent Debtor's Board of Directors shall appoint the Board of Directors for each Subsidiary Debtor pending its dissolution, which Board of Directors may, but is not required to, consist of the same Director(s) that serve on the Reorganized Parent Debtor's Board of Directors, subject to compliance with applicable laws. The Board of Directors will be appointed to serve through the liquidation and dissolution of the Reorganized Debtors, and the CCAA Approval Order will provide that the Reorganized Parent Debtor shall not otherwise be required to comply with applicable law regarding the formation or composition of the Board of Directors.

The initial Chief Wind-Down Officer shall be selected by the Equity Committee with the consent of the Debtors, Monitor and Creditors' Committee (not to be unreasonably withheld) and will be identified in the Plan Supplement and shall be appointed by the Reorganized Parent Debtor's Board of Directors. The Chief Wind-Down Officer may but is not required to be the same person for each of the Debtors. Following the Effective Date, the Reorganized Parent Debtor's Board of Directors shall have the right to replace or terminate the Chief Wind-Down Officer without need for further approval by the Bankruptcy Court or Canadian Court and thereafter, each successor Chief Wind-Down Officer shall fulfill the role of Chief Wind-Down Officer under this Plan.

The Debtors intend to seek relief from the Canadian Court in the CCAA Approval Order providing for, among other things, that the Reorganized Parent Debtor shall not be required to comply with the reporting or disclosure requirements or obligations under Canadian Securities Laws, nor shall the Reorganized Parent Debtor be required to comply with applicable corporate laws under the British Columbia *Business Corporations Act*. As a result of, among other things, the delayed filing of its Annual Report, including its annual audited financial statements for the fiscal year ended May 31, 2016 and the related management's discussion and analysis, the Parent Debtor is in default of the filing requirements under applicable Canadian Securities Laws. It is not expected that the Reorganized Parent Debtor or the Liquidation Trust will be in a position to comply with applicable Canadian Securities Laws following the Effective Date regardless of whether the requested relief is granted by the Canadian Court in the CCAA Approval Order.

Notwithstanding the foregoing, it may be necessary for the Parent Debtor and/or the Liquidation Trust to seek exemptive relief from the Canadian Securities Regulators in order to give effect to the Plan and the transactions contemplated thereby.

E. Liquidation Trust

1. Creation and Funding of the Liquidation Trust; Vesting of Assets

On or before the Effective Date but after the Confirmation Hearing and Canadian Approval Hearing, the Bankruptcy Court and the Canadian Courts shall have approved the formation of the Liquidation Trust pursuant to the Liquidation Trust Agreement and the provisions of this Plan. The Liquidation Trust shall be formed under U.S. law and shall be managed from the U.S. The Liquidation Trustee shall administer the Liquidation Trust, and shall have the powers and duties set forth in the Liquidation Trust Agreement. The Liquidation Trustee shall be designated in the Plan Supplement by the Equity Committee, with the consent of the Creditors' Committee, Monitor and the Debtors, which consent shall not be unreasonably withheld.

Through this Plan, the Shareholder Distributable Assets allocated to the Liquidation Trust (including a proportionate interest in the Retained Causes of Action) for the benefit of Holders of Allowed Parent Equity Interests who elect Option 1 shall vest in the Liquidation Trust as assets of the Liquidation Trust (which, for greater certainty, does not include any Cash (including the Sale Proceeds held by the Debtors as of the Effective Date)) (such assets, the "Liquidation Trust Assets") as a deemed distribution to the Holders of Allowed Parent Equity Interests who elect Option 1 followed immediately by a deemed contribution to the

Liquidation Trust from such Holders of their share of Liquidation Trust Assets. It is anticipated that the Liquidation Trust Assets shall consist of (i) the proportionate interest in the Retained Causes of Action allocable to the Holders of Allowed Parent Equity Interests that elected Option 1, and (ii) a comparable portion of the Liquidation Trust Expense Reserve; it is anticipated that no other Cash shall be transferred (or deemed transferred) to the Liquidation Trust for the Holders of Allowed Parent Equity Interests that elected Option 1.

This Plan shall be considered a motion pursuant to Sections 105, 363 and 365 of the Bankruptcy Code, and the Confirmation Order shall be considered an order granting such relief. The transfer of the Liquidation Trust Assets to the Liquidation Trust shall be made for the benefit of and on behalf of the Liquidation Trust Beneficiaries. For all U.S. federal income tax purposes, the transfer of the Liquidation Trust Assets to the Liquidation Trust shall be treated as (1) a transfer of the Liquidation Trust Assets directly to the Liquidation Trust Beneficiaries, followed by (2) the transfer of such Liquidation Trust Assets by the Liquidation Trust Beneficiaries to the Liquidation Trust in exchange for the Liquidation Trust Beneficial Interests. The Liquidation Trust Beneficiaries shall be treated as the grantors and owners of the Liquidation Trust (other than the Liquidation Trust Assets as are allocable to the Reserves).

As soon as reasonably practicable after the Effective Date, (i) the Liquidation Trustee shall make a good faith valuation of the Liquidation Trust Assets, and (ii) the Liquidation Trustee shall establish appropriate means to apprise the Liquidation Trust Beneficiaries of such valuation. The valuation shall be used consistently by all parties (including, without limitation, the Debtors, the Liquidation Trustee and the Liquidation Trust Beneficiaries) for all U.S. federal and other income tax purposes. The Liquidation Trustee also shall file (or cause to be filed) any other statements, returns, or disclosures relating to the Liquidation Trust that are required by any Governmental Unit.

2. Rights and Powers of the Liquidation Trustee

The Liquidation Trustee shall have all the rights and powers set forth in this Plan (including those conferred upon him as the Litigation Representative pursuant to Article V.E.12 of this Plan) and the Liquidation Trust Agreement to act on behalf of the Liquidation Trust, including the right to (a) effect all actions and execute all agreements, instruments and other documents, and exercise all rights and Privileges previously held by the Debtors, necessary or convenient to implement the provisions of this Plan and the Liquidation Trust Agreement, (b) subject to the Liquidation Trust Agreement and this Plan, prosecute, settle, abandon or compromise the Retained Causes of Action on behalf of the Liquidation Trust and the Debtors, (c) authorize distributions as contemplated by and in accordance with this Plan, and (d) make disbursements from the Liquidation Trust Expense Reserve (or, prior to the funding of the Liquidation Trust Expense Reserve, from Cash held by the Reorganized Parent Debtor) on behalf of the Liquidation Trust and the Reorganized Parent Debtor.

Pursuant to Article V.E.12 hereof, the Liquidation Trustee, in its capacity as Litigation Representative, for the benefit of and on behalf of the Liquidation Trust and the Debtors, without further order of the Bankruptcy Court or the Canadian Court but subject to the Liquidation Trust Agreement and this Plan, shall have full power and authority to (i) investigate, prosecute, abandon, settle, liquidate, or otherwise resolve the Retained Causes of Action, (ii)

retain counsel and other professionals in connection with investigating, prosecuting, abandoning, settling, liquidating, or otherwise resolving the Retained Causes of Action, under such arrangements regarding compensation and other terms as the Liquidation Trustee may deem reasonable and appropriate, and (iii) to the extent consistent with the provisions of U.S. tax laws applicable to liquidating trusts, enter into third-party arrangements for the funding of the foregoing activities of the Litigation Representative in respect of the Retained Causes of Action, which arrangements may include granting interests in the Retained Causes of Action or the proceeds thereof; provided, however, that any such third-party arrangements shall be non-recourse except as to any proceeds received in respect of the Retained Causes of Action subject to such third-party arrangements. Funds in the Liquidation Trust Expense Reserve (whether held by the Reorganized Parent Debtor or the Liquidation Trust) may be used to pay the fees, costs, and expenses (including attorney's fees and other professional fees) that the Liquidation Trust may incur in connection with the implementation of this Plan, including the fees and expenses related to investigating, prosecuting, abandoning, settling, liquidating, or otherwise resolving the Retained Causes of Action.

3. Retention of Professionals

In its capacity as Litigation Representative on behalf of the Debtors and the Liquidation Trust pursuant to Article V.E.12 of this Plan, the Liquidation Trustee may retain counsel and other professionals on behalf of the Liquidation Trust to assist the Liquidation Trust in exercising its rights and powers under the Liquidation Trust Agreement and implementing this Plan. Funds in the Liquidation Trust Expense Reserve (whether held by the Reorganized Parent Debtor or the Liquidation Trust) and, to the extent necessary, the Cause of Action Net Proceeds may be used by the Liquidation Trustee to pay the fees, costs, and expenses that the Liquidation Trust may incur in connection with the implementation of this Plan.

4. Post-Effective Date Fees and Expenses of Liquidation Trust and the Debtors

The Wind-Down Expenses of the Liquidation Trust and the Debtors, including for the Chief Wind-Down Officer and the Monitor, incurred on or after the Effective Date shall be paid by the Liquidation Trustee or the Reorganized Parent Debtor out of the Liquidation Trust Expense Reserve without further order of the Bankruptcy Court or Canadian Court. Following the Effective Date, any requirement that a U.S. Professional comply with sections 327 through 331 of the Bankruptcy Code when seeking compensation for services rendered to any of the Debtors, their Estates or the Liquidation Trust shall terminate.

5. Liquidation Trust Advisory Board

The Liquidation Trust Advisory Board shall consist of three (3) Persons. Each member of the Liquidation Trust Advisory Board shall be designated by the Equity Committee with the consent of the Monitor and the Debtors, which consent is not to be unreasonably withheld, and after consultation with the Creditors' Committee. The initial members of the Liquidation Trust Advisory Board shall be identified in the Plan Supplement.

6. Liquidation Trust Transfer Taxes

Any transfer of the Liquidation Trust Assets to the Liquidation Trust shall be exempt from any stamp tax or similar tax, in accordance with section 1146(a) of the Bankruptcy Code.

7. Federal Income Tax Treatment of the Liquidation Trust

The Liquidation Trust shall be established for the sole purpose of distributing the Liquidation Trust Assets, and proceeds therefrom, in accordance with Treasury Regulation section 301.7701-4(d) and Revenue Procedure 94-45, with no objective to continue or engage in the conduct of a trade or business, and are intended to qualify as a liquidating trust for U.S. federal income tax purposes. In general, a liquidating trust such as the Liquidation Trust is not a separate taxable entity for U.S. federal income tax purposes, but is instead treated as a grantor trust, *i.e.*, pass-through entity. All parties must treat the transfer of the portion of the Liquidation Trust Assets attributable to the Liquidation Trust Beneficiaries as a transfer of such assets directly to the Liquidation Trust Beneficiaries. Consistent therewith, all parties must treat the Liquidation Trust as a grantor trust of which the Liquidation Trust Beneficiaries are the owners and grantors. Subject to the terms of the Liquidation Trust Agreement, the value of a Liquidation Trust Beneficiary's Allowed Parent Equity Interest (less any Cash distribution received from the Reorganized Parent Debtor) shall be the value of such Liquidation Trust Beneficiary's Liquidation Trust Beneficial Interest, and the Liquidation Trust Beneficiaries and the Liquidation Trust must consistently use this valuation for all U.S. and other federal income tax purposes, including for determining gain, loss or tax basis.

If any Holder of Allowed Parent Equity Interests elects Option 1 and the Liquidation Trust is subject to adverse tax consequences in Canada as a result of such Holder holding Beneficial Trust Interests, any transfer to such Holder and the cancellation of such Holder's Parent Equity Interests shall be *void ab initio* and the Reorganized Parent Debtor, the Holder and the Liquidation Trust shall each treat such Holder at all times as if such Holder had elected Option 2.

8. Dissolution of the Liquidation Trust

The Liquidation Trust shall be dissolved no later than five (5) years from the Effective Date, unless the Bankruptcy Court, upon motion made prior to such fifth (5th) anniversary without the need for a favorable letter ruling from the IRS that any further extension would not adversely affect the status of either as a Liquidation Trust for federal income tax purposes, determines that a fixed period extension, not to exceed five (5) years, is necessary to facilitate or complete the recovery on and liquidation of the Liquidation Trust Assets. Upon the filing of any motion for an extension of the date of dissolution, such date shall be deemed automatically extended until an order of the Bankruptcy Court is entered with respect to such motion or the motion is withdrawn.

9. Liquidation Trust Securities Law Matters

To the extent the Liquidation Trust Beneficial Interests are deemed to be “securities,” the issuance of such interests under this Plan, are exempt, pursuant to section 1145 of the Bankruptcy Code, from registration under the Securities Act of 1933, as amended, and any applicable U.S. federal, state and local laws requiring registration of securities.

10. Ability to Seek and Obtain Discovery under Bankruptcy Rule 2004

From and after the Effective Date, in connection with the Retained Causes of Action, pursuant to subparagraph (12) of this Article: (i) the Liquidation Trustee, in its capacity as the Litigation Representative for the Debtors and the Liquidation Trust, shall have the ability to seek and obtain examinations (including document discovery and depositions) under Bankruptcy Rule 2004 (and equivalent Canadian legislation) against any Person or Entity, and (ii) the Bankruptcy Court (and Canadian Court) shall retain jurisdiction to order examinations (including examinations under Bankruptcy Rule 2004) against any Person or Entity, and to hear all matters with respect to the same.

11. Preservation of Privileges and Books and Records of the Estates and Debtors

On the Effective Date, the Debtors shall be deemed to have transferred and assigned all of their respective rights, titles, and interests in any privilege or immunity of the Debtors’ Estates, including the attorney-client privilege and any privileges in respect of any Retained Causes of Action (collectively, the “Privileges”), to the Liquidation Trust and the Reorganized Debtors, and all such Privileges shall automatically vest in the Liquidation Trust and the Reorganized Debtors, jointly, as of the Effective Date; provided, however, that, pursuant to subparagraph (12) of this Article, the Liquidation Trustee, in its capacity as the Litigation Representative for the Debtors and the Liquidation Trust, shall be vested with the sole power and authority to waive or assert such Privileges for the joint benefit of the Debtors and the Liquidation Trust. In addition, on the Effective Date, the Debtors shall be deemed to have transferred and assigned all of their rights and obligations with respect to their books and records and access thereto, including any rights and obligations under the Sale Orders, to the Liquidation Trust and the Debtors, and all such rights and obligations shall automatically vest in the Liquidation Trust and the Debtors as of the Effective Date. The Debtors’ Professionals agree that, prior to and after the Effective Date, they shall provide reasonable assistance and cooperation to the Debtors, the Liquidation Trust, and the Reorganized Parent Debtor, as applicable, and each of their respective professionals, in connection with the investigation and prosecution of the Retained Causes of Action, including, without limitation, by (i) delivering any books and records of the Debtors or other materials (including any documents or materials of the Debtors that may be subject to any Privileges) that may be relevant to the Retained Causes of Action and that are in the respective possession, custody, or control of any such Debtor Professionals, and (ii) responding to any reasonable inquiries made by the Debtors, the Liquidation Trust, or the Reorganized Parent Debtor, as applicable, or any of their respective professionals, in respect of the investigation and prosecution of the Retained Causes of Action; provided, however, that the reasonable assistance and cooperation of the Debtors’ Professionals as set forth herein shall be subject in all respects to any applicable ethical rules or obligations of

such Debtor Professionals, and shall be compensable as a Wind-Down Expense of the Liquidation Trust.

12. Appointment of Liquidation Trustee by Canadian Court and Bankruptcy Court as Representative of the Debtors and Liquidation Trust in Respect of the Retained Causes of Action

On or before the Effective Date, the Canadian Court and the Bankruptcy Court shall have entered orders (which, in the case of the Bankruptcy Court shall be the Confirmation Order and, in the case of the Canadian Court, shall be the CCAA Approval Order) appointing the Liquidation Trustee as the Litigation Representative of the Debtors and the Liquidation Trust and otherwise vesting the Liquidation Trustee with sole responsibility, power and authority (subject only to the terms of this Plan and the review and approval of the Liquidation Trust Advisory Board as required by the Liquidation Trust Agreement, and the Board of Directors of the Reorganized Parent Debtor to the extent required under its amended and restated organizational documents) for investigating, prosecuting, settling and liquidating the Retained Causes of Action, jointly on behalf of the Debtors and the Liquidation Trust. Without limitation of the generality of the foregoing, in its capacity as Litigation Representative, the Liquidation Trustee shall have the exclusive power and authority (subject only to the review and approval of the Liquidation Trust Advisory Board as provided in the Liquidation Trust Agreement, and the Board of Directors of the Reorganized Parent Debtor to the extent required under its amended and restated organizational documents) to (i) assert or waive any applicable Privileges, (ii) seek discovery pursuant to Bankruptcy Rule 2004, (iii) investigate Retained Causes of Action, (iv) assert the Debtors' rights in respect to their books and records, (v) elect whether to prosecute, settle or otherwise liquidate such Retained Causes of Action, and (vi) to use funds in the Liquidation Trust Expense Reserve, whether held by the Reorganized Parent Debtor or Liquidating Trust, to pay professional fees and other Wind-Down Expenses incurred by the Liquidation Trust and/or the Reorganized Parent Debtor, in each case without further approval of the Bankruptcy Court or the Canadian Court or the Reorganized Parent Debtor, but for the joint benefit of the Holders of Equity Interests in the Reorganized Parent Debtor and Beneficial Trust Interests in the Liquidation Trust as provided hereunder.

13. Savings of Retained Causes of Action

If the vesting of interests in Retained Causes of Action with the Liquidation Trust shall compromise the ability to prosecute or recover from any Retained Causes of Action, then notwithstanding anything else contained herein, an interest in such Retained Causes of Action shall not be deemed to have vested in the Liquidation Trust, but rather shall be deemed solely vested with or otherwise retained by the Reorganized Parent Debtor or other applicable Debtor. In such situation, (i) the Liquidation Trustee shall continue to serve as the Litigation Representative on behalf of the Reorganized Parent Debtor with full power and authority respecting all aspects of such Retained Cause of Action as provided in this Plan, including prosecution in the name of the applicable Debtor, funding for same, and terms of settlement and (ii) the Liquidation Trust and applicable Debtor shall share costs and proceeds pertaining to such Retained Cause of Action so as to realize the Asset Apportionment otherwise described in the Plan. Nothing set forth herein shall be deemed applicable to, or binding with respect to, the U.S. federal income tax reporting obligations of the Liquidation Trust or Liquidation Trustee, if any,

and for the avoidance of doubt the Liquidation Trust and Liquidation Trustee shall comply with, and report as required in their sole judgment in compliance with, such U.S. federal income tax laws as may be applicable to the Liquidation Trust and the holders of Beneficial Trust Interests.

F. Cancellation of Unexercised and Unvested Interests

On the Effective Date, any contingent or unexercised option, warrant, or right, contractual or otherwise, to acquire or be awarded any interest in a Debtor, including but not limited to unvested restricted stock units, or other such forms of interest, including those held by former officers, employees or directors of the Debtors as a form of compensation, except for restricted share units and deferred share units identified in the Plan Supplement (which represent restricted share units having vested in the ordinary course of business prior to the Petition Date and deferred share units granted or owing to a director of the Parent Debtor prior to the Effective Date, including, for greater certainty, those which were not granted due to the stay of proceedings in the Chapter 11 Cases and CCAA Proceedings) shall be cancelled without the exchange of any similar interest, or other form of consideration. Any Proof of Claim or Interest filed on account of such cancelled interests shall be disallowed as a Claim or Interest for which the Debtors have no liability and the Claims and Solicitation Agent may adjust the Claims Register accordingly to reflect such disallowance without further order of the Bankruptcy Court or Canadian Court.

VI. PROCEDURES FOR RESOLVING DISPUTED CLAIMS; CLAIM RESERVES

A. Prosecution of Objections to U.S. Claims

After the Effective Date, the Liquidation Trust shall have and retain any and all rights and defenses that any Debtors may have with respect to any U.S. Claims, and shall have the authority, after consultation with the Monitor, to file objections and to settle, compromise, withdraw or litigate to judgment objections to Claims against the U.S. Debtors (except those Allowed by this Plan, the Confirmation Order or other Final Order). The Liquidation Trust, after consultation with the Monitor, shall have the authority to compromise, settle, otherwise resolve, or withdraw, any objections to Disputed Claims on account of U.S. Claims without approval of the Bankruptcy Court. Any final determination of the U.S. Claims made in the Chapter 11 Cases shall be binding in the CCAA Proceedings and constitute Final Orders with respect to such Claims.

The U.S. Debtors (after the later of the Confirmation Date and the CCAA Approval Order Date, and until the Effective Date) or the Liquidation Trust (from and after the Effective Date), shall file objections to any U.S. Disputed Claims with the Bankruptcy Court in accordance with the Bankruptcy Rules on or before the Claims Objection Deadline, as the same may be extended pursuant to the terms of this Plan or order of the Bankruptcy Court.

B. Prosecution of Objections to Canadian Claims

The Monitor, after consultation with the Liquidation Trustee and the Reorganized Parent Debtor, will allow and disallow Canadian Claims in accordance with a Claims Resolution Order granted by the Canadian Court and the authority contained therein. Any objection to a

notice of disallowance or revision issued by the Monitor shall only be made to the Monitor in accordance with the Claims Resolution Order. Any final determination of the Canadian Claims made in the CCAA Proceedings pursuant to the Claims Resolution Order shall be binding in the Chapter 11 Cases and constitute Final Orders with respect to such Claims.

C. Cross-Border Provisions for Resolution of Certain Claims

1. Multiple Disputed Claims

In the event that a Disputed Claim has been separately filed against one or more Canadian Debtors and one or more U.S. Debtors and also with respect to Securities Law Claims, the Monitor and Liquidation Trustee may determine a mutually acceptable process for prosecuting and resolving such Claim in accordance with the Claims Resolution Order, including deciding to liquidate such Disputed Claim under this Plan as a Disputed Canadian Claim or Disputed U.S. Claim, respectively, and if no agreement can be reached, the Bankruptcy Court and Canadian Court shall decide the process by an order of both courts. Any appeal in respect of such Disputed Claim shall only be made to the Monitor in accordance with the Claims Resolution Order if such Disputed Claim is treated as a Disputed Canadian Claim or to the U.S. Debtor or Liquidation Trustee, as applicable, if such Disputed Claim is treated as a Disputed U.S. Claim.

2. Applicable Statutory Caps

To the extent that a provision of the Bankruptcy Code or a provision of the CCAA or an order of the Canadian Court limits the Allowed amount of a particular type of Claim (e.g., sections 502(b)(6) and 502(b)(7) of the Bankruptcy Code), the distribution on such Allowed Claim under this Plan shall not exceed the lesser of (a) the Allowed amount such Claim is entitled to under the provisions of the Bankruptcy Code; and (b) the Allowed amount such Claim is entitled to under the CCAA or any order of the Canadian Court.

3. Estimation of Claims

The Liquidation Trust, after consultation with the Monitor, may, at any time after the Effective Date, request that the Bankruptcy Court estimate any contingent or unliquidated U.S. Claim respectively, pursuant to section 502(c) of the Bankruptcy Code, regardless of whether any Debtor previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court will retain jurisdiction to estimate any U.S. Claim at any time, including during litigation concerning any objection to any U.S. Claim, and during the pendency of any appeal relating to any such objection.

The Monitor may, at any time after the Effective Date and after consultation with the Liquidation Trustee, request the Canadian Court or claims officer appointed by the Canadian Court to estimate, determine or resolve any contingent or unliquidated Canadian Claim respectively, pursuant to the CCAA and in accordance with a Claims Resolution Order.

If the Bankruptcy Court or the Canadian Court or a claims officer appointed by the Canadian Court estimates any contingent or unliquidated Claim, that estimated amount will

constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the applicable court. If the estimated amount constitutes a maximum limitation on such Claim, the Liquidation Trust or Monitor, as applicable, may elect to pursue any supplemental proceedings to object to the allowance and any ultimate payment on such Claim. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court or the Canadian Court, as applicable, including under this Plan, the CCAA Approval Order or a Claims Resolution Order.

4. Distributions on Allowed Claims

As further provided in Article VII of this Plan, the Distribution Agent shall make all distributions on Allowed Claims from the Sale Proceeds. The Liquidation Trustee shall direct the Distribution Agent to make distributions on account of Allowed U.S. Claims and the Monitor shall direct the Distribution Agent to make distributions on account of Allowed Canadian Claims.

D. No Double Recovery on Allowed Cross-Border Claims

The aggregate recovery under this Plan, on the one hand, and in the CCAA Proceedings under the CCAA Approval Order, on the other hand, on account of any Claim for which more than one Debtor is liable, whether on account of a theory of primary or secondary liability, by reason of a guarantee agreement, indemnity agreement, joint and several liability or otherwise shall not exceed 100% of the Allowed amount of the Claim as determined in accordance with this Plan, the CCAA Approval Order or a Claims Resolution Order, as applicable.

E. Reserves

1. Liquidation Trust Expense Reserve

On the Effective Date, the Debtors or the Distribution Agent will fund with Cash the Liquidation Trust Expense Reserve in the amount set forth in the Plan Supplement, and the Liquidation Trust Expense Reserve will remain under the control of the Reorganized Parent Debtor until (1) a Clearance Certificate is obtained that permits transfer of the Liquidation Trust Expense Reserve to the Liquidation Trust or (2) the Board of Directors of the Reorganized Parent Debtor otherwise resolves to disburse such funds; provided, however, that at least \$100,000 of the Liquidation Trust Expense Reserve shall be funded into the Liquidation Trust within 60 days of the Effective Date, unless the Board of Directors of the Reorganized Parent Debtor, with the consent of the Liquidation Trustee, which consent shall not be unreasonably withheld, reasonably determines that such funding should not be made, and provided, further, that Wind-Down Expenses and expenses of the Liquidation Trust (including, but not limited to, professional fees incurred in connection with the Retained Causes of Action) may be paid from any reserves prior to the issuance of a Clearance Certificate. Once distributed by the Reorganized Parent Debtor, the Pro Rata portion of the Liquidation Trust Expense Reserve attributable to beneficial Holders of Allowed Parent Equity Interests that Election Option 1 under the Plan shall be treated as deemed distributions to such Holders followed immediately by deemed contributions by such Holders to the Liquidation Trust, including for all U.S. federal

income tax purposes. To the extent any Cash remains in the Liquidation Trust Expense Reserve after payment of the Wind-Down Expenses of the Liquidation Trust and the Debtors, such excess Cash shall be administered in accordance with the other provisions of this Plan, including as additional distributions to Holders of Beneficial Trust Interests or to Holders of Parent Equity Interests; provided however that any such distribution shall not be made before the Final Distribution Date.

2. Holdback Amount Reserve

On the Effective Date, the Debtors or the Distribution Agent will fund in Cash the Holdback Amount Reserve from the U.S. Sale Proceeds Account in an amount sufficient to Pay in Full the Holdback Amount for Professionals and payment of any additional unpaid amounts asserted or estimated by the Professionals and Alvarez & Marsal North America, LLC as owing to any such firm for fees and expenses accrued prior to the Effective Date that have not yet been paid. To the extent any Cash remains in the Holdback Amount Reserve after payment of the Professionals and Alvarez & Marsal North America, LLC as set forth herein, such excess Cash shall be administered by the Distribution Agent in accordance with the other provisions of this Plan.

3. Individual Securities Damages Reserve

On the Effective Date, the Debtors or the Distribution Agent will fund with Cash the Individual Securities Damages Reserve, and the Individual Securities Damages Reserve will remain under the control of the Monitor on behalf of the Reorganized Parent Debtor until a Clearance Certificate or Comfort Letters are obtained and the Monitor determines that the transfer of the Individual Securities Damages Reserve to the Holder of the Individual Securities Damages Claim is permitted. The Individual Securities Damages Reserve will be used to satisfy any Allowed Individual Securities Damages Claim and will be the sole source of recovery for such Allowed Claim. To the extent any Cash remains in the Individual Securities Damages Reserve after payment of the Individual Securities Damages Claim, to the extent Allowed, or if such Claim is Disallowed, such excess Cash shall be transferred to the Distribution Agent to be administered in accordance with the other provisions of this Plan and the CCAA Approval Order.

4. Reserve Amounts

The Bankruptcy Court and the Canadian Court shall approve the Reserve amounts authorized under this Plan in the Confirmation Order and CCAA Approval Order, respectively.

F. No Interest on Allowed Claims; Setoffs

Unless otherwise specified in this Plan or by Final Order, “Allowed Administrative Claim” or “Allowed General Unsecured Claim” shall not, for any purpose under this Plan, include interest on such Administrative Claim or Claim from and after the Petition Date or attorney’s fees after the Petition Date.

An Allowed Claim shall be net of any setoff or recoupment amount of any Claim that may be asserted by any Debtor against the Holder of such Claim, which amount shall be deemed setoff or recouped pursuant to this Plan.

G. Prompt Claims Resolution

To ensure the prompt resolution of Claims, objections to all U.S. Claims that are (i) subject to reduction by section 502(b)(7) of the Bankruptcy Code, (ii) amended and superseded Claims, and (iii) duplicate Claims shall be filed by no later than thirty (30) days after the Effective Date, and notices of disallowance shall be served on all Canadian Claims that are subject to reduction by section 502(b)(7) of the Bankruptcy Code by such same date.

Additionally, beginning on the 90th day after the Effective Date and continuing every 90th day thereafter until all U.S. Claims have become Satisfied Claims, Allowed U.S. Claims or U.S. Claims disallowed by a Final Order, the Liquidation Trustee shall file on the Docket and serve on the Holders of all remaining U.S. Claims a progress report discussing its efforts to reconcile and liquidate U.S. Claims taken during the reporting period.

VII. PROVISIONS GOVERNING DISTRIBUTIONS

A. Distribution Agent

Each Distribution Agent shall make the applicable distributions under this Plan tasked to such Distribution Agent. The Distribution Agent shall act at the direction of the Reorganized Parent Debtor, the Monitor or the Liquidation Trustee, as the case may be. On the Effective Date, the Distribution Agent shall have the authority to distribute the Sale Proceeds in accordance with this Plan, and as directed by the Reorganized Parent Debtor, the Monitor or the Liquidation Trustee.

Through the Final Monitor Distribution Date, the Monitor as Distribution Agent shall make the Initial Cash Distributions from the Sale Proceeds required under this Plan and the CCAA Approval Order to Holders of Allowed Secured Claims, Allowed Priority Claims, and Allowed General Unsecured Claims, as well as to pay any Allowed Individual Securities Damages Claim from the Individual Securities Damages Reserve, upon receipt of either (a) a Clearance Certificate, (b) Comfort Letters, and/or (c) such other arrangement satisfactory to the Monitor. Following the Final Monitor Distribution Date, any Person selected by the Monitor, Reorganized Parent Debtor or the Liquidation Trustee may be designated as the Distribution Agent to make interim and final distributions to Holders of Claims and Parent Equity Interests as permitted hereunder and under the CCAA Approval Order.

Following the Effective Date, the Reorganized Parent Debtor or the Liquidation Trust, as applicable, shall pay to the Distribution Agent all reasonable and documented fees and expenses of the Distribution Agent without the need for any approvals, authorizations, actions, or consents. The Distribution Agent shall submit detailed invoices to the Reorganized Parent Debtor, the Monitor and the Liquidation Trustee, as applicable, for all fees and expenses for

which the Distribution Agent seeks reimbursement and shall be paid those amounts that the Reorganized Parent Debtor, the Monitor and the Liquidation Trustee, in their sole discretion, deem reasonable. In the event that the Reorganized Parent Debtor, the Monitor or Liquidation Trustee, as applicable, object to all or any portion of the amounts requested to be reimbursed in a Distribution Agent's invoice, the Reorganized Parent Debtor, Monitor or Liquidation Trustee, as applicable, and such Distribution Agent shall endeavor, in good faith, to reach mutual agreement on the amount of the appropriate payment of such disputed fees and/or expenses. In the event that the Reorganized Parent Debtor, Monitor or Liquidation Trustee, as applicable, and the Distribution Agent are unable to resolve any differences regarding disputed fees or expenses, any such party shall be authorized to move to have such dispute heard by the Bankruptcy Court or the Canadian Court, provided however, if the dispute relates to amounts requested to be reimbursed by the Monitor, the dispute shall be heard by the Canadian Court.

B. Delivery of Distributions

Distributions to Holders of Allowed Claims shall be made by the Distribution Agent to the address of the Holder of such Claim as indicated in the Claims Register as of the Distribution Record Date. The Distribution Agent shall have no obligation to recognize the transfer of or sale of any Claim that occurs after the close of business on the Distribution Record Date, and will be entitled for all purposes herein to recognize and distribute only to those Holders of Allowed Claims who are Holders as of the close of business on the Distribution Record Date.

Distributions to Holders of Parent Equity Interests shall be made via a mandatory exchange with Clearing and Depository Services Inc. and Depository Trust Company to Holders of Parent Equity Interests at the time the distribution is made, without the establishment of a distribution record date for Parent Equity Interests, except in the case of Holders of Parent Equity Interests electing Option 1, who shall receive distributions from the Liquidation Trust or other Distribution Agent at the address set forth on their Liquidation Trust Certification Form. Any subsequent distributions on account of Liquidation Trust Beneficial Interests shall be made in similar manner, at the address listed on such Liquidation Trust Beneficiary's Liquidation Trust Certification Form, or at such other address as they later send to the Liquidation Trustee in writing.

C. Timing of Distributions

The Distribution Agent may make one or more interim and final distributions of Cash to Holders of Claims or Parent Equity Interests, in his discretion to the extent permitted hereunder, provided however that no Cash distributions shall be made to the Holders of Allowed Parent Equity Interests or Holders of Beneficial Trust Interests under this Plan until all obligations under this Plan to the Holders of Allowed Claims (including Fee Claims) and the Wind-Down Expenses of the Debtors have been Paid in Full in Cash or reserved for pursuant to a Final Order and the Debtors or the Monitor shall have obtained Clearance Certificates permitting such distribution. With respect to Allowed Claims other than Allowed Fee Claims, the Distribution Agent shall make distributions of Cash to Holders of such Allowed Claims as follows:

1. On the Initial Distribution Date, Cash to all Holders of Allowed Claims as of the Distribution Record Date.
2. On any Interim Distribution Date, Cash to all Holders of Allowed Claims that have become Allowed after the Initial Distribution Date.
3. On the Final Distribution Date, the balance of all Cash distributions to Holders of Allowed Claims and Allowed Equity Interests, as applicable and as required under this Plan.

The Distribution Agent shall pay Allowed Fee Claims in accordance with Article III.B of this Plan.

Until the Monitor is in receipt of the Comfort Letters, the Monitor, as Distribution Agent, shall be under no obligation to make any distributions on account of any Allowed Claims. The Distribution Agent shall not make any Cash distributions from the Sale Proceeds on account of Equity Interests until receipt of the applicable Clearance Certificates satisfactory to the Distribution Agent and the Debtors.

D. No Distributions on Disputed Claims

Notwithstanding any provision in this Plan to the contrary, no distributions, partial or otherwise, shall be made with respect to a Disputed Claim until all disputes with respect to such Claim are resolved by the Liquidation Trust or the Monitor and the Holder of such Claim by Final Order or settlement. Subject to the provisions of this Plan, after a Disputed Claim becomes an Allowed Claim, the Holder of such an Allowed Claim will receive all distributions to which such Holder is then entitled under this Plan on the Initial Distribution Date, or the next scheduled Interim Distribution Date or Final Distribution Date, as the case may be. No Post-Petition Interest, including no post-Effective Date interest, shall be paid on any distributions under this Plan, including with respect to any Disputed Claim that becomes an Allowed Claim. If a Creditor incorporates more than one Claim in a Proof of Claim then: (a) such Claims will be considered one Claim for purposes of this Plan, and (b) no such Claim will be bifurcated into an Allowed portion and a Disputed portion.

E. Amount of Distributions

Notwithstanding anything to the contrary herein, no Holder of an Allowed Claim shall, on account of such Allowed Claim, receive a distribution in excess of the Allowed amount of such Claim to the extent payable in accordance with this Plan, even if filed against multiple Debtors.

F. De Minimis Distributions

Notwithstanding anything contained herein to the contrary, no distribution shall be required to be paid if such payment would be less than \$50.00 on any distribution, provided, however, that distributions made through the Depository Trust Company or Clearing and

Depository Services Inc. may be made to the nearest cent, with half cents rounding down to zero, even if any such distribution would be less than \$50.00.

G. Undeliverable Distributions

1. Holding of Undeliverable Distributions

If any distribution to a Holder of an Allowed Claim, Parent Equity Interest or Liquidation Trust Beneficial Interest is returned as undeliverable, no further distributions must be made to such Holder unless and until the Monitor, Liquidation Trustee or Distribution Agent, as applicable, is notified in writing of such Holder's then-current address or other necessary information for delivery, at which time all currently due missed distributions shall be made to such Holder as soon as practicable, subject to Article VII.G.2 below. Undeliverable Distributions shall remain in the possession of the Monitor or Liquidation Trustee, as applicable, until such time as a distribution becomes deliverable, and shall not be supplemented with any interest, dividends or other accruals of any kind.

2. Failure to Claim Undeliverable Distributions

Any Holder of an Allowed Claim, Parent Equity Interest or Liquidation Trust Beneficial Interest that does not assert its right pursuant to this Plan for an Undeliverable Distribution within ninety (90) days after the distribution is distributed shall be deemed to have waived, and shall be forever barred from asserting, its rights for such Undeliverable Distribution, notwithstanding any applicable federal, state or Canadian escheat, abandoned or unclaimed property laws to the contrary. Nothing contained in this Plan shall require the Debtors, the Monitor, the Liquidation Trustee/Liquidation Trust, or a Distribution Agent to attempt to locate any Holder of an Allowed Claim, Parent Equity Interest or Liquidation Trust Beneficial Interest.

H. Distributions on Non-Business Days

Any payment or distribution due on a day other than a Business Day shall be made, without interest, on the next Business Day.

I. Tax Withholding From Distributions

Any amounts required by law to be withheld from distributions made under this Plan shall be withheld. Any amounts so withheld from any payment made under this Plan shall be deemed paid to the Holder of the Allowed Claim or Parent Equity Interest subject to withholding. Notwithstanding the above, each Holder of an Allowed Claim or Parent Equity Interest that is to receive a distribution under this Plan shall have the sole and exclusive responsibility for the satisfaction and payment of any taxes imposed on such Holder by any Governmental Unit on account of such distribution, except for taxes withheld from payments made under this Plan. Each Debtor, the Liquidation Trustee, the Monitor or any Distribution Agent, as applicable, has the right, but not the obligation, not to make a distribution until such Holder has made arrangements satisfactory to the Debtor, the Liquidation Trustee, the Monitor or Distribution Agent for payment of any withholding tax obligations. Each Debtor, the Liquidation Trustee, the Monitor or any Distribution Agent has no liability hereunder to any

party, including any Governmental Unit, for incorrectly calculating amounts to be withheld, if any. If any Debtor, the Liquidation Trustee, the Monitor or any Distribution Agent fails to withhold with respect to any such Holder's distribution, it shall have no liability for such failure to withhold to any party, including any Governmental Unit, and the Holder shall reimburse the Debtor, the Liquidation Trust, the Monitor or other Distribution Agent, as applicable. Notwithstanding any provision in this Plan to the contrary, any Debtor, the Liquidation Trustee, the Monitor or any Distribution Agent shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made under this Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms it believes are reasonable and appropriate. Any Debtor, the Liquidation Trustee, the Monitor or any Distribution Agent may require, as a condition to the receipt of a distribution, that the Holder complete the appropriate Form W-8 or Form W-9, as applicable to each Holder. If the Holder fails to comply with such a request within three (3) months, such distribution shall be deemed an Undeliverable Distribution. Finally, any Debtor, the Liquidation Trustee, the Monitor or any Distribution Agent reserves the right to allocate all distributions made under this Plan in compliance with all applicable wage garnishments, alimony, child support, and other spousal awards, Liens, and encumbrances, if any.

J. Allocations

Unless otherwise provided in this Plan, distributions in respect of Allowed Claims shall be allocated first to the principal amount (as determined for U.S. federal income tax purposes) of such Allowed Claims, and then, to the extent the distribution exceeds the principal amount of such Allowed Claims, to any portion of such Allowed Claims for accrued but unpaid interest; provided however, that no Post-Petition Interest on account of General Unsecured Claims shall be Allowed or paid under this Plan.

K. Time Bar to Cash Payments

Checks issued on account of Allowed Claims and Parent Equity Interests and Beneficial Trust Interests may be deemed null and void if not negotiated within one hundred and eighty (180) days after the date of issuance thereof. Requests for reissuance of any check shall be made in writing directly to the Liquidation Trust, Monitor or any other Distribution Agent, as applicable, by the Holder of the Allowed Claim or Parent Equity Interest with respect to which such check originally was issued. Any request in respect of such a voided check shall be made in writing on or before the later of one hundred and eighty (180) days after the Effective Date or one hundred and eighty (180) days after the date of issuance of such check. After such date, all rights in respect of void checks shall be forever barred and the distribution on account of such Claims and Parent Equity Interests shall be treated in accordance with Article VII.G of this Plan.

L. Means of Cash Payments

Any Cash payment to be made pursuant to this Plan will be made in U.S. dollars by checks drawn on or by wire transfer from a domestic bank selected by the applicable Debtor, the Liquidation Trustee, the Monitor or any Distribution Agent, as applicable, provided,

however, that any Debtor, the Liquidation Trustee, the Monitor or any Distribution Agent shall make Cash payment on any Claim filed against such Debtor in Canadian Dollars in Canadian Dollars.

M. Foreign Currency Exchange Rates

As of the Effective Date, any Claim asserted in currency(ies) other than U.S. dollars or Canadian Dollars shall be automatically deemed converted to the equivalent U.S. dollar value using the mid-range spot rate of exchange for the applicable currency as published in *The Wall Street Journal*, National Edition, on the Petition Date. For greater certainty, the exchange rate does not apply to any Claims filed in Canadian Dollars that are paid in Canadian Dollars.

N. Setoffs

Any Debtor, the Monitor, the Liquidation Trustee or any Distribution Agent, as applicable, may, pursuant to section 558 of the Bankruptcy Code and applicable Canadian or non-bankruptcy law, set off against any Allowed Claim, the distributions to be made pursuant to this Plan on account of such Claim (before any distribution is made on account of such Claim), the claims, rights and Causes of Action of any nature that the Debtors or Liquidation Trust, as applicable, may hold against the Holder of such Allowed Claim; provided, however, that neither the failure to effect such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release of any such claims, rights and Causes of Action that the Debtors or the Liquidation Trust may possess against such Holder.

O. Satisfied Claims and Claims Paid or Payable by Third Parties

Any Administrative Claim or Claim that has been paid or satisfied in full or in part by any party may be adjusted on the Claims Register without a claims objection having to be filed and without any further notice to or action, order, or approval of the Bankruptcy Court, provided that the Liquidation Trustee shall file a notice of satisfaction or other pleading evidencing such satisfactions as are made by the Purchaser or any other party other than a Debtor or the Monitor, or seek an order of the Bankruptcy Court with respect to the same, all in the Liquidation Trustee's reasonable discretion. To the extent a Holder of a Claim receives a distribution on account of such Claim and receives payment from a party that is not a Debtor, the Monitor or a Distribution Agent, as applicable, on account of such Claim, such Holder shall repay, return or deliver any distribution held by or transferred to the Holder to the Monitor to the extent the Holder's total recovery on account of such Claim from the third party and under this Plan exceeds the total Allowed Claim of such Holder as of the date of any such distribution under this Plan. For the avoidance of doubt, prior to the making of distributions hereunder, Claims shall be reduced by the amount, if any, that was (i) paid by one or more of the Debtors pursuant to an order of the Bankruptcy Court or the Canadian Court, (ii) paid or otherwise assumed by the Purchaser in accordance with the Purchase Agreement, or (iii) otherwise satisfied by any third party; provided, however, that to the extent payment on a Claim that could be satisfied by a third party is still made, then, as permitted under applicable law, the Estates shall be subrogated to any such otherwise Satisfied Claims to recover amounts that could have been used for satisfaction of such Claim.

No distributions under this Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtors' or the Liquidation Trust's insurance policies until the Holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy, except as required under any such insurance policy with respect to a deductible or retention. To the extent that one or more of the insurers agrees to satisfy a Claim should liability ultimately arise on such Claim, then immediately upon such insurers' agreement, such Claim shall be deemed Paid in Full under this Plan.

VIII. TREATMENT OF EXECUTORY CONTRACTS

A. Treatment of Executory Contracts

Except as otherwise expressly provided in Article VIII.B of this Plan, all Executory Contracts of the U.S. Debtors that have not been assumed or assumed and assigned by the Debtors as of the Confirmation Date shall be deemed rejected as of the Effective Date in accordance with, and subject to the provisions and requirements of, sections 365 and 1123 of the Bankruptcy Code.

All Executory Contracts of the Canadian Debtors that have not been assumed or assigned by the Debtors as of the Confirmation Date shall be rejected prior to or after the Effective Date in accordance with section 32 of the CCAA in the CCAA Proceedings.

B. Insurance Policies

Notwithstanding anything to the contrary in this Plan or Confirmation Order, unless any insurance policies have been expressly rejected pursuant to a separate order of the Bankruptcy Court (or through the Confirmation Order), any insurance policies of the Debtors in which the Debtors are or were insured parties (including, without limitation, any policies covering directors' or officers' conduct), or any related insurance agreement issued prior to the Petition Date, shall continue in effect after the Effective Date pursuant to the respective terms and conditions and shall be treated as if assumed. All rights of the Debtors under any insurance policies shall automatically become vested in the Liquidation Trust and the Reorganized Parent Debtor without necessity for further approvals or orders. To the extent that any insurance policies or related insurance agreements are deemed executory contracts, then, unless such policies have been rejected pursuant to a separate order of the Bankruptcy Court or the Canadian Court (or through the Confirmation Order), notwithstanding anything to the contrary in this Plan, this Plan shall constitute a motion to assume, assume and assign, permit "ride through," or ratify such insurance policies or insurance agreements. Subject to the occurrence of the Effective Date, the entry of the Confirmation Order shall constitute both approval of such assumption pursuant to section 365 of the Bankruptcy Code and a finding by the Bankruptcy Court or the Canadian Court that such assumption is in the best interests of the Estates. Unless otherwise determined by the Bankruptcy Court or the Canadian Court pursuant to a Final Order or agreed upon by the parties prior to the Effective Date, no payments shall be required to cure any defaults of the Debtors existing as of the Confirmation Date with respect to any insurance policy or insurance agreement assumed, or assumed and assigned, pursuant to this Section. Each insurance company is prohibited from, and the Confirmation Order shall include an injunction against, denying,

refusing, altering or delaying coverage on any basis regarding or related to these Chapter 11 Cases, this Plan or any provision within this Plan, including the treatment or means of liquidation set out within this Plan for any insured Claims or Retained Causes of Action. Without limiting the generality of the foregoing, all directors' and officers' liability insurance policies in effect as of the Confirmation Date shall be deemed assumed and shall not be rejected.

C. Effect of Confirmation Order on Rejection of Executory Contracts

Other than as provided in Article VIII.B of this Plan, entry of the Confirmation Order shall constitute an order of the Bankruptcy Court pursuant to sections 365 and 1123(b) of the Bankruptcy Code approving the rejection of the Executory Contracts of the U.S. Debtors as of the Effective Date and determining that with respect to such rejections, such rejected Executory Contracts are burdensome and that the rejection therein is in the best interests of the Estates.

D. Rejection Damages Claims and Objections to Rejection

Claims arising out of the rejection of any Executory Contract pursuant to this Plan must be filed and served no later than thirty (30) days after the Effective Date. Holders of any Claim not filed within such time will be forever barred from asserting such Claim against the Liquidation Trust, the Monitor, the Debtors or their Estates, or their respective successors or assigns or their respective property. Unless otherwise ordered by the Bankruptcy Court or the Canadian Court or specified in this Plan, all Claims arising from the rejection of Executory Contracts under this Plan shall be treated as General Unsecured Claims under this Plan.

E. Preexisting Obligations Under Executory Contracts

The Debtors and the Liquidation Trust reserve the right to assert that rejection of any Executory Contract pursuant to this Plan, the CCAA or otherwise shall not constitute a termination of obligations owed to the Debtors and/or the Liquidation Trust, as applicable, under such contracts, including on the grounds that such Executory Contract was, in fact, not executory and such obligations owed to the Debtors "rode through" the Chapter 11 Cases. Notwithstanding any non-bankruptcy law to the contrary, the Debtors and the Liquidation Trust expressly reserve and do not waive any right to receive, or any continuing obligation of a counterparty to provide, warranties or continued maintenance obligations on goods previously purchased, or services previously received, or insurance obligations, by or for the benefit of the contracting Debtors or the Liquidation Trust, as applicable, from counterparties to rejected Executory Contracts.

F. Reservation of Rights

Nothing contained in this Plan, shall constitute an admission by the Debtors or the Liquidation Trust, as applicable, that any contract is in fact an Executory Contract, or that the Debtors or Liquidation Trust, as applicable, have any liability thereunder. In the event of a dispute regarding whether a contract is or was executory at the time of assumption or rejection, the Debtors or Liquidation Trust, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter the treatment of such contract.

IX. CONDITIONS PRECEDENT TO CONFIRMATION AND CONSUMMATION OF THIS PLAN

A. Conditions Precedent to Confirmation

It shall be a condition to Confirmation of this Plan that:

1. the Disclosure Statement Order shall have been entered by the Bankruptcy Court on the Docket of the Chapter 11 Cases, in form and substance acceptable to the Debtors, the Monitor, Creditors' Committee and Equity Committee, and such order shall not be subject to a stay;
2. The Canadian Court shall have issued an Order in form and substance satisfactory to the Debtors, the Monitor and the Committees confirming the steps to be taken by the Debtors in the CCAA Proceedings, including seeking approval of the CCAA Approval Order (the "Initial CCAA Approval Order");
3. the Purported Securities Class Action Claim shall have been disallowed and expunged in its entirety or estimated at \$0.00, in each instance, pursuant to an order of the Bankruptcy Court, Canadian Court or other court of competent jurisdiction entered on or before the Confirmation Date, and for all purposes, including, without limitation, Plan distribution purposes;
4. either the Holder of the Individual Securities Damages Claim shall have agreed to the treatment of the Individual Securities Damages Claim as provided under this Plan (including, but not limited to, the amount of the Individual Securities Damages Claim Reserve), or (ii) the Individual Securities Damages Claim shall have been estimated at \$928,077.31 or some lesser amount pursuant to an order of the Bankruptcy Court or other court of competent jurisdiction entered on or before the Confirmation Date;
5. the Plan Supplement shall have been filed with the documents contemplated by this Plan, and the documents comprising the Plan Supplement shall have been approved by the Confirmation Order; and
6. The SEC, the Debtors and the Equity Committee shall have reached an agreement regarding the treatment of the SEC Claim.

B. Conditions Precedent to the Effective Date

It shall be a condition to occurrence of the Effective Date that the following conditions shall have been satisfied or waived pursuant to Article IX.D of this Plan:

1. the Bankruptcy Court shall have entered on the Docket the Confirmation Order approving this Plan (including the establishment of the Reserves, the payment of Allowed Claims and Interests as set forth in this Plan and the Global Settlement) in form and substance acceptable to the Debtors, Creditors' Committee and Equity Committee, and such order shall not be subject to a stay;
 2. the Canadian Court shall have issued the CCAA Approval Order in form and substance acceptable to the Debtors, Equity Committee, the Creditors' Committee and the Monitor, and such order shall not be subject to a stay;
 3. the Courts shall have approved the formation of the Liquidation Trust and the appointment of the Liquidation Trustee as the Litigation Representative for the Debtors and the Liquidation Trust with all of the rights, powers, privileges and authority described in Article V.E.12 of this Plan by appropriate orders of the Canadian Court and the Bankruptcy Court;
 4. all Reserves shall have been funded in Cash;
 5. all other actions and documents necessary to implement the provisions of this Plan to be effectuated on or before the Effective Date shall be reasonably satisfactory to the Debtors, the Monitor, the Creditors' Committee and the Equity Committee;
 6. the Debtors shall have received all authorizations, consents, approvals, rulings, letters, opinions or documents, if any, necessary to implement this Plan; and
 7. each Debtor's Plan shall have become effective.
- C. Effect of Non-Occurrence of Conditions to Confirmation or Conditions Precedent to the Effective Date

If the conditions in Article IX.A and IX.B of this Plan are not satisfied or waived, as applicable, or if the Confirmation Order or CCAA Approval Order is vacated, this Plan shall be null and void in all respects and nothing contained in this Plan or the Disclosure Statement shall (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtors; or (b) constitute an admission, acknowledgment, offer or undertaking by the Debtors or any other Person in any respect.

D. Waiver of Conditions Precedent

The Debtors, with written consent of the Monitor and each of the Committees, may waive any of the conditions precedent set forth in Article IX.A and Article IX.B of this Plan, other than IX.A.1, IX.B.1, and IX.B.2 in whole or in part at any time, without notice, without leave or order of the Bankruptcy Court, and without any formal action other than proceeding to confirm and/or consummate this Plan.

X. EFFECT OF CONFIRMATION OF THIS PLAN**A. Certain Releases by the Debtors**

Notwithstanding anything contained herein to the contrary, as of the Effective Date, and to the fullest extent authorized by applicable law, for good and valuable consideration, the adequacy of which is hereby confirmed, the Debtor Releasees are deemed released and discharged by the Liquidation Trust, the Debtors and the Estates, from any and all claims, obligations, suits, judgments, damages, demands, debts, remedies, Causes of Action, rights of setoff, other rights, and liabilities whatsoever, including any derivative claims, asserted or that could be asserted directly or indirectly on behalf of the Liquidation Trust, the Debtors, or the Estates, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity, or otherwise, and any and all Causes of Action asserted or that could possibly have been asserted on behalf of the Liquidation Trust, the Debtors, or the Estates (whether individually or collectively) based on, relating to or arising from, in whole or in part, the Debtors, the Estates or the Debtors' subsidiaries, the conduct of the Debtors' businesses, the out-of-court efforts to restructure or liquidate the Debtors, the filing and prosecution of the Chapter 11 Cases or the CCAA Proceedings, the prepetition contracts and agreements with any Debtor or any Estate, all to the extent such acts or occurrence took place prior to the Petition Date (collectively, the "Released Liabilities"); provided, however, that as to any employees of the Debtors who are Insured Persons (such employees, "Insured Employees"), the Debtors, the Estates and the Liquidation Trust, as applicable, shall be permitted to pursue the Insured Employees for any Released Liabilities (the "Permitted Actions") so long as all recourse for the Permitted Actions against such Insured Employees shall be limited in all respects to applicable insurance proceeds actually available and the Insured Employees shall have no personal liability related to any Permitted Actions. Notwithstanding anything contained herein, an Insured Employee shall receive the benefit of the release provisions contained in this Article X.A of the Plan only if, prior to the Effective Date, the Debtors have obtained the consent of the [D&O Insurers], in form and substance acceptable to the Equity Committee in its discretion, confirming that the rights of the Debtors, the Estates and the Liquidation Trust to pursue all applicable insurance policies on account of the Permitted Actions and obtain recoveries thereunder in respect to the Permitted Actions shall not be affected, impaired, or compromised in any way by the releases of the Debtor Releasees or any other Insured Employee granted in this Article X.A. To the extent such consent has not been obtained from the [D&O Insurers] prior to the Effective Date, the releases granted in this Article X.A to any Insured Employee shall be null and void. For the avoidance of doubt, except to the extent expressly provided under this Plan in respect to the Debtor Releasees, no release is being granted to any Person or entity under this Plan.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the releases set forth in this Article X.A, which includes by reference each of the related provisions and definitions contained herein, and further, shall constitute the Bankruptcy Court's finding that such release is: (a) in exchange for the good and valuable consideration provided by the Debtor Releasees; (b) a good faith settlement and compromise of the claims released by this Article X.A; (c) in the

best interests of the Debtors and their Estates; (d) fair, equitable, and reasonable; (e) given and made after due notice and opportunity for hearing; and (f) a bar to any Person asserting any claim or Cause of Action released by this Article X.A.

B. Certain Releases by Holders of Claims

Notwithstanding anything contained herein to the contrary, as of the Effective Date, the Third-Party Releasees shall be deemed to have been conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Releasing Parties from any and all claims, obligations, suits, judgments, damages, demands, debts, remedies, Causes of Action, rights of setoff, other rights, and liabilities whatsoever, whether for tort, contract, violations of federal, provincial or state securities laws, Avoidance Actions, including any derivative claims, asserted or that could possibly have been asserted directly or indirectly on behalf of the Releasing Parties or their Affiliates, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity, or otherwise, and any and all Causes of Action asserted or that could possibly have been asserted on behalf of the Releasing Parties or their Affiliates (whether individually or collectively) or on behalf of the Holder of any Claim, based on or in any way relating to, or in any manner arising from, in whole or in part, the Liquidation Trust, the Debtors, the Debtors' Estates or the Debtors' subsidiaries, the conduct of the Debtors' businesses, the in-court or out-of-court efforts to restructure or liquidate the Debtors, the formulation, preparation, solicitation, dissemination, negotiation, or filing of the Disclosure Statement or this Plan (including the Plan Supplement), or any contract, instrument, release, or other agreement or document created or entered into in connection with or pursuant to the Disclosure Statement, this Plan (including the Plan Supplement), the filing and prosecution of the Chapter 11 Cases or the CCAA Proceedings, the pursuit of Confirmation, the pursuit of Consummation, the subject matter of, or the transactions or events giving rise to, any Claim that is treated in this Plan, the business or contractual arrangements between the Liquidation Trust, the Debtors, the Debtors' Estates or the Debtors' subsidiaries, on the one hand, and any Releasing Parties, on the other hand, prepetition contracts and agreements with any Debtor, or any other act or omission, transaction, agreement, event, or other occurrence taking place before the Effective Date.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the releases set forth in this Article X.B, which includes by reference each of the related provisions and definitions contained herein, and further, shall constitute the Bankruptcy Court's finding that such release is: (a) in exchange for the good and valuable consideration provided by the Third-Party Releasees; (b) a good faith settlement and compromise of the claims released by this Article X.B; (c) in the best interests of the Debtors and their Estates; (d) fair, equitable, and reasonable; (e) given and made after due notice and opportunity for hearing; and (f) a bar to any Person asserting any claim or Cause of Action released by this Article X.B.

C. Exculpation

Effective as of the Effective Date, none of the Exculpated Parties shall have or incur any liability to any Holder of any Claim or Equity Interest, the Debtors' Estates or any successor thereto, or any other party (including any Affiliate of any of the foregoing) for, or be subject to any right of action in respect of, any act or omission on or after the Petition Date and on or before the Effective Date in connection with, related to, or arising out of the Chapter 11 Cases or the CCAA Proceedings, including the formulation, negotiation and execution of the Purchase Agreement, the sale of the Debtors' assets pursuant to the Purchase Agreement, obtaining debtor-in-possession financing in connection with the Chapter 11 Cases and the CCAA Proceedings, the formulation, negotiation and execution of this Plan (including the Plan Supplement), the Disclosure Statement, the solicitation of votes for and the pursuit of confirmation of this Plan, the Consummation of this Plan, or the administration of this Plan, and the property to be distributed under this Plan, including all documents ancillary thereto, all decisions, actions, inactions and alleged negligence or misconduct relating thereto and all postpetition activities leading to the promulgation and Confirmation of this Plan (including any other post-petition act taken or omitted to be taken in connection with or in contemplation of the restructuring or liquidation of the Debtors), except in case of fraud, willful misconduct, or gross negligence by such Exculpated Party as determined by a Final Order of the Bankruptcy Court or the Canadian Court. Effective as of the Effective Date, no Person (including the Liquidation Trustee) shall have any right of action, either direct or derivative of the Estates, against the Exculpated Parties for any Exculpated Actions, provided, however, that notwithstanding anything to the contrary in this Plan, the exculpation of the Debtors' directors are subject to section 5.1(2) of the CCAA.

D. Injunction

Upon the occurrence of the Effective Date, all Holders of Claims and Equity Interests and other parties in interest, along with their respective present or former affiliates, employees, agents, attorneys, advisors, officers, directors, partners or principals, to the extent consistent with this Plan, shall be enjoined from taking any actions to interfere with the implementation of this Plan, and are permanently enjoined and forever barred from taking any action against the Exculpated Parties, Debtor Releasees or Third-Party Releasees, and their respective assets, that is inconsistent with the terms of this Plan, including an injunction from (a) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any Claims or Equity Interests; (b) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order on account of or in connection with or with respect to any such Claims or Equity Interests; (c) creating, perfecting, or enforcing any encumbrance of any kind on account of or in connection with or with respect to any such Claims or Equity Interests; (d) asserting any right of setoff, subrogation, or recoupment of any kind on account of or in connection with or with respect to any such Claims or Equity Interests; and (e) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Equity Interests released, exculpated, settled or otherwise addressed pursuant to this Plan, except on terms consistent with this Plan.

E. Preservation of Causes of Action

1. Vesting of Retained Causes of Action

Except as otherwise provided in this Plan or Confirmation Order, in accordance with Section 1123(b)(3) of the Bankruptcy Code, any Retained Causes of Action that the Debtors or the Estates may hold against any Entity shall vest jointly in the Reorganized Debtors and the Liquidation Trust on the Effective Date in accordance with this Plan and the CCAA Approval Order.

Except as otherwise provided in this Plan or the Confirmation Order, after the Effective Date, the Liquidation Trustee, as the Litigation Representative on behalf of the Liquidation Trust and the Reorganized Debtors, shall have the right to institute, prosecute, abandon, settle, compromise, or otherwise liquidate any Retained Causes of Action, in accordance with the terms of this Plan and/or Liquidation Trust Agreement, as applicable, and without further order of the Bankruptcy Court, in any court or other tribunal, including in an adversary proceeding filed in one or more of the Chapter 11 Cases, or an action filed in any other court of competent jurisdiction.

2. Preservation of all Retained Causes of Action Not Expressly Settled or Exculpated

Unless a Retained Cause of Action against a Person or Entity is expressly waived, relinquished, compromised, or settled in this Plan or any Final Order (including the Confirmation Order, the CCAA Approval Order or the Sale Orders), the Debtors and Liquidation Trust expressly reserve such Retained Causes of Action for later adjudication by the Liquidation Trust and the Debtors (including Retained Causes of Action not specifically identified or described herein or elsewhere, or Retained Causes of Action of which the Debtors may presently be unaware or which may arise or exist by reason of additional facts or circumstances unknown to the Debtors at this time, or facts or circumstances which may change or be different from those the Debtors now believe to exist). Therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable, or otherwise) or laches shall apply to any such Retained Causes of Action upon or after the entry of the Confirmation Order, issuance of the CCAA Approval Order or Effective Date, except where such Retained Causes of Action have been expressly released or exculpated under this Plan, the Confirmation Order, or any other Final Order. In addition, the Liquidation Trust and the Debtors expressly reserve the right to pursue or adopt any claims alleged in any lawsuit in which the Debtors are a defendant or an interested party, against any Entity, including the plaintiffs or co-defendants in such lawsuits, and all such rights are hereby expressly preserved.

F. Protection Against Discriminatory Treatment

In accordance with section 525 of the Bankruptcy Code, and consistent with paragraph 2 of Article VI of the United States Constitution, no Governmental Unit shall discriminate against the Liquidation Trust or any Debtor, as applicable, or any Person with which

the Liquidation Trust or any Debtor has been, is, or becomes associated, solely because any of the Debtors was a debtor under chapter 11, may have been insolvent before the commencement of the Chapter 11 Cases (or during the Chapter 11 Cases) or has not paid a debt except in accordance with this Plan in the Chapter 11 Cases.

G. Release of Liens

Except as otherwise provided herein or in the Confirmation Order, on the Effective Date all mortgages, deeds of trust, Liens, pledges or other security interests against any property of the Debtors, if any, shall be fully released and settled as set forth herein; provided, however, the CCAA Charges shall be released and discharged in the manner provided for in the CCAA Approval Order.

XI. MODIFICATION, REVOCATION OR WITHDRAWAL OF THIS PLAN

A. Modifications of the Plan

After entry of the Confirmation Order, the Debtors, with the consent of the Committees and the Monitor (which consent shall not be unreasonably withheld), may amend or modify this Plan in accordance with section 1127(b) of the Bankruptcy Code to remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan.

Entry of the Confirmation Order shall mean that all modifications or amendments to this Plan approved therein occurring after the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

B. Revocation or Withdrawal of the Plan

The Debtors, after consultation with the Monitor, Creditors' Committee and Equity Committee, reserve the right to revoke or withdraw this Plan before the later of the Confirmation Date and the CCAA Approval Order Date, and to file subsequent chapter 11 plans for any reason. If the Debtors revoke or withdraw this Plan, or if Confirmation or Consummation does not occur with respect to this Plan, then: (a) this Plan will be null and void in all respects; (b) any settlement or compromise embodied in this Plan (including the Global Settlement), assumption or rejection of Executory Contracts effected by this Plan, and any document or agreement executed pursuant thereto shall be null and void in all respects; and (c) nothing contained in this Plan or the Disclosure Statement shall: (i) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtors; or (ii) constitute an admission, acknowledgment, offer or undertaking by the Debtors or any other Person in any respects.

XII. RETENTION OF JURISDICTION

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Canadian Court shall retain the broadest jurisdiction over the CCAA Proceedings and the Bankruptcy Court shall retain the broadest jurisdiction over the Chapter 11 Cases after the Effective Date as legally permissible, including jurisdiction to:

1. allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim against a Debtor or any Securities Law Claim, including the resolution of any and all objections to the allowance or priority of such Claims and the resolution of any request for payment of any Administrative Claim;
2. grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date;
3. resolve any matters related to the assumption, assumption and assignment or rejection of any Executory Contract (including Cure Costs);
4. ensure that distributions to Holders of Allowed Claims and Equity Interests are accomplished pursuant to the provisions of this Plan and CCAA Approval Order, as applicable;
5. decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters and grant or deny any applications involving the Debtors that may be pending before the Bankruptcy Court or CCAA Court on the Effective Date;
6. enter such orders as may be necessary or appropriate to implement or consummate the provisions of this Plan and CCAA Approval Order and all contracts, instruments, releases, and other agreements or documents created in connection with this Plan or CCAA Approval Order;
7. decide or resolve any Retained Causes of Action arising under the Bankruptcy Code, including, without limitation, Avoidance Actions and Claims under sections 362, 510, 542 and 543 of the Bankruptcy Code, and to hear and determine any requests made by the Reorganized Parent Debtor and the Liquidation Trust under Bankruptcy Rule 2004 or in respect to any Privileges and as authorized pursuant to this Plan, in connection therewith;
8. decide or resolve the Individual Securities Damages Claim, including, without limitation, to hear and determine any requests made by the Liquidation Trust under Bankruptcy Rule 2004 and as authorized pursuant to this Plan, in connection therewith;
9. resolve any cases, controversies, suits or disputes that may arise in connection with the Consummation, interpretation or enforcement of this Plan, or any Person's obligations incurred in connection with this Plan, including, without limitation, any aspect of Asset Apportionment and any matter pertaining to Plan integration with the CCAA Approval Order;
10. issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Person with Consummation or enforcement of this Plan;

11. resolve any cases, controversies, suits or disputes with respect to the releases, exculpation, injunction and other provisions contained in Article X of this Plan and enter such further orders as may be necessary or appropriate to implement such releases, injunction and other provisions;
12. enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked or vacated;
13. determine any other matters that may arise in connection with or relate to this Plan, the Confirmation Order, or any contract, instrument, release, or other agreement or document created in connection with this Plan;
14. enter order(s) and/or Final Decree(s) concluding the Chapter 11 Cases;
15. hear and determine matters concerning state, local and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code;
16. hear and determine any matters involving the Liquidation Trust;
17. consider any modifications of this Plan, to cure any defect or omission, or reconcile any inconsistency in any order of the Bankruptcy Court, including the Confirmation Order; and
18. hear any other matter not inconsistent with the Bankruptcy Code or CCAA.

XIII. MISCELLANEOUS PROVISIONS

A. Corporate Action

Upon the Effective Date, all actions contemplated by this Plan shall be deemed authorized, approved, and, to the extent taken prior to the Effective Date, ratified without any requirement for further action by Holders of Claims or Equity Interests, directors, or officers of the Debtors or any other Person, as applicable, including: (a) the execution and delivery of all appropriate agreements or other documents of merger, consolidation, restructuring, conversion, disposition, transfer, dissolution or liquidation containing terms that are consistent with the terms of this Plan, and that satisfy the requirements of any other terms on which the applicable parties may agree; (b) the execution and delivery of appropriate instruments of transfer, assignment, assumption or delegation of any asset, property, right, liability, debt or obligation on terms consistent with the terms of this Plan and having other terms on which the applicable parties may agree; (c) rejection or assumption, as applicable, of Executory Contracts; (d) the filing of appropriate certificates or articles of incorporation, amendment, or organization, reincorporation, merger, amalgamation, consolidation, conversion or dissolution, and bylaws reflecting the corporate governance changes and dissolutions contemplated by this Plan or as are otherwise appropriate to effectuate the intent of this Plan; and (e) all other actions that the Monitor, Debtors, Chief Wind-Down Officer or Liquidation Trustee determine to be necessary or appropriate, including making filings or recordings that may be required by applicable law. All matters provided for in this Plan involving the corporate structure of the Debtors, and any

corporate action required by the Debtors in connection therewith, shall be deemed to have occurred on, and shall be in effect as of, the Effective Date, without any requirement of further action by the security Holders, directors, authorized persons or officers of the Debtors. The authorizations and approvals contemplated by this Article XIII shall be effective notwithstanding any requirements under non-bankruptcy law.

B. Dissolution of the Committees

On the Effective Date, the Creditors' Committee and the Equity Committee shall each dissolve and all members, employees or agents thereof shall be released and discharged from all rights and duties arising from or related to the Chapter 11 Cases, other than the right to prepare, file, prosecute and object to Fee Claims. The Debtors shall not be responsible for paying any fees or expenses incurred by the members of or advisors to either the Creditors' Committee or the Equity Committee after the Effective Date, except for work preparing, filing, prosecuting and objecting to Fee Claims that would have also been compensable prior to the Effective Date.

C. Section 1146(a) Exemption

Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property under this Plan shall not be subject to any stamp tax or similar tax. Upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forego the collection of any such tax and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment.

D. Successors and Assigns

The rights, benefits and obligations of any Person named or referred to in this Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, agent, representative, attorney, beneficiaries, or guardian, if any, of each Person, including those of the Debtors.

E. Notices

Except as otherwise set forth in this Plan, all notices or requests in connection with this Plan shall be in writing and will be deemed to have been given when received by personal delivery, facsimile, e-mail, overnight courier or first class mail and addressed to:

**If to a Debtor before the
Effective Date of a Debtor's
Plan**

Paul, Weiss, Rifkind, Wharton & Garrison
LLP
1285 Avenue of the Americas,
New York, New York 10019
Attn: Kelley A. Cornish
Alice Belisle Eaton

and

2001 K Street, NW
Washington, DC 20006-1047
Attn: Claudia R. Tobler

with a copy to:

Young Conaway Stargatt & Taylor, LLP
Rodney Square
1000 North King Street
Wilmington, Delaware 19801
Attn: Pauline K. Morgan
Sean T. Greecher
Justin H. Rucki

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Rachel Bengino

F. Term of Injunctions or Stay

Unless otherwise provided in this Plan, the Confirmation Order, or a separate order from the Bankruptcy Court, all injunctions or stays arising under or entered during the Chapter 11 Cases in accordance with sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date shall remain in full force and effect until the later of (i) the entry of a final decree closing the last of the Chapter 11 Cases or (ii) the date indicated in such applicable order. All injunctions or stays contained in this Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms. Any stay of proceedings as provided in the CCAA Proceedings similarly is expected to continue after the Effective Date, as specifically provided for in the CCAA Approval Order.

G. Entire Agreement

Except as otherwise indicated, this Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan. To the extent the Confirmation Order or CCAA Approval Order are inconsistent with this Plan, the Confirmation Order and CCAA Approval Order, as applicable, shall control for all purposes.

H. Good Faith

Confirmation of this Plan shall constitute a finding that: (i) this Plan has been proposed in good faith and in compliance with applicable provisions of the Bankruptcy Code;

and (ii) the solicitation of acceptances or rejections of this Plan by all Persons has been in good faith and in compliance with applicable provisions of the Bankruptcy Code.

I. Severability

If, prior to the entry of the Confirmation Order, any term or provision of this Plan is held by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court, at the request of the Debtors, after consultation with the Creditors' Committee, the Equity Committee and the Monitor, shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is (a) valid and enforceable pursuant to its terms; (b) integral to this Plan; and (c) non-severable and mutually dependent.

Dated: Wilmington, Delaware
August 25, 2017

Respectfully submitted,

OLD BPSUSH INC., et al.

Brian J. Fox
Chief Restructuring Officer

EXHIBIT A

Old BPSUSH Inc. (f/k/a BPS US Holdings Inc.)
Old BH Inc. (f/k/a Bauer Hockey, Inc.)
Old EBS Inc. (f/k/a Easton Baseball / Softball Inc.)
Old BHR Inc. (f/k/a Bauer Hockey Retail Inc.)
Old BPSU Inc. (f/k/a Bauer Performance Sports Uniforms Inc.)
Old PLG Inc. (f/k/a Performance Lacrosse Group Inc.)
Old BPSCI Inc. (f/k/a BPS Diamond Sports Inc.)
Old PSGI Inc. (f/k/a PSG Innovation Inc.)
Old BHR Wind-down Corp. (f/k/a Bauer Hockey Retail Corp.)
Old EBS Wind-down Corp. (f/k/a Easton Baseball / Softball Corp.)
Old PSGI Wind-down Corp. (f/k/a PSG Innovation Corp.)
Old BPSDS Wind-down Corp. (f/k/a BPS Diamond Sports Corp.)
Old BPSU Wind-down Corp. (f/k/a Bauer Performance Sports Uniforms Corp.)
Old PLG Wind-down Corp. (f/k/a Performance Lacrosse Group Corp.)
Old PSG Wind-down Ltd. (f/k/a Performance Sports Group Ltd., and also representing the estates of the Debtors formerly known as KBAU Holdings Canada Inc., Bauer Hockey Corp., and BPS Canada Intermediate Corp., respectively)

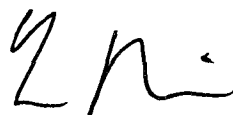
EXHIBIT “E”

EXHIBIT "E"

referred to in the Affidavit of

KEISHA LACKPATIAH-SEALY

Sworn September 20, 2017



Commissioner for Taking Affidavits

**DISCLOSURE STATEMENT WITH RESPECT TO JOINT CHAPTER 11 PLAN OF
LIQUIDATION OF OLD BPSUSH INC. AND ITS AFFILIATED DEBTORS**

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EXHIBITS TO DISCLOSURE STATEMENT	
Exhibit 1	List of Debtors

Exhibit 2	Plan
Exhibit 3	Prepetition Corporate Organizational Chart
Exhibit 4	Liquidation Analysis
Exhibit 5	Disclosure Statement Order (without exhibits)

**RECOMMENDATION BY DEBTORS, OFFICIAL CREDITORS COMMITTEE
AND OFFICIAL EQUITY COMMITTEE; SUPPORT OF THE MONITOR**

THE DEBTORS RECOMMEND THAT ALL HOLDERS OF GENERAL UNSECURED CLAIMS AND PARENT EQUITY INTERESTS RECEIVING A BALLOT VOTE IN FAVOR OF THE PLAN.

THE CREDITORS COMMITTEE AND THE EQUITY COMMITTEE SUPPORT THE PLAN AND ALSO RECOMMEND THAT ALL HOLDERS OF GENERAL UNSECURED CLAIMS AND PARENT EQUITY INTERESTS RECEIVING A BALLOT VOTE IN FAVOR OF THE PLAN.

THE MONITOR WILL PREPARE A REPORT TO THE CANADIAN COURT OUTLINING ITS SUPPORT OF THE PLAN BASED ON THE MONITOR'S OWN ANALYSIS AND CONCLUSIONS, SUBJECT TO THE DISCLAIMERS THAT WILL BE OUTLINED THEREIN.

DISCLAIMER

THE DEBTORS ARE PROVIDING THE INFORMATION IN THIS DISCLOSURE STATEMENT FOR THE JOINT CHAPTER 11 PLAN OF LIQUIDATION OF OLD BPSUSH INC. AND ITS AFFILIATED DEBTORS TO HOLDERS OF CLAIMS AND EQUITY INTERESTS FOR PURPOSES OF SOLICITING VOTES TO ACCEPT OR REJECT THE PLAN. YOU SHOULD NOT RELY UPON OR USE THE INFORMATION IN THIS DISCLOSURE STATEMENT FOR ANY OTHER PURPOSE. THIS DISCLOSURE STATEMENT HAS BEEN PREPARED PURSUANT TO SECTION 1125 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 3016(B) AND IS NOT NECESSARILY IN ACCORDANCE WITH FEDERAL, STATE OR PROVINCIAL SECURITIES LAWS OR OTHER SIMILAR LAWS, INCLUDING SECURITIES LAWS APPLICABLE IN CANADA AND THE UNITED STATES.

THIS DISCLOSURE STATEMENT WAS NOT FILED WITH THE SECURITIES AND EXCHANGE COMMISSION OR SECURITIES REGULATORY AUTHORITIES IN EACH OF THE PROVINCES AND TERRITORIES OF CANADA (THE "CANADIAN SECURITIES REGULATORS") OR ANY STATE OR PROVINCIAL AUTHORITY AND NONE OF THE SECURITIES AND EXCHANGE COMMISSION, THE CANADIAN SECURITIES REGULATORS, OR ANY, FEDERAL, STATE OR PROVINCIAL AUTHORITY HAS PASSED UPON THE ACCURACY OR ADEQUACY OF THIS DISCLOSURE STATEMENT OR UPON THE MERITS OF THE PLAN.

THIS DISCLOSURE STATEMENT INCLUDES FORWARD-LOOKING STATEMENTS WITHIN THE MEANING OF APPLICABLE SECURITIES LAWS INCLUDING WITH RESPECT TO IMPLEMENTATION AND CONSUMMATION OF THE PLAN, APPROVAL OF THE INITIAL CCAA APPROVAL ORDER BY THE CANADIAN COURT, RECOVERY AND DISTRIBUTION ESTIMATES, TIMING AND AMOUNT OF

ACTUAL RECOVERIES AND DISTRIBUTIONS, ANTICIPATED TAX CONSEQUENCES, TIMING OF CONSUMMATION OF THE PLAN AND THE CCAA APPROVAL ORDER, MATTERS CONTEMPLATED IN THE GLOBAL SETTLEMENT, TREATMENT OF THE SEC CLAIM, TREATMENT OF CERTAIN CLAIMS RELATED TO THE PARENT EQUITY INTERESTS (INCLUDING THE SECURITIES LAW CLAIMS) AND THE CREATION, OBLIGATIONS, POWERS AND FUNDING OF THE LIQUIDATION TRUST. THE WORDS “MAY,” “WILL,” “WOULD,” “SHOULD,” “COULD,” “EXPECTS,” “PLANS,” “INTENDS,” “ANTICIPATES,” “TRENDS,” “INDICATIONS,” “ESTIMATES,” “BELIEVES,” “PREDICTS,” “CONTINUES,” “LIKELY” OR “POTENTIAL” OR THE NEGATIVE OR OTHER VARIATIONS OF THESE WORDS, OR OTHER COMPARABLE WORDS OR PHRASES, ARE INTENDED TO IDENTIFY FORWARD-LOOKING STATEMENTS.

FORWARD-LOOKING STATEMENTS, BY THEIR NATURE, ARE BASED ON ASSUMPTIONS, EXPECTATIONS, ESTIMATES AND PROJECTIONS, WHICH, ALTHOUGH, CONSIDERED REASONABLE BY THE DEBTORS AT THE TIME OF PREPARATION OF SUCH DISCLOSURE, MAY PROVE TO BE INCORRECT, AND ARE SUBJECT TO IMPORTANT RISKS AND UNCERTAINTIES. THE MATERIAL RISK FACTORS INCLUDE, BUT ARE NOT LIMITED TO:

- ACCURACY OF FINANCIAL INFORMATION;
- CONFIRMATION OF THE PLAN OR THE CCAA APPROVAL ORDER;
- THE PLAN IS SUBJECT TO CONDITIONS PRECEDENT;
- NOT ALL VOTING CLASSES MAY ACCEPT THE PLAN AND THE DEBTORS’ ABILITY TO CONFIRM THE PLAN WILL DEPEND ON MEETING THE “CRAMDOW” STANDARD UNDER THE BANKRUPTCY CODE;
- IF THE PLAN OR AN ALTERNATIVE PLAN IS NOT CONFIRMED OR THE CCAA APPROVAL ORDER IS NOT GRANTED, THE DEBTORS COULD BE FORCED TO LIQUIDATE;
- UNDUE DELAY IN CONFIRMATION OR FAILURE TO CONFIRM THE PLAN OR TO OBTAIN CCAA APPROVAL MAY RESULT IN SUBSTANTIAL EXPENSES;
- THE BANKRUPTCY COURT MAY NOT DISALLOW THE PURPORTED SECURITIES CLASS ACTION CLAIM;
- ACTUAL RECOVERY OR DISTRIBUTION MAY DIFFER FROM ESTIMATED RECOVERY AND DISTRIBUTION;
- THE TREATMENT OF THE INDIVIDUAL SECURITIES DAMAGES CLAIM;
- TREATMENT OF THE SEC CLAIM;

- DELAYS OF CONFIRMATION OR EFFECTIVE DATE;
- THE CANADIAN COURT MAY NOT ISSUE THE CCAA APPROVAL ORDER NOTWITHSTANDING CONFIRMATION OF THE PLAN BY THE BANKRUPTCY COURT;
- BANKRUPTCY RELATED CONSIDERATIONS;
- RETAINED CAUSES OF ACTION MAY HAVE NO VALUE;
- NO DUTY TO UPDATE THIS DISCLOSURE STATEMENT;
- THE LIQUIDATION TRUST BENEFICIAL INTERESTS MAY NOT BE EXEMPT FROM CERTAIN U.S. AND CANADIAN SECURITIES LAWS;
- NO REPRESENTATIONS OUTSIDE THIS DISCLOSURE STATEMENT ARE AUTHORIZED;
- NO LEGAL, BUSINESS, FINANCIAL OR TAX ADVICE IS BEING PROVIDED BY THIS DISCLOSURE STATEMENT TO ANY CREDITORS OR HOLDERS OF EQUITY INTERESTS;
- REGULATORY COMPLIANCE MATTERS;
- NEITHER OPTION FOR RECEIVING PLAN DISTRIBUTIONS MAY FAVORABLY AFFECT THE TAX OBLIGATIONS OF HOLDERS OF PARENT EQUITY INTERESTS;
- LIQUIDATION TRUST BENEFICIARIES MAY INCUR INCOME TAX LIABILITY REGARDLESS OF WHETHER CASH DISTRIBUTIONS ARE MADE BY THE LIQUIDATION TRUST;
- CLEARANCE CERTIFICATES AND COMFORT LETTER MATTERS;
- THE PLAN TRANSACTIONS MAY RESULT IN MATERIAL TAX LIABILITIES; AND
- TAX CONSEQUENCES FOR CANADIAN HOLDERS WHO ELECT OPTION 1 AND RECEIVE BENEFICIAL TRUST INTERESTS.

FURTHERMORE, UNLESS OTHERWISE STATED, THE FORWARD-LOOKING STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF THE DATE HEREOF, AND THE DEBTORS DO NOT INTEND AND UNDERTAKE NO OBLIGATION TO UPDATE OR REVISE ANY FORWARD-LOOKING STATEMENT, WHETHER AS A RESULT OF NEW INFORMATION, FUTURE EVENTS OR OTHERWISE, EXCEPT AS REQUIRED BY APPLICABLE LAW.

NO LEGAL, FINANCIAL, SECURITIES, TAX OR BUSINESS ADVICE IS PROVIDED TO YOU BY THIS DISCLOSURE STATEMENT. THE DEBTORS URGE HOLDERS OF CLAIMS AND/OR EQUITY INTERESTS TO CONSULT WITH THEIR OWN LEGAL, FINANCIAL, SECURITIES, TAX OR BUSINESS ADVISORS IN REVIEWING THIS DISCLOSURE STATEMENT, THE PLAN, AND EACH OF THE PROPOSED TRANSACTIONS CONTEMPLATED THEREBY. FURTHERMORE, THE BANKRUPTCY COURT'S APPROVAL OF THE ADEQUACY OF DISCLOSURE CONTAINED IN THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL OF THE MERITS OF THE PLAN.

THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE, AND MAY NOT BE CONSTRUED AS, AN ADMISSION OF FACT, LIABILITY, STIPULATION OR WAIVER. RATHER, HOLDERS OF CLAIMS AND EQUITY INTERESTS AND OTHER ENTITIES SHOULD CONSTRUE THIS DISCLOSURE STATEMENT AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS RELATED TO PENDING OR THREATENED LITIGATION OR ACTIONS.

NO RELIANCE SHOULD BE PLACED ON THE FACT THAT A PARTICULAR LITIGATION CLAIM OR PROJECTED OBJECTION TO A PARTICULAR CLAIM IS, OR IS NOT, IDENTIFIED IN THIS DISCLOSURE STATEMENT. THE LIQUIDATION TRUSTEE, THE REORGANIZED DEBTOR OR THE MONITOR MAY SEEK TO INVESTIGATE, FILE AND PROSECUTE CLAIMS AND MAY OBJECT TO CLAIMS AFTER THE EFFECTIVE DATE OF THE PLAN IRRESPECTIVE OF WHETHER THIS DISCLOSURE STATEMENT IDENTIFIES ANY SUCH CLAIMS OR OBJECTIONS TO CLAIMS. THE PLAN RESERVES FOR THE LIQUIDATION TRUSTEE AND THE REORGANIZED DEBTOR THE DISCRETION TO BRING RETAINED CAUSES OF ACTION (DEFINED IN THE PLAN) AGAINST ANY ENTITY OR PARTY IN INTEREST EXCEPT THOSE SPECIFICALLY RELEASED, ENJOINED, PREVIOUSLY RELEASED OR SOLD BY THE DEBTORS.

THE DEBTORS HAVE NOT ANALYZED THE VALUE OF OR MERITS OF ANY OF THE RETAINED CAUSES OF ACTION THAT MAY BE TRANSFERRED IN WHOLE OR IN PART TO THE LIQUIDATION TRUST. MOREOVER, UNDER ONTARIO, BRITISH COLUMBIA OR OTHER CANADIAN LAW, THE TRANSFER OF SUCH RETAINED CAUSES OF ACTION MIGHT ARGUABLY PROVIDE THE PUTATIVE DEFENDANTS WITH POTENTIAL DEFENSES OR POSITIONS THEY COULD NOT OTHERWISE HAVE ASSERTED.

THIS DISCLOSURE STATEMENT CONTAINS, AMONG OTHER THINGS, SUMMARIES OF THE PLAN, CERTAIN STATUTORY PROVISIONS, CERTAIN EVENTS IN THE DEBTORS' CHAPTER 11 CASES AND CCAA PROCEEDINGS AND CERTAIN DOCUMENTS RELATED TO THE PLAN THAT ARE ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE. ALTHOUGH THE DEBTORS BELIEVE THAT THESE SUMMARIES ARE FAIR AND ACCURATE, THESE SUMMARIES ARE QUALIFIED IN THEIR ENTIRETY TO THE EXTENT THAT THE SUMMARIES DO NOT SET FORTH THE ENTIRE TEXT OF SUCH DOCUMENTS OR STATUTORY PROVISIONS OR EVERY DETAIL OF SUCH EVENTS. IN THE EVENT OF ANY

INCONSISTENCY OR DISCREPANCY BETWEEN A DESCRIPTION IN THIS DISCLOSURE STATEMENT AND THE TERMS AND PROVISIONS OF THE PLAN OR ANY OTHER DOCUMENTS INCORPORATED HEREIN BY REFERENCE, THE PLAN OR SUCH OTHER DOCUMENTS WILL GOVERN FOR ALL PURPOSES.

PRIOR TO DECIDING WHETHER AND HOW TO VOTE ON THE PLAN, EACH HOLDER OF A CLAIM OR EQUITY INTEREST IN A VOTING CLASS SHOULD REVIEW AND CONSIDER CAREFULLY ALL OF THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT, INCLUDING THE RISK FACTORS DESCRIBED IN GREATER DETAIL HEREIN, THE PLAN AND THE PLAN SUPPLEMENT. THIS DISCLOSURE STATEMENT IS NOT INTENDED TO REPLACE A CAREFUL AND DETAILED REVIEW AND ANALYSIS OF THE PLAN. THIS DISCLOSURE STATEMENT IS INTENDED TO AID AND SUPPLEMENT THAT REVIEW.

THE DEBTORS' MANAGEMENT, BOARD OF DIRECTORS, THE MONITOR AND FINANCIAL ADVISORS HAVE REVIEWED THE FINANCIAL INFORMATION PROVIDED IN THIS DISCLOSURE STATEMENT. ALTHOUGH THE DEBTORS HAVE USED THEIR REASONABLE BUSINESS JUDGMENT TO ENSURE THE ACCURACY OF THIS FINANCIAL INFORMATION, NO ENTITY HAS AUDITED THE FINANCIAL INFORMATION CONTAINED IN, OR INCORPORATED BY REFERENCE INTO, THIS DISCLOSURE STATEMENT.

THE DEBTORS ARE MAKING THE STATEMENTS AND PROVIDING THE FINANCIAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT AS OF THE DATE HEREOF, UNLESS OTHERWISE SPECIFICALLY NOTED. ALTHOUGH THE DEBTORS MAY SUBSEQUENTLY UPDATE THE INFORMATION IN THIS DISCLOSURE STATEMENT, THE DEBTORS HAVE NO AFFIRMATIVE DUTY OR OBLIGATION TO AND DO NOT UNDERTAKE TO OR ACCEPT ANY OBLIGATION TO DO SO EXCEPT AS REQUIRED BY APPLICABLE LAW. HOLDERS OF CLAIMS AND EQUITY INTERESTS REVIEWING THIS DISCLOSURE STATEMENT SHOULD NOT INFER THAT, AT THE TIME OF THEIR REVIEW, THE FACTS SET FORTH HEREIN HAVE NOT CHANGED SINCE THE FILING OF THIS DISCLOSURE STATEMENT. HOLDERS OF CLAIMS AND EQUITY INTERESTS ENTITLED TO VOTE TO ACCEPT OR REJECT THE PLAN MUST RELY ON THEIR OWN EVALUATION OF THE DEBTORS AND THEIR OWN ANALYSIS OF THE TERMS OF THE PLAN, INCLUDING ANY RISK FACTORS CITED HEREIN, IN DECIDING WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN.

THE DEBTORS HAVE NOT AUTHORIZED ANY ENTITY TO GIVE ANY INFORMATION ABOUT OR CONCERNING THE PLAN OTHER THAN THAT WHICH IS CONTAINED IN THIS DISCLOSURE STATEMENT. THE DEBTORS HAVE NOT AUTHORIZED ANY REPRESENTATIONS CONCERNING THE DEBTORS OR THE VALUE OF THEIR ASSETS OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT.

VOTING DEADLINE

THE VOTING DEADLINE TO ACCEPT OR REJECT THE PLAN IS 5:00 P.M. (PREVAILING EASTERN TIME) ON [_____]. TO BE COUNTED, THE CLAIMS AND SOLICITATION AGENT MUST ACTUALLY RECEIVE YOUR BALLOT ON OR BEFORE THE VOTING DEADLINE.

CONFIRMATION HEARING AND DEADLINE TO OBJECT TO THE PLAN

THE HEARING TO CONSIDER CONFIRMATION OF THE PLAN HAS BEEN SCHEDULED FOR [_____] AT _____ (PREVAILING EASTERN TIME). OBJECTIONS TO CONFIRMATION OF THE PLAN MUST BE FILED (I) ON OR BEFORE [_____] AT 4:00 P.M. (PREVAILING EASTERN TIME), AND (II) IN ACCORDANCE WITH PARAGRAPH [_____] OF THE DISCLOSURE STATEMENT ORDER.

I. INTRODUCTION

Old BPSUSH Inc. and the other debtors and debtors in possession in the above-captioned cases and set forth on Exhibit 1 hereby transmit this Disclosure Statement pursuant to section 1125 of the Bankruptcy Code in connection with the Debtors' solicitation of votes (the "Solicitation") to confirm the *Joint Chapter 11 Plan of Liquidation of Old BPSUSH Inc. and Its Affiliated Debtors*, dated as of [_____] attached as Exhibit 2. The Debtors are the plan proponents within the meaning of section 1129 of the Bankruptcy Code.

All capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Plan. To the extent that a definition of a term in this Disclosure Statement and the definition of such term in the Plan are inconsistent, the definition included in the Plan shall control and govern. All references to currency or "\$" in this Disclosure Statement are to U.S. dollars unless otherwise stated.

Although referred to as a "joint" plan, the Plan comprises eighteen (18) separate Plans (one for each of the Debtors' Chapter 11 Cases). For purposes of this Disclosure Statement, the Debtors distinguish between the Plan as it relates to the Debtors' ultimate parent company, Old PSG Wind-down Ltd. (f/k/a Performance Sports Group Ltd.) (the "Parent Debtor" and the Parent Debtor's Plan, the "Parent Plan"), on the one hand, and the Plan as it relates to the remaining Debtors, all of which are direct or indirect subsidiaries of the Parent Debtor (collectively, the "Subsidiary Debtors" and the Subsidiary Debtors' Plans, the "Subsidiary Debtor Plans"), on the other.

The Plan rests on the Global Settlement of all disputes among the Debtors, the Creditors' Committee and the Equity Committee, a settlement that the Monitor is prepared to recommend to the Canadian Court for approval. The Global Settlement provides for, among other things: (a) the Payment in Full of all Allowed General Unsecured Claims without Post-Petition Interest (to the extent it would have been allowable); (b) the resolution of all disputes regarding the treatment of Intercompany Claims and Equity Interests; (c) the resolution of all disputes regarding allocation of value and the allocation of the Sale Proceeds among the Estates; and (d) the resolution of all disputes regarding potential substantive consolidation of the Debtors. The Monitor is prepared to recommend approving the Global Settlement in the CCAA Proceedings.

The Plan, along with the Global Settlement, if confirmed, provides for the successful completion of the Debtors' liquidation and distribution of approximately \$[_____] million in remaining Sale Proceeds. Together with the contemplated CCAA Approval Order, the Plan treats Allowed Claims and Equity Interests as follows:

- Secured Claims. Full amount of Allowed Claim paid in Cash.
- Priority Claims. Full amount of Allowed Claim paid in Cash.
- General Unsecured Claims. Full amount of Allowed Claim paid in Cash.

- Intercompany Claims. Reinstated for purposes of facilitating intercompany transactions in accordance with the Global Settlement.
- Intercompany Equity Interests. Reinstated for purposes of facilitating intercompany dividends and distributions in accordance with the Global Settlement.
- Securities Law Claims. Will be disallowed prior to Confirmation (with respect to the Purported Securities Class Action Claim), reserved for under the Plan (with respect to the Individual Securities Damages Claim), and/or to the extent Allowed, subordinated pursuant to section 510(b) of the Bankruptcy Code.
- Parent Equity Interests. Will receive substantially all of the assets remaining in the Estates after satisfaction of Creditor Claims and Wind-Down Expenses, including remaining Cash and Retained Causes of Action.

To provide Holders of Parent Equity Interests with options to address the differential tax treatment of receiving Plan distributions in the United States and Canada, the Plan gives the Holders of Parent Equity Interests two options. As described in more detail below, Holders of Parent Equity Interests can either (i) exchange their Parent Equity Interests into beneficial trust interests (and the right to receive their Pro Rata share of any other Shareholder Distributable Assets) and receive distributions from the Liquidation Trust on account of such interests (“Option 1”), or (ii) retain their Parent Equity Interests, and receive distributions from the Reorganized Parent Debtor on account of such interests (“Option 2”). See “Risk Factors” section of this Disclosure Statement.

Throughout the Chapter 11 Cases, the Debtors have worked cooperatively with their regulators, including the SEC. At this time, there is no resolution of the SEC Claim and the treatment of the SEC Claim remains to be determined. There can be no certainty as to the results of the discussions with the SEC and the Plan and this Disclosure Statement may need to be revised, as appropriate, to reflect the status of discussions with the SEC or any resolution, or lack thereof, of the SEC Claim.

On [____], 2017 the Bankruptcy Court (i) entered an order approving this Disclosure Statement (the “Disclosure Statement Order”) as containing “adequate information” under section 1125 of the Bankruptcy Code to enable a hypothetical, reasonable investor typical of the Holders of Claims against and Equity Interests in the Debtors to make an informed judgment as to whether to accept or reject the Plan, and (ii) authorized the Debtors to use this Disclosure Statement in connection with the Solicitation.

APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT, HOWEVER, CONSTITUTE A DETERMINATION BY THE BANKRUPTCY COURT OR THE CANADIAN COURT AS TO THE FAIRNESS OR MERITS OF THE PLAN.

The Disclosure Statement Order sets forth in detail the deadlines, procedures and instructions for voting to accept or reject the Plan and for filing objections to confirmation of the

Plan, the record date for voting purposes, and the applicable standards for tabulating Ballots. In addition, detailed voting instructions accompany each Ballot. Each Holder of a Claim or Equity Interest entitled to vote on the Plan should read this Disclosure Statement (including the Exhibits hereto), the Plan, the Disclosure Statement Order and the instructions accompanying their Ballot in their entirety before voting on the Plan. No solicitation of votes may be made except pursuant to the Disclosure Statement Order, this Disclosure Statement and section 1125 of the Bankruptcy Code. In voting on the Plan, Holders of Claims entitled to vote should not rely on any information relating to the Debtors and their businesses other than the information contained in or incorporated by reference into this Disclosure Statement, the Plan and all exhibits hereto and thereto.

Additional copies of this Disclosure Statement can be accessed free of charge at <https://cases.primeclerk.com/PSG>. Additional copies of this Disclosure Statement are also available free of charge upon request made to counsel for the Debtors, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, Attention: Justin H. Rucki, Esq. and Shane M. Reil, Esq., (302) 571-6600 (phone) or (302) 571-1253 (facsimile).

II. VOTING REQUIREMENTS, ACCEPTANCE AND CONFIRMATION OF THE PLAN, AND OPT-OUT RELEASES

A. Parties in Interest Entitled to Vote

Pursuant to the Bankruptcy Code, only Classes of Claims and Equity Interests that are “impaired” (as defined in section 1124 of the Bankruptcy Code) under the Plan are entitled to vote to accept or reject the Plan. A Class is impaired if the legal, equitable or contractual rights to which the Claims or Equity Interests of that Class are modified by the Plan, other than by curing defaults and reinstating the debt. Classes of Claims and Equity Interests that are not impaired are not entitled to vote on the Plan and are conclusively presumed to have accepted the Plan. In addition, Classes of Claims and Equity Interests that receive no distributions under the Plan are not entitled to vote on the Plan and are deemed to not have accepted the Plan.

B. Classes Impaired Under the Plan

The following Classes of Claims are or may be impaired under the Plan and are entitled to vote on the Plan (the “Voting Classes”):

CREDITORS AND EQUITY INTEREST HOLDERS ENTITLED TO VOTE	
Class	Designation
Subsidiary Debtors Class 3	General Unsecured Claims
Parent Debtor Class 4	General Unsecured Claims
Parent Debtor Class 7	Parent Equity Interests

Acceptances of the Plan are being solicited only from those Holders of Claims and Equity Interests in impaired Classes that will or may receive a distribution under the Plan. Accordingly,

the Debtors are soliciting acceptances from Holders of Claims in Subsidiary Debtors' Class 3, Parent Debtor Class 4, and Parent Equity Interests in Parent Debtor Class 7.

C. Voting Procedures and Requirements

IT IS IMPORTANT THAT HOLDERS OF IMPAIRED CLAIMS OR EQUITY INTERESTS ENTITLED TO VOTE ON THE PLAN VOTE TO ACCEPT OR REJECT THE PLAN. IF YOU HOLD CLAIMS IN MORE THAN ONE CLASS, YOU MAY RECEIVE MORE THAN ONE BALLOT. YOU SHOULD COMPLETE, SIGN AND RETURN EACH BALLOT YOU RECEIVE.

1. Ballots

In voting to accept or reject the Plan, please use only the Ballot or Ballots sent to you with this Disclosure Statement. If you are a member of a Voting Class and did not receive a Ballot, if your Ballot is damaged or lost or if you have any questions concerning voting procedures, please contact the Claims and Solicitation Agent, Prime Clerk LLC, **by phone at: (855)-631-5352, or by email at: psgballots@primeclerk.com**. Each Ballot enclosed with this Disclosure Statement has been encoded with the amount of your Claim for voting purposes and the Class in which your Claim has been classified. If your Claim is a Disputed Claim this amount may not be the amount ultimately allowed for purposes of distributions under the Plan. **PLEASE FOLLOW THE DIRECTIONS CONTAINED ON THE ENCLOSED BALLOT CAREFULLY.**

2. Returning Ballots

IF YOU ARE A HOLDER OF A SUBSIDIARY DEBTOR CLASS 3 CLAIM, A PARENT DEBTOR CLASS 4 CLAIM, OR OF PARENT DEBTOR CLASS 7 EQUITY INTERESTS, AND THUS ENTITLED TO VOTE, YOU SHOULD COMPLETE AND SIGN YOUR BALLOT AND RETURN IT IN THE ENCLOSED ENVELOPE VIA FIRST CLASS MAIL, OVERNIGHT COURIER OR HAND DELIVERY TO:

**PSG Ballot Processing
c/o Prime Clerk, LLC
830 Third Avenue, 3rd Floor
New York, NY 10022**

IF YOU HAVE ANY QUESTIONS ON THE PROCEDURES FOR VOTING ON THE PLAN, PLEASE CONTACT THE CLAIMS AND SOLICITATION AGENT BY PHONE AT: (855)-631-5352, OR BY EMAIL AT: psgballots@primeclerk.com

TO BE COUNTED, YOUR ORIGINAL BALLOT INDICATING ACCEPTANCE OR REJECTION OF THE PLAN MUST BE ACTUALLY RECEIVED BY THE CLAIMS AND SOLICITATION AGENT NO LATER THAN **5:00 P.M. (PREVAILING EASTERN TIME)** ON [____], UNLESS EXTENDED BY THE DEBTORS. ALL BALLOTS MUST BE SIGNED AND MAY BE SENT VIA U.S. FIRST CLASS MAIL, OVERNIGHT COURIER OR HAND DELIVERY.

BALLOTS DELIVERED BY EMAIL OR FACSIMILE WILL NOT BE ACCEPTED.

Prior to deciding whether and how to vote on the Plan, and whether to make an election under the Plan, each Holder in a Voting Class should consider carefully all of the information in this Disclosure Statement. Parties should also consider the Plan Supplement, a supplemental appendix to the Plan to be filed by the Debtors at least five days prior to the Voting Deadline, which will contain, among other things and to the extent applicable under the Plan as of the Confirmation Date, draft forms or signed copies, or the material terms, as applicable, of the following: (a) the names of the Director(s) that will serve on the Board of Directors of each of the Debtors after the Effective Date; (b) the name of the Chief Wind-Down Officer selected as of the Effective Date; (c) the name of the Liquidation Trustee selected as of the Effective Date; (d) the names of the members of the Liquidation Trust Advisory Board; (e) the proposed form of the Liquidation Trust Agreement; (f) the vested restricted share units and deferred share units, including those identified in the Plan Supplement which are owing to the Debtors' directors but were not granted due to the stay of proceedings in the Chapter 11 Cases and the CCAA Proceedings; and (g) amendments, if any, to the Reorganized Parent Debtor's organizational documents to be made on the Effective Date to the extent necessary to implement the Plan. The documents contained in the Plan Supplement shall be approved by the Bankruptcy Court pursuant to the Confirmation Order. The CCAA Approval Order may also approve certain documents contained in the Plan Supplement. Holders of Claims and Equity Interests may inspect a copy of the Plan Supplement, once filed, in the Office of the Clerk of the Bankruptcy Court during normal business hours, or free of charge at <https://cases.primeclerk.com/PSG/> and www.ev.com/ca/psg.

D. Opt-Out Releases

Holders of Claims in Subsidiary Debtors' Class 3 and Parent Debtor Class 4 who wish to opt-out of granting the releases provided in Article X.B of the Plan should check the appropriate box on their Ballot and return the Ballot to the Claims Agent so that it is received on or before the Voting Deadline.

Each Holder of an Unimpaired Claim who wishes to opt-out of granting the releases provided for in Article X.B of the Plan should check the appropriate box on the Opt-Out Notice to do so, and return the Ballot to the Claims Agent so that it is received on or before the Voting Deadline.

In both cases, the failure to do so timely will result in the Holders of the above referenced Claims granting the releases set forth in Article X.B of the Plan. Holders of Parent Equity Interests are not Releasing Parties and as a result are not providing any releases under the Plan.

E. Confirmation Hearing

Section 1128 of the Bankruptcy Code requires that the Bankruptcy Court, after notice, conduct a hearing with respect to whether the Plan and the Debtors have fulfilled the confirmation requirements of section 1129 of the Bankruptcy Code. The Confirmation Hearing has been scheduled for [] at [] (**prevailing Eastern Time**) before the

Honorable Kevin J. Carey, United States Bankruptcy Judge, United States Bankruptcy Court, 824 N. Market Street, 5th Floor, Courtroom No. 5, Wilmington, Delaware 19801. Objections, if any, to confirmation of the Plan must be served and filed so that they are received on or before [____], at 4:00 p.m. (prevailing Eastern Time), in the manner set forth in the Disclosure Statement Order. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice.

F. Canadian Approval Hearing

The Plan requires that the Canadian Court conduct a joint hearing with the Confirmation Hearing to consider granting the CCAA Approval Order. The Canadian Approval Hearing has been scheduled for [____] at [____] (prevailing Eastern Time) before the Honorable the Honorable Justice Hainey on the 8th Floor of the Ontario Superior Court of Justice (Commercial List), 330 University Avenue, Toronto, Ontario M5G 1R7. The Canadian Approval Hearing may be postponed or adjourned from time to time by the Canadian Court without further notice.

G. Acceptance or Rejection of the Plan

1. Elimination of Vacant Classes

Any Class of Claims that does not have a Holder of an Allowed Claim or a Claim temporarily Allowed by the Court for voting purposes as of the date of the Confirmation Hearing shall be deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

2. Special Provision Governing Unimpaired Claims

Nothing under the Plan shall affect the Debtors', Monitor's or Liquidation Trust's rights in respect of any Unimpaired Claims, including all rights in respect of legal and equitable defenses to or setoffs or recoupment against any such Unimpaired Claims.

3. Acceptance by an Impaired Class

In accordance with section 1126(c) of the Bankruptcy Code and except as provided in section 1126(e) of the Bankruptcy Code, Impaired Classes of Claims entitled to vote shall have accepted the Plan as to a Debtor if the Plan is accepted by the Holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the Claims that have timely and properly voted to accept or reject the Plan.

In accordance with section 1126(d) of the Bankruptcy Code and except as provided in section 1126(e) of the Bankruptcy Code, Impaired Classes of Equity Interests entitled to vote under the Plan shall have accepted the Plan as to a Debtor if Holders of at least two-thirds (2/3) in number of the shares of Allowed Equity Interests that have timely and properly voted to accept or reject the Plan vote such shares to accept the Plan.

4. Nonconsensual Confirmation

The Debtors request confirmation under section 1129(b) of the Bankruptcy Code with respect to (a) any Impaired Class of Claims and Equity Interests that have not accepted the Plan in accordance with sections 1126 and 1129(a)(8) of the Bankruptcy Code, (b) any Class that is deemed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code, or that has voted to reject the Plan pursuant to sections 1126(c) or (d) of the Bankruptcy Code, and (c) who has not accepted or who has rejected the Plan under the terms of the Plan or otherwise. The Debtors reserve the right to amend or modify the Plan in accordance with Article XI.A of the Plan to the extent, if any, that Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code requires such amendment or modification.

5. Voting Classes; Presumed Acceptance by Non-Voting Classes

If a Class contains Claims eligible to vote and no Holders of Claims eligible to vote in such Class vote to accept or reject the Plan, the Plan shall be presumed accepted by the Holders of such Claims in such Class.

6. Intercompany Equity Interests

To the extent they are deemed Reinstated under the Plan, distributions on account of Intercompany Equity Interests are being Reinstated solely for the purpose of maintaining the existing corporate structure of the Debtors pending dissolution. For the avoidance of doubt, any interest in non-Debtor subsidiaries owned by a Debtor shall continue to be owned by the applicable Debtor pending dissolution.

III. THE GLOBAL SETTLEMENT

A. **The Plan and CCAA Approval Order Effect a Global Settlement by and Among the Debtors and the Committees**

Pursuant to sections 363 and 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, in consideration of the classification, distributions, releases, and other benefits provided under the Plan and in accordance with the CCAA Approval Order, upon the Effective Date, the provisions of the Plan constitute a good faith compromise and settlement of all issues and controversies among the Debtors and the Committees. The Global Settlement provides for, among other things: (a) the Payment in Full of all Allowed General Unsecured Claims without Post-Petition Interest (to the extent it would have been allowable); (b) the resolution of all disputes regarding the treatment of Intercompany Claims and Equity Interests; (c) the resolution of all disputes regarding allocation of value among the Debtors and the allocation of the Sale Proceeds; and (d) the resolution of all disputes regarding substantive consolidation of the Debtors. The Monitor is prepared to recommend approving the Global Settlement in the CCAA Proceedings.

In accordance with the Global Settlement, none of the Debtors, Monitor or either of the Committees will dispute or object to the allocation of Sale Proceeds under the Plan or other Assets or the CCAA Approval Order, nor seek the substantive consolidation of any or all of the Debtors.

This Disclosure Statement and the Plan constitute a motion requesting that the Bankruptcy Court approve the Global Settlement provided for in the Plan. The Debtors also intend to bring a motion for the CCAA Approval Order which will request the Canadian Court to approve the Global Settlement. Unless an objection to the proposed Global Settlement is made in writing by any party adversely affected by the Global Settlement on or before the deadline to object to Confirmation of the Plan, the Global Settlement may be approved by the Bankruptcy Court at the Confirmation Hearing and the Canadian Court at the Canadian Approval Hearing. The entry of the Confirmation Order and CCAA Approval Order will constitute the Bankruptcy Court's and Canadian Court's approval of the compromise and settlement of all such Claims, Equity Interests, and controversies, as well as a finding by the Bankruptcy Court that the Global Settlement is in the best interests of the Debtors, their Estates, and holders of Claims and Equity Interests and that it is fair, equitable and within the range of reasonableness.

For the avoidance of doubt, to the extent that the Plan is not Confirmed, the Global Settlement is not approved by order of the Canadian Court, or the Effective Date does not occur, then the Global Settlement will be void *ab initio* in all respects, and the rights of the Debtors, Monitor and the Committees with respect to the subject matter of the Global Settlement will be preserved, including the right to seek confirmation of a Chapter 11 plan pursuant to Bankruptcy Code Section 1129(b) and right to seek sanctioning of a plan of compromise and arrangement under the CCAA. The following discusses some of the individual disputes that the Global Settlement resolves.

B. The Treatment of Intercompany Claims and Equity Interests

As noted above, the Global Settlement resolves all disputes about the treatment of Intercompany Claims and Equity Interests. Prior to the Petition Date, the Debtors engaged in numerous intercompany transactions including: (a) intercompany trade transactions; and (b) intercompany debt transactions.

More specifically, in the ordinary course of business, the Debtors regularly participated in ordinary course trade transactions between and among each other (the "Intercompany Trade Transactions"). The Intercompany Trade Transactions involved either shared services performed by one Debtor for the benefit of another which were billed on a "cost plus" basis using transfer pricing, or goods which were sold from one Debtor to another using "cost plus" transfer pricing. In the case of the Debtors' non-U.S. and non-Canadian subsidiaries (the "Foreign Affiliates"), the Intercompany Trade Transactions were made between the Foreign Affiliates and Bauer Hockey Corp. (which is referred to herein as "Bauer Canada" and which has since been amalgamated with Old PSG Wind-down Ltd., f/k/a Performance Sports Group Ltd., through the Corporate Restructuring as discussed further below). Bauer Canada sold its branded product globally through Bauer Hockey AB and Bauer Hockey GmbH, both of which acted as sales and marketing service providers by facilitating the sale of Bauer product to customers throughout Europe. These Foreign Affiliates charged on a "cost plus" basis for their sales and marketing services. The Intercompany Trade Transactions gave rise to numerous intercompany balances by and among the Debtors.

Similarly, prior to the Petition Date, the Debtors entered into a variety of intercompany loans by and among themselves, and with certain of the Foreign Affiliates (the "Intercompany

Debt Transactions” and together with the Intercompany Trade Transactions, the “Intercompany Transactions”). The Intercompany Debt Transactions were generally of two kinds: (a) intercompany notes entered into in connection with the Debtors’ acquisition of the Easton Baseball/Softball Business from Easton-Bell Sports, Inc. in April 2014, for \$330 million in cash, plus a net working capital adjustment of \$21.7 million (the “Easton Baseball/Softball Acquisition”); and (b) notes reflecting borrowings by Bauer Canada or Bauer Hockey, Inc. (now known as Old BH Inc.) under the Debtors’ prepetition secured ABL facility that were advanced to other Debtors. From time to time, the Debtors also entered into intermittent or ad-hoc Intercompany Debt Transactions related to intercompany asset transfers, inventory movement or similar ordinary course business transactions.

The Easton Baseball/Softball Acquisition generated material Intercompany Debt Transactions. The Debtors initially financed the Easton Baseball/Softball Acquisition, as well as refinanced certain existing indebtedness, with a \$200 million secured asset-based revolving credit facility (the “Prepetition ABL Facility”) and a \$450 million secured term loan credit facility (the “Prepetition Term Loan Facility”). The Parent Debtor effected the Easton Baseball/Softball Acquisition through a U.S. incorporated acquisition vehicle. A portion of the proceeds from the Prepetition Term Loan Facility were advanced to the acquisition vehicle through a series of intercompany transfers documented with intercompany notes (the “Easton Notes”). As of the Petition Date, various Easton Notes in amounts up to \$250 million were outstanding.

On June 25, 2014, the Debtors completed an underwritten initial public offering on the New York Stock Exchange (“NYSE”) and a new issue of common shares of the Parent Debtor in Canada for net proceeds of approximately \$119.5 million (the “U.S. IPO”), including the exercise in full of the over-allotment option. The Debtors used the net proceeds of the U.S. IPO to reduce leverage and repay approximately \$119.5 million of the Term Loan Facility then outstanding, but did not, at the time, repay the Easton Notes.

In connection with the Sale, the Debtors, the Monitor and the Committees reserved all their rights to challenge the extent, validity and amount of the Intercompany Transactions, including the Easton Notes. *See* U.S. Sale Order at ¶ 12 (“Nothing in this Order, the Motion, the Purchase Agreement, the Seller Disclosure Letter, Transaction Documents, or related documents, agreements, instruments, schedules, or exhibits to the contrary shall impair the rights of any party in interest to seek to recharacterize, subordinate, or otherwise challenge the extent, validity and amount of Intercompany Indebtedness[.]”).

The Global Settlement resolves any potential dispute by and among the Debtors, the Monitor and the Committees about these Intercompany Transactions including: (a) whether such transactions constitute true debt on the one hand, or equity contributions on the other; (b) whether payments made on account of such transactions are repayments of debt on the one hand, or dividends on equity on the other hand; (c) whether such transactions should be subordinated on equitable grounds or otherwise; and (d) whether any of the transactions were subject to avoidance as constructive fraudulent transfers or preferential payments under Chapter 5 of the Bankruptcy Code or applicable non-bankruptcy or Canadian law.

C. The Corporate Restructuring

To achieve tax efficiencies, the Canadian Debtors amalgamated certain of their legal entities and completed certain other intercompany transactions prior to closing of the Sale (collectively, the “Corporate Restructuring”). The amalgamation eliminated certain corporate distinctions between various of the Canadian Debtors. Although the amalgamation was not intended to have any negative effect on any Debtor’s value, the ultimate effect of the Corporate Restructuring on tax savings was uncertain, and the allocation of tax savings, if any, to which Debtor was subject to dispute.

In connection with the Sale and the Corporate Restructuring, the Debtors, the Monitor and both of the Committees reserved all of their rights with respect to the impact of the Sale or Corporate Restructuring on allocation of value or Sale Proceeds to and among the Debtors’ Estates. *See* U.S. Sale Order at ¶ 51 (“The Debtors agree that notwithstanding anything in the Motion, the Purchase Agreement, Transaction Documents, or related documents, agreements, instruments, schedules, or exhibits to the contrary, any allocation pursuant to the Transaction Documents of the net cash proceeds actually received by the Debtors at the closing of the Sale.. .will not be binding for purposes of distributions of the Sale Proceeds made to creditors or interest holders . . . in connection with the confirmation, approval or consummation of a plan of reorganization, a plan of liquidation, restructuring plans or a distribution motion . . . or for any related purposes, which Distribution Apportionment will be determined in accordance with such Plan or another order of either Court or other settlement agreement or stipulation.”); Restructuring Transactions Order ¶ 12 (“All stakeholders (including creditors or holders of equity security interests) explicitly reserve and preserve their rights . . . with respect to the allocation or distribution of proceeds available for distribution pursuant to the Pre-Closing Reorganization, Pre-Reorganization Distribution Model, or other methodology, as the case may be[.]”).

As discussed below, the Global Settlement resolves these reservations and any potential dispute by and among the Debtors, the Monitor and the Committees concerning the allocation of value among the Debtors, the appropriate distribution model to employ for Plan purposes, and the distributable value from any of the Debtors’ Estates available for Creditors and Holders of a Parent Equity Interest (such Holders, collectively, the “Shareholders”).

D. Substantive Consolidation

The Global Settlement resolves all disputes about whether the Debtors’ Estates should be substantively consolidated. To satisfy the policies of reorganization, equality of distribution and equitable treatment of creditors, bankruptcy courts historically have sometimes exercised their equitable powers, in appropriate circumstances and subject to appropriate exceptions, to treat separate and distinct entities as a single entity for bankruptcy purposes, *i.e.*, to “substantively consolidate” the entities. By treating separate entities as a single entity for bankruptcy purposes, substantive consolidation eliminates structural priority among stakeholders with claims at different or multiple entities within a corporate group. All of the corporate group’s assets and liabilities are pooled, from which all creditors and shareholders receive distributions according to their legal priorities.

The Bankruptcy Court enjoys broad equitable powers. In the U.S. Third Circuit, in ordering substantive consolidation, courts must either find, with respect to the entities in question, that (a) prepetition, they disregarded their separateness “so significantly their creditors relied on the breakdown of entity borders and treated them as one legal entity,” or (b) postpetition, “their assets and liabilities are so scrambled that separating them is prohibitive and hurts all creditors.” *In re Owens Corning*, 419 F.3d 195 (3d Cir. 2005), *amended by* 2005 U.S. App. Lexis 18043 (Aug. 23, 2005), *rev’d*, 316 B.R. 168 (Bankr. D. Del. 2004), *cert. denied*, 547 U.S. 1123 (2006).

The Global Settlement resolves any potential dispute by and among the Debtors, the Monitor and the Committees about whether the Debtors’ Estates should be substantively consolidated under the Plan.

E. Impact of the Global Settlement on Distributions to Creditors and Shareholders

As discussed above, the Global Settlement consensually resolves disputes regarding numerous complex, fact-dependent issues. Litigating these issues would require discovery and extended evidentiary hearings which would significantly escalate professional fees and expenses in the Chapter 11 Cases and the CCAA Proceedings. If the Global Settlement is not approved, the Committees and other parties in interest would be able to challenge the Debtors’ proposed allocation, the treatment of Intercompany Transactions, the impact of the Corporate Restructuring and the other related matters discussed in this Disclosure Statement, such as substantive consolidation. The cost of litigating these issues would be significant, and the outcome of such litigation is uncertain.

Without the Global Settlement, Shareholders might be able to receive some distributions before all General Unsecured Claims are Paid in Full (assuming all Intercompany Claims are valid and enforceable), or alternatively, the cost of litigating the settled issues could deplete the Sale Proceeds such that some Creditors and all Shareholders would not receive any distribution at all. The table below estimates recoveries that Holders of General Unsecured Claims are expected to receive assuming the Global Settlement is approved compared to estimated recoveries that Creditors would receive in a Chapter 7 liquidation. The comparison demonstrates that Creditors at eleven (11) out of fifteen (15) of the Debtors at which Claims exist would receive 7% or less recovery on account of their Claims, significantly less than the 100% recovery provided for under the Global Settlement.

Holders of Parent Equity Interests are also expected to receive greater distributions if the Global Settlement is approved. Specifically, in the absence of the Global Settlement, litigation would be expected to consume a significant amount of the Estates’ Cash at the expense of Holders of General Unsecured Claims and Parent Equity Interests. In addition, if the Global Settlement or an alternative agreement with the Committees and Monitor could not be achieved, the Chapter 11 Cases may be converted to Chapter 7 liquidations. No assurances could be made that Holders of Parent Equity Interests would receive any distributions in a Chapter 7 liquidation. In exchange for the benefits of the Global Settlement – which include reduced Cash burn and a clear exit strategy – the Equity Committee agreed to a re-allocation from the Parent Debtor’s Estate to the other Debtors’ Estates of approximately \$2 million to \$4 million in value. Notably,

this estimated reallocation of value assumes that the Bankruptcy Court and Canadian Court will enforce the validity of all Intercompany Claims as they currently exist, an outcome that is uncertain.

For these reasons, among others, the Debtors believe that the Global Settlement maximizes value for all stakeholders, minimizes the accrual of professional fees and administrative expenses, is fair and equitable, falls well within the range of reasonableness and should be approved by the Bankruptcy Court and Canadian Court.

DEBTOR ESTATE (Using Pre-Petition Names)	Chapter 7 Liquidation		Global Settlement under Plan	
	Low	High	Low	High
Performance Sports Group Ltd.	100%	100%	100%	100%
Bauer Hockey Corp.	3%	3%	100%	100%
Bauer Hockey, Inc.	100%	100%	100%	100%
BPS Diamond Sports Corp.	2%	3%	100%	100%
BPS Diamond Sports Inc.	3%	3%	100%	100%
BPS Uniforms Corp.	4%	4%	100%	100%
BPS Uniforms Inc.	0%	0%	100%	100%
Bauer Performance Lacrosse Inc.	21%	23%	100%	100%
Bauer Performance Lacrosse Corp.	7%	7%	100%	100%
Bauer Hockey Retail Inc.	4%	4%	100%	100%
Bauer Hockey Retail Corp.	N/A	N/A	N/A	N/A
PSG Innovation Inc.	0%	0%	100%	100%
PSG Innovation Corp.	6%	6%	100%	100%
Easton Baseball / Softball Inc.	5%	5%	100%	100%
Easton Baseball / Softball Corp.	4%	4%	100%	100%
BPS US Holdings Inc.	100%	100%	100%	100%
KBAU Holdings Canada, Inc.	N/A	N/A	N/A	N/A
BPS Canada Intermediate Corp.	N/A	N/A	N/A	N/A

IV. BUSINESS OVERVIEW; CORPORATE STRUCTURE; PREPETITION INDEBTEDNESS

A. Overview of the Debtors' Businesses and History

The Debtors formerly designed, developed, manufactured, marketed and sold 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. Prepetition, the Debtors' global operations were headquartered in Exeter, New Hampshire.

The Debtors' customers included over 4,000 retailers across the globe and more than 60 international distributors. The Debtors sold their products through diverse channels of distribution including to: (i) specialty retailers that cater to sports enthusiasts who typically seek premium products at the highest performance levels; (ii) national and regional full-line sporting goods retailers and distributors; (iii) institutional buyers such as educational institutions and athletic leagues; (iv) mass retailers that offer a focused selection of products at entry-level and mid-level price points; and (v) directly to hockey consumers through their owned and operated Own The Moment - Hockey Experience retail stores in the U.S.

B. Corporate Structure

As detailed in the organizational chart attached hereto as Exhibit 3, Old PSG Wind-down Ltd. (formerly known as Performance Sports Group Ltd.) is a holding company and the direct or indirect sole shareholder of each of the other Debtors. Prior to seeking bankruptcy protection, the common shares, of then-Performance Sports Group Ltd. was publicly listed for trading on the Toronto Stock Exchange and, following the U.S. IPO discussed above, the NYSE, in each case under the symbol "PSG." An initial public offering was completed in Canada on March 10, 2011 and the U.S. IPO was completed on June 25, 2014. The authorized share capital of Old PSG Wind-down Ltd. (formerly known as Performance Sports Group Ltd.) consists of an unlimited number of common shares without par value. As of October 28, 2016, 45,861,205 common shares were issued and outstanding. The Debtors understand that the common shares of Old PSG Wind-down Ltd. continue to trade in over-the-counter markets.

Prior to seeking bankruptcy protection, the Debtors operated their businesses through two primary subsidiaries of then-Performance Sports Group Ltd., one incorporated in Canada and one incorporated in the United States, respectively: KBAU Holdings Canada, Inc. (now amalgamated into Old PSG Wind-down Ltd. through the Corporate Restructuring) and BPS US Holdings Inc. (now Old BPSUSH Inc.). These two entities, in turn, functioned as holding companies for the Debtors' respective businesses in Canada and the United States. More specifically, KBAU Holdings Canada, Inc. was a holding company that held, directly or indirectly, the shares of the other Canadian Debtors and Foreign Affiliates, along with indirect interests in two U.S. entities: (i) an indirect 22.07% ownership interest in then-BPS US Holdings Inc. and (ii) a 100% indirect interest in then-PSG Innovation Inc. (now Old PSGI Inc.). Old BPSUSH Inc. (formerly known as BPS US Holdings Inc.) is a Delaware holding company that holds, directly or indirectly, the shares of the other U.S. Debtor subsidiaries.

The Debtors operated their businesses on an internationally coordinated basis, and were generally structured so that there was a Canadian and U.S. subsidiary for each major business line (*i.e.*, Hockey, Baseball/Softball, Lacrosse and Apparel). Each entity performed specific functions, many of which benefited other Debtors.

C. Prepetition Indebtedness

At the time they sought bankruptcy protection, the Debtors' primary funded debt obligations consisted of the \$450 million Prepetition Term Loan Facility with approximately \$332 million outstanding and the maximum \$200 million revolving Prepetition ABL Facility with approximately \$158.9 million outstanding, which, as discussed above, were entered into in

connection with the Easton Baseball/Softball Acquisition. As discussed below, the Prepetition Term Loan Facility and Prepetition ABL Facility have both since been repaid in full.

In addition to the Prepetition ABL Facility and Prepetition Term Loan Facility, the Debtors had entered into discrete equipment financings with certain parties, which parties retained a secured interest in such collateral, or were subject to other miscellaneous Secured Claims incurred in the ordinary course of business.

With respect to unsecured indebtedness, in the ordinary course of operating their business, the Debtors purchased goods and services from a large number of trade creditors, and owed in excess of \$40 million to third-party trade creditors at the time they sought bankruptcy protection. Additionally, various Debtors were obligated to each other on account of the Intercompany Transactions discussed above. Further, certain Debtors were subject to litigation Claims related to the operation of their business.

V. EVENTS LEADING UP TO THE BANKRUPTCY PROCEEDINGS

The Debtors had been carrying a heavy debt load since the Easton Baseball/Softball Acquisition. The performance of the Debtors' business in fiscal 2016 to the Petition Date was significantly impacted by adverse market and economic conditions and related customer credit issues. The baseball/softball market experienced a significant downturn in retail sales across all product categories, but particularly in the Debtors' important bat category. This weakening of consumer demand, coupled with the Chapter 11 filing by one of the largest U.S. national sporting goods retailers and the bankruptcy of an internet baseball retailer, reduced the Debtors' sales with respect to baseball and softball products. The consolidation of hockey retailers in the U.S., and the bankruptcy of a key U.S. hockey customer, reduced customer demand for products as the Debtors' customers continued to reduce their inventory levels. The Debtors' results throughout fiscal 2016 to the Petition Date continued to be impacted negatively by foreign currency exchange rates, specifically, the depreciation of the Canadian dollar and other world currencies relative to the U.S. dollar.

On August 15, 2016, the Debtors announced that they would not file their Annual Report, including their annual audited financial statements for the fiscal year ended May 31, 2016, by the required filing date, and that the audit committee of the board of directors of Performance Sports Group Ltd. (the "Audit Committee") engaged independent legal counsel to conduct an internal investigation of Performance Sports Group Ltd.'s finalization of its financial statements and the related certification process. On August 17, 2016, Performance Sports Group Ltd. announced that it was the subject of inquiries by the SEC and Canadian Securities Regulators, including an investigation by the SEC. Previously, in May 2016, certain of the Debtors' shareholders commenced a class-action securities lawsuit against Performance Sports Group Ltd., alleging, among other things, that Performance Sports Group Ltd. made false or misleading statements and engaged in accounting manipulations, which lawsuit is discussed in greater detail below. Subsequently, on March 27, 2017, the Debtors' independent auditors, KPMG LLP, sent the Debtors a letter stating that KPMG was resigning as the Debtors' independent auditors effective immediately.

The Debtors' failure to file timely audited financial statements by August 28, 2016 resulted in a covenant default under their secured debt facilities. With no other source of liquidity, the Debtors negotiated an amendment to their secured credit facilities which provided an extension of time by which to file audited financials until October 28, 2016. The Debtors also commenced in a thorough review of strategic alternatives with the advice and guidance of experienced financial and legal advisors. Based upon that review and the consideration of the alternatives available to them, the Debtors concluded that entering into the Purchase Agreement for the going-concern sale of substantially all of the assets of the Debtors (the "Sale") to a group of investors led by Sagard Capital Partners, L.P. and Fairfax Financial Holdings Limited (collectively, the "Purchaser"), subject to a sales and auction process, was in the best interests of Performance Sports Group Ltd. and was the optimal course to maximize the value of the Debtors' assets for its stakeholders when compared to other available alternatives.

Accordingly, facing the expiration of the extension of their debt facility amendment on October 28, 2016, on October 31, 2016 (the "Petition Date") the Debtors filed voluntary petitions (collectively, the "Chapter 11 Cases") for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") and each also made an application for protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") with the Ontario Superior Court of Justice (Commercial List) (the "Canadian Court,")) commencing the Debtors' proceedings under the CCAA (the "CCAA Proceedings") and collectively with the Chapter 11 Cases, the "Bankruptcy Proceedings"). The Debtors commenced the Bankruptcy Proceedings to pursue a sale of their businesses at the highest and best value, as the status of the Debtors' debt facilities made an out-of-court sale impractical and such approach was determined not to be one that was in the best interests of Performance Sports Group Ltd. as it would not maximize the value of the Debtors' business.

For a more detailed description of the Debtors' prepetition operations and the events leading up to the commencement of the Chapter 11 Cases, please consult the Declaration of Brian J. Fox In Support of Debtors' Chapter 11 Petitions and First-Day Motions [Docket No. 15] which is incorporated herein by reference.

VI. ADMINISTRATION OF THE BANKRUPTCY PROCEEDINGS

A. Overview of Chapter 11

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. In addition to permitting debtor rehabilitation, chapter 11 promotes equality of treatment for similarly situated holders of claims and equity interests, subject to the priority of distributions prescribed by the Bankruptcy Code.

The commencement of a chapter 11 case creates an estate that is comprised of all of the legal and equitable interests of the debtor as of the filing of a chapter 11 petition. The Bankruptcy Code provides that the debtor may continue to operate its business and remain in possession of its property as a "debtor in possession."

The consummation of a plan is the principal objective of a chapter 11 case. A plan sets forth the means for satisfying claims against and equity interests in a debtor. Confirmation of a

plan by the Bankruptcy Court makes the plan binding upon the debtor, any entity acquiring property under the plan, any holder of a claim against or equity interest in a debtor and all other entities as may be ordered by the Bankruptcy Court in accordance with the applicable provisions of the Bankruptcy Code. The order approving confirmation of a plan prohibits creditors and equity holders of a debtor from seeking to pursue claims and equity interests against or in a debtor except as provided for in the confirmed plan.

Pursuant to section 1125 of the Bankruptcy Code, acceptance or rejection of a plan may not be solicited after the commencement of a chapter 11 case until such time as a bankruptcy court has approved a disclosure statement as containing adequate information. Pursuant to section 1125(a) of the Bankruptcy Code, “adequate information” is information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgment regarding the plan. The Debtors are submitting this Disclosure Statement in satisfaction of the applicable disclosure requirements under section 1125 of the Bankruptcy Code.

B. Overview of CCAA

The *Companies’ Creditors Arrangement Act* (commonly referred to as the “CCAA” or the “CC, double A”) is one of the Federal statutes that allows a financially troubled company, or a group of affiliated companies, the opportunity to restructure their affairs. By allowing the company to restructure its financial affairs through a formal plan of compromise or arrangement and in certain cases through a sale of its business, the CCAA presents an opportunity for the company to avoid bankruptcy and settle with its creditors.

The CCAA is restricted to larger companies, as the company or affiliated group of companies must have liabilities in excess of CAD\$5 million to be eligible to use the CCAA. The CCAA also allows a company to address its shareholders in addition to its creditors, if necessary. If a plan of compromise or arrangement is proposed to the company’s shareholders, the CCAA court may give shareholders of a company an opportunity to vote on the plan.

The process begins in the court system when the company applies to the court for protection under the CCAA. The CCAA court may grant an order ordering a stay of proceedings, which provides the company the breathing room it needs to restructure its affairs (the “Stay of Proceedings”). The CCAA court may extend the Stay of Proceedings upon application to the CCAA court by the company. Typically, the CCAA court will extend the Stay of Proceedings if the Court considers it is appropriate to do so and if the company can demonstrate that it is acting in good faith and is diligently pursuing its restructuring efforts. There is no restriction on the number of times the Stay of Proceedings can be extended by, and with the approval of, the CCAA court. During the Stay of Proceedings, the company will often continue operating in the ordinary course and may also carryout restructuring activities.

A Monitor is an independent third party who is appointed by the CCAA court to monitor the company's ongoing operations and report to the CCAA court on the restructuring process and key developments. The Monitor's duties are set out in the CCAA and the Order appointing it and typically include reporting to the CCAA court and stakeholders on the company’s activities and financial affairs, reporting to the Court on certain significant restructuring initiatives, assisting the company in its restructuring efforts and preparation of a plan of compromise or arrangement,

reviewing and resolving claims, notifying the creditors (and shareholders) of any meetings in respect of a plan of compromise or arrangement and tabulating the votes at these meetings.

C. Cross-Border Implications

The Bankruptcy Proceedings involve both Canadian and U.S. Debtors. Stays were sought and obtained under the Bankruptcy Code and the CCAA. There was a protocol approved given the cross-border nature of the Bankruptcy Proceedings and there were and are stakeholders in Canada, the U.S. and elsewhere. The proceedings under Chapter 11 and those under the CCAA are intended to be coordinated to the fullest possible extent. As a result, there is often a motion and an order in the CCAA Proceedings that is similar or equivalent to a motion and an order made in the Chapter 11 Proceedings.

There are both similarities and differences between the CCAA and Chapter 11 of the U.S. Bankruptcy Code. One important difference is the statutory requirement under the CCAA for a Monitor, as set out above. The developed law with respect to the Monitor results in there being an independent, experienced and professional voice to aid both the stakeholders and the supervising court, in this case the Ontario Superior Court of Justice (Commercial List). Over the years, CCAA courts have entrusted Monitors with widely varied roles and responsibilities as dictated by the circumstances of the particular case.

Additionally, an important hallmark of the CCAA and the developed law with respect to it is the flexibility it provides to allow the supervising court to direct and approve the most cost effective and efficient way to achieve the purposes of the CCAA.

If a debtor's business is not going to emerge from CCAA protection as a restructured going concern, but rather the business and assets are sold, the CCAA provides the flexibility to allow for the distribution of the proceeds to stakeholders following a Court and Monitor supervised claims process in accordance with the stakeholders' respective priorities. Such distribution of proceeds can proceed without the necessity or formality of a plan of compromise or arrangement under the CCAA. In an unusual circumstance where all the creditors other than the equity class are paid, in a Canadian situation, one of the options would be to let the CCAA Proceedings lapse and let the shareholders recover normally from the solvent company under applicable corporate law.

As noted above, the Canadian Court has broad jurisdiction and flexibility under the CCAA to fashion an appropriate way forward in each proceeding. For example, if the Bankruptcy Proceedings did not involve the concurrent Chapter 11 Cases, there would be no requirement to incur the additional expense of filing a plan of arrangement and related disclosure statement and soliciting votes of stakeholders on the plan.

What the Debtors, supported by the Monitor, propose to do in the CCAA Proceedings is inform and advise the Canadian Court of the process being followed in the U.S. and seek the Canadian Court's direction with respect of the U.S. confirmation process and abide by such direction. If the result of the vote on the Plan is favorable and confirmation is sought in the U.S., the Debtors, supported by the Monitor, will seek the CCAA Approval Order from the Canadian Court to implement in Canada the distributions and transactions contemplated by Plan and grant

ancillary relief to fully give full effect to the substance of the Plan, including empowering the Debtors and the Monitor to perform the actions contemplated by the Plan. The granting of the CCAA Approval Order is, of course, in the discretion of the Canadian Court and while the Debtors believe that such an order will be issued, there can be no assurance that it will be made.

D. First Day Pleadings and Certain Related Relief

1. Operational First Day Motions and Orders

Concurrently with the commencement of the Chapter 11 Cases, the Debtors filed various motions requesting typical chapter 11 relief to assist the Company's transition into bankruptcy. On November 1, 2016, the Bankruptcy Court authorized the Debtors to, among other things, (i) continue to utilize their centralized cash management system on an interim basis pending a final hearing [Docket No. 60],² (ii) pay certain employee wages, payroll taxes and other employee benefits on an interim basis [Docket No. 63],³ (iii) continue existing workers' compensation and other insurance coverage [Docket No. 62], (iv) pay pre-petition sales, use and other taxes [Docket No. 64], (v) pay the pre-petition claims of certain foreign, section 503(b)(9), and critical trade vendors on an interim basis [Docket No. 66],⁴ (vi) pay pre-petition claims of certain shippers and warehousemen [Docket No. 65], (vii) honor certain pre-petition customer obligations and customary trade practices [Docket No. 61], (viii) establish interim procedures to resolve adequate assurance requests for their utility accounts [Docket No. 58],⁵ (ix) establish interim procedures governing trading of the Debtors' equity securities [Docket No. 59],⁶ and (x) appoint Prime Clerk LLC as the claims and noticing agent for the Bankruptcy Court [Docket No. 67] (the "Claims and Solicitation Agent"). The Debtors sought and obtained similar relief from the Canadian Court in the CCAA Proceedings through the CCAA Initial Order.

2. Post-Petition Financing

The Debtors also obtained interim and final approval of two separate but coordinated debtor-in-possession financing facilities (collectively, the "DIP Facilities") provided by two distinct groups of lenders, as well as the right to use cash collateral [Docket Nos. 69 & 229]. More specifically, the Debtors secured a \$200 million ABL Facility (the "ABL DIP Facility") from their prepetition secured ABL lenders, under which collections were used to pay down the prepetition ABL facility, which in turn created availability for the Debtors to borrow under the ABL DIP Facility. The structure of the ABL DIP Facility created approximately \$15 million of additional availability for the Debtors. The Debtors also obtained a \$361 million term loan facility provided by the Purchaser, the proceeds of which were used to repay the Debtors'

² The Debtors obtained final authority to utilize their centralized cash management system on November 28, 2016 [Docket No. 199].

³ The Debtors obtained further interim approval on November 30, 2016 [Docket No. 231].

⁴ The Debtors obtained final relief by Order dated November 28, 2016 [Docket No. 200].

⁵ Final procedures were approved by Order dated November 28, 2016 [Docket No. 197].

⁶ Final procedures were approved by Order dated November 28, 2016 [Docket No. 198].

outstanding prepetition term facility in full and provide approximately \$29 million of additional working capital for the Debtors. Although the Creditors' Committee and the Equity Committee objected to final approval of the DIP Facilities [see Docket Nos. 134, 136, 178 and 180], the parties were able to consensually resolve those objections and address key issues raised by the Committees' objections.

Obtaining approval of the DIP Facilities was critical to the Debtors' ability to operate successfully while working to maximize the value of their Estates through the sale process. The Debtors' obligations under the DIP Facilities were satisfied in full through the closing of the Sale.

3. **Retention and Employment of Professionals**

To assist the Debtors in carrying out their duties as debtors and debtors in possession and to obtain legal representation in their Chapter 11 Cases and in the CCAA Proceedings, on November 29, 2016 the Debtors obtained orders approving their retention and employment of certain legal, financial and other professional advisors [Docket Nos. 221 (Prime Clerk as administrative advisor, in addition to its role as claims agent of the Bankruptcy Court), 222 (Alvarez & Marsal North America, LLC to provide CRO and related personnel), and 224 (Young Conaway Stargatt & Taylor, LLP as U.S. bankruptcy co-counsel)]. On December 6, 2016 and December 13, 2016, respectively, the Debtors obtained orders approving the retention of Centerview Partners LLC as their investment banker [Docket No. 244] and Paul, Weiss, Rifkind, Wharton & Garrison LLP as lead U.S. bankruptcy counsel [Docket No. 258].

For additional information with respect to the first day pleadings and related relief sought by the Debtors at the beginning of the Chapter 11 Cases, please consult the *Declaration of Brian J. Fox in Support of Debtors' Chapter 11 Petitions and First-Day Motions* [Docket No. 15], which is incorporated herein by reference.

E. **Creditors' Committee and Equity Committee**

On November 10, 2016, the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee") appointed the Creditors' Committee, a statutory committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code. On November 28, 2016, the U.S. Trustee appointed the Equity Committee, a statutory committee of equity security holders pursuant to section 1102 of the Bankruptcy Code. Like the Debtors, the Creditors' Committee and the Equity Committee are fiduciaries tasked with maximizing the value of the Debtors' Estates, and both have retained attorneys and other advisors to assist them.

Following the appointment of the Committees, the Committees' professionals engaged in an investigation of the Debtors and their businesses. In an effort to facilitate these investigations, with a view towards streamlining the administration of the Chapter 11 Cases and obtaining as much relief on a consensual basis as possible, the Debtors devoted significant resources to assisting the Committees in this process. Specifically, the Debtors engaged in informal discovery with each Committee including informational conference calls, document production, and the continued updating and maintenance of a data room. This informal discovery process

required investments of time and resources by the Debtors, including by members of the Debtors' senior management and the Debtors' advisors.

F. Filing of Schedules of Assets and Liabilities and Statements of Financial Affairs

On December 16, 2016, the Debtors filed the Schedules of Assets and Liabilities and Statements of Financial Affairs for each of the 18 individual Debtors in the Chapter 11 Cases [Docket Nos. 280-315].

G. Setting of Bar Dates

On December 19, 2016 [Docket No. 327] (the "General Bar Date Order") and April 10, 2017 [Docket No. 1005] (the "Employee Bar Date Order") and, together with the General Bar Order, the "Bar Date Orders"), respectively, the Bankruptcy Court entered the Bar Date Orders, which established the following dates by which proofs of claim on account of a Claim were to be received by the Claims and Solicitation Agent:

<u>BAR DATES</u>	
General Bar Date	February 6, 2017 at 5:00 p.m. (ET)
Governmental Unit Bar Date	May 1, 2017 at 5:00 p.m. (ET)
Employee Claims Bar Date	May 17, 2017 at 5:00 p.m. (ET)
Lease/Contract Rejection Bar Date	30 days after entry of an order approving the rejection of any particular contract or lease, or in the case of a contract or lease rejected in the CCAA Proceedings, 30 days after the effective date of the disclaimer of such contract or lease

The Canadian Court also established these Bar Dates in the CCAA Proceedings. Subject to certain limited exceptions contained in the Bankruptcy Code and the Bar Date Orders, Holders of Claims were required to submit all proofs of claim by the applicable bar dates set forth above; otherwise, the Bar Date Orders provide that parties failing to do so are foreclosed from receiving any distribution from the Debtors or their Assets distributed under the Plan. Unless a later bar date applies, all proofs of claim for Claims arising against the Debtors before the Petition Date were required to be filed by the General Bar Date, regardless of claim priority.

H. The Sale of the Inaria (Soccer Uniform) Assets

On December 30, 2016, the Debtors filed the *Debtors' Motion for an Order, Pursuant to Sections 105, 363, and 365 of the Bankruptcy Code, (I) Approving the Asset Purchase Agreement for the Sale of the Soccer Uniforms Business and Authorizing the Sale Contemplated Therein; and (II) Granting Related Relief* [Docket No. 470] (the "Inaria Sale Motion") seeking approval of the sale of their soccer uniforms division for a purchase price of approximately CDN\$2.07 million, subject to certain adjustments, and the assumption of related operating liabilities (the "Inaria Sale"). The Debtors received informal responses to the Inaria Sale Motion from the Committees and other parties, and worked with those parties on a revised form of order approving the Inaria Sale, which consensually resolved all of the issues raised by these parties. On January 23, 2017, the Debtors obtained entry of an order approving the Inaria Sale [Docket No. 615] from the Bankruptcy Court, and also obtained similar approval from the Canadian Court. The Inaria Sale subsequently closed on February 16, 2017. As described more fully in the Inaria Sale Motion, the soccer uniforms business generated negative EBITDA and occupied the Debtors' resources. Successfully selling the soccer uniforms division provided additional proceeds to the Debtors' Estates for the benefit of stakeholders.

I. Corporate Restructuring Motion

On January 17, 2017, the Debtors filed their *Motion for an Order, Pursuant to Sections 105 and 363 of the Bankruptcy Code and Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (i) Approving Certain Corporate Restructuring Transactions In Connection With The Debtors' Going-Concern Sale; and (ii) Granting Related Relief* [Docket No. 574] (the "Corporate Restructuring Motion"). The Corporate Restructuring Motion sought authority to execute the Corporate Restructuring discussed above, which consisted of certain corporate transactions in advance of the closing of the Sale to maximize tax efficiencies. These transactions contemplated, among other things: (i) the amalgamation of certain of the Canadian Debtors into a single legal entity, thereby consolidating the Tax Assets and tax liabilities to maximize tax efficiencies across the Canadian corporate group in connection with the Sale; (ii) the resolution of various intercompany loans and variable trade balances that existed by and among certain of the Canadian Debtors and the non-Debtors, and by and among certain of the non-Debtors; and (iii) the elimination of certain intercompany receivables and, repatriation of cash to the Debtors.

The Debtors engaged in lengthy, in-depth discussions and negotiations with the Committees, the Purchaser, and the Monitor regarding the restructuring transactions contemplated by the Corporate Restructuring Motion. As a result of these discussions, the parties determined that fewer entities could be amalgamated and still effect the same result. Thus, the Debtors submitted a revised order that contemplated a modified set of Reorganization Steps (as defined in the Corporate Restructuring Motion), which was supported by the Committees, the Purchaser, and the Monitor. The Bankruptcy Court and Canadian Court entered orders on February 6, 2017 approving the Corporate Restructuring, and the Debtors subsequently effectuated the Reorganization Steps approved therein prior to the closing of the Sale.

J. Sale of the Debtors' Primary Assets to the Purchaser

As noted above, the Debtors commenced the Chapter 11 Cases and the CCAA Proceedings to maximize the value of their assets for the benefit of their Estates through one or more sales of substantially all of their assets to one or more purchasers at a public auction pursuant to section 363 of the Bankruptcy Code and section 36 of the CCAA.

Toward that end, on October 31, 2016, the Debtors filed that certain *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* (the "Sale and Bidding Procedures Motion") [Docket No. 16] seeking, among other things, approval of the bidding procedures proposed therein to effectuate the sale of substantially all of their assets through a going concern sale, scheduling a sale hearing, and approval of the Sale of substantially all of the Debtors' assets to the Purchaser pursuant to the Purchase Agreement (or an alternative asset purchase agreement negotiated with a higher or better "winning" bidder). Objections to entry of an order approving the bidding procedures were filed by the U.S. Trustee, the Committees, and Q30 Sports, LLC and Q30 Sports Science, LLC. The Debtors worked with each of the objecting parties to resolve their respective objections prior to, or in the case of the Equity Committee, during the joint hearing to approve the bidding procedures held on November 30, 2016 before the Bankruptcy Court and Canadian Court, at the conclusion of which both courts entered orders approving the bidding procedures [Docket No. 233].

Thereafter, the Debtors continued to diligently market their assets to potential bidders. Despite the Debtors' and their advisors' extensive efforts, the Debtors received no timely, conforming qualified bids (other than the qualified bid submitted by the Purchaser through the Purchase Agreement) prior to the deadline for submitting bids. Therefore, pursuant to the bidding procedures, the Debtors filed a notice of cancellation of the auction on January 26, 2017 [Docket No. 667] and proceeded to seek approval of the Sale to the Purchaser.

The Debtors consensually resolved approximately 40 formal and informal objections or responses to the Sale and to the assumption and assignment of certain of the Debtors' executory contracts and unexpired leases prior to the hearing to approve the Sale. The only unresolved objection at the commencement of the hearing to approve the Sale was a contract assignment objection (the "Q30 Objection") [Docket No. 651] of the Q30 Sports Parties (as defined in the Q30 Objection), which itself was settled consensually, with the support of the Monitor and the Creditors' Committee, several days later after the commencement of a contested evidentiary hearing.

On February 28, 2017, effective as of February 27, 2017, the Debtors consummated the Sale. The Sale Proceeds were used to repay the DIP Facilities in full. In addition, under the Purchase Agreement, the Purchaser agreed to pay the Debtors' open trade accounts to the extent transferred in connection with the Sale.

Following the Sale closing, the Debtors no longer conduct any business. They survive solely for the purpose of winding down the Estates, including through the reconciliation of Claims against the Estates and the formulation and prosecution of the Plan for the distribution of the remaining Sale Proceeds and other Assets to the Debtors' stakeholders. The Estates' remaining Assets, other than Cash, consist primarily of Retained Causes of Action, the value of which are estimated in the Liquidation Analysis, attached hereto as Exhibit 4.

VII. SUMMARY OF CLAIMS AGAINST THE DEBTORS; TREATMENT OF CERTAIN UNLIQUIDATED CLAIMS

A. Summary of Claims Against the Debtors

Following entry of the Bar Date Orders, approximately 713 Proofs of Claim asserting more than \$150 million in Claims were filed against the Debtors. Including Claims scheduled on the Debtors' schedules of assets and liabilities (collectively, the "Scheduled Claims"), approximately \$8.3 billion in claims were asserted against the Debtors. This amount does not reflect the actual liabilities owed by the Debtors, as several of the claims are for the same amount asserted against several of the Debtors, and as such these claims are counted more than once in the above total even though creditors cannot recover more than 100% of their claim against all of the Debtors. In particular, thirty-two Scheduled Claims totaling approximately \$7.84 billion were attributable to the prepetition secured lenders. As noted above, the amount due to the prepetition secured lenders, totaling approximately \$456.3 million, was repaid in full in connection with the Sale.

Pursuant to the Purchase Agreement and the Sale Order, the Purchaser agreed to pay open trade balances transferred in connection with the Sale, as well as up to \$1 million in cure costs related to contracts and leases that the Purchaser assumed in connection with the Sale. As a result, the Purchaser satisfied approximately \$59 million in Claims asserted against the Debtors. In addition, as the Debtors were required to do under the Purchase Agreement, the Debtors paid approximately \$3.3 million in other cure costs.

As a result of this and other satisfactions of open accounts, on May 15, 2017, the Debtors filed their *Notice (First) of Claims Previously Satisfied* (the "First Notice of Satisfaction") [Docket No. 1073]. The First Notice of Satisfaction listed 983 filed or scheduled Claims against the Debtors that have been satisfied in full after the Petition Date, providing the corresponding creditors with notice of such satisfaction and an opportunity to respond prior to adjustment of the official claims register by the Claims and Solicitation Agent. Following the filing of the First Notice of Satisfaction, the Debtors received informal responses or formal objections from a few creditors relating to the same, and consensually resolved each of these responses and objections, or temporarily withdrew the First Notice of Satisfaction as to such Claims, through an amended First Notice of Satisfaction (the "Amended First Notice of Satisfaction") [Docket No. 1277] filed on August 23, 2017. As provided in the Amended First Notice of Satisfaction, 966 of the 983 Claims listed on the First Notice of Satisfaction were deemed satisfied on a final basis through the Amended First Notice of Satisfaction.

On August 23, 2017, the Debtors filed their *Notice (Second) of Claims Previously Satisfied* (the "Second Notice of Satisfaction") [Docket No. 1278]. The Second Notice of

Satisfaction contains an additional 208 filed or scheduled Claims against the Debtors that have been satisfied in full after the Petition Date.

The Claims that remain pending and unsatisfied against each Debtor as of the date hereof are included in the Liquidation Analysis attached hereto. As explained therein, the analysis reflects certain assumptions regarding Proofs of Claim that were filed against more than one Debtor, certain Proofs of Claim that are contingent and/or disputed, and certain Proofs of Claim that have been filed in partially or wholly unliquidated amounts. Because of these issues, the amount of Claims against the Debtors that will ultimately become Allowed Claims remains uncertain, but the Liquidation Analysis represents the best estimate of the Debtors at this time. After accounting for the Claims that have been satisfied, approximately 415 Claims against the Debtors remain, the majority of which are Claims filed by former employees of the Debtors, or unliquidated personal injury Claims. The Debtors estimate that, after accounting for the treatment of unliquidated litigation Claims for which the Debtors believe insurance coverage may exist, the aggregate amount of Claims to be paid under the Plan in accordance with the Global Settlement totals approximately [\$15 million to \$20 million].

B. Treatment of Certain Claims Related to the Parent Equity Interests

Three proofs of claim were filed against the Parent Debtor for damages or other liabilities associated with the Parent Equity Interests: (i) the Purported Securities Class Action Claim; (ii) the Individual Securities Damages Claim (the Claims in (i) and (ii) hereof, collectively, the “Securities Claims”); and (iii) the SEC Claim.

1. The Securities Claims – Overview

On May 16, 2016, a putative class action complaint (the “Class Action Complaint”) was filed alleging that Performance Sports Group Ltd. and certain of its former officers, Kevin Davis, Amir Rosenthal and Mark Vendetti, committed securities fraud. Juan Francisco Gonzalez Nieves, as Trustee of the Gonzalez Coronado Trust (“Nieves”), an investor in the Parent Debtor was the named plaintiff of the class action, filed the Class Action Complaint on behalf of itself and purportedly on behalf of a putative plaintiff class of plaintiffs defined as all investors who purchased Parent Debtor securities on the New York Stock Exchange between January 15, 2015 and March 14, 2016 (the “Putative Class”). The Class Action Complaint was filed in the United States District Court for the Southern District of New York and was captioned *Juan Francisco Gonzalez Nieves, as Trustee of the Gonzalez Coronado Trust v. Performance Sports Group Ltd., Kevin Davis, Mark Vendetti, and Amir Rosenthal*, Case No. 1:16-cv-03591 (SDNY May 16, 2016).

On May 17, 2016, the Plumbers & Pipefitters National Pension Fund (“Plumbers & Pipefitters”) filed a motion to appoint itself as lead plaintiff and a motion to appoint Cohen Milstein Sellers & Toll PLLC (“Cohen Milstein”) as lead counsel of the Class Action Complaint. On May 27, 2016, Nieves filed a notice of non-opposition to the Plumbers & Pipefitters’ motion, recognizing that Nieves “[did] not appear to have the largest financial interest [in the Action].” On June 7, 2016, the presiding District Court issued an order appointing the Plumbers & Pipefitters as lead plaintiff and Cohen Milstein as lead counsel.

On August 15, 2016, in accordance with the District Court's June 29, 2016 stipulated scheduling order, the Plumbers & Pipefitters filed an amended complaint naming the Parent Debtor, Kevin Davis and Amir Rosenthal as defendants, and removing Mark Vendetti from the amended complaint. The presiding District Court has not certified the Class, no motion seeking Class certification has been filed with the District Court or any other court, and the Debtors dispute all allegations asserted in the Class Action Complaint. On October 13, 2016, Performance Sports Group Ltd. filed a motion to dismiss the amended complaint. Plaintiffs responded on November 3, 2016, by filing a second amended complaint. In light of Performance Sports Group Ltd.'s bankruptcy, the district court issued a stay on November 9, 2016, which remains in place as to the Parent Debtor.

On or before the General Bar Date, the Plumbers & Pipefitters National Pension Fund filed a putative class action proof of claim, on behalf of itself and purportedly on behalf of the Putative Class, based on the allegations set forth in the Class Action Complaint (the "Purported Securities Class Action Claim") [Proof of Claim No. 444].

On or before the General Bar Date, the Plumbers & Pipefitters National Pension Fund, in its individual capacity, filed an individual proof of claim based on the allegations set forth in the Class Action Complaint (the "Individual Securities Damages Claim") [Proof of Claim No. 494].

2. The Securities Claims – Treatment

Prior to the Confirmation Hearing, the Debtors and the Equity Committee will object to the Purported Securities Class Action Claim. The Debtors and the Equity Committee believe that the Purported Securities Class Action Claim should be disallowed and expunged in its entirety pursuant to both U.S. bankruptcy law and Canadian law. The entry of an order disallowing the Purported Securities Class Action Claim is a condition precedent to confirmation of the Plan. Prior to the Confirmation Hearing, the Equity Committee shall file an objection to the Purported Securities Class Action Claim seeking entry of an Order disallowing and expunging the Purported Securities Class Action Claim in its entirety.

In addition, the Debtors will reserve \$928,077 in Cash on or before the Confirmation Date for the Individual Securities Damages Claim, representing the amount of the damages alleged in the Individual Securities Damages Claim. To the extent that the Individual Securities Damages Claim is Allowed by a Final Order, as soon as reasonably practicable thereafter, the Distribution Agent shall pay such Allowed Claim in Cash and solely from and up to the amount of the Individual Securities Damages Claim Reserve. For the avoidance of doubt, the Individual Securities Damages Claim shall not receive any distribution on account of any Allowed Individual Securities Damages Claim in excess of the Individual Securities Damages Claim Reserve, and such Claim shall not be treated as a Parent Equity Interest notwithstanding section 510(b) of the Bankruptcy Code and the applicable provisions of the CCAA. The Debtors, their Estates and the Equity Committee (and, after the Effective Date, the Liquidation Trust and the Reorganized Parent Debtor) reserve all rights to object to the Individual Securities Damages Claim at any time.

If Allowed, and absent the proposed treatment set forth in the Plan, the Securities Claims would be subordinated to General Unsecured Claims and would have the same priority as the

Parent Equity Interests under section 510(b) of the Bankruptcy Code and, arguably, under the CCAA.

Section 510(b) of the Bankruptcy Code provides:

For the purpose of distribution under this title, a claim arising from rescission of a purchase or sale of a security of the debtor or of an affiliate of the debtor, for damages arising from the purchase or sale of such a security, or for reimbursement or contribution allowed under section 502 on account of such a claim, shall be subordinated to all claims or interests that are senior to or equal the claim or interest represented by such security, except that if such security is common stock, such claim has the same priority as common stock.

11 U.S.C. § 510(b).

Similarly, the section 6(8) of the CCAA provides:

6. (8) No compromise or arrangement that provides for the payment of an equity claim is to be sanctioned by the court unless it provides that all claims that are not equity claims are to be paid in full before the equity claim is to be paid.

...

equity claim means a claim that is in respect of an equity interest, including a claim for, among others,

...

(d) a monetary loss resulting from the ownership, purchase or sale of an equity interest or from the rescission, or, in Quebec, the annulment, of a purchase or sale of an equity interest, or

...

Notwithstanding the foregoing, under the Plan, to the extent Allowed, the Allowed Individual Securities Damages Claim would not have the same priority as the Parent Equity Interests, but rather, would be paid ahead of such Parent Equity Interests from the Individual Securities Damages Claim Reserve, up to the amount of such Reserve. Accordingly, the proposed treatment of any Allowed Individual Securities Damages Claim under the Plan is better than what such Allowed Individual Securities Damages Claim is entitled to under the Bankruptcy Code and applicable U.S. case law and arguably Canadian case law. For the avoidance of doubt, the Debtors, with the consent of the Equity Committee, reserve the right to modify the Plan at any time prior to the Confirmation Hearing with respect to the proposed treatment of the Individual Securities Damages Claim thereunder, including, without limitation, providing that the Individual Securities Damages Claim, to the extent Allowed, will be subordinated to the level of Parent Equity Interests under the Plan.

3. The SEC Claim

On May 10, 2016, the SEC's Enforcement Division in Boston orally notified the Parent Debtor that it was opening a non-public inquiry with respect to the Parent Debtor. The Parent Debtor, through its advisors, has been responding, and continues to respond, to the SEC's inquiries and subsequent questions and requests for information and documentation.

On or before the Government Unit Bar Date, the SEC filed the SEC Claim based on the issues above. The SEC Claim is unliquidated and disputed. Pursuant to the Plan, treatment of the SEC Claim, and voting rights in respect of the SEC Claim, remain to be determined. At this time, there is no agreement with the SEC about the treatment of the SEC Claim.

VIII. SIGNIFICANT SETTLEMENTS; PRESERVATION OF CERTAIN TAX ASSETS

A. Settlement of Purchase Price Dispute

Shortly before the closing of the Sale, a dispute about the total Closing Purchase Price (as defined in the Purchase Agreement) payable under the Purchase Agreement arose. The Purchase Agreement provided that Cash was payable at closing in an amount equal to \$575 million (a) *plus* or *minus*, as applicable, the amount of certain property tax adjustments, (b) *minus* the "Specified Assumed Liability Deduction Amount" (as defined therein) and (c) *minus* the PCR AE Holdback Amount (as defined therein). *See* Purchase Agreement § 2.6. The dispute concerned whether the "Specified Assumed Liability Deduction Amount" included the capitalized amount of a certain non-residential real property lease located in Thousand Oaks, California (the "California Lease") as a deduction from the Closing Purchase Price. The Purchaser argued that the California Lease was a capital lease, the capitalized amount of which – approximately \$12 million – should be deducted from the Closing Purchase Price. The Debtors, on the other hand, asserted that the California Lease was an ordinary operating lease, for which no deduction from the Closing Purchase Price was required.

To facilitate the closing of the Sale, the Debtors and the Purchaser agreed to hold the disputed amount in an escrow pending resolution of the California lease dispute. Following negotiations between the Purchaser and the Debtors, and with the Committees' consent, the Debtors entered into a stipulation with the Purchaser that resolved the dispute. Pursuant to the stipulation, the Debtors and Purchaser received approximately \$8 million and \$4 million of the escrowed funds, respectively. The stipulation also provided certain mutual releases.

On July 13, 2017, the Debtors filed a Certification of Counsel requesting that the Court enter an order approving the stipulation [Docket No. 1194], which order the Bankruptcy Court entered on July 17, 2017 [Docket No. 1197]. The Canadian Court approved the stipulation on the same date. For more information regarding the terms of the stipulation, please consult the governing documents [Docket Nos. 1194 and 1197], the terms of which are incorporated herein by reference.

B. **Preservation of Certain Tax Assets**

As noted above, at the First Day Hearing and thereafter, the Debtors obtained entry of orders establishing procedures governing the trading of Parent Equity Interests (the “Equity Trading Procedures”). The Debtors established the Equity Trading Procedures to preserve the potential value of their net operating loss carryforwards, any capital losses, unrealized built-in losses, and certain other tax and business credits and other tax assets (collectively, the “Tax Assets”). The Tax Assets could be impaired if a “change in control” was deemed to occur under section 382 of the Internal Revenue Code on account of certain trades in the Parent Equity Interests (a “Section 382 Ownership Change”). Importantly, the existence of the Tax Assets protected the Debtors from incurring potentially significant income tax liabilities in the U.S. that would have otherwise been payable upon closing of the Sale.

1. **Stornoway Recovery Fund Transfer**

On March 16, 2017, Ravensource Fund and Stornoway Recovery Fund LP, funds managed by Stornoway Portfolio Management Inc., each provided the Debtors with notice of intent to initiate the purchase of a certain number of Parent Equity Interests. The Debtors believed that, if allowed to occur as originally proposed, the proposed transactions would have resulted in a change of control that could have diminished the value of the Debtors’ Tax Assets. [See Docket Nos. 917 and 918]. In consultation with their legal and financial advisors, the Debtors determined that it was necessary to object to the proposed acquisitions in order to preserve the Tax Assets. Accordingly, on April 17, 2017, the Debtors filed their *Objection to Notices of Intent to Purchase, Acquire, or Otherwise Accumulate an Equity Interests Filed by Stornoway Portfolio Management Inc.* [Docket No. 1014]. Thereafter, the Debtors, the Equity Committee, Ravensource Fund and Stornoway Recovery Fund LP negotiated a resolution of the trade requests and consensually reduced the number of Parent Equity Interests Stornoway Recovery Fund LP would acquire so as to preserve the Debtors’ Tax Assets. See *Debtors’ Notice of Allowance of Stock Trades by Stornoway Recovery Fund LP and Ravensource Fund* [Docket No. 1089] filed on May 19, 2017.

2. **Preservation of Tax Assets**

As of the closing of the Sale, the Debtors retained Tax Assets. The Debtors, along with the Equity Committee, focused throughout the Chapter 11 Cases on maximizing tax efficiencies and the value of the Tax Assets. Towards that end, the Debtors, at the request of the Equity Committee and in consultation with the Monitor, explored various alternate plan structures, including structures pursuant to which some or all of the Tax Assets potentially could be monetized for the benefit of stakeholders. In the end, the Debtors and the Equity Committee determined that the alternate plan structures that were devised to potentially monetize the Tax Assets were not reasonably practicable under the circumstances of the Debtors’ cases, or cost effective under applicable law.

3. **The Bybrook Purchases**

Bybrook Capital LLP or the funds it advised (collectively, “Bybrook”) traded Parent Equity Interests in a manner that could have materially impaired the Tax Assets. More

specifically, Bybrook executed transactions that potentially caused a Section 382 Ownership Change if left unremedied. On July 12, 2017, the Parent Debtor and Bybrook entered into a stipulation (the “Bybrook Stipulation”) pursuant to which Bybrook agreed to dispose of certain of the Parent Equity Interests that it had acquired. The Bybrook Stipulation also acknowledged that such trades were void *ab initio*, [Docket No. 1187]. The Bankruptcy Court approved the Bybrook Stipulation on July 13, 2017 [Docket No. 1192].

Had the U.S. Debtor undergone a Section 382 Ownership Change because of Bybrook’s purchases, or for any other reason, the U.S. Debtors could have faced significant cash tax liabilities in connection with the Sale. The Reorganized Parent Debtor intends to take the position that the implementation of the transactions described in the Bybrook Stipulation eliminates any potential adverse tax consequences arising from a potential Section 382 Ownership change resulting from the Bybrook stock acquisitions, consistent with private rulings that the Service has given other taxpayers in similar circumstances. However, private rulings may be relied upon only by the recipient; therefore, the existing rulings are not substantive authority on which the U.S. Debtors can rely, and the Debtors do not intend to seek a ruling from the Service with respect to the Bybrook purchases or the transactions contemplated by the Bybrook Stipulation. Thus, there can be no assurance that the Bybrook purchases did not impair the Tax Assets of the U.S. Debtors. Furthermore, because the rules under section 382 of the Tax Code are highly complex, no assurance can be given that another transaction has not triggered, or will not trigger, a Section 382 Ownership Change prior to the implementation of the Plan. *See Article VIII.B. – Preservation of Certain Tax Assets.*

4. The Brookfield Sales

On November 21, 2016, Brookfield Asset Management Inc., and affiliated entities Brookfield Private Equity Inc., Brookfield Private Equity Group Holdings LP, Brookfield Capital Partners Ltd., Brookfield Asset Management Private Institutional Capital Adviser (Private Equity), L.P., PubCo Investments LP, 2484842 Ontario Limited, 251091708 Delaware LP, Partners Limited, and BCP GP Limited (collectively, the “Brookfield Entities”) each filed a *Notice of Status of Substantial Shareholder* pursuant to which the Brookfield Entities stated that they beneficially owned 6,026,860 (or approximately 13.23%) of Parent Equity Interests. [Docket Nos. 166, 167, 168, 169, 170, 171, 173, 174, 175, 176]. Pursuant to a Schedule 13D, dated April 4, 2017, filed by the Brookfield Entities, and certain other filings, the Brookfield Entities state that they sold an aggregate of 6,026,860 shares of Parent Equity Interests in the open market during the period March 29, 2017 through April 6, 2017. In consultation with their legal and financial advisors, the Debtors determined that these transactions did not compromise the Tax Assets, and therefore it was not necessary to object to the transactions or exercise their rights provided for in the Equity Trading Procedures to unwind or otherwise seek to invalidate the transactions. Accordingly, on May 19, 2017, the Debtors filed their *Notice of Allowance of Stock Trades by Substantial Shareholder* [Docket No. 1095].

IX. SUMMARY OF PLAN AND CLASSIFICATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS THEREUNDER

A. Summary of Plan

The Plan is a plan of liquidation, pursuant to which the net proceeds from the Sale, the remaining Assets, and/or any recoveries in connection with the Retained Causes of Action are being distributed to persons or entities holding Allowed Claims and Equity Interests in accordance with the priorities of the Bankruptcy Code and the CCAA, as modified by the Global Settlement, under the Plan as summarized below.

THE FOLLOWING CHARTS SUMMARIZE THE CLASSIFICATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS UNDER THE PARENT DEBTOR PLAN AND THE SUBSIDIARY DEBTORS' PLANS, RESPECTIVELY, AND THE POTENTIAL DISTRIBUTIONS THEREUNDER. THE AMOUNTS SET FORTH BELOW ARE ESTIMATES ONLY. REFERENCE SHOULD BE MADE TO THE ENTIRE DISCLOSURE STATEMENT AND THE PLAN FOR A COMPLETE DESCRIPTION OF THE CLASSIFICATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS. THE RECOVERIES SET FORTH BELOW ARE PROJECTED RECOVERIES AND ARE THEREFORE SUBJECT TO CHANGE. THE ALLOWANCE OF CLAIMS MAY BE SUBJECT TO LITIGATION OR OTHER ADJUSTMENTS, AND ACTUAL RECOVERIES TO HOLDERS OF PARENT EQUITY INTERESTS MAY DIFFER MATERIALLY FROM THESE ESTIMATED AMOUNTS. FOLLOWING THE CHART IS THE DESCRIPTION OF THE TREATMENT OF THE CLAIMS AND EQUITY INTERESTS UNDER THE PLAN.

1. Parent Debtor Plan: Claims Against and Equity Interests in Old PSG Wind-down Ltd. (f/k/a Performance Sports Group Ltd.)

Class	Claim or Equity Interest	Status	Voting Rights	Estimated Percentage Recovery
P1	Secured Claims	Unimpaired	Deemed to Accept	100% of Allowed Claim
P2	Priority Non-Tax Claims	Unimpaired	Deemed to Accept	100% of Allowed Claim
P3	SEC Claim	To be determined	To be Determined	To be Determined
P4	General Unsecured Claims	Impaired	Entitled to Vote	100% of Allowed Claim

Class	Claim or Equity Interest	Status	Voting Rights	Estimated Percentage Recovery
P5	Intercompany Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)	Reinstatement
P6	Individual Securities Damages Claim	Unimpaired	Not Entitled to Vote (Deemed to Accept)	100% of Allowed Claim (up to Individual Securities Damages Claim Reserve amount)
P7	Parent Equity Interests	Impaired	Entitled to Vote	Pro Rata share of Shareholder Distributable Assets, which is anticipated to be within a range of \$____ to \$____ per share

2. **Subsidiary Debtor Plans: Claims Against and Equity Interests in Subsidiary Debtors**

Class	Claim or Equity Interest	Status	Voting Rights	Estimated Percentage Recovery
1	Secured Claims	Unimpaired	Deemed to Accept	100%
2	Priority Non-Tax Claims	Unimpaired	Deemed to Accept	100% of Allowed Claim
3	General Unsecured Claims	Impaired	Entitled to Vote	100% of Allowed Claim

4	Intercompany Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)	Reinstatement
5	Intercompany Equity Interests	Unimpaired	Deemed to Accept	Reinstatement

B. Administrative Claims

1. Administrative Expense Claims

Except to the extent that (a) an Allowed Administrative Claim has been previously Paid in Full during the Chapter 11 Cases, (b) the Plan provides for other treatment of an Allowed Administrative Claim, or (c) the Holder of an Allowed Administrative Claim agrees to less favorable treatment, on or as soon as reasonably practicable after the later of (i) the Effective Date or (ii) the first Business Day after the date that is thirty (30) days after the date an Administrative Claim becomes an Allowed Claim, each Holder of an Allowed Administrative Claim shall be Paid in Full in Cash.

2. Administrative Claims Bar Date

The Holder of an Administrative Claim, other than: (a) a Fee Claim; (b) claims of Alvarez & Marsal North America, LLC for services performed and expenses incurred in accordance with its retention order entered in the Chapter 11 Cases [Docket No. 222]; (c) an Administrative Claim that has been Allowed on or before the Effective Date; (d) a claim for U.S. Trustee Fees, or (e) the Canada Revenue Agency or any other Canadian or provincial taxing authority for which a post-petition tax return must be filed, must submit to the Claims and Solicitation Agent a request for such Administrative Claim so as to be received by 5:00 p.m. (prevailing Eastern Time) on the date that is no more than thirty (30) days after service of the Notice of Effective Date. Such request must include at a minimum: (i) the name of the Debtor(s) that are purported to be liable for the Administrative Claim; (ii) the name of the Holder of the Administrative Claim; (iii) the amount of the Administrative Claim; (iv) the basis of the Administrative Claim; and (v) all supporting documentation for the Administrative Claim.

The Canada Revenue Agency or any other Canadian or provincial taxing authority for which a post-petition tax return must be filed must submit to the Claims and Solicitation Agent or the Monitor a request for such Administrative Claim so as to be received by 5:00 p.m. (prevailing Eastern Time) on the date that is no more than ninety (90) days after the applicable post-petition tax return has been filed.

FAILURE TO FILE AND SERVE SUCH REQUEST TIMELY AND PROPERLY SHALL RESULT IN THE ADMINISTRATIVE CLAIM BEING FOREVER BARRED AND UNABLE TO COLLECT FROM THE ASSETS OF THE DEBTORS.

3. Fee Claims

(a) Fee Claims Generally

All Fee Claims must be filed with the Bankruptcy Court and served on (i) the Liquidation Trustee and its counsel, (ii) the U.S. Trustee, (iii) U.S. counsel to the Debtors, (iv) counsel to the Creditors' Committee, (v) counsel to the Equity Committee, and (vi) the Fee Examiner, no later than the Fee Claims Bar Date. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code and prior orders of the Bankruptcy Court in the Chapter 11 Cases, including Docket Nos. 226 and 521, the Bankruptcy Court shall determine the Allowed amounts of such Fee Claims. For the avoidance of doubt, (i) any Canadian Fee Claims shall be paid in accordance with the Cross-Border Protocol and do not need to be filed with the Bankruptcy Court on or before the Fee Claims Bar Date and (ii) the fees of any U.S. Professional retained pursuant of an order of the Bankruptcy Court shall be paid in accordance with the orders of the Bankruptcy Court and do not need to be filed with the Canadian Court.

FAILURE TO PROPERLY FILE AND SERVE FINAL FEE APPLICATIONS BY THE FEE CLAIMS BAR DATE SHALL RESULT IN THE UNDERLYING FEE CLAIMS BEING FOREVER BARRED AND UNABLE TO COLLECT FROM THE DEBTORS' ESTATES.

(b) Objections to Fee Claims

Objections to Fee Claims, if any, must be filed and served on the party asserting the objectionable Fee Claim and each of the parties to be served with a Fee Claim under the Plan no later than twenty (20) days after the filing of the Fee Claim or such other date as may be established by the Bankruptcy Court. Additionally, the Fee Examiner shall review Fee Claims as set forth in the Fee Examiner Order.

(c) Payment of Fee Claims

Upon entry of an order by the Bankruptcy Court Allowing a Fee Claim, the Distribution Agent shall promptly pay the applicable U.S. Professional the Allowed Fee Claim from the Holdback Amount to the extent necessary to pay the Allowed Fee Claim in full *less* any amounts previously received by such U.S. Professional pursuant to the Interim Compensation Order. If the Holdback Amount for any given U.S. Professional is less than the Allowed Fee Claim, the Distribution Agent shall promptly pay the difference to the U.S. Professional from the net Sale Proceeds notwithstanding the insufficiency of the Holdback Amount. For the avoidance of doubt, (i) the Interim Compensation Order will govern the payment and allowance of any Fee Claim through the Effective Date and (ii) Canadian Fee Claims shall be paid by the Debtors in accordance with the Cross-Border Protocol and any procedures adopted by the Canadian Court.

(d) Success and Transaction Fee Applications

Applications for the allowance and payment of success and transaction fees, unless approved by the Bankruptcy Court prior to the Confirmation Date, must be filed with the Bankruptcy Court and served on (i) the Liquidation Trustee and its counsel, (ii) the U.S. Trustee, (iii) U.S. counsel to the Debtors, (iv) counsel to the Creditors' Committee, and (v) counsel to the

Equity Committee no later than forty-five (45) days after the Effective Date. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code and prior orders of the Bankruptcy Court in the Chapter 11 Cases, the Bankruptcy Court shall determine the Allowed amounts of such success and transaction fees, if any, which Allowed amounts the Distribution Agent shall promptly pay.

FAILURE TO FILE AND SERVE A TRANSACTION FEE APPLICATION IN A TIMELY MANNER SHALL RESULT IN THE UNDERLYING CLAIM BEING FOREVER BARRED AND THE HOLDER THEREOF UNABLE TO COLLECT FROM THE ASSETS OF THE DEBTORS.

Objections to requests for allowance and payment of success and transaction fees, if any, must be filed and served on the party asserting the objectionable success or transaction fee claim and each of the parties to be served with such success or transaction fee request under the Plan no later than twenty (20) days after the filing of the requests for allowance and payment of success and transaction fees or such other date as may be established by the Bankruptcy Court. Consistent with the terms of the Fee Examiner Order, the Fee Examiner shall not review success or transaction fee requests.

(e) U.S. Trustee Fees

All fees payable pursuant to 28 U.S.C. § 1930(a) shall be paid by the Distribution Agent on behalf of each Debtor for each quarter (including any fraction thereof) until such Debtor's Chapter 11 Case is converted, dismissed, or a Final Decree is issued, whichever occurs first.

(f) Canadian Fee Claims

All Canadian Fee Claims will be paid by the Debtors in consultation with the Monitor in accordance with and pursuant to the CCAA Approval Order and until the CCAA Approval Order Date, in the ordinary course in the CCAA Proceedings as such Canadian Fee Claims become due and payable.

4. Priority Tax Claims

To the extent not previously paid during the Chapter 11 Cases or the CCAA Proceedings, and except to the extent a Holder of an Allowed Priority Tax Claim agrees to less favorable treatment, a Holder of an Allowed Priority Tax Claim shall receive either (a) on or as soon as practicable after the later of (i) the Effective Date or (ii) the first Business Day after the date that is thirty (30) days after the date a Priority Tax Claim becomes an Allowed Claim, Cash in an amount equal to such Allowed Claim, or (b) deferred Cash payments following the Effective Date, over a period not exceeding five years from the Petition Date (provided, however, that, in accordance with the CCAA, Priority Tax Claims held by the CRA, the Canadian federal government or a Canadian provincial government shall instead be paid over the course of a period not to exceed six (6) months). Any Claim or demand for fines or penalties related to a Priority Tax Claim assessed after the Petition Date shall be disallowed and the Holder of an Allowed Priority Tax Claim shall not assess or attempt to collect any such fine or penalty.

5. **CCAA Charge Claims**

To the extent not previously paid during the Chapter 11 Cases or the CCAA Proceedings, a Holder of an Allowed CCAA Charge Claim shall be paid in Cash in an amount equal to such Allowed Claim in accordance with the CCAA Approval Order or as otherwise agreed between the applicable Debtor, with the consent of the Monitor and the Holder.

C. **Treatment of Classified Claims and Equity Interests in Parent Debtor**

1. **Class P1 – Secured Claims**

- (a) **Treatment:** On or as soon as practicable after the Effective Date, each Holder of a Class P1 Allowed Secured Claim, if any, shall receive in full and final satisfaction, settlement, and release of and in exchange for such Allowed Secured Claim: (a) the return of the Collateral securing such Allowed Secured Claim; (b) Cash equal to 100% of the amount of such Allowed Secured Claim and Post-Petition Interest required to be paid under section 506(b) of the Bankruptcy Code; (c) such other treatment as will render the Holder of such Allowed Secured Claim Unimpaired; or (d) such other treatment as to which the Holder of such Allowed Secured Claim has agreed to in writing.
- (b) **Voting:** Class P1 is Unimpaired under the Plan. The Holders of Class P1 Allowed Secured Claims are conclusively deemed to accept the Plan pursuant to section 1126(f) of the Bankruptcy Code, and are not entitled to vote to accept or reject the Plan.

2. **Class P2 – Priority Non-Tax Claims**

- (a) **Treatment:** Unless the Holder agrees to a different treatment, on or as soon as practicable after the later of the Effective Date or the date a Priority Non-Tax Claim becomes an Allowed Priority Non-Tax Claim, each Holder of an Allowed Priority Non-Tax Claim shall receive Payment in Full in Cash with Post-Petition Interest, or such other treatment as will render the Allowed Priority Non-Tax Claim Unimpaired.
- (b) **Voting:** Class P2 is Unimpaired under the Plan. The Holders of Class P2 Priority Non-Tax Claims are conclusively deemed to accept the Plan pursuant to section 1126(f) of the Bankruptcy Code, and are not entitled to vote to accept or reject the Plan.

3. **Class P3 – SEC Claim**

- (a) **Treatment:** To be determined.
- (b) **Voting:** To be determined.

4. **Class P4 – General Unsecured Claims**

- (a) Treatment: To the extent not already Paid in Full or otherwise satisfied prior to the Effective Date, on or as soon as practicable after the later of (i) the Effective Date or (ii) the date a General Unsecured Claim becomes an Allowed General Unsecured Claim, each Holder of an Allowed General Unsecured Claim shall receive Payment in Full in Cash of the Allowed amount of its Claim. For the avoidance of doubt, in accordance with the Global Settlement, Holders of Allowed General Unsecured Claims shall not receive Post-Petition Interest on account of such Allowed General Unsecured Claims.
- (b) Voting: Class P4 is Impaired under the Plan because the Global Settlement governs the treatment of General Unsecured Claims under the Plan. The Holders of Class 4 General Unsecured Claims are entitled to vote to accept or reject the Plan.

5. **Class P5 – Intercompany Claims**

- (a) Treatment: On or after the Effective Date, each Intercompany Claim shall be Reinstated, subject to the rights of Holders of General Unsecured Claims in Class P4 under the Plan (including the Global Settlement) and the CCAA Approval Order, and any Cash or Assets of the U.S. Debtors that are required to be distributed pursuant to the Plan (including the Retained Causes of Action and Liquidation Trust Expense Reserve) shall be transferred by the U.S. Debtors to the Reorganized Parent Debtor in satisfaction of the same amount of such applicable Intercompany Claims, and Intercompany Claims shall receive such additional or different treatment as will be set forth in the Plan Supplement.
- (b) Voting: Class P5 is Unimpaired under the Plan. Each Holder of a Class P5 Intercompany Claim is conclusively deemed to accept the Plan pursuant to section 1126(f) of the Bankruptcy Code, and is not entitled to vote to accept or reject the Plan.

6. **Class P6 –Individual Securities Damages Claim**

- (a) Treatment: To the extent that the Individual Securities Damages Claim is Allowed by a Final Order, as soon as reasonably practicable thereafter, the Distribution Agent shall pay such Allowed Claim in Cash and solely from and up to the amount of the Individual Securities Damages Claim Reserve, subject to the rights of Holders of General Unsecured Claims to the prior Payment in Full of such Holders' Allowed Claims under the Plan

(including the Global Settlement). For the avoidance of doubt, the Individual Securities Damages Claim shall not receive any distribution on account of any Allowed Individual Securities Damages Claim in excess of the Individual Securities Damages Claim Reserve, and such Claim shall not be treated as a Parent Equity Interest notwithstanding section 510(b) of the Bankruptcy Code and the CCAA.

- (b) Voting: Class P6 is Unimpaired under the Plan. The Holder of the Class P6 Individual Securities Damages Claim is conclusively deemed to accept the Plan pursuant to section 1126(f) of the Bankruptcy Code, and is not entitled to vote to accept or reject the Plan.

7. **Class P7 – Parent Equity Interests**

Treatment: Holders of Parent Equity Interests will receive their Pro Rata share of the Shareholder Distributable Assets under, and subject to, the Plan (including the Global Settlement) and the CCAA Approval Order. The Plan allows Holders of Parent Equity Interests to elect to receive certain of such Plan consideration in the form of either Beneficial Trust Interests (and a right to receive their Pro Rata share of any other Shareholder Distributable Assets in accordance with the Plan) in exchange for their Parent Equity Interests, or to retain their Parent Equity Interests. Holders of Beneficial Trust Interests and Holders of Parent Equity Interests will receive distributions of equal amounts of Cash under the Plan per Parent Equity Interests on a Pro-Rata basis (other than differences attributable to the differing tax treatment of the Liquidation Trust and the Reorganized Parent Debtor that may consequently result in more or less favorable recoveries to Holders of Parent Equity Interests after consideration of the potentially differing rates and basis of taxation of the individual Holders). Article V.B.3 of the Plan further describes the distributions that will be made to Holders of Parent Equity Interests and Beneficial Trust Interests.

- (a) Parent Equity Interest Election. As noted, each Shareholder has the option of receiving its Plan consideration through the following two options, which will result in different tax implications for such Holder:

Option 1: Beneficial Holders of Allowed Parent Equity Interests may elect to have their Parent Equity Interests mandatorily purchased and cancelled in exchange for their Pro Rata share of Beneficial Trust Interests (and a right to receive their Pro Rata share of any other Shareholder Distributable Assets in accordance with the Plan) (“Option 1”).

To elect Option 1, beneficial Holders of Allowed Parent Equity Interests must submit a Liquidation Trust Certification Form on or before the Liquidation Trust Certification Bar Date using the instructions set forth therein. The Debtors shall cause the Liquidation Trust Certification Form to be mailed to Holders of Allowed Parent Equity Interests through the Holders of record at the same time as votes on the Plan are solicited from Holders of Parent Equity Interests, as set forth in the Disclosure Statement Order. Subject to the terms of the Plan and at the time prescribed by the Plan, the Holders of Allowed Parent Equity Interests who elect Option 1 shall have their Parent Equity Interests mandatorily purchased and cancelled in exchange for (i) a deemed distribution of the Liquidation Trust Assets attributable to them, (ii) a deemed distribution of their Pro Rata share of the Liquidation Trust Expense Reserve (followed immediately by a deemed contribution of such Pro Rata share to the Liquidation Trust) in accordance with the Plan, and (iii) a right to receive their Pro Rata share of any other Shareholder Distributable Assets in accordance with the Plan. The Holders of Parent Equity Interests electing to receive Beneficial Trust Interests as set forth in the Plan shall be deemed to immediately contribute their share of Liquidation Trust Assets to the Liquidation Trust.

Beneficial Holders of Allowed Parent Equity Interests may elect Option 1 or Option 2 only for all of their Allowed Parent Equity Interests. All beneficial Holders of Allowed Parent Equity Interests who fail to timely submit the Liquidation Trust Certification Form, who fail to properly make an election on the Liquidation Trust Certification Form, who make an election with respect to less than all of their Parent Equity Interests or who fail to take any action under the Plan shall be deemed to have elected Option 2 under the Plan.

Option 2: All Holders of Allowed Parent Equity Interests who do not elect Option 1 by the Liquidation Trust Certification Bar Date or who are deemed to have elected Option 2 shall retain their Allowed Parent Equity Interests through the Final Distribution Date (“Option 2”). On or after the Final Distribution Date, the Reorganized Parent Debtor shall be dissolved and all remaining Allowed Parent Equity Interests shall be cancelled. If any Holder of Allowed Parent Equity Interests elects Option 1 and the Liquidation Trust is subject to adverse tax consequences in Canada as a result of such Holder holding Beneficial Trust Interests, any transfer to such Holder and the cancellation of such Holder’s Parent Equity Interests shall be void ab initio and Reorganized Parent, the Holder and the Liquidation Trust shall treat such Holder at all times as if such Holder had elected Option 2 (the “Disallowed Election”).

- (b) Voting: Class P7 is Impaired under the Plan. The Holders of Class P7 Allowed Parent Equity Interests are entitled to vote to accept or reject the Plan.

D. Treatment of Classified Claims and Equity Interests in Subsidiary Debtors

1. Class 1 – Secured Claims

- (a) Treatment: On or as soon as practicable after the Effective Date, each Holder of a Class 1 Allowed Secured Claim, if any, shall receive in full and final satisfaction, settlement, and release of and in exchange for such Allowed Secured Claim: (a) the return of the Collateral securing such Allowed Secured Claim; (b) Cash equal to 100% of the amount of such Allowed Secured Claim and Post-Petition Interest required to be paid under section 506(b) of the Bankruptcy Code; (c) such other treatment as will render the Holder of such Allowed Secured Claim Unimpaired; or (d) such other treatment as to which the Holder of such Allowed Secured Claim has agreed to in writing.
- (b) Voting: Class 1 is Unimpaired under the Plan. The Holders of Class 1 Allowed Secured Claims are conclusively deemed to accept the Plan pursuant to section 1126(f) of the Bankruptcy Code, and are not entitled to vote to accept or reject the Plan.

2. Class 2 – Priority Non-Tax Claims

- (a) Treatment: Unless the Holder agrees to a different treatment, on or as soon as practicable after the later of the Effective Date or the date a Priority Non-Tax Claim becomes an Allowed Priority Non-Tax Claim, each Holder of an Allowed Priority Non-Tax Claim shall receive Payment in Full in Cash with Post-Petition Interest, or such other treatment as will render the Allowed Priority Non-Tax Claim Unimpaired.
- (b) Voting: Class 2 is Unimpaired under the Plan. The Holders of Class 2 Priority Non-Tax Claims are conclusively deemed to accept the Plan pursuant to section 1126(f) of the Bankruptcy Code, and are not entitled to vote to accept or reject the Plan.

3. Class 3 – General Unsecured Claims

- (a) Treatment: To the extent not already Paid in Full or otherwise satisfied prior to the Effective Date, on or as soon as practicable after the later of (i) the Effective Date or (ii) the date a General Unsecured Claim becomes an Allowed General Unsecured Claim, each Holder of an Allowed General Unsecured Claim shall receive Payment in Full in Cash of the Allowed amount of its Claim. For the avoidance of doubt, Holders of Allowed General Unsecured Claims shall not receive Post-Petition Interest on account of such Allowed General Unsecured Claims.

- (b) Voting: Class 3 is Impaired under the Plan because the Global Settlement governs the treatment of General Unsecured Claims under the Plan. The Holders of Class 3 General Unsecured Claims are entitled to vote to accept or reject the Plan.

4. **Class 4 – Intercompany Claims**

- (a) Treatment: On or after the Effective Date, each Intercompany Claim shall be Reinstated, subject to the rights of Holders of General Unsecured Claims in Class 3 under the Plan (including the Global Settlement) and the CCAA Approval Order, and any Cash or Assets of the U.S. Debtors that are required to be distributed pursuant to the Plan (including the Retained Causes of Action and Liquidation Trust Expense Reserve) shall be transferred by the U.S. Debtors to the Reorganized Parent Debtor in satisfaction of the same amount of such applicable Intercompany Claims, and any other Intercompany Claims shall receive such additional or different treatment as will be set forth in the Plan Supplement.
- (b) Voting: Class 4 is Unimpaired under the Plan. Each Holder of an Intercompany Claim is therefore conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, each Holder of an Intercompany Claim is not entitled to vote to accept or reject the Plan.

5. **Class 5 – Intercompany Equity Interests**

- (a) Treatment: On the Effective Date, the Holders of Class 5 Intercompany Equity Interests in each Subsidiary Debtor shall receive such treatment as set forth in the Plan Supplement, subject to the rights of Holders of General Unsecured Claims in Class 3 under the Plan (including the Global Settlement) and the CCAA Approval Order.
- (b) Voting: Class 5 is Unimpaired under the Plan. Each Holder of an Intercompany Equity Interest is conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, each Holder of an Intercompany Equity Interest is not entitled to vote to accept or reject the Plan.

E. **RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order, CCAA Approval Order and the occurrence of the Effective Date, the Canadian Court shall retain the broadest jurisdiction over the CCAA Proceedings and the Bankruptcy Court shall retain the broadest jurisdiction over the Chapter 11 Cases after the Effective Date as legally permissible for among other things, the purposes set forth in Article XII of the Plan.

F. MISCELLANEOUS PROVISIONS

1. Corporate Action

Upon the Effective Date, all actions contemplated by the Plan shall be deemed authorized, approved, and, to the extent taken prior to the Effective Date, ratified without any requirement for further action by Holders of Claims or Equity Interests, directors, or officers of the Debtors or any other Person, as applicable, including: (a) the execution and delivery of all appropriate agreements or other documents of merger, consolidation, restructuring, conversion, disposition, transfer, dissolution or liquidation containing terms that are consistent with the terms of the Plan, and that satisfy the requirements of any other terms on which the applicable parties may agree; (b) the execution and delivery of appropriate instruments of transfer, assignment, assumption or delegation of any asset, property, right, liability, debt or obligation on terms consistent with the terms of the Plan and having other terms on which the applicable parties may agree; (c) rejection or assumption, as applicable, of Executory Contracts; (d) the filing of appropriate certificates or articles of amendment or organization, reincorporation, merger, amalgamation, consolidation, conversion or dissolution, and bylaws reflecting the corporate governance changes and dissolutions contemplated by the Plan or as are otherwise appropriate to effectuate the intent of the Plan; and (e) all other actions that the Monitor, Debtors, Chief Wind-Down Officer or Liquidation Trustee determine to be necessary or appropriate, including making filings or recordings that may be required by applicable law. All matters provided for in the Plan involving the corporate structure of the Debtors, and any corporate action required by the Debtors in connection therewith, shall be deemed to have occurred on, and shall be in effect as of, the Effective Date, without any requirement of further action by the security Holders, directors, authorized persons or officers of the Debtors. The authorizations and approvals contemplated by the Plan shall be effective notwithstanding any requirements under non-bankruptcy law.

2. Dissolution of the Committees

On the Effective Date, the Creditors' Committee and the Equity Committee shall each dissolve and all members, employees or agents thereof shall be released and discharged from all rights and duties arising from or related to the Chapter 11 Cases, other than the right to prepare, file, prosecute and object to Fee Claims. The Debtors shall not be responsible for paying any fees or expenses incurred by the members of or advisors to either the Creditors' Committee or the Equity Committee after the Effective Date, except for work preparing, filing, prosecuting and objecting to Fee Claims that would have also been compensable prior to the Effective Date.

3. Section 1146(a) Exemption

Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property under the Plan shall not be subject to any stamp tax or similar tax. Upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forego the collection of any such tax and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment.

4. Successors and Assigns

The rights, benefits and obligations of any Person named or referred to in the Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, agent, representative, attorney, beneficiaries, or guardian, if any, of each Person, including those of the Debtors.

5. Term of Injunction or Stay

Unless otherwise provided in the Plan, the Confirmation Order, or a separate order from the Bankruptcy Court, all injunctions or stays arising under or entered during the Chapter 11 Cases in accordance with sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date shall remain in full force and effect until the later of (i) the entry of a final decree closing the last of the Chapter 11 Cases or (ii) the date indicated in such applicable order. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms. Any stay of proceedings as provided in the CCAA Proceedings similarly is expected to continue after the Effective Date as specifically provided for in the CCAA Approval Order.

6. Entire Agreement

Except as otherwise indicated, the Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan. To the extent the Confirmation Order or CCAA Approval Order are inconsistent with the Plan, the Confirmation Order and CCAA Approval Order, as applicable, shall control for all purposes.

7. Good Faith

Confirmation of the Plan shall constitute a finding that: (i) the Plan has been proposed in good faith and in compliance with applicable provisions of the Bankruptcy Code; and (ii) the solicitation of acceptances or rejections of the Plan by all Persons has been in good faith and in compliance with applicable provisions of the Bankruptcy Code.

8. Severability

If prior to the entry of the Confirmation Order, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court, at the request of the Debtors, after consultation with the Creditors' Committee, Equity Committee and the Monitor shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in

accordance with the foregoing, is (a) valid and enforceable pursuant to its terms; (b) integral to the Plan; and (c) non-severable and mutually dependent.

X. IMPLEMENTATION OF THE PLAN

A. Plan Transactions

From and after the Effective Date, the Monitor, the Liquidation Trustee and/or the Reorganized Debtors, as applicable, may take all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan (the “Plan Transactions”), including: (1) the execution and delivery of any agreements or other documents of merger, consolidation, restructuring, conversion, disposition, transfer, dissolution or liquidation containing terms that are consistent with the terms of the Plan, or any other terms to which the applicable Entities may agree; (2) the execution and delivery of instruments of transfer, assignment, assumption or delegation of any asset, property, right, liability, debt or obligation on terms consistent with the terms of the Plan or having other terms for which the applicable parties agree; (3) the filing of certificates or articles of incorporation, reincorporation, merger, consolidation, conversion or dissolution and bylaws reflecting the corporate governance changes and dissolutions contemplated by the Plan or as are otherwise appropriate to effectuate the intent of the Plan; (4) the execution and delivery of the applicable documents included in the Plan Supplement; and (5) all other actions that the applicable Persons determine to be necessary or appropriate. For the purposes of effectuating the Plan, none of the Plan Transactions contemplated in the Plan constitute a change of control under any agreement, contract or document of the Debtors.

B. Sources of Consideration for Plan Distributions

Distributions under the Plan will be funded and made as follows:

1. Funding of the Reserves.

On the Effective Date, the Distribution Agent, on behalf of the Debtors, shall fund the Reserves in Cash from the Sale Proceeds or any other Cash then in the Estates in accordance with and in the amounts set forth in Article VI.C of the Plan to be held in the Reorganized Parent Debtor, except with respect to the Individual Securities Damages Reserve, which shall be held by the Monitor, until (1) the issuance of a Clearance Certificate (except in the case of the Holdback Amount Reserve, which does not require a Clearance Certificate to be paid to Professionals); (2) the decision of the Board of Directors of the Reorganized Parent Debtor to disburse such Reserves that are held by the Reorganized Parent Debtor rather than the Monitor; or (3) other arrangements are made in form satisfactory to the Monitor for Reserves held by the Monitor; provided, however, that at least \$100,000 of the Liquidation Trust Expense Reserve shall be funded into the Liquidation Trust within sixty (60) days of the Effective Date, unless the Board of Directors of the Reorganized Parent Debtor, with the consent of the Liquidation Trustee which consent shall not be unreasonably withheld, reasonably determines that such funding should not be made. The Distribution Agent shall have the authority to make distributions from the Canadian Sale Proceeds Account and the U.S. Sale Proceeds Account or other Estate accounts, to transfer funds to or from the Canadian Sale Proceeds Account and the U.S. Sale Proceeds

Account, and to close either or both of the Canadian Sale Proceeds Account and U.S. Sale Proceeds Account in accordance with the Plan and the CCAA Approval Order and to facilitate making distributions hereunder; provided, however, that the Distribution Agent shall keep records of all disbursements from and deposits made into the Canadian Sale Proceeds Account and U.S. Sale Proceeds Account or such other Estate accounts and shall provide the Reorganized Parent Debtor, the Monitor and the Liquidation Trust with monthly reconciliations of such transactions; and provided further, however, that the Distribution Agent shall not close the Canadian Sale Proceeds Account or U.S. Sale Proceeds Account without thirty (30) calendar days' prior notice to the Reorganized Parent Debtor, the Monitor and the Liquidation Trustee.

2. **Distributions to Holders of Allowed Claims**

The Distribution Agent shall Pay in Full in Cash all Allowed Claims under the Plan from the Sale Proceeds, other than the Individual Securities Damages Claim to the extent such Claim is Allowed after receipt of the Comfort Letters. The Distribution Agent shall pay the Allowed Amount, if any, of the Individual Securities Damages Claim in Cash solely from the Individual Securities Damages Claim Reserve.

3. **Distributions to Holders of Allowed Parent Equity Interests**

(i) Shareholder Distributable Assets

Holders of Allowed Parent Equity Interests will receive net proceeds from, or interests in, the following Assets under the Plan: (a) the interests in the Retained Causes of Action described in Section V.B.3(b) of the Plan; (b) the Liquidation Trust Expense Reserve (if not fully utilized for Wind-Down Expenses); (c) any Sale Proceeds remaining after the other Reserves are funded, Holders of Allowed Claims are Paid in Full in Cash, and the Wind-Down Expenses are paid in full in Cash to the extent such expenses are paid from the Sale Proceeds; and (d) any other Assets, including investment income earned on any Cash Assets (items (a) through (d) collectively, the "Shareholder Distributable Assets").

(ii) Reorganized Parent Debtor and Liquidation Trust Assets

As soon as practicable after the Effective Date, the Shareholder Distributable Assets other than any Cash (but including the interests in the Retained Causes of Action) held by the Estates on the Effective Date shall vest in either the Reorganized Debtors or the Liquidation Trust. As soon as practicable after the Effective Date, proportionate interests in the Retained Causes of Action shall be vested in the Reorganized Debtors for the benefit of the Holders of Allowed Parent Equity Interests who have elected or are deemed to have elected Option 2 and in the Liquidation Trust for the benefit of those Holders of Allowed Parent Equity Interests who have elected Option 1 in proportion to the percentages of Allowed Parent Equity Interests held respectively by the Holders of such Parent Equity Interests who have elected Option 1 and Option 2, respectively, as of the Liquidation Trust Certification Bar Date (the "Asset Apportionment"). By way of illustration, if 40% of the Holders of Parent Equity Interests elect to receive Beneficial Trust Interests pursuant to Option 1 as of the Liquidation Trust Certification Bar Date, then 60% of the Shareholder Distributable Assets will vest in the Reorganized Debtors and 40% of the Shareholder Distributable Assets (other than Cash) will vest in the Liquidation

Trust, subject to paragraph 3(iii) below. Notwithstanding anything to the contrary in the Plan, the Reorganized Debtors and the Liquidation Trust will cooperate with each other as necessary so that the Shareholder Distributable Assets will be owned by them in a manner that they determine in good faith will maximize the value of such assets under applicable law for all Holders of Allowed Parent Equity Interests, as mutually determined by the Debtors and Equity Committee or, after the Effective Date, the Liquidation Trustee and the Reorganized Debtors. The Debtors and the Liquidation Trust, or the Debtors and the Equity Committee prior to the Effective Date, reserve the right to take any action, and implement any structure as necessary to own the Shareholder Distributable Assets in such manner and as to effect the intent of the Plan.

From and after the Effective Date, the Cash (including the Sale Proceeds but excluding any Cash realized in respect of the Retained Causes of Action) shall vest in the Reorganized Debtors and shall be used by the Distribution Agent on behalf of the Debtors to (i) fund the Reserves; (ii) adequately reserve for or pay in Cash the Wind-Down Expenses; and (iii) Pay in Full the Allowed Claims (including all Allowed Fee Claims and Allowed Canadian Fee Claims to the extent such Claims exceed the Holdback Amount reserved for such Claims) in accordance with the Plan and the CCAA Approval Order (collectively, the “Initial Cash Distributions”). After all such payments have been made or reserved for in full, as mutually determined by the Liquidation Trustee, the Monitor and the Reorganized Parent Debtor, and following receipt of a Clearance Certificate, the remaining Sale Proceeds shall constitute Shareholder Distributable Assets and the Distribution Agent, at the direction of the Liquidation Trustee and the Reorganized Parent Debtor, shall transfer (or allocate) in accordance with the Asset Apportionment such remaining Cash to an account of the Reorganized Debtors and, at the election of the Liquidation Trustee, an account of the Liquidation Trust to make interim and final distributions to Holders of Parent Equity Interests or, if elected, Beneficial Trust Interests, respectively, as provided in the Plan.

Beneficial Holders of Parent Equity Interests who elect Option 1 under the Plan shall be deemed to receive their Pro Rata share of the Liquidation Trust Assets (and a right to receive their Pro Rata share of any other Shareholder Distributable Assets in accordance with the Plan) in exchange for the mandatory purchase and cancellation of their Parent Equity Interests, which Liquidation Trust Assets will be deemed immediately contributed to the Liquidation Trust in exchange for Beneficial Trust Interests, and the Parent Equity Interests of Holders electing Option 1 shall be mandatorily purchased and cancelled under the Plan. The Liquidation Trustee will make distributions on account of the Beneficial Trust Interests to Holders of such Beneficial Trust Interests in accordance with the Plan and the Liquidation Trust Agreement.

Beneficial Holders of Parent Equity Interests who elect Option 2 under the Plan or who are deemed to elect Option 2 under the Plan shall retain their Parent Equity Interests under the Plan up to and through the Final Distribution Date. The Distribution Agent will make distributions to Holders of Parent Equity Interests in accordance with the Plan and the CCAA Approval Order.

(iii) Pre-Dissolution Reconciliation

Notwithstanding anything in the Plan to the contrary, on or before the Final Distribution Date, the Liquidation Trustee and the Reorganized Parent Debtor shall take any reasonably

necessary actions to ensure that the beneficial Holders of Parent Equity Interests shall receive the same Pro Rata distributions of Cash from either the Reorganized Parent Debtor or Liquidation Trust pursuant to the Plan regardless of whether such Holders have elected Option 1 or Option 2 under the Plan (other than potential differences attributable to the differing tax treatment of the Liquidation Trust and Reorganized Parent Debtor under U.S. and Canadian tax laws or the individual tax circumstances of Holders of Parent Equity Interests or Beneficial Trust Interests). Such actions may include (i) a Cash transfer from the Liquidation Trust to the Reorganized Parent Debtor, (ii) a Cash transfer from the Reorganized Parent Debtor to the Liquidation Trust, or (iii) a direct payment by the Distribution Agent or the Liquidation Trustee, as applicable, to Holders of Allowed Parent Equity Interests or Beneficial Trust Interests in an amount necessary to effect such treatment; provided, however, such actions shall not consider or otherwise compensate for the time-value of money, interim fluctuations in currency value, or certain tax liabilities of the Debtors as may be set forth in the Plan Supplement.

4. **Payment of Wind-Down Expenses**

On or before the Effective Date, the Debtors, and after the Effective Date, the Reorganized Parent Debtor or the Liquidation Trust as the case may be, shall pay in Cash: (i) any fees, costs and expenses of the Liquidation Trust in accordance with the Liquidation Trust Agreement (including fees, costs and expenses related to the Retained Causes of Action incurred prior to the date the Liquidation Trust Expense Reserve is funded); (ii) any fees, costs and expenses of the Monitor; (iii) any fees, costs and expenses of the Distribution Agent; (iv) any fees, costs and expenses of the Estates incurred in connection with implementing the Plan and the CCAA Approval Order or winding down the Subsidiary Debtors, including payment of statutory fees and any taxes required to be paid in connection with dissolving the Debtors, including any fees, costs and expenses of the Subsidiary Debtors' Boards of Directors; and (v) any fees, costs and expenses of the Reorganized Parent Debtor, including any fees, costs and expenses of its Board of Directors (items (i) through (v) collectively, the "Wind-Down Expenses").

The Wind-Down Expenses shall be paid from the Sales Proceeds, the Holdback Amount Reserve and any other Cash in the Estates on the Effective Date to the extent paid or incurred on or before the Effective Date and from the Liquidation Trust Expense Reserve or amounts recovered in respect to the Retained Causes of Action if incurred after the Effective Date. In addition, to the extent any funds are recovered in respect of any Retained Causes of Action, such funds shall be applied first to pay any fees, costs, or expenses incurred in connection with the prosecution of such Retained Causes of Action (to the extent not previously paid out of the Liquidation Trust Expense Reserve as Wind-Down Expenses or otherwise) or otherwise incurred by the Liquidation Trust, the Reorganized Parent Debtor or the other Debtors and shall thereafter be deposited into the Liquidation Trust Expense Reserve to the extent necessary to bring the balance on deposit therein (after payment of all then outstanding fees and expenses) to its original amount (as set forth in the Plan Supplement), or such other amount as determined by the Liquidation Trustee necessary to pay reasonable fees and expenses then incurred or anticipated to be incurred for Wind-Down Expenses. For the avoidance of doubt, the initial amount of the Liquidation Trust Expense Reserve shall not be deemed to constitute a "cap" on fees and expenses incurred by the Liquidation Trust with respect to the Retained Causes of Action, the Chief Wind-Down Officer, or the Wind-Down Expenses with respect to required activity.

To the extent any funds recovered in respect of any Retained Causes of Action remain after payment of fees, costs, or expenses and deposit in the Liquidation Trust Expense Reserve as described in the immediately preceding paragraph (the “Cause of Action Net Proceeds”), then such Cause of Action Net Proceeds shall constitute Shareholder Distributable Assets and shall be apportioned between the Liquidation Trust and the Reorganized Parent Debtor for distribution to Holders of Allowed Parent Equity Interests or Beneficial Trust Interests, respectively, in accordance with the Asset Apportionment.

On or before the Effective Date but after the Confirmation Hearing and Canadian Approval Hearing, the Reorganized Parent Debtor and Liquidation Trust will enter into a cost sharing agreement (the “Cost Sharing Agreement”) in form and substance acceptable to the Debtors, Monitor and the Committees, pursuant to which the Reorganized Parent Debtor and the Liquidation Trust will each agree to pay for its share of the Wind-Down Expenses from the Shareholder Distributable Assets (including the Sale Proceeds) or the Liquidation Trust Expense Reserve, as applicable. The Cost Sharing Agreement will allocate the Wind-Down Expenses in accordance with the Asset Apportionment. A form of Cost Sharing Agreement will be included in the Plan Supplement.

C. Corporate Existence; Vesting of Assets

After the Effective Date, the Reorganized Parent Debtor shall continue to exist under applicable corporate law for the sole purposes of (i) prosecuting the Retained Causes of Action, (ii) making distributions from time to time to Holders of Allowed Parent Equity Interests who elect Option 2, and (iii) making any other distributions of Shareholder Distributable Assets until the Final Distribution Date, after which time the Reorganized Parent Debtor shall be dissolved.

After the Effective Date, the Chief Wind-Down Officer shall dissolve the Subsidiary Debtors, unless the Subsidiary Debtors must continue to exist under applicable corporate law for the sole purposes of liquidating the Retained Causes of Action or making distributions in accordance with the Plan or for tax purposes. Prior to such dissolution, all Assets of the Subsidiary Debtors after Payment in Full of General Unsecured Claims, Intercompany Claims as applicable, and the Wind-Down Costs of such Subsidiary Debtors shall vest in the Reorganized Parent Debtor.

Each Debtor or the Chief Wind-Down Officer is authorized and empowered to merge or amalgamate with any of the other Debtors and is authorized and empowered to effect each such merger or amalgamation and to take and cause to be taken such actions in order to carry out such mergers or amalgamations, in each case, on such terms and conditions as it may deem necessary or desirable. Subject to applicable laws, the foregoing dissolution and merger actions are authorized without the requirement to file any annual reports or pay related fees thereon, and without any requirement of further action by the stockholders, shareholders, directors or any other officer of the Debtors.

D. Corporate Governance

The existing officers and directors of each Debtor shall be deemed to have resigned on the Effective Date.

The Equity Committee will select the Board of Directors for the Reorganized Parent Debtor which shall consist of three (3) duly qualified directors. The Board of Directors selected by the Equity Committee will be identified in the Plan Supplement. The Reorganized Parent Debtor's Board of Directors shall appoint the Board of Directors for the Subsidiary Debtors pending their dissolution, which Board of Directors may, but is not required to, consist of the same Director(s) that serve on the Reorganized Parent Debtor's Board of Directors, subject to compliance with applicable laws. The Board of Directors will be appointed to serve through the liquidation and dissolution of the Reorganized Debtors, and the CCAA Approval Order will provide that the Reorganized Parent Debtor shall not otherwise be required to comply with applicable law regarding the formation or composition of the Board of Directors.

The initial Chief Wind-Down Officer shall be selected by the Equity Committee with the consent of the Debtors, Monitor and Creditors' Committee (not to be unreasonably withheld) and will be identified in the Plan Supplement and shall be appointed by the Reorganized Parent Debtor's Board of Directors. The Chief Wind-Down Officer may but is not required to be the same person for each of the Debtors. Following the Effective Date, the Reorganized Parent Debtor's Board of Directors shall have the right to replace or terminate the Chief Wind-Down Officer without need for further approval by the Bankruptcy Court or Canadian Court and thereafter, such successor Chief Wind-Down Officer shall fulfill the role of Chief Wind-Down Officer under the Plan.

The Debtors intend to seek relief from the Canadian Court in the CCAA Approval Order providing for, among other things, that the Reorganized Parent Debtor shall not be required to comply with the reporting or disclosure requirements or obligations under Canadian Securities Laws, nor shall the Reorganized Parent Debtor be required to comply with applicable corporate laws under the British Columbia *Business Corporations Act*. As a result of, among other things, the delayed filing of its Annual Report, including its annual audited financial statements for the fiscal year ended May 31, 2016 and the related management's discussion and analysis, the Parent Debtor is in default of the filing requirements under applicable Canadian Securities Laws. It is not expected that the Reorganized Parent Debtor or the Liquidation Trust will be in a position to comply with applicable Canadian Securities Laws following the Effective Date regardless of whether the requested relief is granted by the Canadian Court in the CCAA Approval Order.

Notwithstanding the foregoing, it may be necessary for the Parent Debtor and/or the Liquidation Trust to seek exemptive relief from the Canadian Securities Regulators in order to give effect to the Plan and the transactions contemplated thereby. See "Risk Factors".

E. The Liquidation Trust

1. Creation and Funding of the Liquidation Trust; Vesting of Assets

On or before the Effective Date but after the Confirmation Hearing and Canadian Approval Hearing, the Bankruptcy Court and the Canadian Courts shall have approved the formation of the Liquidation Trust pursuant to the Liquidation Trust Agreement and the provisions of the Plan. The Liquidation Trust shall be formed under U.S. law and shall be managed from the U.S. The Liquidation Trustee shall administer the Liquidation Trust, and shall have the powers and duties set forth in the Liquidation Trust Agreement. The Liquidation Trustee shall be designated in the Plan Supplement by the Equity Committee, with the consent of

the Creditors' Committee, Monitor and the Debtors, which consent shall not be unreasonably withheld.

Through the Plan, the Shareholder Distributable Assets allocated to the Liquidation Trust (including a proportionate interest in the Retained Causes of Action) for the benefit of Holders of Allowed Parent Equity Interests who elect Option 1 shall vest in the Liquidation Trust as assets of the Liquidation Trust (which, for greater certainty, does not include any Cash (including the Sale Proceeds held by the Debtors as of the Effective Date)) (such assets, the "Liquidation Trust Assets") as a deemed distribution to the Holders of Allowed Parent Equity Interests who elect Option 1 followed immediately by a deemed contribution to the Liquidation Trust from such Holders of their share of Liquidation Trust Assets. It is anticipated that the Liquidation Trust Assets shall consist of (i) the proportionate interest in the Retained Causes of Action allocable to the Holders of Allowed Parent Equity Interests that elected Option 1, and (ii) a comparable portion of the Liquidation Trust Expense Reserve; it is anticipated that no other Cash shall be transferred (or deemed transferred) to the Liquidation Trust for the Holders of Allowed Parent Equity Interests that elected Option 1.

The Plan shall be considered a motion pursuant to Sections 105, 363 and 365 of the Bankruptcy Code, and the Confirmation Order shall be considered an order granting such relief. The transfer of the Liquidation Trust Assets to the Liquidation Trust shall be made for the benefit of and on behalf of the Liquidation Trust Beneficiaries. For all U.S. federal income tax purposes, the transfer of the Liquidation Trust Assets to the Liquidation Trust shall be treated as (1) a transfer of the Liquidation Trust Assets directly to the Liquidation Trust Beneficiaries, followed by (2) the transfer of such Liquidation Trust Assets by the Liquidation Trust Beneficiaries to the Liquidation Trust in exchange for the Liquidation Trust Beneficial Interests. The Liquidation Trust Beneficiaries shall be treated as the grantors and owners of the Liquidation Trust (other than the Liquidation Trust Assets as are allocable to the Reserves).

As soon as reasonably practicable after the Effective Date, (i) the Liquidation Trustee shall make a good faith valuation of the Liquidation Trust Assets, and (ii) the Liquidation Trustee shall establish appropriate means to apprise the Liquidation Trust Beneficiaries of such valuation. The valuation shall be used consistently by all parties (including the Debtors, the Liquidation Trustee and the Liquidation Trust Beneficiaries) for all U.S. federal and other income tax purposes. The Liquidation Trustee also shall file (or cause to be filed) any other statements, returns, or disclosures relating to the Liquidation Trust that are required by any Governmental Unit.

2. **Rights and Powers of the Liquidation Trustee**

The Liquidation Trustee shall have all the rights and powers set forth in the Plan (including, but not limited to, those conferred upon him as the Litigation Representative pursuant to Article V.E.12 of the Plan) and the Liquidation Trust Agreement to act on behalf of the Liquidation Trust, including the right to (a) effect all actions and execute all agreements, instruments and other documents, and exercise all rights and Privileges (as defined below) previously held by the Debtors, necessary or convenient to implement the provisions of the Plan and the Liquidation Trust Agreement, (b) subject to the Liquidation Trust Agreement and the Plan, prosecute, settle, abandon or compromise the Retained Causes of Action on behalf of the

Liquidation Trust and the Debtors, (c) authorize distributions as contemplated by and in accordance with the Plan, and (d) make disbursements from the Liquidation Trust Expense Reserve (or, prior to the funding of the Liquidation Trust Expense Reserve, from Cash held by the Reorganized Parent Debtor) on behalf of the Liquidation Trust and the Reorganized Parent Debtor.

Pursuant to Article V.E.12 of the Plan, the Liquidation Trustee, in its capacity as Litigation Representative, for the benefit of and on behalf of the Liquidation Trust and the Debtors, without further order of the Bankruptcy Court or the Canadian Court but subject to the Liquidation Trust Agreement and the Plan, shall have full power and authority to (i) investigate, prosecute, abandon, settle, liquidate, or otherwise resolve the Retained Causes of Action, (ii) retain counsel and other professionals in connection with investigating, prosecuting, abandoning, settling, liquidating, or otherwise resolving the Retained Causes of Action, under such arrangements regarding compensation and other terms as the Liquidation Trustee may deem reasonable and appropriate, and (iii) to the extent consistent with the provisions of U.S. tax laws applicable to liquidating trusts, enter into third-party arrangements for the funding of the foregoing activities of the Litigation Representative in respect of the Retained Causes of Action, which arrangements may include granting interests in the Retained Causes of Action or the proceeds thereof; provided, however, that any such third-party arrangements shall be non-recourse except as to any proceeds received in respect of the Retained Causes of Action subject to such third-party arrangements. Funds in the Liquidation Trust Expense Reserve (whether held by the Reorganized Parent Debtor or the Liquidation Trust) may be used to pay the fees, costs, and expenses (including attorney's fees and other professional fees) that the Liquidation Trust may incur in connection with the implementation of the Plan, including, but not limited to, the fees and expenses related to investigating, prosecuting, abandoning, settling, liquidating, or otherwise resolving the Retained Causes of Action.

3. **Retention of Professionals**

In its capacity as Litigation Representative on behalf of the Debtors and the Liquidation Trust pursuant to Article V.E.12 of the Plan, the Liquidation Trustee may retain counsel and other professionals on behalf of the Liquidation Trust to assist the Liquidation Trust in exercising its rights and powers under the Liquidation Trust Agreement and implementing the Plan. Funds in the Liquidation Trust Expense Reserve (whether held by the Reorganized Parent Debtor or the Liquidation Trust) and, to the extent necessary, the Cause of Action Net Proceeds may be used by the Liquidation Trustee to pay the fees, costs, and expenses that the Liquidation Trust may incur in connection with the implementation of the Plan.

4. **Post-Effective Date Fees and Expenses of Liquidation Trust and the Debtors**

The Wind-Down Expenses of the Liquidation Trust and the Debtors, including for the Chief Wind-Down Officer and the Monitor, incurred on or after the Effective Date shall be paid by the Liquidation Trustee or the Reorganized Parent Debtor out of the Liquidation Trust Expense Reserve without further order of the Bankruptcy Court or Canadian Court. Following the Effective Date, any requirement that a U.S. Professional comply with sections 327 through

331 of the Bankruptcy Code when seeking compensation for services rendered to any of the Debtors, their Estates or the Liquidation Trust shall terminate.

5. **Liquidation Trust Advisory Board**

The Liquidation Trust Advisory Board shall consist of three (3) Persons. Each member of the Liquidation Trust Advisory Board shall be designated by the Equity Committee with the consent of the Monitor and the Debtors, which consent is not to be unreasonably withheld, and after consultation with the Creditors' Committee. The initial members of the Liquidation Trust Advisory Board shall be identified in the Plan Supplement.

6. **Liquidation Trust Transfer Taxes**

Any transfer of the Liquidation Trust Assets to the Liquidation Trust shall be exempt from any stamp tax or similar tax, in accordance with section 1146(a) of the Bankruptcy Code.

7. **Federal Income Tax Treatment of the Liquidation Trust**

The Liquidation Trust shall be established for the sole purpose of distributing the Liquidation Trust Assets, and proceeds therefrom, in accordance with Treasury Regulation section 301.7701-4(d) and Revenue Procedure 94-45, with no objective to continue or engage in the conduct of a trade or business, and are intended to qualify as a liquidating trust for U.S. federal income tax purposes. In general, a liquidating trust such as the Liquidation Trust is not a separate taxable entity for U.S. federal income tax purposes, but is instead treated as a grantor trust, *i.e.*, pass-through entity. All parties must treat the transfer of the portion of the Liquidation Trust Assets attributable to the Liquidation Trust Beneficiaries as a transfer of such assets directly to the Liquidation Trust Beneficiaries. Consistent therewith, all parties must treat the Liquidation Trust as a grantor trust of which the Liquidation Trust Beneficiaries are the owners and grantors. Subject to the terms of the Liquidation Trust Agreement, the value of a Liquidation Trust Beneficiary's Allowed Parent Equity Interest (less any Cash distribution received from the Reorganized Parent Debtor) shall be the value of such Liquidation Trust Beneficiary's Liquidation Trust Beneficial Interest, and the Liquidation Trust Beneficiaries and the Liquidation Trust must consistently use this valuation for all U.S. and other federal income tax purposes, including for determining gain, loss or tax basis.

If any Holder of Allowed Parent Equity Interests elects Option 1 and the Liquidation Trust is subject to adverse tax consequences in Canada as a result of such Holder holding Beneficial Trust Interests, any transfer to such Holder and the cancellation of such Holder's Parent Equity Interests shall be *void ab initio* and the Reorganized Parent Debtor, the Holder and the Liquidation Trust shall each treat such Holder at all times as if such Holder had elected Option 2.

8. **Dissolution of the Liquidation Trust**

The Liquidation Trust shall be dissolved no later than five (5) years from the Effective Date, unless the Bankruptcy Court, upon motion made prior to such fifth (5th) anniversary without the need for a favorable letter ruling from the IRS that any further extension would not adversely affect the status of either as a Liquidation Trust for federal income tax purposes,

determines that a fixed period extension, not to exceed five (5) years, is necessary to facilitate or complete the recovery on and liquidation of the Liquidation Trust Assets. Upon the filing of any motion for an extension of the date of dissolution, such date shall be deemed automatically extended until an order of the Bankruptcy Court is entered with respect to such motion or the motion is withdrawn.

9. **Liquidation Trust Securities Law Matters**

To the extent the Liquidation Trust Beneficial Interests are deemed to be “securities,” the issuance of such interests under the Plan, are exempt, pursuant to section 1145 of the Bankruptcy Code, from registration under the Securities Act of 1933, as amended, and any applicable U.S. federal, state and local laws requiring registration of securities. Notwithstanding the foregoing, this may give rise to certain reporting and disclosure requirements and obligations in accordance with applicable securities laws in each of the provinces and territories of Canada, the regulations and rules made and forms prescribed thereunder or any applicable published rules, instruments, policy statements and blanket orders and rulings of the Canadian Securities Regulators (collectively, the “Canadian Securities Laws”) notwithstanding receipt of the CCAA Approval Order. The Canadian Securities Regulators may determine that exemptive relief from applicable Canadian Securities Laws is required and there can be no assurance that the appropriate exemptive relief will be granted in a timely manner or at all. *See Risk Factor “Q. The Liquidation Trust Beneficial Interests May Not Be Exempt”.*

10. **Ability to Seek and Obtain Discovery under Bankruptcy Rule 2004**

From and after the Effective Date, in connection with the Retained Causes of Action: (i) the Liquidation Trustee, in its capacity as the Litigation Representative for the Debtors and the Liquidation Trust, shall have the ability to seek and obtain examinations (including document discovery and depositions) under Bankruptcy Rule 2004 (and equivalent Canadian legislation) against any Person or Entity, and (ii) the Bankruptcy Court (and Canadian Court) shall retain jurisdiction to order examinations (including examinations under Bankruptcy Rule 2004) against any Person or Entity, and to hear all matters with respect to the same.

11. **Preservation of Privileges and Books and Records of the Estates and Debtors**

On the Effective Date, the Debtors shall be deemed to have transferred and assigned all of their respective rights, titles, and interests in any privilege or immunity of the Debtors’ Estates, including the attorney-client privilege and any privileges in respect of any Retained Causes of Action (collectively, the “Privileges”), to the Liquidation Trust and the Reorganized Debtors, and all such Privileges shall automatically vest in the Liquidation Trust and the Reorganized Debtors, jointly, as of the Effective Date; provided, however, that the Liquidation Trustee, in its capacity as the Litigation Representative for the Debtors and the Liquidation Trust, shall be vested with the sole power and authority to waive or assert such Privileges for the joint benefit of the Debtors and the Liquidation Trust. In addition, on the Effective Date, the Debtors shall be deemed to have transferred and assigned all of their rights and obligations with respect to their books and records and access thereto, including any rights and obligations under the Sale Orders, to the Liquidation Trust and the Debtors, and all such rights and obligations shall

automatically vest in the Liquidation Trust and the Debtors as of the Effective Date. Pursuant to the Plan, the Debtors' Professionals agree that, prior to and after the Effective Date, they shall provide reasonable assistance and cooperation to the Debtors, the Liquidation Trust, and the Reorganized Parent Debtor, as applicable, and each of their respective professionals, in connection with the investigation and prosecution of the Retained Causes of Action, including by (i) delivering any books and records of the Debtors or other materials (including any documents or materials that may be subject to any Privileges) that may be relevant to the Retained Causes of Action and that are in the respective possession, custody, or control of any such Debtor Professionals, and (ii) responding to any reasonable inquiries made by the Debtors, the Liquidation Trust, or the Reorganized Parent Debtor, as applicable, or any of their respective professionals, in respect of the investigation and prosecution of the Retained Causes of Action; provided, however, that the reasonable assistance and cooperation of the Debtors' Professionals as set forth herein shall be subject in all respects to any applicable ethical rules or obligations of such Debtor Professionals, and shall be compensable as a Wind-Down Expense of the Liquidation Trust.

12. **Appointment of Liquidation Trustee by Canadian Court and Bankruptcy Court as Representative of the Debtors and Liquidation Trust in Respect of the Retained Causes of Action**

On or before the Effective Date, the Canadian Court and the Bankruptcy Court shall have entered orders (which, in the case of the Bankruptcy Court shall be the Confirmation Order and, in the case of the Canadian Court, shall be the CCAA Approval Order) appointing the Liquidation Trustee as the Litigation Representative of the Debtors and the Liquidation Trust and otherwise vesting the Liquidation Trustee with sole responsibility, power and authority (subject only to the terms of the Plan and the review and approval of the Liquidation Trust Advisory Board as required by the Liquidation Trust Agreement, and the Board of Directors of the Reorganized Parent Debtor to the extent required under its amended and restated organizational documents) for investigating, prosecuting, settling and liquidating the Retained Causes of Action, jointly on behalf of the Debtors and the Liquidation Trust. In his capacity as Litigation Representative, the Liquidation Trustee shall have the exclusive power and authority (subject only to the review and approval of the Liquidation Trust Advisory Board as provided in the Liquidation Trust Agreement, and the Board of Directors of the Reorganized Parent Debtor to the extent required under its amended and restated organizational documents) to (i) assert or waive any applicable Privileges, (ii) seek discovery pursuant to Bankruptcy Rule 2004, (iii) investigate Retained Causes of Action, (iv) assert the Debtors' rights in respect to their books and records, (iv) elect whether to prosecute, settle or otherwise liquidate such Retained Causes of Action, and (v) to use funds in the Liquidation Trust Expense Reserve, whether held by the Reorganized Parent Debtor or Liquidation Trust, to pay professional fees and other Wind-Down Expenses incurred by the Liquidation Trust and/or the Reorganized Parent Debtor, in each case without further approval of the Bankruptcy Court or the Canadian Court or the Reorganized Parent Debtor, but for the joint benefit of the Holders of Equity Interests in the Reorganized Parent Debtor and Beneficial Trust Interests in the Liquidation Trust.

13. **Savings of Retained Causes of Action**

If the vesting of interests in Retained Causes of Action with the Liquidation Trust shall compromise the ability to prosecute or recover from any Retained Causes of Action, then notwithstanding anything else contained in the Plan, an interest in such Retained Causes of Action shall not be deemed to have vested in the Liquidation Trust, but rather shall be deemed solely vested with or otherwise retained by the Reorganized Parent Debtor or other applicable Debtor. In such situation, (i) the Liquidation Trustee shall continue to serve as the Litigation Representative on behalf of the Reorganized Parent Debtor with full power and authority respecting all aspects of such Retained Cause of Action as provided in the Plan, including prosecution in the name of the applicable Debtor, funding for same, and terms of settlement and (ii) the Liquidation Trust and applicable Debtor shall share costs and proceeds pertaining to such Retained Cause of Action so as to realize the Asset Apportionment otherwise described in the Plan. Nothing set forth herein shall be deemed applicable to, or binding with respect to, the U.S. federal income tax reporting obligations of the Liquidation Trust or Liquidation Trustee, if any, and for the avoidance of doubt the Liquidation Trust and Liquidation Trustee shall comply with, and report as required in their sole judgment in compliance with, such U.S. federal income tax laws as may be applicable to the Liquidation Trust and the holders of Beneficial Trust Interests.

F. Cancellation of Unexercised and Unvested Interests

On the Effective Date, any contingent or unexercised option, warrant, or right, contractual or otherwise, to acquire or be awarded any interest in a Debtor, including unvested restricted share units, or other such forms of interest, including those held by former officers, employees or directors of the Debtors as a form of compensation, except for deferred share units identified in the Plan Supplement which are owing to the Debtors' directors but were not granted due to the stay of proceedings in the Chapter 11 Cases and the CCAA Proceedings and, for greater certainty, vested restricted share units and other deferred share units, shall be cancelled without the exchange of any similar interest, or other form of consideration. Any Proof of Claim or Equity Interest filed are on account of such cancelled interests shall be disallowed as a Claim or Equity Interest for which the Debtors have no liability and the Claims and Solicitation Agent may adjust the Claims Register accordingly to reflect such disallowance without further order of the Bankruptcy Court or Canadian Court.

XI. PROCEDURES FOR RESOLVING DISPUTED CLAIMS; CLAIM RESERVES

A. Prosecution of Objections to U.S. Claims

After the Effective Date, the Liquidation Trust shall have and retain any and all rights and defenses that any Debtors may have with respect to any U.S. Claims, and shall have the authority, after consultation with the Monitor, to file objections and to settle, compromise, withdraw or litigate to judgment objections to Claims against the U.S. Debtors (except those Allowed by the Plan, the Confirmation Order or other Final Order). The Liquidation Trust, after consultation with the Monitor, shall have the authority to compromise, settle, otherwise resolve, or withdraw, any objections to Disputed Claims on account of U.S. Claims without approval of the Bankruptcy Court. Any final determination of the U.S. Claims made in the

Chapter 11 Proceedings shall be binding in the CCAA Proceedings and constitute Final Orders with respect to such Claims.

The U.S. Debtors (after the later of the Confirmation Date and the CCAA Approval Order Date, and until the Effective Date) or the Liquidation Trust (from and after the Effective Date), shall file objections to any U.S. Disputed Claims with the Bankruptcy Court in accordance with the Bankruptcy Rules on or before the Claims Objection Deadline, as the same may be extended pursuant to the terms of the Plan or order of the Bankruptcy Court.

B. Prosecution of Objections to Canadian Claims

The Monitor, after consultation with the Liquidation Trustee and the Reorganized Parent Debtor, will allow and disallow Canadian Claims in accordance with a Claims Resolution Order granted by the Canadian Court and the authority contained therein. Any objection to a notice of disallowance or revision issued by the Monitor shall only be made to the Monitor in accordance with the Claims Resolution Order. Any final determination of the Canadian Claims made in the CCAA Proceedings pursuant to the Claims Resolution Order shall be binding in the Chapter 11 Cases and constitute Final Orders with respect to such Claims.

C. Cross-Border Provisions for Resolution of Certain Claims

1. Multiple Disputed Claims

In the event that a Disputed Claim has been separately filed against one or more Canadian Debtors and one or more U.S. Debtors and also with respect to Securities Law Claims, the Monitor and Liquidation Trustee may determine a mutually acceptable process for prosecuting and resolving such Claim in accordance with the Claims Resolution Order, including deciding to liquidate such Disputed Claim under the Plan as a Disputed Canadian Claim or Disputed U.S. Claim, respectively, and if no agreement can be reached, the Bankruptcy Court and Canadian Court shall decide the process by an order of both courts. Any appeal to such Disputed Claim shall only be made to the Monitor in accordance with the Claims Resolution Order if such Disputed Claim is treated as a Disputed Canadian Claim or to the U.S. Debtor or Liquidation Trustee, as applicable, if such Disputed Claim is treated as a Disputed U.S. Claim.

2. Applicable Statutory Caps To the extent that a provision of the Bankruptcy Code or a provision of the CCAA or an order of the Canadian Court limits the Allowed amount of a particular type of Claim (e.g., sections 502(b)(6) and 502(b)(7) of the Bankruptcy Code), the distribution on such Allowed Claim under the Plan shall not exceed the lesser of (a) the Allowed amount such Claim is entitled to under the provisions of the Bankruptcy Code; and (b) the Allowed amount such Claim is entitled to under the CCAA or any order of the Canadian Court.

3. Estimation of Claims

The Liquidation Trust, after consultation with the Monitor, may, at any time after the Effective Date, request that the Bankruptcy Court estimate any contingent or unliquidated U.S. Claim respectively, pursuant to section 502(c) of the Bankruptcy Code, regardless of whether any Debtor previously objected to such Claim or whether the Bankruptcy Court has ruled on any

such objection, and the Bankruptcy Court will retain jurisdiction to estimate any U.S. Claim at any time, including during litigation concerning any objection to any U.S. Claim, and during the pendency of any appeal relating to any such objection.

The Monitor may, at any time after the Effective Date and after consultation with the Liquidation Trustee, request that the Canadian Court or claims officer appointed by the Canadian Court to estimate, determine or resolve any contingent or unliquidated Canadian Claim respectively, pursuant to the CCAA and in accordance with a Claims Resolution Order.

If the Bankruptcy Court or the Canadian Court or a claims officer appointed by the Canadian Court estimates any contingent or unliquidated Claim, that estimated amount will constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the applicable court. If the estimated amount constitutes a maximum limitation on such Claim, the Liquidation Trust or Monitor, as applicable, may elect to pursue any supplemental proceedings to object to the allowance and any ultimate payment on such Claim. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court or the Canadian Court, as applicable, including under the Plan, the CCAA Approval Order or a Claims Resolution Order.

4. **Distributions on Allowed Claims**

As further provided in Article VII of the Plan, the Distribution Agent shall make all distributions on Allowed Claims from the Sale Proceeds. The Liquidation Trustee shall direct the Distribution Agent to make distributions on account of Allowed U.S. Claims and the Monitor shall direct the Distribution Agent to make distributions on account of Allowed Canadian Claims.

D. **No Double Recovery on Allowed Cross-Border Claims**

The aggregate recovery under the Plan, on the one hand, and in the CCAA Proceedings under the CCAA Approval Order, on the other hand, on account of any Claim for which more than one Debtor is liable, whether on account of a theory of primary or secondary liability, by reason of a guarantee agreement, indemnity agreement, joint and several liability or otherwise shall not exceed 100% of the Allowed amount of the Claim as determined in accordance with the Plan, the CCAA Approval Order or a Claims Resolution Order, as applicable.

E. **Reserves**

1. **Liquidation Trust Expense Reserve**

On the Effective Date, the Debtors or the Distribution Agent will fund with Cash the Liquidation Trust Expense Reserve in the amount set forth in the Plan Supplement, and the Liquidation Trust Expense Reserve will remain under the control of the Reorganized Parent Debtor until (1) a Clearance Certificate is obtained that permits transfer of the Liquidation Trust Expense Reserve to the Liquidation Trust or (2) the Board of Directors of the Reorganized Parent Debtor otherwise resolves to disburse such funds; provided, however, that at least \$100,000 of the Liquidation Trust Expense Reserve shall be funded into the Liquidation Trust within 60 days of the Effective Date, unless the Board of Directors of the Reorganized Parent

Debtor, with the consent of the Liquidation Trustee, which consent shall not be unreasonably withheld, reasonably determines that such funding should not be made, and provided, further, that Wind-Down Expenses and expenses of the Liquidation Trust (including, but not limited to, professional fees incurred in connection with the Retained Causes of Action) may be paid from any reserves prior to the issuance of a Clearance Certificate. Once distributed by the Reorganized Parent Debtor, the Pro Rata portion of the Liquidation Trust Expense Reserve attributable to beneficial Holders of Allowed Parent Equity Interests that Election Option 1 under the Plan shall be treated as deemed distributions to such Holders followed immediately by deemed contributions by such Holders to the Liquidation Trust, including for all U.S. federal income tax purposes. To the extent any Cash remains in the Liquidation Trust Expense Reserve after payment of the Wind-Down Expenses of the Liquidation Trust and the Debtors, such excess Cash shall be administered in accordance with the other provisions of the Plan, including as additional distributions to Holders of Beneficial Trust Interests or to Holders of Parent Equity Interests; provided however that any such distribution shall not be made before the Final Distribution Date.

2. **Holdback Amount Reserve**

On the Effective Date, the Debtors or the Distribution Agent will fund in Cash the Holdback Amount Reserve from the U.S. Sale Proceeds Account in an amount sufficient to Pay in Full the Holdback Amount for Professionals and payment of any additional unpaid amounts asserted or estimated by the Professionals and Alvarez & Marsal North America, LLC as owing to any such firm for fees and expenses accrued prior to the Effective Date that have not yet been paid. To the extent any Cash remains in the Holdback Amount Reserve after payment of the Professionals and Alvarez & Marsal North America, LLC, such excess Cash shall be administered by the Distribution Agent in accordance with the other provisions of the Plan.

3. **Individual Securities Damages Reserve**

On the Effective Date, the Debtors or the Distribution Agent will fund with Cash the Individual Securities Damages Reserve, and the Individual Securities Damages Reserve will remain under the control of the Monitor on behalf of the Reorganized Parent Debtor until a Clearance Certificate or Comfort Letters are obtained and the Monitor determines that the transfer of the Individual Securities Damages Reserve to the Holder of the Individual Securities Damages Claim is permitted. The Individual Securities Damages Reserve will be used to satisfy any Allowed Individual Securities Damages Claim and will be the sole source of recovery for such Allowed Claim. To the extent any Cash remains in the Individual Securities Damages Reserve after payment of the Individual Securities Damages Claim, to the extent Allowed, or if such Claim is Disallowed, such excess Cash shall be transferred to the Distribution Agent to be administered in accordance with the other provisions of the Plan and the CCAA Approval Order.

4. **Reserve Amounts**

The Bankruptcy Court and the Canadian Court shall approve the Reserve amounts authorized under the Plan in the Confirmation Order and CCAA Approval Order, respectively.

F. No Interest on Allowed Claims; Setoffs

Unless otherwise specified in the Plan or by Final Order, “Allowed Administrative Claim” or “Allowed General Unsecured Claim” shall not, for any purpose under the Plan, include interest on such Administrative Claim or Claim from and after the Petition Date or attorney’s fees after the Petition Date.

An Allowed Claim shall be net of any setoff or recoupment amount of any Claim that may be asserted by any Debtor against the Holder of such Claim, which amount shall be deemed setoff or recouped pursuant to the Plan.

G. Prompt Claims Resolution

To ensure the prompt resolution of Claims, objections to all Claims that are (i) subject to reduction by section 502(b)(7) of the Bankruptcy Code, (ii) amended and superseded Claims and (iii) duplicate Claims shall be filed by no later than thirty (30) days after the Effective Date, and notices of disallowance shall be served on all Canadian Claims that are subject to reduction by section 502(b)(7) of the Bankruptcy Code by such same date.

Additionally, beginning on the 90th day after the Effective Date and continuing every 90th day thereafter until all U.S. Claims have become Satisfied Claims, Allowed U.S. Claims or U.S. Claims disallowed by a Final Order, the Liquidation Trustee shall file on the Docket and serve on the Holders of all remaining U.S. Claims a progress report discussing its efforts to reconcile and liquidate U.S. Claims taken during the reporting period.

XII. PROVISIONS GOVERNING DISTRIBUTIONS

A. Distribution Agent

Each Distribution Agent shall make the applicable distributions under the Plan tasked to such Distribution Agent. The Distribution Agent shall act at the direction of the Reorganized Parent Debtor, the Monitor or the Liquidation Trustee, as the case may be. On the Effective Date, the Distribution Agent shall have the authority to distribute the Sale Proceeds in accordance with the Plan, and as directed by the Reorganized Parent Debtor, the Monitor or the Liquidation Trustee.

The Monitor shall be the Distribution Agent through the Final Monitor Distribution Date, and the Monitor as Distribution Agent shall make the Initial Cash Distributions from the Sale Proceeds required under the Plan and the CCAA Approval Order to Holders of Allowed Secured Claims, Allowed Priority Claims, and Allowed General Unsecured Claims, as well as to pay any Allowed Individual Securities Damages Claim from the Individual Securities Damages Reserve upon receipt of either (a) Comfort Letters, and/or (b) such other arrangement satisfactory to the Monitor, as applicable. Following the Final Monitor Distribution Date, any Person selected by the Monitor, Reorganized Parent Debtor or the Liquidation Trustee may be designated as the Distribution Agent to make interim and final distributions to Holders of Claims and Parent Equity Interests as permitted under the Plan and the CCAA Approval Order.

Following the Effective Date, the Reorganized Parent Debtor or the Liquidation Trust, as applicable, shall pay to the Distribution Agent all reasonable and documented fees and expenses of the Distribution Agent without the need for any approvals, authorizations, actions, or consents. The Distribution Agent shall submit detailed invoices to the Reorganized Parent Debtor, the Monitor and the Liquidation Trustee, as applicable, for all fees and expenses for which the Distribution Agent seeks reimbursement and shall be paid those amounts that the Reorganized Parent Debtor, the Monitor and the Liquidation Trustee, in their sole discretion, deem reasonable. In the event that the Reorganized Parent Debtor, the Monitor or Liquidation Trustee, as applicable, object to all or any portion of the amounts requested to be reimbursed in a Distribution Agent's invoice, the Reorganized Parent Debtor, Monitor or Liquidation Trustee, as applicable, and such Distribution Agent shall endeavor, in good faith, to reach mutual agreement on the amount of the appropriate payment of such disputed fees and/or expenses. In the event that the Reorganized Parent Debtor, Monitor or Liquidation Trustee, as applicable, and the Distribution Agent are unable to resolve any differences regarding disputed fees or expenses, any such party shall be authorized to move to have such dispute heard by the Bankruptcy Court or the Canadian Court, provided, however, if the dispute relates to amounts requested to be reimbursed by the Monitor, the dispute shall be heard by the Canadian Court.

B. Delivery of Distributions

Distributions to Holders of Allowed Claims shall be made by the Distribution Agent to the address of the Holder of such Claim as indicated in the Claims Register as of the Distribution Record Date. The Distribution Agent shall have no obligation to recognize the transfer of or sale of any Claim that occurs after the close of business on the Distribution Record Date, and will be entitled for all purposes to recognize and distribute only to those Holders of Allowed Claims who are Holders as of the close of business on the Distribution Record Date.

Distributions to Holders of Parent Equity Interests shall be made via a mandatory exchange with Clearing and Depository Services Inc. and Depository Trust Company to Holders of Parent Equity Interests at the time the distribution is made, without the establishment of a distribution record date for Parent Equity Interests, except in the case of Holders of Parent Equity Interests electing Option 1, who shall receive distributions from the Liquidation Trust or other Distribution Agent at the address set forth on their Liquidation Trust Certification Form. Any subsequent distributions on account of Liquidation Trust Beneficial Interests shall be made in similar manner, at the address listed on such Liquidation Trust Beneficiary's Liquidation Trust Certification Form, or at such other address as they later send to the Liquidation Trustee in writing.

C. Timing of Distributions

The Distribution Agent may make one or more interim and final distributions of Cash to Holders of Claims or Parent Equity Interests, in his discretion to the extent permitted hereunder, provided, however, that no Cash distributions shall be made to the Holders of Allowed Parent Equity Interests or Holders of Beneficial Trust Interests under the Plan until all obligations under the Plan to the Holders of Allowed Claims (including Fee Claims) and the Wind-Down Expenses of the Debtors have been Paid in Full in Cash or reserved for pursuant to a Final Order and the Debtors or the Monitor shall have obtained Clearance Certificates permitting such distribution.

With respect to Allowed Claims other than Allowed Fee Claims, the Distribution Agent shall make distributions of Cash to Holders of such Allowed Claims as follows:

1. On the Initial Distribution Date, Cash to all Holders of Allowed Claims as of the Distribution Record Date.
2. On any Interim Distribution Date, Cash to all Holders of Allowed Claims that have become Allowed after the Initial Distribution Date.
3. On the Final Distribution Date, the balance of all Cash distributions to Holders of Allowed Claims and Allowed Equity Interests, as applicable and as required under the Plan.

The Distribution Agent shall pay Allowed Fee Claims in accordance with Article III.B of the Plan.

Until the Monitor is in receipt of the Comfort Letters, the Monitor, as Distribution Agent, shall be under no obligation to make any distributions on account of any Allowed Claims. The Distribution Agent shall not make any Cash distributions from the Sale Proceeds on account of Equity Interests until receipt of the applicable Clearance Certificates satisfactory to the Distribution Agent and the Debtors.

D. No Distributions on Disputed Claims

Notwithstanding any provision in the Plan to the contrary, no distributions, partial or otherwise, shall be made with respect to a Disputed Claim until all disputes with respect to such Claim are resolved by the Liquidation Trust or the Monitor and the Holder of such Claim by Final Order or settlement. Subject to the provisions of the Plan, after a Disputed Claim becomes an Allowed Claim, the Holder of such an Allowed Claim will receive all distributions to which such Holder is then entitled under the Plan on the Initial Distribution Date, or the next scheduled Interim Distribution Date or Final Distribution Date, as the case may be. No post-petition interest, including post-Effective Date interest shall be paid on any distributions under the Plan, including with respect to any Disputed Claim that becomes an Allowed Claim. If a Creditor incorporates more than one Claim in a Proof of Claim then: (a) such Claims will be considered one Claim for purposes of the Plan, and (b) no such Claim will be bifurcated into an Allowed portion and a Disputed portion.

E. Amount of Distributions

Notwithstanding anything to the contrary contained in the Plan, no Holder of an Allowed Claim shall, on account of such Allowed Claim, receive a distribution in excess of the Allowed amount of such Claim to the extent payable in accordance with the Plan, even if filed against multiple Debtors.

F. De Minimis Distributions

Notwithstanding anything contained in the Plan to the contrary, no distribution shall be required to be paid if such payment would be less than \$50.00 on any distribution, provided,

however, that distributions made through the Depository Trust Company or Clearing and Depository Services Inc. may be made to the nearest cent, with half cents rounding down to zero, even if any such distribution would be less than \$50.00.

G. Undeliverable Distributions

1. Holding of Undeliverable Distributions

If any distribution to a Holder of an Allowed Claim, Parent Equity Interest or Liquidation Trust Beneficial Interest is returned as undeliverable, no further distributions must be made to such Holder unless and until the Monitor, Liquidation Trustee or Distribution Agent, as applicable, is notified in writing of such Holder's then-current address or other necessary information for delivery, at which time all currently due missed distributions shall be made to such Holder as soon as practicable, subject to Article VII.G.2 of the Plan regarding the failure to claim Undeliverable Distributions. Undeliverable Distributions shall remain in the possession of the Monitor or Liquidation Trustee, as applicable, until such time as a distribution becomes deliverable, and shall not be supplemented with any interest, dividends or other accruals of any kind.

2. Failure to Claim Undeliverable Distributions

Any Holder of an Allowed Claim, Parent Equity Interest or Liquidation Trust Beneficial Interest that does not assert its right pursuant to the Plan for an Undeliverable Distribution within ninety (90) days after the distribution is distributed shall be deemed to have waived, and shall be forever barred from asserting, its rights for such Undeliverable Distribution, notwithstanding any applicable federal, state or Canadian escheat, abandoned or unclaimed property laws to the contrary. Nothing contained in the Plan shall require the Debtors, the Monitor, the Liquidation Trustee/Liquidation Trust, or a Distribution Agent to attempt to locate any Holder of an Allowed Claim, Parent Equity Interest or Liquidation Trust Beneficial Interest.

H. Distributions on Non-Business Days

Any payment or distribution due on a day other than a Business Day shall be made, without interest, on the next Business Day.

I. Tax Withholding From Distributions

Any amounts required by law to be withheld from distributions made under the Plan shall be withheld. Any amounts so withheld from any payment made under the Plan shall be deemed paid to the Holder of the Allowed Claim or Parent Equity Interest subject to withholding. Notwithstanding the above, each Holder of an Allowed Claim or Parent Equity Interest that is to receive a distribution under the Plan shall have the sole and exclusive responsibility for the satisfaction and payment of any taxes imposed on such Holder by any Governmental Unit on account of such distribution, except for taxes withheld from payments made under the Plan. Each Debtor, the Liquidation Trustee, the Monitor or any Distribution Agent, as applicable, has the right, but not the obligation, not to make a distribution until such Holder has made arrangements satisfactory to the Debtor, the Liquidation Trustee, the Monitor or Distribution Agent for payment of any withholding tax obligations. Each Debtor, the Liquidation Trustee, the

Monitor or any Distribution Agent has no liability hereunder to any party, including any Governmental Unit, for incorrectly calculating amounts to be withheld, if any. If any Debtor, the Liquidation Trustee, the Monitor or any Distribution Agent fails to withhold with respect to any such Holder's distribution, it shall have no liability for such failure to withhold to any party, including any Governmental Unit, and the Holder shall reimburse the Debtor, the Liquidation Trust, the Monitor or other Distribution Agent, as applicable. Notwithstanding any provision in the Plan to the contrary, any Debtor, the Liquidation Trustee, the Monitor or any Distribution Agent shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms it believes are reasonable and appropriate. Any Debtor, the Liquidation Trustee, the Monitor or any Distribution Agent may require, as a condition to the receipt of a distribution, that the Holder complete the appropriate Form W-8 or Form W-9, as applicable to each Holder. If the Holder fails to comply with such a request within three (3) months, such distribution shall be deemed an Undeliverable Distribution. Finally, any Debtor, the Liquidation Trustee, the Monitor or any Distribution Agent reserves the right to allocate all distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support, and other spousal awards, Liens, and encumbrances, if any.

J. Allocations

Unless otherwise provided in the Plan, distributions in respect of Allowed Claims shall be allocated first to the principal amount (as determined for U.S. federal income tax purposes) of such Allowed Claims, and then, to the extent the distribution exceeds the principal amount of such Allowed Claims, to any portion of such Allowed Claims for accrued but unpaid interest; provided, however, that no Post-Petition Interest on account of General Unsecured Claims shall be Allowed or paid under the Plan.

K. Time Bar to Cash Payments

Checks issued on account of Allowed Claims and Parent Equity Interests and Beneficial Liquidation Trust Interests may be deemed null and void if not negotiated within one hundred and eighty (180) days after the date of issuance thereof. Requests for reissuance of any check shall be made in writing directly to the Liquidation Trust, Monitor or any other Distribution Agent, as applicable, by the Holder of the Allowed Claim or Parent Equity Interest with respect to which such check originally was issued. Any request in respect of such a voided check shall be made in writing on or before the later of one-hundred and eighty (180) days after the Effective Date or one-hundred and eighty (180) days after the date of issuance of such check. After such date, all rights in respect of void checks shall be forever barred and the distribution on account of such Claims and Parent Equity Interests shall be treated in accordance with Article VII.G of the Plan.

L. Means of Cash Payments

Any Cash payment to be made pursuant to the Plan will be made in U.S. dollars by checks drawn on or by wire transfer from a domestic bank selected by the applicable Debtor, the Liquidation Trustee, the Monitor or any Distribution Agent, as applicable, provided, however, that any Debtor, the Liquidation Trustee, the Monitor or any Distribution Agent shall make Cash payment on any Claim filed against such Debtor in Canadian Dollars.

M. Foreign Currency Exchange Rates

As of the Effective Date, any Claim asserted in currency(ies) other than U.S. dollars or Canadian Dollars shall be automatically deemed converted to the equivalent U.S. dollar value using the mid-range spot rate of exchange for the applicable currency as published in *The Wall Street Journal*, National Edition, on the Petition Date. For greater certainty, the exchange rate does not apply to any Claims filed in Canadian Dollars that are paid in Canadian Dollars.

N. Setoffs

Any Debtor, the Monitor, the Liquidation Trustee or any Distribution Agent, as applicable, may, pursuant to section 558 of the Bankruptcy Code and applicable Canadian or non-bankruptcy law, set off against any Allowed Claim, the distributions to be made pursuant to the Plan on account of such Claim (before any distribution is made on account of such Claim), the claims, rights and Causes of Action of any nature that the Debtors or Liquidation Trust, as applicable, may hold against the Holder of such Allowed Claim; provided, however, that neither the failure to effect such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release of any such claims, rights and Causes of Action that the Debtors or the Liquidation Trust may possess against such Holder.

O. Satisfied Claims and Claims Paid or Payable by Third Parties

Any Administrative Claim or Claim that has been paid or satisfied in full or in part by any party may be adjusted on the Claims Register without a claims objection having to be filed and without any further notice to or action, order, or approval of the Bankruptcy Court, provided that the Liquidation Trustee shall file a notice of satisfaction or other pleading evidencing such satisfactions as are made by the Purchaser or any other party other than a Debtor or the Monitor, or seek an order of the Bankruptcy Court with respect to the same, all in the Liquidation Trustee's reasonable discretion. To the extent a Holder of a Claim receives a distribution on account of such Claim and receives payment from a party that is not a Debtor, the Monitor or a Distribution Agent, as applicable, on account of such Claim, such Holder shall repay, return or deliver any distribution held by or transferred to the Holder to the Monitor to the extent the Holder's total recovery on account of such Claim from the third party and under the Plan exceeds the total Allowed Claim of such Holder as of the date of any such distribution under the Plan. For the avoidance of doubt, prior to the making of distributions hereunder, Claims shall be reduced by the amount, if any, that was (i) paid by one or more of the Debtors pursuant to an order of the Bankruptcy Court or the Canadian Court, (ii) paid or otherwise assumed by the Purchaser in accordance with the Purchase Agreement, or (iii) otherwise satisfied by any third party; provided, however, that to the extent payment on a Claim that could be satisfied by a third

party is still made, then, as permitted under applicable law, the Estates shall be subrogated to any such otherwise Satisfied Claims to recover amounts that could have been used for satisfaction of such Claim.

No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtors' or the Liquidation Trust's insurance policies until the Holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy, except as required under any such insurance policy with respect to a deductible or retention. To the extent that one or more of the insurers agrees to satisfy a Claim should liability ultimately arise on such Claim, then immediately upon such insurers' agreement, such Claim may be deemed Paid in Full under the Plan.

XIII. TREATMENT OF EXECUTORY CONTRACTS

A. Treatment of Executory Contracts

Except as otherwise expressly provided in Article VIII.B of the Plan relating to any insurance policies that may be Executory Contracts, all Executory Contracts of the U.S. Debtors that have not been assumed or assumed and assigned by the Debtors as of the Confirmation Date shall be deemed rejected as of the Effective Date in accordance with, and subject to the provisions and requirements of, sections 365 and 1123 of the Bankruptcy Code.

All Executory Contracts of the Canadian Debtors that have not been assumed or assigned by the Debtors as of the Confirmation Date shall be rejected prior to or after the Effective Date in accordance with section 32 of the CCAA in the CCAA Proceedings.

B. Insurance Policies

Notwithstanding anything to the contrary in the Plan or Confirmation Order, unless any insurance policies have been expressly rejected pursuant to a separate order of the Bankruptcy Court (or through the Confirmation Order), any insurance policies of the Debtors in which the Debtors are or were insured parties (including any policies covering directors' or officers' conduct), or any related insurance agreement issued prior to the Petition Date, shall continue in effect after the Effective Date pursuant to the respective terms and conditions and shall be treated as if assumed. All rights of the Debtors under any insurance policies shall automatically become vested in the Liquidation Trust and the Reorganized Parent Debtor without necessity for further approvals or orders. To the extent that any insurance policies or related insurance agreements are deemed executory contracts, then, unless such policies have been rejected pursuant to a separate order of the Bankruptcy Court or the Canadian Court (or through the Confirmation Order), notwithstanding anything to the contrary in the Plan, the Plan shall constitute a motion to assume, assume and assign, permit "ride through," or ratify such insurance policies or insurance agreements. Subject to the occurrence of the Effective Date, the entry of the Confirmation Order shall constitute both approval of such assumption pursuant to section 365 of the Bankruptcy Code and a finding by the Bankruptcy Court or the Canadian Court that such assumption is in the best interests of the Estates. Unless otherwise determined by the Bankruptcy Court or the Canadian Court pursuant to a Final Order or agreed upon by the parties prior to the Effective Date, no payments shall be required to cure any defaults of the Debtors existing as of the

Confirmation Date with respect to any insurance policy or insurance agreement assumed, or assumed and assigned, pursuant to the Plan. Each insurance company is prohibited from, and the Confirmation Order shall include an injunction against, denying, refusing, altering or delaying coverage on any basis regarding or related to these Chapter 11 Cases, the Plan or any provision within the Plan, including the treatment or means of liquidation set out within the Plan for any insured Claims or Retained Causes of Action. Without limiting the generality of the foregoing, all directors' and officers' liability insurance policies in effect as of the Confirmation Date shall be deemed assumed and shall not be rejected.

C. Effect of Confirmation Order on Rejection of Executory Contracts

Other than as provided in Article VIII.B of the Plan, entry of the Confirmation Order shall constitute an order of the Bankruptcy Court pursuant to sections 365 and 1123(b) of the Bankruptcy Code approving the rejection of the Executory Contracts of the U.S. Debtors as of the Effective Date and determining that with respect to such rejections, such rejected Executory Contracts are burdensome and that the rejection is in the best interests of the Estates.

D. Rejection Damages Claims and Objections to Rejection

Claims arising out of the rejection of any Executory Contract pursuant to the Plan must be filed and served no later than thirty (30) days after the Effective Date. Holders of any Claim not filed within such time will be forever barred from asserting such Claim against the Liquidation Trust, the Monitor, the Debtors or their Estates, or their respective successors or assigns or their respective property. Unless otherwise ordered by the Bankruptcy Court or the Canadian Court or specified in the Plan, all Claims arising from the rejection of Executory Contracts under the Plan shall be treated as General Unsecured Claims under the Plan.

E. Preexisting Obligations Under Executory Contracts

The Debtors and the Liquidation Trust reserve the right to assert that rejection of any Executory Contract pursuant to the Plan, the CCAA or otherwise shall not constitute a termination of obligations owed to the Debtors and/or the Liquidation Trust, as applicable, under such contracts, including but not limited to on the grounds that such Executory Contract was, in fact, not executory and such obligations owed to the Debtors "rode through" the Chapter 11 Cases. Notwithstanding any non-bankruptcy law to the contrary, the Debtors and the Liquidation Trust expressly reserve and do not waive any right to receive, or any continuing obligation of a counterparty to provide, warranties or continued maintenance obligations on goods previously purchased, or services previously received, or insurance obligations, by or for the benefit of the contracting Debtors or the Liquidation Trust, as applicable, from counterparties to rejected Executory Contracts.

F. Reservation of Rights

Nothing contained in the Plan shall constitute an admission by the Debtors or the Liquidation Trust, as applicable, that any contract is in fact an Executory Contract, or that the Debtors or Liquidation Trust, as applicable, have any liability thereunder. In the event of a dispute regarding whether a contract is or was executory at the time of assumption or rejection,

the Debtors or Liquidation Trust, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter the treatment of such contract.

XIV. CONDITIONS PRECEDENT TO CONFIRMATION AND CONSUMMATION OF THE PLAN

A. Conditions Precedent to Confirmation

It shall be a condition to Confirmation of the Plan that:

- (i) the Disclosure Statement Order shall have been entered by the Bankruptcy Court on the Docket of the Chapter 11 Cases, in form and substance acceptable to the Debtors, Monitor, Creditors' Committee and Equity Committee, and such order shall not be subject to a stay;
- (ii) The Canadian Court shall have issued an Order in form and substance satisfactory to the Debtors, the Monitor and the Committees confirming the steps to be taken by the Debtors in the CCAA Proceedings, including seeking approval of the CCAA Approval Order (the "Initial CCAA Approval Order").
- (iii) the Purported Securities Class Action Claim shall have been disallowed and expunged in its entirety or estimated at \$0.00, in each instance, pursuant to an order of the Bankruptcy Court, Canadian Court or other court of competent jurisdiction entered on or before the Confirmation Date, and for all purposes, including, without limitation, Plan distribution purposes;
- (iv) either the Holder of the Individual Securities Damages Claim shall have agreed to the treatment of the Individual Securities Damages Claim as provided under the Plan (including, but not limited to, the amount of the Individual Securities Damages Claim Reserve), or (ii) the Individual Securities Damages Claim shall have been estimated at \$928,077.31 or some lesser amount pursuant to an order of the Bankruptcy Court or other court of competent jurisdiction entered on or before the Confirmation Date;
- (v) the Plan Supplement shall have been filed with the documents contemplated by the Plan, and the documents comprising the Plan Supplement shall have been approved by the Confirmation Order; and

- (vi) The SEC, the Debtors and the Equity Committee shall have reached an agreement regarding the treatment of the SEC Claim.

B. Conditions Precedent to the Effective Date

It shall be a condition to occurrence of the Effective Date that the following conditions shall have been satisfied or waived pursuant to Article IX.D of the Plan:

- (i) the Bankruptcy Court shall have entered on the Docket the Confirmation Order approving the Plan (including the establishment of the Reserves, the payment of Allowed Claims and Equity Interests as set forth in the Plan and the Global Settlement) in form and substance acceptable to the Debtors, Creditors' Committee and Equity Committee, and such order shall not be subject to a stay;
- (ii) the Canadian Court shall have issued the CCAA Approval Order in form and substance acceptable to the Debtors, Equity Committee, the Creditors' Committee and the Monitor, and such order shall not be subject to a stay;
- (iii) the Courts shall have approved the formation of the Liquidation Trust and the appointment of the Liquidation Trustee as the Litigation Representative for the Debtors and the Liquidation Trust with all of the rights, powers, privileges and authority described in Article V.E.12 of the Plan by appropriate orders of the Canadian Court and the Bankruptcy Court;
- (iv) all Reserves shall have been funded in Cash;
- (v) all other actions and documents necessary to implement the provisions of the Plan to be effectuated on or before the Effective Date shall be reasonably satisfactory to the Debtors, the Monitor, the Creditors' Committee and the Equity Committee;
- (vi) the Debtors shall have received all authorizations, consents, approvals, rulings, letters, opinions or documents, if any, necessary to implement the Plan; and
- (vii) each Debtor's Plan shall have become effective.

C. Effect of Non-Occurrence of Conditions to Confirmation or Conditions Precedent to the Effective Date

If the conditions in Article IX.A and IX.B of the Plan are not satisfied, or if the Confirmation Order or CCAA Approval Order is vacated, the Plan shall be null and void in all respects and nothing contained in the Plan or this Disclosure Statement shall (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtors; or (b) constitute an admission, acknowledgment, offer or undertaking by the Debtors or any other Person in any respect.

D. Waiver of Conditions Precedent

The Debtors, with written consent of the Monitor and each of the Committees, may waive any of the conditions precedent set forth in Article IX.A and Article IX.B of the Plan, other than IX.A.1, IX.B.1, and IX.B.2 in whole or in part at any time, without notice, without leave or order of the Bankruptcy Court, and without any formal action other than proceeding to confirm and/or consummate the Plan.

XV. EFFECT OF CONFIRMATION OF THE PLAN

A. Certain Releases by the Debtors

Notwithstanding anything contained in the Plan to the contrary, as of the Effective Date, and to the fullest extent authorized by applicable law, for good and valuable consideration, the Debtor Releasees are deemed released and discharged by the Liquidation Trust, the Debtors and the Estates, from any and all claims, obligations, suits, judgments, damages, demands, debts, remedies, Causes of Action, rights of setoff, other rights, and liabilities whatsoever, including any derivative claims, asserted or that could be asserted directly or indirectly on behalf of the Liquidation Trust, the Debtors, or the Estates, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity, or otherwise, and any and all Causes of Action asserted or that could possibly have been asserted on behalf of the Liquidation Trust, the Debtors, or the Estates (whether individually or collectively) based on, relating to or arising from, in whole or in part, the Debtors, the Estates or the Debtors' subsidiaries, the conduct of the Debtors' businesses, the out-of-court efforts to restructure or liquidate the Debtors, the filing and prosecution of the Chapter 11 Cases or the CCAA Proceedings, the prepetition contracts and agreements with any Debtor or any Estate, all to the extent such acts or occurrence took place prior to the Petition Date (collectively, the "Released Liabilities"); provided, however, that as to any employees of the Debtors who are Insured Persons (such employees, "Insured Employees"), the Debtors, the Estates and the Liquidation Trust, as applicable, shall be permitted to pursue the Insured Employees for any Released Liabilities (the "Permitted Actions") so long as all recourse for the Permitted Actions against such Insured Employees shall be limited in all respects to applicable insurance proceeds actually available and the Insured Employees shall have no personal liability related to any Permitted Actions. Notwithstanding anything contained in the Plan to the contrary, an Insured Employee shall receive the benefit of the release provisions contained in Article X.A of the Plan only if,

prior to the Effective Date, the Debtors have obtained the consent of the [D&O Insurers], in form and substance acceptable to the Equity Committee in its discretion, confirming that the rights of the Debtors, the Estates and the Liquidation Trust to pursue all applicable insurance policies on account of the Permitted Actions and obtain recoveries thereunder in respect to the Permitted Actions shall not be affected, impaired, or compromised in any way by the releases of the Debtor Releasees or any other Insured Employee granted in paragraph X.A of the Plan. To the extent such consent has not been obtained from the [D&O Insurers] prior to the Effective Date, the releases granted in paragraph X.A of the Plan to any Insured Employee shall be null and void. For the avoidance of doubt, except to the extent expressly provided under the Plan in respect to the Debtor Releasees, no release is being granted to any Person or entity under the Plan.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the releases set forth in Article X.A of the Plan, which includes by reference each of the related provisions and definitions contained in the Plan, and further, shall constitute the Bankruptcy Court's finding that such release is: (a) in exchange for the good and valuable consideration provided by the Debtor Releasees; (b) a good faith settlement and compromise of the claims released by Article X.A of the Plan; (c) in the best interests of the Debtors and their Estates; (d) fair, equitable, and reasonable; (e) given and made after due notice and opportunity for hearing; and (f) a bar to any Person asserting any claim or Cause of Action released by Article X.A of the Plan.

B. Certain Releases by Holders of Claims

Notwithstanding anything contained in the Plan to the contrary, as of the Effective Date, the Third-Party Releasees shall be deemed to have been conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Releasing Parties from any and all claims, obligations, suits, judgments, damages, demands, debts, remedies, Causes of Action, rights of setoff, other rights, and liabilities whatsoever, whether for tort, contract, violations of federal, provincial or state securities laws, Avoidance Actions, including any derivative claims, asserted or that could possibly have been asserted directly or indirectly on behalf of the Releasing Parties or their Affiliates, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity, or otherwise, and any and all Causes of Action asserted or that could possibly have been asserted on behalf of the Releasing Parties or their Affiliates (whether individually or collectively) or on behalf of the Holder of any Claim, based on or in any way relating to, or in any manner arising from, in whole or in part, the Liquidation Trust, the Debtors, the Debtors' Estates or the Debtors' subsidiaries, the conduct of the Debtors' businesses, the in-court or out-of-court efforts to restructure or liquidate the Debtors, the formulation, preparation, solicitation, dissemination, negotiation, or filing of this Disclosure Statement or the Plan (including the Plan Supplement), or any contract, instrument, release, or other agreement or document created or entered into in connection with or pursuant to this Disclosure Statement, the Plan (including the Plan Supplement), the filing and prosecution of the Chapter 11 Cases or the CCAA Proceedings, the pursuit of Confirmation, the pursuit of Consummation, the subject matter of, or the transactions or events giving rise to, any Claim that is treated in the Plan, the business or contractual arrangements between the Liquidation Trust, the

Debtors, the Debtors' Estates or the Debtors' subsidiaries, on the one hand, and any Releasing Parties, on the other hand, prepetition contracts and agreements with any Debtor, or any other act or omission, transaction, agreement, event, or other occurrence taking place before the Effective Date.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the releases set forth in Article X.B of the Plan, which includes by reference each of the related provisions and definitions contained in the Plan, and further, shall constitute the Bankruptcy Court's finding that such release is: (a) in exchange for the good and valuable consideration provided by the Third-Party Releasees; (b) a good faith settlement and compromise of the claims released by Article X.B of the Plan; (c) in the best interests of the Debtors and their Estates; (d) fair, equitable, and reasonable; (e) given and made after due notice and opportunity for hearing; and (f) a bar to any Person asserting any claim or Cause of Action released by Article X.B of the Plan.

C. Exculpation

Effective as of the Effective Date, none of the Exculpated Parties shall have or incur any liability to any Holder of any Claim or Equity Interest, the Debtors' Estates or any successor thereto, or any other party (including, but not limited to, any Affiliate of any of the foregoing) for, or be subject to any right of action in respect of, any act or omission on or after the Petition Date and on or before the Effective Date in connection with, related to, or arising out of the Chapter 11 Cases or the CCAA Proceedings, including the formulation, negotiation and execution of the Purchase Agreement, the sale of the Debtors' assets pursuant to the Purchase Agreement, obtaining debtor-in-possession financing in connection with the Chapter 11 Cases and the CCAA Proceedings, the formulation, negotiation and execution of the Plan (including the Plan Supplement), this Disclosure Statement, the solicitation of votes for and the pursuit of confirmation of the Plan, the Consummation of the Plan, or the administration of the Plan, and the property to be distributed under the Plan, including all documents ancillary thereto, all decisions, actions, inactions and alleged negligence or misconduct relating thereto and all postpetition activities leading to the promulgation and Confirmation of the Plan (including, but not limited to, any other post-petition act taken or omitted to be taken in connection with or in contemplation of the restructuring or liquidation of the Debtors), except in case of fraud, willful misconduct, or gross negligence by such Exculpated Party as determined by a Final Order of the Bankruptcy Court or the Canadian Court. Effective as of the Effective Date, no Person (including the Liquidation Trustee) shall have any right of action, either direct or derivative of the Estates, against the Exculpated Parties for any Exculpated Actions; provided, however, that notwithstanding anything to the contrary in the Plan, the exculpation of the Debtors' directors are subject to section 5.1(2) of the CCAA.

D. Injunction

Upon the occurrence of the Effective Date, all Holders of Claims and Equity Interests and other parties in interest, along with their respective present or former affiliates, employees, agents, attorneys, advisors, officers, directors, partners or principals, to the extent consistent with the Plan, shall be enjoined from taking any actions to interfere

with the implementation of the Plan, and are permanently enjoined and forever barred from taking any action against the Exculpated Parties, Debtor Releasees or Third-Party Releasees, and their respective assets, that is inconsistent with the terms of the Plan, including an injunction from (a) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any Claims or Equity Interests; (b) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order on account of or in connection with or with respect to any such Claims or Equity Interests; (c) creating, perfecting, or enforcing any encumbrance of any kind on account of or in connection with or with respect to any such Claims or Equity Interests; (d) asserting any right of setoff, subrogation, or recoupment of any kind on account of or in connection with or with respect to any such Claims or Equity Interests; and (e) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Equity Interests released, exculpated, settled or otherwise addressed pursuant to the Plan, except on terms consistent with the Plan.

E. Preservation of Causes of Action

1. Vesting of Retained Causes of Action

Except as otherwise provided in the Plan or Confirmation Order, in accordance with section 1123(b)(3) of the Bankruptcy Code, any Retained Causes of Action that the Debtors or the Estates may hold against any Entity shall vest jointly in the Reorganized Debtors and the Liquidation Trust on the Effective Date in accordance with the Plan and the CCAA Approval Order.

Except as otherwise provided in the Plan or the Confirmation Order, after the Effective Date, the Liquidation Trustee, as the Litigation Representative on behalf of the Liquidation Trust and the Reorganized Debtors, shall have the right to institute, prosecute, abandon, settle, compromise, or otherwise liquidate any Retained Causes of Action, in accordance with the terms of the Plan and/or Liquidation Trust Agreement, as applicable, and without further order of the Bankruptcy Court, in any court or other tribunal, including in an adversary proceeding filed in one or more of the Chapter 11 Cases, or an action filed in any other court of competent jurisdiction.

2. Preservation of all Retained Causes of Action Not Expressly Settled or Exculpated

Unless a Retained Cause of Action against a Person or Entity is expressly waived, relinquished, compromised, or settled in the Plan or any Final Order (including the Confirmation Order, the CCAA Approval Order or the Sale Orders), the Debtors and Liquidation Trust expressly reserve such Retained Causes of Action for later adjudication by the Liquidation Trust and the Debtors (including Retained Causes of Action not specifically identified or described in the Plan, or Retained Causes of Action of which the Debtors may presently be unaware or which may arise or exist by reason of additional facts or circumstances unknown to the Debtors at this time, or facts or circumstances which may change or be different from those the Debtors now believe to exist). Therefore, no preclusion doctrine, including the doctrines of res judicata,

collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable, or otherwise) or laches shall apply to any such Retained Causes of Action upon or after the entry of the Confirmation Order, issuance of the CCAA Approval Order or Effective Date, except where such Retained Causes of Action have been expressly released or exculpated under the Plan, the Confirmation Order, or any other Final Order. In addition, the Liquidation Trust and the Debtors expressly reserve the right to pursue or adopt any claims alleged in any lawsuit in which the Debtors are a defendant or an interested party, against any Entity, including the plaintiffs or co-defendants in such lawsuits, and all such rights are expressly preserved.

F. Protection Against Discriminatory Treatment

In accordance with section 525 of the Bankruptcy Code, and consistent with paragraph 2 of Article VI of the United States Constitution, no Governmental Unit shall discriminate against the Liquidation Trust or any Debtor, as applicable, or any Person with which the Liquidation Trust or any Debtor has been, is, or becomes associated, solely because any of the Debtors was a debtor under chapter 11, may have been insolvent before the commencement of the Chapter 11 Cases (or during the Chapter 11 Cases) or has not paid a debt except in accordance with the Plan in the Chapter 11 Cases.

G. Release of Liens

Except as otherwise provided in the Plan or in the Confirmation Order, on the Effective Date all mortgages, deeds of trust, Liens, pledges or other security interests against any property of the Debtors, if any, shall be fully released and settled; provided, however, the CCAA Charges shall be released and discharged in the manner provided for in the CCAA Approval Order.

XVI. MODIFICATION REVOCATION OR WITHDRAWAL OF THE PLAN

A. Modification of the Plan After entry of the Confirmation Order, the Debtors, with the consent of the Committees and the Monitor (which consent shall not be unreasonably withheld), may amend or modify the Plan in accordance with section 1127(b) of the Bankruptcy Code to remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan.

Entry of the Confirmation Order shall mean that all modifications or amendments to the Plan approved therein occurring after the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

B. Revocation or Withdrawal of the Plan

The Debtors, after consultation with the Monitor, Creditors' Committee and Equity Committee, reserve the right to revoke or withdraw the Plan before the later of the Confirmation Date and the CCAA Approval Order Date, and to file subsequent chapter 11 plans for any reason. If the Debtors revoke or withdraw the Plan, or if Confirmation or Consummation does not occur with respect to the Plan, then: (a) the Plan will be null and void in all respects; (b) any settlement or compromise embodied in the Plan (including the Global Settlement), assumption or rejection of Executory Contracts effected by the Plan, and any document or agreement executed

pursuant thereto shall be null and void in all respects; and (c) nothing contained in the Plan or this Disclosure Statement shall: (i) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtors; or (ii) constitute an admission, acknowledgment, offer or undertaking by the Debtors or any other Person in any respects.

C. Confirmation

The Bankruptcy Code requires that, in order to confirm the Plan, the Bankruptcy Court must make a series of findings concerning the Plan and the Debtors, including that (i) the Plan has classified Claims and Equity Interests in a permissible manner; (ii) the Plan complies with applicable provisions of the Bankruptcy Code; (iii) the Debtors have complied with applicable provisions of the Bankruptcy Code; (iv) the Debtors have proposed the Plan in good faith and not by any means forbidden by law; (v) the disclosure required by section 1125 of the Bankruptcy Code has been made; (vi) the Plan has been accepted by the requisite votes of creditors and shareholders (except to the extent that cramdown is available under section 1129(b) of the Bankruptcy Code); (vii) the Plan is feasible; (viii) the Plan is in the “best interests” of all Holders of Claims or Equity Interests in an impaired Class by providing to such Holders on account of their Claims or Equity Interests property of a value, as of the Effective Date, that is not less than the amount that such Holder would receive or retain in a chapter 7 liquidation, unless each Holder of a Claim or Equity Interest in such Class has accepted the Plan; (ix) all fees and expenses payable under 28 U.S.C. § 1930, as determined by the Bankruptcy Court at the hearing on confirmation, have been paid or the Plan provides for the payment of such fees on the Effective Date; and (x) the Plan does not alter any obligation of the Debtors to, after the Effective Date, provide for the continuance of all retiree benefits, as defined in section 1114 of the Bankruptcy Code, at the level established at any time prior to confirmation pursuant to sections 1114(e)(1)(B) or 1114(g) of the Bankruptcy Code, for the duration of the period that the Debtors have obligated themselves to provide such benefits.

At the Confirmation Hearing, the Bankruptcy Court will confirm the Plan only if all of the requirements of the Bankruptcy Code are met.

D. Acceptance of Plan

As a condition to confirmation, the Bankruptcy Code requires that each class of impaired claims or interests vote to accept a plan, except under certain circumstances. See “Confirmation Without Acceptance of All Impaired Classes” below. A plan is accepted by an impaired class of interests if Holders of at least two-thirds in number of interests in that class vote to accept the plan. A plan is accepted by an impaired class of claims if Holders of at least two-thirds in dollar amount and more than one-half in number of claims of that class vote to accept the plan. Only those Holders of claims or interests who actually vote count in these tabulations. Holders of Claims or Holders of Interests who fail to vote are not counted as either accepting or rejecting a plan.

In addition to this voting requirement, section 1129 of the Bankruptcy Code requires that a plan be accepted by each Holder of a claim or interest in an impaired class or that the plan otherwise be found by the Bankruptcy Court to be in the best interests of each Holder of a claim or interest in such class. See “Best Interests Test” below. In addition, each impaired class must

accept the plan for the plan to be confirmed without application of the “fair and equitable” and “unfair discrimination” tests in section 1129(b) of the Bankruptcy Code discussed below. See “Confirmation Without Acceptance of All Impaired Classes” below.

E. Confirmation Without Acceptance of All Impaired Classes

The Bankruptcy Code contains provisions for confirmation of a plan even if the plan is not accepted by all impaired classes, as long as at least one impaired class of claims has accepted it. These so-called “cramdown” provisions are set forth in section 1129(b) of the Bankruptcy Code.

A plan may be confirmed under the cramdown provisions if, in addition to satisfying all other requirements of section 1129(a) of the Bankruptcy Code, it (a) “does not discriminate unfairly,” and (b) is “fair and equitable,” with respect to each class of claims or interests that is impaired under, and has not accepted, the plan. As used by the Bankruptcy Code, the phrases “discriminate unfairly” and “fair and equitable” have specific meanings unique to bankruptcy law.

In general, the cramdown standard requires that a dissenting class receive full compensation for its allowed claims or interests before any junior class receives any distribution. More specifically, section 1129(b) of the Bankruptcy Code provides that a plan can be confirmed under that section if: (a) with respect to a secured class, (i) the Holders of such claims retain the liens securing such claims to the extent of the allowed amount of such claims and that each Holder of a claim of such class receive deferred cash payments equaling the allowed amount of such claim as of the plan’s effective date or (ii) such Holders realize the indubitable equivalent of such claims; (b) with respect to an unsecured claim, either (i) the impaired unsecured creditor must receive property of a value equal to the amount of its allowed claim, or (ii) the Holders of claims and interests that are junior to the claims of the dissenting class may not receive any property under the plan; or (c) with respect to a class of interests, either (i) each Holder of an interest of such class must receive or retain on account of such interest property of a value, equal to the greater of the allowed amount of any fixed liquidation preference to which such Holder is entitled, any fixed redemption price to which such Holder is entitled or the value of such interest, or (ii) the Holder of any interest that is junior to the interest of such class may not receive or retain any property on account of such junior interest.

The “fair and equitable” standard, also known as the “absolute priority rule,” requires, among other things, that unless a dissenting unsecured class of claims or a class of interests receives full compensation for its allowed claims or allowed interests, no Holder of claims or interests in any junior class may receive or retain any property on account of such claims or interests. With respect to a dissenting class of secured claims, the “fair and equitable” standard requires, among other things, that Holders either (i) retain their liens and receive deferred cash payments with a value as of the plan’s effective date equal to the value of their interest in property of the estate, or (ii) otherwise receive the indubitable equivalent of these secured claims. The “fair and equitable” standard has also been interpreted to prohibit any class senior to a dissenting class from receiving under a plan more than 100% of its allowed claims. The requirement that a plan not “discriminate unfairly” means, among other things, that a dissenting class must be treated substantially equally with respect to other classes of equal rank.

To the extent a Class rejects the Plan, the Debtors may request confirmation of the Plan, as it may be modified from time to time, under the “cramdown” provisions of section 1129(b) of the Bankruptcy Code. The Debtors will also seek confirmation of the Plan over the objection of individual Holders of Claims who are members of an accepting Class.

The Debtors reserve the right to alter, amend, modify, revoke or withdraw the Plan, any exhibit or schedules thereto, or any Plan Document in order to satisfy the requirements of section 1129(b) of the Bankruptcy Code, if necessary, subject to and in accordance with the provisions of the Plan. The Debtors believe that the Plan will satisfy the “cramdown” requirements of section 1129(b) of the Bankruptcy Code. However, there can be no assurance that the Bankruptcy Court will determine that the Plan meets the requirements of section 1129(b) of the Bankruptcy Code.

Among other things, and without limiting the foregoing reservation of rights, to the extent the Bankruptcy Court, the Canadian Court or another court of competent jurisdiction concludes that the Purported Securities Class Action Claim and any other Securities Law Claims purportedly subsumed in it should not be disallowed, the Debtors reserve the right to amend the Plan (with the consent of the Committees) to provide that the Holders of any Allowed Securities Law Claims ultimately share recoveries on a pro rata basis with Holders of Parent Equity Interests from the residual Liquidation Trust Assets remaining after the satisfaction of all other obligations under the Plan, and ask the Bankruptcy Court to confirm the amended plan without resoliciting votes on such amended Plan, including through a cramdown of such Claims in the Chapter 11 Cases.

F. Best Interests Test

In order to confirm a plan, a bankruptcy court must independently determine that the plan is in the best interests of each Holder of a claim or interest in any such impaired class who has not voted to accept the plan. Accordingly, if an impaired class does not unanimously accept the plan, the best interests test requires the bankruptcy court to find that the plan provides to each member of such impaired class a recovery on account of the class member’s claim or interest that has a value, as of the effective date, at least equal to the value of the distribution that each such member would receive if the debtor was liquidated under chapter 7 of the Bankruptcy Code on such date.

To determine what Holders of Claims in each impaired Class would receive if the Debtors were liquidated under chapter 7, the Bankruptcy Court must determine the dollar amount that would be generated from the liquidation of the Debtors’ remaining Assets, including Causes of Action, in the context of a liquidation under chapter 7 of the Bankruptcy Code. The Cash amount that would be available for satisfaction of Claims and Equity Interests would consist of the proceeds resulting from the disposition of the Assets of the Debtors, augmented by the Cash held by the Debtors at the time of the commencement of the chapter 7 case. Such Cash amount would be reduced by the costs and expenses of liquidation and such additional administrative claims that might result from the use of chapter 7 for the purposes of liquidation, including the fees payable to a chapter 7 trustee in bankruptcy, as well as those fees that would be payable to attorneys and other professionals that such a trustee might engage.

After considering the effects that a chapter 7 liquidation would have on the ultimate proceeds available for distribution to creditors in the Chapter 11 Cases, including the costs and expenses of a liquidation under chapter 7 arising from fees payable to a chapter 7 trustee in bankruptcy, the Debtors have determined that confirmation of the Plan will provide each Holder of an Allowed Claim with a recovery that is not less than such Holder would receive pursuant to the liquidation of the Debtors under chapter 7.

G. Liquidation Analysis

The Debtors could be liquidated under chapter 7 of the Bankruptcy Code. A discussion of the effect that a chapter 7 liquidation would have on the recoveries of the Holders of Claims is set forth in the hypothetical liquidation analysis (the “Liquidation Analysis”) annexed hereto as Exhibit 4.

Underlying the Liquidation Analysis are a number of estimates and assumptions that, although developed and considered reasonable by the Debtors, are inherently subject to significant uncertainties and contingencies beyond the control of the Debtors. The Liquidation Analysis also is based on assumptions with regard to liquidation decisions that are subject to change. Inevitably, some assumptions will not materialize and unanticipated events and circumstances may affect the results of a chapter 7 liquidation of the Debtors. Accordingly, the values reflected might not be realized if the Debtors were, in fact, to be liquidated under chapter 7. All Holders of Claims and Interests that are entitled to vote to accept or reject the Plan are urged to examine carefully all of the assumptions on which the Liquidation Analysis is based in connection with their evaluation of the Plan.

H. Feasibility

Under section 1129(a)(11) of the Bankruptcy Code, a debtor generally must demonstrate that confirmation of a chapter 11 plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtors or any successor to the Debtors (except as proposed in the Plan). The Plan satisfies section 1129(a)(11) of the Bankruptcy Code because it contemplates a global resolution for satisfaction of Claims against the Debtors pursuant to the Global Settlement, followed by the monetization and distribution of the Debtors’ remaining assets to Holders of Equity Interests in accordance with the Plan. Because the Plan effects a liquidation of the Estates’ remaining assets, following the consummation of the Plan, no further reorganization or liquidation of the Debtors or their successors is possible.

I. Compliance with the Applicable Provisions of the Bankruptcy Code

Section 1129(a)(1) of the Bankruptcy Code requires that the Plan comply with the applicable provisions of the Bankruptcy Code. The Debtors have considered each of these issues in the development of the Plan and believe that the Plan complies with all applicable provisions of the Bankruptcy Code.

XVII. ALTERNATIVE TO CONFIRMATION AND CONSUMMATION OF THE PLAN

The Debtors believe the Plan affords Holders of Claims and Equity Interests the potential for the greatest realization on the Debtors' remaining assets and, therefore, is in the best interests of such Holders. If the Plan is not confirmed, the only viable alternatives are dismissal of the Chapter 11 Cases or conversion to chapter 7 of the Bankruptcy Code. Neither of these alternatives is preferable to confirmation and consummation of the Plan.

If the Chapter 11 Cases were dismissed, Holders of Claims and Parent Equity Interests would revert to a "race to the courthouse," the result being that stakeholders would not receive a fair and equitable distribution as contemplated by the Plan. As set forth in the Liquidation Analysis, the Plan provides a recovery to Holders of Claims and Parent Equity Interests no less than that which would be achieved in a case under Chapter 7 of the Bankruptcy Code. Therefore, a Chapter 7 case is not a superior alternative to the Plan. Thus, the Plan represents the best available alternative for maximizing returns to stakeholders.

XVIII. RISK FACTORS

In addition to the other information included in this Disclosure Statement, Holders of Claims or Equity Interests should carefully consider the following risk factors in deciding whether to vote to accept or reject the Plan and whether to elect Option 1 or Option 2. Holders of Claims and Equity Interests should also review and consider the entirety of the Plan and the Plan Supplement in deciding whether to accept or reject the Plan and whether to elect Option 1 or Option 2. Many of these risk factors are beyond the Debtors' control and the effects of which can be difficult to predict.

A. Financial Information; Disclaimer

Although the Debtors have used their best efforts to ensure the accuracy of the financial information provided in this Disclosure Statement, the financial information contained in this Disclosure Statement has not been audited and is based upon an analysis of data available to the Debtors at the time of the preparation of the Plan and this Disclosure Statement. While the Debtors do not currently have any reason to believe that such financial information does not fairly reflect the financial condition of the Debtors, the Debtors are unable to warrant or represent that the information contained herein and attached hereto is without inaccuracies or omissions.

B. The Debtors may not be Able to Obtain Confirmation of the Plan or Issuance of the CCAA Approval Order

The Debtors cannot provide any assurance that they will receive the requisite acceptances to confirm the Plan. Even if the requisite acceptances are received, there can be no assurance that the Bankruptcy Court will confirm the Plan or Canadian Court will issue the CCAA Approval Order. A non-accepting creditor or equity Holder of the Debtors might challenge the confirmation of the Plan or the balloting procedures and/or voting results as not being in compliance with the Bankruptcy Code or Bankruptcy Rules. Even if the Bankruptcy Court

determines that this Disclosure Statement and the balloting procedures and results are appropriate, the Bankruptcy Court could still decline to confirm the Plan if it finds that any of the statutory requirements for confirmation have not been met, including that the terms of the Plan are fair and equitable to non-accepting Classes. Likewise, the Canadian Court may not issue the CCAA Approval Order if it determines the order does meet the statutory requirements of the CCAA, the CCAA does not authorize the Canadian Court to grant the relief requested in the CCAA Approval Order, the relief is inappropriate in the circumstances, or the relief does not further the purpose of the CCAA, among other reasons.

Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation and requires, among other things, a finding by the Bankruptcy Court that the Plan “does not unfairly discriminate” and is “fair and equitable” with respect to any non-accepting Classes and that the value of distributions to non-accepting Holders of Claims or Equity Interests within a particular Class under the Plan will not be less than the value of distributions such Holders would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code. While there can be no assurance that these requirements will be met, the Debtors believe that non-accepting Holders within each Class under the Plan will receive distributions no less than that which would be received following a liquidation under chapter 7 of the Bankruptcy Code when taking into consideration all administrative claims and costs associated with any such chapter 7 cases. *See “III. Global Settlement – E. Impact of Global Settlement on Distributions to Creditors and Shareholders”*

C. The Plan is subject to Conditions Precedent

The Plan also contains its own conditions precedent to confirmation, including that the SEC Claim shall have been settled in a manner acceptable to the Debtors and Equity Committee, and that the Bankruptcy Court shall have entered an order disallowing the Purported Securities Class Action Claim prior to confirmation.

If the conditions precedent to Confirmation of the Plan and/or the Effective Date are not satisfied, or if the Confirmation Order or CCAA Approval Order is vacated, the Plan shall be null and void in all respects and nothing contained in the Plan or this Disclosure Statement shall (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtors; or (b) constitute an admission, acknowledgment, offer or undertaking by the Debtors or any other Person in any respect.

The Debtors reserve their rights to waive these conditions as set forth in Article IX.C of the Plan, or modify the Plan with respect to the SEC Claim or Purported Securities Class Action Claim without resoliciting votes on the Plan; provided, however, that, pursuant to Article IX.D of the Plan, the Debtors may not waive such conditions without the written consent of the Monitor and each of the Committees.

D. Not all Voting Classes may Accept the Plan and the Debtors' ability to Confirm the Plan will depend on Meeting the "Cramdown" Standard under the Bankruptcy Code

The Plan provides treatment for each impaired class of Holders of Claims and Equity Interests entitled to vote on the Plan, as described elsewhere in this Disclosure Statement. A class of Claims accepts a plan if such plan has been accepted by creditors that hold at least two-thirds in amount and more than one-half in number of the Allowed Claims of such Class. A class of Interests accepts a plan if such plan has been accepted by Holders of such Interests that hold at least two thirds in amount of the Allowed Interests of such Class.

In the event that the Plan is not accepted by all impaired classes but is accepted by at least one impaired class of Claims, the Plan may be confirmed under cramdown provisions set forth in section 1129(b) of the Bankruptcy Code, as described elsewhere in this Disclosure Statement.

E. If the Plan or an Alternative Plan is not Confirmed or the CCAA Approval Order is not Granted, the Debtors could be Forced to Convert to Liquidations Under Chapter 7 or the Bankruptcy and Insolvency Act

If the Plan is not confirmed or the CCAA Approval Order is not granted, it is unclear what distributions Holders of Claims or Equity Interests ultimately may receive with respect to their Claims and Equity Interests. If an alternative Plan could not be agreed to, it is possible that the Debtors would convert these Chapter 11 Cases to chapter 7 cases or dismiss these Chapter 11 Cases. Likewise, the stay of proceedings in the CCAA Proceedings could be lifted and the CCAA Proceedings could be converted to liquidation proceedings under the *Bankruptcy and Insolvency Act* or applicable corporate statutes. In either scenario, it is likely that Holders of Claims or Equity Interests would receive substantially less favorable treatment than they would receive under the Plan.

F. Undue Delay in Confirmation or Failure to Confirm the Plan or to Obtain CCAA Approval may Result in Substantial Expenses

In the event that the Plan is not confirmed or the CCAA Approval Order is not granted, the Debtors will incur substantial expenses related to the development and confirmation of a new plan and possibly the approval of a new disclosure statement. This would unnecessarily prolong the administration of the Debtors' assets and negatively affect Creditors' and Shareholders' recoveries on their Claims and Equity Interests.

Similarly, as described above, in the event these Chapter 11 Cases are converted to cases under chapter 7 of the Bankruptcy Code and the CCAA Proceedings are converted to proceedings under the *Bankruptcy and Insolvency Act*, the Debtors will incur substantial expenses related to hiring additional professionals and paying the fees of the chapter 7 trustee and/or a trustee-in-bankruptcy. As the Debtors' tangible assets have already been sold, the additional cost will only serve to reduce distributions to Creditors and Shareholders.

G. The Courts May Not Disallow the Purported Securities Class Action Claim

The disallowance and expungement of the Purported Securities Class Action Claim in its entirety, or its estimation at \$0.00, per order of the Bankruptcy Court, Canadian Court, or other court of competent jurisdiction is a condition precedent to Plan confirmation. The Bankruptcy Court, Canadian Court, or other court of competent jurisdiction may not enter such an order, or may allow the Purported Securities Class Action Claim in whole or in part. Accordingly, the Debtors may be unable to confirm the Plan.

H. Actual Recovery or Distribution may Differ from Estimated Recovery and Distribution

The estimated recoveries and distributions to Holders of Equity Interests set forth in this Disclosure Statement are based on various assumptions and subject to certain qualifications or conditions precedent, and the actual amounts of recovery or distribution may significantly differ from the estimates. Should one or more of the underlying assumptions ultimately prove to be inaccurate or incorrect, the actual recovery or distribution may significantly vary from the estimations set forth in this Disclosure Statement.

I. The Treatment of the Individual Securities Damages Claim

The Plan requires, as a condition to its Confirmation, that the Holder of the Individual Securities Damages Claim shall have agreed to the treatment of the Individual Securities Damages Claim as provided under the Plan (including the amount of the Individual Securities Damages Claim Reserve), or (ii) the Individual Securities Damages Claim shall have been estimated at \$928,077.31 or some lesser amount pursuant to an order of the Bankruptcy Court or other court of competent jurisdiction entered on or before the Confirmation Date. The Bankruptcy Court may not enter an order estimating the Individual Securities Damages Claim on or before the Confirmation Hearing in such amount. In addition, the Holder of such Claim may disagree with its treatment under the Plan. In such case, the Debtors may be unable to confirm the Plan.

J. Treatment of SEC Claim

The Plan requires, as a condition to its Confirmation, that the SEC, the Debtors and the Equity Committee shall have reached an agreement regarding the treatment of the SEC Claim under the Plan. At this time, there is no resolution of the SEC Claim, however, discussions with among the Debtors, the SEC and the Equity Committee are ongoing. There can be no certainty as to the results of the discussions with the SEC and the Plan; this Disclosure Statement and the CCAA Approval Order may need to be revised as appropriate, to reflect the status of discussions among the Debtors, the SEC and the Equity Committee or any resolution, or lack thereof, of the SEC Claim.

K. Delays of Confirmation or Effective Date

Any delays of either confirmation or effectiveness of the Plan could result in, among other things, increased administrative costs, including Fee Claims. Excessive delays or the inability to confirm or consummate a plan may result in conversion of the Chapter 11 Cases to

chapter 7 liquidations and the CCAA Proceedings to proceedings under the *Bankruptcy and Insolvency Act*. See Risk Factor “B. The Debtors may not be Able to Obtain Confirmation of the Plan or Issuance of the CCAA Approval Order” above

L. The Canadian Court may not issue the CCAA Approval Order Notwithstanding Confirmation of the Plan by the Bankruptcy Court

It is a condition to occurrence of the Effective Date of the Plan that the Canadian Court shall have issued the CCAA Approval Order in form and substance acceptable to the Debtors, the Monitor and the Committees, and such order shall not be subject to a stay. The failure of the Canadian Court to do so would result in the Plan not becoming effective notwithstanding confirmation by the Bankruptcy Court. See Risk Factor “E. If the Plan or an Alternative Plan is not Confirmed or the CCAA Approval Order is not Granted, the Debtors could be Forced to Convert to liquidations under Chapter 7 or the Bankruptcy and Insolvency Act” above.

M. Certain Bankruptcy Considerations

There are inherent risks and uncertainties involved in the Bankruptcy Proceedings, including the degree of cooperation among the Debtors, the Creditors’ Committee, the Equity Committee, the Monitor and other stakeholders, the extent of the Debtors’ ability to meet certain obligations during the Bankruptcy Proceedings, risks associated with third-party motions in the Bankruptcy Proceedings, and increased legal and advisory costs related to the Bankruptcy Proceedings and other litigation and regulatory actions.

There can be no assurance that modifications of the Plan or CCAA Approval Order will not be required for acceptance and confirmation or that such modifications would not necessitate the resolicitation of votes on the Plan.

N. Retained Causes of Action May Have No Value

The Shareholder Distributable Assets include various Estate Retained Causes of Action that will vest with the Parent Debtor and the Liquidation Trust, and that will be jointly owned by the Parent Debtor and the Liquidation Trust. Causes of Action are inherently difficult to value, and any such Cause of Action may prove to have limited or zero value. In addition, litigating Causes of Action is a time consuming and expensive process. Accordingly, even if the Retained Causes of Action have some value, Holders of Parent Equity Interests may not realize any proceeds from such litigation for many years, if at all. Moreover, the cost of litigating such Retained Causes of Action is expensive, and may be done on a contingent fee basis. The net proceeds distributable to Holders of Parent Interests may therefore prove considerably less than amounts awarded on account of, or recovered from, the Retained Causes of Action.

The Debtors have not analyzed the merits or otherwise valued of any of the Retained Causes of Action that may be transferred in whole or in part to the Liquidation Trust nor can there be any assurance under Ontario, British Columbia or other Canadian Law, if applicable, as to the effectiveness or ability to transfer any such Retained Causes of Action, in whole or in part, or that such transfers might not provide the putative defendants with potential defenses or positions they would not otherwise have.

O. No Duty to Update

The statements contained in this Disclosure Statement are made by the Debtors as of the date hereof, unless otherwise specified herein, and the delivery of this Disclosure Statement after that date does not imply that there has been no change in the information set forth herein since that date. The Debtors have no duty to update this Disclosure Statement unless otherwise ordered to do so by the Bankruptcy Court.

P. No Representations Outside This Disclosure Statement Are Authorized

No representations concerning or related to the Debtors, the Chapter 11 Cases, or the Plan are authorized by the Bankruptcy Court or the Bankruptcy Code, other than as set forth in this Disclosure Statement. Any representations or inducements made to secure your acceptance or rejection of the Plan that are other than as contained in, or included with, this Disclosure Statement should not be relied upon by you in arriving at your decision.

Q. The Liquidation Trust Beneficial Interests May Not Be Exempt From Registration

The Liquidation Trust Beneficial Interests will be issued without registration under the U.S. Securities Act of 1933, 15 U.S.C. Sections 77A-77AA, together with the rules and regulations promulgated thereunder (the “Securities Act”), or similar U.S., Canadian, federal, state, provincial or local laws to persons resident or located in the U.S. in reliance on the exemptions set forth in section 1145 of the Bankruptcy Code. To the extent the exemptions from registration under section 1145 of the Bankruptcy Code or other applicable laws do not apply, the Liquidation Trust Beneficial Interests may not be offered or issued to persons resident or otherwise located in the U.S. except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act. No assurances can be given that the Liquidation Trust Beneficial Interests are exempt from the registration requirements of the Securities Act pursuant to section 1145 of the Bankruptcy Code. Further, the issuance of the Liquidation Trust Beneficial Interests may give rise to certain reporting and disclosure requirements and obligations in accordance with applicable Canadian Securities Laws notwithstanding receipt of the CCAA Approval Order. The Canadian Securities Regulators may determine that exemptive relief from applicable Canadian Securities Laws is required and there can be no assurance that the appropriate exemptive relief will be granted in a timely manner or at all. *See “X. Implementation of the Plan – E. The Liquidation Trust – 9. Liquidation Trust Securities Law Matters.”* **No Legal, Business, Financial or Tax Advice Is Being Provided To You By This Disclosure Statement**

The contents of this Disclosure Statement should not be construed as legal, business, financial or tax advice. Each Claim or Equity Interest Holder should consult his, her, or its own legal counsel and accountant as to legal, financial, tax, and other matters concerning his, her, or its Claim or Equity Interest.

This Disclosure Statement is not legal advice to you. This Disclosure Statement may not be relied upon for any purpose other than to determine how to vote on the Plan or object to confirmation of the Plan.

S. Regulatory Compliance

In accordance with applicable Canadian Securities Laws, the Parent Debtor is considered to be a “reporting issuer” (as such term is defined in the *Securities Act* (Ontario)). As a result of, among other things, the delayed filing of its Annual Report, including its annual audited financial statements for the fiscal year ended May 31, 2016 and the related management’s discussion and analysis, the Parent Debtor is in default of the filing requirements under applicable Canadian Securities Laws. Following the Effective Date, the Reorganized Parent Debtor will continue to exist under applicable corporate laws and is expected to remain a reporting issuer. Further, to the extent that the Liquidation Trust Beneficial Interests are deemed or determined to be “securities,” the Canadian Securities Regulators may determine the Liquidation Trust to be a reporting issuer. Reporting issuers are subject to reporting and disclosure requirements and obligations under applicable Canadian Securities Laws. It is not expected that the Reorganized Parent Debtor or the Liquidation Trust will be in a position to comply with applicable Canadian Securities Laws for the duration of the CCAA Proceedings or in the future and therefore, the Canadian Securities Regulators may determine it necessary for the Parent Debtor and/or the Liquidation Trust to seek exemptive relief from the Canadian Securities Regulators in order to give effect to the Plan and the transactions contemplated thereby. As a result, there can be no assurance that the appropriate exemptive relief will be granted in a timely manner or at all. An application for exemptive relief may cause significant delays in Confirmation and consummation of the Plan and additional costs and expenses will be incurred by the Debtors’ Estates.

T. Neither Option for Receiving Plan Distributions May Favorably Affect the Tax Obligations of Holders of Parent Equity Interests

The Plan provides Holders of Parent Equity Interests with two options for receiving their distributions. The Debtors, after consultation with the Committees and the Monitor, included such options to mitigate against potential adverse tax consequences that the Reorganized Parent Debtor and Holders of Parent Equity Interests may suffer if distributions were made directly to Holders. The Plan options can result in different tax implications for the Holders of Parent Equity Interests, and such implications may or may not be favorable to the Holders. Given the complexity of cross-border tax implications, no assurances can be given that the Plan options are the best options available to Holders of Parent Equity Interests, that either option will mitigate adverse tax implications for such Holders, or that the Plan options will otherwise impact or effect – positively or negatively – a Holder’s tax obligations. Finally, if a Holder of Parent Equity Interests elects to receive Beneficial Trust Interests under the Plan, and is subsequently determined to be a Canadian Holder of Parent Equity Interests, and it is determined that the Liquidation Trust may be subject to adverse Canadian tax consequence as a result, then any transfer of Beneficial Trust Interests to such Holder and the cancellation of such Holder’s Parent Equity Interests shall be *void ab initio* and the Reorganized Parent Debtor, the Holder and the Liquidation Trust shall each treat such Holder at all times as if such Holder had elected Option 2. See Risk Factor “X. Canadian Shareholders Who Elect Option 1 and Receive Beneficial Trust Interests” below.

U. Significant U.S. Tax Liabilities May Have Resulted From the Sale

As of the closing of the Sale, the U.S. Debtors retained significant Tax Assets. Section 382 of the Tax Code limits a corporation's utilization of Tax Assets following a "50-percent ownership change."

Bybrook participated in trades in the Parent Debtor's equity securities that could have materially impaired the Tax Assets. More specifically, Bybrook executed transactions that would have caused a Section 382 Ownership Change if left unremedied. On July 12, 2017, the Parent Debtor and Bybrook entered into the Bybrook Stipulation pursuant to which Bybrook agreed to dispose of certain of the Parent Debtor's equity securities that it had acquired. The stipulation also acknowledged the trades were void *ab initio*, [Docket No. 1187]. The Bankruptcy Court approved the Bybrook Stipulation on July 13, 2017 [Docket No. 1192] and Bybrook has confirmed that it has completed the sales contemplated thereby.

Had the U.S. Debtor undergone a Section 382 Ownership Change because of Bybrook's purchases, or for any other reason, the U.S. Debtors could have faced significant cash tax liabilities in connection with the Sale. The Reorganized Parent Debtor intends to take the position that the implementation of the transactions described in the Bybrook Stipulation eliminates any potential adverse tax consequences arising from a potential Section 382 Ownership change resulting from the Bybrook stock acquisitions, consistent with private rulings that the Service has given other taxpayers in similar circumstances. However, private rulings may be relied upon only by the recipient; therefore, the existing rulings are not substantive authority on which the U.S. Debtors can rely, and the Debtors do not intend to seek a ruling from the Service with respect to the Bybrook purchases or the transactions contemplated by the Bybrook Stipulation. Thus, there can be no assurance that the Bybrook purchases did not impair the Tax Assets of the U.S. Debtors. Furthermore, because the rules under section 382 of the Tax Code are highly complex, no assurance can be given that another transaction has not triggered, or will not trigger, a Section 382 Ownership Change prior to the implementation of the Plan. *See Article VIII.B. – Preservation of Certain Tax Assets.*

V. The Plan Transactions may result in material U.S. federal tax liabilities to the U.S. Debtors

The U.S. Debtors do not expect material U.S. federal income tax liabilities to arise as a result of the Plan Transactions. The Plan provides that to the extent Cash or Assets of the U.S. Debtors are required to be distributed by the Reorganized Parent Debtor to Holders of Parent Equity Interests, such Cash or Assets shall be transferred from the U.S. Debtors to the Reorganized Parent Debtor in satisfaction of Intercompany Claims pursuant to the Plan. The U.S. Debtors intend to take the position that the Intercompany Claims are respected as indebtedness of the U.S. Debtors for U.S. federal income tax purposes, and, as such, the U.S. Debtors do not expect any U.S. federal tax liability to arise as a result of the transfer of Cash and Assets from the U.S. Debtors to the Reorganized Parent Debtor in repayment of the Intercompany Claims. No assurance can be given, however, that the Service or any other taxing authorities will respect the Intercompany Claims or the form of the Plan Transactions, in which case material U.S. federal tax may apply to the Plan Transactions.

W. The Transactions with the Liquidation Trust may be challenged by the Service

Pursuant to the Plan, each Holder of Parent Equity Interests may elect to receive non-transferrable Beneficial Trust Interests (and a right to receive its Pro Rata share of any other Shareholder Distributable Assets in accordance with the Plan) in cancellation of all of such U.S. Holder's Parent Equity Interests. For U.S. income tax purposes, the Debtors intend to treat the transaction consistent with its form and take the position that a U.S. Holder of Parent Equity Interests that elects Option 1 will be treated as receiving Beneficial Trust Interests and cash distributions in complete redemption of such U.S. Holder's Parent Equity Interests as described below under “– U.S. Federal Income Tax Consequences to U.S. Holders of Parent Equity Interests Electing Option 1 – Distributions in Redemption of Parent Equity Interests.” However, there is no authority addressing an arrangement with terms such as those contained in Option 1 or the ongoing arrangements between the Reorganized Parent Debtor and the Liquidation Trust and, therefore, no assurance can be given that the Service would not assert, or that a court would not sustain, a position contrary to such treatment. In the event of such an outcome, U.S. Holders who elect Option 1 could be treated as receiving distributions from the Liquidation Trust, if any, as if such distributions were made by the Reorganized Parent Debtor on Parent Equity Interests as discussed under “–U.S. Federal Income Tax Consequences to U.S. Holders of Parent Equity Interests Electing Option 2 - Distributions on Parent Equity Interests.”

X. Liquidation Trust Beneficiaries may incur income tax liability regardless of whether cash distributions are made by the Liquidation Trust.

Liquidation Trust Beneficiaries could be required to recognize income in a taxable year for U.S. federal income tax purposes, even if the Liquidation Trust either distributes no cash or other assets in such year or distributes cash or other assets in such year in an amount that is less than the amount of such income. It is anticipated that the Liquidation Trust will allow for tax distributions to be made to U.S. Holders of Beneficial Trust Interests in the event a Liquidation Trust Beneficiary recognizes income or gain from the Liquidation Trust; however, there can be no assurance that any such distribution will be sufficient to satisfy all tax liabilities of a U.S. Holder arising from ownership of Beneficial Trust Interests.

Y. Clearance Certificates and Comfort Letters

In addition, prior to making certain distributions to Holders of Parent Equity Interests, the Plan requires the receipt of one or more Clearance Certificates from the CRA and other applicable tax authorities. Further, until the Monitor is in receipt of the Comfort Letters, the Monitor, as Distribution Agent, shall be under no obligation to make any distributions on account of any Allowed Claims.

The regulatory environment governing distributions on account of the Parent Debtor's securities is complex, and compliance with applicable non-bankruptcy law (including obtaining any Clearing Certificates and Comfort Letters) may cause significant delay in distributions to Holders of Parent Equity Interests, and additional costs and expenses being incurred by the Debtors' Estates.

Z. The Plan Transactions may result in material Canadian federal and provincial tax liabilities

Subject to the comments that follow, the Canadian Debtors do not currently anticipate material Canadian federal or provincial income tax liabilities to arise as a result of the Plan Transactions. The Plan provides that the Liquidation Trust Assets will be deemed to be distributed to Holders of Allowed Parent Equity Interests who elect Option 1 followed immediately by a deemed contribution by such Holders of the Liquidation Trust Assets to the Liquidation Trust. The transfer of such Liquidation Trust Assets within the Debtor group and/or the distribution of such Liquidation Trust Assets in respect of Holders of Allowed Parent Equity Interests who elect Option 1 may result in Canadian federal and provincial income tax consequences to one or more of the Canadian Debtors (including the realization of income or gain). The precise Canadian and provincial income tax consequences to the Canadian Debtors in this regard will depend on a number of factors, including the nature of the Liquidation Trust Assets, where such Liquidation Trust Assets are held within the Debtor corporate group, and the value of such Liquidation Trust Assets. A good faith determination of the value of the Liquidation Trust Assets will be made, in accordance with the Plan, and that amount will be used, along with an assessment of any other relevant factors, in determining the Canadian federal and provincial income tax consequences to the Canadian Debtors of transferring any such Liquidation Trust Assets within the Debtor corporate group and of distributing such Liquidation Trust Assets to Holders of Allowed Parent Equity Interests who elect Option 1. This determination of the value of the Liquidation Trust Assets, and the reporting position taken by the Canadian Debtors with respect to the transfer or distribution of such Liquidation Trust Assets, will not be binding on the Canada Revenue Agency (or any other relevant taxing authority) and there can be no assurance that the Canada Revenue Agency (or other relevant taxation authority) will agree with such determination of value or any reporting position taken by the Company in this respect or otherwise with respect to implementation of the Plan Transactions, in which case material Canadian federal or provincial income tax may arise.

In addition, the Canadian Debtors may realize income or gain in connection with any proceeds to which they are entitled on the settlement or determination of any litigation claims and may be subject to material Canadian or provincial income tax as a result.

AA. Canadian Shareholders Who Elect Option 1 and Receive Beneficial Trust Interests

Pursuant to the Plan, Holders of Parent Equity Interests may elect to receive Beneficial Trust Interests (and a right to receive their Pro Rata share of the Liquidation Trust Expense Reserve and any other Shareholder Distributable Assets in accordance with the Plan) in exchange for all of such holders' Parent Equity Interests. The Canadian tax consequences of such alternative are uncertain, though such consequences are generally expected to be adverse (subject to the comment below with respect to the acceleration of any loss). These uncertainties include those with respect to the character for Canadian tax purposes of any return realized by a holder of Beneficial Trust Interests (which character may be different than the return to Holders who retain their Parent Equity Interests). In addition, see the discussion under the heading "*Canadian Tax Consequences of Liquidation Trust is Uncertain*". However, notwithstanding such uncertainty, a Holder of Parent Equity Interests may be able to accelerate the realization of

any loss such Holder has in respect of their Parent Equity Interests by electing Option 1. Therefore, Canadian-resident Holders who are considering making such election are strongly urged to consult their own tax advisors for advice having regard to their own particular circumstances.

BB. Canadian Tax Consequences of Liquidation Trust is Uncertain

The treatment for Canadian income tax purposes of the Liquidation Trust and of a Holder's Beneficial Trust Interest in such Liquidation Trust is unclear. The Liquidation Trust may be deemed, for certain purposes of the Tax Act, to be resident in Canada. To the extent the Liquidation Trust realizes any income or capital gain (including with respect to Liquidation Trust Assets), the Liquidation Trust may be liable for Canadian income tax on such income or gains if the Liquidation Trust does not qualify as an "exempt foreign trust" and less than all of such income or gain is not paid or made payable to the beneficiaries in the relevant taxation year. The Liquidation Trust should qualify as an exempt foreign trust if the only beneficiaries of the Liquidation Trust who may receive income or capital of the Liquidation Trust are beneficiaries that hold an interest in the Liquidation Trust that qualify as a "fixed interest" and each such fixed interest that is outstanding was issued by the Liquidation Trust in exchange for consideration that was not less than 90% of the interest's proportionate share of the net asset value of property at the time of issuance. For these purposes a "fixed interest" would generally include an interest in the Liquidation Trust where no amount of the income or capital of the Liquidation Trust to be distributed at any time in respect of any interest in the Liquidation Trust depends on a person exercising (or failing to exercise) any discretionary power other than a power in respect of which it is reasonable to conclude that (a) the power is consistent with normal commercial practice, (b) the power is consistent with terms that would be acceptable to beneficiaries under the Liquidation Trust if the beneficiaries were dealing with each other at arm's length, and (c) the exercise of, or failure to exercise, the power will not materially affect the value of an interest as a beneficiary under the Liquidation Trust relative to the value of other such interests under the Liquidation Trust.

In addition, in the event that the Liquidation Trust does not qualify as an exempt foreign Trust, Holders of a Beneficial Trust interest that are not resident in Canada (including U.S. holders) may be subject to 25% Canadian withholding tax in respect of distributions from the Liquidation Trust. No assurances can be given that the Liquidation Trust will qualify as an "exempt foreign trust" for these purposes.

Alternatively, if the Liquidation Trust does qualify as an "exempt foreign trust", the Liquidation Trust may, for certain purposes of the Tax Act, be deemed to be a non-resident corporation and the beneficiaries of the Liquidation Trust deemed to be shareholders. This deeming rule should not result in any Canadian tax consequence for a U.S.-resident Holder of a Beneficial Trust Interest, but may require Canadian-resident Holders (and certain other categories of persons or entities, including controlled foreign affiliates of Canadian residents or partnerships of which a Canadian resident person is a member) of a Beneficial Trust Interest in the Liquidation Trust to include in their income for Canadian tax purposes their proportionate share of any "foreign accrual property income" of the Liquidation Trust on a current basis in certain circumstances. Any such Holders who are considering electing Option 1 are advised to consult their tax advisor for advice having regard to their own particular circumstances.

XIX. CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN

A summary description of certain material U.S. federal income tax consequences of the Plan is provided below. This description is for informational purposes only and, due to a lack of definitive judicial or administrative authority or interpretation, substantial uncertainties exist with respect to various tax consequences of the Plan as discussed herein. Only the principal consequences of the Plan to the U.S. Debtors and to U.S. Holders of Parent Equity Interests and General Unsecured Claims who hold the Parent Equity Interests and General Unsecured Claims as capital assets are discussed herein. No opinion of counsel has been sought or obtained with respect to any tax consequences of the Plan. No rulings or determinations of the United States Internal Revenue Service (the “Service”) or any other tax authorities have been sought or obtained with respect to any tax consequences of the Plan, and the discussion below is not binding on the Service or any other authority. As a result, there can be no assurance that the Service will not disagree with or challenge any of the conclusions reached and described herein and that a court would not sustain such a challenge. Events occurring after the date of this Disclosure Statement, including changes in law and changes in administrative positions, could affect the U.S. federal income tax consequences of the Plan. No representations are being made regarding the particular tax consequences of the confirmation and consummation of the Plan to the Debtors or any U.S. Holder.

Except as otherwise specifically stated herein, this summary does not address any estate or gift tax consequences of the Plan or tax consequences of the Plan under any state, local or non-U.S. laws. Furthermore, this discussion does not address all tax considerations that might be relevant to particular U.S. Holders in light of their personal circumstances or to persons that are subject to special tax rules. In addition, this description of the material U.S. federal income tax consequences does not address the tax treatment of special classes of U.S. Holders, such as: financial institutions, regulated investment companies, real estate investment trusts, tax-exempt entities, insurance companies, persons holding Equity Interests as part of a hedging, integrated or conversion transaction, constructive sale or “straddle,” U.S. expatriates, persons subject to the alternative minimum tax, dealers or traders in securities or currencies, persons holding deferred compensation or other wage claims.

For purposes of this discussion, a “U.S. Holder” is a Holder who is: (1) an individual citizen or resident of the United States for U.S. federal income tax purposes; (2) a corporation (or other entity treated as a corporation for U.S. federal income tax purposes) created or organized under the laws of the United States or any state thereof or the District of Columbia; (3) an estate the income of which is subject to U.S. federal income taxation regardless of its source; or (4) a trust (A) if a court within the United States is able to exercise primary jurisdiction over its administration and one or more U.S. persons have authority to control all substantial decisions of the trust or (B) that has a valid election in effect under applicable Treasury Regulations to be treated as a U.S. person.

If a pass-through entity, including a partnership or other entity taxable as a partnership for U.S. federal income tax purposes, is a Holder, the tax treatment of a partner or other owner will generally depend upon the status of the partner (or other owner) and the activities of the entity. If a person is a partner (or other owner) of a pass-through entity that is a Holder, such

person is urged to consult its tax advisor regarding the tax consequences of the Plan to its particular situation.

The following discussion is based upon the Internal Revenue Code of 1986, as amended (the “Tax Code”), U.S. judicial decisions, administrative pronouncements and existing and proposed Treasury Regulations, all as in effect as of the date hereof. All of the preceding authorities are subject to change, possibly with retroactive effect, so as to result in U.S. federal income tax consequences different from those discussed below.

The following discussion is for general information only and is not intended to be, nor should it be construed to be, legal or tax advice to any U.S. Holder and no opinion or representation with respect to the U.S. federal income tax consequences to any such U.S. Holder is made. U.S. Holders are urged to consult their own tax advisors regarding the application of U.S. federal, state and local tax laws, as well as any applicable non-U.S. tax laws, to their particular situation.

A. U.S. Federal Income Tax Consequences of the Plan Transactions to the U.S. Debtors

The U.S. Debtors do not expect material U.S. federal income tax liabilities to arise as a result of the Plan Transactions. The Plan provides that to the extent Cash or Assets of the U.S. Debtors are required to be distributed by the Reorganized Parent Debtor to Holders of Parent Equity Interests, such Cash or Assets shall be transferred from the U.S. Debtors to the Reorganized Parent Debtor in satisfaction of Intercompany Claims pursuant to the Plan. The U.S. Debtors intend to take the position that the Intercompany Claims are respected as indebtedness of the U.S. Debtors for U.S. federal income tax purposes, and, as such, the U.S. Debtors do not expect any U.S. federal tax liability to arise as a result of the transfer of Cash and Assets from the U.S. Debtors to the Reorganized Parent Debtor in repayment of the Intercompany Claims. No assurance can be given, however, that the Service or any other taxing authorities will respect the Intercompany Claims or the form of the Plan Transactions, in which case material U.S. federal tax may apply to the Plan Transactions.

B. U.S. Federal Income Tax Consequences to U.S. Holders of General Unsecured Claims

Pursuant to the Plan, each U.S. Holder of a General Unsecured Claim will receive Cash in satisfaction of its respective Claims. The U.S. federal income tax consequences of the Plan to holders of General Unsecured Claims, including the character, amount and timing of income, gain or loss recognized as a consequence of the Plan and the distributions provided for by the Plan, generally will depend upon, among other things, (i) the manner in which a U.S. Holder acquired a General Unsecured Claim; (ii) the length of time a General Unsecured Claim has been held; (iii) whether the General Unsecured Claim was acquired at a discount; (iv) whether the U.S. Holder has taken a bad debt deduction in the current or prior years; (v) whether the U.S. Holder has previously included accrued but unpaid interest with respect to a General Unsecured Claim; (vi) the U.S. Holder’s method of tax accounting; (vii) whether the U.S. Holder will realize foreign currency exchange gain or loss with respect to a General Unsecured Claim; (viii) whether a General Unsecured Claim is an installment obligation for federal income tax purposes;

and (ix) whether the transaction is treated as a “closed transaction.” Therefore, U.S. Holders of General Unsecured Claims are urged to consult their tax advisors for information that may be relevant to their particular situation and circumstances and the particular tax consequences to such U.S. Holder as a result thereof. In particular, General Unsecured Claims that arise in the ordinary course of a U.S. Holder’s trade or business may not be treated as capital assets and, in such case, the gain or loss attributable to such General Unsecured Claims would be treated as ordinary income.

A U.S. Holder generally will recognize U.S. source capital gain or loss in an amount equal to the difference between the amount realized (the amount of Cash received in satisfaction of such U.S. Holder’s Claim) and the U.S. Holder’s adjusted tax basis in its General Unsecured Claim (other than Claims for accrued but unpaid interest). *See* discussion below in “— U.S. Federal Income Tax Consequences to U.S. Holders of General Unsecured Claims — Payment for Accrued but Unpaid Interest.” Generally, such gain or loss would be long-term capital gain or loss if the U.S. Holder held the Claim as a capital asset and such U.S. Holder held such Claim for more than one year, unless the U.S. Holder previously claimed a bad debt or worthless securities deduction or had accrued market discount with respect to the Claim (See discussion below in “— U.S. Federal Income Tax Consequences to U.S. Holders of General Unsecured Claims — Market Discount”). Long-term capital gain recognized by certain non-corporate U.S. Holders, including individuals, generally is subject to tax at a reduced rate. The deductibility of capital losses is subject to limitations.

1. Payment for Accrued but Unpaid Interest

Under the Plan, some Cash may be distributed or deemed distributed to certain U.S. Holders of General Unsecured Claims with respect to their Claims for accrued interest. U.S. Holders of General Unsecured Claim for accrued interest that have not previously included such accrued interest in income will be required to recognize ordinary income equal to the amount of Cash received with respect to such General Unsecured Claim for accrued interest. Conversely, a U.S. Holder will generally recognize a deductible loss to the extent that any accrued interest was previously included in income and is not paid in full. Pursuant to the Plan, the Debtors will allocate for U.S. federal income tax purposes all distributions in respect of any General Unsecured Claim first to the principal amount of such General Unsecured Claim, and thereafter to accrued but unpaid interest. Certain legislative history indicates that an allocation of consideration between principal and interest provided for in a bankruptcy plan of reorganization is binding for U.S. federal income tax purposes. However, no assurance can be given that the Service will not challenge such allocation. If a distribution with respect to a General Unsecured Claim is entirely allocated to the principal amount of such General Unsecured Claim, a holder may be entitled to claim a loss to the extent of any accrued but unpaid interest on the Claim that was previously included in the holder’s gross income. U.S. Holders of General Unsecured Claims are urged to consult their own tax advisors regarding the particular U.S. federal income tax consequences to them of the treatment of accrued but unpaid interest, as well as the character of any loss claimed with respect to accrued but unpaid interest previously included in gross income.

2. Market Discount

The market discount provisions of the Tax Code may apply to certain U.S. Holders of General Unsecured Claims. In general, a debt obligation other than a debt obligation with a fixed maturity of one year or less that is acquired by a holder in the secondary market (or, in certain circumstances, upon original issuance) is a “market discount bond” as to that holder if its stated redemption price at maturity (or, in the case of a debt obligation having original issue discount, the revised issue price) exceeds the adjusted tax basis of the debt obligation in the holder’s hand immediately after its acquisition by more than a statutory *de minimis* amount. Gain recognized by a creditor with respect to a “market discount bond” will generally be treated as ordinary interest income to the extent of the market discount accrued on such debt obligation during the creditor’s period of ownership, unless the creditor elected to include accrued market discount in taxable income currently. A holder of a market discount bond may be required under the market discount rules of the Tax Code to defer deduction of all or a portion of the interest on indebtedness incurred or maintained to acquire or carry the bond. In such circumstances, the holder may be allowed to deduct such interest, in whole or in part, on the disposition of such bond.

C. **U.S. Federal Income Tax Consequences to U.S. Holders of Parent Equity Interests Electing Option 1**

1. Distributions in Redemption of Parent Equity Interests

(a) Characterization of Transactions

Pursuant to the Plan, each U.S. Holder of Parent Equity Interests may elect to receive Beneficial Trust Interests, (and a right to receive their Pro Rata share of any other Shareholder Distributable Assets in accordance with the Plan) in cancellation of all of such U.S. Holder’s Parent Equity Interests. The Debtors intend to treat the transaction consistent with its form and take the position that a U.S. Holder of Parent Equity Interests that elects Option 1 will be treated as receiving Beneficial Trust Interests and cash distributions in complete redemption of such U.S. Holder’s Parent Equity Interests as described below under “– *U.S. Federal Income Tax Consequences to U.S. Holders of Parent Equity Interests Electing Option 1 – Distributions in Redemption of Parent Equity Interests.*” However, there is no authority addressing an arrangement with terms such as those contained in Option 1 or the ongoing arrangements between the Reorganized Parent Debtor and the Liquidation Trust and, therefore, no assurance can be given that the Service would not assert, or that a court would not sustain, a position contrary to such treatment. In the event of such an outcome, U.S. Holders who elect Option 1 could be treated as receiving distributions from the Liquidation Trust, if any, as if such distributions were made by the Reorganized Parent Debtor on Parent Equity Interests as discussed under “–*U.S. Federal Income Tax Consequences to U.S. Holders of Parent Equity Interests Electing Option 2 - Distributions on Parent Equity Interests.*”

(b) Distributions in Redemption of Parent Equity Interests

Subject to the discussion below under “–*Passive Foreign Investment Company (PFIC) Considerations,*” and assuming the form of the transaction is respected, a U.S. Holder would

recognize U.S. source capital gain or loss in an amount equal to the difference between the amount realized (the sum of cash distributions received or treated as received from the Reorganized Parent Debtor and the fair market value of such U.S. Holder's Pro Rata share of Liquidation Trust Assets) and the U.S. Holder's adjusted tax basis in its Parent Equity Interests. Such gain or loss would be long-term capital gain or loss if the U.S. Holder held the Parent Equity Interests for more than one year as of the date of the final distribution such U.S. Holder receives in respect of its Parent Equity Interests. Long-term capital gain recognized by certain non-corporate U.S. Holders, including individuals, generally is subject to tax at a reduced rate. The deductibility of capital losses is subject to limitations.

The gross amount of distributions paid in any non-U.S. currency will be included by each U.S. Holder in gross income in a U.S. dollar amount calculated by reference to the exchange rate in effect on the day the distributions are actually or constructively received, regardless of whether the payment is in fact converted into U.S. dollars. If the non-U.S. currency is converted into U.S. dollars on the date of receipt, the U.S. Holder should not be required to recognize any "foreign currency gain or loss" with respect to the receipt of the non-U.S. currency distributions. If the non-U.S. currency received is not converted into U.S. dollars on the date of receipt, a U.S. Holder will have a tax basis in the non-U.S. currency equal to the U.S. dollar value on the date of receipt. Any foreign currency gain or loss realized on a subsequent conversion or other disposition of the non-U.S. currency will be treated as U.S. source ordinary income or loss. The amount of any distribution of property other than cash will be the fair market value of such property on the date of distribution.

(c) Distributions of Liquidation Trust Assets

As discussed below under "*-- U.S. Federal Income Tax Treatment of the Liquidation Trust and Liquidation Trust Beneficiaries*", the Liquidation Trust is intended to qualify as a "grantor trust" for U.S. federal income tax purposes. Accordingly, each U.S. Holder of a Parent Equity Interest is intended to be treated for U.S. federal income tax purposes as directly receiving, and as a direct owner of, its Pro Rata share of Liquidation Trust Assets and then contributing such assets to the Liquidation Trust in exchange for the Beneficial Trust Interests. Pursuant to the Plan, the Liquidation Trustee will in good faith value the assets transferred to the Liquidation Trust, and all parties to the Liquidation Trust (including U.S. Holders of Parent Equity Interests receiving Beneficial Trust Interests) must consistently use such valuation for all U.S. federal income tax purposes.

After the Effective Date, a U.S. Holder's share of any collections received on the Liquidation Trust Assets would not be included, for U.S. federal income tax purposes, in the U.S. Holder's amount realized in respect of its complete redemption of Parent Equity Interests on the Effective Date, but would instead be separately treated as amounts realized in respect of such U.S. Holder's ownership interest in the Liquidation Trust Assets. Because substantially all of the assets of the Liquidation Trust will be Retained Causes of Action, consistent with a private ruling that the Service gave another taxpayer in a similar circumstance, it is anticipated that the Liquidation Trustee will take the position that the origin of the claim doctrine will apply to characterize the income, if any, realized by a U.S. Holder of Beneficial Trust Interests as received in respect of its Allowed Claim for Parent Equity Interests and will be reported as capital gain. However, private rulings may be relied upon only by the recipient, and, therefore,

the private ruling is not substantive authority on which U.S. Holders or the Liquidation Trustee can rely, and the Liquidation Trustee does not intend to seek a ruling from the Service with respect to the character of income received on the Liquidation Trust Assets. There can be no assurance that the Service will not assert that such income is ordinary or that such a challenge would be unsuccessful. See “*U.S. Federal Income Tax Treatment of the Liquidation Trusts and Liquidation Trust Beneficiaries*” below.

2. Recharacterization of Distributions Other than in Redemption of Parent Equity Interests

If the Reorganized Parent Debtor’s position regarding the treatment of the distributions, if any, to U.S. Holders were not respected, the U.S. federal income tax consequences of distributions to U.S. Holders electing Option 1 would be as described below under “—*U.S. Federal Income Tax Consequences to U.S. Holders of Parent Equity Interests Electing Option 2 – Distributions on Parent Equity Interests.*”

D. **U.S. Federal Income Tax Consequences to U.S. Holders of Parent Equity Interests Electing Option 2**

1. Distributions on Parent Equity Interests

It is uncertain whether distributions to a U.S. Holder that elects to retain its Parent Equity Interests under Option 2 will be treated as dividends or liquidating distributions made in exchange for its Parent Equity Interests. This determination will depend in part on the timing of the distributions that are made to such U.S. Holders. The Debtors have not yet determined how such distributions will be reported for U.S. federal income tax purposes. Subject to the discussion under “-- *Passive Foreign Investment Company (PFIC) Considerations*” below, the gross amount of any distribution paid on the Parent Equity Interests other than in redemption of the Parent Equity Interests will generally be subject to U.S. federal income tax as dividend income to the extent paid out of the Debtors’ current or accumulated earnings and profits, as determined under U.S. federal income tax principles. Such amount will be includable in gross income by a U.S. Holder as ordinary income on the date such U.S. Holder actually or constructively receives the distribution. It is anticipated that dividends paid by the Debtors will not be eligible for the dividends received deduction generally allowed to U.S. Holders that are corporations.

Under current law, certain dividends paid by non-U.S. corporations to non-corporate U.S. Holders are eligible for taxation at reduced rates. A non-U.S. corporation is treated as a “qualified foreign corporation” with respect to dividends paid by that corporation that is eligible for benefits of certain income tax treaties with the United States or a corporation the ordinary shares of which are readily tradeable on an established securities market in the United States. The Reorganized Parent Debtor is uncertain whether it will qualify for the benefits of the U.S.-Canadian income tax treaty at the time dividends are paid and it is anticipated that Parent Equity Interests will not be considered readily tradeable on an established securities market in the United States. Therefore, it is uncertain whether dividends from the Reorganized Parent Debtor will be treated as qualified dividends eligible for reduced rates of taxation. Furthermore, dividends received by U.S. Holders from a non-U.S. corporation that was a PFIC in either the

taxable year of the distribution or the preceding taxable year will not constitute qualified dividends. As discussed below in “ -- *Passive Foreign Investment Company Considerations*, ” although it is not entirely clear, the Reorganized Debtor Parent believes that it was not a PFIC for its taxable year ended on May 31, 2017, but believes that it may be a PFIC for its current or future taxable years.

To the extent that a distribution exceeds the amount of the Debtors’ current or accumulated earnings and profits, as determined under U.S. federal income tax principles, the distribution will be treated first as a tax-free return of capital, causing a reduction in the U.S. Holder’s adjusted basis in the Parent Equity Interests held by such U.S. Holder (thereby increasing the amount of gain, or decreasing the amount of loss, to be recognized by such U.S. Holder upon a subsequent disposition of the Parent Equity Interests), with any amount that exceeds the adjusted basis being taxed as a capital gain recognized on a sale or exchange. However, the Debtors do not maintain calculations of earnings and profits in accordance with U.S. federal income tax principles. Therefore, if U.S. Holders are not treated as receiving a distribution in complete redemption of Parent Equity Interests, such U.S. Holders should assume that any distribution by the Reorganized Parent Debtor with respect to Parent Equity Interests will constitute ordinary dividend income.

The gross amount of distributions paid in any non-U.S. currency will be included by each U.S. Holder in gross income as discussed above (See “ -- *U.S. Federal Income Tax Consequences to U.S. Holders of Parent Equity Interests Electing Option 1 Distributions in Redemption of Parent Equity Interests* ”).

The treatment of distributions in redemption of stock will generally be taxed as discussed above (See “ -- *U.S. Federal Income Tax Consequences to U.S. Holders of Parent Equity Interests Electing Option 1 Distributions in Redemption of Parent Equity Interests – b) Distributions in Redemption of Parent Equity Interests* ”).

E. Passive Foreign Investment Company (PFIC) Considerations

Special and generally unfavorable U.S. federal income tax rules may apply to a U.S. Holder if its holding period in its Parent Equity Interests includes any period during a taxable year of the Reorganized Parent Debtor in which the Reorganized Parent Debtor or certain non-U.S. corporations related to it (a “Related Entity”) is a passive foreign investment company (a “PFIC”). A non-U.S. corporation is classified as a PFIC for each taxable year in which (a) 75% or more of its income is passive income (as defined for U.S. federal income tax purposes) or (b) on average for such taxable year, 50% or more of the value (or, if elected, the adjusted tax basis) of its assets either produce or are held for the production of passive income.

The method of calculating the average percentage of passive assets for a taxable year is unclear. Specifically, it is uncertain whether the average percentage of passive assets is measured: (1) by taking the sum of the percentage of passive assets at the end of each quarter and dividing by four; or (2) by dividing the average of the values (or basis) of passive assets at the end of each quarter by the average value (or basis) of all assets at the end of each quarter. The Service, however, has suggested that the latter approach is correct. Based on the latter calculation method, the Reorganized Parent Debtor believes that it was not a PFIC for its taxable

year ending on May 31, 2017. The law in this area is uncertain and there can be no assurance that the Service will agree with the Reorganized Parent Debtor's conclusion in this regard.

The Reorganized Parent Debtor may be a PFIC for its current or future taxable years, unless the "start-up" exception discussed below applies. A corporation that would otherwise be a PFIC in its "start-up year" (defined as the first taxable year such corporation earns gross income), is not treated as a PFIC in that taxable year provided that (1) no predecessor corporation was a PFIC, (2) it is established to the satisfaction of the Service that such corporation will not be a PFIC in either of the two succeeding years, and (3) the corporation is not, in fact, a PFIC for either succeeding year. Whether the Reorganized Parent Debtor will satisfy these conditions is a factual question, however, and may depend on whether a corporation that has liquidated is treated as "not a PFIC" for purposes of these rules. No assurance can be made that the Reorganized Parent Debtor will qualify for this exception in the current or future taxable years.

If the Reorganized Parent Debtor or a Related Entity were classified as a PFIC for any taxable year during which a U.S. Holder holds Parent Equity Interests, such U.S. Holder would be subject to an increased tax liability (such tax generally will be calculated at the highest U.S. federal income tax rate and will also include an interest charge) upon the sale or other disposition of the Parent Equity Interests or upon the receipt of certain distributions treated as "excess distributions," unless the U.S. Holder elects to be taxed currently (as discussed below under "*Passive Foreign Investment Company (PFIC) Considerations – QEF Election*") on such U.S. Holder's pro rata portion of the Reorganized Parent Debtor's income, regardless of whether such income was actually distributed. An excess distribution generally would be any distribution to a U.S. Holder with respect to Parent Equity Interests during a single taxable year that is greater than 125% of the average annual distributions received by such U.S. Holder with respect to Parent Equity Interests during the three preceding taxable years or, if shorter, during such U.S. Holder's holding period for the Parent Equity Interests. In addition, the Reorganized Parent Debtor may be treated as owning, directly or indirectly, interests in "lower-tier PFICs," the rules with respect to which are complex and generally adverse.

Accordingly, U.S. Holders should be aware that U.S. Holders could be subject to tax even if no distributions from the Reorganized Parent Debtor are received and no redemptions or other dispositions of Parent Equity Interests are made. The Debtors do not expect to be able to provide U.S. Holders with the information that would be necessary to calculate the amount, if any, of such tax that may be due.

In addition, certain special, generally adverse rules will apply to the Parent Equity Interests if the Reorganized Parent Debtor is a PFIC. For example, under Section 1298(b)(6) of the Tax Code, if a U.S. Holder uses PFIC shares as security for a loan (including a marginal loan) such U.S. Holder will, except as may be provided in Treasury regulations, be treated as having made a taxable disposition of such shares.

F. QEF Election.

The PFIC tax rules outlined above would not apply to a U.S. Holder if such U.S. Holder elected to treat the Reorganized Parent Debtor as a "qualified electing fund" or "QEF." Each

U.S. Holder is urged to consult its tax advisor as to the availability and consequences of such an election. Special rules apply for calculating the amount of the foreign tax credit with respect to excess distributions by a PFIC or, in certain cases, QEF inclusions.

The Reorganized Parent Debtor does not expect to provide U.S. Holders with the information that is necessary to make a QEF election. If a U.S. Holder was eligible for and timely made a QEF election, such U.S. Holder would include in income each year for which the Parent Debtor is a PFIC (and be subject to current U.S. federal income tax on) such U.S. Holder's pro rata share of the Parent Debtor's ordinary earnings, as ordinary income, and net capital gains, as long-term capital gain, for the Reorganized Parent Debtor's taxable year that ends with or within such U.S. Holder's taxable year, regardless of whether such amounts are actually distributed. Any such ordinary income would not be eligible for the favorable rates applicable to qualified dividend income. If a U.S. Holder is a corporation such U.S. Holder will not be eligible for a dividends received deduction in respect of such income or gain. Such U.S. Holder's adjusted tax basis in the Parent Equity Interests would be increased to reflect taxed but undistributed earnings and profits. Distributions of earnings and profits that had been previously taxed would result in a corresponding reduction in such U.S. Holder's adjusted tax basis in the Parent Equity Interests and would not be taxed again. Such U.S. Holder would not, however, be entitled to a deduction for its pro rata share of any losses that the Parent Debtor incurred with respect to any year. In certain cases in which the Reorganized Parent Debtor did not distribute all of our earnings in a taxable year, such U.S. Holder might also be permitted to elect to defer payment of some or all of the taxes on the Reorganized Parent Debtor's income, subject to an interest charge on the deferred amount. In this respect, U.S. Holders should be aware that the Reorganized Parent Debtor may have in any given year substantial earnings for U.S. federal income tax purposes that are not distributed. Thus, absent an election to defer payment of taxes, if a U.S. Holder makes a QEF election with respect to the Reorganized Parent Debtor such U.S. Holder may owe tax on significant "phantom" income. Such U.S. Holder would generally recognize capital gain or loss on the sale, exchange or other disposition of Parent Equity Interests. U.S. Holders would generally make a QEF election with respect to the first year during which the Reorganized Parent Debtor was at any time a PFIC by filing one copy of IRS Form 8621 with the U.S. Holder's U.S. federal income tax return. The QEF election is made on a shareholder by shareholder basis and can only be revoked with the consent of the Service.

Notwithstanding any election made with respect to Parent Equity Interests, dividends received with respect to Parent Equity Interests will not constitute "qualified dividend income" if the Reorganized Parent Debtor is a PFIC in either the year of the distribution or the preceding taxable year. Dividends that do not constitute qualified dividend income are not eligible for taxation at the reduced tax rate discussed above in "*-- U.S. Federal Income Tax Consequences to U.S. Holders of Parent Equity Interests Electing Option 2 -- Distributions on Parent Equity Interests.*" Instead, such dividends would be subject to tax at ordinary income rates. If a U.S. Holder owns Parent Equity Interests during any year in which the Reorganized Parent Debtor is a PFIC, such U.S. Holder must also file IRS Form 8621.

U.S. Holders are urged to consult their tax advisors concerning the U.S. federal income tax consequences of holding Parent Equity Interests if the Reorganized Parent Debtor is considered a PFIC in any taxable year.

G. U.S. Federal Income Tax Treatment of the Liquidation Trust and Liquidation Trust Beneficiaries

1. Classification of the Liquidation Trust

The Liquidation Trust will be established for the sole purpose of distributing the Liquidation Trust Assets, and any proceeds therefrom, in accordance with Treasury Regulation section 301.7701-4(d) and Revenue Procedure 94-45, with no objective to continue or engage in the conduct of a trade or business. The Liquidation Trust is intended to qualify as a liquidating trust for U.S. federal income tax purposes.

The Debtors intend to treat a U.S. Holder of Parent Equity Interests that elects Option 1 as receiving non-transferrable Beneficial Trust Interests in the Liquidation Trust as consideration, in part, for the complete redemption of Parent Equity Interests as described below under “--U.S. Federal Income Tax Treatment of the Liquidation Trust and Liquidation Trust Beneficiaries—Creation and Funding of the Liquidation Trust” and “--U.S. Federal Income Tax Treatment of the Liquidation Trust and Liquidation Trust Beneficiaries-- General Tax Reporting by the Liquidation Trust and Liquidation Trust Beneficiaries”; however, there is no authority addressing the ongoing arrangements between the Reorganized Parent Debtor and the Liquidation Trust and, therefore, no assurance can be given that the Service would not assert, or that a court would not sustain, a challenge to the ongoing arrangements between the Reorganized Parent Debtor and the Liquidation Trust. In the event of such an outcome, U.S. Holders who elect Option 1 could be treated as receiving distributions from the Liquidation Trust, if any, as if such distributions were made by the Debtor Parent on Parent Equity Interests as discussed under “--U.S. Federal Income Tax Consequences to U.S. Holders of Parent Equity Interests Electing Option 2 - Distributions on Parent Equity Interests.”

2. Creation and Funding of the Liquidation Trust

The transfer of the Liquidation Trust Assets to the Liquidation Trust shall be made for the benefit of and on behalf of the Liquidation Trust Beneficiaries. For all U.S. federal income tax purposes, the transfer of the Liquidation Trust Assets to the Liquidation Trust shall be treated as (1) a transfer of the Liquidation Trust Assets directly to the Liquidation Trust Beneficiaries, followed by (2) the transfer of such Liquidation Trust Assets by the Liquidation Trust Beneficiaries to the Liquidation Trust in exchange for the Liquidation Trust Beneficial Interests. The Liquidation Trust Beneficiaries shall be treated as the grantors and owners of the Liquidation Trust (other than the Liquidation Trust Assets as are allocable to the Reserves).

3. General Tax Reporting by the Liquidation Trust and Liquidation Trust Beneficiaries

In general, a liquidating trust is not a separate taxable entity for U.S. federal income tax purposes, but is instead treated as a grantor trust, *i.e.*, a pass-through entity. All parties must treat the transfer of the portion of the Liquidation Trust Assets attributable to the Liquidation Trust Beneficiaries as a transfer of such assets directly to the Liquidation Trust Beneficiaries. Consistent therewith, the Plan provides that all parties must treat the Liquidation Trust as a

grantor trust of which the Liquidation Trust Beneficiaries are the owners and grantors. Subject to the terms of the Liquidation Trust Agreement, the value of a Liquidation Trust Beneficiary's Allowed Interest (less any Cash distribution received from the Reorganized Parent Debtor) shall be the value of such Liquidation Trust Beneficiary's Liquidation Trust Beneficial Interest, and the Liquidation Trust Beneficiaries and the Liquidation Trust must consistently use this valuation for all U.S. federal income tax purposes, including for determining gain, loss or tax basis.

The United States federal income tax reporting obligation of a Liquidation Trust Beneficiary is not dependent upon the Liquidation Trust distributing any cash or other proceeds. The Plan provides that the Liquidation Trust will allocate items of income, gain, loss, expense and other tax items to the Liquidation Trust Beneficiaries in accordance with their relative beneficial interest in the Liquidation Trust. Therefore, a Liquidation Trust Beneficiary may incur an income tax liability with respect to its allocable share of the income of the Liquidation Trust, if any, whether or not the Liquidation Trust has made any concurrent distribution of cash or other assets to the Liquidation Trust Beneficiary.

Taxable income or loss allocated to each Liquidation Trust Beneficiary is expected to be treated as income or loss with respect to such beneficiary's undivided interest in the Liquidation Trust Assets, and not as income or loss with respect to its prior Allowed Parent Equity Interests. The character of any income, if any, and the character and ability to use any loss will depend on the particular situation of such beneficiary. Because substantially all of the assets of the Liquidation Trust will be Retained Causes of Action, consistent with a private ruling that the Service gave another taxpayer in a similar circumstance, the Liquidation Trustee may take the position that the origin of the claim doctrine will apply to characterize the income, if any, realized by a U.S. Holder of Beneficial Trust Interests as received in respect of its Allowed Claim for Parent Equity Interests. However, private rulings may be relied upon only by the recipient, and, therefore, the private ruling is not substantive authority on which U.S. Holders or the Liquidation Trustee can rely, and the Liquidation Trustee does not intend to seek a ruling from the Service with respect to the character of income received on the Liquidation Trust Assets. Therefore, the Liquidation Trustee may take the position that the Liquidation Trust Assets are capital assets, but collections received on the Liquidation Trust Assets may constitute ordinary income because the settlement of Retained Causes of Action may not constitute a "sale or exchange" of the Retained Causes of Action such that the amount realized in respect of the settlement thereof would constitute capital gain.

The Plan requires the Liquidation Trust to file tax returns for the Liquidation Trust as a "grantor trust" pursuant to Treasury Regulation section 1.671-4(a). The Liquidation Trust may send each Liquidation Trust Beneficiary a separate statement setting forth the Liquidation Trust Beneficiary's share of items of income, gain, loss, deduction, or credit, and such Liquidation Trust Beneficiary will be responsible for any reporting requirements with respect to the allocated amounts and the payment of any taxes, if any, that result from such allocations. It is anticipated that the Liquidation Trust will allow for tax distributions to be made to U.S. Holders of Beneficial Trust Interests in the event a Liquidation Trust Beneficiary is allocated income or gain from the Liquidation Trust; however, there can be no assurance that such distribution, if any, will be sufficient to satisfy all tax liabilities of a U.S. Holder arising from an ownership of Beneficial Trust Interests.

Liquidation Trust Beneficiaries are urged to consult their own tax advisors regarding the appropriate federal income tax reporting of allocations from the Liquidation Trust.

4. U.S. Information Reporting and Backup Withholding Tax

Proceeds from a taxable disposition of Parent Equity Interests or General Unsecured Claims that are paid in the United States or by a U.S.-related financial intermediary will be subject to U.S. information reporting rules, unless a U.S. Holder is a corporation or other exempt recipient. In addition, payments that are subject to information reporting may be subject to backup withholding (currently at a 28% rate) if a U.S. Holder does not provide its taxpayer identification number and otherwise comply with the backup withholding rules. Backup withholding is not an additional tax. Amounts withheld under the backup withholding rules are available to be credited against a U.S. Holder's U.S. federal income tax liability and may be refunded by the Service to the extent they exceed such liability, provided the required information is provided to the Service in a timely manner.

5. Additional Tax on Investment Income

U.S. Holders that are individuals, estates or trusts and whose income exceeds certain thresholds generally will be subject to an additional 3.8% tax on certain investment income, including, among other things, capital gains from the taxable disposition of Parent Equity Interests or General Unsecured Claims, subject to certain limitations and exceptions. Each U.S. Holder is urged to consult its own tax advisors regarding the possible implications of the additional tax on investment income described above.

H. **FATCA**

Sections 1471 through 1474 of the Code ("FATCA") impose a 30% withholding tax on certain types of payments made to a foreign financial institution, unless the foreign financial institution enters into an agreement with the U.S. Treasury to, among other things, undertake to identify accounts held by certain U.S. persons or U.S.-owned entities, annually report certain information about such accounts, and withhold 30% on payments to account holders whose actions prevent it from complying with these and other reporting requirements, or unless the foreign financial institution is otherwise exempt from those requirements. Certain countries have entered into, and other countries are expected to enter into, agreements with the United States to facilitate the type of information reporting required under FATCA. Such intergovernmental agreements may provide different rules with respect to foreign financial institutions. In addition, FATCA imposes a 30% withholding tax on the same types of payments to a non-financial foreign entity unless the entity certifies that it does not have any substantial U.S. owners, the entity furnishes identifying information regarding each substantial U.S. owner or an exemption applies. A foreign financial institution or non-financial foreign entity's failure to comply with the additional certification, information reporting and other specified requirements imposed under FATCA could result in the 30% withholding tax being imposed on certain U.S. source payments to it. It is uncertain whether the Reorganized Parent Debtor is subject to these rules. Prospective investors are urged to consult their own tax advisors regarding FATCA and its effect on them and their investment in the Reorganized Parent Debtor.

XX. CERTAIN CANADIAN FEDERAL INCOME TAX CONSEQUENCES AND RISKS OF THE PLAN

The following summary fairly describes, as at the date hereof, the principal Canadian federal income tax consequences of the Plan generally applicable under the *Income Tax Act* (Canada) (the “Tax Act”) to a Holder of Parent Equity Interests and/or General Unsecured Claims who, for purposes of the Tax Act and at all relevant times, deals at arm’s length with the Debtors and, in the case of Parent Equity Interests, holds such interests as capital property and is not “affiliated” (as defined in the Tax Act) with Debtors at all relevant times (defined as a “Canadian Holder” in the present section). Generally, the Parent Equity Interests will be considered to be capital property to a Canadian Holder provided that the Canadian Holder does not use or hold and is not deemed to use or hold the Parent Equity Interests in the course of carrying on a business and has not acquired them in one or more transactions considered to be an adventure in the nature of trade. Certain Canadian resident Holders who might not otherwise be considered to hold their Parent Equity Interests as capital property may, in certain circumstances, be entitled to have their Parent Equity Interests, and all other “Canadian securities” (as defined in the Tax Act) that are held by such Canadian resident Holder, treated as capital property by making the irrevocable election permitted by subsection 39(4) of the Tax Act. Canadian resident Holders considering making a subsection 39(4) election are advised to speak to their own tax advisors given their particular circumstances.

This summary is based upon the provisions of the Tax Act, the regulations under the *Tax Act* in force as at the date hereof and Debtors’ understanding of the current published administrative and assessing practices of the Canada Revenue Agency (the “CRA”). This summary takes into account all specific proposals to amend the Tax Act and the regulations under the Tax Act which have been publicly announced by or on behalf of the Minister of Finance (Canada) (the “Minister”) prior to the date hereof. This summary does not otherwise take into account or anticipate any changes in law, whether by legislative, governmental or judicial decision or action, and does not take into account provincial, territorial or foreign tax legislation or considerations, which may differ significantly from those discussed herein.

On July 18, 2017, the Minister released a consultation paper that included an announcement of the Government’s intention to amend the Tax Act to increase the amount of tax applicable to passive investment income earned through a private corporation. No specific amendments to the Tax Act were proposed in connection with this announcement. Canadian Holders that are private Canadian corporations should consult their own tax advisors.

This summary is not applicable to a Canadian Holder: (a) that is a “financial institution” for the purposes of the mark-to-market rules in the Tax Act; (b) that, in the case of a Canadian Holder of Parent Equity Interests, is a “specified financial institution” (as defined in the Tax Act); (c) an interest in which is a “tax shelter investment” (as defined in the Tax Act); (d) that reports its “Canadian tax results” (as defined in the Tax Act) in a currency other than the Canadian currency; or (e) that has entered or enters into a “derivative forward agreement” (as defined in the Tax Act) with respect to the Parent Equity Interests. This summary does not apply to any Canadian Holder of Parent Equity Interests who acquired such interests pursuant to an employee incentive plan and does not describe the tax consequences to any Canadian Holder

who may acquire Parent Equity Interests pursuant to an incentive plan in connection with the Plan.

This summary is of a general nature only and is not intended to be legal or tax advice to any Canadian Holder. This summary is for informational purposes only and, due to a lack of definitive judicial or administrative authority or interpretation, substantial uncertainties exist with respect to various tax consequences of the Plan as discussed herein. No opinion of counsel has been sought or obtained with respect to any tax consequences of the Plan. No rulings or determinations of the CRA or any other tax authorities have been sought or obtained with respect to any tax consequences of the Plan, and the discussion below is not binding on the CRA or any other authority. As a result, there can be no assurance that the CRA (or other relevant tax authority) will not disagree with or challenge any of the conclusions reached and described herein and that a court would not sustain such a challenge. This summary is not exhaustive of all possible income tax considerations under the Tax Act that may affect a Canadian Holder. Consequently, Canadian Holders should consult their own tax advisors about the implications of the contemplated Plan in light of their particular circumstances.

Canadian Tax Consequences to the Debtors

Subject to the comments that follow, the Canadian Debtors do not currently anticipate material Canadian federal or provincial income tax liabilities to arise as a result of the Plan Transactions.

The Plan provides that the Liquidation Trust Assets will be deemed to be distributed to Holders of Allowed Parent Equity Interests who elect Option 1 followed immediately by a deemed contribution by such Holders of the Liquidation Trust Assets to the Liquidation Trust. The transfer of such Liquidation Trust Assets within the Debtor group and/or the deemed distribution of such Liquidation Trust Assets in respect of Holders of Allowed Parent Equity Interests who elect Option 1 may result in Canadian federal income tax consequences to one or more of the Canadian Debtors (including the realization of income or gain). The precise Canadian and federal income tax consequences to the Canadian Debtors in this regard will depend on a number of factors, including the nature of the Liquidation Trust Assets, where such Liquidation Trust Assets are held within the Debtor corporate group, and the value of such Liquidation Trust Assets. A good faith determination of the value of the Liquidation Trust Assets will be made and that amount will be used, along with an assessment of any other relevant factors, in determining the Canadian federal tax consequences to the Canadian Debtors of transferring any such Liquidation Trust Assets within the Debtor corporate group and of the deemed distribution of such Liquidation Trust Assets to Canadian Holders of Allowed Parent Equity Interests who elect Option 1. This determination of the value of the Liquidation Trust Assets, and the reporting position taken by the Canadian Debtors with respect to the deemed transfer or distribution of such Liquidation Trust Assets, will not be binding on the CRA (or any other relevant taxing authority) and there can be no assurance that the CRA (or other relevant taxation authority) will agree with such determination of value or any reporting position taken by the Debtors in this respect or otherwise with respect to implementation of the Plan, in which case material Canadian federal or provincial income tax may arise.

In addition, the Canadian Debtors may realize income or gain in connection with any proceeds to which they are entitled on the settlement or determination of any litigation claims and may be subject to material Canadian or provincial income tax as a result.

Residents of Canada

The following part of the summary is applicable to a Canadian Holder who, at all relevant times, is resident or deemed to be resident of Canada for purposes of the Tax Act (a “Resident Holder”).

Parent Equity Interests Electing Option 1 – Liquidation Trust

Pursuant to the Plan, holders of Parent Equity Interests may elect to receive Beneficial Trust Interests (and a right to receive their Pro Rata share of the Liquidation Trust Expense Reserve and any other Shareholder Distributable Assets in accordance with the Plan) in exchange for all of such holders’ Parent Equity Interests. The Canadian tax consequences of such alternative are uncertain, though such consequences are generally expected to be adverse (subject to the comment below with respect to the acceleration of any loss). These uncertainties include those with respect to the character for Canadian tax purposes of any return realized by a Resident Holder of Beneficial Trust Interests (which character may be different than the return to Resident Holders who retain their Parent Equity Interests). However, notwithstanding such uncertainty, a Resident Holder of Parent Equity Interests may be able to accelerate the realization of any loss such holder has in respect of their Parent Equity Interests by electing Option 1. Therefore, Resident Holders who are considering making such election are strongly urged to consult their own tax advisors for advice having regard to their own particular circumstances.

As noted above, the treatment for Canadian income tax purposes of the Liquidation Trust and of a Resident Holder’s Beneficial Trust Interest in such Liquidation Trust is unclear. The Liquidation Trust may be deemed, for certain purposes of the Tax Act, to be resident in Canada. To the extent the Liquidation Trust realizes any income or capital gain (including with respect to Liquidation Trust Assets), the Liquidation Trust may be liable for Canadian income tax on such income or gains if the Liquidation Trust does not qualify as an “exempt foreign trust” and less than all of such income or gain is paid or made payable to the beneficiaries in the relevant taxation year. The Liquidation Trust should qualify as an exempt foreign trust if the only beneficiaries of the Liquidation Trust who may receive income or capital of the Liquidation Trust are beneficiaries that hold an interest in the Liquidation Trust that qualify as a “fixed interest” and each such fixed interest that is outstanding was issued by the Liquidation Trust in exchange for consideration that was not less than 90% of the interest’s proportionate share of the net asset value of the property of the Liquidation Trust at the time of issuance. For these purposes a “fixed interest” would generally include an interest in the Liquidation Trust where no amount of the income or capital of the Liquidation Trust to be distributed at any time in respect of any interest in the Liquidation Trust depends on a person exercising (or failing to exercise) any discretionary power other than a power in respect of which it is reasonable to conclude that (a) the power is consistent with normal commercial practice, (b) the power is consistent with terms that would be acceptable to beneficiaries under the Liquidation Trust if the beneficiaries were dealing with each other at arm’s length, and (c) the exercise of, or failure to exercise, the

power will not materially affect the value of an interest as a beneficiary under the Liquidation Trust relative to the value of other such interests under the Liquidation Trust.

Alternatively, if the Liquidation Trust does qualify as an “exempt foreign trust”, the Liquidation Trust may, for certain purposes of the Tax Act, be deemed to be a non-resident corporation and the Resident Holders of the Liquidation Trust deemed to be shareholders. This deeming rule may require Resident Holders (and certain other categories of persons or entities, including controlled foreign affiliates of Canadian residents or partnerships of which a Canadian resident person is a member) of a Beneficial Trust Interest in the Liquidation Trust to include in their income for Canadian tax purposes their proportionate share of any “foreign accrual property income” of the Liquidation Trust on a current basis in certain circumstances. Any such Resident Holders who are considering electing Option 1 are advised to consult their tax advisor for advice having regard to their own particular circumstances.

Parent Equity Interests Option 2 – Retained Parent Equity Interests

All Holders of Parent Equity Interests who do not elect Option 1 or who are deemed to have elected Option 2 shall retain their Parent Equity Interests through the Final Distribution Date. All distributions to Resident Holders may be effected through reductions of the stated capital of the Retained Parent Equity Interests. The amount or value of the funds or property distributed to a Resident Holder on a reduction of stated capital will not be deemed to be a taxable dividend, but a return of capital, to the extent it does not exceed the paid-up capital of the shares for purposes of the Tax Act.

Resident Holders will reduce the adjusted cost base of their Parent Equity Interests by the amount or value of the funds or property received upon a reduction of stated capital. To the extent that the amount or value of the funds or property received by a Resident Holder on a reduction of stated capital is greater than the adjusted cost base of their Parent Equity Interests, the excess will be deemed to be a capital gain of the Resident Holder for the year from the disposition of the Parent Equity Interest and the adjusted cost base of the Parent Equity Interest to the Resident Holder will then be nil. The taxation of capital gains is described below.

The amount or value of the funds or property distributed to a Resident Holder in connection with the Plan in excess of the paid-up capital of the Retained Parent Equity Interests for purposes of the Tax Act held by such Resident Holder, if any, will be deemed to be a taxable dividend.

A Resident Holder will be required to include in computing the Resident Holder’s income for a taxation year any dividend received or deemed to be received on the Parent Equity Interest. In the case of a Resident Holder that is an individual (other than certain trusts), such dividend will be subject to the gross-up and dividend tax credit rules normally applicable under the Tax Act to taxable dividends received. In the case of a Resident Holder that is a corporation, the amount of any such dividend that is included in its income for a taxation year will generally be deductible in computing its taxable income for that taxation year. A Resident Holder that is a “private corporation” or a “subject corporation,” as defined in the Tax Act, will generally be liable to pay a refundable tax of 38 1/3% under Part IV of the Tax Act on dividends received or deemed to be received on the Parent Equity Interest to the extent such dividends are deductible in

computing the Resident Holder's taxable income for the year. In certain circumstances, however, subsection 55(2) of the Tax Act will treat a dividend received or deemed to be received by a Resident Holder that is a corporation as proceeds of disposition or a capital gain. Resident Holders that are corporations should consult their own tax advisors having regard to their own circumstances.

Pursuant to the Tax Act, a Resident Holder will be considered to have disposed of their Parent Equity Interests on the redemption or cancellation of the Parent Equity Interests for proceeds equal to the fair market value of the funds or property distributed to such Resident Holder at that time. The Resident Holder will be deemed to have received a dividend equal to the amount by which the fair market value of the property received or receivable exceeds the paid-up capital of such holder's Parent Equity Interests for purposes of the Tax Act at that time. In addition, the cancellation of the Parent Equity Interests will also give rise to a capital gain (or capital loss) equal to the amount by which the fair market value of the property received or receivable, net of reasonable costs of disposition and the amount of any deemed dividend referred to above, exceeds (or is exceeded by) the adjusted cost base of such Parent Equity Interests to the Resident Holder at that time.

Generally, one-half of a capital gain must be included in income as a taxable capital gain and one-half of a capital loss is an allowable capital loss. An allowable capital loss for a year normally may be deducted by the Resident Holder in computing income to the extent of any taxable capital gains for the year. Any allowable capital loss not deductible in the year may be deducted against taxable capital gains in computing taxable income for any of the three preceding years or any subsequent year (in accordance with the rules contained in the Tax Act).

Where a Resident Holder that is a corporation or a trust (other than certain trusts) disposes of a Parent Equity Interest, the Resident Holder's capital loss from the disposition may be reduced by the amount of dividends previously received by the Resident Holder except to the extent that a loss on a previous disposition of Parent Equity Interests has been reduced by those dividends. Analogous rules apply where a Resident Holder that is a corporation or a trust (other than certain trusts) is a member of a partnership that disposes of Parent Equity Interests.

A Resident Holder that is throughout the relevant taxation year a "Canadian-controlled private corporation" (as defined in the Tax Act) may be liable to pay an additional refundable tax of 10 2/3% on its "aggregate investment income" (as defined in the Tax Act) for the year, including taxable capital gains realized on the disposition of Parent Equity Interests. Capital gains and taxable dividends received or deemed to be received by a Resident Holder who is an individual (other than certain trusts) may result in such Resident Holder being liable for alternative minimum tax under the Tax Act. Such Resident Holders should consult their own tax advisors in this regard.

It should be noted that there may be a time gap between the date of one or more initial distributions and the resulting final distribution (if any). As such, a Resident Holder may be considered to have received one or more distributions in connection with the Plan at a particular moment in time, yet not be considered to have disposed of their Parent Equity Interests until a much later moment in time in connection with the formal dissolution of the Parent Debtor. This

would delay the realization of any capital loss which a Resident Holder may have in respect of their Parent Equity Interests.

General Unsecured Claims

Generally, a Resident Holder who receives Cash in satisfaction of its General Unsecured Claim may realize ordinary income to the extent that any portion of such consideration is characterized as interest, but generally only if (i) such amount has not otherwise been included in the Resident Holder's income for the taxation year or a preceding taxation year, or (ii) such amounts was previously included in the Resident Holder's income for a taxation year but a deduction for a bad debt or uncollectable loan amount was claimed by the Resident Holder in respect of such interest.

The income tax consequences arising as a result of the non-payment of any interest owing to a Resident Holder of a General Unsecured Claim will be dependent on the particular circumstances of the Resident Holder, including the method followed in computing its income for tax purposes and whether it has previously claimed a bad debt deduction or doubtful debt reserve in respect of such interest. Such Resident Holders are encouraged to consult their own tax advisors in light of their particular circumstances.

A Resident Holder whose General Unsecured Claim is held as capital property for the purposes of the Tax Act and who receives Cash in satisfaction of the principal amount of such General Unsecured Claim will be considered to have disposed of such General Unsecured Claim for proceeds of disposition equal to the amount of such Cash. Generally, such Resident Holder will realize a capital gain (or capital loss) for Canadian federal income tax purposes equal to the amount by which the proceeds of disposition, net of any reasonable costs of disposition, exceed (or are less than) the adjusted cost base of such Claim, determined immediately prior to the time such General Unsecured Claim is settled pursuant to the Plan. Please see above under "*Parent Equity Interests Option 2 – Retained Parent Equity Interests*" for a general discussion of capital gains and losses under the Tax Act.

Generally, in the case of a Resident Holder whose General Unsecured Claim arose in the course of a business carried on by it and who has, for purposes of the Tax Act, included an amount in income for the year or a previous year in respect of such General Unsecured Claim, the Canadian income tax consequences to such Resident Holder of receiving Cash in satisfaction of the principal amount of such General Unsecured Claim will depend on the Resident Holder's particular circumstances, including the method regularly followed in computing income for tax purposes and whether it has previously claimed a bad debt deduction or doubtful debt reserve in respect of such General Unsecured Claim. Where such a Resident Holder has previously claimed such a deduction in respect of its General Unsecured Claim, the Resident Holder may be required to include in computing its income (in the taxation year in which such property is received) an amount equal to such Cash. Such Resident Holders are encouraged to consult their own tax advisors in light of their particular circumstances.

Non-Residents of Canada

The following summary is applicable to a Canadian Holder who, for purposes of the Tax Act and any applicable tax treaty, and at all relevant times, is not resident, or deemed to be resident, in Canada and does not use or hold and is not deemed to use or hold the Parent Equity Interests and/or the General Unsecured Claims in connection with a trade or business that the Holder carries on, or is deemed to carry on, in Canada (a “Non-Resident Holder”). This summary does not address the considerations relevant to a Non-Resident Holder (a) that is an insurer carrying on business in Canada and elsewhere, or (b) to whom the relevant General Unsecured Claim constitutes “taxable Canadian property” (as defined in the Tax Act). This summary also assumes that no amounts that are paid or payable to a Non-Resident Holder in respect of a General Unsecured Claim is on account of “participating debt interest” (as defined in the Tax Act).

Parent Equity Interests Electing Option 1 – Liquidation Trust

Non-Resident Holders of Parent Equity Interests who elect Option 1 under the Plan shall receive their Pro Rata share of the Liquidation Trust Assets (and a right to receive their Pro Rata share of the Liquidation Trust Expense Reserve and any other Shareholder Distributable Assets in accordance with the Plan) (collectively such assets, the “PSG Distributed Assets”) in exchange for and in redemption of their Parent Equity Interests. In general, a Non-Resident Holder will be deemed to have received a dividend equal to the amount by which the fair market value of the PSG Distributed Assets exceeds the paid-up capital of such holder’s Parent Equity Interests for purposes of the Tax Act at that time. Any such deemed dividend will be subject to Canadian withholding tax at the rate of 25%, subject to reduction under the provisions of an applicable income tax treaty or convention. Please see above under “Canadian Tax Consequences to the Debtors” for a discussion related to the valuation of the PSG Distributed Assets.

In addition to the above, a Non-Resident Holder will also be considered to have disposed of their Parent Equity Interests upon the redemption in accordance with the Plan. For the purpose of determining the Non-Resident Holder’s capital gain or capital loss, the Non-Resident Holder’s proceeds of disposition will be equal to the fair market value of the PSG Distributed Assets less the amount of any deemed dividend referred to above. A Non-Resident Holder will not be subject to tax under the Tax Act on any capital gain realized on the disposition of Parent Equity Interests unless the Parent Equity Interests constitute “taxable Canadian property” and do not constitute “treaty-protected property” of the Non-Resident Holder, as defined in the Tax Act.

Generally, the Parent Equity Interests will not constitute “taxable Canadian property” to a Non-Resident Holder at a particular time unless at any particular time during the 60-month period that ends at that time more than 50% of the fair market value of the Parent Equity Interests was derived, directly or indirectly, from one or any combination of: (i) real or immovable property situated in Canada, (ii) “Canadian resource properties” (as defined in the Tax Act), (iii) “timber resource properties” (as defined in the Tax Act) and (iv) options in respect of, or interests in, or for civil law rights in, property in any of the foregoing whether or not the property exists (the “Real Property Condition”). The Debtors do not believe that the Parent Equity Interests satisfy the Real Property Condition in the current circumstances. Notwithstanding the foregoing, in certain circumstances set out in the Tax Act, Parent Equity

Interests could be deemed to be “taxable Canadian property.” Non-Resident Holders whose Parent Equity Interests may constitute “taxable Canadian property” should consult their own tax advisors.

Even if the Parent Equity Interests are considered to be taxable Canadian property to a Non-Resident Holder, a taxable capital gain resulting from the disposition of the Parent Equity Interests will not be included in computing the Non-Resident Holder’s income for purposes of the Tax Act if the Parent Equity Interests constitute “treaty-protected property” of the Non-Resident Holder, as defined in the Tax Act. Parent Equity Interests owned by a Non-Resident Holder will generally be “treaty-protected property” if the gain from the disposition of such property would, because of an applicable income tax treaty, be exempt from tax under Part I of the Tax Act. Non-Resident Holders whose Parent Equity Interests may constitute taxable Canadian property should consult their own tax advisors regarding the availability of any relief under any applicable income tax treaty in their circumstances.

In the event that Parent Equity Interests constitute taxable Canadian property but not treaty-protected property of a particular Non-Resident Holder, the tax consequences as described above related to capital gains and losses will generally apply. A Non-Resident Holder who disposes of taxable Canadian property should consult its own tax advisors regarding any resulting Canadian reporting requirements.

The treatment for Canadian income tax purposes of the Liquidation Trust and of a Non-Resident Holder’s Beneficial Trust Interest in such Liquidation Trust is unclear. The Liquidation Trust may be deemed, for certain purposes of the Tax Act, to be resident in Canada. To the extent the Liquidation Trust realizes any income or capital gain (including with respect to Liquidation Trust Assets), the Liquidation Trust may be liable for Canadian income tax on such income or gains if the Liquidation Trust does not qualify as an “exempt foreign trust” and less than all of such income or gain is not paid or made payable to the beneficiaries in the relevant taxation year. Please see the discussion above under “*Residents of Canada - Parent Equity Interests Electing Option 1 – Liquidation Trust*” for a discussion of the requirements to be an exempt foreign trust. In addition, in the event that the Liquidation Trust does not qualify as an exempt foreign Trust, Non-Resident Holders of a Beneficial Trust interest may be subject to 25% Canadian withholding tax in respect of distributions from the trust. No assurances can be given that the Liquidation Trust will qualify as an “exempt foreign trust” for these purposes.

Parent Equity Interests Option 2 – Retained Parent Equity Interests

The summary of the principal Canadian federal income tax consequences arising in connection with Option 2 discussed above under the heading “*Residents of Canada - Parent Equity Interests Option 2 – Retained Parent Equity Interests*” also applies to Non-Resident Holders. Accordingly, a Non-Resident Holder may realize a return of capital, capital gain or capital loss on the disposition or deemed disposition of Parent Equity Interests, and/or be deemed to have been paid a dividend, in the same manner and in the same circumstances described above.

A Non-Resident Holder will not be subject to tax under the Tax Act on any capital gain realized on the disposition or deemed disposition of Parent Equity Interests unless the Parent

Equity Interests constitute “taxable Canadian property” and do not constitute “treaty-protected property” of the Non-Resident Holder, as defined in the Tax Act. Please see above under the discussion “*Parent Equity Interests Electing Option 1 – Liquidation Trust*”.

To the extent that a Non-Resident Holder is deemed to have received a dividend, such deemed dividend will be subject to Canadian withholding tax at the rate of 25%, subject to reduction under the provisions of an applicable income tax treaty or convention.

General Unsecured Claims

A Non-Resident Holder will not realize any Canadian federal income tax consequences as a result of the settlement of a General Unsecured Claim pursuant to the Plan.

XXI. CONCLUSION AND RECOMMENDATION OF DEBTORS, EQUITY COMMITTEE, CREDITORS’ COMMITTEE AND THE MONITOR

THE DEBTORS, THE EQUITY COMMITTEE AND THE CREDITORS’ COMMITTEE EACH BELIEVE THAT CONFIRMATION AND CONSUMMATION OF THE PLAN IS IN THE BEST INTERESTS OF CREDITORS AND HOLDERS OF EQUITY INTERESTS AND THAT THE PLAN SHOULD BE CONFIRMED. THE DEBTORS AND THE COMMITTEES EACH BELIEVE THAT CONFIRMATION OF THE PLAN IS PREFERABLE TO ALL OTHER ALTERNATIVES BECAUSE IT WILL PROVIDE RECOVERIES TO CREDITORS AND HOLDERS OF PARENT EQUITY INTERESTS IN EXCESS OF THOSE WHICH WOULD OTHERWISE BE AVAILABLE IF THE CHAPTER 11 CASES AND CCAA PROCEEDINGS WERE DISMISSED OR CONVERTED TO CASES UNDER CHAPTER 7 OF THE BANKRUPTCY CODE AND BANKRUPTCY AND INSOLVENCY ACT, RESPECTIVELY. THE DEBTORS AND COMMITTEES EACH THEREFORE RECOMMEND THAT ALL CREDITORS AND EQUITY INTEREST HOLDERS RECEIVING A BALLOT VOTE IN FAVOR OF THE PLAN.

THE MONITOR WILL PREPARE A REPORT TO THE CANADIAN COURT OUTLINING ITS SUPPORT OF THE PLAN BASED ON THE MONITOR’S OWN ANALYSIS AND CONCLUSIONS, SUBJECT TO THE DISCLAIMERS THAT WILL BE OUTLINED THEREIN.

Dated: Wilmington, Delaware
August 25, 2017

Respectfully submitted,
OLD BPSUSH INC., et al.

Brian J. Fox
Chief Restructuring Officer

EXHIBIT 1

List of Debtors and Debtors in Possession

Old BPSUSH Inc. (f/k/a BPS US Holdings Inc.)
Old BH Inc. (f/k/a Bauer Hockey, Inc.)
Old EBS Inc. (f/k/a Easton Baseball / Softball Inc.)
Old BHR Inc. (f/k/a Bauer Hockey Retail Inc.)
Old BPSU Inc. (f/k/a Bauer Performance Sports Uniforms Inc.)
Old PLG Inc. (f/k/a Performance Lacrosse Group Inc.)
Old BPSCI Inc. (f/k/a BPS Diamond Sports Inc.)
Old PSGI Inc. (f/k/a PSG Innovation Inc.)
Old BHR Wind-down Corp. (f/k/a Bauer Hockey Retail Corp.)
Old EBS Wind-down Corp. (f/k/a Easton Baseball / Softball Corp.)
Old PSGI Wind-down Corp. (f/k/a PSG Innovation Corp.)
Old BPSDS Wind-down Corp. (f/k/a BPS Diamond Sports Corp.)
Old BPSU Wind-down Corp. (f/k/a Bauer Performance Sports Uniforms Corp.)
Old PLG Wind-down Corp. (f/k/a Performance Lacrosse Group Corp.)
Old PSG Wind-down Ltd. (f/k/a Performance Sports Group Ltd., and also representing the estates of the Debtors formerly known as KBAU Holdings Canada, Inc., Bauer Hockey Corp., and BPS Canada Intermediate Corp., respectively)

EXHIBIT 2

The Plan

EXHIBIT 3

Prepetition Corporate Organization Chart

EXHIBIT 4

Liquidation Analysis

EXHIBIT 5

Disclosure Statement Order

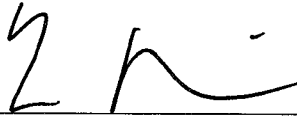
EXHIBIT “F”

EXHIBIT "F"

referred to in the Affidavit of

KEISHA LACKPATIAH-SEALY

Sworn September 20, 2017

A handwritten signature in black ink, appearing to be 'Z h', written over a horizontal line.

Commissioner for Taking Affidavits

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

OLD BPSUSH INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 16-12373 (KJC)

(Jointly Administered)

Hearing Date: October 16, 2017 at 10:00 a.m. (ET)

Response Deadline: October 5, 2017 at 4:00 p.m. (ET)

**OBJECTION OF OFFICIAL COMMITTEE OF EQUITY SECURITY
HOLDERS, PURSUANT TO 11 U.S.C. § 502 AND FED R. BANKR. P. 3007, 7023,
AND 9014, TO PUTATIVE CLASS CLAIM FILED BY PLUMBERS &
PIPEFITTERS NATIONAL PENSION FUND (PROOF OF CLAIM NO. 444)**

The Official Committee of Equity Security Holders (the “**Official Equity Committee**”) appointed in the Chapter 11 cases of Old BPSUSH Inc. (f/k/a BPS US Holdings Inc.), *et al.* (collectively, the “**Debtors**”), hereby: (i) files this objection (the “**Objection**”), pursuant to 11 U.S.C. § 502 and Rules 3007, 7023, and 9014 of the Federal Rules of Bankruptcy Procedure (“**FRBP**”), to proof of claim no. 444 (the “**Putative Class Claim**”) filed against Old PSG Wind-down Ltd. (f/k/a Performance Sports Group Ltd.) (“**PSG**”) by the Plumbers & Pipefitters National Pension Fund (the “**Individual Claimant**”), on behalf of itself and purportedly on behalf of a putative class of persons and entities that purchased or acquired common stock of PSG on the New York Stock Exchange during the period from January 15, 2015 through March

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Old BPSUSH Inc. (f/k/a BPS US Holdings Inc.) (8341); Old BH Inc. (f/k/a Bauer Hockey, Inc.) (3094); Old EBS Inc. (f/k/a Easton Baseball / Softball Inc.) (5670); Old BHR Inc. (f/k/a Bauer Hockey Retail Inc.) (6663); Old BPSU Inc. (f/k/a Bauer Performance Sports Uniforms Inc.) (1095); Old PLG Inc. (f/k/a Performance Lacrosse Group Inc.) (4200); Old BPSCI Inc. (f/k/a BPS Diamond Sports Inc.) (5909); Old PSGI Inc. (f/k/a PSG Innovation Inc.) (9408); Old BHR Wind-down Corp. (f/k/a Bauer Hockey Retail Corp.) (1899); Old EBS Winddown Corp. (f/k/a Easton Baseball / Softball Corp.) (4068); Old PSGI Wind-down Corp. (f/k/a PSG Innovation Corp.) (2165); Old BPSDS Wind-down Corp. (f/k/a BPS Diamond Sports Corp.) (8049); Old BPSU Wind-down Corp. (f/k/a Bauer Performance Sports Uniforms Corp.) (2203); Old PLG Wind-down Corp. (f/k/a Performance Lacrosse Group Corp.) (1249); and Old PSG Wind-down Ltd. (1514) (f/k/a Performance Sports Group Ltd., and also representing the estates of the Debtors formerly known as KBAU Holdings Canada, Inc., Bauer Hockey Corp., and BPS Canada Intermediate Corp.). The Debtors’ address is 100 Domain Dr., Exeter, New Hampshire 03833.

14, 2016 (the “**Putative Class**”); and (ii) seeks entry of an Order, substantially in the form attached hereto as **Exhibit A** (the “**Proposed Order**”), disallowing and expunging the Putative Class Claim in its entirety.² A true and correct copy of the Putative Class Claim is attached hereto as **Exhibit B**. In support of this Objection, the Official Equity Committee states as follows:

PRELIMINARY STATEMENT

1. These bankruptcies were filed more than ten months ago and, during that time span, the cases observed significant activity in both the United States and Canada. Myriad issues, including some of extraordinary complexity, were diligenced, discussed out-of-court, and typically brought to settlement; but, matters also were presented to one or both Courts for ruling, including after evidentiary trial. Throughout the bankruptcy process, parties were given notice, in full accordance with applicable rules of procedure. And, throughout the bankruptcy process, parties with true economic interests made their views known at both the bargaining table and Courtroom podium, interfacing and/or counter-arguing with: the Debtors-in-Possession, the Canadian Monitor, the Official Committee of Unsecured Creditors, the Official Committee of Equity Security Holders, the Pre-Petition Bank Lenders, Sagard (the business acquirer and a large stockholder), the United States Trustee, and the U.S. Securities and Exchange Commission. There has been, in sum, ample notice, time and opportunity to participate in these cases, if parties desired to do so. After more than ten months of focused attention, the cases are now ready to conclude through a heavily-negotiated plan of liquidation (the “**Plan**”).³

² In addition to this Objection, the Equity Committee will be filing an objection to the Putative Class Claim in the Canadian Proceedings to be heard by the Canadian Court concurrently with this Objection.

³ *See Joint Chapter 11 Plan of Liquidation of Old BPSUSH Inc. and its Affiliated Debtors* (Docket No. 1283).

2. But, expeditious distribution of the estates is being “held up” by a putative class proof of claim. The proof of claim stems from a putative class action lawsuit filed prepetition in the Southern District of New York. That lawsuit was never certified as a class action, has not materially progressed since filing (discovery has not commenced and the individual defendants’ joint motion to dismiss is still pending), is directed primarily against legacy officers (who are covered by a D&O insurance policy), and does not assert an amount certain against the Debtors’ estates. Counsel to the putative class never: (i) sought stay relief to obtain class certification in the Southern District of New York; (ii) filed a motion before either the U.S. Bankruptcy or Canadian Court requesting authority under Bankruptcy Rule 7023 to file a class proof of claim; (iii) spoke at any hearings in the bankruptcy cases on behalf of the Putative Class; (iv) to the best of the Official Equity Committee’s knowledge, expressed any desire to sit on either the Official Creditors’ Committee or the Official Equity Committee, or otherwise participate in out-of-court discussions regarding any substantive case issue; or (v) to the best of the Official Equity Committee’s knowledge, sought any diligence relating to any issue underlying these bankruptcy cases. For all intents and purposes, the Putative Class was absent from the bankruptcy process, except for lodging the putative class proof of claim. That putative class proof of claim now threatens expeditious distribution of the estates, and warrants full disallowance.

3. Foundationally, it bears noting that a “class” is a legal fiction and, thus, has no inherent entitlement to access the Courts. The law of both the United States and Canada requires a substantial showing before this legal fiction is deemed worthy of any judicial recognition. Under both U.S. and Canadian restructuring law, the court in its discretion must determine in the first instance whether to permit the filing of a class claim. In making this determination, courts in both jurisdictions consider whether the class was certified prepetition (here, it was not),

whether putative class members received adequate notice of the bar date (here, they did), and whether class certification will adversely affect the administration of the estate (here, it would). A putative class that, through putative class counsel, does not obtain certification before the bankruptcy filing, does not seek special authorization under Bankruptcy Rule 7023 before the claims bar date (notwithstanding ample notice and opportunity to do so), does not thereafter make an appropriate showing under Rule 7023, and otherwise sits on its rights during the bankruptcy case, has not earned the right to Court recognition. That is especially true where, as here, appropriate notice was provided to potential class claimants and not a single one (besides the “lead” plaintiff) filed a proof of claim or otherwise asserted any entitlement in these cases.

4. The putative class proof of claim disables expeditious distribution of the estates because (i) the claim is entirely contingent and unliquidated, is subject to a court process (Southern District of New York) that, today, is in its infancy, and may take many years to develop; and (ii) under both U.S. and Canadian law, the claim is subject to subordination to the level of common stock, and common stock has no repayment “ceiling” enabling an apportionment between the class claimants and stockholders. It bears noting that this Objection is legal in nature, and the Official Equity Committee believes that it can be fully briefed and brought to resolution in relatively short order, unlike adjudication of the Putative Class Claim (should this Objection be overruled), which will likely require costly and time-consuming litigation regarding whether the Putative Class satisfies the requirements of class certification,⁴ and, if certified, the underlying merits of the claim, before the estates can make any distributions to stockholders (and even then, likely only after further litigation over the apportionment of

⁴ Class certification issues include whether (1) the class is needed because there are “numerous” actual claimants; (2) those claimants are similarly situated because they have “common” questions of facts and law, and there is “typicality” to their claims; and (3) a class action is “superior” to all other methods of claim adjudication. *See* Fed. R. Civ. P. 23.

estate assets between stockholders and the subordinated class claimants). Disallowing the Putative Class Claim solves these structural problems, and enables the distributions contemplated by the Plan to move forward. But, importantly, it does not deprive the Putative Class of a recovery, should it ultimately be certified and prove its case; rather, all matters pertinent to the class litigation are channeled to its rightful tribunal (the Southern District of New York), where the litigation can proceed against the Debtors' legacy officers, and a recovery there might be obtained from substantial D&O insurance.

JURISDICTION, VENUE, STATUTORY PREDICATES

5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are Section 502 of Chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (as amended, the “**Bankruptcy Code**”), and FRBP 3007, 7023, and 9014.

RELIEF REQUESTED

6. Through this Objection, the Official Equity Committee seeks entry of an order, substantially in the form of the Proposed Order attached hereto as **Exhibit A**, disallowing and expunging the Putative Class Claim in its entirety.

RELEVANT BACKGROUND

A. Relevant Background With Respect To Putative Class Proceeding.

7. On May 13, 2016, plaintiff Juan Francisco Gonzales Nieves, as trustee of the Gonzalez Coronado Trust, filed a complaint, individually and purportedly on behalf of a class of similarly situated persons, against PSG, Kevin Davis (PSG's former CEO), and Amir Rosenthal (PSG's former Interim CEO/CFO) (Messrs. Davis and Rosenthal, together, the “**Individual**

Defendants”, and, with PSG, the “**Defendants**”) in the United States District Court for the Southern District of New York (the “**District Court**”) (Case No. 16-03591) (GHW) (the “**Putative Class Proceeding**”).

8. The Putative Class has not been certified in the Putative Class Proceeding, and no motion or other pleading requesting class certification has yet been filed with the District Court, the U.S. Bankruptcy Court, the Canadian Court, or any other court.

9. The Putative Class consists of all persons and entities that purchased or acquired PSG common stock on the New York Stock Exchange (“**NYSE**”) during the period from January 15, 2015 through March 14, 2016. As of the Petition Date, the Debtors had issued and outstanding more than 45 million shares of PSG stock on both the Toronto and New York stock exchanges.⁵ According to Bloomberg, during the Putative Class period, approximately 122.6 million shares of PSG common stock were traded on the NYSE through approximately 711,459 transactions.⁶

10. On June 7, 2016, the District Court entered an order appointing the Individual Claimant as the lead plaintiff in the Putative Class Proceeding. (Putative Class Proceeding D.I. 24)

11. On August 15, 2016, the Individual Claimant filed its first amended putative class complaint. (Putative Class Proceeding D.I. 62) Pursuant to this amended complaint, a copy of which is annexed to the Putative Class Claim, the Individual Claimant alleges two counts against the Defendants: (i) one count for alleged violations of Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78a *et seq.* (the “**Exchange Act**”) and Rule 10b-5 of the Securities and

⁵ See Declaration of Brian J. Fox in Support of Debtors’ Chapter 11 Petitions and First-Day Motions (Docket No. 15).

⁶ Attached hereto as **Exhibit C** is trading information in respect of PSG’s stock during the Putative Class period. Retrieved August 17, 2017 from Bloomberg L.P. database.

Exchange Commission; and (ii) one count for alleged violation of Section 20(a) of the Exchange Act.

12. On October 13, 2016, the Defendants filed a joint motion to dismiss the putative class complaint. (Putative Class Proceeding D.I. 81, 82) On October 31, 2016, the Debtors filed for relief under Chapter 11 of the Bankruptcy Code. As a result, the Putative Class Proceeding was stayed as to PSG.

13. On November 3, 2016, the Individual Claimant filed its second amended putative class complaint, which did not name PSG as a defendant. On January 17, 2017, the District Court entered an order extending the automatic stay to Individual Defendants Davis and Rosenthal. (Putative Class Proceeding D.I. 102)

14. On May 9, 2017, the District Court entered a stipulated scheduling order pursuant to which the automatic stay was lifted as to the Individual Defendants and a deadline of June 22, 2017, was established for the Individual Defendants to answer or otherwise respond to the second amended putative class complaint. (Putative Class Proceeding D.I. 109)

15. On June 22, 2017, the Individual Defendants filed their joint motion to dismiss the second amended putative class complaint. (Putative Class Proceeding D.I. 114, 115) On July 24, 2017, the Individual Claimant filed its opposition to the joint motion to dismiss. (Putative Class Proceeding D.I. 123) On August 14, 2017, the Individual Defendants filed their consolidated reply in support of their motion to dismiss. (Putative Class Proceeding D.I. 124)

B. Relevant Background With Respect To Chapter 11 And CCAA Cases.

16. PSG is a public company incorporated under the British Columbia *Business Corporations Act*, SBC 2002, c 57. On October 31, 2016, (the “**Petition Date**”), PSG and its Debtor subsidiaries filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code

in the United States Bankruptcy Court for the District of Delaware (the “**Court**” or “**U.S. Bankruptcy Court**”, and the cases filed therein, the “**Chapter 11 Cases**”). 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 with the U.S. Bankruptcy Court, the “**Courts**”), and the proceedings therein, the “**CCAA Proceedings**”).

17. On November 9, 2016, the Debtors filed their notice of commencement of their Chapter 11 Cases (Docket No. 101), which the Debtors served on, among other parties, all registered holders of PSG stock (including CDS and DTC (both as defined below) and all shareholder nominees that were also CDS/DTC participants). (*Affidavit of Service* (Docket No. 137))

18. On November 28, 2016, the Debtors filed the *Debtors’ Motion for an Order (I) Establishing Bar Dates for Filing Claims and (II) Approving the Form and Manner of Notice Thereof* (Docket No. 212) (the “**Bar Date Motion**”), pursuant to which the Debtors sought, among other things, entry of an order approving certain bar dates in the Chapter 11 Cases and the CCAA Proceedings, and approving the form and manner of notice of such bar dates.

19. On December 19, 2016, the Courts entered the *Order (I) Establishing Bar Dates for Filing Claims and (II) Approving the Form and Manner of Notice Thereof* (Docket No. 327) (the “**Bar Date Order**”), pursuant to which the Courts granted the relief requested in the Bar Date Motion and established February 6, 2017, at 5:00 p.m. (prevailing Eastern Time) as the General Bar Date (as defined in the Bar Date Order). (Bar Date Order ¶ 4) The Bar Date Order provides, among other things, the following:

Any entity holding an interest in the Debtors (an “Interest Holder”), which interest is based exclusively upon the ownership of: (a) common stock in

Performance Sports Group Ltd.; or (b) warrants or rights to purchase, sell or subscribe to such stock (any such stock or aforementioned right related thereto being referred to herein as an “Interest”), need not file a proof of claim or proof of interest on or before the General Bar Date on account of such Interest; provided, however, Interest Holders who want to assert claims against the Debtors that arise out of or relate to the ownership or purchase of an Interest, including claims arising out of or relating to the sale, issuance or distribution of the Interest, must file a claim by the applicable Bar Dates, unless another exception identified in this motion applies.

(Bar Date Order ¶ 13) (emphasis in original)

20. Pursuant to the Bar Date Order, the Courts approved the form and manner of notice of the General Bar Date to creditors, including the Publication Notice (as defined in the Bar Date Order), and determined that such forms of notice satisfied the requirements of the Bankruptcy Code and Bankruptcy Rules. (Bar Date Order ¶ 3)

21. On December 23, 2016, the Debtors served the Bar Date Notice on, among other parties in interest: (i) all registered holders of PSG stock (*Supplemental Affidavit of Service* (Docket No. 467)); and (ii) the Individual Claimant (and the named plaintiff) in the Putative Class Proceeding. (*Affidavit of Service* (Docket No. 454))

22. Among the entities served with actual notice of the General Bar Date were: (i) CDS & Co. (the nominee company for the Canadian Depository for Securities Ltd. (“**CDS**”)), which, as of the Petition Date, was the registered owner of approximately 38,553,857 PSG shares (or approximately 84.06% of PSG’s issued and outstanding stock); (ii) CEDE & Co. (the nominee company for the Depository Trust Company (“**DTC**”)), which, as of the Petition Date, was the registered owner of approximately 6,184,432 PSG shares (or approximately 13.49% of PSG’s issued and outstanding stock); and (iii) all registered participants with CDS and/or DTC that were also shareholder banks, brokers, dealer agents, nominees, or agents for shareholders that held their PSG shares in book-entry form. (*See Notice of Filing of List of Equity Security*

Holders (Docket No. 115); *Affidavit of Service* (Docket No. 137); *Supplemental Affidavit of Service* (Docket No. 467))

23. Pursuant to and in accordance with the Bar Date Order, the Debtors also provided constructive notice of the General Bar Date, via Publication Notice, to all “unknown” creditors of the Debtors. In accordance with the Bar Date Order, the Publication Notice was approved by the Courts and published in the following periodicals: (i) the National Edition of the Globe and Mail, on December 28, 2016; (ii) the National Edition of USA Today, on December 28, 2016; (iii) the International Edition of The Wall Street Journal, on December 28, 2016; and (iv) La Presse (French language), on December 31, 2016. (Bar Date Order ¶ 18; *Affidavit of Publication* (Docket No. 528); *Affidavit of Publication* (Docket No. 562))

24. On February 6, 2017, the Courts entered their Orders approving the Section 363 sale of substantially all of the Debtors’ assets pursuant to that certain Asset Purchase Agreement, dated as of October 31, 2016, (Docket No. 770), and on February 28, 2017, the Section 363 sale closed. (Docket No. 884)

25. On August 9, 2017, the Debtors filed their *Joint Chapter 11 Plan of Liquidation of Old BPSUSH Inc. and Its Affiliated Debtors* (Docket No. 1240), and, on August 25, 2017, the Debtors filed a revised version of the Plan and an accompanying Disclosure Statement, and scheduled October 3, 2017 as the hearing date with respect to the Disclosure Statement. (Docket Nos. 1283, 1284, 1285) Pursuant to the Plan, a condition precedent to Plan confirmation is entry of an order by the U.S. Bankruptcy or Canadian Court disallowing and expunging the Putative Class Claim in its entirety. (Plan Art. IX(A)(3)) Pursuant to the Disclosure Statement, parties in interest were advised that the Official Equity Committee would file an objection seeking full

disallowance of the Putative Class Claim prior to the confirmation hearing on the Plan.
(Disclosure Statement Art. VII(B)(2))

ARGUMENTS IN OBJECTION

I. There Is No Inherent Right To File A Class Proof Of Claim In Bankruptcy.

26. There is no right to file a class proof of claim in a U.S. bankruptcy case.⁷ Rather, before a class proof of claim may be permitted, the bankruptcy court must first determine, in its sound discretion,⁸ whether permitting the filing of a class proof of claim (via application of FRBP 7023 to the claim) would be beneficial to the case.⁹ In making this determination, “a pervasive theme is avoiding undue delay in the administration of the case.”¹⁰

27. This Objection concerns only whether the Court should apply FRBP 7023 to the Putative Class Claim. The Equity Committee notes that, to the extent that the Court were inclined to apply FRBP 7023 to the Putative Class Claim, the Court would then need to determine, among other issues, whether the certification requirements of Rule 23 of the Federal Rules of Civil Procedure (*e.g.*, numerosity, commonality, typicality, and adequacy of representation) were satisfied in respect of the Putative Class,¹¹ and the Equity Committee reserves all rights with respect thereto.

⁷ *In re Musicland Holding Corp.* (“**Musicland**”), 362 B.R. 644, 650 (Bankr. S.D.N.Y. 2007) (“While class proofs of claim in bankruptcy are not prohibited, the right to file one is not absolute.”) (internal citations omitted).

⁸ *In re Pacific Sunwear of California, Inc.*, 2016 WL 3564484, at *5 (Bankr. D. Del. June 22, 2016) (LSS) (“I will join the vast majority of courts holding that whether to permit a class action is a matter of discretion.”); *In re Ephedra Prods. Liability Litig.*, 329 B.R. 1, 5 (S.D.N.Y. 2005) (“Rule 23 may be invoked against the debtor only if the bankruptcy court first makes a discretionary ruling under Rule 9014 to apply Rule 23 to the proof of claim.”)

⁹ *Musicland*, 362 B.R. at 651.

¹⁰ *Ephedra*, 329 B.R. at 4.

¹¹ *Musicland*, 362 B.R. at 651.

II. The Court Should Not Apply FRBP 7023 To The Putative Class Claim.

A. The Individual Claimant Chose Not To Seek Application Of FRBP 7023 To The Putative Class Claim.

28. Typically, a class representative must make a motion seeking to apply FRBP 7023 to a class claim. But, no such motion has been made here (or to the Canadian Court), despite the fact that the Putative Class Claim was filed more than seven months ago. The most relevant precedent where, as here, the class representative chose not to seek application of FRBP 7023 is *In re Craft*,¹² a decision from the Mirant Corp. Chapter 11 proceedings. There, representatives of putative classes in several uncertified putative class actions filed proofs of claim on behalf of their respective putative classes, but failed to seek application of FRBP 7023 to the putative class claims.¹³ The court, exercising its discretion, disallowed the putative class claims. In exercising its discretion, the court considered the following factors: (i) the timeliness of seeking application of FRBP 7023 to the putative class claims; (ii) the potential prejudice to the debtor (and creditors) if the claims were not disallowed (including efficient estate administration); and (iii) the potential prejudice to putative class members if the claim were disallowed.¹⁴

29. **First**, regarding the timeliness of seeking application of FRBP 7023, the *Craft* court noted that it was “the burden of the class representatives to raise the issue of class certification.”¹⁵ Mirant filed for Chapter 11 relief on July 14, 2003.¹⁶ The putative class representatives timely filed putative class proofs of claim, but failed to seek application of FRBP 7023 thereto; meanwhile, a Chapter 11 plan was being negotiated and prepared for filing. Prior

¹² *In re Craft*, 321 B.R. 189, 190-91 (N.D. Tex. 2005).

¹³ *Id.*

¹⁴ *Id.* at 199.

¹⁵ *Id.*

¹⁶ *Craft*, 321 B.R. at 190.

to filing its plan, the debtor filed motions to strike the putative class claims, the first of which was heard on December 1, 2004.¹⁷ In disallowing the putative class claims, the court stated that the “putative class representatives ... waited too long to seek invocation of Rule 7023.”¹⁸ The opinion of the District Court for the Southern District of New York in *Ephedra* provides further guidance. In disallowing three (3) consumer class claims, the court noted that the putative class representatives never affirmatively sought application of FRBP 7023 to the putative class claims.¹⁹ Meanwhile, the debtor’s assets were liquidated, the plan was negotiated, filed, and confirmed, and the estate was ready to distribute assets.²⁰ The court held that application of FRBP 7023 at such a late stage in the case, after the putative representative failed to promptly seek such relief, was inappropriate.²¹

30. Here, other than filing the claim more than seven months ago, the Individual Claimant has done *nothing* in these cases with respect to the Putative Class Claim. Indeed, the Individual Claimant has still not sought application of FRBP 7023 to the Putative Class Claim (notwithstanding that the Plan that was filed on August 9, 2017 was conditioned on disallowance of the Putative Class Claim and that the Disclosure Statement filed on August 25, 2017 explicitly stated that the Official Equity Committee would be filing an objection to the Putative Class Claim prior to the Plan confirmation hearing). In this regard, an observation of the Bankruptcy Court for the Southern District of New York in the *Connaught Group* bankruptcy cases is apt:

[T]he principal consideration must be the effect of the class certification on the administration of the estate. **If the class plaintiff sits silently and does not raise the issue of certification until after the plan has been**

¹⁷ *Id.* at 191.

¹⁸ *Id.* at 199.

¹⁹ *Ephedra*, 329 B.R. at 8.

²⁰ *Id.*

²¹ *Id.* at 8-10.

negotiated, and certification would adversely affect the timing or possibility of confirmation, there are good reasons to deny certification and prevent the proposed class from gumming up the works.²²

31. *Second*, regarding prejudice to the debtor, the *Craft* court noted that, with a Chapter 11 plan deep in negotiations (the plan was being negotiated at the time the opinion was drafted and was filed just prior to the issuance of the opinion), the debtor's case was at a "critical juncture" and it "would prejudice [the debtor] and its creditors to delay the plan process and claim objection process to conduct a Rule 7023 hearing."²³ In *Ephedra*, the court noted that a "pervasive theme" when considering whether to apply FRBP 7023 to a class claim "is avoiding undue delay in the administration of the case," and, so, a bankruptcy court "may decline to apply Rule 23 if doing so would ... gum up the works of distributing the estate."²⁴ The court stated that the potential interference with timely distributions under a liquidating plan "itself presents sufficient grounds to expunge the class claims."²⁵ Here, the heavily-negotiated Plan and Disclosure Statement have been filed, a hearing on the Disclosure Statement is scheduled for October 3, 2017, and any delay to conduct an FRBP 7023 certification hearing would be costly and time-consuming (discovery on certification has not yet begun in the District Court), impose unnecessary costs and delay (including with respect to Plan distributions), and substantially prejudice the Debtors, creditors, and equity holders.²⁶

32. *Finally*, regarding potential prejudice to the putative class members, the *Craft* court noted that other proceedings (in that case, actions brought by governmental units) would

²² *In re The Connaught Group, Ltd.*, 491 B.R. 88, 98 (Bankr. S.D.N.Y.2013) (emphasis added).

²³ *Craft*, 321 B.R. at 199.

²⁴ *Ephedra*, 329 B.R. at 4.

²⁵ *Id.* at 5.

adequately protect the interests of putative class members.²⁷ Here, disallowance of the Putative Claim will not deprive Putative Class members of an opportunity for a recovery. Rather, the interests of Putative Class members will be adequately protected through the District Court proceeding, where the litigation can proceed against the Debtors' legacy officers, and a recovery there might be obtained from D&O insurance.

B. If The Putative Class Claimants Now Make An Untimely Request To Apply FRBP 7023 To The Putative Class Claim, Such Request Should Be Denied Because The Putative Class Claimants Cannot Satisfy Their Burden In Respect Thereof.

33. If the Court is inclined to consider whether to exercise its discretion regarding application of FRBP 7023 (notwithstanding that no such request has even been made yet), then, under the traditional factors considered by courts, the Court should decline to do so. In determining whether to grant a request to apply FRBP 7023 to a class claim, bankruptcy courts typically analyze three factors (referred to as the *Musicland* factors):

- (1) Whether the class was certified prepetition;
- (2) Whether the members of the putative class received notice of the bar date; and
- (3) Whether class certification will adversely affect the administration of the estate.²⁸

34. Application of the *Musicland* factors here strongly militates against the Court applying FRBP 7023 to the Putative Class Claim.

²⁶ *Craft*, 321 B.R. at 199; see *In re Circuit City Stores, Inc.*, 439 B.R. 652, 660-61 (E.D. Va. 2010), *aff'd on other grounds*, *Gentry v. Siegel*, 668 F.3d 83 (4th Cir. 2012) (denying application of FRBP 7023 to class claim); *In re Bally Total Fitness*, 402 B.R. 616, 612 (Bankr. S.D.N.Y. 2009).

²⁷ *Craft*, 321 B.R. at 199.

²⁸ *Pacific Sunwear*, 2016 WL at *5 (citing *Musicland*, 362 B.R. at 654-55).

(i) The Putative Class Was Not Certified Prepetition.

35. To date, the Putative Class has not been certified by this Court, the District Court, the Canadian Court, or any other court (nor has a request for certification been made to any court). Whether a class was certified prepetition is relevant to the question of whether putative class members were required to comply with a bar date order (or other applicable order of the bankruptcy court) or, instead, could reasonably rely on the class plaintiff to represent the interests of individual class members.²⁹ If the class was not certified prepetition, putative class members “lack a reasonable expectation that they need not comply with the Bar Date Order.”³⁰ Here, because the Putative Class was not certified prepetition, the members of the Putative Class lacked a “reasonable expectation” that they did not need to comply with the Bar Date Order. Accordingly, this factor weighs in favor of not applying FRBP 7023 to the Putative Class Claim.³¹

(ii) The Putative Class Members Received Adequate Notice Of The Bar Date.

36. Courts generally decline to apply FRBP 7023 to a class claim where the class members received adequate notice of the bar date.³² As a preliminary matter, the Individual

²⁹ *In re Jamesway Corp.*, 1997 WL 327105, at *10 (Bankr. S.D.N.Y. 1997); *see also Musicland*, 362 B.R. at 654 (same).

³⁰ *Jamesway*, 1997 WL at *10; *see also Musicland*, 362 B.R. at 654 (same); *In re Sacred Heart Hosp. of Norristown*, 177 B.R. 16, 22 (Bankr. E.D. Pa. 1995) (denying class proof of claim and distinguishing cases where class was certified prepetition and cases where class was not certified and no procedures were established for noticing class members).

³¹ *Bally*, 402 B.R. at 620 (“The filing of a class proof of claim is consistent with the Bankruptcy Code generally in two principal situations: (i) where a class has been certified pre-petition by a non-bankruptcy court; and (ii) where there has been no actual or constructive notice to the class members of the bankruptcy case and Bar Date. Plaintiffs fail to meet both of these requirements. No class certification decision has been made in either [class action] and there are no material notice issues in this case.”); *In re Chaparral Energy, Inc.*, 2017 WL 2292765, at *3 (Bankr. D. Del. May 24, 2017) (“The first *Musicland* factor weighs against applying Bankruptcy Rule 7023 to the Class Claim, as the Putative Class was not certified prepetition.”).

³² *See Sacred Heart*, 177 B.R. at 22 (stating that “if the putative unnamed class members have clearly received actual or constructive notice of the bankruptcy case and the bar date, denial of the implementation of the class proof of claim device appears advisable”); *Bally*, 402 B.R. at 620 (disallowing class proof of claim where

Claimant, which received actual notice of the commencement of the Debtors' Chapter 11 cases and the General Bar Date, lacks standing to challenge the adequacy of notice to unnamed members of the Putative Class.³³ In any event, the Debtors provided adequate notice of the General Bar Date to all members of the Putative Class.

37. **First**, the Debtors provided actual notice of the General Bar Date (and the commencement of their Chapter 11 Cases) to all holders listed on PSG's official stock register, including CDS and DTC, which, combined were the registered owners of approximately 44.7 million – or nearly ninety-eight percent (98%) – of PSG's issued and outstanding stock.³⁴ The Debtors also provided actual notice to shareholder nominees who were also CDS/DTC participants. To the extent that any members of the Putative Class still held their PSG shares as of December 23, 2016, (the date the Bar Date notices were served), such actual notice to the registered shareholders and/or nominees was likely adequate for due process considerations. In *In re Color Tile Inc.*, the Third Circuit held that the relationship between DTC (as the registered owner of a stock) and the beneficial owner of a stock is that of an agent (DTC) to a principal (the beneficial owner), and, as a general matter, "[w]here an agent receives notice, that notice is imputed to the principal."³⁵ The issue in *Color Tile* was whether service of a complaint on DTC

debtors provided actual or constructive notice reasonably calculated to apprise the interested parties of the bankruptcy case); *In re Adam Aircraft Indus.*, 2009 WL 2100929, at *9 (Bankr. D. Colo. Mar. 20, 2009) (declining to apply Bankruptcy Rule 7023 to allow a class proof of claim where all class members had been given notice of the bar date and had "already been afforded one bite at the claims apple"); *Jamesway*, 1997 WL at *10 (disallowing class proof of claim where the debtors provided adequate notice of bankruptcy cases and the bar date to interested parties and stating that certification of class would be "unwarranted, unfair, and possibly violate the due process rights of other creditors.").

³³ *Gentry v. Siegel*, 668 F.3d 83, 95 (4th Cir. 2012) (holding that representatives of a putative class, who themselves received actual, individualized notice of the bankruptcy cases and bar date, lacked standing to object to the notice provided to unnamed class members); *In re Lear Corp.*, 2012 WL 443951, at *9 (Bankr. S.D.N.Y. Feb. 10, 2012) ("[T]he named plaintiffs who assert due process violations cannot, at this stage of the litigation, assert the rights of a class that has not been certified.").

³⁴ See *Affidavit of Service* (Docket No. 137); *Supplemental Affidavit of Service* (Docket No. 467); *Notice of Filing of List of Equity Security Holders* (Docket No. 115).

³⁵ *In re Color Tile Inc.*, 475 F.3d 508 (3d Cir. 2007).

provided adequate notice to the beneficial owner of the stock of the existence of the lawsuit for purposes of the statute of limitations. The district court held that service of the complaint on DTC did not provide actual notice of the lawsuit to the beneficial owner of the stock. The Third Circuit vacated the district court's ruling, stating that "[t]he District Court took an extremely narrow view of what constitutes actual notice," and that, under principles of agency and contract law, notice of the complaint on DTC may be imputed to the beneficial owner of the stock.³⁶

38. ***Second***, the Debtors provided constructive notice of the General Bar Date via publication in national publications in Canada (Globe and Mail, La Presse) and the United States (USA Today, The Wall Street Journal), pursuant to and in accordance with the Bar Date Order. Such publication notice was adequate as to all unnamed members of the Putative Class, including those members of the Putative Class who held their PSG shares in book-entry form through a custodian and/or CDS/DTC participant, because such unnamed Putative Class members were "unknown" creditors of the Debtors.³⁷

39. The opinion of the District Court for the Eastern District of Virginia in *In re Circuit City Stores, Inc.* is instructive.³⁸ In *Circuit City*, claimants purporting to represent a putative class of the debtors' employees and former employees sought damages and injunctive relief with respect to the debtors' alleged violations of the California Labor Codes and California

³⁶ *Id.* at 513-15. The Third Circuit ultimately remanded the matter back to the district court for a further evidentiary hearing with respect to an ambiguity between the DTC bylaws and a side agreement between DTC and the beneficial owner of the stock with respect to DTC's obligations to send documents to the beneficial owner.

³⁷ To satisfy constitutional due process requirements, adequate notice requires notice that is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action." (*Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950)) In bankruptcy, whether notice to a particular creditor was "adequate" turns on whether a creditor was "known" (*i.e.*, "one whose identity is either known or 'reasonably ascertainable by the debtor'") or "unknown" (*i.e.*, "one whose 'interests are either conjectural or future or, although they could be discovered upon investigation, do not in due course of business come to the knowledge of the debtor'") to the debtor. (*Chemetron Corp. v. Jones*, 72 F.3d 341, 346-48 (3d Cir. 1995))

³⁸ *See Circuit City*, 439 B.R. at 660-61.

Business and Professions Codes.³⁹ In affirming the bankruptcy court ruling finding that the unnamed class members were “unknown” creditors, the district court noted that the:

Debtors employed approximately 39,600 employees throughout the United States and had over 100 separate geographic locations within the State of California. The scope of individuals who could potentially fall within the classes identified by the Class Claims is broad and uncovering their identity and claims would require more effort than is reasonably required by the circumstances.⁴⁰

40. The district court further stated that “subject[ing] the Debtors to the task of identifying all its employees in California within the period identified by the Class Claims and then requiring the Debtors to provide actual notice to each individual would be expensive and would consume a disproportionate share of the Debtor’s resources.”⁴¹ The district court concluded its analysis by noting that:

[T]he bankruptcy court has an obligation to the existing creditors and the Debtors’ stockholders. Approximately 15,000 claims were filed against the Debtors and more than half—approximately 7,800 orders—have been disposed of. On the other hand, the Class Claims collectively seek \$150 million. The Class Action Lawsuits were not certified and discovery had not occurred. Proceeding with the Class Claims would therefore cause unnecessary delay and burden on the balance of the Debtors’ resources.⁴²

41. The district court’s reasoning in *Circuit City* is directly applicable here. The scope of individuals who could fall within the Putative Class is far broader than in *Circuit City* (e.g., during the Putative Class period approximately 122.6 million PSG shares were traded on the NYSE in 711,459 transactions), and uncovering the identity of each beneficial holder who was a member of the Putative Class was not possible, let alone practicable or justified under the circumstances. As this Court articulated in *New Century TRS Holdings*, “[a] debtor need not be

³⁹ *Id.* at 655.

⁴⁰ *Id.* at 660-61.

⁴¹ *Id.* at 661.

⁴² *Id.*

omnipotent or clairvoyant, but need only do what is reasonable under the circumstances to provide notice to ascertainable creditors.”⁴³ Moreover, even if it were possible to identify all unnamed members of the Putative Class (which it was not), requiring the Debtors to identify each Putative Class member and provide actual notice to each individual would have been prohibitively expensive and time-consuming.⁴⁴

42. Having provided adequate notice to all members of the Putative Class (through either actual or constructive notice), the second *Musicland* factor weighs against applying FRBP 7023 to the Putative Class Claim.⁴⁵

**(iii) Class Certification Would Adversely
Affect The Administration Of The Estates.**

43. Permitting the Putative Class Claim to proceed will have a material adverse effect on the administration of the estates. The Debtors’ Chapter 11 cases are nearing their end. The Section 363 sale closed several months ago, the General Bar Date passed more than seven months ago, and the claims reconciliation process is well underway. The Chapter 11 Plan has been fully negotiated and filed, and the hearing on the Disclosure Statement is scheduled for October 3, 2017. Permitting the Putative Class Claim to proceed would jeopardize expeditious distribution of the estates, introduce additional and wholly unnecessary layers of procedural and

⁴³ *In re New Century TRS Holdings, Inc.*, 465 B.R. 38, 46 (Bankr. D. Del. 2012) (creditor was unknown because review of debtor’s books and records did not indicate any potential claims).

⁴⁴ *See also Chemetron*, 72 F.3d 341(holding that debtor not required to perform title search to ascertain identities of potential creditors); *Pacificorp and Vancott Bagley Cornwall & McCarthy v. W.R. Grace*, 2006 WL 2375371, at *10 (D. Del. Aug. 16, 2006) (debtor had no direct relationship with creditor; thus, creditor was unknown).

⁴⁵ *Circuit City*, 439 B.R. at 661 (“Because notice by publication was given to the unknown creditors, the notice was constitutionally adequate.”); *Sacred Heart*, 177 B.R. at 22 (finding that, because the “putative unnamed class members have clearly received ... constructive notice of the bankruptcy case and the bar date, denial of the ... class proof of claim device appears advisable.”).

factual complexity to the Chapter 11 cases, and require the estates to expend additional resources to adjudicate issues such as class certification and the merits of the Putative Class Claim.⁴⁶

44. Further, these cases are unique. The Debtors' assets have been substantially liquidated, the estates are solvent, and the Putative Class claimants have asserted contingent, unliquidated claims that are subject to subordination to the level of common stock under U.S. (and Canadian) law. The Putative Class Claim will take several years to mature; meanwhile, unless the Putative Class Claim is disallowed, the amount of assets that will be distributable to PSG's shareholders will not have been determined and the portion to which the Putative Class Claim is entitled (if any) will not be readily ascertainable. By way of example: assume (a) there is \$40 million in cash or other estates assets to be administered to the Debtors' equity holders, and (b) the Putative Class Claim is determined to be allowed in the aggregate amount of \$50 million. How is the \$40 million in distributable assets to be apportioned among PSG's 45 million shares and the \$50 million subordinated claim? Neither the Bankruptcy Code nor U.S. jurisprudence (nor CCAA/Canadian jurisprudence) provides any meaningful guidance. Thus, application of FRBP 7023 to the Putative Class Claim may precipitate costly and time-consuming litigation regarding allocation of the estates' residual assets (in addition to the costly and time-consuming litigation in respect of class certification and the ultimate merits of the claim). At the very least, it would likely result in a substantial delay of any distributions to the Debtors' equity holders under the Plan pending the disposition of the class litigation (which may take many years).

⁴⁶ See *Circuit City*, 439 B.R. at 658 (denying application of FRBP 7023 to class claim); *Bally*, 402 B.R. at 621 (“[C]lass certification would adversely affect the administration of these cases adding layers of procedural and factual complexity that accompany class-based claims, siphoning the Debtors' resources and interfering with the orderly progression of the reorganization.”).

45. Finally, any benefit of class adjudication is far outweighed by the negative consequences in these cases. Many of the policy considerations favoring class adjudication are not applicable in bankruptcy (e.g., centralization of claims, consistent adjudication, and protection against a race to judgment, less expensive and time-consuming).⁴⁷ And, the members of the Putative Class have an alternative and adequate forum for pursuing the merits of the Putative Class Claim – the District Court – where the Putative Class Proceeding is proceeding as against the Individual Defendants, who are covered by a D&O insurance policy.⁴⁸

III. Applying Canadian Law To The Putative Class Claim Yields The Same Result As Under U.S. Bankruptcy Law.

46. The Putative Class Claim is asserted against PSG, the Canadian parent company (the estates have not been, and will not be, substantively consolidated). In addition to U.S. bankruptcy law, under applicable Canadian jurisprudence, the Putative Class Claim is procedurally deficient and should be disallowed. In *Muscletech Research & Development Inc., Re*,⁴⁹ the representative of an uncertified putative class filed a class claim asserting claims under California law for, among other things, alleged unlawful and fraudulent business practices.⁵⁰ The Canadian Court determined that the law of Ontario (where the CCAA case was filed), not California, applied as to whether the putative class representative was a legal personal representative of the putative class members with the authority to file the putative class claim on

⁴⁷ *Gentry*, 668 F.3d at 92-93 (“Bankruptcy provides (1) established mechanisms for notice, (2) established mechanisms for managing large numbers of claimants, (3) proceedings centralized in a single court with nationwide service of process, and (4) protection against a race to judgment since all of the debtor’s assets are under control of the bankruptcy court.”); *Ephedra*, 329 B.R. at 5; *see also Bally*, 411 B.R. at 145 (“many of the perceived advantages of class treatment drop away” in a bankruptcy proceeding).

⁴⁸ *See Craft*, 321 B.R. at 199.

⁴⁹ Copies of the relevant Canadian Court decisions in *Muscletech* are attached hereto as **Exhibit D**.

⁵⁰ *Muscletech Research & Development Inc., Re*, 2006 CarswellOnt 4929, at ¶ 14.

their behalf.⁵¹ Applying Ontario law, the Canadian Court found that, as a result of the absence of documentary evidence from members of the putative class supporting the potential claimant's authority to file a proof of claim on their behalf or a court order granting such authority, the claimant was not a "legal personal representative" for purposes of a proof of claim and disallowed the claim.⁵²

47. Here, the Individual Claimant did not take any steps before the Canadian Court to seek recognition, certification, authorization, or appointment as representative counsel appropriately qualified before the Canadian Court, or to seek a representation order or any form of representative status, in respect of the Putative Class or the Putative Class Claim. Accordingly, under applicable Canadian law, the Putative Class Claim should be disallowed.

RESERVATION OF RIGHTS

48. The Official Equity Committee hereby reserves and preserves its rights to amend, modify, or supplement this Objection and, to the extent that the Putative Class Claim is not disallowed and expunged as set forth herein, to: (i) file subsequent objections to the Putative Class Claim on any grounds, including, without limitation, that the Putative Class fails to satisfy the certification requirements of Rule 23 of the Federal Rules of Civil Procedure, and that the claims asserted under the Putative Class Claim have no merit under applicable law; (ii) seek to subordinate the Putative Class Claim pursuant to Bankruptcy Code Section 510(b) and applicable

⁵¹ *Muscletech Research & Development Inc., Re*, 2006 CarswellOnt 4929, at ¶ 28. In another opinion from the *Muscletech* proceedings, the Canadian Court disallowed additional putative class claims and, in doing so, considered additional factors similar to those typically considered by U.S. courts, including whether the class was certified prepetition and whether the class members were adequately protected by prior orders of the court. *See also Muscletech Research & Development Inc., Re*, 2006 CarswellOnt 7877.

⁵² *Muscletech Research & Development Inc., Re*, 2006 CarswellOnt 4929, at ¶ 44. The Official Equity Committee notes that at least one U.S. bankruptcy court has similarly held that, where a representative of an uncertified putative class did not obtain prior authorization from the court to file a putative class claim, such representative was not an "authorized agent" under Bankruptcy Rule 3001 and the claim, therefore, was invalid. *See Kahler v. FIRSTPLUS Financial, Inc. (In re FIRSTPLUS Financial, Inc.)*, 248 B.R. 60 (N.D. Tex. 2000).

Canadian law; and/or (iii) seek to estimate the Putative Class Claim for all purposes, including, without limitation, Plan distribution purposes.

NO PRIOR REQUEST

49. No previous request for the relief sought herein has been made to this Court or any other court.⁵³

NOTICE

50. Notice of this Objection has been provided to: (i) counsel to the Debtors; (ii) counsel to the Individual Claimant; (iii) counsel to the Official Committee of Unsecured Creditors; (iv) the Office of the United States Trustee; (v) the Canadian Monitor; (vi) all registered shareholders of PSG stock and shareholder nominees that are also CDS/DTC participants; and (vii) all parties requesting notice pursuant to Bankruptcy Rule 2002. The Official Equity Committee submits that such notice is adequate under the circumstances and that no further notice is necessary.

[Remainder of page intentionally left blank.]

⁵³ As noted above, in addition to this Objection, the Equity Committee will be filing an objection to the Putative Class Claim in the Canadian Proceedings to be heard by the Canadian Court concurrently with this Objection.

CONCLUSION

WHEREFORE, the Official Equity Committee respectfully requests that the Court:

(i) sustain this Objection to the Putative Class Claim; (ii) enter the Proposed Order attached hereto as **Exhibit A** disallowing and expunging the Putative Class Claim in its entirety; and

(iii) grant such other and further relief as the Court deems just and proper.

Dated: September 15, 2017
Wilmington, Delaware

**MONTGOMERY, McCRACKEN,
WALKER & RHOADS, LLP**

/s/ DRAFT

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*Counsel to the
Official Committee of Equity Security Holders*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

OLD BPSUSH INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 16-12373 (KJC)

(Jointly Administered)

Hearing Date: October 16, 2017 at 10:00 a.m. (ET)

Responses Due: October 5, 2017 at 4:00 p.m. (ET)

NOTICE OF OBJECTION TO CLAIM

TO: Counsel for the Plumbers & Pipefitters National Pension Fund

The Official Committee of Equity Security Holders (the “**Official Equity Committee**”) in the above-captioned case has filed the Objection of Official Committee of Equity Security Holders, Pursuant to 11 U.S.C. § 502 and Fed. R. Bankr. 3007, 7023, and 9014, to Putative Class Claim Filed by Plumbers & Pipefitters National Pension Fund (Proof of Claim No. 444) (the “**Objection**”) to the proof of claim (the “**Putative Class Claim**”) filed by the Plumbers & Pipefitters National Pension Fund on behalf of itself and purportedly on behalf of others. The Objection seeks to disallow and expunge the Putative Class Claim in its entirety for the reasons set forth in detail in the Objection.

¹ The Debtors in these Chapter 11 cases, along with the last four digits of each Debtors’ federal tax identification number or Canadian equivalent, are as follows: Old BPSUSH Inc (f/k/a BPS US Holdings Inc.) (8341); Old BH Inc. (f/k/a Bauer Hockey, Inc.) (3094); Old EBS Inc. (f/k/a Easton Baseball/Softball Inc.) (5670); Old BHR Inc. (f/k/a Bauer Hockey Retail Inc.) (6663); Old BPSU Inc (f/k/a Bauer Performance Sports Uniforms Inc.) (1095); Old PLG Inc (f/k/a Performance Lacrosse Group Inc.) (4200); Old BPSCI Inc. (f/k/a BPS Diamond Sports Inc.) (5909); Old PSGI Inc (f/k/a PSG Innovation Inc.) (9408); Old PSG Wind-down Ltd. (f/k/a Performance Sports Group Ltd.) (1514); Old BHR Wind-down Corp (f/k/a Bauer Hockey Retail Corp.) (1899); Old EBS Wind-down Corp. (f/k/a Easton Baseball/Softball Corp.) (4068); Old PSGI Wind-down Corp. (f/k/a PSG Innovation Corp.) (2165); Bauer Hockey Corp. (4465); BPS Canada Intermediate Corp. (4633); Old BPSDS Wind-down Corp (f/k/a BPS Diamond Sports Corp.) (8049); Old BPSU Wind-down Corp. (f/k/a Bauer Performance Sports Uniform Corp.) (2203); and Old PLG Wind-down Corp (f/k/a Performance Lacrosse Group Corp.) (1249). The Debtors’ headquarters are located at 100 Domain Dr., Exeter, New Hampshire 03833.

You are required to file a response to the Objection (the “Response”) on or before October 5, 2017 at 4:00 p.m. (ET).

At the same time, you must also serve a copy of the Response upon counsel for the Official Equity Committee: (a) Brown Rudnick, 7 Times Square, New York, NY 10036; Attn: Robert J. Stark, Steven B. Levine, and Andrew M. Carty; and (b) Montgomery, McCracken, Walker & Rhoads, LLP, 1105 North Market Street, 15th Floor, Wilmington, DE 19801; Attn: Natalie D. Ramsey and Mark A. Fink.

A HEARING ON THE OBJECTION WILL BE HELD BEFORE THE HONORABLE KEVIN J. CAREY AT THE BANKRUPTCY COURT, 824 NORTH MARKET STREET, WILMINGTON, DELAWARE 19801 ON OCTOBER 16, 2017 AT 10:00 A.M. (ET).

**IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE
BANKRUPTCY COURT MAY GRANT THE RELIEF DEMANDED BY THE
OBJECTION WITHOUT FURTHER NOTICE OR HEARING.**

Dated: Wilmington, Delaware
September 15, 2017

**MONTGOMERY, McCRACKEN,
WALKER & RHOADS, LLP**

/s/ Mark A. Fink

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– and –

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*Counsel to the
Official Committee of Equity Security Holders*

EXHIBIT A

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

OLD BPSUSH INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 16-12373 (KJC)

(Jointly Administered)

Ref. Dkt. No.: _____

**ORDER, PURSUANT TO 11 U.S.C. § 502 AND FED R. BANKR. P.
3007, 7023, AND 9014, DISALLOWING AND EXPUNGING
PUTATIVE CLASS CLAIM FILED BY PLUMBERS &
PIPEFITTERS NATIONAL PENSION FUND (PROOF OF CLAIM NO. 444)**

Upon consideration of the *Objection of Official Committee of Equity Security Holders, Pursuant to 11 U.S.C. § 502 and Fed. R. Bankr. P. 3007, 7023, and 9014, to Putative Class Claim Filed by Plumbers & Pipefitters National Pension Fund (Proof of Claim No. 444)*, dated September 15, 2017 (the “**Objection**”), seeking entry of an order disallowing and expunging in its entirety the Putative Class Claim²; and the Court having reviewed the Objection and any responses thereto; and the Court having held a hearing on the Objection; and the Court having determined that it has jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and the Court having determined that the Objection and the relief requested therein is a core proceeding

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Old BPSUSH Inc. (f/k/a BPS US Holdings Inc.) (8341); Old BH Inc. (f/k/a Bauer Hockey, Inc.) (3094); Old EBS Inc. (f/k/a Easton Baseball / Softball Inc.) (5670); Old BHR Inc. (f/k/a Bauer Hockey Retail Inc.) (6663); Old BPSU Inc. (f/k/a Bauer Performance Sports Uniforms Inc.) (1095); Old PLG Inc. (f/k/a Performance Lacrosse Group Inc.) (4200); Old BPSCI Inc. (f/k/a BPS Diamond Sports Inc.) (5909); Old PSGI Inc. (f/k/a PSG Innovation Inc.) (9408); Old BHR Wind-down Corp. (f/k/a Bauer Hockey Retail Corp.) (1899); Old EBS Winddown Corp. (f/k/a Easton Baseball / Softball Corp.) (4068); Old PSGI Wind-down Corp. (f/k/a PSG Innovation Corp.) (2165); Old BPSDS Wind-down Corp. (f/k/a BPS Diamond Sports Corp.) (8049); Old BPSU Wind-down Corp. (f/k/a Bauer Performance Sports Uniforms Corp.) (2203); Old PLG Wind-down Corp. (f/k/a Performance Lacrosse Group Corp.) (1249); and Old PSG Wind-down Ltd. (1514) (f/k/a Performance Sports Group Ltd., and also representing the estates of the Debtors formerly known as KBAU Holdings Canada, Inc., Bauer Hockey Corp., and BPS Canada Intermediate Corp.). The Debtors’ address is 100 Domain Dr., Exeter, New Hampshire 03833.

² Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Objection.

pursuant to 28 U.S.C. § 157(b); and the Court having determined that due and proper notice of the Objection has been provided; and the Court having determined that no other or further notice need be provided; and the Court having determined that the legal and factual bases set forth in the Objection establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing;

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Objection is SUSTAINED and the relief requested therein is GRANTED as set forth herein.
2. The Putative Class Claim is hereby DISALLOWED and EXPUNGED in its entirety.
3. This Order shall be effective immediately upon its entry.
4. The Debtors and Official Equity Committee are authorized to take all actions necessary or appropriate to implement the terms of this Order.
5. This Court shall retain jurisdiction over all matters arising from or related to the interpretation or implementation of this Order.

Dated: _____, 2017
Wilmington, Delaware

THE HONORABLE KEVIN J. CAREY
UNITED STATES BANKRUPTCY JUDGE

62870638 v1

EXHIBIT B

Putative Class Claim

Fill in this information to identify the case (Select only one Debtor per claim form):

- | | | |
|--|--|---|
| ☐ BPS US Holdings Inc.
(Case No. 16-12373) | ☐ BPS Diamond Sports Inc.
(Case No. 16-12379) | ☐ PSG Innovation Corp.
(Case No. 16-12385) |
| ☐ Bauer Hockey, Inc.
(Case No. 16-12374) | ☐ PSG Innovation Inc.
(Case No. 16-12380) | ☐ Bauer Hockey Corp.
(Case No. 16-12386) |
| ☐ Easton Baseball / Softball Inc.
(Case No. 16-12375) | ☒ Performance Sports Group Ltd.
(Case No. 16-12381) | ☐ BPS Canada Intermediate Corp.
(Case No. 16-12387) |
| ☐ Bauer Hockey Retail Inc.
(Case No. 16-12376) | ☐ KBAU Holdings Canada, Inc.
(Case No. 16-12382) | ☐ BPS Diamond Sports Corp.
(Case No. 16-12388) |
| ☐ Bauer Performance Sports Uniforms Inc.
(Case No. 16-12377) | ☐ Bauer Hockey Retail Corp.
(Case No. 16-12383) | ☐ Bauer Performance Sports Uniforms Corp.
(Case No. 16-12389) |
| ☐ Performance Lacrosse Group Inc.
(Case No. 16-12378) | ☐ Easton Baseball / Softball Corp.
(Case No. 16-12384) | ☐ Performance Lacrosse Group Corp.
(Case No. 16-12390) |

Proof of Claim

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy/restructuring case. Other than a claim under 11 U.S.C. § 503(b)(9), this form should not be used to make a request for payment of an administrative expense or an expense relating to goods delivered or services rendered after the petition date. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be subject to severe penalties including significant monetary fines and /or imprisonment.

Fill in all the information about the claim as of October 31, 2016.

☐ The amounts set forth on this claim form are in US Dollars

☐ The amounts set forth on this claim form are in Canadian Dollars

Part 1: Identify the Claim

1. Who is the current creditor?	Plumbers & Pipefitters National Pension Fund, for itself and on behalf of the Putative Class Name of the current creditor (the person or entity to be paid for this claim)	
	Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	☒ No ☐ Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent?	Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
	c/o Lowenstein Sandler LLP Attn: Michael S. Etkin and Andrew Behlmann 65 Livingston Avenue Roseland, New Jersey 07068	
	Contact phone 973-597-2500	Contact phone _____
	Contact email metkin@lowenstein.com, abehlmann@lowenstein.com	Contact email _____
	Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	
4. Does this claim amend one already filed?	☒ No ☐ Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
5. Do you know if anyone else has filed a proof of claim for this claim?	☒ No ☐ Yes. Who made the earlier filing? _____	

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor?	☒ No ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ ____ ____ ____
7. How much is the claim and in what currency?	\$ <u>See attached addendum</u> Does this amount include interest or other charges? ☒ USD ☒ No ☐ CDN ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges.
8. What is the basis of the claim?	Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, credit card, restructuring claim/disclaimed or resiliated contract, etc. Attach redacted copies of any documents supporting the claim. Limit disclosing information that is entitled to privacy, such as health care information. <u>Violations of federal securities laws. See attached addendum</u>
9. Is all or part of the claim secured?	☒ No ☐ Yes. The claim is secured by a lien on property. Nature of property: ☐ Real estate. ☐ Motor vehicle ☐ Other. Describe: _____ Basis for perfection: _____ Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.) Value of property: \$ _____ Amount of the claim that is secured: \$ _____ Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.) Amount necessary to cure any default as of October 31, 2016: \$ _____ Annual Interest Rate (when case was filed) _____ % ☐ Fixed ☐ Variable
10. Is this claim based on a lease?	☒ No ☐ Yes. Amount necessary to cure any default as of the date of the petition or Initial Order. \$ _____
11. Is this claim subject to a right of setoff?	☒ No ☐ Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority or special treatment under US or Canadian law?	☒ No ☐ Yes. Check one: Under U.S. law: ☐ Up to \$2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7). ☐ Wages, salaries, or commissions (up to \$12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4). ☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8). ☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5). ☐ Other. Specify subsection of 11 U.S.C. § 507(a)() that applies. Under Canadian law: ☐ Wages, salaries, or commissions (up to CDN \$2,000) earned within 6 months before the Initial Order or disbursements of a travelling salesperson (up to CDN \$1,000) incurred in the same period, as referred to in section 6(5) CCAA. ☐ Amounts due in respect of a registered pension plan as referred to in section 6(6) CCAA. ☐ Amounts due to the governments and referred to in section 6(3) CCAA.	Amount entitled to priority \$ _____ \$ _____ \$ _____ \$ _____ \$ _____ \$ _____ \$ _____ \$ _____
13. Is all or part of the claim entitled to administrative priority pursuant to 11 U.S.C. § 503(b)(9)?	☒ No ☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the Debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.	\$ _____

* Amounts are subject to adjustment on 4/01/16 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it.

A person who files a fraudulent claim could be subject to severe penalties including significant monetary fines and/or imprisonment.

Check the appropriate box:

- ☐ I am the creditor.
- ☒ I am the creditor's attorney or authorized agent.
- ☐ I am the trustee, or the debtor, or their authorized agent.
- ☐ I am a guarantor, surety, endorser, or other codebtor.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 02/06/2017 (mm/dd/yyyy)

Signature: Andrew Behlmann
Andrew Behlmann (Feb 6, 2017)

Email: abehlmann@lowenstein.com

Print the name of the person who is completing and signing this claim:

Name	<u>Andrew David Behlmann</u>		
	First name	Middle name	Last name
Title	<u>Counsel</u>		
Company	<u>Lowenstein Sandler LLP</u>		
	Identify the corporate servicer as the company if the authorized agent is a servicer.		
Address	<u>65 Livingston Avenue</u>		
	Number	Street	
	<u>Roseland</u>	<u>NJ</u>	<u>07068</u>
	City	State/Province	ZIP/Postal Code
Contact phone	<u>973-597-2332</u>	Email	<u>abehlmann@lowenstein.com</u>

Attach Supporting Documentation (limited to a single PDF attachment that is less than 5 megabytes in size and under 100 pages):

☒ I have supporting documentation.
(attach below)

☐ I do not have supporting documentation.



PLEASE REVIEW YOUR PROOF OF CLAIM AND SUPPORTING DOCUMENTS AND REDACT ACCORDINGLY PRIOR TO UPLOADING THEM. PROOFS OF CLAIM AND ATTACHMENTS ARE PUBLIC DOCUMENTS THAT WILL BE AVAILABLE FOR ANYONE TO VIEW ONLINE.

IMPORTANT NOTE REGARDING REDACTING YOUR PROOF OF CLAIM AND SUPPORTING DOCUMENTATION When you submit a proof of claim and any supporting documentation you must show only the last four digits of any social-security, individual's tax-identification, or financial-account number, only the initials of a minor's name, and only the year of any person's date of birth. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information.

A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. The responsibility for redacting personal data identifiers (as defined in Federal Rule of Bankruptcy Procedure 9037) rests solely with the party submitting the documentation and their counsel. Prime Clerk and the Clerk of the Court will not review any document for redaction or compliance with this Rule and you hereby release and agree to hold harmless Prime Clerk and the Clerk of the Court from the disclosure of any personal data identifiers included in your submission. In the event Prime Clerk or the Clerk of the Court discover that personal identifier data or information concerning a minor individual has been included in a pleading, Prime Clerk and the Clerk of the Court are authorized, in their sole discretion, to redact all such information from the text of the filing and make an entry indicating the correction.

Instructions for Proof of Claim

United States Bankruptcy Court and Ontario Superior Court of Justice (Commercial List)

These instructions and definitions generally explain the law. In certain circumstances, exceptions to these general rules may apply. You should consider obtaining the advice of an attorney, especially if you are unfamiliar with the bankruptcy/insolvency process and privacy regulations.

Notice to claimant/creditor: A person who files a fraudulent claim could be subject to severe penalties, including monetary fines and/or imprisonment. It is your responsibility to prepare and file your claim accurately.

How to fill out this form

- ☐ **Fill in the caption at the top of the form:** You must indicate to which of the listed Debtor Companies your Claim relates. If your Claim is against several of the listed entities, you must prepare a *Proof of Claim* for each entity against which a Claim is asserted. If a Claim is made against more than one entity, you must indicate in a schedule accompanying the Claim the reasons why the entity is liable for the Claim (e.g. principal/guarantor) and provide the documentation supporting the guarantee, as the case may be.
- ☐ **Fill in all of the information about the claim as of October 31, 2016.**
- ☐ **Proceedings:** This *Proof of Claim* form is intended to be used in the Debtors' proceedings under the *Companies' Creditors Arrangement Act* (Canada) ("**CCAA**") as well as in the Debtors' concurrent proceedings under Chapter 11 of the *Bankruptcy Code*. Creditors are expected to complete a single *Proof of Claim* form in respect of the Restructuring Proceedings (see the definition on the next page) for a particular Debtor.
- ☐ **Identification:** Make sure the name of the creditor is properly identified on the *Proof of Claim* (in section 1) together with the addresses to be used for notices and payments (in section 3) and the name and address of the person completing the *Proof of Claim* form (in Part 3).
- ☐ **Make sure you indicate the currency used for the amounts referred to in the claim.** The amounts may be expressed in U.S. currency (U.S.\$) or in Canadian currency (CDN\$). If your Claim is expressed in a currency other than U.S.\$ or CDN\$, your Claim should be converted in U.S.\$ or in CDN\$ at the rate of exchange that prevailed on October 31, 2016. In such a case, Creditors must also provide particulars of the original currency of your Claim and of the foreign exchange rate used to convert the Claim, in a separate document.
- ☐ **If the claim has been acquired from someone else:** State the identity of the last party who owned the Claim or was the holder of the Claim and who transferred it to you before the initial Claim was filed.
- ☐ **Attach copies of any supporting documents to this form.** You may attach copies of any document you believe is necessary in order to establish your Claim. If the documents contain confidential information, the documents should be redacted to make the confidential information unrecognizable (see the definition of *redaction* on the next page). Attach copies of any documents that show that the debt exists, a lien secures the debt, or both. Also attach copies of any documents that show perfection of any security interest or any assignments or transfers of the debt. In addition to the documents, a summary may be added.
- ☐ **Do not send original documents because attachments may be destroyed after scanning.**
- ☐ **Confidential Information:** If the Claim is based on delivering health care goods or services, do not disclose confidential health care information. Leave out or redact confidential information both in the Claim and in the attached documents. A *Proof of Claim* form and any attached documents must show only the last 4 digits of any social security number, individual's tax identification number, or financial account number, and only the year of any person's date of birth.
- ☐ **For a minor child, fill in only the child's initials and the full name and address of the child's parent or guardian.** For example, write A.B., a minor child (John Doe, parent, 123 Main St., City, State).

Confirmation that the claim has been filed

To receive confirmation that the Claim has been filed, enclose a stamped (with appropriate stampage for a delivery from the United States) self-addressed envelope and a copy of this form. You may view a list of filed Claims in this case by visiting the Claims and Noticing Agent's website at <http://cases.primeclerk.com/psg>.

Understand the terms used in this form

Administrative expense: Generally, an expense that arises after a case is filed in connection with operating, liquidating, or distributing the estate, in the context of proceedings under the U.S. *Bankruptcy Code*.

Bankruptcy: Typically, the term "bankruptcy" refers to proceedings under the *Bankruptcy Code*, either as a voluntary or involuntary liquidation process or a restructuring process under Chapter 11 of the *Bankruptcy Code*, whether or not a trustee is appointed. In the present case, the term may also include the restructuring process initiated by the Debtors under the provisions of the CCAA, where the context so requires.

CCAA: *Companies' Creditors Arrangement Act* (Canada)

Claim: A Creditor's right to receive payment for a debt or liability that the Debtor owed on the Relevant Date, whether secured, preferred, unsecured priority, unsecured nonpriority, or otherwise entitled to special treatment under applicable U.S. or Canadian law in the context of the Restructuring Proceedings. A Claim may be secured or unsecured, fixed or contingent, and/or liquidated or unliquidated. A Claim must be an amount owed by Debtor on the Relevant Date, or an amount that becomes due after that date as a result of an obligation incurred before the Relevant Date.

Claim Pursuant to 11 U.S.C. §503(b)(9): A Claim arising from the value of any goods received by the Debtor within 20 days before the date of commencement of a case under the *Bankruptcy Code*, in which the goods have been sold to the Debtor in the ordinary course of the Debtor's business. Attach documentation supporting such Claim.

Creditor: A person, corporation, or other entity that has a Claim against a Debtor.

Debtor: A person, corporation, or other entity who is undergoing a Restructuring Proceeding. Use the Debtor's name and case number as shown in the bankruptcy notice you received.

Evidence of perfection: Evidence of perfection of a security interest may include documents showing that a security interest has been filed or recorded or published, such as a mortgage, lien, certificate of title, financing statement or hypothec.

Information entitled to privacy: A *Proof of Claim* form and any attached documents must show only the last 4 digits of any social security number, an individual's tax identification number, or a financial account number, only the initials of a minor's name, and only the year of any person's date of birth. If a Claim is based on delivering health care goods or services, limit the disclosure of the goods or services to avoid embarrassment or disclosure of confidential health care information. You may later be required to give more information if an objection is made regarding the Claim, or if the Debtor or the Monitor requests additional information to support the Claim.

Monitor: The Court appointed officer in the proceedings under the CCAA.

Priority claim: A Claim within a category of unsecured claims that is entitled to priority or otherwise entitled to special treatment under applicable U.S. or Canadian law in the context of the Restructuring Proceedings. These claims are paid from the available money or property before other unsecured claims are paid. Common priority unsecured claims include certain unpaid wages (up to prescribed limits), source deductions, certain governmental claims entitled to priority by statute, and certain amounts due to prescribed pension plans.

Proof of claim: A form that indicates the Claim asserted by a Creditor against a Debtor, as of the Relevant Date. The form must be filed in compliance with the procedures approved by the court in the context of the Restructuring Proceedings, and within the deadlines set by the orders of the Court.

Redaction of information: Masking, editing out, or deleting certain information to protect privacy. Filers must redact or leave out Information entitled to privacy on the *Proof of Claim* form and any attached documents.

Relevant Date: Used in this form, the expression Relevant Date means October 31, 2016, namely the date of the petition under the *Bankruptcy Code*, or the date of the Initial Order made under the CCAA, as the case may be.

Restructuring Proceedings: The proceedings commenced by the Debtors under Chapter 11 of the *Bankruptcy Code* and pending in the United States Bankruptcy Court for the District of Delaware, and the proceedings commenced by the Debtors under the CCAA and pending before the Ontario Superior Court of Justice (Commercial List), in Toronto, Ontario.

Secured claim: A Claim backed by a lien, a security instrument or other similar encumbrance on particular property of the Debtor. A Claim is secured to the extent that a Creditor has the right to be paid from the property before other creditors are paid. The amount of a secured claim usually cannot be more than the value of the particular encumbered property that secures the debt. Any amount owed to a Creditor that is more than the value of the encumbered property normally may be an unsecured claim. But exceptions exist. Examples of liens on property include a mortgage or hypothec on real estate or

a security interest in a car. A lien may be voluntarily granted by a Debtor, may arise by statute or other force of law, or may be obtained through a court proceeding.

Setoff: Occurs when a Creditor pays itself with money belonging to the Debtor that it is holding, or by canceling a debt it owes to the Debtor.

Unsecured claim: A Claim that does not meet the requirements of a secured claim. A Claim may be unsecured in part to the extent that the amount of the Claim is more than the value of the property on which a Creditor has a lien.

Offers to purchase a Claim

Certain entities purchase Claims for an amount that is less than the face value of the Claims. These entities may contact Creditors offering to purchase their Claims. Some written communications from these entities may easily be confused with official court documentation or communications from the Debtor. These entities do not represent the bankruptcy court, the bankruptcy trustee, the Debtor or the Monitor. A Creditor has no obligation to sell its Claim. However, if a Creditor decides to sell its Claim, any transfer of that Claim is subject to applicable U.S. or Canadian law in the context of the Restructuring Proceedings, and any orders of the U.S. Bankruptcy Court or of the Ontario Superior Court of Justice that apply in the context of the Restructuring Proceedings.

Please send completed Proof(s) of Claim to:

BPS US Holdings Inc. Claims Processing Center
c/o Prime Clerk LLC
830 3rd Avenue, 3rd Floor
New York, NY 10022

Do not file these instructions with your form
--

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

BPS US Holdings, Inc., *et al.*,¹

Debtors.

Chapter 11

Case No. 16-12373 (KJC)

(Jointly Administered)

ADDENDUM TO CLASS PROOF OF CLAIM

1. This Class Proof of Claim is submitted against Performance Sports Group Ltd. (“PSG”), one of the above-captioned debtors (the “Debtors”), by Plumbers & Pipefitters National Pension Fund, the court-appointed lead plaintiff (“Lead Plaintiff”) in the securities class action styled as *Nieves v. Performance Sports Group Ltd., et al.*, Case No. 1:16-CV-3591-GHW (S.D.N.Y.) (the “Securities Litigation”), pending in the United States District Court for the Southern District of New York (the “SDNY District Court”), for itself and on behalf of the Putative Class (as defined below).

2. The Securities Litigation was commenced on May 13, 2016 against, among others, Amir Rosenthal (“Rosenthal”), the Debtors’ former Chief Executive Officer; Kevin Davis, the Debtors’ former Chief Financial Officer (collectively with Rosenthal, the “Individual Defendants”); and PSG (collectively with the Individual Defendants, the “Defendants”).

3. As set forth more fully in the *Second Amended Class Action Complaint for Violations of the Federal Securities Laws* (the “Second Amended Complaint”) filed in the

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.

Securities Litigation on November 3, 2016, a copy of which is annexed hereto as **Exhibit A** and incorporated herein by reference, the Securities Litigation is a class action brought on behalf of a proposed class of persons and entities (the “Putative Class”) who purchased or acquired common stock of PSG on the New York Stock Exchange (the “NYSE”) during the period from January 15, 2015 through March 14, 2016, inclusive (as may be amended from time to time, the “Class Period”).

4. By order dated June 7, 2016, a copy of which is annexed hereto as **Exhibit B**, the SDNY District Court appointed Lead Plaintiff to represent the Putative Class in the Securities Litigation.

5. On August 15, 2016, Lead Plaintiff filed an Amended Class Action Complaint (the “First Amended Complaint”) against PSG and the Individual Defendants, asserting claims under the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a *et seq.* (the “Exchange Act”) on behalf of itself and the Putative Class in connection with false and misleading statements and/or omissions by PSG and the Individual Defendants during the proposed class period. On that same day, PSG failed to file its annual financial report due to an ongoing internal Audit Committee investigation into the “Company’s financial statements and the related certification process.” On October 13, 2016, PSG and the Individual Defendants filed a joint motion to dismiss the First Amended Complaint.

6. On October 31, 2016 (the “Petition Date”), days before Lead Plaintiff’s deadline to respond to the Defendants’ motion to dismiss (or, alternatively, to file an amended class action complaint if, instead of responding to the motion, Lead Plaintiff chose to amend the First Amended Complaint pursuant to the applicable chambers rules in the SDNY District Court),

PSG filed these chapter 11 cases. As a result, the Securities Litigation was automatically stayed with respect to PSG under section 362(a) of the Bankruptcy Code.

7. On November 3, 2016, cognizant of PSG's status as a chapter 11 debtor and the impact of the automatic stay, Lead Plaintiff filed the Second Amended Complaint against the Individual Defendants, but not PSG.

8. On January 17, 2017, the SDNY District Court entered an order (the "Stay Order") granting Rosenthal's motion (which Davis joined at the time of filing and PSG joined on December 12, 2016, after Lead Plaintiff asserted, among other things, that the Individual Defendants lacked standing to seek such relief) for a temporary stay of the Securities Litigation with respect to the Individual Defendants. Pursuant to the Stay Order, the Securities Litigation is stayed with respect to the Individual Defendants until the automatic stay is terminated in these chapter 11 cases or the SDNY District Court orders otherwise.

9. As of the Petition Date and continuing up to and including the present, PSG was and is liable to Lead Plaintiff and the Putative Class for damages in an amount not yet determined, plus interest, costs, and attorneys' fees as allowed (the "Class Claim"). The allegations in the Second Amended Complaint, as may be further amended from time to time, form the basis of the Class Claim against PSG for damages resulting from violations of the federal securities laws by PSG and the Individual Defendants in connection with the purchase or other acquisition by Lead Plaintiff and the Putative Class of common stock of PSG on the NYSE during the Class Period.

10. Specifically, through the Securities Litigation, Lead Plaintiff seeks, for itself and on behalf of the Putative Class, damages against PSG and the Individual Defendants pursuant to Sections 10(b) and 20(a) of the Exchange Act, 15 U.S.C. §§ 78j(b) and 78t(a), and Rule 10b-5, ,

17 C.F.R. § 240.10b-5, promulgated under the Exchange Act by the Securities and Exchange Commission (the “SEC”)² The Second Amended Complaint alleges, among other things, that PSG and the Individual Defendants made a series of false and misleading statements and/or omissions during the Class Period, which artificially inflated and/or maintained the value of PSG’s stock, and that subsequent disclosures and/or materializations of undisclosed risks caused PSG’s stock price to decline, resulting in injury to Lead Plaintiff and the Putative Class.

11. Lead Plaintiff files this proof of claim on behalf of itself and the Putative Class and its members, individually and/or as a group, with a reservation of rights to identify additional members of the Putative Class in the future.

12. The Class Claim is not founded upon a specific writing, although certain documents, too voluminous and burdensome to annex hereto, which upon information and belief, relate to PSG’s violations of the federal securities laws from which the Class Claim arises, and which include, but are not limited to, documents filed with the SEC, are available. In addition, certain of these documents, as well as other documents, may become available through discovery with respect to the Class Claim.

13. No payments have been made on account of the Class Claim.

14. The Class Claim is not subject to any setoff or counterclaim.

15. No security interest is held for the Class Claim.

16. The Class Claim is asserted in addition to all other claims that Lead Plaintiff individually, the Putative Class, and/or any individual members of the Putative Class may have

² The description of the claims and causes of action asserted in the Second Amended Complaint is intended only as a summary, is qualified in all respects by the allegations in the Second Amended Complaint, and is submitted without prejudice to the rights of Lead Plaintiff to further amend the Second Amended Complaint to assert other and further claims and/or to amend or supplement this Proof of Claim.

against PSG, its affiliates, the Individual Defendants, and any other defendants to be named in the Securities Litigation.

17. Lead Plaintiff reserves all rights (including but not limited to arguments, counterarguments, and defenses) in connection with the Securities Litigation. Lead Plaintiff further reserves all rights with respect to the Class Claim and this Proof of Claim, including but not limited to the right to amend and/or supplement this Proof of Claim from time to time and/or move to withdraw the bankruptcy reference.

EXHIBIT A
Second Amended Complaint

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

JUAN FRANCISCO GONZALEZ NIEVES, AS
TRUSTEE OF THE GONZALEZ CORONADO
TRUST, Individually and on Behalf of All Others
Similarly Situated,

Plaintiff,

-v-

PERFORMANCE SPORTS GROUP LTD.,
KEVIN DAVIS AND AMIR ROSENTHAL,

Defendants.

Case No.: 1:16-CV-3591-GHW

**SECOND AMENDED CLASS
ACTION COMPLAINT FOR
VIOLATIONS OF THE FEDERAL
SECURITIES LAWS**

JURY TRIAL DEMANDED

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The allegations set forth in this Second Amended Class Action Complaint for Violations of the Federal Securities Laws (the “Complaint”) are based on the investigation undertaken by Lead Counsel on behalf of Lead Plaintiff Plumbers & Pipefitters National Pension Fund (“Lead Plaintiff”). Lead Plaintiff brings this Complaint against Kevin Davis (“Davis”), the former Chief Executive Officer (“CEO”), President, and director of Performance Sports Group Ltd. (“PSG” or the “Company”),¹ and Amir Rosenthal (“Rosenthal”), the Company’s former Chief Financial Officer (“CFO”). Lead Plaintiff’s allegations against PSG and Defendants are based on personal knowledge as to its own acts and on information and belief as to all other matters, such information and belief having been informed by the investigation conducted by and under the supervision of its counsel, which included, among other things: (i) review and analysis of PSG’s public filings with the U.S. Securities and Exchange Commission (“SEC”); (ii) review and analysis of the sports equipment industry and analyst reports and other publicly-available materials concerning PSG’s business practices and policies; (iii) review and analysis of other publicly-available information concerning PSG and its competitors; (iv) interviews with former PSG employees, Class Period customers of PSG and other persons with knowledge of the matters alleged herein (most of whom have provided information in confidence; these confidential witnesses (“CWs”) will be identified herein by number (CW1, CW2, etc.)), including W. Graeme Rouston (“Rouston”), the former Chairman of PSG; and (v) consultations with experts. Lead Plaintiff believes that substantial additional evidentiary support will exist for

¹ PSG was previously named as a defendant in the Amended Class Action Complaint for Violations of the Federal Securities Laws (Dkt. No. 62). PSG and seventeen of its affiliates (collectively with PSG, the “Debtors”) filed voluntary bankruptcy petitions in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) on October 31, 2016. Accordingly, by operation of the automatic stay under 11 U.S.C. § 362 (the “Automatic Stay”), PSG is no longer named as a defendant in this action. The Automatic Stay in the Debtors’ bankruptcy cases does not impact any Defendant other than PSG. Lead Plaintiff reserves the right to name PSG (or any of the other Debtors, as the circumstances may require) as a defendant in this or any other action in the future in the event the Automatic Stay is terminated, lifted, or modified.

its allegations after a reasonable opportunity for discovery. On behalf of itself and the Class it seeks to represent, Lead Plaintiff alleges as follows:

I. NATURE OF THE ACTION

1. Lead Plaintiff brings this federal securities class action on behalf of itself and a proposed class of persons and entities (the “Class”) who purchased or acquired PSG common stock on the New York Stock Exchange (“NYSE”) during the period from January 15, 2015 through March 14, 2016, inclusive (the “Class Period”). Lead Plaintiff seeks remedies under the Securities Exchange Act of 1934 (the “Exchange Act”). PSG and Defendants made a series of false and misleading statements and/or omissions during the Class Period which artificially inflated and/or maintained the value of PSG’s stock. Subsequent disclosures and/or materializations of undisclosed risks caused PSG’s stock price to decline, resulting in injury to Lead Plaintiff and the Class.

2. PSG is a developer and manufacturer of sports equipment and apparel that it sells to independent retailers internationally. Its most recognizable brands include Bauer Hockey (“Bauer”) and Easton. For years, PSG stuck to its winning sales formula of providing quality products to independent retailers for sale to consumers.

3. From 2012 to 2014, PSG witnessed substantial revenue and profit growth based on a series of acquisitions and its strong market position in the hockey, baseball and softball markets. In April 2014, PSG completed its sixth acquisition, acquiring Easton Baseball/Softball from BRG Sports.

4. On June 20, 2014, PSG, which had previously been called Bauer Performance Sports Ltd. and was publicly trading on the Toronto Stock Exchange since March 10, 2011, held

its initial public offering, issuing more than 7 million shares of stock to the public at a price of \$15.50 per share (the “U.S. IPO”).² Following the IPO, PSG’s stock also traded on the NYSE.

5. In an effort to sustain the perception of strong growth, PSG began an aggressive push, led by Defendants Rosenthal and Davis, to further increase the Company’s revenue and sales figures by any means necessary, including by the coercive, fraudulent sales practices described herein. Defendants and PSG then led investors to believe that the Company’s success during the Class Period was based on sustainable “organic” sales growth while omitting the true reasons for PSG’s growth and “record sales” from its public statements. In doing so, PSG and Defendants propped up the value of the Company’s stock based on false and misleading information.

6. In particular, from the Company’s U.S. IPO and throughout the Class Period, PSG and Defendants touted PSG’s “record” growth in sales and revenue, which was purportedly the result of PSG’s strong product line, high market demand and “organic sales.” However, this was not the full picture.

7. Indeed, “organic growth,” as the term is generally used, refers to growth based on increased output, customer base expansion, or new product development, as opposed to mergers and acquisitions. However, a company’s organic growth does not include growth that results from fraudulent or manipulated sales practices aimed at boosting a company’s earnings. *See* Edward Hess and Robert Kazanjian, A SEARCH FOR ORGANIC GROWTH, Cambridge University Press, 103-104 (2006). Such earnings are transitory and are not sustainable. As a result, earnings from PSG’s fraudulent sales practices, described *infra*, are not part of the Company’s core

² In connection with the U.S. IPO, the Company changed its name from Bauer Performance Sports Ltd. to Performance Sports Group Ltd.

earnings (*i.e.*, earnings from its principal business) or “organic growth,” nor would they have been expected by investors to be such.

8. In reality, PSG employed a progressive sales program that involved threatening customers with the removal of vital discounts and sales terms if they did not increase their orders each year. The offering of discounts and advantageous terms is not uncommon; however, as employed by PSG, this sales program was used in a coercive, strong-arm fashion to effectively force PSG retailers to continuously increase their purchases or risk losing valuable discounts, regardless of actual demand for the product by the retailers. In the words of one PSG retailer, “they did try to jam orders down our throat, to take orders early, to overstock, oversupply, over-inventory us. They said it would all work out, and then things hit a wall.”³

9. That “things hit a wall” for PSG was not surprising. According to statistics published by USA Hockey, hockey player membership grew by less than 2% during the Class Period, yet PSG insisted that its retailers increase orders by 10-15% every year in order for retailers to keep necessary discounts.

10. Moreover, the Company further propped up its financial results by shipping its products early to retailers, thereby pulling sales from later fiscal periods into earlier ones. In fact, many of PSG’s retailers, as the confidential witnesses set forth herein exemplify, knew that the Company regularly shipped its products early in order to meet its quarterly financial goals. Although shipping early and offering discounts to increase sales may not be inherently fraudulent in and of themselves, these practices were abused by PSG and, as utilized, created a known trend that PSG should have disclosed, but did not. Specifically, PSG’s sales were occurring in an already-saturated market; thus it was reasonably likely PSG would not sustain

³ Bob Sanders, *Questions Abound Over Performance Sports Group*, NEW HAMPSHIRE BUSINESS REVIEW, Sept. 1, 2016, <http://www.nhbr.com/September-2-2016/Questions-abound-over-Performance-Sports-Group/>.

“record growth” and that sales would decrease, which would have a material adverse impact on PSG’s financial condition.

11. Defendants and PSG were well aware of the Company’s manipulative sales practices, that such manipulative practices were not sustainable and, given their pervasiveness, were reasonably likely to have a material negative effect on the Company’s financial results. Indeed, these practices were developed and overseen by executives at the highest levels of the Company, including Davis and Rosenthal. Moreover, Defendants and the Company knew that PSG’s purportedly “record” figures during the Class Period were being propped up by manipulated and aggressive sales that had no reasonable means of continuing in the long-term but failed to disclose this known trend to the market until the end of the Class Period.

12. Moreover, PSG aggressively pushed its retailers to place their orders earlier and earlier, in some cases asking customers to order merchandise one year in advance in order to further grow its quarterly sales and revenue figures.

13. During the Class Period, PSG held sales meetings at least twice per year, which Defendant Rosenthal attended, encouraging its sales representatives to aggressively push PSG customers to buy more and more product earlier and earlier.

14. Furthermore, beginning in the summer of 2015, as PSG began filing its annual and quarterly reports with the SEC on Forms 10-K and 10-Q, Defendants submitted certifications pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (“SOX Certifications”) attesting to the truthfulness of those filings and the effectiveness of PSG’s internal controls. These filings were misleading because they failed to disclose the true nature of PSG’s sales practices and their manipulative effect on the Company’s financial results. PSG subsequently announced, after the filing of Plaintiffs’ Amended Complaint in August 2016, that an investigation had been

commenced by PSG's internal Audit Committee, and that the Company was the subject of investigations by the SEC and Canadian regulatory authorities. According to newspaper accounts, the Canadian regulatory authorities include the Ontario Securities Commission.⁴

15. PSG's fraudulent conduct was conducted by Defendants or with Defendants' knowledge and/or reckless disregard in order to conceal from the market that the Company's "record" revenues were the result of overly aggressive sales practices and manipulation. These sales practices were designed to maintain and inflate PSG's stock price by portraying the Company's "record" quarterly revenue and sales figures as sustainable and "organic" even though Defendants knew, or recklessly disregarded, that PSG would soon be faced with a lack of sales in later quarters as PSG ran out of transactions to pull forward and as retailers became over-supplied with inventory that exceeded market demand as a result of PSG's penalties on retailers if they did not increase their orders with PSG.

16. These sales tactics were not limited to just a handful of PSG sales representatives, or a handful of PSG's small clients, but constituted a systematic, company-wide program with the full knowledge of PSG and Defendants, that was applied to all of PSG's retail customers. These facts have been confirmed by a PSG sales representative who described how these sales tactics were discussed at full department meetings, and by multiple Easton and Bauer retail customers who have described a pervasive scheme to manipulate the Company's financial results with aggressive sales tactics. The scheme was also confirmed by PSG's former Chairman, Roustan, who, on two separate occasions – one with the assistance of accounting firm Grant Thornton and the other through the survey website "SurveyMonkey.com" – surveyed the largest

⁴ PSG became a publicly-traded U.S. company on June 20, 2014 and began filing domestic reports with the SEC, including Forms 10-Q and 10-K, in August 2015. Before August 2015, PSG filed its financial statements with the SEC on Form 6-K as a foreign issuer.

of PSG's customers and found that a majority of them had been asked by PSG to move sales into earlier quarters. Moreover, Defendants and PSG fraudulently withheld from the market the reasonably likely, adverse impact its undisclosed tactics would soon have on PSG's bottom line.

17. This scheme of withholding the truth behind the Company's "record revenue" met its inevitable demise in early 2016 as PSG ran out of customer orders to pull forward and the risks of PSG's and Defendants' fraudulent scheme began to materialize.

18. In January 2016, PSG and Defendants released the Company's financial results for the second quarter of PSG's 2016 fiscal year.⁵ In those results, Defendants and the Company announced for the first time during the Class Period that PSG had experienced a substantial decrease in all relevant financial metrics, including sales, revenue, profit, and EBITDA. However, in both the Company's SEC filings and in its conference call with industry analysts, Defendants concealed the true cause of the decline and blamed the worsening financial results on market consolidation among PSG's customers and currency exchange rate issues. PSG and Defendants did not disclose that these results were the consequence of manipulative practices – that PSG and Defendants knew were reasonably likely to be detrimental to the Company's financial results – involving pulling sales forward into earlier quarters and penalizing retailers who did not increase their bookings with PSG, without regard for market demand. As a result of this news, PSG's stock price fell more than 23% from \$7.71 per share to \$5.92 per share on heightened average daily trading volume of 1.29 million shares as the market absorbed this information.

19. On March 8, 2016, PSG and Defendants, faced with no way to hide the inevitable and foreseeable downturn of sales and demand, was forced to reduce the Company's earnings

⁵ PSG's fiscal year runs from June 1 to May 31.

per share guidance by nearly **80%**, citing an “**unexpected** significant downturn in retail sell-through.” (Emphasis added.) On this news, shares of PSG fell \$5.75 per share or over 66% to close at \$2.91 per share on March 8, 2016, on trading volume of 18.6 million shares.

20. Shortly thereafter, on March 14, based on the information obtained by Roustan through his two surveys, the *New York Post* revealed to the market that questions had been raised regarding allegations that PSG had been misdating quarterly revenue as part of its fraudulent scheme to conceal the known risks that its aggressive sales tactics had produced. On this news, shares of PSG fell \$0.41 per share or over 10.35% to close at \$3.55 per share on March 15, 2016, on an average two-day trading volume of approximately 2.29 million shares, damaging investors. Approximately one week after the *New York Post* article and the end of the Class Period, PSG announced the abrupt departure of Defendant Davis.

21. However, throughout all of the Company’s disclosures in early 2016, Defendants tried to blame its newly-disclosed reality wholly on market factors, including bankruptcy filings by two of its customers, Team Express and Sports Authority. But this was not the full picture and only further obscured, hid, and omitted the truth from investors. By way of contrast, while PSG was announcing that Bauer’s sales were down 19% at the end of 2015, and revising its 2016 outlook, its rival Reebok-CCM Hockey, on January 13, 2016, reported an 8% increase in global equipment business and an **18% increase** in sales.⁶ Similarly, Amer Sports, owners of the Wilson and Louisville Slugger baseball brands, was reporting double digit increases in revenues and sales in its Q4 2015 results and stated that its “pipeline is strong and momentum is good behind Louisville Slugger.” Additionally, Newell Brands, owners of the Rawlings baseball brand, told the market that “[w]e are extremely pleased with our growth and financial results this quarter.”

⁶ CCM Hockey Announced Year End Results, BUSINESS WIRE, Jan. 13, 2016

22. The truth has caught up with PSG, and the undisclosed risks materialized. News has continued to emerge that PSG's failings were not exclusively the result of uncontrollable market factors but instead resulted, in large part, from the Company's own coercive and manipulative sales practices that were concealed from the market by Defendants. PSG has now found itself in utter turmoil. On August 15, 2015, the Company failed to file its annual financial report due to an ongoing internal Audit Committee investigation into the "Company's financial statements and the related certification process." Two days later, on August 17, 2016, the Company disclosed that both SEC and Canadian regulatory authorities were conducting their own investigations of PSG. Even after receiving a 60-day extension from creditors to file its Form 10-K, the Company was unable to do so and on October 31, 2016 was forced to file for bankruptcy protection in the U.S. and Canada. PSG also recently announced the departure of Defendant Rosenthal, while the Company is trying to save itself from Defendants' failed and fraudulent conduct through an asset sale and bankruptcy proceedings. As a result of the Company's bankruptcy, PSG's stock has been delisted from the NYSE and now trades on the over-the-counter ("OTC") market.

II. JURISDICTION AND VENUE

23. The federal securities claims asserted herein arise under Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§ 78j(b) and 78t(a), and Rule 10b-5 promulgated thereunder by the SEC [17 C.F.R. § 240.10b-5]).

24. This Court has jurisdiction over the subject matter of the federal securities claims pursuant to 28 U.S.C. § 1331 and Section 27 of the Exchange Act.

25. Venue is proper in the Southern District of New York pursuant to Section 27 of the Exchange Act and 28 U.S.C. § 1391(b), given that many of the acts and practices complained

of herein occurred in this District as the Company's stock was traded on the NYSE during the Class Period.

III. PARTIES AND RELEVANT NON-PARTIES

26. Lead Plaintiff **Plumbers & Pipefitters National Pension Fund** engaged in the transactions listed in the accompanying certification during the Class Period and was injured as a result of Defendants' false and misleading statements and omissions. Lead Plaintiff is a multi-employer plan that provides benefits to more than 150,000 participants associated with more than 4,600 employers. Lead Plaintiff's primary place of business is 103 Oronoco Street, Alexandria, Virginia 22314.

27. Bankrupt Non-Defendant **Performance Sports Group Ltd.** ("PSG") is a designer, developer and manufacturer of sports equipment and related apparel. PSG stock traded in an efficient market on the NYSE during the Class Period. Currently, in connection with PSG's bankruptcy, the Company's stock has been delisted from the NYSE and now trades on the OTC market. PSG headquarters are located at 100 Domain Drive, Exeter, New Hampshire 03833. PSG is liable under the Exchange Act, but is not named as a Defendant herein because on October 31, 2016, PSG petitioned for bankruptcy protection pursuant to Chapter 11 of the U.S. Bankruptcy Code which prohibits the commencement or continuation of an action against a debtor that was or could have been commenced before the commencement of the bankruptcy proceeding. *See* 11 U.S.C. § 362(a)(1). As stated above, Lead Plaintiff reserves the right to name PSG (or any of the other Debtors, as the circumstances may require) as a defendant in this or any other action in the future in the event the Automatic Stay is terminated, lifted, or modified.

28. During all relevant times, non-debtor defendant **Kevin Davis** ("Davis") served as President, CEO and a director of PSG. Davis was a signatory on each of the Company's publicly

filed documents during the Class Period and was directly responsible for overseeing the revenue recognition policies and progressive sales structure of PSG's business.

29. From the start of the Class Period through December 14, 2015, non-debtor defendant **Amir Rosenthal** ("Rosenthal") served as CFO and Executive Vice President ("EVP") of Finance and Administration of PSG. On May 28, 2015, Rosenthal was appointed to a newly created position of President, PSG Brands in which he became responsible for overseeing PSG's seven-brand portfolio, including Bauer, Mission, Maverik, Cascade, Inaria, Combat and Easton. Following his appointment as President, PSG Brands, Rosenthal retained the day-to-day responsibilities of CFO, including serving as a signatory on all of PSG's public filings, until December 14, 2015. Rosenthal, as CFO and EVP of Finance, was directly responsible for PSG's sales and revenue oversight and its credit procedures. On October 31, 2016, PSG announced Rosenthal's departure from the Company.

30. From December 14, 2015 through the present, non-party Mark Vendetti ("Vendetti") has served as CFO of PSG, taking over the duties from Defendant Rosenthal.

31. Defendants Davis and Rosenthal are collectively referred to as the "Defendants."

32. Because of the Defendants' positions with the Company, they had access to the adverse undisclosed information about the Company's business, operations, operational trends, financial statements, markets and present and future business prospects via access to internal corporate documents (including the Company's operating plans, budgets and forecasts and reports of actual operations compared thereto), conversations and connections with other corporate officers and employees, attendance at management and Board of Directors meetings and committees thereof and via reports and other information provided to them in connection therewith.

33. It is appropriate to treat the Defendants as a group for pleading purposes and to presume that the false, misleading and incomplete information conveyed in the Company's public filings, press releases and other public statements as alleged herein are the collective actions of the narrowly defined group of defendants defined above as the Defendants. Each of the Defendants, as officers of PSG, by virtue of their high-level positions with the Company, directly participated in the management of the Company, was directly involved in the day-to-day operations of the Company at the highest levels and was privy to confidential proprietary information concerning the Company and its business, operations, growth, financial statements and financial condition, as alleged herein. Davis and Rosenthal were both involved in drafting, producing, reviewing and/or disseminating the false and misleading statements and information alleged herein, were aware or recklessly disregarded that false and misleading statements were being issued regarding the Company and approved or ratified these statements, in violation of the federal securities laws.

34. As officers and controlling persons of a publicly held company whose common stock was and is registered with the SEC pursuant to the Exchange Act, and was traded on the NYSE during the Class Period and is governed by the provisions of the federal securities laws, Defendants Davis and Rosenthal each had a duty to disseminate prompt, accurate and truthful information with respect to the Company's financial condition and performance, growth, operations, financial statements, business, markets, management, earnings and present and future business prospects, and to correct any previously-issued statements that had become materially misleading or untrue, so that the market price of the Company's publicly-traded common stock would be based on truthful and accurate information. Defendants' misrepresentations and omissions during the Class Period violated these specific requirements and obligations.

35. Defendants participated in the drafting, preparation and/or approval of the various public, shareholder and investor reports and other communications complained of herein and were aware of, or recklessly disregarded, the misstatements contained therein and omissions therefrom, and were aware of their materially false and misleading nature. Because of their Board membership and/or executive and managerial positions with PSG, Davis and Rosenthal had access to the adverse undisclosed information about PSG's sales, financial condition and performance as particularized herein and knew (or recklessly disregarded) that these adverse facts rendered the positive representations made by or about PSG and its business issued or adopted by the Company materially false and misleading.

36. Defendants, because of their positions of control and authority as officers and/or directors of the Company, were able to and did control the content of the various SEC filings, press releases and other public statements pertaining to the Company during the Class Period. Davis and Rosenthal were each provided with copies of the documents alleged herein to be misleading, including the Company's quarterly and annual filings and the prepared remarks for each of the Company's quarterly earnings conference calls prior to or shortly after their issuance and had the ability or opportunity to prevent their issuance or cause them to be corrected. Accordingly, Defendants are responsible for the accuracy of the public reports and releases detailed herein and are therefore primarily liable for the representations contained therein.

37. Each of the Defendants is liable as a participant in a fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of PSG common stock by disseminating materially false and misleading statements and/or concealing material adverse facts. The scheme (i) deceived the investing public regarding PSG's business operations and financial health, namely the strength of its revenue figures and the accuracy of its yearly outlook;

(ii) enabled PSG to report purportedly “record” sales and demand growth before and during the Class Period; and (iii) caused Lead Plaintiff and other members of the Class to purchase PSG common stock at artificially inflated and/or maintained prices.

IV. SUBSTANTIVE ALLEGATIONS

38. The sources for Lead Plaintiff’s allegations regarding PSG’s and Defendants’ fraudulent conduct were derived from the investigation of counsel, which includes, among other things, an interview of W. Graeme Roustan (“Roustan”), the former Chairman of Bauer until 2008 and a current shareholder of PSG; review of statements made by Ronald Rugal, president of B&R Sports, a Bauer retailer, published in an article in the *New Hampshire Business Review*; and interviews of former PSG employees who worked at PSG during the Class Period and/or immediately before or after the Class Period and current and former customers of PSG with first-hand knowledge of PSG’s sales tactics, including the following:

- **CW1** was a sales representative and independent contractor at Bauer for 29 years until his contract was not renewed on February 1, 2016. CW1 reported to regional sales manager Matt Hayes (“Hayes”) who reported to Paul Healey (“Healey”), Bauer’s Vice President of Sales, North America. CW1 also reported to Bryan McDermott (“McDermott”), Bauer’s Business Director for North America.
- **CW2** is the store manager of a Bauer retail customer located in Summit, New Jersey. CW2’s store has purchased products from Bauer since the early 1990’s.
- **CW3** is the co-owner of a Bauer retail customer based in Salem, New Hampshire. CW3’s company has six additional locations in Massachusetts and New Hampshire.
- **CW4** is a franchise owner of an Easton Baseball/Softball retail customer based in Milwaukee, Wisconsin.

A. PSG's Growth and Progressive Sales Program

39. PSG is a leading developer and manufacturer of ice hockey, roller hockey, lacrosse, baseball and softball sports equipment, as well as related apparel and soccer apparel. According to its own website, the Company considers itself “the global leader in hockey with the strongest and most recognized brand” that “holds the No. 1 North American position in baseball and softball.” PSG markets its products under several brand names, including Bauer, Cascade and Easton. The Company's brand names are distributed by sales representatives and independent distributors throughout the world to all types of retailers, from “big-box” retailers like Dicks Sporting Goods to “mom and pop” stores.

40. PSG brands also use business-to-business portals on their websites that allow retailers to submit orders directly without the use of a PSG-affiliated sales representative.

41. In general, PSG sales personnel, who worked as either employees or independent contractors, would make initial sales to retailers. Once a sales order was sent to headquarters, the Company's credit department would review the terms of the sale and the credit-worthiness of the customer. PSG was driven by the bottom line and pushed its sales staff to increase its numbers without regard to market demand or customer sentiment.

42. According to CW1, during his time at PSG, including during the Class Period, the Company employed a progressive sales program designed by PSG executives that was intended to reward and encourage retail customers, regardless of their size. The program was designed and implemented by Healey, the head of PSG's Bauer North American Sales group, together with Defendants and other executives. Sales representatives were not involved in the design of the program. The program was simple; the greater the volume of equipment purchased, the greater the discount.

43. As the Company described it, PSG offered “various cooperative marketing incentive programs to assist our sales channels with the marketing and selling of our products...” 2015 Form 10-K, dated June 14, 2015, at 51.

44. But under Davis and Rosenthal, PSG’s cooperative marketing incentive programs were anything but cooperative incentive programs. Rather, using strong-arm tactics and penalties, PSG threatened customers with the loss of their discounts if they did not increase the size of their orders each year or if they did not agree to accept merchandise shipment early.

45. As a result of its incentive programs and the acquisitions of market competitors, PSG experienced substantial success from 2010 through 2014, recording positive growth in all relevant areas.

(in USD Millions)	2010	2011	2012	2013	2014
Net Revenue	257.4	306.1	374.8	399.6	446.2
Adjusted EBITDA	30.7	43.5	51.5	62.3	69
Gross Profit	89.1	119.1	142.6	147.2	154.3
Source: PSG Annual Reports 2010-2014.					

46. On April 15, 2014, PSG completed its acquisition of Easton Baseball/Softball from BRG Sports for \$330 million. The acquisition, according to the Company, added the number one brand of baseball and softball equipment and apparel to the PSG portfolio.

47. Shortly thereafter, on June 19, 2014, PSG filed its Amended Registration Statement on Form F-10/A with the SEC. The following day, PSG filed its final Prospectus Supplement for its initial public offering with the SEC.

48. On June 20, 2014, the Company issued its initial public offering in the United States, offering more than 7 million shares of PSG stock at \$15.50 per share. Thereafter, PSG’s stock traded on the NYSE.

49. On January 8, 2015, just prior to the start of the Class Period, PSG announced that it was changing its heretofore successful business strategy to put itself into direct competition with its customers by opening Bauer “Own the Moment” retail locations in 6-8 “key hockey markets” over the next 18-24 months. PSG’s press release stated:

Bauer Hockey to Open First-Ever Retail Experiences

*‘Own The Moment’ Consumer Experiences to Debut in Boston and Minneapolis;
20,000-Plus Square Foot Premium Stores To Offer Unmatched Fit Expertise and
Product Education*

EXETER, NH - January 8, 2015 - Bauer Hockey, the world’s leading manufacturer of ice hockey equipment and a subsidiary of Performance Sports Group Ltd. (NYSE:PSG) (TSX:PSG), announced today that it will open its first-ever Bauer Hockey retail experiences beginning this summer. A transformative and historic initiative for Bauer Hockey, the premium “Own the Moment” retail experiences will elevate the BAUER brand, deliver an unmatched consumer educational experience and serve as the ultimate BAUER brand and product showcase.

“We’ve been elevating player performance at every level of the game since 1927, and today we’re excited to take this innovation to new heights by giving consumers an in-store BAUER experience that they’ve never seen before in the industry,” said Rich Wuerthele, executive vice president, hockey. “Similar to other premium brands that have entered retail, offering the full depth and breadth of our products in one place allows us to tell our unique stories in a way that only we can and helps strengthen the surrounding hockey retail environment. The Bauer Hockey ‘Own The Moment’ retail experiences will be living representations of our brand.”

Bauer Hockey will open its first “Own The Moment” retail experience in the Boston suburb of Burlington, Mass., in late summer and its second location in the Minneapolis area in the fall. Future phases are currently expected to include the opening of an additional 6-8 BAUER retail experiences over the next several years in key hockey markets across the U.S. and Canada. The company expects its retail operations to grow its overall business and be profitable in the next 18-24 months.

50. PSG customers immediately made their displeasure with this decision known to PSG’s senior management. CW3 met in person with Healey, the head of PSG’s Bauer North American Sales group, to express his disagreement with PSG’s decision to compete with its

customers while at the same time, pushing customers to increase their orders significantly every year.

51. Roustan, as further detailed below, also made his concerns known to PSG's Board of Directors at a meeting in June 2015 in which he pleaded with the Board of Directors, including Defendant Davis, to "reverse [its] Bauer retail store strategy" but was ultimately "unable to convince them that retail partners would likely react negatively to the abrupt change in business strategy and reduce their purchase of Bauer, Easton and Cascade products."

52. In PSG's and Defendants' quest to keep the Company's purportedly "record-setting" growth going, and notwithstanding that demand for PSG products with the Company's retailers would likely ultimately drop as a result of the business decision to compete with them, PSG nevertheless continued to push its sales representatives to pressure retail customers to order larger and larger quantities of PSG-branded merchandise and to do so earlier and earlier in advance or be penalized if they did not. As CW2 recalled, there was strong pressure to go along with PSG's and Defendants' tactics if you wanted to sell Bauer's merchandise.

53. CW2 remembers being told frequently by Bauer representatives to either increase the size of orders or risk losing the store's wholesale discount. This same "threat" was made to CW3, who, in a meeting with Healey in the summer of 2015, was told that if CW3's store did not increase its retail bookings or purchase orders by at least 15%, CW3's store would lose its existing discount. CW2 knew that even if increasing the store's order was not necessary, it was cheaper to comply than lose the discount on the existing order.

54. As CW1 put it, "we were 'asked' through sales programs to ask [retail customers] for increased volume from the previous year to maintain current or increased discounts. Dealers

complained about the increase due to larger dealer shelf space already given to Bauer and the fact the dealer's business wasn't growing."

55. However, PSG and Defendants disregarded these complaints, and pushed ahead throughout the Class Period with the Company's highly aggressive and bullying sales tactics.

56. Further compounding the issues caused by PSG's increasingly coercive progressive sales program, CW1 recalls instances where he was asked to work with retailers to accept early deliveries. For instance, if a product was scheduled to ship to a retailer in September, PSG would ask the retailer to accept the product in early August.

57. CW3 also remembers regularly receiving calls during the Class Period from PSG headquarters asking whether CW3 would accept shipments of orders early. CW3 stated that orders were shipped early "to make [PSG's] numbers in a certain quarter."

58. This was confirmed by Ronald Rugal, president of B&R Sports, a PSG customer based in Detroit with 12 locations in Michigan and greater Chicago, in an interview with *New Hampshire Business Review* regarding PSG's present troubles with what the publication described as "charges of fraud, delayed financial filings, internal and federal investigations in two countries, management turmoil – including Davis' resignation in March – and a stock price that is just one-tenth of what it was at its peak." Bob Sanders, *Questions Abound Over Performance Sports Group*, NEW HAMPSHIRE BUSINESS REVIEW, Sept. 1, 2016, <http://www.nhbr.com/September-2-2016/Questions-abound-over-Performance-Sports-Group/>.

59. Like CW3, Rugal described PSG's practice during the Class Period of "try[ing] to jam orders down our throat, to take orders early, to overstock, oversupply, over-inventory us. They said it would all work out, and then things hit a wall." Rugal, too, stated that this was done to meet quarterly numbers. *Id.*

60. Things were no different for PSG's baseball/softball brand, Easton. As CW4, an Easton retail customer during the Class Period, recalls, CW4 agreed to accept early shipment of a large order in return for free shipping.

61. At one point, in October or November 2015, CW4 attempted to contact CW4's Easton representative to downsize a large baseball equipment order that was placed for 2016. However, the Easton representative ignored CW4's request, and instead the full order was delivered more than two months early.

62. Before the Class Period in or around 2013, according to CW3, executive vice president Edward Kinnaly challenged the Company's executive leadership, including Healy, Davis and Rosenthal, about the Company's sales and booking practices at a meeting of PSG's Board of Directors. As CW3 recalls, Kinnaly warned those in attendance, including Davis, who was a director of PSG at the time, that pulling orders forward or "trade loading" in order to make their numbers would eventually catch up with PSG. Soon after that Board of Directors meeting, according to CW3, Kinnaly was fired from PSG as a consequence of speaking out.

63. But not only did PSG coerce its retailers to order larger quantities or else incur penalties if they did not increase bookings by, for instance, 10 or 15%, it also demanded that stores place their orders earlier and earlier, as CW2 recalls. In recent years, including during the Class Period, Bauer insisted that CW2 place the store's order a full year early which was extremely difficult and unrealistic because CW2 would not know what degree of demand the product would have that far in advance.

64. CW3 corroborated this sales tactic. CW3 had to place the store's order whenever Bauer told him to, even if it was a year early. If CW3's shelves were already fully stocked, it was

impossible to forecast what would be needed the next year, but PSG did not care, according to CW3 – it just needed the order.

65. When product was pushed to retailers prior to its scheduled shipping date, retailers did not have to pay or initiate any scheduled payment plan until the agreed-upon payment date, as both CW3 and CW4 recalled.

66. As CW3, an experienced veteran hockey-equipment retailer recounted, Healey and Defendant Davis both knew that the hockey equipment market was fully saturated during the Class Period.

67. Also, according to statistics published by USA Hockey, player membership grew by less than 2% during the Class Period,⁷ yet PSG insisted that their retailers increase orders by 10-15% or more every year.

68. However, none of these coercive and aggressive tactics, which Defendants and PSG knew of and condoned, were ever disclosed to the market, nor was the reasonably likely impact of these tactics on long-term revenue earnings per share ever disclosed. In reality, due to PSG's sales practices and the material volume of early shipments (the degree of which was confirmed by CW1, CW2, CW3, and CW4, and Roustan's surveys described below), Defendants knew that PSG's sales figures, on the back of these tactics, were unsustainable.

B. PSG Customers Tell PSG's Former Chairman About PSG's Practice of Moving Orders to Earlier Periods

69. Further corroborating the CWs' accounts, during the Class Period in mid-2015, Roustan, the Company's Chairman prior to Defendant Davis' appointment as CEO, hired Grant Thornton to conduct a survey of PSG's 10 largest customers in the U.S. and Canada, which

⁷ According to USA Hockey, player membership in 2014-2015 was 533,172. In 2015-2016, that figure grew by just 9,411, or 1.7%, to 542,583. In fact, between the 2012-2013 and 2013-2014 seasons, the number of hockey players had actually decreased by 899 players.

represented 50-55% of PSG’s business (the “GT Survey”). The GT Survey was intended to be disclosed to PSG’s board and its shareholders.

70. The GT Survey asked, among other questions, about PSG’s accounting practices and whether anyone, in the past two years at PSG, had asked the customers to move an order into an earlier quarter. According to Roustan, a majority of the surveyed customers responded “yes.”

71. Furthermore, after the Company tried to block or delay Grant Thornton from disclosing the results of that survey to Roustan himself, Roustan conducted his own survey of the same customers on the survey website SurveyMonkey.com (the “SurveyMonkey Survey”).

72. The SurveyMonkey Survey polled the same customers and asked the same questions. Again, a majority of the surveyed customers responded that they had been asked by PSG to move an order into an earlier quarter.

C. PSG Touts Revenue Growth and Strong Sales Performance

73. Instead of disclosing this ongoing scheme at any time during the Class Period, PSG and Defendants continued to tout the Company’s record growth based on “strong performance” and “organic sales growth.”

74. In general, “organic growth,” as used in the corporate and investment context, refers to a company’s growth based on increased outputs, customer base expansion, or new product development, as opposed to mergers and acquisitions, which are generally referred to as inorganic growth. However, a company’s organic growth does not, and should not, include growth that results from fraudulent or aggressive sales practices aimed at boosting a company’s earnings. Such earnings are transitory and not sustainable. As a result, earnings from PSG’s fraudulent sales practices should not have been considered part of, or a contributing factor of, the Company’s core earnings and purportedly “organic” growth.

75. As explained in Hess and Kazanjian's "*A Search for Organic Growth*:"

The interest and focus on organic growth in a meaningful way is a recent phenomenon, which grew out of the financial scandals of the late 1990s and early years of the following decade. What the public learned from these scandals was that (1) there are different types of earnings; (2) companies can create earnings in different ways; (3) earnings can be created by accounting recognition, accounting policies, accounting adjustments, accounting elections, and valuations; (4) ***earnings can be created by financially engineered transactions, pension fund gains, related party transactions, currency gains, cookie jar reserves, classification of investment transactions, channel stuffing, etc.***; (5) ***earnings management is more widespread than many thought***; and (6) ***yes, earnings management can turn into earnings manipulation***.

* * *

Historically, the definition of organic growth has not been the focus of academic or financial analysts. Academic researchers looked at increase in revenues or increase in head-count as evidence of growth. Organic growth was defined as the opposite of acquisitive growth. Almost all academic research counted or evaluated every cent of earnings equally. Academic research into corporate growth has generally focused on absolute sales growth or relative employment growth. Some have looked at market share, assets, and profits.... ***I respectfully submit that all earnings are not equal if you are trying to evaluate the strength, sustainability, and predictability of a business's core operations and processes***.

Edward Hess and Robert Kazanjian, *A SEARCH FOR ORGANIC GROWTH*, Cambridge University Press, 103-04 (2006) (emphasis added.)

76. Hess and Kazanjian also described the creation of an Organic Growth Index as a method to measure a company's organic growth, stating:

First, we wanted to expand the definition of growth to include not only sales growth but also growth in cash flow from operations (CFFO) because we thought it was harder to manipulate CFFO than sales volume. Secondly, we wanted a way to normalize results across industries, which negated industry bias in growth numbers. ***Thirdly, we wanted to include an accounting "shenanigans" test to highlight potential income manipulations and, lastly, we wanted to add a merger and acquisition test to discriminate between serial acquirers who repeatedly or significantly purchased revenues from those companies who grew internally or organically***.

* * *

The Organic Growth Index is explained in Table 7.1, while on the basis of our model, Table 7.2 lists the best organic growers in the period 1997-2002 using EVA adjusted by size, sales, and cash flow growth as compared to industry averages and as normalized by industry standard deviations. ***On a relative basis***,

these companies did not produce material financial results from non-core earnings, accounting manipulations, aggressive revenue recognition, or serial acquisitions. These companies outperformed their industry competition primarily by growing their businesses organically.

Id., at 105-06 (emphasis added).

77. Thus, reasonable investors could not have known, and could not have reasonably expected, that PSG’s “organic” growth included growth resulting from manipulative, aggressive, and unsustainable sales tactics.

78. In any event, on January 14, 2015, PSG published a news release entitled “Performance Sports Group Reports Record Fiscal Second Quarter 2015” in which PSG reported “record” revenues and increases in Adjusted Gross Profit and Net Income.

79. The following day, on January 15, 2015, during PSG’s Q2 2015 earnings conference call, CEO Davis stated, “*We experienced another record quarter for PSG, and our Q2 results were driven by the continued strong performance of the EASTON baseball/softball business and another quarter of more than 10% organic sales growth; significant adjusted gross margin expansion due to the addition of EASTON’s product in Q2*; and record adjusted EPS, even in the face of significant and increasing currency headwinds.” Q2 2015 PSG Earnings Call Transcript, at 3, Thomson Reuters StreetEvents (January 15, 2015) (emphasis added).

80. During the same call, CFO Rosenthal explained that “[r]evenues in the second quarter of FY15 increased 47% to \$172.3 million compared to the same year ago period, or 51% without the impact of changes in foreign currencies.”

81. PSG’s and Defendants’ January 2015 public statements were false and misleading because they omitted and failed to disclose that PSG’s “record” revenues were the result of PSG’s aggressive sales tactics that forced inventory on its retailers in excess and in advance of

retailers' demand, which inflated PSG's earlier quarterly sales and revenue such that it would leave the Company with weaker sales in later quarters.

82. In particular, as discussed in paragraphs 38 to 72, PSG maintained a practice of (a) pulling orders from later quarters into earlier quarters, as confirmed by Roustan's surveys and Rugal's statements to the *New Hampshire Business Review*; (b) asking customers to accept product before the scheduled ship date, as recalled by CW1, CW3, CW4 and Rugal; (c) penalizing customers by withdrawing their existing discounts if they did not increase the size of their orders in a market that could not sustain such increases; and (d) terminating employees who objected to these aggressive sales tactics, as CW3 remembers.

83. PSG and Defendants knew or recklessly disregarded the true facts known at the time regarding PSG's alleged "record" revenues because, *inter alia*, (a) CW3 met with Healey, the Company's head of North American Sales for Bauer, who told CW3 that CW3's store had to increase its sales by 15% or risk losing its discounts; (b) CW1 attended yearly sales meetings which Rosenthal attended where sales practices were openly discussed; (c) Davis attended PSG's Board of Directors meetings, as CEO and a PSG director, in 2013 when, according to CW3, Kinnaly told PSG's Board of Directors that the Company's practice of pulling orders forward to make its numbers would catch up with the Company, and was fired shortly thereafter for voicing his views; (d) Roustan had told Defendant Davis and several of PSG's directors at a June 2015 meeting that demand among the Company's retail customers would fall as a result of its decision to open "Own the Moment" stores and compete directly with its customers; and (e) hockey and baseball/softball merchandise sales represented the majority of PSG's revenues and was thus the core of PSG's business.

84. After the market closed on April 13, 2015, the Company and Defendants issued a

press release entitled, “Performance Sports Group Reports Record Fiscal Third Quarter 2015 Results.” The press release detailed PSG’s financial position for the third quarter of its fiscal 2015 including record revenues and increases in Adjusted Gross Profit and Net Income.

85. The following day, on April 14, 2015, PSG filed its Report of Foreign Private Issuer on Form 6-K, attaching PSG’s “Management’s Discussion and Analysis of Financial Condition and Results of Operations for the three and nine month periods ended February 28, 2015” (“Q3 2015 6-K”). The Q3 2015 6-K repeated the financial results set forth in PSG’s Q3 2015 press release. The Q3 2015 6-K further stated:

Fiscal Q3 2015 Financial Results

Revenues in the fiscal third quarter of 2015 increased 121% to \$137.7 million compared to \$62.2 million in the same year-ago quarter. On a constant currency basis, revenues were up 127%. The increase was primarily due to the addition of revenues generated by EASTON and solid growth in ice hockey equipment, partially offset by an unfavorable impact from foreign exchange. Excluding the results of EASTON, as well as the impact from foreign exchange, revenues grew organically by 16%.

Q3 2015 6-K, at 3.

86. On that same day, during PSG’s Q3 2015 earnings conference call, CEO Davis again attributed PSG’s record success to its strong performance and organic sales that were in reality based on fraudulent and aggressive sales practices that do not properly constitute “organic growth,” explaining:

We reported another record quarter due to the continued strong performance of Easton, the fifth consecutive quarter of double-digit hockey growth, and an overall 16% organic sales growth net of currency changes.

Easton continued to experience solid demand for its products, and our hockey business, which grew 16% on a constant currency basis, benefited from the highly successful launch of our Vapor IX stick, underscoring our well-defined strategy to grow our stick business, the largest hockey category. In fact, our stick category grew 92% in constant currency during the quarter and is up 26% year-to-date. Our hockey business also benefited from strong team apparel growth.

So far in 2015, we experienced an earlier loading of new products, particularly the Mako and Mako Torq bats, for some of our large retailers, resulting in a shift in demand from the third and fourth fiscal quarters of 2015 into the second and third quarters. As a result, we believe Easton will generate its highest sales volume in FY15 during the second and third quarters versus the third and fourth quarters historically, with Q3 being the most significant.

Q3 2015 PSG Earnings Call Transcript, at 2, Fair Disclosure Wire (April 14, 2015) (emphasis added).

87. However, PSG's and Defendant Davis' April 2015 public statements were false and misleading because they failed to disclose that PSG's "record" revenues were the result of aggressive sales practices and manipulation designed to inflate PSG's stock price by portraying the Company's quarterly revenue and quarterly sales figures as sustainable and "organic" even though the Company knew, or recklessly disregarded, the truth that PSG would soon be faced with a lack of sales in later quarters as the Company ran out of transactions to pull forward.

88. In fact, PSG's and Defendant Davis' April 2015 statements attributed the Company's "shift in demand" to market forces beyond its control. In reality, this "shift in demand" was the result of an explicit effort by PSG, with the express consent and knowledge of Davis and Rosenthal, to coerce PSG customers into accepting its products earlier shifting revenue to earlier quarters and penalizing retail customers that did not increase their equipment orders without regard to market demand.

89. In particular, as discussed in paragraphs 38 to 72, PSG and Defendants maintained a practice of (a) pulling orders from later quarters into earlier quarters, as confirmed by Roustan's surveys and Rugal's statements to the *New Hampshire Business Review*; (b) asking customers to accept product before the scheduled ship date, as recalled by CW1, CW3, CW4, and Rugal; (c) penalizing customers by withdrawing their existing discounts if they did not

increase the size of their orders in a market that could not sustain such increases; and (d) terminating employees who objected to these aggressive sales tactics, as CW3 remembers.

90. PSG and the Defendants knew or recklessly disregarded the true facts known at the time regarding the Company's alleged "record" revenues because, *inter alia*, (a) CW3 met with Healey, the Company's head of North American Sales for Bauer, who told CW3 that CW3's store had to increase its sales by 15% or risk losing its discounts; (b) CW1 attended yearly sales meetings which Rosenthal attended where sales practices were openly discussed; (c) Davis attended PSG's Board of Directors meetings, as CEO and a PSG director, in 2013 when, according to CW3, Kinnaly told PSG's Board of Directors that the Company's practice of pulling orders forward to make its numbers would catch up with the Company, and was fired shortly thereafter for voicing his views; (d) Roustan had told Defendant Davis and several of PSG's directors at a June 2015 meeting that demand among the Company's retail customers would fall as a result of the Company's decision to open "Own the Moment" stores and compete directly with its customers; and (e) hockey and baseball/softball merchandise sales represented the majority of PSG's revenues and was thus the core of PSG's business.

91. Then, after the market closed on July 7, 2015, the Company issued a press release entitled, "Performance Sports Group Provides Preliminary Fiscal Fourth Quarter and Full Year 2015 Results." The press release detailed PSG's preliminary financial position for the fourth quarter of its fiscal 2015.

92. The following day, on July 8, 2015, the Company again held a conference call with analysts regarding its fourth quarter and full year 2015 financial results. During the conference call, Davis explained:

As stated in our release last night our anticipated fourth-quarter and full-year revenue results are record-setting and expected to contribute to another fantastic

year for PSG delivering record returns for shareholders.

The key components of this message is that we continue to outpace the growth of the markets in which we participate by growing market share and profitability and we continue to leverage our Performance Sports platform which is improving efficiency and driving constant dollar currency profit growth rates that exceed our revenue growth. While the rapid strengthening of the US dollar will continue to impact our reported results, especially in the first half of 2016, we remain very well-positioned to continue our momentum into 2016 and beyond.

Preliminary Q4 2015 PSG Earnings Call Transcript, at 3, Thomson Reuters StreetEvents (July 8, 2015) (emphasis added).

93. Again, PSG and Davis’ public statements explicitly omitted any impact that the Company’s sales practices had or would be reasonably likely to have on its quarterly and yearly sales figures and financial data. In fact, the “outpaced” growth of PSG was not the result of “growing market share” or “leverag[ing the Company’s] Performance Sports platform” but was instead the result of a scheme to coerce its customers to purchase more and more product through the use of penalties and discounts and to accept the shipment of products earlier and earlier so that PSG could move revenue intended for later quarters into earlier quarters in order to claim “record revenues.”

94. In particular, as discussed in paragraphs 38 to 72, PSG and Defendants maintained a practice of (a) pulling orders from later quarters into earlier quarters, as confirmed by Roustan’s surveys and Rugal’s statements to the *New Hampshire Business Review*; (b) asking customers to accept product before the scheduled ship date, as recalled by CW1, CW3, CW4, and Rugal; (c) penalizing customers by withdrawing their existing discounts if they did not increase the size of their orders in a market that could not sustain such increases; and (d) terminating employees who objected to these aggressive sales tactics, as CW3 remembers.

95. Defendants and the Company knew or recklessly disregarded the true facts known

at the time regarding PSG's alleged "record" revenues because, *inter alia*, (a) CW3 met with Healey, the Company's head of North American Sales for Bauer, who told CW3 that CW3's store had to increase its sales by 15% or risk losing its discounts; (b) CW1 attended yearly sales meetings which Rosenthal attended where sales practices were openly discussed; (c) Davis attended PSG's Board of Directors meetings, as CEO and a PSG director, in 2013 when, according to CW3, Kinnaly told PSG's Board of Directors that the Company's practice of pulling orders forward to make its numbers would catch up with the Company, and was fired shortly thereafter for voicing his views; (d) Roustan had told Defendant Davis and several of PSG's directors at a June 2015 meeting that demand among the Company's retail customers would fall as a result of its decision to open "Own the Moment" stores and compete directly with its customers; and (e) hockey and baseball/softball merchandise sales represented the majority of PSG's revenues and was thus the core of PSG's business.

96. Continuing this trend, after the market closed on August 26, 2015, the Company issued a press release announcing its fourth quarter and full year 2015 financial results, which it again described as "record setting" ("August 26 Press Release").

97. Explaining the "record setting" figures, the Management Commentary stated:

"Our fourth quarter and full year revenue results were record-setting and contributed to market share gains in all of the sports we serve," said Kevin Davis, CEO of Performance Sports Group. "In fact, currency neutral hockey revenues grew 13% for the year, improving our estimated global equipment market share from 54% to 56%. Our Maverik Lacrosse revenues grew 28% in fiscal 2015, improving our estimated total equipment market share from 26% to 28%. Our baseball business, led by EASTON, had a record-setting year driven by solid demand for the MAKO family of products."

"These results reinforce that the fundamental building blocks of our shareholder value are continuing to perform quite strongly. Our Company continues to outpace the growth of the markets in which we participate by growing market share and profitability. We also continue to leverage our performance sports platform, which is driving cost efficiencies and, on a

currency neutral basis, profit growth rates that exceed our revenue growth. We remain very well positioned to continue our momentum into fiscal 2016 and beyond.”

98. PSG and Defendant Davis’ statement in the August 26 Press Release were false and misleading because they omitted and failed to disclose that the Company’s “record-setting” financial results were the result of an aggressive sales program whereby PSG was (a) pulling orders from later quarters into earlier quarters, as confirmed by Roustan’s surveys and Rugal’s statements to the *New Hampshire Business Review*; (b) asking customers to accept product before the scheduled ship date, as recalled by CW1, CW3, CW4, and Rugal; (c) penalizing customers by withdrawing their existing discounts if they did not increase the size of their orders in a market that could not sustain such increases; and (d) terminating employees who objected to these aggressive sales tactics, as CW3 remembers.

99. Defendants and the Company knew or recklessly disregarded the true facts known at the time regarding PSG’s alleged “record” revenues because, *inter alia*, (a) CW3 met with Healey, the Company’s head of North American Sales for Bauer, who told CW3 that CW3’s store had to increase its sales by 15% or risk losing its discounts; (b) CW1 attended sales meetings which Rosenthal attended where sales practices were openly discussed; (c) Davis attended PSG’s Board of Directors meetings, as CEO and a PSG director, in 2013 when, according to CW3, Kinnaly told PSG’s Board of Directors that the Company’s practice of pulling orders forward to make its numbers would catch up with the Company, and was fired shortly thereafter for voicing his views; (d) Roustan had told Defendant Davis and several of PSG’s directors at a June 2015 meeting that demand among the Company’s retail customers would fall as a result of its decision to open “Own the Moment” stores and compete directly with its customers; and (e) hockey and baseball/softball merchandise sales represented the majority of

PSG's revenues and was thus the core of PSG's business.

100. In fact, Defendants and PSG knew, at the time that these statements were made, that the increasing sales figures were not the result of "growing market share" or "cost efficiencies" but instead the result of front-loaded revenues caused by PSG's scheme, with the Defendants' knowledge and consent, of coercing its customers to accept earlier shipments of merchandise so that PSG could include those sales in earlier quarters and penalizing retailers that did not order additional product from PSG brands without regard for market demand.

101. The August 26 Press Release also provided guidance for the 2016 fiscal year ending May 31, 2016:

The strengthening U.S. dollar continues to impact the reported results of companies with meaningful business outside the U.S. For our Company, the impact is experienced most particularly in our hockey business, which represents nearly all of our revenues generated outside of the U.S. At today's foreign exchange rates, we currently expect Adjusted Net Income in fiscal 2016 to fall in a range between \$0.70 to \$0.73 per share, primarily due to the impact of foreign exchange on our reported results in the first quarter. Absent the year-over-year impact of foreign exchange, we currently expect our Adjusted Net Income per share for fiscal 2016 to be roughly flat compared to the \$1.02 per share reported in fiscal 2015.

102. This statement from the August 26 Press Release reaffirming the Company's expectation that Adjusted Net Income would remain the same for fiscal year 2016 was further false and misleading because the Company knew and/or recklessly disregarded, at the time the statement was made, that its sales practices propping up earnings could not be maintained forever, but fraudulently failed to disclose this known trend to investors.

103. In particular, as discussed in paragraphs 38 to 72, during the Class Period, PSG and Defendants maintained a practice of (a) pulling orders from later quarters into earlier quarters, as confirmed by Roustan's surveys and Rugal's statements to the *New Hampshire Business Review*; (b) asking customers to accept product before the scheduled ship date, as

recalled by CW1, CW3, CW4, and Rugal; (c) penalizing customers by withdrawing their existing discounts if they did not increase the size of their orders in a market that could not sustain such increases; and (d) terminating employees who objected to these aggressive sales tactics, as CW3 remembers.

104. Defendants and PSG knew or recklessly disregarded the true facts known at the time regarding PSG's alleged "record" revenues because, *inter alia*, (a) CW3 met with Healey, the Company's head of North American Sales for Bauer, who told CW3 that CW3's store had to increase its sales by 15% or risk losing its discounts; (b) CW1 attended yearly sales meetings which Rosenthal attended where sales practices were openly discussed; (c) Davis attended PSG's Board of Directors meetings, as CEO and a PSG director, in 2013 when, according to CW3, Kinnaly told PSG's Board of Directors that the Company's practice of pulling orders forward to make its numbers would catch up with the Company, and was fired shortly thereafter for voicing his views; (d) Roustan had told Defendant Davis and several of PSG's directors at a June 2015 meeting that demand among the Company's retail customers would fall as a result of its decision to open "Own the Moment" stores and compete directly with its customers; and (e) hockey and baseball/softball merchandise sales represented the majority of PSG's revenues and was thus the core of PSG's business.

105. Defendants and PSG knew or recklessly disregarded that it was reasonably likely that once customers stopped ordering PSG merchandise, such that there were no more orders that could be moved into earlier quarters, the Company's "record-setting" figures would quickly decline. As a result, the Company withheld from the market the truth that its sales and income in fiscal 2016 would fall by much larger amounts due to more than merely the impact of foreign exchange issues.

106. The following day, on August 27, 2016, the Company filed its annual report on Form 10-K with the SEC for the fiscal year ending May 31, 2015 (the “2015 10-K”). The 2015 10-K reported PSG’s financial highlights as follows:

- *A 51% increase in revenues on a constant currency basis, generating \$675.2 million in revenue in Fiscal 2015, compared to \$446.2 million in Fiscal 2014;*
- *Currency neutral Adjusted Net Income increased by 64.6%, to \$61.4 million or \$1.32 per diluted share, compared to \$37.3 million, or \$1.00 per diluted share in Fiscal 2014;*
- *We continued to outpace the growth of the markets in which we participate by growing market share and profitability and we continue to leverage our performance sports platform, which is improving efficiency and driving constant currency profit growth that exceeds revenue growth;*
- We announced a supply chain initiative that we expect to improve pretax profitability of \$30 million by Fiscal 2020;
- We announced a cash flow improvement initiative that is targeting an improvement in net cash flow from working capital of \$30 million in Fiscal 2016;
- Our leading hockey market share strengthened, growing from 54% to 56%;
- On a constant currency basis, our total apparel sales grew approximately 36% for the year, driven by a 50% growth in team uniforms and a 50% growth in performance apparel;
- Easton Baseball/Softball continued its dominant share at the NCAA level as 17 EASTON teams competed in the NCAA College World Series;
- Maverik continued to gain momentum, signing High Point University and Penn State as college partners. Maverik sales also increased by approximately 28% for the year; and
- In January 2015, we announced our plans to open 810 Bauer Hockey Own The Moment Hockey Experience retail stores. The first location opened in Burlington, Massachusetts on August 15, 2015.

2015 10-K, at 50-51 (emphasis added).

107. The 2015 10-K also continued to tout the Company’s organic growth:

We have repeatedly used our world-class performance sports product platform to grow our business into new performance equipment and apparel categories and sports markets. Our successful acquisition and integration of seven businesses since 2008 has demonstrated our ability to identify targets and integrate acquired businesses. *We are continuing to explore a number of potential near-term opportunities to complement our organic growth.* When evaluating potential targets, we look for the ability to leverage our world-class performance sports platform, existing or potential market leaders, authentic brand equity and heritage and sports that demand high quality, innovative performance products. We are disciplined in our approach and have foregone many acquisition opportunities that

did not satisfy our criteria.

2015 10-K, at 20 (emphasis added).

108. The statements above in the 2015 10-K touting PSG’s “organic” and “outpaced” growth were false and misleading because they failed to disclose that PSG and Defendants were attaining these financial results as a result of the Company’s aggressive and coercive sales practices pushing customers to accept merchandise deliveries earlier than needed so that PSG could count those sales in earlier quarters and penalizing customers by taking away vital discounts unless they increased their bookings with PSG. These practices, which Defendants knew were not sustainable, created a known trend that should have been disclosed pursuant to Regulation S-K. The statements were also false and misleading because they failed to disclose that the 2015 financial results were not the consequence of “organic” growth or the “leveraging” of PSG’s brands, but instead the result of poor financial controls and a fraudulent scheme as described herein.

109. In particular, as discussed in paragraphs 38 to 72, during the Class Period, PSG and Defendants maintained a practice of (a) pulling orders from later quarters into earlier quarters, as confirmed by Roustan’s surveys and Rugal’s statements to the *New Hampshire Business Review*; (b) asking customers to accept product before the scheduled ship date, as recalled by CW1, CW3, CW4, and Rugal; (c) penalizing customers by withdrawing their existing discounts if they did not increase the size of their orders in a market that could not sustain such increases; and (d) terminating employees who objected to these aggressive sales tactics, as CW3 remembers.

110. Defendants and the Company knew or recklessly disregarded the true facts known at the time regarding PSG’s alleged “record” revenues because, *inter alia*, (a) CW3 met with

Healey, the Company's head of North American Sales for Bauer, who told CW3 that CW3's store had to increase its sales by 15% or risk losing its discounts; (b) CW1 attended yearly sales meetings which Rosenthal attended where sales practices were openly discussed; (c) Davis attended PSG's Board of Directors meetings, as CEO and a PSG director, in 2013 when, according to CW3, Kinnaly told PSG's Board of Directors that the Company's practice of pulling orders forward to make its numbers would catch up with the Company, and was fired shortly thereafter for voicing his views; (d) Roustan had told Defendant Davis and several of PSG's directors at a June 2015 meeting that demand among the Company's retail customers would fall as a result of its decision to open "Own the Moment" stores and compete directly with its customers; and (e) hockey and baseball/softball merchandise sales represented the majority of PSG's revenues and was thus the core of PSG's business.

111. The 2015 10-K was signed by Defendants Davis and Rosenthal. Attached to the 2015 10-K were SOX Certifications signed by Defendants Davis and Rosenthal attesting to the accuracy of financial reporting and effectiveness of the Company's internal controls.

112. Rosenthal's and Davis' certifications both stated, in relevant part, that:

I have reviewed this Annual Report on Form 10K of Performance Sports Group Ltd. (the "registrant");

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in

Exchange Act Rules 13a15(e) and 15d15(e)) ***and internal control over financial reporting*** (as defined in Exchange Act Rules 13a15(f) and 15d15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) ***Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;***

(c) ***Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and***

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting;

2015 10-K, at Exs. 31.1, 31.2 (emphasis added).

113. Defendant Davis' and Rosenthal's certifications were false and misleading because in reality, (a) the 2015 10-K failed to disclose that PSG's sales and revenue figures were based on manipulated sales that resulted from PSG's practice of coercing customers to accept merchandise shipments in earlier quarters and penalizing customers that did not continue to increase their orders each year by removing vital and necessary discounts and sales terms regardless of whether market demand could support such increases; and (b) PSG lacked proper internal controls to prevent the manipulation of its sales revenues from occurring.

114. In particular, as discussed in paragraphs 38 to 72, during the Class Period, PSG maintained a practice of (a) pulling orders from later quarters into earlier quarters, as confirmed by Roustan's surveys and Rugal's statements to the *New Hampshire Business Review*; (b) asking customers to accept product before the scheduled ship date in order to prop up quarterly sales figures, as recalled by CW1, CW3, CW4, and Rugal; (c) penalizing customers by withdrawing their existing discounts if they did not increase the size of their orders in a market that could not sustain such increases; and (d) terminating employees who objected to these aggressive sales tactics, as CW3 remembers.

115. Defendants and the Company knew or recklessly disregarded the true facts known at the time regarding PSG's alleged "record" revenues because, *inter alia*, (a) CW3 met with Healey, the Company's head of North American Sales for Bauer, who told CW3 that CW3's store had to increase its sales by 15% or risk losing its discounts; (b) CW1 attended yearly sales meetings which Rosenthal attended where sales practices were openly discussed; (c) Davis attended PSG's Board of Directors meetings, as CEO and a PSG director, in 2013 when, according to CW3, Kinnaly told PSG's Board of Directors that the Company's practice of pulling orders forward to make its numbers would catch up with the Company, and was fired shortly thereafter for voicing his views; (d) Roustan had told Defendant Davis and several of PSG's directors at a June 2015 meeting that demand among the Company's retail customers would fall as a result of its decision to open "Own the Moment" stores and compete directly with its customers; and (e) hockey and baseball/softball merchandise sales represented the majority of PSG's revenues and was thus the core of PSG's business.

116. On October 14, 2015, PSG filed its financial results on Form 10-Q for the first quarter of the 2016 fiscal year ending August 31, 2015 ("Q1 2016 10-Q").

117. Like the 2015 10-K, the Q1 2016 10-Q was accompanied by SOX Certifications signed by Defendants Davis and Rosenthal which represented that the information included therein was true and correct and that the Company's internal controls were effective, stating in part:

I have reviewed this quarterly report on Form 10-Q of Performance Sports Group Ltd. (the "registrant");

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a15(e) and 15d15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a15(f) and 15d15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting;

Q1 2016 10-Q, at Exs. 31.1 and 32.2 (emphasis added).

118. Defendant Davis' and Rosenthal's certifications were false and misleading because (a) the Q1 2016 10-Q failed to disclose that PSG's sales and revenue figures were based on manipulated sales that resulted from PSG's practice of coercing customers to accept merchandise shipments in earlier quarters and penalizing customers that did not continue to increase their orders each year by removing vital and necessary discounts and sales terms regardless of whether market demand could support such increases; and (b) PSG lacked proper internal controls to prevent the manipulation of its sales revenues from occurring.

119. In particular, as discussed in paragraphs 38 to 72, during the Class Period, PSG and Defendants maintained a practice of (a) pulling orders from later quarters into earlier quarters, as confirmed by Roustan's surveys; (b) asking customers to accept product before the scheduled ship date, as recalled by CW1, CW3, CW4 and Rugal; (c) penalizing customers by withdrawing their existing discounts if they did not increase the size of their orders in a market that could not sustain such increases; and (d) terminating employees who objected to these aggressive sales tactics, as CW3 remembers.

120. Defendants and PSG knew or recklessly disregarded the true facts known at the time regarding PSG's alleged "record" revenues because, *inter alia*, (a) CW3 met with Healey, the Company's head of North American Sales for Bauer, who told CW3 that CW3's store had to increase its sales by 15% or risk losing its discounts; (b) CW1 attended yearly sales meetings which Rosenthal attended where sales practices were openly discussed; (c) Davis attended PSG's

Board of Directors meetings, as CEO and a PSG director, in 2013 when, according to CW3, Kinnaly told PSG's Board of Directors that the Company's practice of pulling orders forward to make its numbers would catch up with the Company, and was fired shortly thereafter for voicing his views; (d) Roustan had told Defendant Davis and several of PSG's directors at a June 2015 meeting that demand among the Company's retail customers would fall as a result of its decision to open "Own the Moment" stores and compete directly with its customers; and (e) hockey and baseball/softball merchandise sales represented the majority of PSG's revenues and was thus the core of PSG's business.

121. On the same day, the Company held a conference call to discuss PSG's first quarter 2016 financial results. On the conference call, Defendant Davis stated in relevant part:

Despite the ongoing impact of currency on our year-over-year results and the timing of product launches that impact quarterly comparison, ***we continue to see solid growth across our brand***, including continued market share gains in the recently completed back-to-hockey season, which runs from April to September.

Q1 2016 PSG Earnings Call Transcript, at 2, Seeking Alpha (October 15, 2015) (emphasis added).

122. Then, during the same call, in response to an analyst's question regarding sales performance, Defendant Davis explained:

There has been a little of consolidation in the U.S. hockey retail market over the past several months with two of the top three retailers in the U.S. hockey market making acquisitions of two other retailers who are in the top seven. To say it in another [way] the top seven are now the top five. I think also, there has been some remix of where our lacrosse product is being sold between specialty and mass retailers with [indiscernible] starting to take a little bit more share in the lacrosse base, as they dedicate more and more space to selling that product. ***But otherwise, we don't see any sort of decline in demand from consumers for those products.***

Id. at 5 (emphasis added).

123. PSG' and Davis' representations that the Company was still seeing "solid growth" and that it was not affected by "decline in demand from consumers" but instead was the victim

of “a little [] consolidation” in the hockey market were false and misleading because the Company was losing demand and was no longer growing at the same rate, but Defendants concealed those facts by (a) pulling orders from later quarters into earlier quarters, as confirmed by Roustan’s surveys; (b) asking customers to accept product before the scheduled ship date, as recalled by CW1, CW3, CW4 and Rugal; (c) penalizing customers by withdrawing their existing discounts if they did not increase the size of their orders in a market that could not sustain such increases; and (d) terminating employees who objected to these aggressive sales tactics, as CW3 remembers.

124. Defendants and PSG knew or recklessly disregarded the true facts known at the time regarding PSG’s alleged “record” revenues because, *inter alia*, (a) CW3 met with Healey, the Company’s head of North American Sales for Bauer, who told CW3 that CW3’s store had to increase its sales by 15% or risk losing its discounts; (b) CW1 attended yearly sales meetings which Rosenthal attended where sales practices were openly discussed; (c) Davis attended PSG’s Board of Directors meetings, as CEO and a PSG director, in 2013 when, according to CW3, Kinnaly told PSG’s Board of Directors that the Company’s practice of pulling orders forward to make its numbers would catch up with the Company, and was fired shortly thereafter for voicing his views; (d) Roustan had told Defendant Davis and several of PSG’s directors at a June 2015 meeting that demand among the Company’s retail customers would fall as a result of its decision to open “Own the Moment” stores and compete directly with its customers; and (e) hockey and baseball/softball merchandise sales represented the majority of PSG’s revenues and was thus the core of PSG’s business.

D. PSG Violated Item 303 of Regulation S-K

125. Item 303 of Regulation S-K, 17 C.F.R. 229.303, requires public companies, in

their Form 10-K filings, to:

Describe any known trends or uncertainties that have had or that the registrant reasonably expects will have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations. ***If the registrant knows of events that will cause a material change in the relationship between costs and revenues (such as known future increases in costs of labor or materials or price increases or inventory adjustments)***, the change in the relationship shall be disclosed.

Emphasis added.

126. PSG, and its senior executives, Davis and Rosenthal, knew PSG's success was due, at least in part, to PSG's practice of pressuring customers to accept orders before they were needed and place orders earlier and earlier; and penalizing customers that did not increase their PSG bookings by removing existing discounts regardless of whether market demand could support such increases, thereby frontloading and propping up the Company's sales and revenue reported in its financial statements.

127. PSG and the Defendants knew that the Company's sales practices were not sustainable and that they were reasonably likely to catch up with PSG, especially in light of the fact that its former Chairman (Roustan), an Executive Vice President (Kinnaly), and customers (including CW3) told PSG so in face-to-face meetings resulting in a significant drop in sales and revenue as PSG adjusted its financial outlook to accurately reflect true market demand.

128. These trends and circumstances were known to PSG and Defendants at the time when PSG filed its Form 10-K during the Class Period which failed to disclose these known trends.

129. As a result, Defendants caused PSG to violate Item 303 of Regulation S-K by failing to disclose this known trend and uncertainty to the marketplace.

E. PSG's Blind Aggression Catches Up with the Company

130. It was only a matter of time, however, before PSG's aggressive sales tactics would catch up to it and force the Company to disclose the truth about its sales practices. In fact, by the start of the 2016 calendar year, the risks concealed by PSG's and Defendants' fraudulent scheme were beginning to materialize.

131. After the market closed on January 13, 2016, the Company issued a press release announcing its financial results for the quarter ended November 30, 2015 and giving an overview of the different segments of PSG's business. The press release also lowered the previously issued guidance for the fiscal year ending May 31, 2016. The press release stated in part:

Performance Sports Group Reports Fiscal Second Quarter 2016 Results

* * *

Given the continued weakening of the Canadian dollar since our last stated guidance, we are revising our fiscal 2016 guidance and now expect Adjusted Net Income to range between \$0.66 and \$0.69 per share. Additionally, we expect Adjusted EPS to range between \$0.09 and \$0.10 in our fiscal 2016 third quarter and between \$0.31 and \$0.33 in our fourth quarter. These expectations assume current foreign exchange rates hold in the remainder of our year. In fiscal 2016, we continue to expect that, on a currency-neutral basis, our businesses will outpace the growth of the markets we serve, resulting in revenue gains and increased profitability. Looking to fiscal 2017, at current rates, we expect our results during the first half of the year to be impacted by year-over-year declines in exchange rates, partially offset by the execution of our cost saving initiatives.

* * *

Baseball/Softball EBITDA in the second quarter decreased 31% (including and excluding the impact of foreign currency) to \$7.9 million, which was largely driven by a bad debt write-off related to outstanding receivables for an internet baseball retailer that filed for bankruptcy reorganization, as well as the aforementioned product launch timing differences, EASTON product mix, and other SG&A investments in marketing and IT which were partially offset by a reduction in performance-based incentives.

132. The following day, on January 14, 2016, the Company filed its financial results on Form 10-Q for the second quarter of 2016, ending November 30, 2015 ("Q2 2016 10-Q"). The Company's Q2 2016 10-Q disclosed, for the first time, declines in revenue, declines in gross

profit and declines in adjusted EBITDA.

- Revenues totaled \$153.0 million, declining 11.2% (down 5.5% in constant currency)
- Adjusted Gross Profit was \$50.6 million, declining 18.6% (down 2.1% in constant currency)
- Adjusted Gross Profit margin was 33.1%, down 300 basis points (up 130 basis points in constant currency)
- Gross profit was \$45.7 million, declining 18.3% (down 0.5% in constant currency), and gross profit margin was 29.9%, down 260 basis points (up 160 basis points in constant currency)
- Adjusted EBITDA was \$15.3 million, down 36.3% (down 2.1% in constant currency)
- Adjusted Net Income totaled \$5.9 million or \$0.13 per share, compared to \$11.3 million or \$0.24 per share (Adjusted Net Income of \$11.8 million or \$0.25 per share in constant currency)
- Net loss totaled \$4.5 million or (\$0.10) per share, compared to net income of \$1.0 million or \$0.02 per share (net loss of \$0.5 million or (\$0.01) per share in constant currency)

Q2 2016 10-Q, at 16.

133. The Q2 2016 10-Q was accompanied by SOX Certifications signed by Defendant Davis and CFO Vendetti, who was appointed as CFO one month earlier on December 14, 2015.

134. That same day, PSG held a conference call with industry analysts to discuss its Q2 2016 results. Defendant Davis, speaking first, explained:

In the second quarter, our brands continued to take market share, and demonstrated strong resilience in some very challenging markets. During the quarter, Bauer continued to hold the number one market share, and its brand affinity remains very strong. Our Own the Moment hockey retail initiative, now with two open stores -- one in Massachusetts and the other in Minnesota -- are hitting or exceeding our financial and strategic expectations.

We recently conducted a thorough independent consumer study, which informed us that in these local markets, we are increasing brand awareness, engaging consumers, improving overall Bauer market share, and because of the great shopping experience for hockey gear, we are increasing consumers' likelihood of visiting local hockey retailers after shopping at Own the Moment.

Baseball sales growth was driven by Easton's non-bat categories, which were up 28%, while lacrosse sales, driven by strong growth in the Maverik line of heads and protective gear, were up 9%, leading up to its peak selling season.

We continue to execute on the initiatives put in place to improve our operations, which helps offset the impacts from the weakening Canadian dollar. In fact, our plan to improve working capital by \$30 million in FY16 is well on track, as year to date we have already reduced inventory by \$13 million. We've also experienced strong results from our supply chain initiatives, and we are increasing our expectations for the benefits from that initiative in FY17 to range from between \$8 million and \$12 million, compared to the \$5 million to \$7 million previously disclosed.

January 14, 2016 Earnings Call Transcript, at 2.

135. Following that, CFO Vendetti, omitting any reference to the Company's manipulation of its sales revenue by coercing customers to take merchandise shipments in earlier quarters than needed or by instituting penalties on customers that did not increase their bookings with PSG, sought to blame the Company's worsening figures on industry consolidation and a weakening currency:

Jumping right into our results for the fiscal second quarter, revenues decreased 11% to \$153 million, compared to the same year-ago quarter. On a constant-currency basis, however, revenues were down 6% to \$162.9 million. ***The 11% reported decline was primarily due to unfavorable impact from foreign exchange, variations in product launch cycles in our hockey segment, as well as retailer consolidation in the US and continued challenging market conditions for our hockey business in Russia and eastern Europe.*** Offsetting these revenue declines was a 4% sales growth from Easton and a 9% increase in lacrosse sales.

On a regional basis, revenues in North America were down 9%, while the rest of the world was down 23%. ***Again, this was due to the aforementioned factors in hockey.*** Despite these results, we remain encouraged about the long-term prospects of our business globally.

Now, moving on to our performance by segment. Hockey revenues decreased 19%, or 11% on a constant-currency basis to \$91.9 million, compared to the year-ago quarter, driven by the unfavorable impact from foreign exchange, variations in hockey equipment product launch cycles, the decline in performance apparel retail related to the prior year's launch of a complete line of 37.5 apparel, as well as consolidation among the largest retailers in the US, and lower sales to our Russian and European distributors.

To be specific, as it relates to the US consolidation, four of our top seven retailers have consolidated over the past several months. Baseball/softball

revenues in the second quarter increased 4% to \$50.9 million, compared to the year-ago quarter. As Kevin mentioned, this was due to a 28% sales growth in non-bat categories, partially offset by the launch of only one bat family for Easton, compared to a two-family launch last year. The growth in non-bat revenues is significant, as we have designated the expansion of the Easton brand outside of bats as a key strategic initiative.

Id. at 4 (emphasis added).

136. However, while PSG was announcing at the beginning of calendar year 2016 that Bauer's sales in late 2015 were down 19%, its rival Reebok-CCM Hockey reported an **18% increase** in sales for the same time period. In fact, it was not until much later than PSG that Reebok-CCM Hockey started to report any sort of negative results.

137. Thus, even though PSG was experiencing worsening sales figures on all fronts, PSG and the Defendants continued to conceal the true reason for PSG's lackluster financial results by offering reasons for the poor financial performance that were purportedly out of their control.

138. As a result of the Company's Q2 2016 disclosures, PSG's stock price experienced a 4-day fall from its opening price on January 14, 2016 of \$7.71 per share to a closing price on January 19, 2016 of \$5.92 per share on heightened average trading volume of 1.29 million shares per day. By comparison, on January 13, 2016, PSG's trading volume was approximately 420,000 shares.

139. Then, on March 8, 2016, before the market opened, the Company issued a press release revising guidance for the fiscal year ending May 31, 2016. The press release, entitled "Performance Sports Group Revises Fiscal 2016 Outlook and Reports Preliminary Fiscal Third Quarter Results," stated in relevant part:

EXETER, NH - March 8, 2016 - Performance Sports Group Ltd. (NYSE: PSG) (TSX: PSG) ("Performance Sports Group" or the "Company"), a leading developer and manufacturer of high performance sports equipment and apparel, has revised

its outlook for its 2016 fiscal year and reported preliminary results for its fiscal third quarter ended February 29, 2016. All figures are in U.S. dollars. Certain metrics, including those expressed on an adjusted and/or constant currency basis, are non-GAAP financial measures (see “Non-GAAP Financial Measures” below). All figures exclude the accounting gain the Company expects to record in the third quarter of fiscal 2016 associated with its acquisition of Easton Hockey in January 2016. The Company has reduced its fiscal year 2016 Adjusted EPS guidance by approximately \$0.55 per diluted share to approximately \$0.12 to \$0.14 per diluted share as compared to its prior publication of guidance (\$0.66 to \$0.69 per diluted share), primarily as a result of the following three factors: (i) a write down of the receivable balance from a U.S. national sporting goods retailer that has filed under chapter 11 and the related anticipated loss of sales from this retailer (\$0.09 per share); (ii) an anticipated reduction in sales, particularly due to weakness in the baseball/softball market (\$0.31 per share); and (iii) additional bad debt reserves primarily for certain U.S. hockey customers and the related anticipated loss of sales from such customers (\$0.19 per share). (Emphasis added).

140. About an hour after the press release, the Company held a conference call to discuss the revised fiscal year 2016 guidance and the preliminary third quarter 2016 results.

Defendant Davis stated in relevant part:

The second half of fiscal 2016 has been *impacted by adverse market conditions and related customer credit issues. The baseball/softball market is experiencing an unexpected significant downturn in retail sales, including in our important bat category. This weakening of consumer demand, coupled with the chapter 11 filing by one of our largest US national sporting goods retailers, is reducing our sales for baseball and softball products. Additionally, the consolidation of hockey retail in the US has reduced our customers’ demand for products more than we previously anticipated as they continue to reduce their inventory levels.*

In light of these events and challenges, including the bankruptcy of an Internet baseball retailer in the second quarter, we decided to increase our bad debt reserves for certain of our US hockey and baseball/softball customers. (Emphasis added).

141. Defendant Davis tried to blame PSG’s declining financial results on “weakening of consumer demand,” but in reality it was PSG’s own manipulation of sales that pushed revenue into earlier quarters and bullying of retailers to increase bookings without regard for the ability of market demand to support those increases that were the true causes of the decline. On the same conference call, CFO Vendetti, speaking on behalf of PSG, stated in relevant part:

We have reduced our fiscal year 2016 adjusted EPS guidance by approximately \$0.55 per diluted share to approximately \$0.12 to \$0.14 per diluted share as compared to prior publication of guidance of \$0.66 to \$0.69 per diluted share. On a constant currency basis, 2016 adjusted EPS is expected to range between approximately \$0.64 and \$0.66 per diluted share.

* * *

The weakness that we're seeing in baseball is coming not only from Sports Authority, as you point out. As we said a minute ago, the bankruptcy situation that they are going through caused us to not only write-down their receivable but also take their future sales out of our forecast. There's other weakness in sell-through in the market with other of our customers. There is also, as I noted in the comments that I made during the prepared remarks, there's little bit of a general CSA effect, which is discouraging and impacting orders from other customers, given that there is the possibility of a significant amount of inventory in the marketplace that would be on discounted terms, so it's all of those factors combined. And as I indicated, also there is a possibility that the wetter and colder weather that we've seen in many parts of the country had an impact as well. It's very hard to quantify that. (Emphasis added).

142. Defendant Rosenthal also tried to explain:

As Kevin mentioned in his remarks, we've seen an unexpected significant downturn in retail sell-through in the baseball/softball category, particularly in bat [sic]. Easton's market share in bat is larger than any other category, but the slowdown in sell-through for bat [sic] was a disproportionate impact on Easton's versus other competitors in the baseball/softball market.

There were some indications that customer demand was softer than expected coming out of the holiday season, but we did not expect this reduced demand to fall further as it did later in the third quarter. It was only toward the end of the third quarter that it became apparent the extent to which demand had fallen and how, in connection with the bankruptcy of a large US national sporting goods retailer that is filed under Chapter 11, this would reduce sales in the second half of fiscal 2016.

At this time, we do not believe that this weakening is related to the upcoming BBCOR standard change for youth bat. It is possible that the unusually cold and wet winter in certain parts of the United States has played a role in the market dynamics that we're experiencing. It is also worth noting that a meaningful amount of our baseball products were sold to retailers on an at-once basis. These customers tend to have more sophisticated point-of-sale analytics than our [] hockey customers, who were typically smaller. And that means we receive information about retailers purchasing decision much closer to their actual shipment and without as much advanced notice as we have in our hockey business.

We believe that the recent bankruptcy filing of a large US national sporting goods

retailer may also be affecting other baseball retailers, who have either cancelled orders or are hesitant to place orders in anticipation (technical difficulty). As we mentioned in our second quarter call, four of our Top 7 retailers in hockey have consolidated in the US over the past several months. This consolidation process reduced our customers' demand for products more than we previously anticipated, as they continue to reduce their inventory levels.

As Kevin mentioned, in light of the challenges we are facing and recent bankruptcy filings of an online baseball retailer in the second fiscal quarter and a large US national sporting goods retailer in the third fiscal quarter, we have increased our potential bad debt reserve for a limited number of our US customers, primarily in hockey, but also in baseball/softball.

* * *

So, to be clear, we have not seen any bankruptcies among our retailers, which has caused us to take the bad debt reserves that we have. It's not a bankruptcy that is [sic] caused it, but other developments with their earnings history and outstanding balances. The focus of that bad debt reserve is on a variety of customers in our US hockey market. So, we don't have much more that we can add to the points that we've said so far. But other than what we've previously talked about in the US market, four of our Top 7 retailers have emerged. And when that happens, it's not unusual to see a period of time where there is redundant inventory from those business combinations. And we experienced the similar situation in the Canadian hockey market several years ago, when three of our Top 5 customers combined over a two-year period. So we'll expect the consolidation in the US market to have a similar effect for us and we have every intention of working closely with those customers that are both impacted by the consolidation that's happening in the US and those who are outside of that group as they navigate through the current situation. (Emphasis added).

143. In sum, PSG's and Defendants' March 8, 2016 statements made clear that the risks concealed by PSG's and Defendants' fraudulent scheme of manipulating the Company's sales revenue were materializing. PSG and Defendants had known about this trend, which was reasonably likely to materially affect the Company's future financial results, before the start of the 2016 calendar year. Even with this knowledge, or their reckless disregard for the truth, PSG and Defendants promoted and condoned the Company's sales practices anyway. Further, instead of accurately disclosing that the Company had been coercing its customers to accept its products early to shift revenue to earlier quarters and bullying PSG's retailer customers to increase their

orders under threat of the loss of their discounts, PSG attributed its “purportedly” new-found decline to bankruptcies and market demand.

144. Similarly, PSG and Defendants continued to try to hide the true cause of the Company’s downturn by blaming it on “redundant inventory.” Again, in reality, they and caused the Company’s own demise by oversupplying its retail customers with product and delivering that product earlier than the product was needed.

145. On this news, shares of PSG fell \$5.75 per share or over 66% to close at \$2.91 per share on March 8, 2016, on trading volume of 18.6 million shares, thereby damaging investors. By comparison, the trading volume of PSG shares on March 7, 2016 was approximately 142,000 shares.

146. By this time, analysts were starting to pick up on the problems that PSG was truly facing. On March 14, 2016, analyst Jay Sole at Morgan Stanley downgraded PSG to “Equal Weight” from its previous rating of “Overweight,” stating that “the profit warning indicates visibility is much poorer than previously thought.” “Performance Sports Group downgraded to Equal Weight at Morgan Stanley,” Theflyonthewall.com, March 14, 2016.

147. On that same day, the *New York Post* published an article under the headline, “Bauer’s Parent Company Questioned About Misdating Earnings” in which the nationally circulated newspaper disclosed that PSG had been questioned about manipulating revenue. The article disclosed:

Customers told former PSG Chair Graeme Roustan that the company had asked them to misdate earnings, a source with direct knowledge of the situation said.

Roustan, PSG chair from 2008 to 2012, has been fighting his former company, trying to get back on the board.

Last year Roustan commissioned SurveyMonkey — an online survey platform —

to ask PSG customers if they were told to move future orders into an earlier quarter. Roustan presented his findings to the PSG board, sources said.

* * *

Roustan had first hired Grant Thornton to take a survey of PSG's customers. PSG persuaded Grant Thornton not to release those findings, including a question about misdating earnings, to Roustan. Now Roustan is suing Grant Thornton, court documents show. Roustan declined comment. (Emphasis added).

148. On this news, shares of PSG fell \$0.41 per share or over 10.35% to close at \$3.55 per share on March 15, 2016, on an average 2-day trading volume of approximately 2.29 million shares, damaging investors.

F. PSG Hides Behind Irrelevant Customer Bankruptcies

149. During the Class Period, two of PSG's retail customers filed for bankruptcy protection. On December 16, 2015, Team Express, an online sporting goods retailer, filed for protection under Chapter 11 of the U.S. Bankruptcy Code. Then, on March 2, 2016, Sports Authority, a national sporting goods retail chain, filed for protection under Chapter 11 of the U.S. Bankruptcy Code.

150. Although PSG and Defendants sought to hide the losses from its fraudulent scheme under the smoke screen of these bankruptcies, these were not the true cause of PSG's declining business. In fact, none of PSG's competitors even mentioned these bankruptcies as a cause or potential cause of business decline until months after PSG started using these bankruptcies as an excuse for its now faltering business.

G. PSG's Competitors Had No Issues with Market Demand or Retailer Bankruptcies in Late 2015

151. According to PSG's 2015 Annual Report, PSG's primary competitors in the baseball and softball space are Amer Sports (owners of the Wilson and Louisville Slugger baseball brands), Newell Brands (owner of Rawlings) and Mizuno. Nike is not listed in PSG's Annual Report as a primary competitor, but only as competitive in some "specific categories

such as batting gloves.” PSG 2015 Annual Report, at 9.

152. Contrary to PSG’s and Defendants’ claims of market conditions as the cause of the Company’s poor performance in late calendar year 2015, the CEO of Amer Sports stated on February 3, 2016 at Amer’s own Q4 2015 earnings conference call that its “pipeline is strong and momentum is good behind Louisville Slugger. As for our baseball overall, [] its fine. And we expect the year to be good.”

153. In its Q1 2016 earnings presentation, Amer also reported that its footwear revenue was up 16%, its apparel revenue was up 19%, its sports instruments revenue (including baseball bats) was up 14% and overall net sales were up 11%. In summary, Amer told the market that they were observing “broad-based growth in team sports further supported by Louisville Slugger.”

154. Similarly, Michael Polk, Newell Brand’s CEO, in that company’s own Q1 2016 earnings release, stated, “We are extremely pleased with our growth and financial results this quarter.”

155. In the hockey space, PSG competes with Reebok-CCM Hockey, which is owned by Adidas AG. In Adidas’ FY 2015 Annual Report, dated March 3, 2016, Adidas also explained that it was experiencing “high single-digit increases at Reebok-CCM Hockey and double-digit sales increases in other centrally managed businesses.” This was reported at the same time that PSG was reporting its own decreases as alleged herein.

H. Post Class Period Developments

156. On March 15, 2016, a day after the Class Period, PSG and Defendant Davis announced at a Bank of America Merrill Lynch Conference that PSG would suspend its “Own the Moment” store retail strategy until after fiscal year 2017.

157. In a press release of his own the following day, Roustan stated:

Toronto, Ontario, Canada – March 16, 2016 – W. Graeme Roustan, Chairman and CEO of Roustan Capital and Trustee of the Walter Graeme Roustan Trust today announced its pleasure with hearing the CEO of Performance Sports Group at the Bank of America Merrill Lynch Conference yesterday state that there will be no capital expenditures next (fiscal) year 2017 for Bauer retail store openings.

Mr. Roustan states; “Finally, Performance Sports Group has decided to not open any retail stores through FY 2017 after almost a year of warnings that these retail stores carry all kinds of risk.” Yesterday, Mr. Roustan learned for the first time from CEO, Kevin Davis’s statements that each store cost \$4 million to open but he offered up no clarity on how much each existing store lost based on their statement on January 8th, 2015 that they expect retail operations would be unprofitable for the first 18 - 24 months.

Mr. Roustan also stated; “In my June 5th, 2015 meeting with Chairman Bernie McDonell, Director Bob Nicholson, Director Karyn Barsa and the CEO and Director Kevin Davis, *I pleaded with them to abandon and reverse their Bauer retail store strategy. Without the Grant Thornton Survey Report that I contracted specifically for my June 5th meeting that Performance Sports Group lawyers and Chairman requested Grant Thornton withhold from me, I was unable to convince them that retail partners would likely react negatively to the abrupt change in business strategy and reduce their purchases of Bauer, Easton, Cascade products.*” Since the June 5th, 2015 meeting where Mr. Roustan did not have the Grant Thornton Survey Report to present, the stock has declined approximately \$20 CDN or 80% per share.

Roustan Capital Press Release, March 16, 2016 (emphasis added).

158. Then, just days later, and on the heels of the *New York Post*’s disclosure of the Company’s aggressive and manipulative sales practices, on March 22, 2016, following the markets’ close, the Company announced that Defendant Davis had abruptly resigned and was leaving the Company immediately. Defendant Rosenthal was appointed by the Company’s Board of Directors as interim CEO.

159. On June 8, 2016, PSG announced the appointment of Harlan Kent (“Kent”) as CEO. Once appointed, Kent attempted to fix the damage that Defendants’ conduct had caused, realizing losses that should have been realized earlier, restructuring divisions, and laying off

employees. However, Kent's attempts were to no avail as the Company has since been forced, as described herein, to file for bankruptcy protection in the United States and Canada.

160. On August 15, 2016, Lead Plaintiff filed its Amended Class Action Complaint for Violations of the Federal Securities Laws (the "First Amended Complaint") alleging that Defendants had fraudulently misstated and concealed during the Class Period the known trend of a material revenue reduction that had become inevitable as a result of Defendants' manipulative sales practices described in the First Amended Complaint.

161. That same day, PSG was expected and required to file its financial results for the fourth quarter and full year 2016 with the SEC on Form 10-K. However, rather than filing its Form 10-K, the Company filed a press release with the SEC on Form 8-K in which it announced "that its Annual Report on Form 10-K, including its annual audited financial statements for the fiscal year ended May 31, 2016 and the related management's discussion and analysis (collectively, the "Form 10-K"), will not be filed by the required filing date of August 15, 2016." The Company disclosed, in vague fashion, that the delay was the result of an internal investigation being conducted by PSG's Audit Committee into the Company's financial results. Specifically, the Company stated, "The delay is a result of the decision of Performance Sports Group's Audit Committee to conduct an internal investigation in connection with the finalization of the Company's financial statements and the related certification process." PSG explained that the failure to file its Form 10-K would result in a default under the Company's credit facilities which would force PSG into bankruptcy if an agreement could not be reached between PSG and its creditors. On August 30, 2016, the Company announced such an agreement with its creditors that gave the Company until October 28, 2016 to file its Form 10-K.

162. Two days later, on August 17, 2016, the Company again filed a Form 8-K with

the SEC, this time disclosing that, in addition to being the subject of the above-captioned class action lawsuit, the Company was also the subject of investigations by both Canadian securities regulators and the SEC. Although no further information was provided by the Company, the disclosure of the Company's internal investigation and investigations by the SEC and Canadian regulators all came within days of the filing of Lead Plaintiff's First Amended Complaint.

163. On October 28, 2016, however, the Company again failed to file any financial reports with the SEC. Instead, news outlets, including Reuters, announced that PSG was "preparing to file for protection from its creditors as early as Monday under chapter 11 in the United States and a similar court process in Canada."

164. On October 31, 2016, before the markets opened, PSG announced, on a Form 8-K filed with the SEC, that it had filed voluntary petitions in the United States Bankruptcy Court for the District of Delaware for relief under Chapter 11 of the United States Bankruptcy Code and had sought creditor protection in the Ontario Superior Court of Justice (Commercial List) under the Companies' Creditors Arrangement Act (the "CCAA").

165. In the same Form 8-K filing, PSG announced that it had entered into an asset purchase agreement for the sale of the Company with a group of investors led by Sagard Capital Partners, L.P. and Fairfax Financial Holdings Limited.

166. At the same time, PSG also announced the departure of Defendant Rosenthal from the Company.

V. THE FACTS GIVE RISE TO A STRONG INFERENCE THAT PSG AND THE DEFENDANTS ACTED WITH SCIENTER

167. As set forth above, Defendants and PSG knew or recklessly disregarded the truth about the Company's sales practices. Meetings involving the sales representatives, like CW1, were held twice per year. Defendant Rosenthal, as CFO and EVP of Finance, attended those

meetings. CW3 recounted that Kinnaly told PSG's Board of Directors, including Defendant Davis about the Company's aggressive and coercive sales practices as early as 2013 and warned them that those practices would catch up with the Company. Furthermore, according to Roustan's March 2016 press release, Roustan met with Defendant Davis and the Chairman of the PSG's Board during the Class Period and told them that demand was going to drop as a result of the Company's decision to proceed with the Bauer "Own the Moment" retail stores.

168. In addition to the foregoing facts, all of which support a strong inference of scienter on the part of Defendants and PSG, Defendants Davis and Rosenthal also had the motive and opportunity to foster PSG's aggressive and unsustainable sales practices and revenue manipulation. The opening of Bauer's "Own the Moment" retail stores in January 2015, which customers of PSG were resoundingly unsupportive of, put PSG directly into competition with its own customers, causing overall sales and revenue to decline.

169. Roustan made clear to PSG's Board of Directors, including Defendant Davis, that customer demand would decline as a result of this retail strategy.

170. PSG and Defendants pushed ahead with their retail stores during the Class Period anyway, and concealed the truth as the risks of their strategy materialized.

171. They were thus motivated to conceal the true lackluster performance of PSG's core business, *i.e.*, its hockey and baseball/softball sales and revenue figures, by persuading customers to move purchases to earlier quarters and bullying and coercing retailers to order more product that was needed in exchange for keeping their existing discounts. These sales practices were effective because they made the Company's retail strategy, which was otherwise unprofitable, appear to be profitable in the short term.

172. As CEO during the time PSG acquired Easton Baseball/Softball and Easton

Hockey, and at the time the “Own the Moment” store strategy (a strategy that was widely disliked by the Company’s customers) was created and announced to the market, Defendant Davis needed PSG to continue the success it had been experiencing before the Class Period and thus was further motivated to conceal the truth regarding PSG’s sales and demand.

173. As CFO and President of PSG Brands during the same period, Defendant Rosenthal also needed PSG to continue the success it had experienced before the Class Period and thus was motivated to conceal the truth regarding PSG’s “record-setting” financial results.

174. PSG and Defendants each acted with scienter in that, as set forth herein, each knew or recklessly disregarded that PSG’s public statements about the Company’s revenues, sales and profitability issued during the Class Period were materially false and misleading. These Defendants were the senior management of the Company, and thus at all times were the individuals with principal responsibility for ensuring that the Company’s statements were accurate and truthful, and spoke on the Company’s behalf.

A. Defendant Davis’ Abrupt Departure Just Days After the Truth Was Revealed Supports an Inference of Scienter

175. The suspension of PSG’s “Own the Moment” retail strategy and Defendant Davis’ departure from PSG all within one week of the materialization of the risks concealed by Defendants’ fraudulent scheme are highly indicative of scienter.

VI. LOSS CAUSATION

176. During the Class Period, as detailed herein, PSG and Defendants engaged in a scheme to deceive the market and a course of conduct that artificially inflated and/or maintained the price of PSG’s common stock and operated as a fraud or deceit on Class Period purchasers of PSG common stock by failing to disclose and misrepresenting the true reasons for the growth of the Company’s sales as detailed herein. As the risks of PSG’s and Defendants’ fraudulent

scheme materialized and the falsity of their prior misrepresentations and fraudulent conduct became apparent to the market, the artificial inflation embedded in the price of PSG stock dissipated and the price of PSG common stock declined significantly.

177. As a result of their purchases of PSG common stock during the Class Period, Lead Plaintiff and the other Class members suffered economic loss, *i.e.*, damages, under the federal securities laws. PSG's and Defendants' false and misleading statements and omissions had their intended effect and caused PSG common stock to trade at artificially-inflated and/or maintained levels throughout the Class Period, reaching as high as \$21.65 per share on May 18, 2015.

178. By concealing from investors the adverse facts detailed herein, PSG and Defendants presented a misleading picture of PSG's business, products and operations. As the truth about the Company materialized and began to be revealed to the market, the price of PSG common stock began to fall significantly. These declines removed the artificial inflation from the price of PSG common stock, causing real economic loss to investors who had purchased PSG common stock during the Class Period.

179. The declines in the price of PSG common stock after the truth came to light were a direct result of the nature and extent of Defendants' fraudulent misrepresentations and omissions being revealed to investors and the market. The timing and magnitude of the price decline in PSG common stock indicate that the losses suffered by Lead Plaintiff and Class members was not exclusively caused by changed market conditions, overall stock market and/or industry-specific factors, or Company-specific information unrelated to PSG's and Defendants' fraudulent conduct.

180. The economic loss, *i.e.*, damages, suffered by Lead Plaintiff and the other Class

members was a direct result of PSG's and Defendants' fraudulent scheme to artificially inflate and/or maintain the price of PSG common stock and the subsequent significant decline in the value of PSG common stock when the inherent risks of PSG's and Defendants' fraudulent scheme materialized toward the end of the Class Period.

VII. APPLICABILITY OF PRESUMPTION OF RELIANCE: FRAUD ON THE MARKET DOCTRINE

181. At all relevant times, the market for PSG's common stock was an efficient market for the following reasons, among others:

- i. PSG common stock met the requirements for listing and was listed and actively traded on the NYSE during the Class Period, a highly efficient and automated market;
- ii. As a regulated issuer during the Class Period, PSG filed periodic public reports with the SEC and the NYSE;
- iii. PSG regularly communicated with public investors via established market communications mechanisms, including through regular dissemination of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and
- iv. PSG was followed by several securities analysts employed by major brokerage firms who wrote the reports that were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

182. As a result of the foregoing, the market for PSG common stock promptly digested current information regarding PSG from all publicly available sources, including nationally circulated newspapers, and reflected such information in PSG's stock price. Under these circumstances, all purchasers of PSG common stock during the Class Period suffered similar

injury through their purchase of PSG common stock at artificially inflated and/or maintained prices and a presumption of reliance applies to Lead Plaintiff's allegations.

VIII. APPLICABILITY OF PRESUMPTION OF RELIANCE – *AFFILIATED UTE* DOCTRINE

183. Lead Plaintiff and the Class are also entitled to a presumption of reliance under *Affiliated Ute v. United States*, 406 U.S. 128 (1972), because the claims asserted herein against Defendants⁸ are primarily predicated upon the omission of material facts that PSG and Defendants had a duty to disclose, namely that PSG's financial results during the Class Period were the result of an undisclosed practice of coercing customers to pull sales into earlier quarters in order to inflate the Company's performance.

IX. NO SAFE HARBOR

184. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this complaint. Many of the specific statements pleaded herein were not identified as "forward-looking statements" when made. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein, Defendants are liable for those false forward-looking statements because at the time each of those purportedly forward-looking statements was made, the particular speaker knew that the particular forward-looking statement was false, and/or the forward-looking statement was

⁸ Again, because PSG has filed for bankruptcy protection and is covered by the Bankruptcy Code's Automatic Stay provision, the claims asserted herein are not asserted against PSG at this time.

authorized and/or approved by an executive officer of PSG who knew that those statements were false when made.

X. CLASS ACTION ALLEGATIONS

185. Lead Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(3) on behalf of a class consisting of all persons and entities that purchased or acquired PSG common stock on the New York Stock Exchange (“NYSE”) during the Class Period, seeking to pursue remedies under the Exchange Act. Excluded from the Class are Defendants; the officers and directors of the Company, at all relevant times; members of their immediate families and their legal representatives, heirs, successors, or assigns; and any entity in which any of the Defendants have or had a controlling interest.

186. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, PSG common stock was actively traded on the NYSE. While the exact number of Class members is unknown to Lead Plaintiff at this time and can only be ascertained through appropriate discovery, Lead Plaintiff believes that there are hundreds or thousands of members in the proposed Class. Millions of PSG shares were traded publicly during the Class Period on the NYSE. Record owners and other members of the Class may be identified from records maintained by PSG or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

187. Lead Plaintiff’s claims are typical of the claims of Class members, who were all similarly affected by Defendants’ wrongful conduct in violation of federal securities laws that is complained of herein. Further, Lead Plaintiff will fairly and adequately protect the interests of Class members and has retained counsel competent and experienced in class and securities litigation.

188. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- a) whether the federal securities laws were violated by PSG and Defendants' conduct alleged herein;
- b) whether statements made by PSG and Defendants to the investing public during the Class Period omitted or misrepresented material facts about the business, operations, known trends and prospects of PSG; and
- c) to what extent Class members have sustained damages and the proper measure of damages.

189. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Further, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation makes it impossible for Class members to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

XI. CAUSES OF ACTION

COUNT I

(Against Defendants for Violation of Section 10(b) of the Exchange Act and Rule 10b-5 of the Securities and Exchange Commission)

190. Lead Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

191. This Count is asserted against both Defendants and is based upon Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder.

192. During the Class Period, Defendants, singularly and in concert, directly made

various deceptive and untrue statements of material facts and omitted to state material facts in order to make the statements made, in light of the circumstances under which they were made, not misleading to Lead Plaintiff and the other members of the Class, including statements in SEC filings and other public statements that falsely touted the financial strength of the Company and strength and growth of the Company's sales and revenue streams. The purpose and effect of said scheme, plan, and unlawful course of conduct was, among other things, to induce Lead Plaintiff and the other members of the Class to purchase PSG common stock during the Class Period at artificially inflated and/or maintained prices.

193. During the Class Period, PSG and Defendants knowingly and/or recklessly issued, caused to be issued, or participated in the issuance of, the preparation and issuance of deceptive and materially false and misleading statements to the investing public as particularized above.

194. As a result of the dissemination of the false and misleading statements set forth above, the price of PSG common stock was artificially inflated and/or maintained during the Class Period. In ignorance of the false and misleading nature of the statements described above and the deceptive and manipulative devices and contrivances employed by PSG and Defendants, Lead Plaintiff and the other members of the Class relied, to their detriment, on the integrity of the price of the common stock of PSG. Had Lead Plaintiff and the other members of the Class known the truth, they would not have purchased said shares or would not have purchased them at the inflated prices that were paid.

195. Lead Plaintiff and the other members of the Class have suffered substantial damages as a result of the wrongs herein alleged in an amount to be proved at trial.

196. By reason of the foregoing, Defendants directly violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder in that they made untrue statements of

material facts or omitted to state material facts in order to make the statements made, in light of the circumstances under which they were made, not misleading during the Class Period.

COUNT II

(Against Defendants for Violation of Section 20(a) of the Exchange Act)

197. Lead Plaintiff repeats and realleges each and every allegation contained in each of the foregoing paragraphs as if set forth fully herein.

198. Defendants Davis and Rosenthal, by virtue of their positions and specific acts described above, were, at the time of the wrongs alleged herein, controlling persons of the Company within the meaning of Section 20(a) of the Exchange Act.

199. Defendants had the power and influence and exercised the same to cause the Company to engage in the illegal conduct and practices complained of herein.

200. By reason of the conduct alleged in Count I of this Complaint which also applies to the Company and for which the Company would be liable had it been named as a Defendant herein, Defendants are liable for the aforesaid wrongful conduct as control persons of the Company, and are liable to Lead Plaintiff and to the other members of the Class for the substantial damages which they suffered in connection with their purchases of PSG common stock during the Class Period.

WHEREFORE, Lead Plaintiff prays for relief and judgment, as follows:

(a) determining that this action is a proper class action and certifying Lead Plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure;

(b) awarding compensatory damages in favor of Lead Plaintiff and the other Class members against both Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

(c) awarding Lead Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

(d) such other and further relief as the Court may deem just and proper.

JURY DEMAND

Lead Plaintiff demands a trial by jury.

Dated: November 3, 2016

Respectfully submitted,

**COHEN MILSTEIN SELLERS
& TOLL PLLC**

/s/ Steven J. Toll

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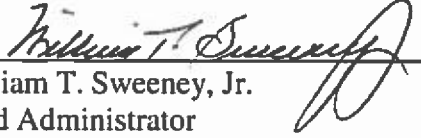
*Additional Attorneys for the Plumbers &
Pipefitters National Pension Fund*

CERTIFICATION

William T. Sweeney, Jr., Fund Administrator for the Plumbers & Pipefitters National Pension Fund (“Plumbers National Pension Fund”), declares, as to the claims asserted under the federal securities laws, that:

1. I am authorized to make this certification on behalf of Plumbers National Pension Fund.
2. I have reviewed a complaint filed in this matter and wish to serve as a lead plaintiff.
3. Plumbers National Pension Fund did not purchase the securities that are the subject of this action at the direction of its counsel or to participate in this action.
4. Plumbers National Pension Fund is willing to serve as a lead plaintiff and class representative on behalf of the Class, including providing testimony at deposition and trial if necessary.
5. Plumbers National Pension Fund’s transactions in the securities of Performance Sports Group Ltd. that are the subject of this action are set forth in Schedule A, attached hereto.
6. During the three years prior to the date of this Certification, Plumbers National Pension Fund sought to serve as a representative party for a class under the federal securities laws in the following cases:
 - *Wallace v. IntraLinks Holdings, Inc.*, Civ. No. 11-8861-TPG (S.D.N.Y.);
 - *In re Questcor Sec. Litig.*, Civ. No. 12-1623-DMG (C.D. Cal);
 - *In re ITT Educ. Services, Inc. Sec. Litig.*, Civ. No. 13-cv-1620-JPO (S.D.N.Y.);
 - *Firefighters Pension & Relief Fund of the City of New Orleans v. Bulmahn, et al.*, Civ. No. 13-cv-03935 (E.D. La.);
 - *Singh v. Orthofix International et al.*, Civ. No. 13-cv-05696-JGK (S.D.N.Y.);
 - *Isolde v. Trinity Industries, Inc. et al.*, Civ. No. 15-cv-02093 (N.D. Tex.);
 - *Luna v. Marvell Technology Group, Ltd. et al.*, Civ. No. 15-cv-07214 (S.D.N.Y.);
 - *In re: Barclays Liquidity Cross and High Frequency Trading Litigation*, No. 14-md-2589 (JMF) (S.D.N.Y.);
 - *West Palm Beach Police Pension Fund v. DFC Global Corp., et al.*, Civ. No. 13-cv-06731 (E.D. Pa.)
7. Plumbers National Pension Fund will not accept any payment for serving as a class representative on behalf of the class beyond its *pro rata* share of any recovery, except such reasonable costs and expenses (including lost wages) relating to the representation of the class as ordered or approved by the court.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 17th day of May 2016.



William T. Sweeney, Jr.
Fund Administrator
Plumbers & Pipefitters National Pension Fund

SCHEDULE A

Trade Date	Transaction Type	# Shares	Share Price (\$)
8/28/2015	PURCHASES	8,700	12.94
8/28/2015	PURCHASES	5,000	12.88
8/31/2015	PURCHASES	6,800	12.93
9/1/2015	PURCHASES	4,900	12.52
9/2/2015	PURCHASES	1,400	12.15
9/2/2015	PURCHASES	1,000	12.15
9/3/2015	PURCHASES	2,095	12.95
9/8/2015	PURCHASES	7,473	13.81
9/25/2015	PURCHASES	11,300	13.97
9/29/2015	PURCHASES	1,800	13.89
10/1/2015	PURCHASES	2,900	12.58
11/3/2015	PURCHASES	6,450	11.87
11/4/2015	PURCHASES	10,049	11.87
11/10/2015	PURCHASES	7,825	11.1
11/30/2015	PURCHASES	8,700	11.62
12/7/2015	PURCHASES	4,300	11.46
12/8/2015	PURCHASES	7,700	11.18
12/9/2015	PURCHASES	4,740	10.96
1/20/2016	PURCHASES	1,650	5.83
3/8/2016	SALES	13,700	3.93
3/8/2016	SALES	49,700	3.18
3/9/2016	SALES	22,800	3.3
3/10/2016	SALES	18,582	3.8

CERTIFICATE OF SERVICE

I, Steven J. Toll, counsel for Lead Plaintiff, hereby certify that on November 3, 2016, I filed the foregoing Second Amended Class Action Complaint for Violations of the Federal Securities Laws on the United States District Court for the Southern District of New York's Electronic Case Filing System which caused a copy of this document to be served on counsel of record for all Parties.

/s/ Steven J. Toll
Steven J. Toll

EXHIBIT B
Lead Plaintiff Appointment Order

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 06/07/2016

-----X
JUAN FRANCISCO NIEVES, *as trustee of the* :
Gonzalez Coronado Trust, Individually and on behalf of all :
others similarly situated, :
, :
:

1:16-cv-3591-GHW

Plaintiff, :

ORDER

-v- :

PERFORMANCE SPORTS GROUP, LTD., :
KEVIN DAVIS, MARK VENDETTI, and :
AMIR ROSENTHAL, :
Defendants. :
-----X

GREGORY H. WOODS, United States District Judge:

Having considered the papers filed in support of the Motion of Plumbers & Pipefitters National Pension Fund (“Plumbers & Pipefitters” or “Movant”) for Appointment as Lead Plaintiff and Appointment of Lead Counsel, pursuant to Section 21D(a)(3)(B) of the Securities Exchange Act of 1934 (the “Exchange Act”), as amended by the Private Securities Litigation Reform Act of 1995 (“PSLRA”), at 15 U.S.C. § 78u-4, and for good cause shown, the Court hereby enters the following Order.

1. Plumbers & Pipefitters has moved the Court to be appointed Lead Plaintiff in this class action and to approve the counsel retained to be Lead Counsel.

2. Having considered the provisions of Section 21D(a)(3)(B) of the Exchange Act, 15 U.S.C. § 78u-4(a)(3)(B), the Court hereby determines that Plumbers & Pipefitters is the most adequate plaintiff and satisfies the requirements of the PSLRA. The Court hereby appoints Plumbers & Pipefitters as Lead Plaintiff to represent the interests of the class in this Action.

3. Pursuant to Section 21D(a)(3)(B)(v) of the Exchange Act, 15 U.S.C. § 78u-4(a)(3)(B)(v), Plumbers & Pipefitters has selected and retained the law firm of Cohen Milstein Sellers

& Toll PLLC to serve as Lead Counsel. The Court approves Movant's selection of Lead Counsel for this Action.

4. Lead Counsel shall have the following responsibilities and duties:

- a. the briefing and argument of any and all motions;
- b. the conduct of any and all discovery proceedings;
- c. the examination of any and all witnesses in depositions;
- d. the selection of counsel to act as spokesperson at all pretrial conferences;
- e. the organization of meetings of plaintiffs' counsel as they deem necessary and appropriate from time to time;
- f. settlement negotiations with counsel for defendants;
- g. the pretrial discovery proceedings and the preparation for trial and the trial of this matter, and delegation of work responsibilities to selected counsel as may be required;
- h. the preparation and filing of all pleadings; and
- i. the supervision of all other matters concerning the prosecution or resolution of the Action.

5. No motion, discovery request, or other pretrial proceedings shall be initiated or filed by any plaintiffs without the approval of Lead Counsel, so as to prevent duplicative pleadings or discovery by plaintiffs. No settlement negotiations shall be conducted without the approval of Lead Counsel.

6. Lead Counsel shall have the responsibility of receiving and disseminating Court orders and notices.

7. Lead Counsel shall be the contact between plaintiffs' counsel and defendants' counsel, as well as the spokespersons for all plaintiffs' counsel, and shall direct and coordinate the activities of plaintiffs' counsel. Lead Counsel shall be the contact between the Court and plaintiffs and their counsel.

The Clerk of Court is directed to terminate the motions pending at Dkt. Nos. 6, 8.

Movant is directed to serve a copy of this order on the defendants and to retain proof of service.

SO ORDERED.

Dated: June 7, 2016
New York, New York



GREGORY H. WOODS
United States District Judge

Electronic Proof of Claim

Adobe Sign Document History

02/06/2017

United States Bankruptcy Court District of Delaware, Delaware Superior Court of Justice, Court File No. 16-12373-KJC

Electronic Proof of Claim

Proof of Claim

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy proceeding. Other than a claim for a debt of \$10,000 or less, this form must be filed with a supporting affidavit. The supporting affidavit must be filed with the claim form and must be sworn to by the claimant or the claimant's attorney. The supporting affidavit must be filed with the claim form and must be sworn to by the claimant or the claimant's attorney. The supporting affidavit must be filed with the claim form and must be sworn to by the claimant or the claimant's attorney.

Claimant Information

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____

Email: _____

Debtor Information

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____

Email: _____

Claim Information

Amount: _____

Description: _____

Signature

Signature: _____

Date: _____

Created: 02/06/2017

By: Prime Clerk (epoc@primeclerk.com)

Status: Signed

Transaction ID: CBJCHBCAABAA2FAYmn6pOtHny0Bck9hRdtKCxQ94SpK8

"Electronic Proof of Claim" History

-  Widget created by Prime Clerk (epoc@primeclerk.com)
02/06/2017 - 1:41:26 PM EST
-  Andrew Behlmann (abehlmann@lowenstein.com) uploaded the following supporting documents:
 Attachment
 02/06/2017 - 1:45:23 PM EST
-  Widget filled in by Andrew Behlmann (abehlmann@lowenstein.com)
02/06/2017 - 1:45:23 PM EST- IP address: 199.127.9.1
-  (User email address provided through API User-Agent: Mozilla/5.0 (Windows NT 6.1; Win64; x64) AppleWebKit/537.36 (KHTML, like Gecko) Chrome/51.0.2704.103 Safari/537.36)
02/06/2017 - 1:45:28 PM EST- IP address: 199.127.9.1
-  Signed document emailed to Prime Clerk (epoc@primeclerk.com) and Andrew Behlmann (abehlmann@lowenstein.com)
02/06/2017 - 1:45:28 PM EST

EXHIBIT C

PSG Stock Trading Information

Security PSGHQ US Equity
 Start Date 1/15/2015 0:00
 End Date 3/14/2016 0:00
 Period D
 Currency USD

DATE	EQY_FLOAT	PX_VOLUME	NUMBER OF TRADES
1/15/2015	44.99	290,862	1,967
1/16/2015	44.99	403,148	1,623
1/20/2015	44.99	88,197	649
1/21/2015	44.99	113,153	455
1/22/2015	44.99	50,748	229
1/23/2015	44.99	63,618	436
1/26/2015	44.99	49,684	398
1/27/2015	44.99	14,191	147
1/28/2015	44.99	61,065	286
1/29/2015	44.99	66,162	570
1/30/2015	44.99	33,321	390
2/2/2015	44.99	50,747	516
2/3/2015	44.99	68,119	598
2/4/2015	44.99	123,509	493
2/5/2015	44.99	82,447	573
2/6/2015	44.99	39,186	333
2/9/2015	44.99	30,356	250
2/10/2015	44.99	38,420	381
2/11/2015	44.99	22,014	196
2/12/2015	44.99	38,603	301
2/13/2015	44.99	57,900	437
2/17/2015	44.99	28,213	262
2/18/2015	44.99	23,787	217
2/19/2015	44.99	21,299	180
2/20/2015	44.99	52,476	355
2/23/2015	44.99	47,586	444
2/24/2015	44.99	39,846	359
2/25/2015	44.99	25,398	202
2/26/2015	44.99	34,333	383
2/27/2015	44.99	37,709	243
3/2/2015	44.99	22,892	195
3/3/2015	44.99	37,467	339
3/4/2015	44.99	33,287	314
3/5/2015	44.99	65,212	439

Security PSGHQ US Equity
 Start Date 1/15/2015 0:00
 End Date 3/14/2016 0:00
 Period D
 Currency USD

DATE	EQY_FLOAT	PX_VOLUME	NUMBER OF TRADES
3/6/2015	44.99	54,985	502
3/9/2015	44.99	13,915	154
3/10/2015	44.99	44,273	403
3/11/2015	44.99	29,398	270
3/12/2015	44.99	28,889	298
3/13/2015	44.99	32,888	288
3/16/2015	44.99	43,687	296
3/17/2015	44.99	88,078	727
3/18/2015	44.99	43,922	402
3/19/2015	44.99	52,023	384
3/20/2015	44.99	82,467	488
3/23/2015	44.99	69,540	477
3/24/2015	44.99	80,822	613
3/25/2015	44.99	95,608	746
3/26/2015	44.99	44,522	401
3/27/2015	44.99	28,146	265
3/30/2015	44.99	146,290	1,124
3/31/2015	44.99	63,501	515
4/1/2015	44.99	228,040	1,198
4/2/2015	44.99	142,589	946
4/6/2015	44.99	108,113	604
4/7/2015	44.99	274,638	847
4/8/2015	44.99	204,277	983
4/9/2015	44.99	98,703	748
4/10/2015	44.99	78,174	514
4/13/2015	44.99	454,890	2,844
4/14/2015	44.99	484,790	2,914
4/15/2015	44.99	275,286	1,703
4/16/2015	44.99	383,969	2,527
4/17/2015	44.99	398,544	2,156
4/20/2015	44.99	243,998	1,463
4/21/2015	44.99	156,590	1,265
4/22/2015	44.99	109,366	935
4/23/2015	44.99	223,635	1,827

Security PSGHQ US Equity
 Start Date 1/15/2015 0:00
 End Date 3/14/2016 0:00
 Period D
 Currency USD

DATE	EQY_FLOAT	PX_VOLUME	NUMBER OF TRADES
4/24/2015	44.99	146,659	1,380
4/27/2015	44.99	162,348	1,318
4/28/2015	44.992	174,321	1,383
4/29/2015	44.992	149,897	1,286
4/30/2015	45.032	236,037	1,798
5/1/2015	45.032	158,899	1,247
5/4/2015	45.032	145,912	1,107
5/5/2015	45.032	84,149	753
5/6/2015	45.032	153,460	1,235
5/7/2015	44.971	70,445	668
5/8/2015	44.971	120,336	1,030
5/11/2015	44.971	139,214	1,154
5/12/2015	44.971	218,823	2,044
5/13/2015	44.971	169,792	1,584
5/14/2015	45.032	332,356	2,395
5/15/2015	45.032	205,935	1,144
5/18/2015	45.032	158,433	1,301
5/19/2015	45.032	244,727	1,900
5/20/2015	45.049	148,072	1,254
5/21/2015	45.057	164,493	1,532
5/22/2015	45.057	150,306	1,585
5/26/2015	45.173	272,291	2,196
5/27/2015	45.173	376,127	2,365
5/28/2015	45.173	240,648	1,744
5/29/2015	45.359	257,304	2,429
6/1/2015	45.359	140,292	1,387
6/2/2015	45.359	205,311	1,599
6/3/2015	45.359	139,570	1,157
6/4/2015	45.359	144,116	1,293
6/5/2015	45.359	256,128	2,087
6/8/2015	45.359	223,115	1,853
6/9/2015	45.359	144,631	1,228
6/10/2015	45.359	226,588	1,981
6/11/2015	45.359	204,962	1,033

Security PSGSQ US Equity
 Start Date 1/15/2015 0:00
 End Date 3/14/2016 0:00
 Period D
 Currency USD

DATE	EQY_FLOAT	PX_VOLUME	NUMBER OF TRADES
6/12/2015	45.359	98,794	892
6/15/2015	45.359	165,512	1,753
6/16/2015	45.359	125,448	1,191
6/17/2015	45.359	240,330	1,536
6/18/2015	45.359	218,827	1,780
6/19/2015	45.359	215,466	1,853
6/22/2015	45.359	224,667	2,027
6/23/2015	45.359	387,467	3,048
6/24/2015	45.359	244,324	2,171
6/25/2015	45.359	368,307	2,835
6/26/2015	45.359	2,924,024	5,605
6/29/2015	45.359	369,921	2,886
6/30/2015	45.359	354,266	2,578
7/1/2015	45.359	181,748	1,493
7/2/2015	45.386	163,959	1,488
7/6/2015	45.386	290,582	2,490
7/7/2015	45.386	293,996	2,858
7/8/2015	45.386	447,726	3,600
7/9/2015	45.386	575,614	3,810
7/10/2015	45.386	243,227	2,117
7/13/2015	45.386	251,499	1,992
7/14/2015	45.386	153,605	1,324
7/15/2015	45.386	242,365	1,813
7/16/2015	45.386	323,117	2,661
7/17/2015	45.386	407,523	3,471
7/20/2015	45.386	545,753	3,736
7/21/2015	45.386	335,807	2,435
7/22/2015	45.386	215,615	1,540
7/23/2015	45.386	138,154	1,112
7/24/2015	45.386	213,127	1,569
7/27/2015	45.386	206,369	1,579
7/28/2015	45.386	204,848	1,570
7/29/2015	45.386	179,592	1,344
7/30/2015	45.386	171,390	1,274

Security PSGSQ US Equity
 Start Date 1/15/2015 0:00
 End Date 3/14/2016 0:00
 Period D
 Currency USD

DATE	EQY_FLOAT	PX_VOLUME	NUMBER OF TRADES
7/31/2015	45.386	152,131	1,029
8/3/2015	45.386	138,288	1,283
8/4/2015	45.386	145,653	1,238
8/5/2015	45.386	235,610	2,002
8/6/2015	45.386	212,080	1,612
8/7/2015	45.386	247,094	1,548
8/10/2015	45.386	221,010	1,261
8/11/2015	45.386	148,814	1,321
8/12/2015	45.386	265,947	1,820
8/13/2015	45.386	172,419	1,523
8/14/2015	45.386	247,036	2,073
8/17/2015	45.386	470,553	2,741
8/18/2015	45.386	152,183	1,315
8/19/2015	45.386	249,432	2,024
8/20/2015	45.386	456,322	3,105
8/21/2015	45.386	356,503	2,774
8/24/2015	45.386	337,875	2,745
8/25/2015	45.386	337,205	2,699
8/26/2015	45.386	252,857	2,054
8/27/2015	45.386	1,125,563	7,800
8/28/2015	45.386	415,209	3,422
8/31/2015	45.386	285,097	2,455
9/1/2015	45.386	504,662	4,205
9/2/2015	45.386	467,511	3,733
9/3/2015	45.386	557,649	4,138
9/4/2015	45.386	283,258	2,414
9/8/2015	45.336	574,755	4,485
9/9/2015	45.331	294,973	2,095
9/10/2015	45.349	195,957	1,591
9/11/2015	45.349	195,967	1,536
9/14/2015	45.349	250,678	1,213
9/15/2015	45.344	236,174	1,580
9/16/2015	45.344	250,785	1,940
9/17/2015	45.344	223,248	1,985

Security PSGLO US Equity
 Start Date 1/15/2015 0:00
 End Date 3/14/2016 0:00
 Period D
 Currency USD

DATE	EQY_FLOAT	PX_VOLUME	NUMBER OF TRADES
9/18/2015	45.344	261,920	1,914
9/21/2015	45.344	192,708	1,763
9/22/2015	45.344	210,777	1,790
9/23/2015	45.344	278,413	2,237
9/24/2015	45.344	238,923	1,878
9/25/2015	45.344	1,406,999	9,211
9/28/2015	45.344	454,038	3,746
9/29/2015	45.344	543,971	4,468
9/30/2015	45.346	483,862	3,367
10/1/2015	45.346	388,662	3,131
10/2/2015	45.346	526,600	2,797
10/5/2015	45.346	449,856	3,029
10/6/2015	45.346	261,444	1,976
10/7/2015	45.346	194,578	1,640
10/8/2015	45.346	226,835	1,739
10/9/2015	45.346	129,356	1,397
10/12/2015	45.346	116,464	975
10/13/2015	45.352	323,230	2,379
10/14/2015	45.352	430,565	3,013
10/15/2015	45.352	641,833	4,584
10/16/2015	45.352	522,710	4,123
10/19/2015	45.352	273,895	2,092
10/20/2015	45.352	417,548	2,722
10/21/2015	45.352	296,466	2,544
10/22/2015	45.352	478,183	3,206
10/23/2015	45.352	479,381	3,389
10/26/2015	45.352	588,722	2,678
10/27/2015	45.344	631,041	2,809
10/28/2015	45.344	572,208	3,800
10/29/2015	45.334	244,329	1,563
10/30/2015	45.334	522,880	3,053
11/2/2015	45.334	378,476	2,919
11/3/2015	45.334	285,916	2,354
11/4/2015	45.334	252,968	1,945

Security PSGSQ US Equity
 Start Date 1/15/2015 0:00
 End Date 3/14/2016 0:00
 Period D
 Currency USD

DATE	EQY_FLOAT	PX_VOLUME	NUMBER OF TRADES
11/5/2015	45.334	192,975	1,635
11/6/2015	45.334	281,824	2,384
11/9/2015	45.334	182,734	1,553
11/10/2015	45.334	332,821	1,709
11/11/2015	45.334	382,837	2,414
11/12/2015	45.334	326,252	3,084
11/13/2015	45.334	254,401	1,998
11/16/2015	45.334	642,005	3,367
11/17/2015	45.334	590,463	3,784
11/18/2015	45.334	1,405,849	7,301
11/19/2015	45.334	476,357	3,058
11/20/2015	45.334	424,665	2,771
11/23/2015	45.334	276,568	1,763
11/24/2015	45.334	186,501	1,499
11/25/2015	45.334	286,644	1,786
11/27/2015	45.334	66,526	614
11/30/2015	45.334	272,004	2,236
12/1/2015	45.334	333,923	2,782
12/2/2015	45.334	334,056	2,584
12/3/2015	45.334	225,168	1,524
12/4/2015	45.334	131,982	1,047
12/7/2015	45.334	185,723	1,319
12/8/2015	45.334	202,308	1,652
12/9/2015	45.334	351,957	2,887
12/10/2015	45.334	310,480	2,115
12/11/2015	45.334	324,840	1,961
12/14/2015	45.334	762,815	4,701
12/15/2015	45.334	364,599	2,622
12/16/2015	45.334	256,761	2,048
12/17/2015	45.334	320,980	2,067
12/18/2015	45.334	403,099	2,567
12/21/2015	45.334	204,048	1,536
12/22/2015	45.334	171,907	1,622
12/23/2015	45.334	136,830	1,266

Security PSGIQ US Equity
 Start Date 1/15/2015 0:00
 End Date 3/14/2016 0:00
 Period D
 Currency USD

DATE	EQY_FLOAT	PX_VOLUME	NUMBER OF TRADES
12/24/2015	45.334	151,783	1,597
12/28/2015	45.334	190,260	1,194
12/29/2015	45.334	243,947	1,680
12/30/2015	45.334	301,970	1,921
12/31/2015	45.334	304,484	2,019
1/4/2016	45.334	365,343	2,722
1/5/2016	45.334	287,075	1,794
1/6/2016	45.334	354,184	2,534
1/7/2016	45.334	430,358	3,154
1/8/2016	45.334	665,248	3,847
1/11/2016	45.334	336,297	2,552
1/12/2016	45.334	527,601	4,169
1/13/2016	45.334	420,382	2,926
1/14/2016	45.347	1,125,820	6,247
1/15/2016	45.347	2,036,498	9,409
1/19/2016	45.347	681,406	4,538
1/20/2016	45.347	1,013,795	6,901
1/21/2016	45.347	709,936	4,543
1/22/2016	45.347	528,829	3,537
1/25/2016	45.347	630,832	4,232
1/26/2016	45.347	448,326	3,252
1/27/2016	45.347	492,971	3,477
1/28/2016	45.347	577,131	2,849
1/29/2016	45.347	640,397	3,752
2/1/2016	45.347	369,472	3,469
2/2/2016	45.347	337,484	2,520
2/3/2016	45.347	445,661	3,171
2/4/2016	45.347	538,472	4,018
2/5/2016	45.347	409,973	3,608
2/8/2016	45.347	390,077	2,580
2/9/2016	45.347	363,329	2,524
2/10/2016	45.347	320,943	2,333
2/11/2016	45.347	362,633	2,821
2/12/2016	45.347	143,561	1,023

Security PSGSQ US Equity
 Start Date 1/15/2015 0:00
 End Date 3/14/2016 0:00
 Period D
 Currency USD

DATE	EQY_FLOAT	PX_VOLUME	NUMBER OF TRADES
2/16/2016	45.347	255,117	1,832
2/17/2016	45.347	301,025	2,123
2/18/2016	45.347	367,551	2,500
2/19/2016	45.347	223,176	1,455
2/22/2016	45.347	334,475	2,062
2/23/2016	45.347	279,396	1,754
2/24/2016	45.347	146,534	1,299
2/25/2016	45.347	149,356	1,162
2/26/2016	45.347	85,358	784
2/29/2016	45.347	248,321	1,476
3/1/2016	45.347	190,539	1,423
3/2/2016	45.347	285,294	2,199
3/3/2016	45.347	319,504	2,565
3/4/2016	45.347	406,558	3,192
3/7/2016	45.347	142,776	1,153
3/8/2016	45.347	18,601,514	70,440
3/9/2016	45.347	9,275,276	30,799
3/10/2016	45.347	5,376,575	16,035
3/11/2016	45.347	4,456,073	13,708
3/14/2016	45.347	2,768,787	10,471
TOTAL		122,581,017	711,459

EXHIBIT D

Canadian Court's *MuscleTech* Decisions

2006 CarswellOnt 4929
Ontario Superior Court of Justice [Commercial List]

Muscletech Research & Development Inc., Re

2006 CarswellOnt 4929, [2006] O.J. No. 3300, 150 A.C.W.S. (3d) 534, 25 C.B.R. (5th) 218, 33 C.P.C. (6th) 131

**In the Matter of the Companies' Creditors
Arrangement Act, R.S.C. 1985, c. C-36 as amended**

In the Matter of Muscletech Research and Development Inc. and Those Entities Listed on Schedule "A" Hereto

Mesbur J.

Heard: July 31, 2006

Judgment: August 16, 2006 *

Docket: 06-CL-6241

Counsel: Fred Myers, David Bish for Applicants

Kevin P McElcheran for Representative Plaintiffs

James H. Grout, Kyla Mahar for Krys Osborne, on behalf of herself and all other similarly situated California consumers

Derrick Tay for Iovate Health & Sciences, DIP Lender

Jeff Carhart for Ad hoc Tort Claimants Committee

Natasha MacParland for Monitor, RSM Richter Inc.

Subject: Insolvency; Civil Practice and Procedure

Related Abridgment Classifications

For all relevant Canadian Abridgment Classifications refer to highest level of case via History.

Bankruptcy and insolvency

[XIX Companies' Creditors Arrangement Act](#)

[XIX.5 Miscellaneous](#)

Headnote

Bankruptcy and insolvency --- Proposal — Companies' Creditors Arrangement Act — Miscellaneous issues

Company was granted protection under Act to resolve large number of lawsuits — Call for claims order provided for broad notice to potential claimants — Creditors not filing proof of claim before specified date were barred from making claim — Four claimants purported to file proofs on behalf of all other similarly situated persons — Claimants had uncertified class actions pending in United States — Other creditors brought motion to prohibit representative claims — Motion granted — Act did not expressly prohibit representative claims but none had yet been allowed — This was not appropriate case to exercise discretion to allow claims because process under Act adequately protected interests of potential claimants — Claimants had as much notice and opportunity to file proofs as those who did — Absence of additional claims suggested they may not exist — Increasing potential claims after others were settled would prejudice success of process — Representative claims could continue as individual claims.

Table of Authorities

Cases considered by *Mesbur J.*:

Canadian Red Cross Society / Société Canadienne de la Croix-Rouge, Re (1999), 1999 CarswellOnt 3234, 12 C.B.R. (4th) 194, 39 C.P.C. (4th) 362 (Ont. S.C.J. [Commercial List]) — considered

Statutes considered:

Bankruptcy Code, 11 U.S.C. 1982
Chapter 15 — considered

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3
Generally — referred to

s. 2 "claim provable in bankruptcy" — considered

s. 121(1) — considered

s. 124 — considered

s. 124(1) — considered

s. 124(3) — considered

s. 135(1.1) [en. 1997, c. 12, s. 89(1)] — considered

Class Proceedings Act, 1992, S.O. 1992, c. 6
Generally — referred to

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36
Generally — referred to

s. 12(1) "claim" — considered

Rules considered:

Rules of Civil Procedure, R.R.O. 1990, Reg. 194
R. 10 — considered

MOTION by creditors under *Companies' Creditors Arrangement Act* to prohibit representative claims.

Mesbur J.:

Nature of the motions:

1 These motions raise the question of whether plaintiffs in uncertified class actions may file claims in the claims process in this CCAA proceeding on behalf of themselves and all other similarly situated plaintiffs. The applicant, the Monitor, the DIP lender and the Ad Hoc Tort Claimants Committee all take the position that claims filed in this manner are a nullity, and should be forever barred.

2 Mr. McElcheran, on behalf of four plaintiffs in four yet-uncertified US class actions, and Mr. Grout and Ms. Mahar for a plaintiff in a yet-uncertified class action in California all are of the view that there is jurisdiction under the CCAA to permit such representative claims, and either the claims should be permitted, or alternatively, the stay of proceedings imposed by the CCAA should be lifted to allow them to proceed to certification motions in the United States for their

respective actions. I will refer to Mr. McElcheran's clients as the "Representative Plaintiffs", and Mr. Grout's clients as the "California Consumers".

Some history:

3 The applicants, whom I will refer to collectively as "Muscletech", are comprised of the applicant, Muscletech, and its various subsidiaries and related companies listed in Schedule "A". Muscletech is a Canadian company. Historically, it was in the business of the manufacture and sale of dietary supplements. Some of these supplements contained the chemical ephedra, while others contained what have been referred to as prohormones. Muscletech was not alone in selling supplements containing these compounds. A number of American companies did so as well. Because of problems surrounding the compounds, Muscletech's products have ceased to contain them since 2002. Nevertheless, there was significant litigation, particularly in various states in the United States, brought by the consumers of these products, against both Muscletech and other companies.

4 The litigation is essentially of two kinds. The ephedra litigation primarily concerns those consumers of products containing ephedra who allege they have suffered physical damages as a result of using these products. The parties here refer to that litigation as the Products Liability litigation. The prohormone litigation has been brought by consumers of products containing prohormone who allege either that the product failed to produce the promised increased muscle mass, or alternatively, produced the promised increased muscle mass, but in doing so, must have contained a controlled substance, namely anabolic steroids. In the first instance, the prohormone consumers complain of being the victims of false and misleading advertising. In the second, they complain of being illegally sold a controlled substance.

5 For the purposes of this motion, there are several of these lawsuits that are important. First, there is the group of four yet to be certified class actions relating to prohormone claims. These have been described as the Hannon Claim, the Hochberg Claim, the Rodriguez Claim and the Guzman Claim, or collectively, the Representative Plaintiffs' Claims.

6 The Hannon Claim was commenced in the State of Florida. The Hochberg and Rodriguez claims were commenced in New York State, and the Guzman claim was commenced in California. Using the multi-district litigation (MDL) provisions available in the United States, all four proceedings have been moved to the United States District Court for the Southern District of New York (the "U.S. District Court") in New York City, to be managed, along with all the other related ephedra litigation by Justice Rakoff of that court. As I have said, I will refer to these four claims as the "Representative Plaintiffs' Claims", and to the plaintiffs in them as the "Representative Plaintiffs".

7 In addition to the Representative Plaintiffs' Claims, there is a further yet-to-be-certified class action in the United States that is germane to this motion. It has been described as the California Consumers' Claim. Unlike the Representative Plaintiffs' Claims, the California Consumers' Claim is an ephedra claim, seeking damages for personal injuries. I refer to this action as the "California Consumers' Claim", and its plaintiffs as the "California Consumers". The California Consumers participated on the motion simply to support the Representative Plaintiffs' position; they seek no relief themselves.

8 In January 2006, Muscletech sought and was granted CCAA protection in this court. The initial stay has been extended throughout the proceedings to August 11, 2006.¹ As the applicants' factum puts it, seeking CCAA protection was done "principally as a means of achieving a global resolution of the large number of product liability and other lawsuits" against the applicants and others. These lawsuits relate to the products that Muscletech and others sold.

9 Once the initial order was granted, the Monitor commenced ancillary proceedings in the USA under Chapter 15 of the U.S. Bankruptcy Code. These proceedings are before the U.S. District Court as well. As a result of these ancillary proceedings, there is a similar stay in the U.S.

10 At the same time, the Monitor also applied for a Temporary Restraining Order and Preliminary Injunction (TRO/PI Application) in the U.S. District Court, to prohibit anyone commencing or continuing any products liability actions.

The TRO/PI application was granted. That application is referred to as the "Adversary Proceeding" under Chapter 15 of the U.S. Bankruptcy Code.

11 On February 8, 2006, an Ad Hoc committee of products liability claimants sought and was granted representative status in this CCAA proceeding. On March 3, 2006, this court made a Call for Claims order. American counsel for both the Representative Plaintiffs and the California Consumers were served with the motion and draft order in relation to the Call for Claims order, just as they have been served throughout these CCAA proceedings. Although many interested parties made submissions concerning the terms of the order both before the hearing and at the hearing itself, counsel for the Representative Plaintiffs and California Consumers did not. They took no steps, as did the Ad Hoc Committee, to obtain representative status, or direction as to how they might put forward their claims.

12 As I have mentioned, Muscletech sought and obtained an order in the USA bankruptcy court, recognizing and enforcing the Ontario CCAA order, including its automatic stay. The Call for Claims order was similarly recognized and approved by Judge Rakoff in the U.S. District Court on March 22, 2006. Judge Rakoff is managing all the ephedra litigation, as well as the motions to recognize and enforce orders made here under these CCAA proceedings, and the Adversary Proceeding as well.

13 The Call for Claims order established a process for calling for what were defined as both "claims" and "product liability claims". The object of the order was to identify everyone with any kind of claim against Muscletech, its affiliates, and some defined Third Parties. The process envisions "a person" completing a proof of claim, with particulars of the claim, and sending it to the Monitor.² In this way, the Monitor could identify what Mr. Tay for the DIP lender has called the "total universe of potential claims". The Call for Claims order does not set the process for deciding on the validity of any of the claims. Its purpose is simply to identify them.

14 The Call for Claims order set out comprehensive definitions of what constitutes both types of claims, as well as an elaborate method of giving broad notice to anyone who might have a claim. In this case, the order required the Monitor to send a package containing a proof of claim and other necessary information to all known creditors of Muscletech. It also required that the Monitor file these documents and the Call for Claims order electronically on the U.S. District Court's website in all three pieces of litigation there. These are described in the Call for Claims order as the "U.S. Chapter 15 Proceedings", the "U.S. Chapter 15 Adversary Proceedings" and the "U.S. MDL Proceedings". The order required the Monitor to publish notices to creditors in the national edition of the *Globe and Mail* newspaper, the *Wall Street Journal*, and *USA Today*. The Monitor was also required to post copies of the documents and Call for Claims order on the Monitor's website. The Monitor did all these things.

15 All proofs of claim were to be filed by May 8, 2006. This date was defined in the order as the Claims Bar date. Any creditor who has not filed a proof of claim by that date is forever barred from making or enforcing any claim, and is not entitled to participate as a creditor in the CCAA proceedings, or to vote at any meeting of creditors. Prior to the Claims Bar date, the members of the Ad Hoc Tort Claimants Committee filed individual proofs of claim. The California Consumers also filed individual proofs of claim.

16 On May 8, the Representative Plaintiffs, (that is, Hannon, Hochberg, Rodriguez and Guzman), filed proofs of claim, claiming to do so on their own behalves, and "on behalf of all other similarly situated persons". Unlike the Representative Plaintiffs, the California Consumers filed individual proofs of claim. Even though they have done so, they support the Representative Plaintiffs' position on this motion.

17 The monitor received some 33 ephedra claims, both from the California Consumers individually, and from others, including the members of the Ad Hoc Tort Committee. The only prohormone claims the monitor has received are from the Representative Plaintiffs. No other individual claims relating to prohormones have been filed.

18 After the claims bar date, this court made a Claims Resolution order. That order, dated June 8, 2006 provided, among other things, for a method for the monitor to review proofs of claim, accept or reject them, and for a claims

resolution process for resolving disputed claims. The Claims Resolution order is subject to an earlier Mediation Order, which provided for mediation of ephedra claims. Of the 33 ephedra claims filed, 30 have already been settled through the mediation process. The mediation process is part of a larger mediation process in New York, in the context of the much broader ephedra litigation that Judge Rakoff is managing. This litigation is referred to as the MDL, or multi-district litigation, in the U.S.

19 No one has appealed the Call for Claims order. No one moved to vary its terms, prior to the claims bar date. No one has appealed the Claims Resolution order. None of the Representative Plaintiffs have taken any steps in the United States (where their class actions are pending), to lift the stay of proceedings there to permit their actions to proceed to certification.

The parties and their positions:

20 On these motions the applicants take the position that the proofs of claims by the Representative Plaintiffs are a nullity, since there is no provision in either the CCAA or any of the court orders that permit these claims to be made either as representative claims, or class action claims. They say that to allow these claims would unreasonably delay the CCAA process, and would undermine the process that has already been established, which all stakeholders rely on.

21 The DIP lender supports the applicants' position. The DIP lender takes the position that if the proposed claims were allowed, there is a potential for significant prejudice to the DIP lender who is funding the process, and will ultimately fund any plan of compromise. The DIP lender has already settled with a significant number of other tort claimants (albeit ephedra, as opposed to prohormone claimants). The DIP lender says it reached its settlement on the basis of a particular "known universe" of claims. It suggests that allowing these indeterminate claims, and claimants, at this late date, would prejudice its position.

22 The Ad Hoc Committee of Tort Claimants supports the applicants as well. The Committee takes the position that even before the Call for Claims order was made, it was able to obtain an order allowing it to participate as a Committee in the CCAA process and obtain what is called representative status in the proceedings. It says that if the Ad Hoc Committee was able to do so within the CCAA process, these other proposed claimants could, and should have done the same. Since the other proposed claimants did not, and took no steps to appeal the Call for Claims order, and indeed, declined to participate in the motion in which its terms were set, they should be barred from doing so at this late date.

23 The Monitor also supports the applicants' position, saying the CCAA process gave the Representative Plaintiffs adequate opportunity to file individual claims. The forms were readily accessible in plain English. The Products Liability claimants, that is, the members of the Ad Hoc Committee, were able to put individual claims forward in the CCAA process and the Representative Plaintiffs had the same opportunity to participate in exactly the same way. Lastly, the Monitor says that the CCAA process is far more economic than the lengthy process of certification of class actions, particularly in the USA, where certification would have to take place. To allow this new process to be overlaid on the existing CCAA process would be cumbersome, excessively expensive and time consuming.

24 All those opposing the Representative Plaintiffs' Claims and California Consumers suggests that the real motivation for putting these claims forward is to obtain and secure payment of significant legal fees for the lawyers involved, rather than to reap any meaningful benefits for any class participants. I need not comment on what is essentially a bald allegation. I mention it only to make the record of the parties' positions complete.

25 Both the Representative Plaintiffs and the California Consumers take a contrary view. They say their clients' claims should not be defeated on what they describe as essentially procedural grounds. They suggest that fairness requires that they be permitted to file in this way. They say the current CCAA process is not so far advanced that there would be undue prejudice to any of the other stakeholders, if their proofs of claims were allowed to be filed as representative claims.

The law and analysis:

26 The first question to consider is whether the CCAA permits representative claims, or class action claims. The next issue is whether this particular CCAA process adequately protected the interests of this potential group of claimants. Lastly, given the inherent jurisdiction of the court, I must also address whether this case might be an appropriate case to exercise my discretion and permit the Representative Plaintiffs' Claims to proceed in some fashion at this time.

Does the CCAA permit representative claims?

27 The CCAA neither expressly permits nor forbids representative claims. The CCAA defines "claim" in s. 12(1). It says that for the purposes of the CCAA, "claim" means "any indebtedness, liability or obligation of any kind that, if unsecured, would be a debt provable in bankruptcy within the meaning of the *Bankruptcy and Insolvency Act*." Thus, to determine what a CCAA "claim" is, one must turn to the *Bankruptcy and Insolvency Act*, and the definition of debts "provable in bankruptcy".

28 Section 121(1) of the BIA deals with "claims provable", and says:

All debts and liabilities, present or future, to which the bankrupt is subject on the day on which the bankrupt becomes bankrupt or to which the bankrupt may become subject before the bankrupt's discharge by reason on any obligation incurred before the day on which the bankrupt becomes bankrupt shall be deemed to be claims provable in proceedings under this Act.

29 The BIA has a mechanism to determine whether a contingent or unliquidated claim is a provable claim. The mechanism is found in section 135(1.1), which provides:

The trustee shall determine whether any contingent claim or unliquidated claim is a provable claim, and, if a provable claim, the trustee shall value it, and the claim is thereafter, subject to this section, deemed a proved claim to the amount of its valuation.

30 A determination under s. 135(1.1) is "final and conclusive", unless within a thirty day period after the trustee serves a notice of disallowance, the person to whom the notice of disallowance was sent appeals the trustee's decision.

31 Section 124 of the BIA deals with the proof of claims. First, it provides in subsection (1) that creditors shall prove claims. It says: "Every creditor shall prove his claim, and a creditor who does not prove his claim is not entitled to share in any distribution that may be made." The section goes on, in subsection (3) to deal with who may make proof of claims. The subsection says: "The proof of claim may be made by the creditor himself or by a person authorized by him on behalf of the creditor, and, if made by a person authorized, it shall state his authority and means of knowledge."

32 The term "creditor" is not specifically defined in the CCAA. The applicants therefore point to the definition of "creditor" in the Call for Claims order itself. There, creditor is defined as "any *Person* having a Claim or a Product Liability Claim" [emphasis added]

33 From the interplay of the sections of the CCAA and the BIA, together with the definition in the Call for Claims order, the applicants infer that only individual creditors may make claims, unless they have authorized someone else to do so on their behalf. Since there is no question the Representative Plaintiffs' Claims have not been authorized by the group of people whom they purport to represent, they have no authority to do so, and the applicants say these claims must therefore be declared a nullity, at least to the extent that they purport to advance claims for other than Hannon, Hochberg, Rodriquez and Guzman personally.

34 While this interpretation may be technically correct, it is also clear that representative orders of some kind have been used in other CCAA proceedings³, and even in this case.⁴ In addition, there have been cases in which a stay has been lifted in order to permit a potential class proceeding to file certification materials,⁵ while in other cases, a motion

to lift the stay for that purpose and to file a class claim have been denied.⁶ As yet, however, there are no examples in Canada where a class proof of claim has been specifically permitted.⁷

35 It is noteworthy here, that even though Farley J made an order granting a "representation and ancillary order regarding funding" to the Ad Hoc Committee in this proceeding, there was no order permitting "representative" claims to be filed; each member of the committee filed an individual proof claim with the monitor.

36 From this I conclude that while it is possible at least to have a limited representation order in CCAA proceedings, it is by no means clear that representation orders have been extended to permit a "representative" proof of claim to be filed. Canadian courts have not yet permitted a filing of a proof of claim by a plaintiff in an uncertified class proceeding on behalf of itself and other members of the class. At best, our courts have at least once lifted a stay to permit the filing of certification materials. Any steps beyond that would be the subject of a further motion.⁸ In the case of *Re Air Canada*, however, there was no suggestion that certification motions were going to be made in a foreign jurisdiction, as would be the case here.

37 While a representative claim may therefore be possible, the next question is whether this is a proper case to either permit this kind of "representative" claim, without the necessity of the individual members of the class filing claims, or whether the stay should be lifted to permit certification motions to proceed in the United States. This involves a discussion first of whether the orders here gave adequate protection to this potential group or groups of creditors, and second, whether this might be an appropriate case for the court to exercise its discretion and grant the relief the Representative Plaintiffs seek.

Did the CCAA process adequately protect the interests of these potential claimants?

38 When I consider the CCAA process here, I am drawn inescapably to the conclusion that it adequately protected the interests of these potential claimants, had they availed themselves of the process as other claimants did.

39 The Ad Hoc committee obtained a representation order, and participates on that basis, although its members filed individual proofs of claim. Even the California Consumers filed individual claims. If the members of the Representative Plaintiff's proposed class had wished to file proofs of claim, they had as much notice and opportunity to do so as anyone else. This is particularly so since the required notices were published not only in two American nation-wide newspapers, but also in three locations on the U.S. District Court's website. Not a single "similarly situated" person, other than Hannon, Hochberg, Rodriguez and Guzman filed a proof of claim. They easily could have. They did not. I cannot conclude that the absence of additional claims implies the process was somehow unfair or flawed. To the contrary, the absence of even a single additional claim suggests there may be no other claimants at all. The process adequately protected the interests of these potential claimants. They simply chose not to utilize that process.

Should the court exercise its discretion?

40 While the court clearly has a broad discretion in CCAA matters⁹, I am not persuaded that this is a proper case to exercise that discretion either to allow the representative claims as they are, or to lift the stay to permit certification motions to proceed.

41 First, representative claims *per se*, have not been recognized in Canadian jurisprudence in the context of CCAA proceedings. It is clear that rule 10 of the *Rules of Civil Procedure* permits the court to "appoint one or more persons to represent any person or class of persons who are unborn or unascertained or who have a present, future, contingent or unascertained interest in or may be affected by the proceeding and who cannot be readily ascertained, found or served."

42 Rule 10, however, is generally used in estates and trusts cases, or as what has been described as the "simplified procedure" version of proceedings under the *Class Proceedings Act*, particularly in pension fund disputes.¹⁰ I was referred to no case in which the rule was specifically used in CCAA proceedings to permit the filing of a representative or

class claim. I do not see rule 10 as useful in these CCAA proceedings, which has created its own process and procedures. Here, a structure was established by court order, on notice to the very parties who now wish to alter the process fundamentally, after all stakeholders have relied on the structure that was established.

43 Changing and increasing the landscape of claimants after the settlement of 30 of the ephedra claims after the claims bar date could cause prejudice to the eventual success of the CCAA process. Simply put, all the arguments made by the Representative Plaintiffs and California Consumers should have been made before Farley J when the Call for Claims order was made, or earlier motions should have been made to deal with these issues before the Call for Claims order was even made.

44 The process gave adequate opportunity for anyone with a claim to file a proof of claim. The forms were accessible, in plain English. The products liability claimants all managed to make individual claims, even though they might have been involved in class actions. No other prohormone claimants have filed a proof of claim. To allow representative or class claims at this date would be prejudicial to the entire claims process, and would impair the integrity of the CCAA process here. I decline to exercise my discretion in these circumstances.

Disposition:

45 The applicants' motion is therefore granted, and the representative plaintiffs' motion is dismissed. To be clear, the "representative" claims are to be considered as individual claims for each of Hannon, Hochberg, Rodriguez and Guzman. As the parties have agreed, there will be no order as to costs.

SCHEDULE "A"

HC Formulations Ltd.

CELL Formulations Ltd.

NITRO Formulations Ltd.

MESO Formulations Ltd.

ACE Formulations Ltd.

MISC Formulations Ltd.

GENERAL Formulations Ltd.

ACE US Formulations Ltd.

MT Canadian Supplement Trademark Ltd.

Mt Foreign Supplement Trademark Ltd.

MC Trademark Holdings Ltd.

HC US Trademark Ltd.

1619005 Ontario Ltd. (f/k/a NEW HC US Trademark Ltd.)

HC Canadian Trademark Ltd.

HC Foreign Trademark Ltd.

Motion granted.

Footnotes

- * Additional reasons at *Muscletech Research & Development Inc., Re* (2006), 2006 CarswellOnt 5484, 25 C.B.R. (5th) 229 (Ont. S.C.J. [Commercial List]).
- 1 Since hearing this motion, I have granted an order extending the stay to November 10 of this year. Judge Rakoff has made a similar order in the corresponding US litigation.
- 2 See "Notice to Creditors Re: Notice of Call for Claims and Product Liability Claims", Schedule "E" to the call for claims order.
- 3 See, for example, *Canadian Red Cross Society / Société Canadienne de la Croix-Rouge, Re* (1999), 12 C.B.R. (4th) 194 (Ont. S.C.J. [Commercial List]). See also the order of Blair J. in *Canadian Red Cross Society / Société Canadienne de la Croix-Rouge* dated July 29, 1998, in which he appointed representative counsel for various groups of claimants. It is noteworthy, however, that he did not provide for the filing of representative proofs of claim in the order.
- 4 See the reasons of Farley J. dated February 6, 2006 at paragraph 8, in which he says: "I understand that later this week the Ad Hoc Committee will be requesting a representation and ancillary order incorporating a joint funding agreement. [Note: as this is being typed up February 8th, I would note that I have just granted such an order.]" Again, nothing in the order permitted a representative *claim* to be filed.
- 5 *Re Air Canada*, Court File # 03-CL-4932. Endorsement of Farley J dated September 24, 2003.
- 6 *Re Canadian Red Cross, supra*
- 7 *Re Canadian Red Cross*, note 2, above, at page 197
- 8 *Re Air Canada*, note 5, above at paragraph 18.
- 9 The *CCAA* has been described as having a "broad remedial purpose", and cases have stated the Act should be given a large and liberal interpretation. See Holden & Morawetz *The 2006 Annotated Bankruptcy and Insolvency Act*, [Carswell, 2006] pp 1163-64, and these cases referred to there.
- 10 See *Overview* to rule 10, Killeen, Morton and James, *Ontario Superior Court Practice*

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2006 CarswellOnt 7877
Ontario Superior Court of Justice

Muscletech Research & Development Inc., Re

2006 CarswellOnt 7877

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

AND IN THE MATTER OF MUSCLETECH RESEARCH AND DEVELOPMENT
INC. AND THOSE ENTITIES LISTED ON SCHEDULE "A" HERETO

Ground J.

Heard: November 3, 2006
Judgment: December 11, 2006
Docket: 06-CL-6241

Counsel: Jay A. Carfagnini, Frederick Myers, David Bish for Applicants, Muscletech Research & Development Inc. et al
D.J. Miller, Kyla E.M. Mahar for Krys Osborne & similarly situated California consumers

Subject: Insolvency

Related Abridgment Classifications

For all relevant Canadian Abridgment Classifications refer to highest level of case via History.

Bankruptcy and insolvency

IX Proving claim

IX.4 Practice and procedure

IX.4.g Miscellaneous

Headnote

Bankruptcy and insolvency --- Proving claim — Practice and procedure — Miscellaneous issues

Several product liability actions were filed against applicants in United States pertaining to sale of product that contained ephedra — Applicants sought and obtained relief under Companies' Creditors Arrangement Act as means of achieving global resolution of claims against it — Court issued "Call for Claims" order that provided deadline by which claims must be filed failing which claims were barred — Monitor also commenced ancillary proceedings in United States — Monitor sent proofs of claim to all known creditors of applicants, filed proof of claim package electronically on U.S court dockets, advertised in newspapers and took other steps to inform potential creditors — Only proof of claim filed was that of creditor who sought to represent other creditors as member of class — Applicants brought motion for order that proof of claim was nullity to extent it purported to advance representative claim on behalf of other persons — Motion granted — Creditor brought cross-motion for order permitting claim to be filed on behalf of other persons and for related relief — Cross-motion dismissed — Although court had inherent jurisdiction to permit class proof of claim to be filed in proceedings determination as to whether to do so was to be made based on factual circumstances and equities between parties — "Call for Claims" order specifically permitted representative claims to be brought by legal personal representatives but creditor was not legal personal representative within meaning of order — Creditor did not have documentary evidence that she had authority to file claim on behalf of class or court order permitting her to do so — Although this did not preclude court from determining that creditor could file claim on behalf of class on facts, other creditors were given notice of

proceedings and failed to file claims, applicants had resolved almost all other product liability claims — To permit filing of class proof of claim at this stage would seriously disrupt and extend proceedings as well as increasing costs and decreasing benefits to all stakeholders — There were also substantial doubts as to whether allegedly false and misleading advertising that was basis of class action would be found to be established and as to whether class was certifiable — There was no evidence that claims order or process was unfair or unduly prejudicial to creditors.

Table of Authorities

Cases considered by *Ground J.*:

Alton, Re (2003), 45 C.B.R. (4th) 25, 2003 CarswellOnt 3044 (Ont. S.C.J.) — considered

Air Canada, Re (September 24, 2003), Farley J. (Ont. S.C.) — considered

Canadian Airlines Corp., Re (2000), 19 C.B.R. (4th) 24, 2000 CarswellAlta 728 (Alta. Q.B.) — considered

Canadian Red Cross Society / Société Canadienne de la Croix-Rouge, Re (1999), 12 C.B.R. (4th) 194, 1999 CarswellOnt 3234, 39 C.P.C. (4th) 362 (Ont. S.C.J. [Commercial List]) — considered

Ephedra Products Liability Litigation, Re (2005), 329 B.R. 1 (U.S. Dist. Ct. S.D. N.Y.) — considered

Muscletech Research & Development Inc., Re (2006), 25 C.B.R. (5th) 218, 2006 CarswellOnt 4929 (Ont. S.C.J. [Commercial List]) — considered

Perez v. Metabolife International Inc. (2003), 218 F.R.D. 262 (U.S. Dist. Ct. S.D. Fla.) — referred to

Statutes considered:

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3
s. 124(3) — considered

Bankruptcy Code, 11 U.S.C. 1982
Chapter 15 — referred to

Business and Professions Code, California
s. 17200 — referred to

MOTION for order that proof of claim was nullity to extent it purported to advance representative claim on behalf of other persons; CROSS-MOTION for order permitting claim to be filed on behalf of other persons and for related relief.

Ground J.:

1 This motion is brought by the Applicants in the within proceeding (collectively "Muscletech") for an Order that the proof of claim filed by Krys Osborne ("Osborne") in this proceeding is invalid and a nullity to the extent that it purports to advance a representative claim on behalf of other persons.

Background

2 In response to call for claims in this proceeding, Osborne filed a proof of claim in respect of claims against the Applicants Iovate Health Sciences Group Inc., Iovate Health Sciences U.S.A. Inc., General Nutrition Corporation and other entities in a purported class representative capacity (the "Osborne Proof of Claim"). The Osborne Proof of Claim is based on alleged false and/or misleading advertising pertaining to the sale of Hydroxycut containing the ingredient ephedra and asserts a claim in the estimated amount of U.S. \$100 million.

3 MuscleTech sought and obtained relief under the CCAA pursuant to an order of this court of Justice dated January 18, 2006 (the "Initial CCAA Order"). The Initial CCAA Order granted a stay of proceedings to and including February 18, 2006 in respect of the Applicants and certain non-applicant parties and appointed RSM Richter Inc. as Monitor of the Applicants (the "Monitor"). By subsequent Orders of this court, the Stay of Proceedings has been extended to and including February 1, 2007.

4 On January 18, 2006, the Monitor commenced ancillary proceedings in the United States of America in respect of the Applicants under Chapter 15 of the *U.S. Bankruptcy Code* and those proceedings are now before the United States District Court for the Southern District of New York (the "District Court").

5 The Applicants sought relief under the CCAA principally as a means of achieving a global resolution of the large number of product liability and other lawsuits commenced by numerous claimants (collectively, the "Product Liability Claimants") against MuscleTech and others in the United States that related to products formerly sold by MuscleTech (collectively, the "Product Liability Actions").

6 In addition to MuscleTech, a number of affiliated and non-affiliated parties were also named as defendants or otherwise involved in certain of the Product Liability Actions (collectively, the "Non-Applicant Defendants"). The liability of the Non-Applicant Defendants is derivative of, and inextricably linked to, the liability of the Applicants.

7 On March 3, 2006, this court granted an order (the "Call for Claims Order") that established a process for the calling of: (a) all Claims (as defined in the Call For Claims Order) in respect of the Applicants and its officers and directors; and (b) all Product Liability Claims (as defined in the Call For Claims Order) in respect of the Applicants and the Non-Applicant Defendants. The Call For Claims Order required persons who wished to advance claims to file Proofs of Claim (as defined in the Call For Claims Order) with the Monitor by no later than 5:00 p.m. (EST) on May 8, 2006 (the "Claims Bar Date"), failing which the proposed claims would be barred. The Call For Claims Order was approved by Order of the District Court dated March 22, 2006.

8 In accordance with the Call For Claims Order, the Monitor: (a) sent a package containing the requisite proof of claim forms (the "Proof of Claim Package") to all known creditors of the Applicants; (b) filed electronically on the court dockets of the District Court the Proof of Claim Package and a notice to creditors advising of the call for claims process; (c) caused to be published a notice to creditors in *The Globe and Mail* (National Edition), *The Wall Street Journal*, and *USA Today*; and (d) posted a copy of the notice to creditors and the Proof of Claim Package on the Monitor's website. No Proof of Claim was filed by anyone, other than Osborne, who would be a member of the putative class sought to be represented by Osborne pursuant to the Osborne Proof of Claim.

9 The Call For Claims Order did not contain a process to resolve the Claims and Product Liability Claims. Accordingly, with the input of various key stakeholders, the Applicants established a claims resolution process (the "Claims Resolution Process") approved by this court and incorporated in a Claims Resolution Order dated June 8, 2006 (the "Claims Resolution Order") and approved by order of the District Court dated June 22, 2006.

10 The Claims Resolution Order provides: (a) a process for the review of all Proofs of Claim filed with the Monitor; (b) a process for the acceptance or dispute, in whole or in part, by the Applicants, with the assistance of the Monitor, of Claims and/or Product Liability Claims for the purpose of voting and/or distribution under a plan of compromise or arrangement in respect of the Applicants (a "Plan"); (c) the appointment of a claims officer to resolve disputed Claims or Product Liability Claims; and (d) an appeal process from the determination of the claims officer to this court.

11 MuscleTech has, with the assistance of the Monitor, reviewed the proofs of claim filed with the Monitor with a view to accepting or objecting to them for voting and/or distribution purposes under a Plan and has reviewed the Osborne Proof of Claim and denies that the claim advanced therein can succeed on the merits with respect to the allegations of false or misleading advertising.

12 On August 10, 2006, in accordance with the Claims Resolution Process, the Monitor issued a Notice of Objection to the Osborne Proof of Claim. In response to the Notice of Objection, Osborne filed a Dispute Notice dated August 23, 2006.

13 Paragraph 18 of the Claim Resolution Order authorizes MuscleTech to move before this court to resolve or seek directions in respect of the validity, effect and/or quantum of proofs of claim submitted on a representative basis in respect of existing consumer class actions involving the Applicants, where such class actions were uncertified as of the date of the Initial CCAA Order.

14 The Osborne Proof of Claims pertains to an action that was brought against MuscleTech and certain Non-Applicant Defendants in the Superior Court of the State of California on February 16, 2005, prior to the commencement of these CCAA proceedings alleging violations of Section 17200 of the *California Business & Professions Code*, which prohibits "unlawful, unfair or fraudulent" business practices. The case was subsequently transferred to the United States District Court of California (Los Angeles) and a motion to transfer the case to the District Court was heard and granted on June 19, 2006.

15 As stated above, the Applicants' motion now before this court seeks an order that the Osborne Proof of Claim is invalid as a nullity to the extent that it purports to advance a representative claim on behalf of other persons.

16 The class of claimants purported to be represented by Osborne was uncertified as of the date of the filing of the application in this CCAA proceeding and, as a result of the stay of proceedings, remains uncertified as of this date.

17 The cross motion filed by Osborne and now before this court seeks an order for, among other things:

(a) a declaration that the Call for Claims Order permits the filing of a proof of claim by Osborne, on behalf of herself and all other similarly situated California consumers, as the class representative of the putative class;

(b) in the alternative, to vary the Call for Claims Order *nunc pro tunc* to allow for the filing of the Osborne Proof of Claim to be determined for voting and/or distribution purposes in accordance with the Claims Resolution Order;

(c) in the further alternative, to lift the stay of proceedings to allow Osborne, as the class representative of the putative class, to take the necessary steps to certify the class action (the "California Class Action") and, contingent upon obtaining certification of the class, allow for the filing of the Osborne Proof of Claim in this proceeding to be determined for voting and/or distribution purposes in accordance with the Claims Resolution Order; and

(d) in the further alternative, to lift the stay of proceedings as against (i) Iovate Health Sciences Group, Inc. ("Iovate Group"), (ii) Iovate Health Sciences USA, Inc. ("Iovate USA") and (iii) General Nutrition Corporation ("GNC") (collectively the "Relevant Non-Applicant Defendants") to allow Osborne as the class representative of the California Consumers to continue the California Class Action as against the Relevant Non-Applicant Defendants.

Issues

18 The motions before this court raise the following issues:

(1) Is there any authority for the filing of uncertified class action claims in proceedings under the CCAA?

(2) Is Osborne the legal personal representative of the members of the putative class as referred to in the definition of "person" in the Call for Claims Order and what is the proper law for the determination of whether Osborne is a legal personal representative?

(3) Whether or not there is any such authority, should this court, in considering the equities of the case, exercise its inherent jurisdiction and accept the Osborne Proof of Claim for filing on behalf of the putative class.

Analysis

Class Proofs of Claim in CCAA Cases

19 The CCAA is silent as to whether class proofs of claim may be filed in a CCAA proceeding and it would appear that no Canadian court has definitively held that class proofs of claim may not be filed in a CCAA proceeding.

20 In *Canadian Red Cross Society / Société Canadienne de la Croix-Rouge, Re* (1999), 12 C.B.R. (4th) 194 (Ont. S.C.J. [Commercial List]), the applicant sought an order to lift the CCAA stay to commence a class proceeding on behalf of those who received blood tainted with Creutzfeld-Jakob Disease ("CJD"), and an order to file a class proof of claim. Blair, J. concluded that the real issue raised by the applicant was the adequacy of the notice of the established CCAA claims filing procedure. He dismissed the application on the basis that there was no evidence of inadequate notice to CJD claimants and the CCAA proceedings having gone on for one year and having had a very high profile, Blair, J. doubted that permitting a class action to proceed would yield different results, and concluded that allowing the class action to proceed would disrupt the CCAA proceedings with only marginal benefit to CJD claimants. Regarding the last point, Blair, J. stated at paras. 9-11:

In the first place, I am reluctant to impose another feature into the CCAA procedure which might upset the current timing, particularly where ___ as I have indicated ___ I think the helpfulness of the proposed class action proceeding would be marginal at best in respect of the individual CJD claimants and in respect of the CCAA proceedings. Moreover, the claims procedure for voting purposes which has already been put in place ___ with the concurrence of the various groups of Transfusion Claimants ___ is one which is founded upon individual voting by claimants with respect to the Plan.

I am not sure how individual voting would work in the context of the "class proof of claim" which Mr. Wright proposes should be filed, and I am not prepared to run the risk of upsetting the present procedure which is clearly underway and which has already absorbed a great deal of the time, energy and resources of the various Transfusion Claimants, at this late stage. There is an imperative at work here which demands that this proceeding be advanced and that voting and completion of the Plan (if accepted and approved) take place in as timely a fashion as possible, in order the Claimants receive what compensation they are entitled to as early as possible.

This is not the case, in my view ___ because it is not necessary to do so ___ to consider carefully and determine whether class proofs of claim are permissible in Canadian insolvency proceedings. There are apparently no examples in Canada yet where such a procedure has been permitted. In the United States, which has ___ as Mr. Wright's factum put it ___ a "lengthier history of class proceedings", class proofs of claim have sometimes been allowed in principle in the bankruptcy context: see, for example, In the *Matter of American Reserve Corp.*, 840 F.2d 487 (U.S. 7th Cir. III. 1988) (Feb. 18, 1988) (No. 87-1768), and *Reid v. White Motor Corp.*, 886 F.2d 1462 (U.S. C.A. 6th Cir. 1989), (Sept. 28, 2989). As I understand these cases, it is a matter for the discretion of the insolvency judge as to whether to permit the filing of a class proof of claim. For the reasons I have articulated, I would not exercise my discretion in the circumstances of this case to permit such a filing, even if I were to apply the principles to be drawn from the American authorities.

21 In *Air Canada, Re* (September 24, 2003), Farley J. (Ont. S.C.) (unreported), the applicants sought an order to lift the CCAA stay to commence a class proceeding in Federal Court on behalf of various travel agencies and requested

an order permitting them to thereafter file a class proof of claim. Farley J. dismissed the applicants' request that they be permitted to apply as a class of creditors if their class action was certified, and dismissed their request to submit a favourable judgment in the class action as a class proof of claim. Since the applicants' claims under the CCAA would have to be dealt with in the near future, and it was not likely that the Federal Court would be able to dispose of the class action in time, Farley J. concluded that "nothing is gained by their request". Farley, J. therefore did not definitively rule on the appropriateness of class proofs of claim.

22 In *Muscletech Research & Development Inc., Re*, 2006 CarswellOnt 4929 (Ont. S.C.J. [Commercial List]), four plaintiffs in yet-uncertified American class actions relating to physical damages alleged to be caused by prohormones in certain products sold by Muscletech and others, applied to submit class proofs of claim and to have the CCAA stay lifted. In her Endorsement, Mesbur, J. noted that the CCAA neither expressly permits nor forbids class proofs of claim and, referring to the BIA and the cases noted above, she concluded that class proofs of claim under the CCAA were possible and the question was whether this was a proper case to permit the representative claims. For the reasons stated in her Endorsement, Mesbur, J. did not allow the class proofs of claim to be filed. It has been agreed between the parties that the Order of Mesbur, J. does not constitute *res judicata* or issue estoppel with respect to the motions now before this court relating to the Osborne claim.

23 In *Alton, Re* (2003), 45 C.B.R. (4th) 25 (Ont. S.C.J.), the bankrupt Alton applied for a discharge. One Claude Millard opposed Alton's application. The issue was whether Millard was a proven creditor. Millard was the representative plaintiff in a certified class action against Alton for losses arising from an allegedly fraudulent investment scheme operated by Alton. A previous Order of Farley J. dated January 31, 2001, stated that Millard,

may file a proof of claim in the bankruptcy of [Alton] on behalf of himself and all Class Members in the amount of \$5,000,000...and such proof of claim shall be accepted by the Trustee for voting purposes only in the place and stead of proofs of claim filed on behalf of each of the Class Members individually.

Lax, J. accordingly found that this Order made Millard a proven creditor for all purposes other than distribution.

24 It would appear from the above authorities that this court has inherent jurisdiction to permit a class proof of claim to be filed in a CCAA proceeding but that the determination of whether it should be permitted in any particular case will depend upon the factual circumstances of the case and the equities between the parties.

Osborne as Legal Personal Representative

25 The Call for Claims Order defines "claim" as a claim of any "person" and "person" is defined as meaning:

... any individual, partnership, limited partnership, joint venture, trust, corporation, unincorporated organization, government, agency, regulatory body or instrumentality thereof, legal personal representative or litigation guardian, or any other judicial entity howsoever designated or constituted.

26 The Call for Claims Order accordingly contemplates claims being brought in a representative capacity. In addition, paragraph 18 of the Claims Resolution order contemplates a motion before this court with respect to proofs of claim submitted on a representative basis. Paragraph 18 provides as follows:

18. THIS COURT ORDERS that, notwithstanding anything herein to the contrary, the Monitor or the Applicants may move before the Court to resolve or seek directions in respect of the validity, effect and/or quantum of Proofs of Claim submitted on a representative basis in respect of existing consumer class actions involving the Applicants, where such class actions were uncertified as of the Filing Date.

27 In my view, the terms of these Orders clearly contemplate that this court may order the acceptance of a claim filed on a representative basis by a legal personal representative, including a class action claim. The issue then becomes whether Osborne qualifies as a "legal personal representative" for the purposes of this proceeding.

28 Although under the law of California Osborne may owe certain duties to members of the putative class having purported to institute a proceeding on their behalf, I am of the view that the law of Ontario must be applied to determine whether Osborne is a legal personal representative for purposes of orders of this court such that she has authority to file a proof of claim on behalf of such persons in the CCAA proceeding before this court.

29 It is not alleged that Osborne has any specific authority from any member of the putative class to file a proof of claim on his or her behalf. It is to be noted that the reference to "legal personal representative" in the definition of "claim" in the Call for Claims Order is in the context of "legal personal representative or litigation guardian, or any other judicial entity howsoever designated or constituted". It would seem to me that the definition implies that a legal personal representative must have been designated or constituted or in some way obtained authority from the persons alleged to be represented by way of power of authority, proxy, court order or some other document. In *Canadian Airlines Corp., Re* (2000), 19 C.B.R. (4th) 24 (Alta. Q.B.) at paragraph 50, Paperny, J. stated:

A proxy signed by a participant and beneficial owner will be sufficient to authenticate a claim. However, a proxy signed by a participant and a third party claiming to have authority on behalf of a beneficial holder absent something from the beneficial holder itself is insufficient to extend to voting on behalf of the beneficial holders.

30 The definition of "claim" in the Call for Claims Order also makes reference to claims that "would have been claims provable in bankruptcy under the *Bankruptcy and Insolvency Act*". Subsection 124(3) of the *Bankruptcy and Insolvency Act* provides as follows:

124. (3) Who may make proof of claims ____ The proof of claim may be made by the creditor himself or by a person authorized by him on behalf of the creditor, and, if made by a person so authorized, it shall state his authority and means of knowledge.

31 This again indicates that for a proof of claim to be made by a legal personal representative such representative must have some authority from the person on whose behalf the claim is being filed.

32 Accordingly, I am of the view that absent some documentary evidence that Osborne has authority from the members of the putative class to file a proof of claim on their behalf or a court order granting such authority, she is not a "legal personal representative" for purposes of Call for Claims Order.

Equities and Inherent Jurisdiction

33 As stated above, in order for the court to determine whether a class proof of claim should be accepted in a particular proceeding, the court must consider the factual circumstances of the case and the equities between the parties. In addition, in my view, the inherent jurisdiction of this court under the CCAA would enable this court to permit the acceptance of the Osborne Proof of Claim even though Osborne does not strictly qualify as a legal personal representative.

34 In making such determination there are, in my view, a number of factual matters which the court should take into account in addition in considering the equities as between the parties. Among the factual matters to be considered are the following. This CCAA proceeding was commenced for the purpose of achieving a global resolution of all product liability and other lawsuits commenced in the United States against MuscleTech and others, including the Non-Applicant Defendants, relating to products formerly sold by MuscleTech. As a result of strenuous negotiation and successful court-supervised mediation through the District Court, the Applicants have succeeded in resolving virtually all of the outstanding claims with the exception of the Osborne claim and, to permit the filing of a class proof of claim at this time, would seriously disrupt and extend the CCAA proceedings and the approval of a Plan and would increase the costs and decrease the benefits to all stakeholders. There appears to have been adequate notice to potential claimants and no member of the putative class other than Osborne herself has filed a proof of claim. It would be reasonable to infer that none of the other members of the putative class is interested in filing a claim in view of the minimal amounts of their claims and of the difficulty of coming up with documentation to support their claim. In this context the comments of

Rakoff, J. in *Ephedra Products Liability Litigation, Re* [329 B.R. 1 (U.S. Dist. Ct. S.D. N.Y. 2005)] U.S. Dist. LEXIS 16060 at page 6 are particularly apt.

Further still, allowing the consumer class actions would unreasonably waste an estate that was already grossly insufficient to pay the allowed claims of creditors who had filed timely individual proofs of claim. The Debtors and Creditors Committee estimate that the average claim of class [*10] members would be \$ 30, entitling each claimant to a distribution of about \$ 4.50 (figures which Barr and Lackowski do not dispute; although Cirak argues that some consumers made repeated purchases of Twinlabs steroid hormones totaling a few hundred dollars each). Presumably, each claimant would have to show some proof of purchase, such as the product bottle. Because the Debtor ceased marketing these products in 2003, many purchasers would no longer have such proof. Those who did might well find the prospect of someday recovering \$ 4.50 not worth the trouble of searching for the old bottle or store receipt and filing a proof of claim. Claims of class members would likely be few and small. The only real beneficiaries of applying Rule 23 would be the lawyers representing the class. *Cf Woodward*, 205 B.R. at 376-77. The Court has discretion under Rule 9014 to find that the likely total benefit to class members would not justify the cost to the estate of defending a class action under Rule 23.

35 In addition, in the case at bar, there would appear to be substantial doubt as to whether the basis for the class action, that is the alleged false and misleading advertising, would be found to be established and substantial doubt as to whether the class is certifiable in view of being overly broad, amorphous or vague and administratively difficult to determine. (See *Perez v. Metabolife International Inc.* [218 F.R.D. 262 (U.S. Dist. Ct. S.D. Fla. 2003)] U.S. Dist. LEXIS 21206 at pages 3-5). The timing of the bringing of this motion in this proceeding is also problematic. The claims bar date has passed. The mediation process is virtually completed and the Osborne claim is one of the few claims not settled in mediation although counsel for the putative class were permitted to participate in the mediation process. The filing of the class action in California occurred prior to the initial CCAA Order and at no prior time has this court been asked to approve the filing of a class action proof of claim in these proceedings. The claims of the putative class members as reflected in the comments of Rakoff, J. quoted above would be limited to a refund of the purchase price for the products in question and, in the context of insolvency and restructuring proceedings, *de minimus* claims should be discouraged in that the costs and time in adjudicating such claims outweigh the potential recoveries for the claimants. The claimants have had ample opportunity to file individual claims if they were so inclined and none, other than Osborne, has done so. There is no evidence that the call for claims order or the claims process as implemented has been prejudicial or unfair to the putative class members.

36 In summary, taking into account the factual circumstances of this case and the equities as between the parties, I am of the view that this court should not exercise its inherent jurisdiction to permit the filing of the Osborne Proof of Claim. An order will issue that the Osborne Proof of Claim is invalid and a nullity to the intent that it purports to advance a representative claim on behalf of other persons. The Cross-Motion is dismissed.

37 Counsel may make brief written submissions to me as to the costs of this proceeding, on or before December 29, 2006.

Schedule A

HC Formulations Ltd.

CELL Formulations Ltd.

NITRO Formulations Ltd.

MESO Formulations Ltd.

ACE Formulations Ltd.

MISC Formulations Ltd.

GENERAL Formulations Ltd.

ACE US Trademark Ltd.

MT Canadian Supplement Trademark Ltd.

MT Foreign Supplement Trademark Ltd.

HC Trademark Holdings Ltd.

HC US Trademark Ltd.

1619005 Ontario Ltd. (f/k/a New HC US Trademark Ltd.)

HC Canadian Trademark Ltd.

HC Foreign Trademark Ltd.

Motion granted; Cross-motion dismissed.

End of Document

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EXHIBIT “G”

EXHIBIT "G"

referred to in the Affidavit of

KEISHA LACKPATIAH-SEALY

Sworn September 20, 2017

A handwritten signature in black ink, appearing to be 'Z N.' with a horizontal line extending from the end.

Commissioner for Taking Affidavits

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.

)

MONDAY, THE 19th

JUSTICE NEWBOULD

)

DAY OF DECEMBER, 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.

(the "**Applicants**")

CLAIMS PROCEDURE ORDER

THIS MOTION, made by 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 procedures and bar dates described in the affidavit of Brian J. Fox sworn December 9, 2016 (the "**Fox Affidavit**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Fox Affidavit and the Exhibits thereto and the third 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, no one

appearing for any other party although duly served as appears from the affidavit of service of Vlad A. Calina, sworn December 9, 2016, filed,

DEFINITIONS

1. **THIS COURT ORDERS** that for purposes of this Order the following terms shall have the following meanings:

- (a) **"ABL Lenders"** means the lenders party to the the credit agreement dated April 15, 2014 in the principal amount of \$200 million;
- (b) **"Amended Schedules Bar Date"** means the later of: (i) the Claims Bar Date; and (ii) 30 days after the date that a Claimant is served with notice that an Applicant has amended or supplement its Schedules to reduce the undisputed, non-contingent or liquidated amount of its Claim or to change the nature and classification of its Claim;
- (c) **"Applicants"** means Performance Sports Group Ltd. ("PSG") and the other entities listed on Schedule "A";
- (d) **"Business Day"** means a day, other than a Saturday or Sunday, on which banks are generally open for business in Toronto, Ontario;
- (e) **"Canadian Filing Date"** means October 31, 2016;
- (f) **"CCAA"** means the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended;
- (g) **"CCAA Proceedings"** means the within proceedings;
- (h) **"Chapter 11 Proceedings"** means the proceedings commenced on October 31, 2016 by the Applicants under U.S. Bankruptcy Code in the U.S. Court;
- (i) **"Claim"** means any right or claim of any Person against one or more of the Applicants in connection with any indebtedness, liability or obligation of any kind whatsoever of one or more of the Applicants, whether reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed,

undisputed, legal, equitable, secured, unsecured, present, future, known or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including without limitation any claim arising from or caused by the repudiation by an Applicant of any contract, lease or other agreement, whether written or oral, the commission of a tort (intentional or unintentional), any breach of duty (legal, statutory, equitable, fiduciary or otherwise), or any right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any grievance, matter, action, cause or chose in action, whether existing at present or commenced in the future, based in whole or in part on facts which existed on the Canadian Filing Date, together with any other claims of any kind that, if unsecured, would constitute a debt provable in bankruptcy within the meaning of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3;

- (j) **"Claimant"** means a Person asserting a Claim;
- (k) **"Claims Bar Date"** means February 6, 2017 at 5:00 p.m. (Eastern Time), or such other date as may be ordered by the Court;
- (l) **"Claims Notice"** means the document setting out the Claim a Known Claimant has against the company, as determined by the Company with the assistance of the Monitor (and its other professional advisors).;
- (m) **"Claims Package"** means the document package which shall include a copy of the Instruction Letter, a Claims Notice, blank Proof of Claim and such other materials as the Applicants consider necessary or appropriate;
- (n) **"Claims Procedure"** means the procedures outlined in this order in connection with the assertion of Claims or Restructuring Claims against one or more of the Applicants as set out by subsequent order of this Court and as amended or supplemented by the same;
- (o) **"Court"** means the Ontario Superior Court of Justice (Commercial List);

- (p) **"Director"** means any Person who is or was, or may be deemed to be or have been, a director of an Applicant;
- (q) **"Disclaimed Contract"** means any agreement terminated, repudiated or disclaimed pursuant to either section 365 of the U.S. Bankruptcy Code or section 32 of the CCAA;
- (r) **"Government Agency"** means any federal, provincial, state or local government, agency or instrumentality thereof or similar entity, howsoever designated or constituted exercising executive, legislative, judicial, regulatory or administrative functions in Canada, the United States, or elsewhere;
- (s) **"Government Claims Bar Date"** means May 1, 2017 at 5:00 p.m. (Eastern Time), or such other date as may be ordered by the Court;
- (t) **"Instruction Letter"** means the letter regarding completion of a Proof of Claim, which letter shall be substantially in the form attached hereto as Schedule "C";
- (u) **"Intercompany Claims"** means any Claim or Restructuring Claim of the Applicants or any other affiliate of PSG against an Applicant or any other affiliate of PSG;
- (v) **"Interest"** means any stock in PSG or any warrants, rights to purchase, sell or subscribe to any such stock;
- (w) **"Interest Holder"** means any person holding an Interest;
- (x) **"Known Claimants"** means Claimants which the books and records of the Applicants disclose were owed money by the Applicants as of the Canadian Filing Date which obligation remains unpaid in whole or in part;
- (y) **"Monitor"** means Ernst & Young Inc., in its capacity as the Court-appointed Monitor of the Applicants;
- (z) **"Notice to Creditors"** means the notice substantially in the form attached hereto as Schedule "B";

- (aa) **"Officer"** means any Person who is or was, or may be deemed to be or have been, an officer of an Applicant;
- (bb) **"Person"** means any individual, partnership, firm, joint venture, trust, entity, corporation, body corporate, unincorporated association or organization, trade union, employee or other association, Government Agency, or similar entity, howsoever designated or constituted and any individual or other entity owned or controlled by or which is the agent of any of the foregoing;
- (cc) **"Plan"** means any Plan of Compromise or Arrangement filed by one of more of the Applicants pursuant to the CCAA;
- (dd) **"Prime Clerk"** means Prime Clerk LLC;
- (ee) **"Proof of Claim"** means the form to be completed and filed by a Claimant setting forth its purported Claim or Restructuring Claim, which proof of claim shall be substantially in the form attached hereto as Schedule "D";
- (ff) **"Restructuring Claim"** means any right or claim of any Person against one or more of the Applicants arising as a result of or in connection with the repudiation, termination or restructuring by the Applicants of any contract, lease or other agreement after the Canadian Filing Date;
- (gg) **"Restructuring Claims Bar Date"** means the later of: (i) the Claims Bar Date (or with respect to a Government Agency, the Government Claims Bar Date); and (ii) with respect to the Chapter 11 Proceedings, 30 days after the entry of a rejection order in the U.S. Court approving the termination of the agreement, and with respect to the CCAA Proceeding, 30 days after the effective date of the disclaimer notice sent by the applicable Applicant in respect of a Disclaimed Contract;
- (hh) **"Schedules"** means the schedules and statements prepared from the books and records of the Applicants setting forth, *inter alia*, lists of claims asserted against the Applicants, posted on Prime Clerk's website (<https://cases.primeclerk.com/PSG/>) and the Monitor's website (www.ey.com/ca/psg);

- (ii) **"Term Loan Lenders"** means the lenders party to the term loan credit agreement dated as of April 15, 2014 in the principal amount of \$450 million;
- (jj) **"UCC"** means the Official Committee of Unsecured Creditors in the Chapter 11 Proceedings;
- (kk) **"U.S. Bankruptcy Code"** means Chapter 11 of title 11 of the United States Bankruptcy Code;
- (ll) **"U.S. Bar Dates Order"** means the order entered in the Chapter 11 Proceedings (i) establishing bar dates for filing claims and (ii) approving the form and manner of notice thereof;
- (mm) **"U.S. Claims Procedure"** means the claims process approved by the U.S. Court to be conducted within the Chapter 11 Proceedings in respect of the Applicants;
- (nn) **"U.S. Court"** means the United States Bankruptcy Court for the District of Delaware; and
- (oo) **"U.S. Proof of Claim"** means a proof of claim filed in the U.S. Claims Procedure.

NOTICE OF CLAIMS

2. **THIS COURT ORDERS** that the Prime Clerk shall cause a Claims Package to be sent to:
- (a) all known holders of Claims or potential Claims, including all entities listed in the Schedules as potentially holding claims;
 - (b) the office of the United States Trustee for the District of Delaware;
 - (c) counsel to the UCC;
 - (d) all parties that have requested notice in the Chapter 11 Proceedings pursuant to U.S. Bankruptcy Rule 2002 as of the date of the entry of the U.S. Bar Dates Order;
 - (e) all parties that are on the service list or have served notices of appearance in the CCAA Proceedings as of the date of this Order;

- (f) all counterparties to executory contracts with, and unexpired leases of, the Applicants;
- (g) all parties to litigation with the Applicants;
- (h) the District Director of Internal Revenue for the District of Delaware and all other taxing authorities for the jurisdictions (including all Canadian jurisdictions) in which the Applicants conduct business;
- (i) all relevant state, provincial and federal attorneys general;
- (j) all holders of record of any Interests in any of the Applicants as of the date of the U.S. Bar Date Order, provided, however, Interest Holders who want to assert claims against the Applicants that arise out of or relate to the ownership or purchase of an Interest, including claims arising out of or relating to the sale, issuance or distribution of the Interest, must file a claim by the applicable Bar Dates, unless another exception identified in this order applies; and
- (k) such additional persons and entities as deemed appropriate by the Applicants;

by regular prepaid mail within five Business Days of the date of this Order.

3. **THIS COURT ORDERS** that Prime Clerk shall cause the Notice to Creditors to be placed in *The Globe and Mail* (National Edition), the international edition of the *Wall Street Journal*, the national edition of *USA Today* and *La Presse* (Saturday edition) for one day in each of the two weeks following the date of this Order.

4. **THIS COURT ORDERS** that the Monitor shall cause the Notice to Creditors and the Claims Package to be posted on the Monitor's website (at www.ey.com/ca/psg) within three days of the date of this Order.

5. **THIS COURT ORDERS** that Prime Clerk shall cause a copy of the Claims Package to be sent to any Person requesting such material as soon as practicable.

6. **THIS COURT ORDERS** that, in the event that the Monitor believes that any action taken by an Applicant may give rise to a Restructuring Claim, or the Monitor is advised by any

Person that such Person believes it has a Restructuring Claim, Prime Clerk shall thereafter cause a copy of the Claims Package to be sent to the Claimant.

FILING OF PROOFS OF CLAIM

Claims

7. **THIS COURT ORDERS** that every Claimant disputing the Claim set out in the Claims Notice shall complete a Proof of Claim and deliver that Proof of Claim to Prime Clerk so that it is actually received by no later than the Claims Bar Date (or with respect to a Government Agency, the Government Claims Bar Date).
8. **THIS COURT ORDERS** that, for a Claimant to validly file a Proof of Claim the Claimant must: (i) include a signed original copy of a completed Proof of Claim together with accompanying documents as required to prove the amount claimed; and (ii) upload the Proof of Claim using the electronic interface on the website maintained by Prime Clerk for the Chapter 11 Proceedings or deliver the Proof of Claim to Prime Clerk by courier service, hand delivery or regular mail. A Proof of Claim is deemed to be filed on the date when received by Prime Clerk through one of the approved delivery methods set out herein. A Proof of Claim may not be delivered by facsimile or electronic mail.
9. **THIS COURT ORDERS** that any Claimant asserting a Claim against two or more Applicants must file a separate Proof of Claim with respect to each such Applicant and identify the particular Applicant against which a Claim is asserted. If a Claimant lists more than one Claimant on any one Proof of Claim, the Claim will be deemed to have been asserted only against the first-listed Applicant.
10. **THIS COURT ORDERS** that any Claimant (a) (i) whose Claim or Restructuring Claim is listed on the Schedules; (ii) whose Claim or Restructuring Claim is not listed as contingent, unliquidated or disputed; and (iii) who does not dispute the classification or amount of the Claim or Restructuring Claim as set forth in the Schedules; or (b) whose Claim has previously been allowed by, or paid pursuant to, an order of this Court or the U.S. Court; or (c) who has already filed a signed Proof of Claim against the applicable Applicant(s), in a form substantially similar to the Proof of Claim, with the clerk of the U.S. Court, Prime Clerk, or the Monitor is not

required to deliver a Proof of Claim in respect of such listed Claim or Restructuring Claim by the Claims Bar Date, the Government Claims Bar Date or the Restructuring Claims Bar Date, as applicable.

11. **THIS COURT ORDERS** that, in addition to those Claimants listed in paragraph 10, the following Claimants shall not be required to deliver a Proof of Claim by the Claims Bar Date, the Government Claims Bar Date, or the Restructuring Claims Bar Date, as applicable: (a) any Applicant, affiliated company of the Applicants (as such term is defined in section 3(2) of the CCAA) or any non-debtor affiliate of the Applicants (as such term is defined in section 101(2) of the U.S. Bankruptcy Code); (b) any of the Applicants' current officers, directors or employees having a Claim for indemnification, contribution or reimbursement; (c) the ABL Lenders; and (d) the Term Loan Lenders.

12. **THIS COURT ORDERS** that, subject to paragraph 13, any Claimant (i) whose Claim or Restructuring Claim is not listed on the Schedules; or (ii) whose Claim or Restructuring Claim is listed as contingent, unliquidated or disputed, or (iii) who disputes the amount or classification of the Claim on the Schedules, is required to deliver a Proof of Claim in respect of such Claim or Restructuring Claim by the Claims Bar Date, the Government Claims Bar Date or the Restructuring Claims Bar Date, as applicable, failing which such Claim or Restructuring Claim will be barred in accordance with either paragraph 16 or 20, as applicable.

13. **THIS COURT ORDERS** that if, after the date of this Order, the Schedules are amended or supplemented (in consultation with the Monitor) (a) to reduce the non-contingent, liquidated or undisputed amount of a Claim or Restructuring Claim, (b) to change the nature or characterization of a Claim or Restructuring Claim, or (c) to add a new Claim or Restructuring Claim to the Schedules, the affected Claimant may file a Proof of Claim or amend any previously filed Proof of Claim in respect of the amended scheduled Claim or Restructuring Claim in accordance with the procedures described herein so that it is received by Prime Clerk on or before the later of (i) the Claims Bar Date, the Government Claims Bar Date or Restructuring Claims Bar Date, or (ii) thirty (30) days after the Claimant is given notice of the applicable amendment or supplement to the Schedules. The Applicants shall cause notice of any such amendment or supplement to be provided to the applicable Claimant and to the Monitor and shall provide the Monitor with revised Schedules for posting on its website.

14. **THIS COURT ORDERS** that to the extent that a Claimant submits a proof of claim to the Monitor by the applicable Bar Date, such proof of claim will be forwarded to Prime Clerk for inclusion on the Applicants' official claims register and shall be deemed timely filed. The Monitor shall forward all copies of proofs of claim received to Prime Clerk (whether or not timely filed) and the Applicants shall cause copies of any U.S. Proofs of Claim against the Applicant(s) filed in accordance with the U.S. Claims Procedure to be made available to the Monitor.

15. **THIS COURT ORDERS** that any Claimant who has complied with the requirements of the U.S. Claims Procedure shall not have its Claim or Restructuring Claim, as applicable, barred and extinguished as a consequence of failing to comply with paragraphs 16 or 20, as applicable.

16. **THIS COURT ORDERS** that, any Claimant who:

- (a) is a Known Claimant and does not file a Proof of Claim in respect of a Claim or Restructuring Claim as set forth in the Schedules has been deemed to accept the amount set out in the Claims Notice in accordance with paragraph 10 and shall be forever barred, estopped and enjoined from asserting or enforcing any Claim of a different classification or in excess of the listed amount against any of the Applicants and any such different or greater claim shall be forever extinguished without any further act or notification by the Applicants;
- (b) is not a Known Claimant and does not deliver a Proof of Claim in respect of a Claim in accordance with paragraph 12:
 - (i) shall be forever barred, estopped and enjoined from asserting or enforcing such Claim against any of the Applicants and the Applicants shall not have any liability whatsoever in respect of such Claim and such Claim shall be extinguished without any further act or notification by the Applicants;
 - (ii) shall not be entitled to participate as a Claimant in these proceedings or receive any further notice in respect of these proceedings, the Claims Procedure or any Plan;
 - (iii) shall not be entitled to vote on any Plan or receive any distribution from any Plan or otherwise from the Applicants, or the Monitor on behalf of the Applicants, in respect of such Claim; and

17. **THIS COURT ORDERS** that the Applicants shall retain the right to: (a) dispute, or assert offsets of defences against, any filed proofs of claim, or any claim listed or reflected in the Schedules, as to nature, amount, liability, classification or otherwise; (b) subsequently designate any scheduled claim as disputed, contingent or unliquidated; and (c) otherwise amend or supplement the Schedules. If the Applicants subsequently amend or supplement the Schedules, the Applicants shall give notice of any amended Schedules to the holders of claims affected thereby, including notice of the Amended Schedules Bar Date to file proofs of claim in response to the amended Schedules. Notwithstanding the foregoing, nothing contained herein shall preclude the Applicants from objecting to any claim, whether scheduled or filed, on any grounds.

Restructuring Claims

18. **THIS COURT ORDERS** that every Claimant asserting a Restructuring Claim against an Applicant shall set out its aggregate Restructuring Claim in a Proof of Claim and deliver that Proof of Claim so that it is received by Prime Clerk no later than the Restructuring Claims Bar Date.

19. **THIS COURT ORDERS** that paragraphs 7 to 17 apply to Proofs of Claim delivered in respect of Restructuring Claims with any modification as circumstances require to apply to a Restructuring Claim.

20. **THIS COURT ORDERS** that any Claimant who does not deliver a Proof of Claim in respect of a Restructuring Claim in accordance with paragraph 18 shall be forever barred from asserting such Restructuring Claim against any of the Applicants and such Restructuring Claim shall be forever extinguished and any holder of such Restructuring Claim shall not be entitled to participate as a Claimant in these proceedings or receive any further notice in respect of the CCAA Proceedings, the Claims Procedure or any Plan and shall not be entitled to vote on any Plan or receive any distribution from any Plan or otherwise from the Applicants, or the Monitor on behalf of the Applicants, in respect of such Restructuring Claim.

DETERMINATION OF CLAIMS AND RESTRUCTURING CLAIMS

21. **THIS COURT ORDERS** that the applicable procedures for reviewing and determining Claims or Restructuring Claims shall be established by further Order of the Court. Notice of such procedures shall be provided to the service list in this CCAA proceeding and any Person who has filed a Proof of Claim or U.S. Proof of Claim against the Applicants in accordance with the Claims Procedure or the U.S. Claims Procedure.

GENERAL PROVISIONS

22. **THIS COURT ORDERS** that references to the singular shall include the plural, references to the plural shall include the singular and to any gender shall include the other gender.

23. **THIS COURT ORDERS** that any Claim or Restructuring Claim denominated in any currency other than U.S. dollars shall, for the purposes of this Order, be converted to and shall constitute obligations in U.S. dollars, such calculation to be effected using the Wall Street Journal rate as at the Canadian Filing Date (Canadian dollar claims are to be converted at the rate of CDN \$1.3410 = US \$ 1.00).

24. **THIS COURT ORDERS** that the Applicants, with the assistance of the Monitor, are hereby authorized to use reasonable discretion as to the adequacy of compliance with respect to the manner in which any forms delivered hereunder are completed and executed, and may waive strict compliance with the requirements of this Claims Procedure Order as to the completion and execution of such forms.

25. **THIS COURT ORDERS** that notwithstanding any other provisions of this Claims Procedure Order, the solicitation by the Applicants or the Monitor of Claims and the filing by any Claimant of any Claims shall not, for that reason only, grant any Person any standing in these proceedings.

26. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA and under the Initial Order, shall assist the Applicants in connection with the matters described herein, and is hereby authorized and directed to take

such other actions and fulfill such other roles as are contemplated by this Order and such other roles in keeping with its position as an officer of this Court.

27. **THIS COURT ORDERS** that nothing set out in this Order be interpreted as limiting the role of the Monitor in any way or otherwise restricting powers of the Monitor in connection with the procedure set out in this or any other or further order of this Court.

28. **THIS COURT ORDERS** that any notice or other communication to be given in connection with this Order by the Applicants or the Monitor to a Claimant, other than the Notice to Creditors to be published as provided in paragraph 2 herein, shall be in writing. Such notice or other communication will be sufficiently given to a Claimant if given by prepaid ordinary mail, by courier, by delivery or by facsimile transmission or electronic mail to the Claimant to such address, facsimile number or e-mail address appearing in the books and records of the Applicants or in any Proof of Claim filed by the Claimant. Any such notice or other communication, (a) if given by prepaid ordinary mail, shall be deemed received on the third (3rd) Business Day after mailing within Ontario, the fifth (5th) Business Day after mailing elsewhere within Canada or to the United States and the tenth (10th) Business Day after mailing internationally; (b) if given by courier or delivery shall be deemed received on the next Business Day following dispatch; (c) if given by facsimile transmission or electronic mail before 5:00 p.m. on a Business Day shall be deemed received on such Business Day; and (d) if given by facsimile transmission or electronic mail after 5:00 p.m. on a Business Day shall be deemed received on the following Business Day.

29. **THIS COURT ORDERS** that in the event that the day on which any notice or communication required to be delivered pursuant to the Claims Procedure is not a Business Day then such notice or communication shall be required to be delivered on the next Business Day.

30. **THIS COURT ORDERS** that if, during any period during which notices or other communication are being given pursuant to this Order a postal strike or postal work stoppage of general application should occur, such notices or other communications then not received or deemed received shall not, absent further Order of this Court, be effective. Notices and other communications given hereunder during the course of any such postal strike or work stoppage

of general application shall only be effective if given by electronic mail, courier, delivery or facsimile transmission in accordance with this Order.

31. **THIS COURT ORDERS AND REQUESTS** the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada (including the assistance of any court in Canada pursuant to Section 17 of the CCAA) and the Federal Court of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province and any court or any judicial, regulatory or administrative body of the United States and the states or other subdivisions of the United States and of any other nation or state to act in aid of and to be complementary to this Court in carrying out the terms of this order.



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

DEC 19 2016

PER / PAR: 

Schedule A

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.

Schedule B

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, RSC 1985, C.
C-36, AS AMENDED.
AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT
OF PERFORMANCE SPORTS GROUP LTD. *ET. AL.*

- and -

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

BPS US Holdings Inc., *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 16-12373 (KJC)
)
) (Jointly Administered)
)

NOTICE OF BAR DATES FOR FILING CLAIMS

**ANY HOLDER OF A POSSIBLE CLAIM AGAINST THE DEBTORS SHOULD
CONSULT AN ATTORNEY REGARDING ANY MATTERS NOT COVERED BY THIS
NOTICE, SUCH AS WHETHER THE HOLDER SHOULD FILE A PROOF OF CLAIM.**

**TO ALL KNOWN CREDITORS OF THE ABOVE-CAPTIONED ENTITIES
(COLLECTIVELY, THE "DEBTORS"):**

On [____], 2016, the United States Bankruptcy Court for the District of
Delaware and the Ontario Superior Court of Justice (Commercial List) (the "Courts") entered
orders (together, the "Bar Date Orders") establishing certain claims bar dates.

¹ The Debtors in these Chapter 11 Cases and Canadian Proceedings, 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.

Pursuant to the Bar Date Orders, the Courts established February 6, 2017 at 5:00 p.m., Eastern Time as the general bar date (the "General Bar Date") for filing prepetition claims in the Debtors' chapter 11 cases (the "Chapter 11 Cases") and the Canadian Proceedings (the "Canadian Proceeding").

As used in this Notice, the term "entity" includes a person, estate, trust, or governmental unit. In addition, the term "persons" includes an individual, partnership, and corporation, and the term "governmental units" means the United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States (but not a United States trustee while serving as a trustee in a chapter 11 case); a State; a Commonwealth; a District; a Territory; a US or Canadian municipality; a provincial government; the Canadian federal government; a Canadian governmental authority; a foreign state; or other foreign or domestic government, respectively.

As used in this Notice, the term "claim" means, as to or against any of the Debtors: (i) any right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or (ii) any right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

As used in this Notice, "prepetition" has the same meaning as the term "pre-filing".

THE BAR DATES

The Bar Date Orders established the following bar dates for filing claims in these Chapter 11 Cases and the Canadian Proceedings (the collectively, the "Bar Dates"):

- a. The General Bar Date. Pursuant to the Bar Date Orders, except as described below, all entities holding claims against the Debtors, whether secured, preferred, unsecured non-priority, unsecured priority claim or otherwise entitled to special treatment under applicable US or Canadian law in connection with the Chapter 11 Cases or the Canadian Proceedings that arose before October 31, 2016 (the "Petition Date") must file proofs of claim by the General Bar Date of February 6, 2017 at 5:00 p.m. Eastern Time. All other administrative claims (such as a claim under section 503(b) of the Bankruptcy Code) must be asserted by separate requests for payment and will not be deemed proper if made by proof of claim.
- a. The Governmental Bar Date. Pursuant to the Bar Date Orders, except as described below, all governmental units holding claims (whether secured, preferred, unsecured non-priority, unsecured priority claim or otherwise entitled to special treatment under applicable US or Canadian law in connection with the Chapter 11

Cases or the Canadian Proceedings) against the Debtors that arose before the Petition Date must file proofs of claim by the Governmental Bar Date of May 1, 2017 at 5:00 p.m. Eastern Time.

- b. The Rejection Bar Date. Any entity whose claims arise out of the (i) Court approved rejection of an executory contract or unexpired lease, in accordance with section 365 of the Bankruptcy Code and pursuant to an order entered prior to the confirmation of a plan in the applicable Debtor's case, or (ii) the disclaimer by a Debtor of a contract pursuant to section 32 of the CCAA, must file a proof of claim on or before the later of the applicable deadline (i) the General Bar Date; or (ii) in the Chapter 11 Cases, 30 days after the entry of the order providing for the rejection of such executory contract or unexpired lease in the Chapter 11 Cases; or (iii) in the Canadian Proceeding, 30 days after the effective date of the disclaimer by a Debtor in accordance with section 32 of the CCAA. The later of these dates is referred to in this notice as the "Rejection Bar Date."
- c. The Amended Schedules Bar Date. If, subsequent to the mailing date of this notice, a Debtor amends or supplements its Schedules of Assets and Liabilities (the "Schedules") to reduce the undisputed, noncontingent and liquidated amount or to change the nature or classification of a claim against a Debtor reflected therein, any affected entities that dispute such amendments or supplements to the Schedules (such Schedules, the "Amended Schedules") are required to file a proof of claim or amend any previously filed proof of claim in respect of the Amended Schedules claim on or before the later of: (i) the General Bar Date; and (ii) 30 days after the date that notice of the applicable Amended Schedules is served on the claimant. The later of these dates is referred to in this notice as the "Amended Schedule Bar Date."

FILING CLAIMS

1. WHO MUST FILE

Subject to the terms described above for holders of claims subject to the Governmental Bar Date, Rejection Bar Date, and the Amended Schedules Bar Date, the following entities **MUST** file proofs of claim on or before the General Bar Date:

- a. any entity (i) whose prepetition claim against a Debtor is not listed in the applicable Debtor's Schedules or is listed as any of disputed, contingent, or unliquidated and (ii) that desires to share in any

distribution in any of these Chapter 11 Cases or Canadian Proceedings; and

- b. any entity that believes that its prepetition claim is improperly classified in the Schedules or is listed in an incorrect amount or against an incorrect Debtor and that desires to have its claim allowed in a classification or amount or against a Debtor different from the classification, amount or Debtor identified in the Schedules.

2. WHAT TO FILE

Prepetition Claims

The Debtors are enclosing a proof of claim form (the “Proof of Claim Form”) for use in these Chapter 11 Cases or Canadian Proceedings, or you may use another proof of claim form that conforms substantially thereto. If your claim is scheduled by the Debtors, the enclosed Proof of Claim Form also sets forth: (i) the amount of your claim (if any) as scheduled; (ii) the specific Debtor against which the claim is scheduled; (iii) whether your claim is scheduled as disputed, contingent or unliquidated; and (iv) whether your claim is listed as a secured, preferred, unsecured non-priority, unsecured priority claim or otherwise entitled to special treatment under applicable U.S. or Canadian law in connection with the Chapter 11 Cases or the Canadian Proceedings. You will receive a different proof of claim form for each claim scheduled in your name by the Debtors. You may utilize the proof of claim form(s) provided by the Debtors to file your claim. Additional proof of claim forms may be obtained at the following website: <https://cases.primeclerk.com/PSG> (the “Claim Agent Website”) or the website of the court-appointed Monitor in the Canadian Proceeding: www.ey.com/ca/psg (the “Monitor’s Website”).

3. WHEN AND WHERE TO FILE

Entities must file each Proof of Claim Form so they are received on or before the applicable Bar Dates, (i) via the electronic interface on the website of the Debtors’ claims agent, Prime Clerk LLC, <https://cases.primeclerk.com/PSG>, or (ii) at the following address:

**Performance Sports Group Claims Processing Center
c/o Prime Clerk LLC
830 3rd Avenue, 3rd Floor
New York, NY 10022**

Proofs of claim will be deemed filed when actually received by Prime Clerk on or before the applicable Bar Date. Proofs of claim may not be delivered via facsimile or electronic mail transmission.

Proofs of claim will be collected, docketed and maintained by Prime Clerk for both the Chapter 11 Cases and the Canadian Proceeding. If you want to receive acknowledgement of Prime Clerk's receipt of a proof of claim, you must submit, by the applicable Bar Date and concurrently with submitting your original proof of claim, (i) a copy of

the original proof of claim and (ii) a self-addressed, postage prepaid return envelope or follow the instructions on Prime Clerk's website if submitting electronically.

All forms must be signed by the claimant or, if the claimant is not an individual, by an authorized agent of the claimant. The form must be written in English or French. You should attach to your completed form any documents on which the claim is based (or, if such documents are voluminous, attach a summary) or an explanation as to why the documents are not available.

Any entity asserting claims against multiple Debtors must file a separate proof of claim form with respect to each Debtor. In addition, any entity filing a claim must identify on its proof of claim form the particular Debtor against which the entity asserts its claim. If an entity lists more than one Debtor on any one form, the relevant claims will be treated as filed only against the first listed Debtor.

4. ENTITIES NOT REQUIRED TO FILE A CLAIM

The Bar Date Orders further provide that the following entities, whose claims otherwise would be subject to the General Bar Date or the Governmental Bar Date need not file claims in these cases:

- a. any entity that already has filed a signed proof of claim against the applicable Debtor(s) in a form substantially similar to the form enclosed herewith and attached to the Motion as **Exhibit B** with:
(i) the Clerk of the Bankruptcy Court for the District of Delaware, the Monitor or (iii) the Debtors' claims and noticing agent, Prime Clerk;
- b. any entity (i) whose claim against a Debtor is not listed as "disputed", "contingent", or "unliquidated" in the Schedules or Amended Schedules and (ii) agrees with the nature, classification and amount of its claim as identified in the Schedules or Amended Schedules;
- c. any entity whose claim against a Debtor previously has been allowed by, or paid pursuant to, an order of the Courts;
- d. any Debtor or any of their non-debtor affiliates (as such term is defined in section 101(2) of the Bankruptcy Code) or an entity related to any Debtor as such term is defined under section 3(2) of the CCAA, as applicable;
- e. any current officer, director or employee of any of the Debtors having a claim against any of the Debtors for indemnification, contribution or reimbursement;
- f. the Prepetition ABL Lenders; and

g. the Prepetition Term Loan Lenders.

NO REQUIREMENT FOR STOCKHOLDERS TO FILE PROOFS OF INTEREST

Any entity holding an interest in the Debtors (an "Interest Holder"), which interest is based exclusively upon the ownership of: (a) common stock in Performance Sports Group Ltd.; or (b) warrants or rights to purchase, sell or subscribe to such stock (any such stock or aforementioned right related thereto being referred to herein as an "Interest"), need not file a proof of claim or proof of interest on or before the General Bar Date on account of such Interest; provided, however, Interest Holders who want to assert claims against the Debtors that arise out of or relate to the ownership or purchase of an Interest, including claims arising out of or relating to the sale, issuance or distribution of the Interest, must file a claim by the applicable Bar Dates, unless another exception identified in this motion applies.

CONSEQUENCES OF FAILURE TO FILE A CLAIM

Entities that fail to properly file a Proof of Claim Form by the applicable Bar Date shall be barred, estopped and enjoined from: (a) asserting any prepetition claim against the Debtors that such entity may possess and that (i) is in an amount that exceeds the amount, if any, that is identified in the Schedules or Amended Schedules on behalf of such entity as undisputed, noncontingent and liquidated or (ii) is of a different nature, classification or priority than any claim identified in the Schedules or Amended Schedules on behalf of such entity (any such claim under this subparagraph (a) being referred to herein as an "Unscheduled Claim"); and (b) voting upon, or receiving distributions under, any plan of reorganization or arrangement in these Chapter 11 Cases or Canadian Proceedings in respect of an Unscheduled Claim.

RESERVATION OF RIGHTS

The Debtors retain the right to: (i) dispute, or assert offsets or defenses against, any filed proofs of claim, or any claim listed or reflected in the Schedules, as to nature, amount, liability, classification or otherwise; (ii) subsequently designate any scheduled claim as disputed, contingent or unliquidated; and (iii) otherwise amend or supplement the Schedules. Notwithstanding the foregoing, nothing contained herein shall preclude the Debtors from objecting to any claim, whether scheduled or filed, on any grounds.

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ADDITIONAL INFORMATION

If you require additional information regarding the filing of a claim, you may contact Prime Clerk at **855-631-5352** or by submitting an inquiry at <https://cases.primeclerk.com/PSG>. Copies of the Bar Date Order and other information regarding the Debtors' Chapter 11 Cases are available for inspection free of charge on Prime Clerk's website at: <https://cases.primeclerk.com/PSG/Home-Index>.

Neither Prime Clerk nor the Monitor can advise you how to file, or whether you should file, a claim. You may wish to consult an attorney regarding this matter

Dated: Wilmington, Delaware and
 Toronto, Ontario

BY ORDER OF THE COURTS

_____, 2016

Schedule C

Instructions for Proof of Claim

United States Bankruptcy Court and Ontario Superior Court of Justice (Commercial List)

12/15

These instructions and definitions generally explain the law. In certain circumstances, such as bankruptcy cases that debtors do not file voluntarily, exceptions to these general rules may apply. You should consider obtaining the advice of an attorney, especially if you are unfamiliar with the bankruptcy process and privacy regulations.

A person who files a fraudulent claim could be subject to severe penalties, including monetary fines and/or imprisonment.

How to fill out this form

- Fill in all of the information about the claim as of the date the case was filed.
- Fill in the caption at the top of the form.
- If the claim has been acquired from someone else, then state the identity of the last party who owned the claim or was the holder of the claim and who transferred it to you before the initial claim was filed.
- **Attach any supporting documents to this form.**
Attach redacted copies of any documents that show that the debt exists, a lien secures the debt, or both. (See the definition of *redaction* on the next page.)

Also attach redacted copies of any documents that show perfection of any security interest or any assignments or transfers of the debt. In addition to the documents, a summary may be added.
- **Do not attach original documents because attachments may be destroyed after scanning.**
- If the claim is based on delivering health care goods or services, do not disclose confidential health care information. Leave out or redact confidential information both in the claim and in the attached documents.

- A *Proof of Claim* form and any attached documents must show only the last 4 digits of any social security number, individual's tax identification number, or financial account number, and only the year of any person's date of birth.
- For a minor child, fill in only the child's initials and the full name and address of the child's parent or guardian. For example, write *A.B., a minor child (John Doe, parent, 123 Main St., City, State)*.

Confirmation that the claim has been filed

To receive confirmation that the claim has been filed, enclose a stamped self-addressed envelope and a copy of this form. You may view a list of filed claims in this case by visiting the Claims and Noticing Agent's website at <http://cases.primeclerk.com/psg>.

Understand the terms used in this form

Administrative expense: Generally, an expense that arises after a bankruptcy case is filed in connection with operating, liquidating, or distributing the bankruptcy estate.

CCAA: Companies' Creditors Arrangement Act (Canada)

Claim: A creditor's right to receive payment for a debt that the debtor owed on the date the debtor filed for bankruptcy, whether secured, preferred, unsecured priority, unsecured nonpriority, or otherwise entitled to special treatment under applicable U.S. or Canadian law. A claim may be secured or unsecured.

Claim Pursuant to 11 U.S.C. §503(b)(9): A claim arising from the value of any goods received by the Debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of the Debtor's business. Attach documentation supporting such claim.

Creditor: A person, corporation, or other entity to whom a debtor owes a debt that was incurred on or before the date the debtor filed for bankruptcy.

Debtor: A person, corporation, or other entity who is in bankruptcy. Use the debtor's name and case number as shown in the bankruptcy notice you received.

Evidence of perfection: Evidence of perfection of a security interest may include documents showing that a security interest has been filed or recorded, such as a mortgage, lien, certificate of title, or financing statement.

Information that is entitled to privacy: A *Proof of Claim* form and any attached documents must show only the last 4 digits of any social security number, an individual's tax identification number, or a financial account number, only the initials of a minor's name, and only the year of any person's date of birth. If a claim is based on delivering health care goods or services, limit the disclosure of the goods or services to avoid embarrassment or disclosure of confidential health care information. You may later be required to give more information if the trustee or someone else in interest objects to the claim.

Priority claim: A claim within a category of unsecured claims that is entitled to priority under applicable U.S. or Canadian law. These claims are paid from the available money or property in a bankruptcy case before other unsecured claims are paid. Common priority unsecured claims include alimony, child support, taxes, and certain unpaid wages, source deductions, employee wage claims up to prescribed limits, and certain governmental claims entitled to priority by statute.

Proof of claim: A form that shows the amount of debt the debtor owed to a creditor on the date of the bankruptcy filing. The form must be filed in the district where the case is pending.

Redaction of information: Masking, editing out, or deleting certain information to protect privacy. Filers must redact or leave out information entitled to **privacy** on the *Proof of Claim* form and any attached documents.

Secured claim: A claim backed by a lien on particular property of the debtor. A claim is secured to the extent that a creditor has the right to be paid from the property before other creditors are paid. The amount of a secured claim usually cannot be more than the value of the particular property on which the creditor has a lien. Any amount owed to a creditor that is more than the value of the property normally may be an unsecured claim. But exceptions exist.

Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment may be a lien.

Setoff: Occurs when a creditor pays itself with money belonging to the debtor that it is holding, or by canceling a debt it owes to the debtor.

Unsecured claim: A claim that does not meet the requirements of a secured claim. A claim may be unsecured in part to the extent that the amount of the claim is more than the value of the property on which a creditor has a lien.

Offers to purchase a claim

Certain entities purchase claims for an amount that is less than the face value of the claims. These entities may contact creditors offering to purchase their claims. Some written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court, the bankruptcy trustee, or the debtor. A creditor has no obligation to sell its claim. However, if a creditor decides to sell its claim, any transfer of that claim is subject to Bankruptcy Rule 3001(e), any provisions of the Bankruptcy Code (11 U.S.C. § 101 et seq.) that apply, and any orders of the bankruptcy court that apply.

Please send completed Proof(s) of Claim to:

BPS US Holdings Inc. Claims Processing Center
c/o Prime Clerk LLC
830 3rd Avenue, 3rd Floor
New York, NY 10022

Do not file these instructions with your form

Schedule D

Fill in this information to identify the case (Select only one Debtor per claim form):

- | | | |
|--|--|---|
| ☐ BPS US Holdings Inc.
(Case No. 16-12373) | ☐ BPS Diamond Sports Inc.
(Case No. 16-12379) | ☐ PSG Innovation Corp.
(Case No. 16-12385) |
| ☐ Bauer Hockey, Inc.
(Case No. 16-12374) | ☐ PSG Innovation Inc.
(Case No. 16-12380) | ☐ Bauer Hockey Corp.
(Case No. 16-12386) |
| ☐ Easton Baseball / Softball Inc.
(Case No. 16-12375) | ☐ Performance Sports Group Ltd.
(Case No. 16-12381) | ☐ BPS Canada Intermediate Corp.
(Case No. 16-12387) |
| ☐ Bauer Hockey Retail Inc.
(Case No. 16-12376) | ☐ KBAU Holdings Canada, Inc.
(Case No. 16-12382) | ☐ BPS Diamond Sports Corp.
(Case No. 16-12388) |
| ☐ Bauer Performance Sports Uniforms Inc.
(Case No. 16-12377) | ☐ Bauer Hockey Retail Corp.
(Case No. 16-12383) | ☐ Bauer Performance Sports Uniforms Corp.
(Case No. 16-12389) |
| ☐ Performance Lacrosse Group Inc.
(Case No. 16-12378) | ☐ Easton Baseball / Softball Corp.
(Case No. 16-12384) | ☐ Performance Lacrosse Group Corp.
(Case No. 16-12390) |

Proof of Claim

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy/restructuring case. Other than a claim under 11 U.S.C. § 503(b)(9), this form should not be used to make a request for payment of an administrative expense or an expense relating to goods delivered or services rendered after the petition date. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be subject to severe penalties including significant monetary fines and /or imprisonment.

Fill in all the information about the claim as of October 31, 2016.

☐ The amounts set forth on this claim form are in US Dollars

☐ The amounts set forth on this claim form are in Canadian Dollars

Part 1: Identify the Claim

1. Who is the current creditor?

Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor

2. Has this claim been acquired from someone else?

☐ No

☐ Yes. From whom?

3. Where should notices and payments to the creditor be sent?

Where should notices to the creditor be sent?

Where should payments to the creditor be sent? (if different)

Name

Name

Number Street

Number Street

City State/Province ZIP/Postal Code

City State/Province ZIP/Postal Code

Country

Country

Contact phone

Contact phone

Contact email

Contact email

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. Does this claim amend one already filed?

☐ No

☐ Yes. Claim number on court claims registry (if known)

Filed on MM / DD / YYYY

5. Do you know if anyone else has filed a proof of claim for this claim?

☐ No

☐ Yes. Who made the earlier filing?

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? ☐ No
☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim and in what currency? \$ _____ Does this amount include interest or other charges?
☐ USD ☐ No
☐ CDN ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges.

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, credit card, restructuring claim/disclaimed or resiliated contract, etc.

Attach redacted copies of any documents supporting the claim.

Limit disclosing information that is entitled to privacy, such as health care information.

9. Is all or part of the claim secured? ☐ No
☐ Yes. The claim is secured by a lien on property.

Nature of property:

- ☐ Real estate.
☐ Motor vehicle

☐ Other. Describe: _____

Basis for perfection: _____

Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: \$ _____

Amount of the claim that is secured: \$ _____

Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)

Amount necessary to cure any default as of October 31, 2016: \$ _____

Annual Interest Rate (when case was filed) _____%

- ☐ Fixed
☐ Variable

10. Is this claim based on a lease? ☐ No
☐ Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? ☐ No
☐ Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority or special treatment under US or Canadian law?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☐ No

☐ Yes. Check one:

Under U.S. law:

☐ Up to \$2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

Amount entitled to priority

\$ _____

☐ Wages, salaries, or commissions (up to \$12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

\$ _____

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

\$ _____

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

\$ _____

☐ Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.

\$ _____

Under Canadian law:

☐ Wages, salaries, or commissions (up to CDN \$2,000) earned within 6 months before the Initial Order, as referred to in section 6(5) CCAA.

\$ _____

☐ Amounts due in respect of a registered pension plan as referred to in section 6(6) CCAA.

\$ _____

☐ Amounts due to the governments and referred to in section 6(3) CCAA.

\$ _____

* Amounts are subject to adjustment on 4/01/16 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim entitled to administrative priority pursuant to 11 U.S.C. § 503(b)(9)?

☐ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the Debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ _____

Part 3: Sign Below

The person completing this proof of claim must sign and date it.

A person who files a fraudulent claim could be subject to severe penalties including significant monetary fines and/or imprisonment.

Check the appropriate box:

- ☐ I am the creditor.
☐ I am the creditor's attorney or authorized agent.
☐ I am the trustee, or the debtor, or their authorized agent.
☐ I am a guarantor, surety, endorser, or other codebtor.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date _____ (mm/dd/yyyy)

Signature

Print the name of the person who is completing and signing this claim:

Name

First name

Middle name

Last name

Title

Company

Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Number

Street

City

State/Province

ZIP/Postal Code

Country

Contact phone

Email

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
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

CLAIMS PROCEDURE ORDER

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

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

Vlad A. Calina LSUC# 69072W
Tel: (416) 869-5202
Fax: (416) 947-0866

Lawyers for the Applicants

EXHIBIT “H”

EXHIBIT "H"

referred to in the Affidavit of

KEISHA LACKPATIAH-SEALY

Sworn September 20, 2017



Commissioner for Taking Affidavits

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.	)	FRIDAY, THE 1ST
	)	
JUSTICE HAINEY	)	DAY OF SEPTEMBER, 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 OLD
PSG WIND-DOWN LTD., OLD BHR WIND-DOWN CORP., OLD BPSU WIND-DOWN
CORP., OLD BPSDS WIND-DOWN CORP., OLD EBS WIND-DOWN CORP., OLD PLG
WIND-DOWN CORP., OLD PSGI WIND-DOWN CORP., OLD BHR INC., OLD BH INC.,
OLD BPSU INC., OLD BPSCI INC., OLD BPSUSH INC., OLD EBS INC., OLD PLG INC.,
AND OLD PSGI INC.

(Applicants)

CLAIMS RESOLUTION ORDER

THIS MOTION, made by Old PSG Wind-down Ltd. ("PSG"), Old BHR Wind-down Corp., Old BPSU Wind-down Corp., Old BPSDS Wind-down Corp., Old EBS Wind-down Corp., Old EBS Wind-down Corp., Old PLG Wind-down Corp., Old PSGI Wind-down Corp., Old BHR Inc., Old BH Inc., Old BPSU Inc., Old BPSCI Inc., Old BPSCI Inc., Old BPSUSH Inc., Old EBS Inc., Old PLG Inc., and Old PSGI Inc. (together, the "**Applicants**") for an order for the procedure to resolve and dispute claims against the Applicants was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Brian J. Fox sworn August 28, 2017, and the Tenth Report of Ernst & Young Inc. dated August 31, 2017 in its capacity as Monitor of the Applicants (the "**Monitor**") and on hearing the submissions of counsel for the Applicants, the Monitor and those other parties present, no one appearing for any other party although duly served as appears from the affidavit of service of Lee Nicholson, filed.

SERVICE

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

DEFINITIONS

2. **THIS COURT ORDERS** that for purposes of this Claims Resolution Order any capitalized terms not otherwise defined herein shall have the meanings attributed to them in the Claims Procedure Orders, copies of which are attached hereto as Schedule "A", and the following terms shall have the following meanings:

- (a) **"Canadian Applicants"** means those Applicants which are incorporated under the laws of Canada or one of its Provinces, namely, Old PSG Wind-down Ltd., Old BHR Wind-down Corp., Old BPSU Wind-down Corp., Old BPSDS Wind-down Corp., Old EBS Wind-down Corp., Old PLG Wind-down Corp., Old PSGI Wind-down Corp.;
- (b) **"Bar Date"** means the applicable bar date in respect of a Claim as provided for in the Claims Procedure Orders, including the Claims Bar Date, Government Claims Bar Date, Employee Claims Bar Date or Restructuring Claims Bar Date or a bar date established by further order of the Court;
- (c) **"Canadian Claim"** means any Claim or Restructuring Claim, except for Securities Law Claims and the SEC Claim, against any one of the Canadian Applicants for which a Claimant has delivered a Proof of Claim by the applicable Bar Date or was listed in the Schedules as a Known Claimant of a Canadian Applicant;
- (d) **"Claims Procedure Orders"** means, collectively, the Claims Procedure Order of this Court dated December 19, 2016 and the Employee Claims Procedure Order of this Court dated April 10, 2017;
- (e) **"Claims Officer"** means any Person appointed as the Claims Officer by the Monitor in accordance with this Claims Resolution Order;

- (f) **"Creditors Committee"** means the Applicants' Official Committee of Unsecured Creditors appointed in the Chapter 11 Proceedings, if then existing;
- (g) **"Cross Border Claims"** means one or more Canadian Claims and one or more U.S. Claims held by the same Claimant which all arise from similar facts, events, circumstances, agreements or invoices;
- (h) **"Disputed Canadian Claim"** means any Canadian Claim in respect of which the Monitor has issued a Notice of Revision or Disallowance;
- (i) **"Dispute Objection Deadline"** has the meaning ascribed to it in paragraph 6 of this Claims Resolution Order;
- (j) **"Effective Date"** means the effective date of the Joint Plan;
- (k) **"Equity Committee"** means the Applicants' Official Committee of Equity Security Holders appointed in the Chapter 11 Proceedings;
- (l) **"Joint Plan"** means the proposed Joint Chapter 11 Plan of Liquidation of Old BPSUSH Inc. and its affiliated debtors, filed with the U.S. Bankruptcy Court on August 25, 2017, or any subsequently revised, modified, amended or restated version thereof;
- (m) **"Liquidation Trustee"** means the Liquidation Trustee as defined in the Joint Plan appointed pursuant to the Joint Plan after the Effective Date;
- (n) **"Notice of Dispute"** means a notice, in substantially the form attached as Schedule "C" hereto, giving notice to the Monitor and the Applicants that the Claimant disputes the Notice of Revision or Disallowance and the reasons for such dispute;
- (o) **"Notice of Revision or Disallowance"** means a notice, in substantially the form attached as Schedule "B" hereto, advising the Claimant that the Monitor, with the consent of the Applicants, has revised or disallowed all or part of the Disputed Canadian Claim as set out in such Claimant's Proof of Claim;

- (p) **"Request for Information"** has the meaning ascribed to it in paragraph 14 of this Claims Resolution Order;
- (q) **"SEC Claim"** means the Proof of Claim[s] filed by the United States Securities and Exchange Commission against Old PSG Wind-Down Ltd.;
- (r) **"Securities Law Claims"** means any Claim, whether or not the subject of an existing lawsuit, that is subject to mandatory subordination pursuant to section 510(b) of the U.S. Bankruptcy Code or comparable principles of Canadian law;
- (s) **"Statutory Limits"** has the meaning ascribed to it in paragraph 20 of this Claims Resolution Order;
- (t) **"U.S. Applicants"** means those Applicants which are incorporated under the laws of the United States, namely, Old BHR Inc., Old BH Inc., Old BPSU Inc., Old BPSCI Inc., Old BPSUSH Inc., Old EBS Inc., Old PLG Inc. and Old PSGI Inc.; and
- (u) **"U.S. Claim"** means any Claim against the U.S. Applicants for which a Claimant has delivered a Proof of Claim by the applicable Bar Date or was listed in the Schedules as a Known Claimant of a U.S. Applicant.

ADJUDICATION OF CANADIAN CLAIMS

3. **THIS COURT ORDERS** that the Monitor shall review all Proofs of Claim in respect of Canadian Claims filed in accordance with the Claims Procedure Orders, in consultation with the Applicants (and following the Effective Date, the Liquidation Trustee) and shall accept, revise or disallow the amount of each Canadian Claim, unless the Monitor declines to accept, revise or disallow the Canadian Claim pursuant to paragraph 21 of this Claims Resolution Order.

4. **THIS COURT ORDERS** that for any Canadian Claim that the Monitor revises or disallows, the Monitor shall notify the Claimant that the Canadian Claim has been revised or disallowed and the reasons therefor, by sending a Notice of Revision or Disallowance to the Claimant at the Claimant's address identified on their Proof of Claim. The Monitor shall provide a copy of all Notices of Revision or Disallowance to the Creditors' Committee, if

applicable and the Equity Committee (and following the Effective Date, the Liquidation Trustee) within five (5) calendar days of it being sent to the Claimant.

5. **THIS COURT ORDERS** that in revising or disallowing any Canadian Claim, the Monitor may take account of and determine the presence and amount, if any, of any set-off or counterclaim or Statutory Limits relating to such Canadian Claim.

6. **THIS COURT ORDERS** that a Claimant that intends to dispute a Notice of Revision or Disallowance shall deliver a Notice of Dispute, including the reasons for the dispute, to the Monitor, with a copy to the Applicants, within twenty-one (21) calendar days after the date on which the Claimant is deemed to receive the Notice of Revision or Disallowance, or such other date as may be agreed to by the Monitor in writing (the "**Dispute Objection Deadline**"). In the event that a dispute raised in a Notice of Dispute is not settled within a time period or in a manner satisfactory to the Monitor, in consultation with the Applicants (and following the Effective Date, the Liquidation Trustee), the Monitor shall refer the dispute raised in the Notice of Dispute to a Claims Officer or the Court for adjudication. The Monitor or the Applicants shall inform the Creditors' Committee and Equity Committee or the Liquidation Trustee, as applicable, of any Canadian Claims referred to a Claims Officer or the Court for adjudication.

7. **THIS COURT ORDERS** that the Monitor shall provide copies of any filed Notice of Dispute to the Creditors' Committee and the Equity Committee or Liquidation Trustee, as applicable, within five (5) calendar days of such Notice of Dispute being filed. Without imposing any obligation, within ten (10) calendar days of receipt of any filed Notice of Dispute, the Creditors' Committee and Equity Committee or Liquidation Trustee, as applicable, shall deliver documents or other information to the Monitor that the Creditors' Committee, Equity Committee or Liquidation Trustee, as applicable, believe are relevant to the filed Notice of Dispute not otherwise addressed in the applicable Notice of Revision or Disallowance. The Monitor shall confer with the party submitting such information or documents and may consider such documents and information as the Monitor deems appropriate. The Monitor, in its sole discretion, may consider documents or other information delivered to the Monitor after the time period provided for in this paragraph.

8. **THIS COURT ORDERS** that, in the event that a Claimant does not file a Notice of Dispute by the Dispute Objection Deadline, such Claimant's Canadian Claim shall be revised to the amount set out in the Notice of Revision or Disallowance and such Claimant shall have no further right to dispute, contest or otherwise appeal the Notice of Revision or Disallowance or the amount of their Canadian Claim, including, for greater certainty, in the Chapter 11 Proceedings.

9. **THIS COURT ORDERS** that the Monitor, in consultation with the Applicants (and following the Effective Date, the Liquidation Trustee), is authorized to and may attempt to consensually resolve and settle the amount of any Disputed Canadian Claim and any Canadian Claim for which the Monitor intends to issue a Notice of Revision or Disallowance prior to sending the notice and/or after sending the Notice of Revision or Disallowance but prior to a determination by the Claims Officer.

10. **THIS COURT ORDERS** that the Monitor shall consult with the Equity Committee, in connection with any Canadian Claim in excess of US\$250,000 that the Monitor proposes to allow, admit, settle, resolve, value or revise in whole or in part (including by Notice of Revision or Disallowance) prior to allowing, admitting, settling, resolving, valuing or revising in whole or in part such Canadian Claim and shall only distribute on account of such Canadian Claim on ten (10) calendar days' notice to the Equity Committee.

11. **THIS COURT ORDERS** that the Monitor shall consult with the Creditors' Committee in connection with any Canadian Claim in excess of US\$250,000 that the Monitor proposes to revise or disallow in whole or in part prior to issuing a Notice of Revision or Disallowance in respect of such Canadian Claim.

12. **THIS COURT ORDERS** that the Monitor shall provide notice to and consult with each of the Creditors' Committee and the Equity Committee with respect to any Disputed Canadian Claims in excess of US\$250,000 that is referred to a Claims Officer or the Court for adjudication.

13. **THIS COURT ORDERS** that the Applicants, in consultation with the Monitor and with the consent of the Equity Committee or the Liquidation Trustee, as applicable, may determine whether the Securities Law Claims will be adjudicated pursuant to this Claims

Resolution Order in the CCAA Proceedings or in the Chapter 11 Proceedings, or jointly by this Court and the U.S. Bankruptcy Court. For the avoidance of doubt, nothing in this Claims Resolution Order shall limit, impair, or affect in any way the right of the Equity Committee, the Liquidation Trustee, or any other party in interest to independently object to the Securities Law Claims pursuant to section 502(a) of the U.S. Bankruptcy Code or any other applicable U.S. or Canadian law.

14. **THIS COURT ORDERS** that the Monitor or the Applicants (and following the Effective Date, the Liquidation Trustee) at any time, may request additional information (a "Request for Information"), on notice to the Claimant, from any Person who, in the Monitor's or the Applicants' determination, possesses or has knowledge of information that the Monitor, the Applicants or, following the Effective Date, the Liquidation Trustee determine is relevant to its assessment of a Canadian Claim or any part thereof that is accepted by the Monitor, in consultation with the Applicants (and following the Effective Date, the Liquidation Trustee) for distribution and/or voting purposes. For greater certainty, it is solely the Claimant's continuing responsibility to prove its claim to the satisfaction of the Monitor, the Claims Officer or the Court, as applicable and this section does not impose any obligation on the Monitor or the Applicants (or, following the Effective Date, the Liquidation Trustee) to issue a Request for Information.

CLAIMS OFFICER

15. **THIS COURT ORDERS** that, if necessary, the Monitor, in consultation with the Applicants, the Creditors' Committee and the Equity Committee or the Liquidation Trustee, as applicable, may appoint a Claims Officer to determine the validity or quantum of any Disputed Canadian Claim and resolve any dispute arising from a Notice of Dispute.

16. **THIS COURT ORDERS** that the Applicants or their estates shall be entitled to pay the Claims Officer appointed by the Monitor reasonable compensation for the performance of his/her obligations set out in this Claims Resolution Order, or any further Order of the Court, on the terms set out in a retention agreement between the Claims Officer and the Applicants or the Liquidation Trustee, as applicable.

17. **THIS COURT ORDERS** that a Claims Officer, once so appointed, shall schedule and conduct a hearing, in writing or orally, as soon as reasonably practicable, with notice to the Claimant holding the Disputed Canadian Claim, the Monitor and the Applicants (and following the Effective Date, the Liquidation Trustee) (and the Monitor shall subsequently deliver such notice to the Equity Committee) to determine the validity and quantum of the Disputed Canadian Claim for distribution and/or voting purposes, as the case may be. A Claims Officer shall determine all procedural matters which may arise in respect of his or her determination of these matters, including the manner in which any evidence may be adduced and whether the hearing in respect of the Disputed Canadian Claim shall be in writing or heard orally. A Claims Officer may make any award of costs as the Claims Officer deems appropriate in the circumstances. For greater certainty, unless otherwise consented to by the Monitor and the Claims Officer, only the Claimant holding the Disputed Canadian Claim, the Monitor and the Applicants (and following the Effective Date, the Liquidation Trustee) may attend and participate at the hearing of the Claims Officer.

18. **THIS COURT ORDERS** that the Claims Officer shall notify the Monitor, the Claimant holding the Disputed Canadian Claim, the Applicants, and following the Effective Date, the Liquidation Trustee in writing of his or her determination. The Claims Officer shall provide reasons in writing for his or her determination to the Monitor, the Applicants, the Liquidation Trustee when applicable, and the Claimant holding the Disputed Canadian Claim, but such reasons may be provided after the Claims Officer has made his or her determination. Prior to the Effective Date, the Applicants or the Monitor shall provide the reasons of any decision by the Claims Officer to the Equity Committee and Creditors' Committee within five (5) calendar days of receiving the reasons.

19. **THIS COURT ORDER** that the Monitor, the Claimant holding the Disputed Canadian Claim, the Applicants or the Equity Committee (and following the Effective Date, the Liquidation Trustee) may appeal the Claims Officer's determination by serving upon the others and filing with this Court, within ten (10) calendar days of receipt of the Claims Officer's reasons, a motion to appeal the Claims Officer's determination returnable on a date to be fixed by the Court. If a motion to appeal the Claims Officer's determination is not filed within such period, then the Claims Officer's determination shall be deemed to be final and

binding and shall fix the quantum of such Claimant's Disputed Canadian Claim for distribution and/or voting purposes.

STATUTORY LIMITS

20. **THIS COURT ORDERS** that, with respect to all Canadian Claims, if any statutory provision of the U.S. Bankruptcy Code (including, without limitation, sections 502(b)(6), 502(b)(7), and 503(c) of the U.S. Bankruptcy Code) limits the distribution on account of such Canadian Claim to less than is permitted under the CCAA, such Canadian Claim shall be limited to the lower amount (the "**Statutory Limits**") and the Monitor is hereby directed to revise any Canadian Claim accordingly pursuant to this Claims Resolution Order.

CROSS BORDER CLAIMS

21. **THIS COURT ORDERS** that the Monitor, with the agreement and consent of the Applicants and the Equity Committee (and following the Effective Date, the Liquidation Trustee) and, in consultation with the Creditors' Committee, may (i) accept, revise or disallow any Cross Border Claims (including the U.S. Claims) in accordance with the procedures established by this Claims Resolution Order as if the Cross Border Claims (including the U.S. Claims) were Canadian Claims; or (ii) decline to accept, revise or disallow any Cross Border Claims (including the Canadian Claims) and such Cross Border Claims (including the Canadian Claims) shall be determined in the manner provided for in the Chapter 11 Proceedings and under the U.S. Bankruptcy Code.

22. **THIS COURT ORDERS** that in the event the Monitor, the Applicants, and the Equity Committee, and following the Effective Date, the Liquidation Trustee, cannot agree on whether Cross Border Claims shall be determined in the CCAA Proceedings pursuant to this Claims Resolution Order or in the Chapter 11 Proceedings under the U.S. Bankruptcy Code, this Court and the U.S. Bankruptcy Court shall decide on the process by which such Cross Border Claims shall be resolved.

23. **THIS COURT ORDERS** that the procedure for determining Employee Claims that are Cross Border Claims shall not be decided by the Applicants and the Monitor in

accordance with paragraph 21 of this Claims Resolution Order prior to the Effective Date without consent of the Equity Committee and Creditors' Committee.

24. **THIS COURT ORDERS** that in making a determination under paragraph 21 of this Claims Resolution Order on whether Cross Border Claims shall be determined in the CCAA Proceedings pursuant to this Claims Resolution Order or in the Chapter 11 Proceedings under the U.S. Bankruptcy Code, the Monitor, the Applicants, the Equity Committee (and following the Effective Date, the Liquidation Trustee) may consider the location of the Claimant, the nexus of the Cross Border Claims to Canada or the United States, the jurisdiction whose laws are principally implicated by the Cross Border Claim, and any governing law clause in any agreement to which the Cross Border Claims relate, among other factors.

25. **THIS COURT ORDERS** that a determination made in the Chapter 11 Proceedings in respect of any U.S. Claim and any Canadian Claim which the Monitor declines to accept, revise or disallow in accordance with the terms of this Claims Resolution Order, shall be final and binding for purposes of the CCAA Proceedings and the Claimant shall have no further right to dispute, contest or appeal the decision determining the Claim pursuant to this Claims Resolution Order.

26. **THIS COURT ORDERS** that the U.S. Bankruptcy Court shall retain sole jurisdiction for any disputes with respect to all U.S. Claims and this Claims Resolution Order shall not affect in any way the determination of U.S. Claims, except as provided for in paragraph 21 hereof. For the avoidance of doubt, nothing in this Claims Resolution Order shall limit, impair, or affect in any way the right of the Equity Committee or Liquidation Trustee, as applicable, or any other party in interest to independently object to any U.S. Claims that are not Cross Border Claims, any Cross Border Claims that are to be decided in the Chapter 11 Proceedings or the SEC Claim pursuant to section 502(a) of the U.S. Bankruptcy Code or any other applicable U.S. or Canadian law.

SERVICE AND NOTICES

27. **THIS COURT ORDERS** that any notice or other communication to be given under this Claims Resolution Order to the Monitor shall be in writing in substantially the form, if

any, provided for in this Claims Resolution Order and will be sufficiently given only if delivered by courier, by personal delivery, email or facsimile transmission addressed to:

Ernst & Young Inc.,
in its capacity as the Court-appointed Monitor of Old PSG Wind-Down Ltd. et. al.
800 René Lévesque West, suite 1900
Montreal, Quebec
Canada H3B 1X9

Attention: Jonathan Cohen-Domanus
Email: jonathan.cohen-domanus@ca.ey.com
Telephone: (514) 879-8051
Fax: (514) 879-3999

with a copy to:

Thornton Grout Finnigan LLP, Counsel to the Monitor
100 Wellington St. W., Suite 3200
Toronto, ON
Canada M5K 1K7

Attention: Robert Thornton and Rachel Bengino
Email: rthornton@tgf.ca / rbengino@tgf.ca
Telephone: (416) 304-1616
Fax: (416) 304-1313

28. **THIS COURT ORDERS** that any notice or other communication to be given under this Claims Resolution Order to the Applicants shall be in writing in substantially the form, if any, provided for in this Claims Resolution Order and will be sufficiently given only if delivered by courier, by personal delivery, email or facsimile transmission addressed to:

Stikeman Elliot LLP
199 Bay Street, Suite 5300
Toronto, ON
Canada M5L 1B9

Attention: Peter Howard / Lee Nicholson
Email: phoward@stikeman.com / leenicholson@stikeman.com
Telephone: (416) 869-5500
Fax: (416) 947-0866

29. **THIS COURT ORDERS** that any notice or other communication to be given under this Claims Resolution Order to the Equity Committee or Liquidation Trustee shall be in

writing in substantially the form, if any, provided for in this Claims Resolution Order and will be sufficiently given only if delivered by courier, by personal delivery, email or facsimile transmission addressed to:

McMillan LLP
Brookfield Place, Suite 4400
181 Bay Street
Toronto, ON
Canada M5J 2T3

Attention: Andrew Kent / Caitlin Fell
Email: andrew.kent@mcmillan.ca / caitlin.fell@mcmillan.ca
Telephone: (416) 865 7841
Fax: (416) 865 7048

with a copy to:

Brown Rudnick LLP
Seven Times Square
New York, NY 10036

Attention: Robert J. Stark / Steven B. Levine / Andrew M. Carty
Email: rstark@brownrudnick.com / slevine@brownrudnick.com /
acarty@brownrudnick.com
Telephone: (212) 209 4800
Fax: (212) 209 4801

30. **THIS COURT ORDERS** that any notice or other communication to be given under this Claims Resolution Order to the Creditors' Committee shall be in writing in substantially the form, if any, provided for in this Claims Resolution Order and will be sufficiently given only if delivered by courier, by personal delivery, email or facsimile transmission addressed to:

Cassels Brock LLP
Suite 2100, Scotia Plaza
40 King Street West
Toronto, ON
Canada M5H 3C2

Attention: Monique Sassi
Email: msassi@casselsbrock.com
Telephone: (416) 860 6886
Fax: (416) 640 3005

with a copy to:

Blank Rome LLP
One Logan Square
130 North 18th Street
Philadelphia, PA 19103-6998

Attention: Josef W. Mintz
Email: Mintz@BlankRome.com
Telephone: (215) 569 5528
Fax: (215) 832 5528

31. **THIS COURT ORDERS** that from and after the Effective Date any notice to the Applicants pursuant to paragraph 28 of this Claims Resolution Order shall be addressed to the Chief-Wind Down Officer (as defined by the Joint Plan), the contact details of which shall be posted on the website of the Monitor.

32. **THIS COURT ORDERS** that any notice or other communication (including a Notice of Revision or Disallowance, a Notice of Dispute or a Request for Information) to be given under this Claims Resolution Order to a Claimant by the Applicants or the Monitor shall be deemed to be received by the Claimant on (i) two (2) business days after the date such notice is sent by registered mail if sent to the Claimant, or to the Person designated as its duly authorized representative on the Proof of Claim; or (ii) on the same date such notice is issued by courier or personal delivery to the address provided by the Claimant in its Proof of Claim, by email to the email address provided by the Claimant in its Proof of Claim or by facsimile transmission to the facsimile number provided by the Claimant in its Proof of Claim.

33. **THIS COURT ORDERS** that if the date on which a notice shall be issued or filed occurs on a day that is not a business day, then such notice or filing may be done on the next succeeding business day.

GENERAL

34. **THIS COURT ORDERS** that the forms in Schedules "B" and "C" attached hereto are approved in their entirety.

35. **THIS COURT ORDERS** that nothing in this Claims Resolution Order shall affect the rights, as they may exist, of the Equity Committee and Creditors' Committee to seek

directions or a determination from this Court or other relief with respect to a determination by the Monitor to accept, revise or disallow a Canadian Claim.

36. **THIS COURT ORDERS** that (i) in carrying out the terms of this Claims Resolution Order, the Monitor shall have all of the protections given to it by the CCAA, the Second Amended and Restated Initial Order granted by this Court on October 31, 2016, this Claims Resolution Order, and as an officer of the Court, including the stay of proceedings in its favour, (ii) the Monitor and the Claims Officer shall incur no liability or obligation as a result of carrying out the provisions of this Claims Resolution Order, (iii) the Monitor shall be entitled to rely on information provided by the Applicants and/or a Claimant, all without independent investigation, (iv) except by leave of the Court, no action lies against the Claims Officer with respect to any action taken pursuant to this Claims Resolution Order; and (v) the Monitor shall not be liable for any claims or damages resulting from any errors or omissions in information provided by the Applicants or by any Claimant.

37. **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 Claims Resolution Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Claims Resolution 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 Claims Resolution 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 Claims Resolution Order.

A handwritten signature in blue ink, appearing to read "Hainey J.", is written over a horizontal line.

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

SEP 01 2017

PER / PAR: 

Schedule "A" - Claims Procedure Orders

[Attached]

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.) MONDAY, THE 19th
JUSTICE NEWBOULD) DAY OF DECEMBER, 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.

(the "Applicants")

CLAIMS PROCEDURE ORDER

THIS MOTION, made by 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 procedures and bar dates described in the affidavit of Brian J. Fox sworn December 9, 2016 (the "Fox Affidavit") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Fox Affidavit and the Exhibits thereto and the third 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, no one

appearing for any other party although duly served as appears from the affidavit of service of Vlad A. Calina, sworn December 9, 2016, filed,

DEFINITIONS

1. **THIS COURT ORDERS** that for purposes of this Order the following terms shall have the following meanings:

- (a) **"ABL Lenders"** means the lenders party to the the credit agreement dated April 15, 2014 in the principal amount of \$200 million;
- (b) **"Amended Schedules Bar Date"** means the later of: (i) the Claims Bar Date; and (ii) 30 days after the date that a Claimant is served with notice that an Applicant has amended or supplement its Schedules to reduce the undisputed, non-contingent or liquidated amount of its Claim or to change the nature and classification of its Claim;
- (c) **"Applicants"** means Performance Sports Group Ltd. ("PSG") and the other entities listed on Schedule "A";
- (d) **"Business Day"** means a day, other than a Saturday or Sunday, on which banks are generally open for business in Toronto, Ontario;
- (e) **"Canadian Filing Date"** means October 31, 2016;
- (f) **"CCAA"** means the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended;
- (g) **"CCAA Proceedings"** means the within proceedings;
- (h) **"Chapter 11 Proceedings"** means the proceedings commenced on October 31, 2016 by the Applicants under U.S. Bankruptcy Code in the U.S. Court;
- (i) **"Claim"** means any right or claim of any Person against one or more of the Applicants in connection with any indebtedness, liability or obligation of any kind whatsoever of one or more of the Applicants, whether reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed,

undisputed, legal, equitable, secured, unsecured, present, future, known or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including without limitation any claim arising from or caused by the repudiation by an Applicant of any contract, lease or other agreement, whether written or oral, the commission of a tort (intentional or unintentional), any breach of duty (legal, statutory, equitable, fiduciary or otherwise), or any right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any grievance, matter, action, cause or chose in action, whether existing at present or commenced in the future, based in whole or in part on facts which existed on the Canadian Filing Date, together with any other claims of any kind that, if unsecured, would constitute a debt provable in bankruptcy within the meaning of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3;

- (j) "Claimant" means a Person asserting a Claim;
- (k) "Claims Bar Date" means February 6, 2017 at 5:00 p.m. (Eastern Time), or such other date as may be ordered by the Court;
- (l) "Claims Notice" means the document setting out the Claim a Known Claimant has against the company, as determined by the Company with the assistance of the Monitor (and its other professional advisors).;
- (m) "Claims Package" means the document package which shall include a copy of the Instruction Letter, a Claims Notice, blank Proof of Claim and such other materials as the Applicants consider necessary or appropriate;
- (n) "Claims Procedure" means the procedures outlined in this order in connection with the assertion of Claims or Restructuring Claims against one or more of the Applicants as set out by subsequent order of this Court and as amended or supplemented by the same;
- (o) "Court" means the Ontario Superior Court of Justice (Commercial List);

- (p) **"Director"** means any Person who is or was, or may be deemed to be or have been, a director of an Applicant;
- (q) **"Disclaimed Contract"** means any agreement terminated, repudiated or disclaimed pursuant to either section 365 of the U.S. Bankruptcy Code or section 32 of the CCAA;
- (r) **"Government Agency"** means any federal, provincial, state or local government, agency or instrumentality thereof or similar entity, howsoever designated or constituted exercising executive, legislative, judicial, regulatory or administrative functions in Canada, the United States, or elsewhere;
- (s) **"Government Claims Bar Date"** means May 1, 2017 at 5:00 p.m. (Eastern Time), or such other date as may be ordered by the Court;
- (t) **"Instruction Letter"** means the letter regarding completion of a Proof of Claim, which letter shall be substantially in the form attached hereto as Schedule "C";
- (u) **"Intercompany Claims"** means any Claim or Restructuring Claim of the Applicants or any other affiliate of PSG against an Applicant or any other affiliate of PSG;
- (v) **"Interest"** means any stock in PSG or any warrants, rights to purchase, sell or subscribe to any such stock;
- (w) **"Interest Holder"** means any person holding an Interest;
- (x) **"Known Claimants"** means Claimants which the books and records of the Applicants disclose were owed money by the Applicants as of the Canadian Filing Date which obligation remains unpaid in whole or in part;
- (y) **"Monitor"** means Ernst & Young Inc., in its capacity as the Court-appointed Monitor of the Applicants;
- (z) **"Notice to Creditors"** means the notice substantially in the form attached hereto as Schedule "B";

- (aa) "Officer" means any Person who is or was, or may be deemed to be or have been, an officer of an Applicant;
- (bb) "Person" means any individual, partnership, firm, joint venture, trust, entity, corporation, body corporate, unincorporated association or organization, trade union, employee or other association, Government Agency, or similar entity, howsoever designated or constituted and any individual or other entity owned or controlled by or which is the agent of any of the foregoing;
- (cc) "Plan" means any Plan of Compromise or Arrangement filed by one of more of the Applicants pursuant to the CCAA;
- (dd) "Prime Clerk" means Prime Clerk LLC;
- (ee) "Proof of Claim" means the form to be completed and filed by a Claimant setting forth its purported Claim or Restructuring Claim, which proof of claim shall be substantially in the form attached hereto as Schedule "D";
- (ff) "Restructuring Claim" means any right or claim of any Person against one or more of the Applicants arising as a result of or in connection with the repudiation, termination or restructuring by the Applicants of any contract, lease or other agreement after the Canadian Filing Date;
- (gg) "Restructuring Claims Bar Date" means the later of: (i) the Claims Bar Date (or with respect to a Government Agency, the Government Claims Bar Date); and (ii) with respect to the Chapter 11 Proceedings, 30 days after the entry of a rejection order in the U.S. Court approving the termination of the agreement, and with respect to the CCAA Proceeding, 30 days after the effective date of the disclaimer notice sent by the applicable Applicant in respect of a Disclaimed Contract;
- (hh) "Schedules" means the schedules and statements prepared from the books and records of the Applicants setting forth, *inter alia*, lists of claims asserted against the Applicants, posted on Prime Clerk's website (<https://cases.primeclerk.com/PSG/>) and the Monitor's website (www.ey.com/ca/psg);

- (ii) **"Term Loan Lenders"** means the lenders party to the term loan credit agreement dated as of April 15, 2014 in the principal amount of \$450 million;
- (jj) **"UCC"** means the Official Committee of Unsecured Creditors in the Chapter 11 Proceedings;
- (kk) **"U.S. Bankruptcy Code"** means Chapter 11 of title 11 of the United States Bankruptcy Code;
- (ll) **"U.S. Bar Dates Order"** means the order entered in the Chapter 11 Proceedings (i) establishing bar dates for filing claims and (ii) approving the form and manner of notice thereof;
- (mm) **"U.S. Claims Procedure"** means the claims process approved by the U.S. Court to be conducted within the Chapter 11 Proceedings in respect of the Applicants;
- (nn) **"U.S. Court"** means the United States Bankruptcy Court for the District of Delaware; and
- (oo) **"U.S. Proof of Claim"** means a proof of claim filed in the U.S. Claims Procedure.

NOTICE OF CLAIMS

2. **THIS COURT ORDERS** that the Prime Clerk shall cause a Claims Package to be sent to:
- (a) all known holders of Claims or potential Claims, including all entities listed in the Schedules as potentially holding claims;
 - (b) the office of the United States Trustee for the District of Delaware;
 - (c) counsel to the UCC;
 - (d) all parties that have requested notice in the Chapter 11 Proceedings pursuant to U.S. Bankruptcy Rule 2002 as of the date of the entry of the U.S. Bar Dates Order;
 - (e) all parties that are on the service list or have served notices of appearance in the CCAA Proceedings as of the date of this Order;

- (f) all counterparties to executory contracts with, and unexpired leases of, the Applicants;
- (g) all parties to litigation with the Applicants;
- (h) the District Director of Internal Revenue for the District of Delaware and all other taxing authorities for the jurisdictions (including all Canadian jurisdictions) in which the Applicants conduct business;
- (i) all relevant state, provincial and federal attorneys general;
- (j) all holders of record of any Interests in any of the Applicants as of the date of the U.S. Bar Date Order, provided, however, Interest Holders who want to assert claims against the Applicants that arise out of or relate to the ownership or purchase of an Interest, including claims arising out of or relating to the sale, issuance or distribution of the Interest, must file a claim by the applicable Bar Dates, unless another exception identified in this order applies; and
- (k) such additional persons and entities as deemed appropriate by the Applicants;

by regular prepaid mail within five Business Days of the date of this Order.

3. **THIS COURT ORDERS** that Prime Clerk shall cause the Notice to Creditors to be placed in *The Globe and Mail* (National Edition), the international edition of the *Wall Street Journal*, the national edition of *USA Today* and *La Presse* (Saturday edition) for one day in each of the two weeks following the date of this Order.

4. **THIS COURT ORDERS** that the Monitor shall cause the Notice to Creditors and the Claims Package to be posted on the Monitor's website (at www.cy.com/ca/psg) within three days of the date of this Order.

5. **THIS COURT ORDERS** that Prime Clerk shall cause a copy of the Claims Package to be sent to any Person requesting such material as soon as practicable.

6. **THIS COURT ORDERS** that, in the event that the Monitor believes that any action taken by an Applicant may give rise to a Restructuring Claim, or the Monitor is advised by any

Person that such Person believes it has a Restructuring Claim, Prime Clerk shall thereafter cause a copy of the Claims Package to be sent to the Claimant.

FILING OF PROOFS OF CLAIM

Claims

7. **THIS COURT ORDERS** that every Claimant disputing the Claim set out in the Claims Notice shall complete a Proof of Claim and deliver that Proof of Claim to Prime Clerk so that it is actually received by no later than the Claims Bar Date (or with respect to a Government Agency, the Government Claims Bar Date).

8. **THIS COURT ORDERS** that, for a Claimant to validly file a Proof of Claim the Claimant must: (i) include a signed original copy of a completed Proof of Claim together with accompanying documents as required to prove the amount claimed; and (ii) upload the Proof of Claim using the electronic interface on the website maintained by Prime Clerk for the Chapter 11 Proceedings or deliver the Proof of Claim to Prime Clerk by courier service, hand delivery or regular mail. A Proof of Claim is deemed to be filed on the date when received by Prime Clerk through one of the approved delivery methods set out herein. A Proof of Claim may not be delivered by facsimile or electronic mail.

9. **THIS COURT ORDERS** that any Claimant asserting a Claim against two or more Applicants must file a separate Proof of Claim with respect to each such Applicant and identify the particular Applicant against which a Claim is asserted. If a Claimant lists more than one Claimant on any one Proof of Claim, the Claim will be deemed to have been asserted only against the first-listed Applicant.

10. **THIS COURT ORDERS** that any Claimant (a) (i) whose Claim or Restructuring Claim is listed on the Schedules; (ii) whose Claim or Restructuring Claim is not listed as contingent, unliquidated or disputed; and (iii) who does not dispute the classification or amount of the Claim or Restructuring Claim as set forth in the Schedules; or (b) whose Claim has previously been allowed by, or paid pursuant to, an order of this Court or the U.S. Court; or (c) who has already filed a signed Proof of Claim against the applicable Applicant(s), in a form substantially similar to the Proof of Claim, with the clerk of the U.S. Court, Prime Clerk, or the Monitor is not

required to deliver a Proof of Claim in respect of such listed Claim or Restructuring Claim by the Claims Bar Date, the Government Claims Bar Date or the Restructuring Claims Bar Date, as applicable.

11. **THIS COURT ORDERS** that, in addition to those Claimants listed in paragraph 10, the following Claimants shall not be required to deliver a Proof of Claim by the Claims Bar Date, the Government Claims Bar Date, or the Restructuring Claims Bar Date, as applicable: (a) any Applicant, affiliated company of the Applicants (as such term is defined in section 3(2) of the CCAA) or any non-debtor affiliate of the Applicants (as such term is defined in section 101(2) of the U.S. Bankruptcy Code); (b) any of the Applicants' current officers, directors or employees having a Claim for indemnification, contribution or reimbursement; (c) the ABL Lenders; and (d) the Term Loan Lenders.

12. **THIS COURT ORDERS** that, subject to paragraph 13, any Claimant (i) whose Claim or Restructuring Claim is not listed on the Schedules; or (ii) whose Claim or Restructuring Claim is listed as contingent, unliquidated or disputed, or (iii) who disputes the amount or classification of the Claim on the Schedules, is required to deliver a Proof of Claim in respect of such Claim or Restructuring Claim by the Claims Bar Date, the Government Claims Bar Date or the Restructuring Claims Bar Date, as applicable, failing which such Claim or Restructuring Claim will be barred in accordance with either paragraph 16 or 20, as applicable.

13. **THIS COURT ORDERS** that if, after the date of this Order, the Schedules are amended or supplemented (in consultation with the Monitor) (a) to reduce the non-contingent, liquidated or undisputed amount of a Claim or Restructuring Claim, (b) to change the nature or characterization of a Claim or Restructuring Claim, or (c) to add a new Claim or Restructuring Claim to the Schedules, the affected Claimant may file a Proof of Claim or amend any previously filed Proof of Claim in respect of the amended scheduled Claim or Restructuring Claim in accordance with the procedures described herein so that it is received by Prime Clerk on or before the later of (i) the Claims Bar Date, the Government Claims Bar Date or Restructuring Claims Bar Date, or (ii) thirty (30) days after the Claimant is given notice of the applicable amendment or supplement to the Schedules. The Applicants shall cause notice of any such amendment or supplement to be provided to the applicable Claimant and to the Monitor and shall provide the Monitor with revised Schedules for posting on its website.

14. **THIS COURT ORDERS** that to the extent that a Claimant submits a proof of claim to the Monitor by the applicable Bar Date, such proof of claim will be forwarded to Prime Clerk for inclusion on the Applicants' official claims register and shall be deemed timely filed. The Monitor shall forward all copies of proofs of claim received to Prime Clerk (whether or not timely filed) and the Applicants shall cause copies of any U.S. Proofs of Claim against the Applicant(s) filed in accordance with the U.S. Claims Procedure to be made available to the Monitor.

15. **THIS COURT ORDERS** that any Claimant who has complied with the requirements of the U.S. Claims Procedure shall not have its Claim or Restructuring Claim, as applicable, barred and extinguished as a consequence of failing to comply with paragraphs 16 or 20, as applicable.

16. **THIS COURT ORDERS** that, any Claimant who:

- (a) is a Known Claimant and does not file a Proof of Claim in respect of a Claim or Restructuring Claim as set forth in the Schedules has been deemed to accept the amount set out in the Claims Notice in accordance with paragraph 10 and shall be forever barred, estopped and enjoined from asserting or enforcing any Claim of a different classification or in excess of the listed amount against any of the Applicants and any such different or greater claim shall be forever extinguished without any further act or notification by the Applicants;
- (b) is not a Known Claimant and does not deliver a Proof of Claim in respect of a Claim in accordance with paragraph 12:
 - (i) shall be forever barred, estopped and enjoined from asserting or enforcing such Claim against any of the Applicants and the Applicants shall not have any liability whatsoever in respect of such Claim and such Claim shall be extinguished without any further act or notification by the Applicants;
 - (ii) shall not be entitled to participate as a Claimant in these proceedings or receive any further notice in respect of these proceedings, the Claims Procedure or any Plan;
 - (iii) shall not be entitled to vote on any Plan or receive any distribution from any Plan or otherwise from the Applicants, or the Monitor on behalf of the Applicants, in respect of such Claim; and

17. **THIS COURT ORDERS** that the Applicants shall retain the right to: (a) dispute, or assert offsets of defences against, any filed proofs of claim, or any claim listed or reflected in the Schedules, as to nature, amount, liability, classification or otherwise; (b) subsequently designate any scheduled claim as disputed, contingent or unliquidated; and (c) otherwise amend or supplement the Schedules. If the Applicants subsequently amend or supplement the Schedules, the Applicants shall give notice of any amended Schedules to the holders of claims affected thereby, including notice of the Amended Schedules Bar Date to file proofs of claim in response to the amended Schedules. Notwithstanding the foregoing, nothing contained herein shall preclude the Applicants from objecting to any claim, whether scheduled or filed, on any grounds.

Restructuring Claims

18. **THIS COURT ORDERS** that every Claimant asserting a Restructuring Claim against an Applicant shall set out its aggregate Restructuring Claim in a Proof of Claim and deliver that Proof of Claim so that it is received by Prime Clerk no later than the Restructuring Claims Bar Date.

19. **THIS COURT ORDERS** that paragraphs 7 to 17 apply to Proofs of Claim delivered in respect of Restructuring Claims with any modification as circumstances require to apply to a Restructuring Claim.

20. **THIS COURT ORDERS** that any Claimant who does not deliver a Proof of Claim in respect of a Restructuring Claim in accordance with paragraph 18 shall be forever barred from asserting such Restructuring Claim against any of the Applicants and such Restructuring Claim shall be forever extinguished and any holder of such Restructuring Claim shall not be entitled to participate as a Claimant in these proceedings or receive any further notice in respect of the CCAA Proceedings, the Claims Procedure or any Plan and shall not be entitled to vote on any Plan or receive any distribution from any Plan or otherwise from the Applicants, or the Monitor on behalf of the Applicants, in respect of such Restructuring Claim.

DETERMINATION OF CLAIMS AND RESTRUCTURING CLAIMS

21. **THIS COURT ORDERS** that the applicable procedures for reviewing and determining Claims or Restructuring Claims shall be established by further Order of the Court. Notice of such procedures shall be provided to the service list in this CCAA proceeding and any Person who has filed a Proof of Claim or U.S. Proof of Claim against the Applicants in accordance with the Claims Procedure or the U.S. Claims Procedure.

GENERAL PROVISIONS

22. **THIS COURT ORDERS** that references to the singular shall include the plural, references to the plural shall include the singular and to any gender shall include the other gender.

23. **THIS COURT ORDERS** that any Claim or Restructuring Claim denominated in any currency other than U.S. dollars shall, for the purposes of this Order, be converted to and shall constitute obligations in U.S. dollars, such calculation to be effected using the Wall Street Journal rate as at the Canadian Filing Date (Canadian dollar claims are to be converted at the rate of CDN \$1.3410 = US \$ 1.00).

24. **THIS COURT ORDERS** that the Applicants, with the assistance of the Monitor, are hereby authorized to use reasonable discretion as to the adequacy of compliance with respect to the manner in which any forms delivered hereunder are completed and executed, and may waive strict compliance with the requirements of this Claims Procedure Order as to the completion and execution of such forms.

25. **THIS COURT ORDERS** that notwithstanding any other provisions of this Claims Procedure Order, the solicitation by the Applicants or the Monitor of Claims and the filing by any Claimant of any Claims shall not, for that reason only, grant any Person any standing in these proceedings.

26. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA and under the Initial Order, shall assist the Applicants in connection with the matters described herein, and is hereby authorized and directed to take

such other actions and fulfill such other roles as are contemplated by this Order and such other roles in keeping with its position as an officer of this Court.

27. **THIS COURT ORDERS** that nothing set out in this Order be interpreted as limiting the role of the Monitor in any way or otherwise restricting powers of the Monitor in connection with the procedure set out in this or any other or further order of this Court.

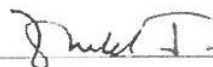
28. **THIS COURT ORDERS** that any notice or other communication to be given in connection with this Order by the Applicants or the Monitor to a Claimant, other than the Notice to Creditors to be published as provided in paragraph 2 herein, shall be in writing. Such notice or other communication will be sufficiently given to a Claimant if given by prepaid ordinary mail, by courier, by delivery or by facsimile transmission or electronic mail to the Claimant to such address, facsimile number or e-mail address appearing in the books and records of the Applicants or in any Proof of Claim filed by the Claimant. Any such notice or other communication, (a) if given by prepaid ordinary mail, shall be deemed received on the third (3rd) Business Day after mailing within Ontario, the fifth (5th) Business Day after mailing elsewhere within Canada or to the United States and the tenth (10th) Business Day after mailing internationally; (b) if given by courier or delivery shall be deemed received on the next Business Day following dispatch; (c) if given by facsimile transmission or electronic mail before 5:00 p.m. on a Business Day shall be deemed received on such Business Day; and (d) if given by facsimile transmission or electronic mail after 5:00 p.m. on a Business Day shall be deemed received on the following Business Day.

29. **THIS COURT ORDERS** that in the event that the day on which any notice or communication required to be delivered pursuant to the Claims Procedure is not a Business Day then such notice or communication shall be required to be delivered on the next Business Day.

30. **THIS COURT ORDERS** that if, during any period during which notices or other communication are being given pursuant to this Order a postal strike or postal work stoppage of general application should occur, such notices or other communications then not received or deemed received shall not, absent further Order of this Court, be effective. Notices and other communications given hereunder during the course of any such postal strike or work stoppage

of general application shall only be effective if given by electronic mail, courier, delivery or facsimile transmission in accordance with this Order.

31. **THIS COURT ORDERS AND REQUESTS** the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada (including the assistance of any court in Canada pursuant to Section 17 of the CCAA) and the Federal Court of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province and any court or any judicial, regulatory or administrative body of the United States and the states or other subdivisions of the United States and of any other nation or state to act in aid of and to be complementary to this Court in carrying out the terms of this order.



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

DEC 19 2016

PER / PAR: 

Schedule A

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.

Schedule B

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, RSC 1985, C.
C-36, AS AMENDED.
AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT
OF PERFORMANCE SPORTS GROUP LTD. *ET. AL.*

- and -

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	
	)	Chapter 11
BPS US Holdings Inc., <i>et al.</i> , ¹	)	Case No. 16-12373 (KJC)
	)	
Debtors.	)	(Jointly Administered)
	)	

NOTICE OF BAR DATES FOR FILING CLAIMS

**ANY HOLDER OF A POSSIBLE CLAIM AGAINST THE DEBTORS SHOULD
CONSULT AN ATTORNEY REGARDING ANY MATTERS NOT COVERED BY THIS
NOTICE, SUCH AS WHETHER THE HOLDER SHOULD FILE A PROOF OF CLAIM.**

**TO ALL KNOWN CREDITORS OF THE ABOVE-CAPTIONED ENTITIES
(COLLECTIVELY, THE "DEBTORS"):**

On [], 2016, the United States Bankruptcy Court for the District of
Delaware and the Ontario Superior Court of Justice (Commercial List) (the "Courts") entered
orders (together, the "Bar Date Orders") establishing certain claims bar dates.

¹ The Debtors in these Chapter 11 Cases and Canadian Proceedings, 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.

Pursuant to the Bar Date Orders, the Courts established February 6, 2017 at 5:00 p.m., Eastern Time as the general bar date (the "General Bar Date") for filing prepetition claims in the Debtors' chapter 11 cases (the "Chapter 11 Cases") and the Canadian Proceedings (the "Canadian Proceeding").

As used in this Notice, the term "entity" includes a person, estate, trust, or governmental unit. In addition, the term "persons" includes an individual, partnership, and corporation, and the term "governmental units" means the United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States (but not a United States trustee while serving as a trustee in a chapter 11 case); a State; a Commonwealth; a District; a Territory; a US or Canadian municipality; a provincial government; the Canadian federal government; a Canadian governmental authority; a foreign state; or other foreign or domestic government, respectively.

As used in this Notice, the term "claim" means, as to or against any of the Debtors: (i) any right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or (ii) any right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

As used in this Notice, "prepetition" has the same meaning as the term "pre-filing".

THE BAR DATES

The Bar Date Orders established the following bar dates for filing claims in these Chapter 11 Cases and the Canadian Proceedings (the collectively, the "Bar Dates"):

- a. The General Bar Date. Pursuant to the Bar Date Orders, except as described below, all entities holding claims against the Debtors, whether secured, preferred, unsecured non-priority, unsecured priority claim or otherwise entitled to special treatment under applicable US or Canadian law in connection with the Chapter 11 Cases or the Canadian Proceedings that arose before October 31, 2016 (the "Petition Date") must file proofs of claim by the General Bar Date of February 6, 2017 at 5:00 p.m. Eastern Time. All other administrative claims (such as a claim under section 503(b) of the Bankruptcy Code) must be asserted by separate requests for payment and will not be deemed proper if made by proof of claim.
- a. The Governmental Bar Date. Pursuant to the Bar Date Orders, except as described below, all governmental units holding claims (whether secured, preferred, unsecured non-priority, unsecured priority claim or otherwise entitled to special treatment under applicable US or Canadian law in connection with the Chapter 11

Cases or the Canadian Proceedings) against the Debtors that arose before the Petition Date must file proofs of claim by the Governmental Bar Date of May 1, 2017 at 5:00 p.m. Eastern Time.

- b. The Rejection Bar Date. Any entity whose claims arise out of the (i) Court approved rejection of an executory contract or unexpired lease, in accordance with section 365 of the Bankruptcy Code and pursuant to an order entered prior to the confirmation of a plan in the applicable Debtor's case, or (ii) the disclaimer by a Debtor of a contract pursuant to section 32 of the CCAA, must file a proof of claim on or before the later of the applicable deadline (i) the General Bar Date; or (ii) in the Chapter 11 Cases, 30 days after the entry of the order providing for the rejection of such executory contract or unexpired lease in the Chapter 11 Cases; or (iii) in the Canadian Proceeding, 30 days after the effective date of the disclaimer by a Debtor in accordance with section 32 of the CCAA. The later of these dates is referred to in this notice as the "Rejection Bar Date."
- c. The Amended Schedules Bar Date. If, subsequent to the mailing date of this notice, a Debtor amends or supplements its Schedules of Assets and Liabilities (the "Schedules") to reduce the undisputed, noncontingent and liquidated amount or to change the nature or classification of a claim against a Debtor reflected therein, any affected entities that dispute such amendments or supplements to the Schedules (such Schedules, the "Amended Schedules") are required to file a proof of claim or amend any previously filed proof of claim in respect of the Amended Schedules claim on or before the later of: (i) the General Bar Date; and (ii) 30 days after the date that notice of the applicable Amended Schedules is served on the claimant. The later of these dates is referred to in this notice as the "Amended Schedule Bar Date."

FILING CLAIMS

1. WHO MUST FILE

Subject to the terms described above for holders of claims subject to the Governmental Bar Date, Rejection Bar Date, and the Amended Schedules Bar Date, the following entities **MUST** file proofs of claim on or before the General Bar Date:

- a. any entity (i) whose prepetition claim against a Debtor is not listed in the applicable Debtor's Schedules or is listed as any of disputed, contingent, or unliquidated and (ii) that desires to share in any

distribution in any of these Chapter 11 Cases or Canadian Proceedings; and

- b. any entity that believes that its prepetition claim is improperly classified in the Schedules or is listed in an incorrect amount or against an incorrect Debtor and that desires to have its claim allowed in a classification or amount or against a Debtor different from the classification, amount or Debtor identified in the Schedules.

2. WHAT TO FILE

Prepetition Claims

The Debtors are enclosing a proof of claim form (the "Proof of Claim Form") for use in these Chapter 11 Cases or Canadian Proceedings, or you may use another proof of claim form that conforms substantially thereto. If your claim is scheduled by the Debtors, the enclosed Proof of Claim Form also sets forth: (i) the amount of your claim (if any) as scheduled; (ii) the specific Debtor against which the claim is scheduled; (iii) whether your claim is scheduled as disputed, contingent or unliquidated; and (iv) whether your claim is listed as a secured, preferred, unsecured non-priority, unsecured priority claim or otherwise entitled to special treatment under applicable U.S. or Canadian law in connection with the Chapter 11 Cases or the Canadian Proceedings. You will receive a different proof of claim form for each claim scheduled in your name by the Debtors. You may utilize the proof of claim form(s) provided by the Debtors to file your claim. Additional proof of claim forms may be obtained at the following website: <https://cases.primeclerk.com/PSG> (the "Claim Agent Website") or the website of the court-appointed Monitor in the Canadian Proceeding: www.ey.com/ca/psg (the "Monitor's Website").

3. WHEN AND WHERE TO FILE

Entities must file each Proof of Claim Form so they are received on or before the applicable Bar Dates, (i) via the electronic interface on the website of the Debtors' claims agent, Prime Clerk LLC, <https://cases.primeclerk.com/PSG>, or (ii) at the following address:

**Performance Sports Group Claims Processing Center
c/o Prime Clerk LLC
830 3rd Avenue, 3rd Floor
New York, NY 10022**

Proofs of claim will be deemed filed when actually received by Prime Clerk on or before the applicable Bar Date. Proofs of claim may not be delivered via facsimile or electronic mail transmission.

Proofs of claim will be collected, docketed and maintained by Prime Clerk for both the Chapter 11 Cases and the Canadian Proceeding. If you want to receive acknowledgement of Prime Clerk's receipt of a proof of claim, you must submit, by the applicable Bar Date and concurrently with submitting your original proof of claim, (i) a copy of

the original proof of claim and (ii) a self-addressed, postage prepaid return envelope or follow the instructions on Prime Clerk's website if submitting electronically.

All forms must be signed by the claimant or, if the claimant is not an individual, by an authorized agent of the claimant. The form must be written in English or French. You should attach to your completed form any documents on which the claim is based (or, if such documents are voluminous, attach a summary) or an explanation as to why the documents are not available.

Any entity asserting claims against multiple Debtors must file a separate proof of claim form with respect to each Debtor. In addition, any entity filing a claim must identify on its proof of claim form the particular Debtor against which the entity asserts its claim. If an entity lists more than one Debtor on any one form, the relevant claims will be treated as filed only against the first listed Debtor.

4. ENTITIES NOT REQUIRED TO FILE A CLAIM

The Bar Date Orders further provide that the following entities, whose claims otherwise would be subject to the General Bar Date or the Governmental Bar Date need not file claims in these cases:

- a. any entity that already has filed a signed proof of claim against the applicable Debtor(s) in a form substantially similar to the form enclosed herewith and attached to the Motion as **Exhibit B** with:
(i) the Clerk of the Bankruptcy Court for the District of Delaware, the Monitor or (iii) the Debtors' claims and noticing agent, Prime Clerk;
- b. any entity (i) whose claim against a Debtor is not listed as "disputed", "contingent", or "unliquidated" in the Schedules or Amended Schedules and (ii) agrees with the nature, classification and amount of its claim as identified in the Schedules or Amended Schedules;
- c. any entity whose claim against a Debtor previously has been allowed by, or paid pursuant to, an order of the Courts;
- d. any Debtor or any of their non-debtor affiliates (as such term is defined in section 101(2) of the Bankruptcy Code) or an entity related to any Debtor as such term is defined under section 3(2) of the CCAA, as applicable;
- e. any current officer, director or employee of any of the Debtors having a claim against any of the Debtors for indemnification, contribution or reimbursement;
- f. the Prepetition ABL Lenders; and

g. the Prepetition Term Loan Lenders.

NO REQUIREMENT FOR STOCKHOLDERS TO FILE PROOFS OF INTEREST

Any entity holding an interest in the Debtors (an "Interest Holder"), which interest is based exclusively upon the ownership of: (a) common stock in Performance Sports Group Ltd.; or (b) warrants or rights to purchase, sell or subscribe to such stock (any such stock or aforementioned right related thereto being referred to herein as an "Interest"), need not file a proof of claim or proof of interest on or before the General Bar Date on account of such Interest; provided, however, Interest Holders who want to assert claims against the Debtors that arise out of or relate to the ownership or purchase of an Interest, including claims arising out of or relating to the sale, issuance or distribution of the Interest, must file a claim by the applicable Bar Dates, unless another exception identified in this motion applies.

CONSEQUENCES OF FAILURE TO FILE A CLAIM

Entities that fail to properly file a Proof of Claim Form by the applicable Bar Date shall be barred, estopped and enjoined from: (a) asserting any prepetition claim against the Debtors that such entity may possess and that (i) is in an amount that exceeds the amount, if any, that is identified in the Schedules or Amended Schedules on behalf of such entity as undisputed, noncontingent and liquidated or (ii) is of a different nature, classification or priority than any claim identified in the Schedules or Amended Schedules on behalf of such entity (any such claim under this subparagraph (a) being referred to herein as an "Unscheduled Claim"); and (b) voting upon, or receiving distributions under, any plan of reorganization or arrangement in these Chapter 11 Cases or Canadian Proceedings in respect of an Unscheduled Claim.

RESERVATION OF RIGHTS

The Debtors retain the right to: (i) dispute, or assert offsets or defenses against, any filed proofs of claim, or any claim listed or reflected in the Schedules, as to nature, amount, liability, classification or otherwise; (ii) subsequently designate any scheduled claim as disputed, contingent or unliquidated; and (iii) otherwise amend or supplement the Schedules. Notwithstanding the foregoing, nothing contained herein shall preclude the Debtors from objecting to any claim, whether scheduled or filed, on any grounds.

[Remainder of this page intentionally left blank]

ADDITIONAL INFORMATION

If you require additional information regarding the filing of a claim, you may contact Prime Clerk at **855-631-5352** or by submitting an inquiry at <https://cases.primeclerk.com/PSG>. Copies of the Bar Date Order and other information regarding the Debtors' Chapter 11 Cases are available for inspection free of charge on Prime Clerk's website at: <https://cases.primeclerk.com/PSG/Home-Index>.

Neither Prime Clerk nor the Monitor can advise you how to file, or whether you should file, a claim. You may wish to consult an attorney regarding this matter

Dated: Wilmington, Delaware and
 Toronto, Ontario

BY ORDER OF THE COURTS

_____, 2016

Schedule C

Instructions for Proof of Claim

United States Bankruptcy Court and Ontario Superior Court of Justice (Commercial List)

12/15

These instructions and definitions generally explain the law. In certain circumstances, such as bankruptcy cases that debtors do not file voluntarily, exceptions to these general rules may apply. You should consider obtaining the advice of an attorney, especially if you are unfamiliar with the bankruptcy process and privacy regulations.

A person who files a fraudulent claim could be subject to severe penalties, including monetary fines and/or imprisonment.

How to fill out this form

- Fill in all of the information about the claim as of the date the case was filed.
- Fill in the caption at the top of the form.
- If the claim has been acquired from someone else, then state the identity of the last party who owned the claim or was the holder of the claim and who transferred it to you before the initial claim was filed.
- Attach any supporting documents to this form.
Attach redacted copies of any documents that show that the debt exists, a lien secures the debt, or both. (See the definition of *redaction* on the next page.)
Also attach redacted copies of any documents that show perfection of any security interest or any assignments or transfers of the debt. In addition to the documents, a summary may be added.
- Do not attach original documents because attachments may be destroyed after scanning.
- If the claim is based on delivering health care goods or services, do not disclose confidential health care information. Leave out or redact confidential information both in the claim and in the attached documents.

- A *Proof of Claim* form and any attached documents must show only the last 4 digits of any social security number, individual's tax identification number, or financial account number, and only the year of any person's date of birth.
- For a minor child, fill in only the child's initials and the full name and address of the child's parent or guardian. For example, write *A.B., a minor child (John Doe, parent, 123 Main St., City, State)*.

Confirmation that the claim has been filed

To receive confirmation that the claim has been filed, enclose a stamped self-addressed envelope and a copy of this form. You may view a list of filed claims in this case by visiting the Claims and Noticing Agent's website at <http://cases.primeclerk.com/psg>.

Understand the terms used in this form

Administrative expense: Generally, an expense that arises after a bankruptcy case is filed in connection with operating, liquidating, or distributing the bankruptcy estate.

CCAA: Companies' Creditors Arrangement Act (Canada)

Claim: A creditor's right to receive payment for a debt that the debtor owed on the date the debtor filed for bankruptcy, whether secured, preferred, unsecured priority, unsecured nonpriority, or otherwise entitled to special treatment under applicable U.S. or Canadian law. A claim may be secured or unsecured.

Claim Pursuant to 11 U.S.C. §503(b)(9): A claim arising from the value of any goods received by the Debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of the Debtor's business. Attach documentation supporting such claim.

Creditor: A person, corporation, or other entity to whom a debtor owes a debt that was incurred on or before the date the debtor filed for bankruptcy.

Debtor: A person, corporation, or other entity who is in bankruptcy. Use the debtor's name and case number as shown in the bankruptcy notice you received.

Evidence of perfection: Evidence of perfection of a security interest may include documents showing that a security interest has been filed or recorded, such as a mortgage, lien, certificate of title, or financing statement.

Information that is entitled to privacy: A *Proof of Claim* form and any attached documents must show only the last 4 digits of any social security number, an individual's tax identification number, or a financial account number, only the initials of a minor's name, and only the year of any person's date of birth. If a claim is based on delivering health care goods or services, limit the disclosure of the goods or services to avoid embarrassment or disclosure of confidential health care information. You may later be required to give more information if the trustee or someone else in interest objects to the claim.

Priority claim: A claim within a category of unsecured claims that is entitled to priority under applicable U.S. or Canadian law. These claims are paid from the available money or property in a bankruptcy case before other unsecured claims are paid. Common priority unsecured claims include alimony, child support, taxes, and certain unpaid wages, source deductions, employee wage claims up to prescribed limits, and certain governmental claims entitled to priority by statute.

Proof of claim: A form that shows the amount of debt the debtor owed to a creditor on the date of the bankruptcy filing. The form must be filed in the district where the case is pending.

Redaction of Information: Masking, editing out, or deleting certain information to protect privacy. Filers must redact or leave out information entitled to **privacy** on the *Proof of Claim* form and any attached documents.

Secured claim: A claim backed by a lien on particular property of the debtor. A claim is secured to the extent that a creditor has the right to be paid from the property before other creditors are paid. The amount of a secured claim usually cannot be more than the value of the particular property on which the creditor has a lien. Any amount owed to a creditor that is more than the value of the property normally may be an unsecured claim. But exceptions exist.

Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment may be a lien.

Setoff: Occurs when a creditor pays itself with money belonging to the debtor that it is holding, or by canceling a debt it owes to the debtor.

Unsecured claim: A claim that does not meet the requirements of a secured claim. A claim may be unsecured in part to the extent that the amount of the claim is more than the value of the property on which a creditor has a lien.

Offers to purchase a claim

Certain entities purchase claims for an amount that is less than the face value of the claims. These entities may contact creditors offering to purchase their claims. Some written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court, the bankruptcy trustee, or the debtor. A creditor has no obligation to sell its claim. However, if a creditor decides to sell its claim, any transfer of that claim is subject to Bankruptcy Rule 3001(e), any provisions of the Bankruptcy Code (11 U.S.C. § 101 et seq.) that apply, and any orders of the bankruptcy court that apply.

Please send completed Proof(s) of Claim to:

BPS US Holdings Inc. Claims Processing Center
c/o Prime Clerk LLC
830 3rd Avenue, 3rd Floor
New York, NY 10022

Do not file these instructions with your form

Schedule D

Fill in this information to identify the case (Select only one Debtor per claim form):

- | | | |
|--|--|---|
| ☐ BPS US Holdings Inc.
(Case No. 16-12373) | ☐ BPS Diamond Sports Inc.
(Case No. 16-12379) | ☐ PSG Innovation Corp.
(Case No. 16-12385) |
| ☐ Bauer Hockey, Inc.
(Case No. 16-12374) | ☐ PSG Innovation Inc.
(Case No. 16-12380) | ☐ Bauer Hockey Corp.
(Case No. 16-12386) |
| ☐ Easton Baseball / Softball Inc.
(Case No. 16-12375) | ☐ Performance Sports Group Ltd.
(Case No. 16-12381) | ☐ BPS Canada Intermediate Corp.
(Case No. 16-12387) |
| ☐ Bauer Hockey Retail Inc.
(Case No. 16-12376) | ☐ KBAU Holdings Canada, Inc.
(Case No. 16-12382) | ☐ BPS Diamond Sports Corp.
(Case No. 16-12388) |
| ☐ Bauer Performance Sports Uniforms Inc.
(Case No. 16-12377) | ☐ Bauer Hockey Retail Corp.
(Case No. 16-12383) | ☐ Bauer Performance Sports Uniforms Corp.
(Case No. 16-12389) |
| ☐ Performance Lacrosse Group Inc.
(Case No. 16-12378) | ☐ Easton Baseball / Softball Corp.
(Case No. 16-12384) | ☐ Performance Lacrosse Group Corp.
(Case No. 16-12390) |

Proof of Claim

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy/restructuring case. Other than a claim under 11 U.S.C. § 503(b)(9), this form should not be used to make a request for payment of an administrative expense or an expense relating to goods delivered or services rendered after the petition date. Make such a request according to 11 U.S.C. § 503. Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be subject to severe penalties including significant monetary fines and/or imprisonment.

Fill in all the information about the claim as of October 31, 2016.

☐ The amounts set forth on this claim form are in US Dollars

☐ The amounts set forth on this claim form are in Canadian Dollars

Part 1 Identify the Claim

1. Who is the current creditor?

Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor

2. Has this claim been acquired from someone else?

- ☐ No
☐ Yes From whom?

3. Where should notices and payments to the creditor be sent?

Where should notices to the creditor be sent?

Where should payments to the creditor be sent? (if different)

Name

Name

Number Street

Number Street

City State/Province ZIP/Postal Code

City State/Province ZIP/Postal Code

Country

Country

Contact phone

Contact phone

Contact email

Contact email

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. Does this claim amend one already filed?

- ☐ No
☐ Yes. Claim number on court claims registry (if known)

Filed on MM / DD / YYYY

5. Do you know if anyone else has filed a proof of claim for this claim?

- ☐ No
☐ Yes. Who made the earlier filing?

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? ☐ No
☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____
7. How much is the claim and in what currency? \$ _____ Does this amount include interest or other charges?
☐ USD ☐ No
☐ CDN ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges.
8. What is the basis of the claim?
Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, credit card, restructuring claim/disclaimed or resiliated contract, etc.
Attach redacted copies of any documents supporting the claim.
Limit disclosing information that is entitled to privacy, such as health care information.

9. Is all or part of the claim secured? ☐ No
☐ Yes. The claim is secured by a lien on property.
Nature of property:
☐ Real estate.
☐ Motor vehicle
☐ Other. Describe: _____
Basis for perfection: _____
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
Value of property: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)
Amount necessary to cure any default as of October 31, 2016: \$ _____
Annual Interest Rate (when case was filed) _____ %
☐ Fixed
☐ Variable
10. Is this claim based on a lease? ☐ No
☐ Yes. Amount necessary to cure any default as of the date of the petition. \$ _____
11. Is this claim subject to a right of setoff? ☐ No
☐ Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority or special treatment under US or Canadian law?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority

☐ No

☐ Yes. Check one:

Under U.S. law:

- ☐ Up to \$2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).
- ☐ Wages, salaries, or commissions (up to \$12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4)
- ☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).
- ☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).
- ☐ Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.

Under Canadian law:

- ☐ Wages, salaries, or commissions (up to CDN \$2,000) earned within 6 months before the Initial Order, as referred to in section 6(5) CCAA.
- ☐ Amounts due in respect of a registered pension plan as referred to in section 6(6) CCAA.
- ☐ Amounts due to the governments and referred to in section 6(3) CCAA.

Amount entitled to priority

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

* Amounts are subject to adjustment on 4/01/16 and every 3 years after that for cases begun on or after the date of adjustment

13. Is all or part of the claim entitled to administrative priority pursuant to 11 U.S.C. § 503(b)(9)?

☐ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the Debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ _____

Part 3: Sign Below

The person completing this proof of claim must sign and date it.

A person who files a fraudulent claim could be subject to severe penalties including significant monetary fines and/or imprisonment.

Check the appropriate box:

- ☐ I am the creditor.
- ☐ I am the creditor's attorney or authorized agent.
- ☐ I am the trustee, or the debtor, or their authorized agent.
- ☐ I am a guarantor, surety, endorser, or other codebtor.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date _____ (mm/dd/yyyy)

Signature _____

Print the name of the person who is completing and signing this claim:

Name _____
First name Middle name Last name

Title _____

Company _____
Identify the corporate servicer as the company if the authorized agent is a servicer

Address _____
Number Street

City State/Province ZIP/Postal Code Country

Contact phone _____ Email _____

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

CLAIMS PROCEDURE ORDER

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

Kathryn Esaw LSUC#: 58264F
Tel: (416) 869-5230
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Vlad A. Calina LSUC# 69072W
Tel: (416) 869-5202
Fax: (416) 947-0866

Lawyers for the Applicants

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.	)	MONDAY, THE 10 TH
	)	
JUSTICE NEWBOULD	)	DAY OF APRIL, 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: Employee Claims Procedure)

THIS MOTION, made by 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 procedures and bar dates for former employees of the Applicants to file claims against the Applicants, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Brian J. Fox sworn March 30, 2017 and the Exhibits thereto, the Sixth Report of Ernst & Young Inc. in its capacity as monitor (the "Monitor") to the Applicants dated April 7, 2017, and on hearing the submissions of counsel for the Applicants, the Monitor and those other parties present, no one appearing for any other person on the service list, although duly served as appears from the affidavit of service of Lee Nicholson, filed.

DEFINITIONS

1. **THIS COURT ORDERS** that for purposes of this Order all capitalized terms not otherwise defined herein have the meaning ascribed to them in the Claims Procedure Order and the following terms shall have the following meanings:

- (a) **"Claims Procedure Order"** means the Order of this Court dated December 19, 2016 outlining the procedures for asserting a Claim or Restructuring Claim;
- (b) **"Employee"** means any employee, independent contractor, or temporary worker, whom the Applicants employed as of October 31, 2016 or thereafter.
- (c) **"Employee Claim"** means any Claim or Restructuring Claim held by an Employee, including, but not limited to, claims for indemnification or reimbursement, unpaid compensation, expenses, severance, termination pay or benefits, and any claims arising from the rejection of any employment agreement.
- (d) **"Employee Claims Bar Date Notice"** means the notice substantially in the form attached hereto as Schedule "A";
- (e) **"Employee Claims Bar Date"** means May 17, 2017 at 5:00 p.m., EDT.
- (f) **"Employee Proof of Claim"** means the form to be completed and filed by an Employee setting forth his or her purported Employee Claim, which proof of claim shall be substantially in the form attached hereto as Schedule "B"; and
- (g) **"U.S. Claims Procedures"** means the claims process and employee claims process approved by the U.S. Court to be conducted within the Chapter 11 Proceedings in respect of the Applicants.

NOTICE

2. **THIS COURT ORDERS** that no later than seven (7) days following entry of this Order, Prime Clerk shall serve the Employee Claims Bar Date Notice by mailing a copy of the Employee Bar Date Notice, together with an Employee Proof of Claim, by first-class mail to all known Employees at such Employees' last known addresses as found in the Applicants' books and records.

3. **THIS COURT ORDERS** that the Monitor shall cause the Employee Claims Bar Date Notice and an Employee Proof of Claim to be posted on the Monitor's website at www.ey.com/ca/psg) within three (3) days of the date of this Order.

FILING OF EMPLOYEE PROOFS OF CLAIM

4. **THIS COURT ORDERS** that any Employee asserting an Employee Claim shall complete an Employee Proof of Claim and file the Employee Proof of Claim before the Employee Claims Bar Date by (i) filing electronically via the interface available on Prime Clerk's website at <https://cases.primeclerk.com/PSG>; or (ii) delivering a completed Employee Proof of Claim by first-class mail, overnight delivery service, or hand delivery at the following address: Performance Sports Group Claims Processing Center, c/o Prime Clerk LLC, 830 3rd Avenue, 3rd Floor, New York, NY 10022.

5. **THIS COURT ORDERS** that any Employee who has submitted a Proof of Claim pursuant to the Claims Procedure Order or U.S. Claims Procedures (such claim being a "Prior Proof of Claim") shall not be required to file an Employee Proof of Claim, his or her Prior Proof of Claim shall continue to act as that Employee's Proof of Claim, and the Employee may amend the Prior Proof of Claim until, but not following, the Employee Claims Bar Date.

6. **THIS COURT ORDERS** that paragraphs 10 and 13 of the Claims Procedure Order shall continue to apply.

7. **THIS COURT ORDERS** that the following procedures for the filing of Employee Proofs of Claim shall apply:

- (a) Employee Proofs of Claim will be deemed filed when actually received by Prime Clerk in the manner provided for in the Employee Bar Date Notice, or by the Monitor.
- (b) Employee Proofs of Claim may not be delivered via facsimile or electronic mail transmission.
- (c) Employee Proofs of Claim will be collected, docketed and maintained by Prime Clerk.
- (d) All Employee Proofs of Claim must be signed by the Employee or, by an authorized agent of the Employee. The Employee Proof of Claim must be written in English or French. The Employee shall attach to the completed form any documents on which the Employee Claim is based (or, if such documents are voluminous, attach a summary) or an explanation as to why the documents are not available.

8. **THIS COURT ORDERS** that to the extent that an Employee submits an Employee Proof of Claim to the Monitor by registered mail or hand delivery on or before the Employee Claims Bar Date, the Employee Proof of Claim will be forwarded to Prime Clerk for inclusion on the Applicants' official claims register and shall be deemed timely filed.

9. **THIS COURT ORDERS** that any Employee who does not deliver an Employee Proof of Claim in respect of an Employee Claim in accordance with paragraphs 4 and 7 of this Order or a Proof of Claim in accordance the Claim Procedure Order, shall be forever barred from asserting such Employee Claim against any of the Applicants and such Employee Claim shall be forever extinguished and any holder of such Employee Claim shall not be entitled to participate as a creditor in these proceedings or receive any further notice in respect of the CCAA Proceedings, the Claims Procedure or any Plan and shall not be entitled to vote on any Plan or receive any distribution from any Plan or otherwise from the Applicants, or the Monitor on behalf of the Applicants, in respect of such Employee Claim.

10. **THIS COURT ORDERS** that nothing in the within Order shall be deemed to enlarge or extend the bar dates for any parties previously required to file proofs of claim pursuant to the Claims Procedure Order or U.S. Claims Procedures.

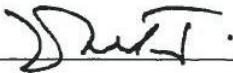
DETERMINATION OF CLAIMS AND RESTRUCTURING CLAIMS

11. **THIS COURT ORDERS** that the applicable procedures for reviewing and determining Claims or Restructuring Claims, if any, shall be established by further Order of the Court. Notice of such procedures shall be provided to the service list in this CCAA Proceedings and any Person who has filed a Proof of Claim or Employee Proof of Claim in accordance with the Claims Procedure or the procedures established by this Order.

GENERAL

12. **THIS COURT ORDERS** that references to the singular shall include the plural, references to the plural shall include the singular and to any gender shall include the other gender.

13. **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 and 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 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.



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

APR 10 2017

PER / PAR:



Schedule "A" - Employee Claims Bar Date Notice

Attached

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, RSC 1985, C.
C-36, AS AMENDED.
AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT
OF PERFORMANCE SPORTS GROUP LTD. *ET. AL.*

- and -

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
BPS US Holdings Inc., <i>et al.</i> , ¹	)	Case No. 16-12373 (KJC)
	)	
Debtors.	)	(Jointly Administered)
	)	

NOTICE TO EMPLOYEES OF BAR DATES FOR FILING CLAIMS

ANY HOLDER OF A POSSIBLE CLAIM AGAINST THE DEBTORS SHOULD
CONSULT AN ATTORNEY REGARDING ANY MATTERS NOT COVERED BY THIS
NOTICE, SUCH AS WHETHER THE HOLDER SHOULD FILE A PROOF OF CLAIM.

TO ALL KNOWN EMPLOYEES, INDEPENDENT CONTRACTORS, AND/OR
TEMPORARY WORKERS EMPLOYED BY THE ABOVE CAPTIONED AFFILIATED
DEBTORS AND DEBTORS IN POSSESSION (COLLECTIVELY, THE "DEBTORS")
AS OF OCTOBER 31, 2016 (THE "PETITION DATE") OR THEREAFTER:

¹ The Debtors in these Chapter 11 Cases and Canadian Proceedings, 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.

PLEASE TAKE NOTICE THAT, on [____], the United States Bankruptcy Court for the District of Delaware and the Ontario Superior Court of Justice (Commercial List) (the "Courts") entered orders (together, the "Employee Claims Bar Date Orders") establishing May 17, 2017 at 5:00 p.m., prevailing Eastern Time as the deadline by which all employees, independent contractors, or temporary workers employed or otherwise utilized by the Debtors (each an "Employee" and, collectively, the "Employees") must file proofs of claim in the Debtors' chapter 11 cases (the "Chapter 11 Cases") or the Canadian Proceedings (the "Canadian Proceeding"), as applicable, on account of any claim against the Debtors, whether arising before or after the Petition Date.

As used in this Notice, the term "claim" means, as to or against any of the Debtors: (i) any right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or (ii) any right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

As used in this Notice, "prepetition" has the same meaning as the term "pre-filing".

FILING CLAIMS

WHO MUST FILE

The Employee Claims Bar Date applies to all employees, independent contractors, and/or temporary workers employed or otherwise utilized by the Debtors as of the Petition Date or thereafter. Pursuant to the Employee Claims Bar Date Order, such persons **must** file proofs of claim in the Chapter 11 Cases or the Canadian Proceedings, as applicable, on account of any alleged claim against the Debtors, whether arising before or after the Petition Date, by the Employee Claims Bar Date.

WHAT TO FILE

The Debtors are enclosing a proof of claim form (the "Proof of Claim Form") for use in these Chapter 11 Cases or Canadian Proceedings, or you may use another proof of claim form that conforms substantially thereto. If your claim is scheduled by the Debtors, the enclosed Proof of Claim Form also sets forth: (i) the amount of your claim (if any) as scheduled; (ii) the specific Debtor against which the claim is scheduled; (iii) whether your claim is scheduled as disputed, contingent or unliquidated; and (iv) whether your claim is listed as a secured, preferred, unsecured non-priority, unsecured priority claim or otherwise entitled to special treatment under applicable U.S. or Canadian law in connection with the Chapter 11 Cases or the Canadian Proceedings. You will receive a different proof of claim form for each claim scheduled in your name by the Debtors. You may utilize the proof of claim form(s) provided by the Debtors to file your claim. Additional proof of claim forms may be obtained at the following website: <https://cases.primeclerk.com/PSG> (the "Claim Agent Website") or the website of the court-appointed Monitor in the Canadian Proceeding: www.ey.com/ca/psg (the "Monitor's Website").

WHEN AND WHERE TO FILE

Entities must file each Proof of Claim Form so that it is received on or before the Employee Claims Bar Date, (i) via the electronic interface on the website of the Debtors' claims agent, Prime Clerk LLC, <https://cases.primeclerk.com/PSG>, or (ii) at the following address:

**Performance Sports Group Claims Processing Center
c/o Prime Clerk LLC
830 3rd Avenue, 3rd Floor
New York, NY 10022**

Proofs of claim will be deemed filed when **actually received** by Prime Clerk on or before the applicable Bar Date. **Proofs of claim may not be delivered via facsimile or electronic mail transmission.**

Proofs of claim will be collected, docketed and maintained by Prime Clerk for both the Chapter 11 Cases and the Canadian Proceedings. If you want to receive acknowledgement of Prime Clerk's receipt of a proof of claim, you must submit, by the Employee Claims Bar Date and concurrently with submitting your original proof of claim, (i) a copy of the original proof of claim and (ii) a self-addressed, postage prepaid return envelope or follow the instructions on Prime Clerk's website if submitting electronically.

All forms must be **signed** by the claimant or, if the claimant is not an individual, by an authorized agent of the claimant. The form must be written in English or French. You should attach to your completed form any documents on which the claim is based (or, if such documents are voluminous, attach a summary) or an explanation as to why the documents are not available.

Any entity asserting claims against multiple Debtors must file a separate proof of claim form with respect to each Debtor. In addition, any entity filing a claim must identify on its proof of claim form the particular Debtor against which the entity asserts its claim. If an entity lists more than one Debtor on any one form, the relevant claims will be treated as filed **only** against the first listed Debtor.

CONSEQUENCES OF FAILURE TO FILE A CLAIM

Employees that fail to properly file a Proof of Claim Form by the Employee Claims Bar Date shall be forever barred, estopped and enjoined from asserting such claim against any of the Debtors (or filing a Proof of Claim with respect thereto) and shall not be permitted to vote to accept or reject any chapter 11 plan filed in these Chapter 11 Cases, participate in any distribution in these Chapter 11 Cases on account of such claim, or receive further notices regarding such claim.

RESERVATION OF RIGHTS

The Debtors retain the right to: (i) dispute, or assert offsets or defenses against, any filed proofs of claim or requests for payment of administrative expenses, or any claim listed or reflected in the Schedules, as to nature, amount, liability, classification or otherwise; (ii) subsequently designate any scheduled claim as disputed, contingent or unliquidated; and (iii) otherwise amend or supplement the Schedules. Notwithstanding the foregoing, nothing contained herein shall preclude the Debtors from objecting to any claim, whether scheduled or filed, on any grounds.

ADDITIONAL INFORMATION

If you require additional information regarding the filing of a claim, you may contact Prime Clerk at 855-631-5352 or by submitting an inquiry at <https://cases.primeclerk.com/PSG>. Copies of the Employee Claims Bar Date Orders and other information regarding the Debtors' Chapter 11 Cases and the Canadian Proceedings are available for inspection free of charge on Prime Clerk's website at: <https://cases.primeclerk.com/PSG/Home-Index>, or the Monitor's Website: www.ey.com/ca/psg, as applicable.

Neither Prime Clerk nor the Monitor can advise you how to file, or whether you should file, a claim. You may wish to consult an attorney regarding this matter.

Dated: Wilmington, Delaware and
Toronto, Ontario

_____, 2017

BY ORDER OF THE COURTS

Schedule "B" - Employee Proof of Claim

Attached

Fill in this information to identify the case (Select only one Debtor per claim form):

- | | | |
|--|--|---|
| ☐ BPS US Holdings Inc.
(Case No. 16-12373) | ☐ BPS Diamond Sports Inc.
(Case No. 16-12379) | ☐ PSG Innovation Corp.
(Case No. 16-12385) |
| ☐ Bauer Hockey, Inc.
(Case No. 16-12374) | ☐ PSG Innovation Inc.
(Case No. 16-12380) | ☐ Bauer Hockey Corp.
(Case No. 16-12386) |
| ☐ Easton Baseball / Softball Inc.
(Case No. 16-12375) | ☐ Performance Sports Group Ltd.
(Case No. 16-12381) | ☐ BPS Canada Intermediate Corp.
(Case No. 16-12387) |
| ☐ Bauer Hockey Retail Inc.
(Case No. 16-12376) | ☐ KBAU Holdings Canada, Inc.
(Case No. 16-12382) | ☐ BPS Diamond Sports Corp.
(Case No. 16-12388) |
| ☐ Bauer Performance Sports Uniforms Inc.
(Case No. 16-12377) | ☐ Bauer Hockey Retail Corp.
(Case No. 16-12383) | ☐ Bauer Performance Sports Uniforms Corp.
(Case No. 16-12389) |
| ☐ Performance Lacrosse Group Inc.
(Case No. 16-12378) | ☐ Easton Baseball / Softball Corp.
(Case No. 16-12384) | ☐ Performance Lacrosse Group Corp.
(Case No. 16-12390) |

Proof of Claim

Read the Instructions before filling out this form. This form is for making a claim for payment in a bankruptcy/restructuring case. Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be subject to severe penalties including significant monetary fines and /or imprisonment.

- ☐ The amounts set forth on this claim form are in US Dollars
☐ The amounts set forth on this claim form are in Canadian Dollars

Part 1: Identify the Claim

1. Who is the current creditor?		
Name of the current creditor (the person or entity to be paid for this claim) _____		
Other names the creditor used with the debtor _____		
2. Has this claim been acquired from someone else?		
☐ No		
☐ Yes. From whom? _____		
3. Where should notices and payments to the creditor be sent?	Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
Name _____	Name _____	
Number _____ Street _____	Number _____ Street _____	
City _____ State/Province _____ ZIP/Postal Code _____	City _____ State/Province _____ ZIP/Postal Code _____	
Country _____	Country _____	
Contact phone _____	Contact phone _____	
Contact email _____	Contact email _____	
Uniform claim identifier for electronic payments in chapter 13 (if you use one) _____		
4. Does this claim amend one already filed?		
☐ No		
☐ Yes. Claim number on court claims registry (if known) _____ Filed on MM / DD / YYYY		
5. Do you know if anyone else has filed a proof of claim for this claim?		
☐ No		
☐ Yes. Who made the earlier filing? _____		

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor?	☐ No ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____
7. How much is the claim and in what currency?	\$ _____ Does this amount include interest or other charges? ☐ USD ☐ No ☐ CDN ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges.
8. What is the basis of the claim?	Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, credit card, restructuring claim/disclaimed or resiliated contract, etc. Attach redacted copies of any documents supporting the claim. Limit disclosing information that is entitled to privacy, such as health care information. _____
9. Is all or part of the claim secured?	☐ No ☐ Yes. The claim is secured by a lien on property. Nature of property: ☐ Real estate. ☐ Motor vehicle ☐ Other. Describe: _____ Basis for perfection: _____ Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.) Value of property: \$ _____ Amount of the claim that is secured: \$ _____ Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.) Amount necessary to cure any default as of October 31, 2016: \$ _____ Annual Interest Rate (when case was filed) _____ % ☐ Fixed ☐ Variable
10. Is this claim based on a lease?	☐ No ☐ Yes. Amount necessary to cure any default as of the date of the petition or Initial Order. \$ _____
11. Is this claim subject to a right of setoff?	☐ No ☐ Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority or special treatment under US or Canadian law? A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.	☐ No ☐ Yes. Check one: Under U.S. law: ☐ Up to \$2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7). ☐ Wages, salaries, or commissions (up to \$12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4). ☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8). ☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5). ☐ Other. Specify subsection of 11 U.S.C. § 507(a)() that applies. Under Canadian law: ☐ Wages, salaries, or commissions (up to CDN \$2,000) earned within 6 months before the Initial Order or disbursements of a travelling salesperson (up to CDN \$1,000) incurred in the same period, as referred to in section 6(5) CCAA. ☐ Amounts due in respect of a registered pension plan as referred to in section 6(6) CCAA. ☐ Amounts due to the governments and referred to in section 6(3) CCAA.	Amount entitled to priority \$ _____ \$ _____ \$ _____ \$ _____ \$ _____ \$ _____ \$ _____ \$ _____
* Amounts are subject to adjustment on 4/01/16 and every 3 years after that for cases begun on or after the date of adjustment.		
13. Is all or part of the claim an administrative expense entitled to administrative priority?	☐ No ☐ Yes.	Amount entitled to administrative priority \$ _____

Part 3: Sign Below

The person completing this proof of claim must sign and date it.

A person who files a fraudulent claim could be subject to severe penalties including significant monetary fines and/or imprisonment.

Check the appropriate box:

- ☐ I am the creditor.
- ☐ I am the creditor's attorney or authorized agent.
- ☐ I am the trustee, or the debtor, or their authorized agent.
- ☐ I am a guarantor, surety, endorser, or other codebtor.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date _____ (mm/dd/yyyy)

Signature _____

Print the name of the person who is completing and signing this claim:

Name _____

First name Middle name Last name

Title _____

Company _____

Identify the corporate servicer as the company if the authorized agent is a servicer.

Address _____

Number Street

City State/Province ZIP/Postal Code Country

Contact phone _____ Email _____

Instructions for Proof of Claim

United States Bankruptcy Court and Ontario Superior Court of Justice (Commercial List)

These instructions and definitions generally explain the law. In certain circumstances, exceptions to these general rules may apply. You should consider obtaining the advice of an attorney, especially if you are unfamiliar with the bankruptcy/insolvency process and privacy regulations.

Notice to claimant/creditor: A person who files a fraudulent claim could be subject to severe penalties, including monetary fines and/or imprisonment. It is your responsibility to prepare and file your claim accurately.

How to fill out this form

- **Fill in the caption at the top of the form:** You must indicate to which of the listed Debtor Companies your Claim relates. If your Claim is against several of the listed entities, you must prepare a *Proof of Claim* for each entity against which a Claim is asserted. If a Claim is made against more than one entity, you must indicate in a schedule accompanying the Claim the reasons why the entity is liable for the Claim (e.g. principal/guarantor) and provide the documentation supporting the guarantee, as the case may be.
- **Proceedings:** This *Proof of Claim* form is intended to be used in the Debtors' proceedings under the *Companies' Creditors Arrangement Act (Canada)* ("CCAA") as well as in the Debtors' concurrent proceedings under Chapter 11 of the *Bankruptcy Code*. Creditors are expected to complete a single *Proof of Claim* form in respect of the Restructuring Proceedings (see the definition on the next page) for a particular Debtor.
- **Identification:** Make sure the name of the creditor is properly identified on the *Proof of Claim* (in section 1) together with the addresses to be used for notices and payments (in section 3) and the name and address of the person completing the *Proof of Claim* form (in Part 3).
- **Make sure you indicate the currency used for the amounts referred to in the claim.** The amounts may be expressed in U.S. currency (U.S.\$) or in Canadian currency (CDN\$). If your Claim is expressed in a currency other than U.S.\$ or CDN\$, your Claim should be converted in U.S.\$ or in CDN\$ at the rate of exchange that prevailed on October 31, 2016. In such a case, Creditors must also provide particulars of the original currency of your Claim and of the foreign exchange rate used to convert the Claim, in a separate document.
- **If the claim has been acquired from someone else:** State the identity of the last party who owned the Claim or was the holder of the Claim and who transferred it to you before the initial Claim was filed.
- **Attach copies of any supporting documents to this form.** You may attach copies of any document you believe is necessary in order to establish your Claim. If the documents contain confidential information, the documents should be redacted to make the confidential information unrecognizable (see the definition of *redaction* on the next page). Attach copies of any documents that show that the debt exists, a lien secures the debt, or both. Also attach copies of any documents that show perfection of any security interest or any assignments or transfers of the debt. In addition to the documents, a summary may be added.
- **Do not send original documents because attachments may be destroyed after scanning.**
- **Confidential Information:** If the Claim is based on delivering health care goods or services, do not disclose confidential health care information. Leave out or redact confidential information both in the Claim and in the attached documents. A *Proof of Claim* form and any attached documents must show only the last 4 digits of any social security number, individual's tax identification number, or financial account number, and only the year of any person's date of birth.
- **For a minor child, fill in only the child's initials and the full name and address of the child's parent or guardian.** For example, write *A.B., a minor child (John Doe, parent, 123 Main St., City, State)*.

Confirmation that the claim has been filed

To receive confirmation that the Claim has been filed, enclose a stamped (with appropriate stampage for a delivery from the United States) self-addressed envelope and a copy of this form. You may view a list of filed Claims in this case by visiting the Claims and Noticing Agent's website at <http://cases.primeclerk.com/psg>.

Understand the terms used in this form

Administrative expense: Generally, an expense that arises after a case is filed in connection with operating, liquidating, or distributing the estate, in the context of proceedings under the U.S. *Bankruptcy Code*.

Bankruptcy: Typically, the term "bankruptcy" refers to proceedings under the *Bankruptcy Code*, either as a voluntary or involuntary liquidation process or a restructuring process under Chapter 11 of the *Bankruptcy Code*, whether or not a trustee is appointed. In the present case, the term may also include the restructuring process initiated by the Debtors under the provisions of the CCAA, where the context so requires.

CCAA: *Companies' Creditors Arrangement Act (Canada)*

Claim: A Creditor's right to receive payment for a debt or liability that the Debtor owed on the Relevant Date, whether secured, preferred, unsecured priority, unsecured nonpriority, or otherwise entitled to special treatment under applicable U.S. or Canadian law in the context of the Restructuring Proceedings. A Claim may be secured or unsecured, fixed or contingent, and/or liquidated or unliquidated. A Claim must be an amount owed by Debtor on the Relevant Date, or an amount that becomes due after that date as a result of an obligation incurred before the Relevant Date.

Creditor: A person, corporation, or other entity that has a Claim against a Debtor.

Debtor: A person, corporation, or other entity who is undergoing a Restructuring Proceeding. Use the Debtor's name and case number as shown in the bankruptcy notice you received.

Evidence of perfection: Evidence of perfection of a security interest may include documents showing that a security interest has been filed or recorded or published, such as a mortgage, lien, certificate of title, financing statement or hypothec.

Information entitled to privacy: A *Proof of Claim* form and any attached documents must show only the last 4 digits of any social security number, an individual's tax identification number, or a financial account number, only the initials of a minor's name, and only the year of any person's date of birth. If a Claim is based on delivering health care goods or services, limit the disclosure of the goods or services to avoid embarrassment or disclosure of confidential health care information. You may later be required to give more information if an objection is made regarding the Claim, or if the Debtor or the Monitor requests additional information to support the Claim.

Monitor: The Court appointed officer in the proceedings under the CCAA.

Priority claim: A Claim within a category of unsecured claims that is entitled to priority or otherwise entitled to special treatment under applicable U.S. or Canadian law in the context of the Restructuring Proceedings. These claims are paid from the available money or property before other unsecured claims are paid. Common priority unsecured claims include certain unpaid wages (up to prescribed limits), source deductions, certain governmental claims entitled to priority by statute, and certain amounts due to prescribed pension plans.

Proof of claim: A form that indicates the Claim asserted by a Creditor against a Debtor, as of the Relevant Date. The form must be filed in compliance with the procedures approved by the court in the context of the Restructuring Proceedings, and within the deadlines set by the orders of the Court.

Redaction of Information: Masking, editing out, or deleting certain information to protect privacy. Filers must redact or leave out Information entitled to privacy on the *Proof of Claim* form and any attached documents.

Relevant Date: Used in this form, the expression Relevant Date means October 31, 2016, namely the date of the petition under the *Bankruptcy Code*, or the date of the Initial Order made under the CCAA, as the case may be.

Restructuring Proceedings: The proceedings commenced by the Debtors under Chapter 11 of the *Bankruptcy Code* and pending in the United States Bankruptcy Court for the District of Delaware, and the proceedings commenced by the Debtors under the CCAA and pending before the Ontario Superior Court of Justice (Commercial List), in Toronto, Ontario.

Secured claim: A Claim backed by a lien, a security instrument or other similar encumbrance on particular property of the Debtor. A Claim is secured to the extent that a Creditor has the right to be paid from the property before other creditors are paid. The amount of a secured claim usually cannot be more than the value of the particular encumbered property that secures the debt. Any amount owed to a Creditor that is more than the value of the encumbered property normally may be an unsecured claim. But exceptions exist. Examples of liens on property include a mortgage or hypothec on real estate or

a security interest in a car. A lien may be voluntarily granted by a Debtor, may arise by statute or other force of law, or may be obtained through a court proceeding.

Setoff: Occurs when a Creditor pays itself with money belonging to the Debtor that it is holding, or by canceling a debt it owes to the Debtor.

Unsecured claim: A Claim that does not meet the requirements of a secured claim. A Claim may be unsecured in part to the extent that the amount of the Claim is more than the value of the property on which a Creditor has a lien.

Offers to purchase a Claim

Certain entities purchase Claims for an amount that is less than the face value of the Claims. These entities may contact Creditors offering to purchase their Claims. Some written communications from these entities may easily be confused with official court documentation or communications from the Debtor. These entities do not represent the bankruptcy court, the bankruptcy trustee, the Debtor or the Monitor. A Creditor has no obligation to sell its Claim. However, if a Creditor decides to sell its Claim, any transfer of that Claim is subject to applicable U.S. or Canadian law in the context of the Restructuring Proceedings, and any orders of the U.S. Bankruptcy Court or of the Ontario Superior Court of Justice that apply in the context of the Restructuring Proceedings.

Please send completed Proof(s) of Claim to:

BPS US Holdings Inc. Claims Processing Center
c/o Prime Clerk LLC
830 3rd Avenue, 3rd Floor
New York, NY 10022

Do not file these instructions with your form

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 EMPLOYEE CLAIMS PROCEDURE)**

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

Schedule "B" - Notice of Revision or Disallowance

[Attached]



Ernst & Young Inc.
800, boul. René-Lévesque Ouest
Bureau 1900
Montréal (Québec) H3B 1X9

Tél./Tel: +1 514 875 6060
Téléc./Fax: +1 514 879 2600
ey.com

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*¹

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF OLD PSG WIND-DOWN LTD., OLD BHR WIND-DOWN CORP., OLD BPSU WIND-DOWN CORP., OLD BPSDS WIND-DOWN CORP., OLD EBS WIND-DOWN CORP., OLD PLG WIND-DOWN CORP., OLD PSGI WIND-DOWN CORP., OLD BHR INC., OLD BH INC., OLD BPSU INC., OLD BPSCI INC., OLD BPSUSH INC., OLD EBS INC., OLD PLG INC., AND OLD PSGI INC.²

NOTICE OF REVISION OR DISALLOWANCE OF A PROOF OF CLAIM

TO: [Claimant name and address]

By: [method of delivery and/or coordinates]

Claim reference #:

Notice is hereby given as follows:

1. On October 31, 2016, the Ontario Superior Court of Justice – Commercial List (the “Court”) granted an order (as amended and restated, the “**Initial Order**”), among other things declaring that Old PSG Wind-down Ltd. (formerly Performance Sports Group Ltd.) and certain of its subsidiaries and affiliates (collectively, the “**Applicants**”) were companies to which the *Companies' Creditors Arrangement Act* (“CCAA”)¹ applied, appointing Ernst & Young Inc. as monitor (in such capacity, the “**Monitor**”) of the Applicants, and granting certain relief in favour of the Applicants. The Initial Order has been amended and restated on several occasions and is still in effect.
2. By order dated September 1, 2017 (the “**Claims Resolution Order**”), the Court authorized the Monitor, *inter alia*, to review proofs of claim with a view to accept, revise or disallow the amount of the claims filed against the Canadian Applicants and certain of the Cross-Border Claims (as each term is defined in the Claims Resolution Order), in accordance with the Claims Resolution Order. If you intend to dispute the Notice of Revision or Disallowance, such dispute must be made to the Monitor in accordance with the second page hereof and the Claims Resolution Order. At this time, there is no right to appeal the Notice of Revision or Disallowance to the Court. Further, there is no right to appeal the Notice of Revision or Disallowance to the United States Bankruptcy Court for the District of Delaware.

¹ *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36, as amended (“CCAA”).

² The Applicants in the proceedings herein have changed their corporate names and some of the entities have amalgamated since the inception of the proceedings under the CCAA. An equivalency list between the former and current corporate names is presented in Appendix “A” to this Notice of Revision or Disallowance.



3. In accordance with the provisions of the Claims Resolution Order, and in particular paragraph 4 thereof, the Monitor hereby provides notice that it has reviewed your Proof of Claim against [Debtor] and has disallowed your claim (in whole or in part) and revised same as follows:³

	Secured claim	Unsecured claim
Name of Debtor		
Currency CDN\$		
Claim amount as filed (in above-mentioned currency)		
Adjustments (see explanations below)		
Claim amount as adjusted (in above-mentioned currency)	0.00	0.00
Claim amount as adjusted (in US\$)	0.00	0.00

Your claim has been adjusted for the following reasons:

1. [Insert reasons for revision or disallowance]
- 2.
- 3.
- 4.

If you do not agree with this Notice of Revision or Disallowance please take notice of the following:

1. If you intend to dispute this Notice of Revision or Disallowance, you must, within twenty-one (21) calendar days of the date of this Notice of Revision or Disallowance, deliver a Notice of Dispute to the Monitor, the Monitor's counsel and the Applicants' counsel, in the manner contemplated in the Claims Resolution Order. The Claims Resolution Order can be accessed on the Monitor's website, at www.ey.com/ca/psg. The form of Notice of Dispute, which is attached as Schedule "B" to the Claims Resolution Order, is also attached hereto as Appendix "B", for your ease of reference.
2. If you do not dispute the decision disallowing or revising your claim within the above prescribed time period, the determination of your claim shall be deemed to be as set out in this Notice of Revision or Disallowance, and you shall have no further right to dispute, contest or appeal the decision determining the claim pursuant to this Claims Resolution Order or otherwise.
3. In the event that you dispute the present Notice of Revision or Disallowance, the Monitor and the Applicants reserve the right to present any other petition, request or reason that they may consider appropriate.

³ In accordance with the provisions of the Claims Procedure Order made on December 19, 2016, the claims expressed in Canadian dollars have been converted to US currency using a rate of CDN\$1.3410 per US\$1.00.



Dated at Montreal this _____ day of _____ 2017

ERNST & YOUNG INC.

Licensed Insolvency Trustee

In its capacity as Court-appointed Monitor of Old PSG Wind-down Ltd. *et al.*

Per: _____

Encl.

Appendix "A"

Corporate Name as of October 31, 2016	Current Corporate Name
Performance Sports Group Ltd./ Bauer Hockey Corp./ BPS Canada Intermediate Corp./ KBAU Holdings Canada, Inc.	Old PSG Wind-down Ltd.
Bauer Hockey Retail Corp.	Old BHR Wind-down Corp.
Bauer Performance Sports Uniforms Corp.	Old BPSU Wind-down Corp.
BPS Diamond Sports Corp.	Old BPSDS Wind-down Corp.
Easton Baseball/Softball Corp.	Old EBS Wind-down Corp.
Performance Lacrosse Group Corp.	Old PLG Wind-down Corp.
PSG Innovation Corp.	Old PSGI Wind-down Corp.
Bauer Hockey Retail Inc.	Old BHR Inc.
Bauer Hockey, Inc.	Old BH Inc.
Bauer Performance Sports Uniforms Inc.	Old BPSU Inc.
BPS Diamond Sports Inc.	Old BPSCI Inc.
BPS US Holdings Inc.	Old BPSUSH Inc.
Easton Baseball/Softball Inc.	Old EBS Inc.
Performance Lacrosse Group Inc.	Old PLG Inc.
PSG Innovation Inc.	Old PSGI Inc.

Schedule "C" - Notice of Dispute

[Attached]

Appendix "B"

DISPUTE NOTICE

For claimants of Old PSG Wind-down Ltd. *et. al.* (collectively, the "Applicants")

FORM OF DISPUTE NOTICE

Claim Reference Number: _____

1. Particulars of Creditor

1.1. Full Legal Name of Claimant (including trade name, if different):

1.2. Full Mailing Address of the Claimant:

1.3. Other Contact Information of the Claimant:

Telephone Number: _____

Email Address: _____

Facsimile Number: _____

Attention (Contact Person): _____

2. Particulars of original Claimant from whom you acquired the claim, if applicable:

2.1. Have you acquired this claim by assignment?

Yes: ☐

No: ☐

2.2. If yes and if not already provided, attach documents evidencing assignment.

2.3. Full Legal Name of original Claimant(s): _____

3. Dispute of Revision and Disallowance of Claim:

The Claimant hereby disagrees with the value of its claim as set out in the Notice of Revision and Disallowance for the following reasons: *(You must include a list of reasons as to why you are*

disputing your claim as set out in the Notice of Revision and Disallowance and attach supporting documentation as applicable.)

In view of the foregoing, the Claimant hereby disputes the Notice of Revision or Disallowance and requests that the claim be reinstated as follows:

	Secured claim	Unsecured claim
Name of Debtor		
Currency CDN\$		
Claim amount as asserted (in above-mentioned currency)	0.00	0.00
Claim amount as asserted (in US\$)	0.00	0.00

DATED this _____ day of _____, 2017.

Name of Claimant

Witness

Per:

Name:

Title:

Witness name (please print)

(please print)

SERVICE OF DISPUTE NOTICES

If you intend to dispute the Notice of Revision and Disallowance, within twenty-one (21) calendar days after the Notice of Revision and Disallowance is deemed to have been received by you (in accordance with paragraph 6 of the Claims Resolution Order), you must deliver to the Monitor, the Monitor's counsel and the Applicants' counsel this Dispute Notice by prepaid registered mail, courier, personal delivery or electronic or digital transmission, in the manner and at the addresses mentioned in the Claims Resolution Order, a copy of which can be obtained from the Monitor's website at www.ey.com/ca/PSG. In accordance with the Claims Resolution Order, notices shall be deemed to be received upon actual receipt thereof by the Monitor during normal business hours, or if delivered outside of normal business hours, on the next business day.

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 OLD PSG WIND-DOWN LTD. ET AL.

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

Proceeding commenced at Toronto

CLAIMS RESOLUTION 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

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

Lawyers for the Applicants

EXHIBIT “I”

EXHIBIT "I"

referred to in the Affidavit of

KEISHA LACKPATIAH-SEALY

Sworn September 20, 2017



Commissioner for Taking Affidavits

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

BPS US Holdings Inc., *et al.*,¹

Debtors.

Chapter 11

Case No. 16-12373 (KJC)

(Jointly Administered)

AFFIDAVIT OF SERVICE

I, Georgia L. Faust, depose and say that I am employed by Prime Clerk LLC (“*Prime Clerk*”), the claims and noticing agent for the Debtors in the above-captioned chapter 11 cases.

On December 23, 2016, at my direction and under my supervision, employees of Prime Clerk caused the following document, along with a blank proof of claim form, to be served via First Class Mail on the Core/2002 Service List attached hereto as **Exhibit A**:

- Notice of Bar Date for Filing Claims, attached hereto as **Exhibit B** (the “*Bar Date Notice*”)

On December 23, 2016, at my direction and under my supervision, employees of Prime Clerk caused the following to be served via First Class Mail: (1) the Bar Date Notice and a proof of claim form (customized to include the name and address of the party and an indication that the party appears on the Master Mailing List) on the parties listed on the Master Mailing Service List attached hereto as **Exhibit C**; (2) the Bar Date Notice and a proof of claim form (customized to include the name, address of the party, the amount, and nature and classification of its scheduled claim) on the parties listed on the Schedule DEF Party Service List attached hereto as **Exhibit D**; and (3) the Bar Date Notice and a proof of claim form (customized to include the name and address of the party and an indication that the party appears on Schedule G) on the parties listed on the Schedule G Party Service List attached hereto as **Exhibit E**.

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.

Dated: December 29, 2016



Georgia L. Faust

State of New York
County of New York

Subscribed and sworn to (or affirmed) before me on December 29, 2016, by Georgia L. Faust, proved to me on the basis of satisfactory evidence to be the person who appeared before me.

Signature: 

PAUL PULLO
Notary Public, State of New York
No. 01PU6231078
Qualified in Nassau County
Commission Expires Nov. 15, 2018

Exhibit A

Core/2002 Service List
Served via First Class Mail

DESCRIPTION	NAME	ADDRESS
Delaware State Treasury	Delaware State Treasury	Attn: Bankruptcy Department 820 Silver Lake Boulevard Suite 100 Dover DE 19904
Counsel to MIPS AB	DLA Piper (Canada) LLP	Attn: Bruce Stratton, Geoff Mowatt, Bentley Gaikis, Mary Buttery, Lance Williams Suite 6000, 1 First Canadian Place P. O. Box 367, 100 King Street West Toronto ON M5X 1E2 Canada
Counsel to G-Form, LLC	Greenberg Traurig, LLP	Attn: Dennis A. Meloro The Nemours Building 1007 North Orange Street, Suite 1200 Wilmington DE 19801
Counsel to G-Form, LLC	Greenberg Traurig, LLP	Attn: Nathan A. Haynes MetLife Building 200 Park Avenue New York NY 10166
Counsel to Stalking Horse Purchaser Co-Counsel for 9938982 Canada, Inc. and Sagard Capital	Kirkland & Ellis, LLP	Attn: Christopher J. Marcus, George Klidonas 601 Lexington Avenue New York NY 10022-4611
Counsel to Stalking Horse Purchaser Co-Counsel for 9938982 Canada, Inc. and Sagard Capital	Klehr Harrison Harvey Branzburg, LLP	Attn: Domenic E. Pacitti 919 North Market Street Suite 1000 Wilmington DE 19801-3062
Bankruptcy Counsel to Lead Plaintiff and the Class	Lowenstein Sandler, LLP	Attn: Michael S. Etkin, Esq., Andrew Behlmann, Esq. 65 Livingston Avenue Roseland NJ 07068
Counsel to Sierra Pacific Constructors, Inc.	Mirman, Bubman & Nahmias, LLP	Attn: Alan I. Nahmias 21860 Burbank Boulevard Suite 360 Woodland Hills CA 91367
Official Committee of Equity Security Holders	Montgomery, McCracken, Walker & Rhoads, LLP	Attn: Natalie D. Ramsey & Mark A. Fink 1105 North Market Street Suite 1500 Wilmington DE 19801

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, RSC 1985, C.
C-36, AS AMENDED.
AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT
OF PERFORMANCE SPORTS GROUP LTD. *ET. AL.*

- and -

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
BPS US Holdings Inc., <i>et al.</i> , ¹	)	
	)	Case No. 16-12373 (KJC)
	)	
Debtors.	)	(Jointly Administered)
	)	

NOTICE OF BAR DATES FOR FILING CLAIMS

**ANY HOLDER OF A POSSIBLE CLAIM AGAINST THE DEBTORS SHOULD
CONSULT AN ATTORNEY REGARDING ANY MATTERS NOT COVERED BY THIS
NOTICE, SUCH AS WHETHER THE HOLDER SHOULD FILE A PROOF OF CLAIM.**

**TO ALL KNOWN CREDITORS OF THE ABOVE-CAPTIONED ENTITIES
(COLLECTIVELY, THE "DEBTORS"):**

On December 19, 2016, the United States Bankruptcy Court for the District of Delaware and the Ontario Superior Court of Justice (Commercial List) (the "Courts") entered orders (together, the "Bar Date Orders") establishing certain claims bar dates.

¹ The Debtors in these Chapter 11 Cases and Canadian Proceedings, 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.

Pursuant to the Bar Date Orders, the Courts established February 6, 2017 at 5:00 p.m., Eastern Time as the general bar date (the "General Bar Date") for filing prepetition claims in the Debtors' chapter 11 cases (the "Chapter 11 Cases") and the Canadian Proceedings (the "Canadian Proceeding").

As used in this Notice, the term "entity" includes a person, estate, trust, or governmental unit. In addition, the term "persons" includes an individual, partnership, and corporation, and the term "governmental units" means the United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States (but not a United States trustee while serving as a trustee in a chapter 11 case); a State; a Commonwealth; a District; a Territory; a US or Canadian municipality; a provincial government; the Canadian federal government; a Canadian governmental authority; a foreign state; or other foreign or domestic government, respectively.

As used in this Notice, the term "claim" means, as to or against any of the Debtors: (i) any right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or (ii) any right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

As used in this Notice, "prepetition" has the same meaning as the term "pre-filing".

THE BAR DATES

The Bar Date Orders established the following bar dates for filing claims in these Chapter 11 Cases and the Canadian Proceedings (the collectively, the "Bar Dates"):

- a. The General Bar Date. Pursuant to the Bar Date Orders, except as described below, all entities holding claims against the Debtors, whether secured, preferred, unsecured non-priority, unsecured priority claim or otherwise entitled to special treatment under applicable US or Canadian law in connection with the Chapter 11 Cases or the Canadian Proceedings that arose before October 31, 2016 (the "Petition Date") must file proofs of claim by the General Bar Date of February 6, 2017 at 5:00 p.m. Eastern Time. All other administrative claims (such as a claim under section 503(b) of the Bankruptcy Code) must be asserted by separate requests for payment and will not be deemed proper if made by proof of claim.
- a. The Governmental Bar Date. Pursuant to the Bar Date Orders, except as described below, all governmental units holding claims (whether secured, preferred, unsecured non-priority, unsecured priority claim or otherwise entitled to special treatment under applicable US or Canadian law in connection with the Chapter 11

Cases or the Canadian Proceedings) against the Debtors that arose before the Petition Date must file proofs of claim by the Governmental Bar Date of May 1, 2017 at 5:00 p.m. Eastern Time.

- b. The Rejection Bar Date. Any entity whose claims arise out of the (i) Court approved rejection of an executory contract or unexpired lease, in accordance with section 365 of the Bankruptcy Code and pursuant to an order entered prior to the confirmation of a plan in the applicable Debtor's case, or (ii) the disclaimer by a Debtor of a contract pursuant to section 32 of the CCAA, must file a proof of claim on or before the later of the applicable deadline (i) the General Bar Date; or (ii) in the Chapter 11 Cases, 30 days after the entry of the order providing for the rejection of such executory contract or unexpired lease in the Chapter 11 Cases; or (iii) in the Canadian Proceeding, 30 days after the effective date of the disclaimer by a Debtor in accordance with section 32 of the CCAA. The later of these dates is referred to in this notice as the "Rejection Bar Date."
- c. The Amended Schedules Bar Date. If, subsequent to the mailing date of this notice, a Debtor amends or supplements its Schedules of Assets and Liabilities (the "Schedules") to reduce the undisputed, noncontingent and liquidated amount or to change the nature or classification of a claim against a Debtor reflected therein, any affected entities that dispute such amendments or supplements to the Schedules (such Schedules, the "Amended Schedules") are required to file a proof of claim or amend any previously filed proof of claim in respect of the Amended Schedules claim on or before the later of: (i) the General Bar Date; and (ii) 30 days after the date that notice of the applicable Amended Schedules is served on the claimant. The later of these dates is referred to in this notice as the "Amended Schedule Bar Date."

FILING CLAIMS

1. WHO MUST FILE

Subject to the terms described above for holders of claims subject to the Governmental Bar Date, Rejection Bar Date, and the Amended Schedules Bar Date, the following entities **MUST** file proofs of claim on or before the General Bar Date:

- a. any entity (i) whose prepetition claim against a Debtor is not listed in the applicable Debtor's Schedules or is listed as any of disputed, contingent, or unliquidated and (ii) that desires to share in any

distribution in any of these Chapter 11 Cases or Canadian Proceedings; and

- b. any entity that believes that its prepetition claim is improperly classified in the Schedules or is listed in an incorrect amount or against an incorrect Debtor and that desires to have its claim allowed in a classification or amount or against a Debtor different from the classification, amount or Debtor identified in the Schedules.

2. WHAT TO FILE

Prepetition Claims

The Debtors are enclosing a proof of claim form (the “Proof of Claim Form”) for use in these Chapter 11 Cases or Canadian Proceedings, or you may use another proof of claim form that conforms substantially thereto. If your claim is scheduled by the Debtors, the enclosed Proof of Claim Form also sets forth: (i) the amount of your claim (if any) as scheduled; (ii) the specific Debtor against which the claim is scheduled; (iii) whether your claim is scheduled as disputed, contingent or unliquidated; and (iv) whether your claim is listed as a secured, preferred, unsecured non-priority, unsecured priority claim or otherwise entitled to special treatment under applicable U.S. or Canadian law in connection with the Chapter 11 Cases or the Canadian Proceedings. You will receive a different proof of claim form for each claim scheduled in your name by the Debtors. You may utilize the proof of claim form(s) provided by the Debtors to file your claim. Additional proof of claim forms may be obtained at the following website: <https://cases.primeclerk.com/PSG> (the “Claim Agent Website”) or the website of the court-appointed Monitor in the Canadian Proceeding: www.ey.com/ca/psg (the “Monitor’s Website”).

3. WHEN AND WHERE TO FILE

Entities must file each Proof of Claim Form so they are received on or before the applicable Bar Dates, (i) via the electronic interface on the website of the Debtors’ claims agent, Prime Clerk LLC, <https://cases.primeclerk.com/PSG>, or (ii) at the following address:

**Performance Sports Group Claims Processing Center
c/o Prime Clerk LLC
830 3rd Avenue, 3rd Floor
New York, NY 10022**

Proofs of claim will be deemed filed when **actually received** by Prime Clerk on or before the applicable Bar Date. **Proofs of claim may not be delivered via facsimile or electronic mail transmission.**

Proofs of claim will be collected, docketed and maintained by Prime Clerk for both the Chapter 11 Cases and the Canadian Proceedings. If you want to receive acknowledgement of Prime Clerk's receipt of a proof of claim, you must submit, by the applicable Bar Date and concurrently with submitting your original proof of claim, (i) a copy of

the original proof of claim and (ii) a self-addressed, postage prepaid return envelope or follow the instructions on Prime Clerk's website if submitting electronically.

All forms must be **signed** by the claimant or, if the claimant is not an individual, by an authorized agent of the claimant. The form must be written in English or French. You should attach to your completed form any documents on which the claim is based (or, if such documents are voluminous, attach a summary) or an explanation as to why the documents are not available.

Any entity asserting claims against multiple Debtors must file a separate proof of claim form with respect to each Debtor. In addition, any entity filing a claim must identify on its proof of claim form the particular Debtor against which the entity asserts its claim. If an entity lists more than one Debtor on any one form, the relevant claims will be treated as filed **only** against the first listed Debtor.

4. ENTITIES NOT REQUIRED TO FILE A CLAIM

The Bar Date Orders further provide that the following entities, whose claims otherwise would be subject to the General Bar Date or the Governmental Bar Date need **not** file claims in these cases:

- a. any entity that already has filed a signed proof of claim against the applicable Debtor(s) in a form substantially similar to the form enclosed herewith and attached to the Bar Date Orders with: (i) the Clerk of the Bankruptcy Court for the District of Delaware, the Monitor or (iii) the Debtors' claims and noticing agent, Prime Clerk;
- b. any entity (i) whose claim against a Debtor is not listed as "disputed", "contingent", or "unliquidated" in the Schedules or Amended Schedules and (ii) agrees with the nature, classification and amount of its claim as identified in the Schedules or Amended Schedules;
- c. any entity whose claim against a Debtor previously has been allowed by, or paid pursuant to, an order of the Courts;
- d. any Debtor or any of their non-debtor affiliates (as such term is defined in section 101(2) of the Bankruptcy Code) or an entity related to any Debtor as such term is defined under section 3(2) of the CCAA, as applicable;
- e. any current officer, director or employee of any of the Debtors having a claim against any of the Debtors for indemnification, contribution or reimbursement;
- f. the Prepetition ABL Lenders; and

g. the Prepetition Term Loan Lenders.

NO REQUIREMENT FOR STOCKHOLDERS TO FILE PROOFS OF INTEREST

Any entity holding an interest in the Debtors (an "Interest Holder"), which interest is based exclusively upon the ownership of: (a) common stock in Performance Sports Group Ltd.; or (b) warrants or rights to purchase, sell or subscribe to such stock (any such stock or aforementioned right related thereto being referred to herein as an "Interest"), need not file a proof of claim or proof of interest on or before the General Bar Date on account of such Interest; provided, however, Interest Holders who want to assert claims against the Debtors that arise out of or relate to the ownership or purchase of an Interest, including claims arising out of or relating to the sale, issuance or distribution of the Interest, must file a claim by the applicable Bar Dates, unless another exception identified in this motion applies.

CONSEQUENCES OF FAILURE TO FILE A CLAIM

Entities that fail to properly file a Proof of Claim Form by the applicable Bar Date shall be barred, estopped and enjoined from: (a) asserting any prepetition claim against the Debtors that such entity may possess and that (i) is in an amount that exceeds the amount, if any, that is identified in the Schedules or Amended Schedules on behalf of such entity as undisputed, noncontingent and liquidated or (ii) is of a different nature, classification or priority than any claim identified in the Schedules or Amended Schedules on behalf of such entity (any such claim under this subparagraph (a) being referred to herein as an "Unscheduled Claim"); and (b) voting upon, or receiving distributions under, any plan of reorganization or arrangement in these Chapter 11 Cases or Canadian Proceedings in respect of an Unscheduled Claim.

RESERVATION OF RIGHTS

The Debtors retain the right to: (i) dispute, or assert offsets or defenses against, any filed proofs of claim, or any claim listed or reflected in the Schedules, as to nature, amount, liability, classification or otherwise; (ii) subsequently designate any scheduled claim as disputed, contingent or unliquidated; and (iii) otherwise amend or supplement the Schedules. Notwithstanding the foregoing, nothing contained herein shall preclude the Debtors from objecting to any claim, whether scheduled or filed, on any grounds.

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ADDITIONAL INFORMATION

If you require additional information regarding the filing of a claim, you may contact Prime Clerk at **855-631-5352** or by submitting an inquiry at <https://cases.primeclerk.com/PSG>. Copies of the Bar Date Orders and other information regarding the Debtors' Chapter 11 Cases are available for inspection free of charge on Prime Clerk's website at: <https://cases.primeclerk.com/PSG/Home-Index>, or the Monitor's Website: www.ey.com/ca/psg, as applicable.

Neither Prime Clerk nor the Monitor can advise you how to file, or whether you should file, a claim. You may wish to consult an attorney regarding this matter.

Dated: Wilmington, Delaware and
Toronto, Ontario

December 23, 2016

BY ORDER OF THE COURTS

Exhibit C
Master Mailing Service List
Served via First Class Mail

MNULD	Name	Address 1	Address 2	Address 3	Address 4	City	State	Postal Code	Country
3155906	PLAY MOORE HOCKEY LLC	1895 MURRELL ROAD, SUITE 124				ROCKLEDGE	FL	32955	
3155905	PLAY MOORE HOCKEY PRO SHOP	1190 WINDING MEADOWS RD				MIAMI	FL	32955-8232	
3155908	PLAY OFF SPORT GEAR	10801 N.W. 14 STREET, UNIT 102				NOVI	MI	48375	
3266682	PLAY SPORTS, INC DBA PLAY IT AGAIN SPORTS	25875 NOVI RD. STE #140				MANCHESTER	NH	03103	
3155909	PLAY THE GAME	JIM CARDELO	8051 SOUTH WILLOW ST.			SAINT HELENS	OR	97051	
3155250	PLAYAZ SOFTBALL CLUB	MISTY WELLS	595-31 YARMER LANE ST.			CHATHAM	ON	N7M 1P4	CANADA
3155251	PLAYBACK SPORTS EQUIPMENT	214 RICHMOND STREET				CLERMONT	FL	34712	
3155259	PLAYBALL SPORTS STORE	HILDA BURGESS	PO BOX 120008			LAKE IN THE HILLS	IL	60156	
3155259	PLAYERS CHOICE	9210 TRINITY DR.				PRINCE GEORGE	BC	60237	
3155260	PLAYERS BEACH	2376 WESTWOOD DRIVE				DENVER	CO	80237	
3155261	PLAYERS BEACH	4401 S TAMARAC PKWY				PRINCE GEORGE	BC	V2N 4H3	CANADA
3155262	PLAYERS BEACH	200-411 QUEBEC ST				PRINCE GEORGE	BC	V2N 4H3	CANADA
3155263	PLAYERS BEACH PRINCE GEORGE	ATTN: ANDREW ADAMS	2376 WESTWOOD DRIVE			PRINCE GEORGE	BC	V2N 4H3	CANADA
3155265	PLAYERS BEACH PRINCE GEORGE	PLAYERS BEACH HOLDINGS (PG) LTD.	2376 WESTWOOD DRIVE			PRINCE GEORGE	BC	V2N 4H3	CANADA
3155266	PLAYERS BEACH SPORTS	1970 SPIKA BLVD. SOUTH				PRINCE GEORGE	BC	V2N 4W5	CANADA
3155267	PLAYERS BEACH SPORTS	451 LANSDOWNE ST				KAMLOOPS	BC	V2C1Y2	CANADA
3155271	PLAYERS BEACH SPORTS	612, 13TH STREET N.				LET BRIDGE	AB	T1H 2S8	CANADA
3155274	PLAYERS BEACH SPORTS	KAMLOOPS PLAYERS BEACH INC.				KAMLOOPS	BC	V2C 1V2	CANADA
3155276	PLAYERS BEACH SPORTS	PLAYERS BEACH CORPORATION	4401 S TAMARAC PKWY - UNIT A			DENVER	CO	80237	
3155277	PLAYERS BEACH SPORTS	PLAYERS BEACH CORPORATION	8351 E BELLEVUE AVE			LET BRIDGE	AB	T1H 2S8	CANADA
3155279	PLAYERS BEACH SPORTS	PLAYERS BEACH LETHBRIDGE E INC.	612 13TH STREET NORTH			LET BRIDGE	AB	T1H 2S8	CANADA
3155270	PLAYERS' BEACH SPORTS	612 13TH STREET				PRINCE GEORGE	BC	V2N 4H3	CANADA
3155280	PLAYERS BEACH SPORTS PRINCE GEORGE	2376 WESTWOOD DRIVE				PRINCE GEORGE	BC	V2N 4H3	CANADA
3155283	PLAYERS CHOICE	SCOTT DOOLEY	3 STRAWBERRY LANE			ELGIN	SC	29045	
3155281	PLAYERS' CHOICE BASEBALL, LLC	GREG WIKEL	332 CHURCH RD.			HATFIELD	PA	19440	
3155282	PLAYERS' CHOICE PRO SHOP LLC	320 EAST 1ST STREET				BETHLEHEM	PA	18015	
3155284	PLAYERS CONNECTION	18654 NW 67TH AVENUE				MIAMI	FL	33015	
3155285	PLAYERS EDGE	MYLES RUNSDORF	11411 C.W. PALMETTO PARK RD			BOCA RATON	FL	33428	
3155286	PLAYERS SPORTS	ATTN MIKE FERRANTINO	353 SCHULTZ RD			WEST SENECA	NY	14224-2517	
3155287	PLAYERS SPORTS INC.	MIKE FERRANTINO	353 SCHULTZ RD			WEST SENECA	NY	14224-2517	
3155288	PLAYERS' WAREHOUSE LLC	ATTN: CHRISTOPHER TAMILLO	1835 AMBRIDGE RD.			CENTREVILLE	OH	45459	
3155289	PLAYERS WAREHOUSE SOFTBALL	LEON MATTINGLY	384 FORD DR.			MOUNT WASHINGTON	KY	40047	
3155910	PLAYTIME BOWL	33 SAMOR RD				TORONTO	ON	M6A 1J2	CANADA
3155911	PLAZA SPORTING	46 NORTHUMBERLAND DR				SHOREHAM	NY	1786-2005	
3155912	PLAZA SURF N' SPORTS	46 NORTHUMBERLAND DR				SHOREHAM	NY	1786-2005	
3155913	PLAZA SURF N' SPORTS II INC.	716 MAIN STREET				MONTAUK	NY	11954	
3155914	PLAZA SURF N'SPORTS II, INC.	46 NORTHUMBERLAND DR				SHOREHAM	NY	1786-2005	
3155915	PUNINGER & PARTNER PARTG MBH	STELURBERATER	STADTPLATZ 20			MUEHLDORF	NY	84453	GERMANY
3155918	PLOMBERIE JERVEN INC.	C.P. 524, SUCC. BUREAU-4-REF				SAINT-JE-ROME	QC	J7Z 5V3	CANADA
3155999	POUFFE, SUZANNE	REDACTED	REDACTED			REDACTED	REDACTED	REDACTED	REDACTED
3155921	POL RIVER LLC	1246 CHARLES STREET				STATE COLLEGE	PA	16801	
3155926	POL RIVER LLC	PO BOX 568				REDSVILLE	PA	17084	
3155919	POLIMBERS & PIPEFITTERS	JOSH ONSTOTT	2680 MORGAN ROAD			EATON RAPIDS	MI	48827	
3155922	POLIVERIVER LLC	1257 EAST COLLEGE AVENUE				STATE COLLEGE	PA	16801	
3152733	PUNKETT, MELISSA	REDACTED	REDACTED			REDACTED	REDACTED	REDACTED	REDACTED
3155928	PLYMOUTH SVI & SPORTS, INC	97 MAIN ST				PLYMOUTH	NH	03264	
3155930	PM INDUSTRIAL SUPPLY CO	PO BOX 5109				CHATS WORTH	CA	91133	
3155929	PMGI	IONATHAN AGES	2 PENN PLAZA			NEW YORK	NY	10121	
3155931	PM'S PROFILTRYCK & SPORT	PM'S PROFILTRYCK	VILLAVAGEN 11			MONTREAL	QC	H4C 2Z6	SWEDEN
3155932	PMU QUEBEC	1001 RUE LENOIR LOCAL B-435				OLYMPIA	MI	48316	CANADA
3155933	PNW FORCE	JEREMY TAN OR SPARKS	2555 14TH AVE NE			BOWLING GREEN	KY	42104	
3155938	POL SPORTS GROUP	ROBERT NEYENHAUS	713 WHITEBARK CT.			INGENWOOD	CA	93902	
3154741	POLLON, PRET	REDACTED	REDACTED			REDACTED	REDACTED	REDACTED	REDACTED
3155935	POLYBLANK TRAINING CENTER, INC (BLANK)	1225 N. LABREA AVE.				INGENWOOD	CA	93902	
2466692	POLYBLANK TRAINING CENTER, INC (BLANK)	50 MANTHORN BLVD, SUITE 400				GROSSE POINTE	MI	48236	
3155936	POINTE ATLAS SPORTING GOODS	SCOTT FREELCOTON				THORNHILL	ON	L3T 7W8	CANADA
3148014	POLIER, GLORIA	REDACTED	REDACTED			REDACTED	REDACTED	REDACTED	REDACTED
315217	POLIER, MARC	REDACTED	REDACTED			REDACTED	REDACTED	REDACTED	REDACTED
315218	POLIER, MARC	REDACTED	REDACTED			REDACTED	REDACTED	REDACTED	REDACTED
315219	POLIER, VANN	REDACTED	REDACTED			REDACTED	REDACTED	REDACTED	REDACTED
315248	POLINS, MATTHEU	REDACTED	REDACTED			REDACTED	REDACTED	REDACTED	REDACTED
315248	POLINS, MATTHEU	REDACTED	REDACTED			REDACTED	REDACTED	REDACTED	REDACTED
315258	POLINS, MATTHEU	REDACTED	REDACTED			REDACTED	REDACTED	REDACTED	REDACTED
3155940	POLAR PROMOTIONS & SPORTSWEAR	6025 5TH STREET SE				CHAGRAY	AB	T4H 1L5	CANADA
3155941	POLAR SPORTS	1010 NORTH EDGE TRAIL-SUITE 220				VERONA	WI	53593	
3154696	POLLIO, PAUL	REDACTED	REDACTED			REDACTED	REDACTED	REDACTED	REDACTED
3155942	POLIMPORT / SPORTVERSTAN	UMSTERSGATAN 13				LIMHAMN	SE	216 16	SWEDEN
3155943	POLK COMMUNITY COLLEGE	JEFF STEVENS	999 AVE H NE			WINTER HAVEN	FL	33881	
3155945	POLK STATE COLLEGE	999 AVE H, NORTHWEST				WINTER HAVEN	FL	33881	
3148507	POLLARD, HAMILTON	REDACTED	REDACTED			REDACTED	REDACTED	REDACTED	REDACTED
311246	POLYFORM	454 EDOUARD ST.				GRANBY	QC		
3155946	POLYMERS TECHNOLOGIES	6330 LAUNIER BLVD. WEST				SAINT-HYACINTHE	QC	J2S 9A7	CANADA
3155947	POLYMERS TECHNOLOGIES INC.	6330, 800 LAUNIER WEST				SAINT-HYACINTHE	QC	J2S 9A7	CANADA
3155948	POLYMOS INC.	150, 5TH BOULEVARD				TERASSE-AUDRUILL	QC	J7V 5M3	CANADA
3155949	POLYNT COMPOSITES CANADA INC.	29 REGAN ROAD				BRAMPTON	ON	L7A 1B2	CANADA
3155950	POLYTECH HIGH SCHOOL	823 WALNUT SHADE ROAD				WOODSIDE	DE	19880	

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 OLD PSG WIND-DOWN LTD. ET. AL.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**AFFIDAVIT OF KEISHA LACKPATIAH-SEALY
(SWORN SEPTEMBER 20, 2017)**

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Lawyers for the Applicants

TAB 3

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.	)	MONDAY, THE 16th
	)	
JUSTICE HAINEY	)	DAY OF OCTOBER, 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 OLD
PSG WIND-DOWN LTD., OLD BHR WIND-DOWN CORP., OLD BPSU WIND-DOWN
CORP., OLD BPSDS WIND-DOWN CORP., OLD EBS WIND-DOWN CORP., OLD PLG
WIND-DOWN CORP., OLD PSGI WIND-DOWN CORP., OLD BHR INC., OLD BH INC.,
OLD BPSU INC., OLD BPSCI INC., OLD BPSUSH INC., OLD EBS INC., OLD PLG INC.,
AND OLD PSGI INC.

(Applicants)

ORDER

THIS MOTION, made by Old PSG Wind-down Ltd. ("**PSG**"), Old BHR Wind-down Corp., Old BPSU Wind-down Corp., Old BPSDS Wind-down Corp., Old EBS Wind-down Corp., Old EBS Wind-down Corp., Old PLG Wind-down Corp., Old PSGI Wind-down Corp., Old BHR Inc., Old BH Inc., Old BPSU Inc., Old BPSCI Inc., Old BPSCI Inc., Old BPSUSH Inc., Old EBS Inc., Old PLG Inc., and Old PSGI Inc. (together, the "**Applicants**") for an order disallowing proof of claim #444 (the "**Putative Class Claim**") filed by The Plumbers & Pipefitters National Pension Fund (the "**Individual Claimant**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Keisha Lackpatiah-Sealy sworn September 20, 2017, and the Twelfth Report of Ernst & Young Inc. dated ● in its capacity as Monitor of the Applicants (the "**Monitor**") and on hearing the submissions of counsel for the Applicants, the Monitor, the Official Committee of Equity Security Holders, the Individual Claimant and those other parties present, no one appearing for any other party although duly served as appears from the affidavit of service of ●, filed.

PUTATIVE CLASS CLAIM

1. **THIS COURT ORDERS** that the Putative Class Claim is disallowed and expunged in its entirety, including for distribution and voting purposes.

GENERAL

2. **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.

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF OLD PSG WIND-DOWN LTD. ET AL.

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

Proceeding commenced at Toronto

ORDER

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Lawyers for the Applicants

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
OLD PSG WIND-DOWN LTD. ET AL.

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

ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST) Proceeding commenced at Toronto	
MOTION RECORD (Re: Disallowance of Putative Class Claim) (Returnable October 16, 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: pward@stikeman.com Lee Nicholson LSUC#: 664121 Tel: (416) 869-5604 E-mail: leenicholson@stikeman.com Fax: (416) 947-0866 Lawyers for the Applicants	