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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 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)

COMPENDIUM OF U.S. FILINGS AND OTHER DOCUMENTS

Dated: October 12, 2017

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TAB 1

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

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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 Servi*ce (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.

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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. <u>The Court Should Not Apply FRBP 7023 To The Putative Class Claim</u>.

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

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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**

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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

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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.

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[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) <u>The Putative Class Was Not Certified Prepetition</u>.

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 <u>Received Adequate Notice Of The Bar Date</u>.

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

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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

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[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

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[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

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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 administrated 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).

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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

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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

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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
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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.

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[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
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– and –

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Counsel to the
Official Committee of Equity Security Holders

<u>EXHIBIT A</u>

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 Claim[2]; 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

United States Bankruptcy Court, District of Delaware, Ontario Superior Court of Justice - Court File No. CV-16-11582-OOCL

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? ______

Claim Number: 444

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?

- [x] 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.

- [x] USD
- [ ] CDN

Does this amount include interest or other charges?

- [x] No
- [ ] 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?

- [x] 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?

- [x] 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?

- [x] 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.	**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.**	$________

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
Signature

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

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

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.

<u>EXHIBIT A</u>
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

Table of Contents

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 Roustan ("Roustan"), 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

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[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 the 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.

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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 emerged 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 1X 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

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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

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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.

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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

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> 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

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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 Defendants[8] 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.

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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

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Attorneys for the Plumbers & Pipefitters National Pension Fund and Lead Counsel for the Class

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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

<u>CERTIFICATE OF SERVICE</u>

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.

<u>/s/ Steven J. Toll</u>
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

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.

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.

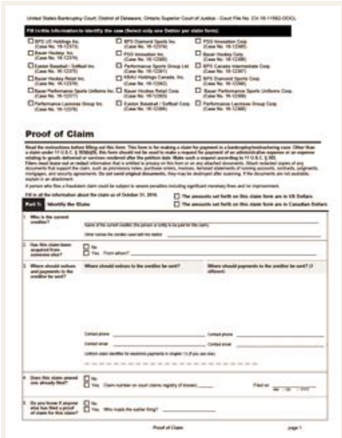
The Clerk of Court is directed to terminate the motions pending at Dkt. Nos. 6, 8.

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



Electronic Proof of Claim

Adobe Sign Document History 02/06/2017

Created:	02/06/2017
By:	Prime Clerk (epoc@primeclerk.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAA2FAYmn6pOtHny0BcK9hRdtKCxQ94SpK8

"Electronic Proof of Claim" History

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Andrew Behlmann (abehlmann@lowenstein.com) uploaded the following supporting documents:
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(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)
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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	PSGLQ 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	PSGLQ 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	PSGLQ 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	PSGLQ 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	PSGLQ 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	PSGLQ 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	PSGLQ 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	PSGLQ 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	PSGLQ 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**

<u>EXHIBIT D</u>

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 Calfornia 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 proceedings [3], 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 matters[9] , 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*

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 Creuzfeld-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

TAB 2

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) Re: D.I. 1326 **Hearing Date: October 3, 2017 at 1:00 p.m. (ET)** **Objection Deadline: September 26, 2017 at 4:00 p.m. (ET)**

SECURITIES PLAINTIFFS' OBJECTION TO DEBTORS' MOTION, PURSUANT TO SECTION 105(A) OF THE BANKRUPTCY CODE, FOR AN ORDER GRANTING EFFECT TO AND ENFORCING CLAIMS RESOLUTION ORDER

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"), for itself and on behalf of the putative class of purchasers (the "Putative Class") of the common stock ("PSG Common Stock") of Performance Sports Group Ltd., now known as Old PSG Wind-down Ltd. (the "Parent Debtor") that it represents in the Securities Litigation, hereby submits this objection to the motion (the "Motion") [D.I. 1326] filed by the debtors in possession (the "Debtors") in the above-captioned chapter 11 bankruptcy cases (the "Chapter 11 Cases") for entry of an order of

[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 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. (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., respectively). The Debtors' mailing address is 666 Burrard Street, Suite 1700, Vancouver, British Columbia, Canada, V6C 2X8.

this Court (the "Enforcement Order") "granting effect to and enforcing" an order entered by the Ontario Superior Court (the "Ontario Court") on September 2, 2017 (the "Canadian Claims Resolution Order") [D.I. 1326 Ex. 1 to Ex. A]. In support of this objection, Lead Plaintiff respectfully states as follows:

RELEVANT BACKGROUND

General Background

1. In the interest of brevity, Lead Plaintiff respectfully refers the Court to Lead Plaintiff's objection to approval of the disclosure statement and solicitation procedures for the Debtors' proposed plan of liquidation [D.I. 1357] for the background of the Securities Litigation and the Debtors' chapter 11 cases.

2. On February 6, 2017, Lead Plaintiff timely filed two proofs of claim against the Parent Debtor, asserting claims arising out of the Securities Litigation (a) in Lead Plaintiff's individual capacity (the "Individual Securities Damages Claim") [Claim No. 494] and (b) for Lead Plaintiff itself and on behalf of the Putative Class (the "Class Claim") [Claim No. 444]. Both claims were denominated in United States Dollars and arise entirely under United States law. In addition, the addenda to each proof of claim filed by Lead Plaintiff included only the caption of the Chapter 11 Cases and expressly stated that the Claims were being submitted against the Parent Debtor as a debtor in the Chapter 11 Cases. Lead Plaintiff did not file copies of either proof of claim (or any other proof of claim) with the monitor in the CCAA Case (as defined below) or take any other action to file claims in the CCAA Case or submit itself to the jurisdiction of the Ontario Court (as defined below). The bar date order entered in the Chapter

11 Cases [D.I. 327] contains no provision deeming a proof of claim filed in the Chapter 11 Cases to also constitute a claim filed in the CCAA Case.[2]

The Claims Resolution Order

3. On Friday, August 25, 2017, the Debtors filed a motion in the Ontario Court (the "Canadian Motion") seeking entry of the Canadian Claims Resolution Order, which implements procedures for the resolution of certain claims scheduled and/or filed (the "Canadian Claims") in the Debtors' proceedings under the Companies' Creditors Arrangement Act (the "CCAA Case") pending in the Ontario Court. The Canadian Motion was scheduled to be heard the following Friday, September 1, 2017. Bankruptcy counsel to Lead Plaintiff and the Putative Class were not served with the Canadian Motion by facsimile or e-mail, but rather, received only a hardcopy of the Canadian Motion, apparently after the Canadian Claims Resolution Order had already been entered.

4. The Canadian Claims Resolution Order implements procedures for the resolution of Canadian Claims and "Cross-Border Claims," which are Canadian Claims together with claims filed and/or scheduled in these Chapter 11 Cases "held by the same Claimant which all arise from similar facts, events, circumstances, agreements or invoices[.]" Canadian Claims Resolution Order, ¶¶ 2(c) (definition of "Canadian Claim"), 2(g) (definition of "Cross-Border Claims"), 3-14 (procedures for adjudication of Canadian Claims), 21-26 (procedures for adjudication of Cross-Border Claims).

5. The Canadian Claims Resolution Order defines "Securities Law Claims" as "any Claim, whether or not the subject of an existing lawsuit, that is subject to mandatory

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[2] Because the Ontario Court has no personal jurisdiction over Lead Plaintiff or the Putative Class, and no subject-matter jurisdiction over the Class Claim, the Individual Securities Damages Claim, or any other claims asserted by Lead Plaintiff and/or the Putative Class, the claims procedure order entered in the CCAA Case on December 19, 2016 is inapplicable to Lead Plaintiff, the Putative Class, the Class Claim, and the Individual Securities Damages Claim.

subordination pursuant to section 510(b) of the US. Bankruptcy Code or comparable principles of Canadian law[.]" Id. ¶ 2(r). The definition of "Canadian Claim" specifically excludes the Securities Law Claims. Id. ¶ 2(c).

6. The Canadian Claims Resolution Order defines "U.S. Claim" as "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." Id. ¶ 2(u). In contrast to the definition of "Canadian Claim," the definition of U.S. Claim does not exclude the Securities Law Claims.

7. The Canadian Claims Resolution Order specifically directs 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."

Id. ¶ 26 (emphasis added). Paragraph 21, in turn, contains certain procedures for the resolution of Cross-Border Claims. Id. ¶ 21.

8. The morning of September 25, 2017 (the deadline for filing objections to approval of the Debtors' proposed), bankruptcy counsel for Lead Plaintiff and the Putative Class received two large binders of motion materials filed in the CCAA Case, seeking entry of an order of the Ontario Court disallowing the Class Claim (the "Canadian Class Claim Objection").[3]

9. However, the Class Claim was never filed in the CCAA Case, Lead Plaintiff has never submitted itself or the Putative Class to the jurisdiction of the Ontario Court, and neither

[3] Although the Canadian Class Claim Objection is dated September 21, 2017, it was not sent until the evening of Friday, September 22, 2017, for delivery on Monday, September 25, 2017. Moreover, as of 10:06 AM (ET) on Monday, September 25, 2017, the Canadian Class Claim Objection was not available on the website maintained by the Monitor in the CCAA Case. Bankruptcy counsel to Lead Plaintiff and the Putative Class are not included on the most recent e-mail service list in the CCAA Case, dated July 7, 2017.

the Class Claim nor the Individual Securities Damages Claim is a "Canadian Claim" or a "Cross-Border Claim" as defined in the Claims Resolution Order.

10. Rather, the Class Claim was filed only in, and thus remains within the exclusive jurisdiction of, this Court. Indeed, the Canadian Class Claim Objection, by its terms, is subject to Rule 5.04 of the *Ontario Rules of Civil Procedure*, which provides in pertinent part that the Ontario Court "may, in a proceeding, determine the issues in dispute so far as they affect the rights of the parties to the proceeding and pronounce judgment *without prejudice to the rights of all persons who are not parties*" (emphasis added). Neither Lead Plaintiff nor the Putative Class are parties to the CCAA Case, and thus the Claims Resolution Order does not bind them.

11. The Debtors never sought this Court's approval of the Claims Resolution Order concurrently with seeking its entry in the Ontario Court. Instead, eleven days after the Claims Resolution Order was entered (effectively *ex parte*) by the Ontario Court, the Debtors filed the Motion, apparently seeking to jurisdiction upon the Ontario Court to adjudicate the Class Claim, notwithstanding the fact that the Class Claim (a) arises out of litigation pending solely before a United States court, (b) asserts claims arising solely under United States law, (c) was filed solely in this Court by a party that is domiciled in the United States and has taken no steps whatsoever to submit itself or the Class Claim to the jurisdiction of the Ontario Court. Through the U.S. Class Claim Objection, the Canadian Class Claim Objection, the Claims Resolution Order, and the Motion, the Debtors and the Equity Committee are attempting to grant themselves the ability to forum-shop by pressing the same matter simultaneously in two separate forums, one of which is utterly without jurisdiction over the Class Claim, Lead Plaintiff, or the Putative Class.

12. As noted in the cross-border protocol approved by this Court on November 29, 2016 (the "<u>Cross-Border Protocol</u>") [D.I. 220 Ex. 1], the Chapter 11 Cases and the CCAA Case

"are full and separate proceedings[,]" this Court and the Ontario Court have independent jurisdiction that the Cross-Border Protocol "shall not divest nor diminish[,]" and this Court has "sole and exclusive jurisdiction and power over the conduct of the Chapter 11 Cases and the hearing and determination of matters arising in the Chapter 11 Cases." Cross-Border Protocol, ¶¶ 5, 6, 7. To the extent the Claims Resolution Order purports to confer on the Ontario Court the plenary authority to adjudicate or otherwise resolve the Class Claim, *which was filed solely in this Court*, the Claims Resolution Order violates paragraph 8(a) of the Cross-Border Protocol, which provides that nothing in the Cross-Border Protocol shall be construed to "increase . . . or otherwise modify the . . . jurisdiction of the U.S. Court, the Canadian Court . . . ."

OBJECTION

13. On its face, the Enforcement Order is disguised as a simple procedural device to coordinate the resolution of cross-border claims filed in both these Chapter 11 Cases and the CCAA Case. As discussed above, the Claims Resolution Order expressly provides that resolution of U.S. Claims remains within the exclusive purview of this Court. See ¶ 7 above. The Motion purports to recognize this fact. See Motion, ¶ 12(c) ("This Court retains sole jurisdiction for any disputes with respect to all U.S. Claims and the Claim Resolution Order does not affect the determination of U.S. Claims that are not Cross Border Claims.").

14. However, the Debtors' recent, inexplicable filing of the Canadian Class Claim Objection reveals that the Debtors, presumably as the mouthpiece of the Equity Committee (which has already filed an objection of its own to the Class Claim in this Court), are attempting to do the exact opposite of what paragraph 12(c) of the Motion says. Rather, the Debtors and the Equity Committee are engaging in jurisdictional gamesmanship, filing essentially identical proceedings in two courts at the same time (one of which lacks jurisdiction in the first instance),

in the hopes of securing an order of whichever court will grant the relief they seek, disallowance of the Class Claim, which is neither a Canadian Claim nor a Cross-Border Claim under the Claims Resolution Order. If that happens to be the Canadian Court, there can be little doubt that the Equity Committee will then assert that the Enforcement Order somehow conferred jurisdiction upon the Canadian Court to adjudicate the Class Claim, notwithstanding the fact that Lead Plaintiff and the Putative Class are strangers to the Canadian Court and the CCAA Case and the Class Claim was filed solely in the Chapter 11 Cases.

15. In filing the Canadian Class Claim Objection, the Debtors appear to rely upon paragraph 13 of the Claims Resolution Order, which authorizes the Debtors, in consultation with the monitor appointed in their CCAA Case and with the consent of the Equity Committee or the liquidation trustee, "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." Notably, that paragraph is located under the heading "ADJUDICATION OF CANADIAN CLAIMS" and does not purport to override the general statement in paragraph 26 that nothing in the Claims Resolution Order affects in any way the determination of U.S. Claims. Thus, the Debtors' reliance on paragraph 13 as a basis to attempt to adjudicate the U.S.-only Class Claim in the Ontario Court is misplaced. The simple fact remains that the Ontario Court does not have, and the Debtors cannot (nor is there any basis for this Court to) confer upon it, any jurisdiction whatsoever to adjudicate, allow, disallow, or otherwise enter any order with respect to the Class Claim..

16. The Court should not countenance such jurisdictional chicanery. Instead, the Court should (a) direct the Debtors to immediately withdraw the Canadian Claims Objection and (b) deny the Motion unless the Enforcement Order is revised to expressly provide that,

notwithstanding anything in the Canadian Claims Resolution Order or the Enforcement Order, this Court retains exclusive jurisdiction over the allowance and disallowance of the U.S.-only Class Claim and the treatment thereof under any chapter 11 plan of the Debtors. [4]

[*signature page follows*]

[4] Nothing herein is intended to, does, or shall (a) waive any rights of Lead Plaintiff or the Putative Class to seek withdrawal of the bankruptcy reference with respect to the Class Claim or any other issue or (b) constitute consent by Lead Plaintiff, on behalf of itself or the Putative Class or any member thereof, to entry by this Court of a final order or judgment on any non-core issue.

WHEREFORE, for all of the foregoing reasons, Lead Plaintiff respectfully requests that the Court deny the Motion in its entirety.

Dated: September 26, 2017
Wilmington, Delaware

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Lead Counsel to Lead Plaintiff and the Class

CERTIFICATE OF SERVICE

I, Christopher P. Simon, hereby certify that on September 26, 2017, I caused a true and correct copy of the *Securities Plaintiffs' Objection to Debtors' Motion, Pursuant to Section 105(a) of the Bankruptcy Code, for an Order Granting Effect to and Enforcing Claims Resolution Order* to be served upon all interested parties via CM/ECF and upon the parties listed below via first class mail.

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/s/ Christopher P. Simon
Christopher P. Simon (No. 3697)

TAB 3

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 Docket Nos. 1338 & 1340**

JOINDER OF THE DEBTORS TO THE OBJECTION OF THE 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 Debtors, by and through their undersigned counsel, hereby join (the "Joinder") in the *Objection of the 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 "Objection") [Docket No. 1338], and respectfully states as follows:

JOINDER

1. On February 6, 2017, the same day the Putative Class filed the Putative Class Claim, this Court and the Canadian Court[2] approved the Debtors' sale of substantially all

[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 666 Burrard Street, Suite 1700, Vancouver, British Columbia, Canada, V6C 2X8.

of their assets. For more than six months following approval of the sale, the Debtors and their stakeholders were fully engaged in the complex process of negotiating various plan issues, including, among other things, allocation of sale proceeds among the estates and cross-border structural and tax issues. On August 9, 2017, after hard-fought and at times tense negotiations among all parties, the Debtors filed the Plan, which enjoys the support of each and every stakeholder, on both sides of the border, that has been involved in and appeared in these cases. If approved, the Plan would represent an extraordinarily successful conclusion of these cases; namely, the estates would be administered and resolved such that unsecured creditors would recover in full on their claims and the Debtors' residual assets would be expeditiously distributed for the benefit of the Debtors' equity holders.

2. Standing as a roadblock to expeditious distributions is the unliquidated Putative Class Claim, which, in addition to being procedurally improper, is meritless. As counsel for the Putative Class is no doubt aware, resolving the Putative Class Claim on its merits would likely take years and cost a small fortune in litigation costs. Indeed, before this Court and the Canadian Court could even preside over costly and time-consuming litigation on the merits of the Putative Class Claim, each would first need to preside over a preliminary costly and time-consuming litigation on whether the Putative Class should be certified. Thus, resolving the Putative Class Claim on its merits, even if the ultimate result is that the claim is allowed in some amount, would necessarily delay and reduce final distributions of the Debtors' estates. Further, because the Putative Class Claim is unliquidated and there is insufficient information with respect to claimed damages in the underlying suit, it is impossible for the Plan to reserve for the Putative Class Claim as it does for the claim of the Individual Claimant.

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[2] Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Objection.

3. Although delay in the resolution of the Putative Class Claim, and thus a delay in distributions, damages all stakeholders, *including the Putative Class*, the Putative Class has nonetheless chosen to sit idle in the more than six months since it filed the Putative Class Claim. Despite clear authority stating that the burden is on the proponent of a class claim to file a motion to certify any putative class before the Court[3], the Putative Class has filed no such motion for certification before this Court or the Canadian Court. And, despite the Debtors stating numerous times before this Court and the Canadian Court in the last six months that they would be pursuing and negotiating a plan to distribute sale proceeds to their stakeholders, the Putative Class has made no attempt to collaborate on a means of addressing the Putative Class Claim without delaying distributions to stakeholders and has not provided any information to supplement the Putative Class Claim that could have allowed the Debtors and their stakeholders who did participate in formulating the Plan to devise a creative solution of their own. Indeed, as the Official Equity Committee notes in the Objection, the Putative Class has, in addition to not taking an interest in the Plan, not appeared before the Court to advocate on behalf of itself and the Putative Class Claim in these cases at all. Instead, the Putative Class has chosen to allow the Putative Class Claim to languish since the day it was filed, serving no purpose other than as a placeholder and roadblock to timely distributions.

4. Fortunately for the Debtors and their stakeholders, the law is clear that a putative class claim should be expunged unless the Court determines that it is beneficial to the bankruptcy estate for the court to exercise its discretion to apply Bankruptcy Rule 7023 to

[3] *See e.g.*, *In re Musicland Holding Corp.*, 362 B.R. 644, 651-52 (Bankr. S.D.N.Y. 2007) (concluding that the "more practical view" is that the putative class representative can move for certification and has the burden to do so and collecting cases holding that the burden is on the class representative to move for certification of the putative class).

consider whether the putative class should be certified.[4] In exercising this discretion, courts have consistently acknowledged that "a pervasive theme is avoiding undue delay in the administration of the estate"[5] and have further acknowledged that, from that pervasive theme, "It follows that a court sitting in bankruptcy may decline to apply Rule 23 if doing so would . . . 'gum up the works' of distributing the estate."[6] Finally, courts have made clear that delay by a class representative in asking the court to apply Bankruptcy Rule 7023 weighs in favor of a finding that a putative class claim improperly 'gums up the works' of distribution of the estate and against the court exercising its discretion to consider whether class certification is appropriate.[7]

5. Applying this legal framework to the Putative Class Claim, it is clear that the Court should refuse to apply Rule 23 and should instead expunge the Putative Class Claim. In fact, the circumstances here are strikingly similar to those in perhaps the foundational case in this area of law, *In re Ephedra Products Liability Litigation*, 329 B.R. 1 (S.D.N.Y. 2005), where

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[4] *See e.g.*, *In re Pacific Sunwear of California, Inc.*, Case No. 16-10882 (LSS), 2016 WL 3564484 (Bankr. D. Del. June 22, 2016) at *5 ("I will join the vast majority of courts holding that whether to permit a class action is a matter of discretion. In exercising that discretion, a two-step analysis is performed. First, I must determine whether it is beneficial to apply Bankruptcy Rule 7023, via Bankruptcy Rule 9014(c), to the claims administration process."); *In re MF Global Inc.*, 512 B.R. 757, 762 (Bankr. S.D.N.Y. 2014) ("While most courts agree that class proofs of claim are allowed in bankruptcy proceedings, 'the right to file is not absolute.' . . . First, the Court must exercise its discretion whether to apply Rule 23 to the proposed class claim.") (internal quotations omitted).

[5] *See e.g.*, *In re Pacific Sunwear of California, Inc.*, 2016 WL 3564484 at *5; *In re MF Global Inc.*, 512 B.R. at 762 (internal quotations omitted).

[6] *In re MF Global Inc.*, 512 B.R. at 762 (internal quotations omitted).

[7] *See In re Ephedra Products Liability Litig.*, 329 B.R. 1, 5 (S.D.N.Y. 2005) ("counsel for the class claimants bear primary responsibility for the 'gumming up' by not affirmatively moving under Rule 9014(c) for class certification."); *In re Musicland Holding Corp.*, 362 B.R. 644, 652 (Bankr. S.D.N.Y. 2007) ("Although the delay [in moving] does not automatically disqualify the class claim, it bears on the exercise of the discretion whether to apply Rule 23."); *In re Craft*, 321 B.R. 189, 199 (Bankr. N.D. Tex. 2005) ("The putative class representatives in the Mirant Cases have also waited too long to seek invocation of Rule 7023.").

Judge Rakoff[8] refused to apply Rule 23 and instead expunged class proofs of claim.[9] In *Ephedra*, as here, class representatives did not move to apply Rule 23 to class proofs of claim; it was only after the debtors had put a plan on file and sent it to creditors for a vote that the issue was brought before the court pursuant to the debtors' and creditors' committee's objection to the class proofs of claim.

6. Judge Rakoff began his analysis of the objections by setting forth the now oft-quoted principal that "a court sitting in bankruptcy may decline to apply Rule 23 if doing so would . . . 'gum up the works' of distributing the estate."[10] Then, he applied that principal to conclude that "the potential interference with timely distribution in itself presents sufficient grounds to expunge the class claims" because "[a]pplying Rule 23 to the class claims now would initiate protracted litigation that might delay distribution of the estate for years." In expanding on this reasoning Judge Rakoff further stated that, "[i]t is simply too late in the administration of this Chapter 11 case to ask the Court to apply Rule 23 to the class proofs of claim" and noted that the class claimants had committed a "procedural default" by failing to affirmatively move for class certification."[11]

7. Judge Rakoff's reasoning is equally applicable here. First, the continued existence of the Putative Class Claim gums up the works of distributing the Debtors' estates. But for the Putative Class Claim, the Plan, if approved by the Court and the Canadian Court,

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[8] Although not discussed in the opinion, the class claims were seemingly before Judge Rakoff because the debtors' plan, which was confirmed by joint order of the district court and the bankruptcy court, contemplated that Judge Rakoff would hear objections to the class proofs of claim, which were before him as part of a multi-district litigation proceeding involving the debtors.

[9] *Ephedra*, 329 B.R. at 4.

[10] *Id.* at 5.

[11] *See Ephedra*, 329 B.R. at 5-6.

could go effective and distributions could be timely made. On the other hand, applying Rule 23 to the Putative Class Claim could initiate protracted and expensive litigation, on both the class certification process, in addition to the merits of the Putative Class Claim itself, that could delay distribution of the estates for years while at the same time reducing such distributions. Additionally, as in *Ephedra*, the Putative Class's failure to move for certification in the last six plus months, and the Putative Class's inaction in general, weighs in favor of expunging the Putative Class Claim. The Court should not subject the Debtors' stakeholders to litigation and delayed distributions for the benefit of a claim that even the Putative Class seems unwilling to advocate for.

8. Application of the so-called *Musicland*[12] factors courts use to guide application of their discretion also leads to the same result: expungement of the Putative Class Claim. The *Musicland* factors are: (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. As discussed at length in the Objection, the Putative Class was not certified prepetition and the members of the Putative Class did have notice of the bar date, meaning that the first two *Musicland* factors weigh decidedly in favor of expungement. The third *Musicland* factor centers on (a) the timing of the motion for certification, with a late-filed motion weighing in favor of expungement, and (b) whether a plan has been negotiated, voted on or confirmed, with any or all of those statuses weighing in favor of expungement.[13] Here, where the Putative Class has not filed a motion for certification and a plan has been negotiated, this factor too weighs heavily in favor of expungement. Additionally, as

[12] *In re Musicland Holding Corp.*, 362 B.R. 644 (Bankr. S.D.N.Y. 2007).

[13] *See Musicland*, 362 B.R. at 654-55.

Judge Silberstein recently observed, the *Musicland* factors are designed to guide the court in the exercise of its discretion with respect to application of Rule 7023 so as to avoid undue delay in the administration of the case.[14] There can be no question that expungement of the Putative Class Claim avoids undue delay in the administration of the cases here.

9. Finally, and as detailed in the Objection and in the brief the Official Equity Committee filed with the Canadian Court, application of Canadian law and legal principles to these issues also points towards expunging the Putative Class Claim. The Court can thus take comfort that all US and Canadian legal roads lead to the same result: sustaining the Objection and expunging the Putative Class Claim.

[14] *See Pacific Sunwear*, 2016 WL 3654484 at *5 ("As stated in *Motors Liquidation*, '[a]lthough the Bankruptcy Code and Rules give no express guidance for the court's exercise of this discretion, a pervasive theme is avoiding undue delay in the administration of the case.' To achieve that result, courts have developed [the *Musicland* factors] to help guide the court's discretion in determining if Rule 7023 should be applied.").

WHEREFORE, the Debtors respectfully request that this Court sustain the Objection, disallow and expunge the Putative Class Claim and grant such other relief as it deems just and proper.

Dated: October 5, 2017
Wilmington, Delaware

/s/ Justin H. Rucki

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TAB 4

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) Re: D.I. 1338, 1340 **Hearing Date: October 16, 2017 at 10:00 a.m. (ET)** **Response Deadline: October 5, 2017 at 4:00 p.m. (ET)**

LEAD PLAINTIFF'S BRIEF (I) IN OPPOSITION TO OBJECTION OF EQUITY COMMITTEE TO CLASS CLAIM AND (II) IN SUPPORT OF CROSS-MOTION FOR APPLICATION OF FED. R. BANKR. P. 7023 TO CLASS CLAIM

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[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 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. (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., respectively). The Debtors' mailing address is 666 Burrard Street, Suite 1700, Vancouver, British Columbia, Canada, V6C 2X8.

[2] Additional counsel on signature page.

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"The Supreme Court has noted that the dominant purpose behind certifying Rule 23(b)(3) cases is to vindicate the rights of people who individually would be without the strength to bring their opponents into court; it overcomes the problem of small recoveries, which do not provide enough incentive for individual actions to be prosecuted."[3]

The 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"), for itself and on behalf of the putative class of purchasers (the "Class") of the common stock ("PSG Common Stock") of Performance Sports Group Ltd., now known as Old PSG Wind-down Ltd. (the "Parent Debtor" or "PSG"), that it represents in the Securities Litigation, hereby submits this brief

(i) in opposition (the "Opposition") to 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) (as amended on September 16, 2017, the "Class Claim Objection") [D.I. 1338, 1340] filed by the Official Committee of Equity Security Holders (the "Equity Committee") appointed in the chapter 11 cases (the "Chapter 11 Cases") of the above-captioned debtors in possession (the "Debtors"); and

(ii) in support of Lead Plaintiff's cross-motion (the "Cross-Motion"), filed contemporaneously herewith, for an order applying Rule 7023 ("Rule 7023") of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and, thereby, Rule 23 of the Federal Rules of Civil Procedure ("FRCP 23") to the claim filed by the Lead Plaintiff on behalf of the Class (the "Class Claim") [Claim No. 444].

In support of the Opposition and the Cross-Motion, Lead Plaintiff relies upon the declaration of Andrew Behlmann, Esq. submitted herewith (the "Behlmann Decl.") and the exhibits thereto, and respectfully states as follows:

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3 Teva Pharm. USA, Inc. v. Abbott Labs., 252 F.R.D. 213, 224 (D. Del. 2008) (citing Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 617, 117 S.Ct. 2231 L.Ed.2d 689 (1997)).

PRELIMINARY STATEMENT[4]

1. The Class Claim Objection is a foundational step in the scheme orchestrated by the Debtors and the Equity Committee to eviscerate the claims of the Class – the victims of the securities fraud that is the subject of the Securities Litigation – and allow vulture purchasers of the Debtor's stock to hijack the value remaining in the Debtors' estates after the payment of all other senior creditors in full. As discussed below, the Equity Committee and its constituents not only purchased their PSG Common Stock after the Class Period, but many (if not most) purchased after the Debtors were already in bankruptcy. The purpose behind the Equity Committee's efforts is to appropriate the remaining value in the estate for the exclusive benefit of the Equity Committee and its constituency of speculators, to the exclusion of defrauded purchasers of PSG Common Stock, and to hamper the ability of those victims to access the proceeds of the available directors' and officers' liability insurance policies.

2. The Court should reject the Equity Committee's nefarious efforts to forestall the appropriate treatment of the Class Claim and should instead, respectfully, exercise its discretion to apply Rule 7023 to the Class Claim. There is ample support, both legal and equitable, for the application of Rule 7023 to the Class Claim, which was timely filed by the court-appointed Lead Plaintiff shortly after the commencement of these cases. On the other hand, there is no factual, legal, or equitable basis to grant the relief the Equity Committee seeks, which would deprive defrauded purchasers of PSG Common Stock of any recovery from the Debtors in order to reward a group of vulture purchasers who paid pennies for their PSG Common Stock after the fraud was

[4] Capitalized terms used but not defined in this Preliminary Statement have the meanings given below.

perpetrated. There is a reason why there is a long history of jurisprudence establishing FRCP 23 and then Rule 7023 as a vehicle for those who are unable and/or unaware to vindicate their rights. That rationale is very much in play in this case.

3. Despite the Equity Committee's protestations that the Chapter 11 Cases are being "held up" by the Class Claim, the reality is that applying Rule 7023 to the Class Claim will not delay the administration of the Debtors' estates one iota. The Debtors and the Equity Committee – fully aware of the presence of Lead Plaintiff and the Class and the nature of their claims against PSG – elected to negotiate in secret, spending months engineering a Plan (which, as set forth in the Disclosure Statement Objection, is fatally flawed in its current form) designed to deprive the Class of any recovery for the sake of the Equity Committee and the speculators it represents. In fact, the Plan is really nothing more than a pot plan except for its targeting of the securities fraud claims to eliminate what the Equity Committee perceives as unwanted competition for the remaining value after all senior creditors are paid in full.

4. In positing the supposed need for speed as a basis to eradicate the Class Claim, the Equity Committee conveniently ignores the present posture of the Chapter 11 Cases: The Debtors have sold substantially all of their assets, leaving a pot of cash and litigation claims as the only material assets of the Debtors' estates to administer. There are no businesses to reorganize, no wasting assets to sell or preserve, and no jobs to save. Under the Plan in its current form, *all allowed claims senior to common stock are being paid in full*. The simple reality is that the Class Claim will have no bearing on the fact, timing, or amount of any other creditors' recoveries. The only impact the Class Claim will have is on the allocation of any remaining cash and the proceeds, if any, of the

litigation to be brought by the liquidating trust (which will likely not pay off for years in any event) among current stockholders and defrauded former stock purchasers, whose respective interests and claims are *pari passu* pursuant to section 510(b) of the Bankruptcy Code. Indeed, section 510(b) mandates equal treatment between holders of the Debtors' stock and defrauded purchasers of that stock. The most common vehicle to vindicate the rights of defrauded purchasers is class treatment pursuant to Rule 7023 and FRCP 23.

5. On the other hand, sustaining the Class Claim Objection would be tantamount to a death knell for class treatment where it is needed most and violate the due process rights of substantially all members of the Class, to whom the Debtors failed to provide actual notice of the Bar Date. Instead, the Equity Committee's constituents – current shareholders, who received actual notice of the Bar Date – would receive a windfall, to the exclusion of the real victims, Lead Plaintiff and the Class. Remarkably, the costs of the Equity Committee's parochial efforts are being funded by the Debtors' estates. The Court should reject the Equity Committee's efforts to further fleece the defrauded purchasers of PSG Common Stock in order to line the pockets of speculators.

RELEVANT BACKGROUND

A. The Securities Litigation

6. The Securities Litigation is a putative securities class action commenced in the United States District Court for the Southern District of New York (the "SDNY District Court") 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").

7. By order dated June 7, 2016 (the "Lead Plaintiff Order"),[5] the SDNY District Court appointed Plumbers & Pipefitters National Pension Fund as Lead Plaintiff to represent the Class in the Securities Litigation and appointed Cohen Milstein Sellers & Toll PLLC as lead counsel ("Lead Counsel"). The Lead Plaintiff Order tasked Lead Counsel with, among other responsibilities and duties, "the supervision of all other matters concerning the prosecution or resolution of" the Securities Litigation. Lead Plaintiff Order, ¶ 4(i).

8. On August 15, 2016, Lead Plaintiff filed an Amended Class Action Complaint (the "FAC") against PSG and the Individual Defendants, asserting claims under the Securities Exchange Act of 1934 on behalf of itself and the 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 FAC.

9. On October 31, 2016, 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 FAC pursuant to the applicable chambers rules), 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.

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[5] Behlmann Decl., Ex. A.

10. 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 Class Action Complaint (the "SAC") against the Individual Defendants but not PSG. The SAC asserts claims against the Individual Defendants on behalf of the Class, consisting of persons and entities who purchased or acquired PSG Common Stock on the New York Stock Exchange during the period from January 15, 2015 through March 14, 2016, inclusive (the "Class Period").

11. On November 18, 2016, Rosenthal moved in the Securities Litigation (not in this Court) for an order extending the automatic stay in these chapter 11 cases to himself. Davis filed a joinder to Rosenthal's motion. Lead Plaintiff opposed the motion. In response to Lead Plaintiff's argument that the Individual Defendants lacked standing to move to extend the automatic stay, PSG, without seeking relief from the automatic stay in this Court, filed a joinder to Rosenthal's motion but did not raise any independent arguments or submit any evidence of its own. On January 17, 2017, the SDNY District Court entered an order in the Securities Litigation extending the automatic stay in PSG's chapter 11 case to the Individual Defendants until the automatic stay terminates with respect to PSG or the SDNY District Court orders otherwise.[6]

12. On May 9, 2017, the SDNY District Court entered a stipulated scheduling order (the "Scheduling Order") lifting the stay as to the Individual Defendants, permitting

[6] For the avoidance of doubt, Lead Plaintiff maintains, *inter alia*, that (a) the SDNY District Court lacks jurisdiction to extend the automatic stay in these chapter 11 cases to the Individual Defendants or anyone else, as extension of the automatic stay is exclusively an exercise of this Court's equitable powers under section 105(a) of the Bankruptcy Code and (b) even if the SDNY District Court had jurisdiction to extend the automatic stay, neither the Individual Defendants nor PSG satisfied the heavy evidentiary burden necessary to obtain such extraordinary relief. Accordingly, Lead Plaintiff reserves all rights with respect to the SDNY District Court's order dated January 17, 2017 extending the automatic stay.

the Securities Litigation to proceed against them only. The Scheduling Order granted the Individual Defendants until June 22, 2017 to respond to the SAC, or until June 8, 2017 to submit a pre-motion conference letter if they intended to move to dismiss.

13. On June 8, 2017, pursuant to the Scheduling Order, the Individual Defendants submitted a letter to the SDNY District Court requesting a pre-motion conference, which the Court held on June 15, 2017. On June 16, 2017, the SDNY District Court entered an order directing the Individual Defendants to file their motion to dismiss no later than June 22, 2017, directing Lead Plaintiff to file its opposition no later than July 24, 2017, and permitting the Individual Defendants to file a reply, if any, within three weeks after service of Lead Plaintiff's opposition. As of August 14, 2017, the Individual Defendants' motion to dismiss the SAC (the "Motion to Dismiss") has been fully briefed.

14. The Securities Litigation is subject to the Private Securities Litigation Reform Act of 1995 ("PSLRA"). The PSLRA provides that "discovery and other proceedings" shall be stayed during the pendency of a "motion to dismiss". 15 U.S.C. § 78u-4(b)(3) ("In any private action arising under this chapter, all discovery and other proceedings shall be stayed during the pendency of any motion to dismiss, unless the court finds upon the motion of any party that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to that party."). Discovery that may be necessary to support a motion for class certification is therefore currently prohibited absent relief from the PSLRA stay and/or stay relief from this Court.

B. The Chapter 11 Cases

15. 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").

C. The Bar Date and Notice Thereof

16. On November 28, 2016, the Debtors filed a motion (the "Bar Date Motion") [D.I. 212] seeking, among other relief, entry of an order setting February 6, 2017, at 5:00 p.m. (Eastern) as the deadline for filing of proofs of claim for prepetition claims against the Debtors (the "Bar Date") and approving the form of notice of the Bar Date to be mailed to certain holders of claims and interests (the "Bar Date Notice") and published in certain periodicals (the "Publication Notice").

17. On December 19, 2016, the Court entered an order granting the Bar Date Motion (the "Bar Date Order") [D.I. 327]. In the Bar Date Order, the Court approved the form and manner of notice of the Bar Date to creditors, including the Bar Date Notice and the Publication Notice. Id., ¶ 3. There is no mention of the Securities Litigation in the Bar Date Notice or the Publication Notice, nor does the Publication Notice specifically mention claims arising from the purchase of PSG Common Stock.

18. The Debtors purport to have served the Bar Date Notice on all registered holders of PSG stock and the Lead Plaintiff on December 23, 2016. See Affidavit of Service [D.I. 454]; Supplemental Affidavit of Service [D.I. 467]. The Class Claim Objection also states that notice of the Bar Date was served on (a) CDS & Co., nominee for the Canadian Depository for Securities Ltd. ("CDS"); (b) Cede & Co., nominee for the Depository Trust Company ("DTC"); and (c) "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 Class Claim Obj., ¶ 22 (citing Notice of Filing of List of Equity Security Holders [D.I. 115]; Affidavit of Service [D.I. 137]; Supplemental Affidavit of Service [D.I. 467]). Notably absent from the Class Claim Objection, and from the rest of the record in the Chapter 11 Cases, is any explanation of the manner in which the Debtors served the Bar Date Notice on members of the Class – because, in fact, they failed to do so.

19. The Class Claim Objection also states that notice of the Bar Date was served to "all 'unknown creditors'" by publication in (a) the National Edition of the *Globe and Mail*, on December 28, 2016; (b) the National Edition of *USA Today*, on December 28, 2016; (c) the International Edition of *The Wall Street Journal*, on December 28, 2016; and (d) *La Presse* (French language), on December 31, 2016. See Class Claim Obj., ¶ 23.

D. The Class Claim, the Individual Securities Damages Claim, and the U.S. and Canadian Objections to the Class Claim

20. On February 6, 2017, Lead Plaintiff timely filed two proofs of claim against the Parent Debtor, asserting claims based upon the detailed allegations in the Securities Litigation: (a) a claim in Lead Plaintiff's individual capacity (the "Individual Securities Damages Claim") [Claim No. 494] and (b) the Class Claim, for Lead Plaintiff itself and on behalf of the Class. Both claims were denominated in United States Dollars and arose exclusively under the United States federal securities laws for sales of stock on a United State exchange. In addition, the addenda to each proof of claim filed by Lead Plaintiff included only the caption of the Chapter 11 Cases and expressly stated that the Claims were being submitted against the Parent Debtor as a debtor in the Chapter 11 Cases. Lead Plaintiff did not file copies of either proof of claim (or any other proof of

claim) with the monitor in the CCAA Case (as defined below) or take any other action to file claims or appear in the CCAA Case or submit itself to the jurisdiction of the Ontario Court (as defined below). The Bar Date Order contains no provision deeming a proof of claim filed only in the Chapter 11 Cases to also constitute a claim filed in the CCAA Case or requiring that such claims be filed in the CCAA Case.[7]

The Class Claim Objection and the Canadian Class Claim Objection

21. On September 15, 2017, the Equity Committee filed the Class Claim Objection. The primary basis of the Class Claim Objection appears to be – despite the fact that it took the Debtors and the Equity Committee months of negotiating in secret to prepare and file a Plan designed purely to disenfranchise securities fraud claimants – that somehow "the expeditious distribution of the estates is being 'held up' by" the Class Claim. Class Claim Obj., ¶ 2.

22. The morning of September 25, 2017 (the deadline for filing objections to approval of the Disclosure Statement), bankruptcy counsel for Lead Plaintiff and the Class received two large binders of motion materials filed in the Debtors' Canadian insolvency proceedings (the "CCAA Case") pending in the Ontario Superior Court of Justice (the "Ontario Superior Court"), seeking entry of an order of the Ontario Superior Court disallowing the Class Claim (the "Canadian Class Claim Objection").[8] However,

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[7] Because the Ontario Court has no personal jurisdiction over Lead Plaintiff or the Putative Class, and no subject-matter jurisdiction over the Class Claim, the Individual Securities Damages Claim, or any other claims asserted by Lead Plaintiff and/or the Putative Class, the claims procedure order entered in the CCAA Case on December 19, 2016 is inapplicable to Lead Plaintiff, the Putative Class, the Class Claim, and the Individual Securities Damages Claim.

[8] Although the Canadian Class Claim Objection is dated September 21, 2017, it was not sent until the evening of Friday, September 22, 2017, for delivery on Monday, September 25, 2017. Moreover, as of 10:06 AM (Eastern) on Monday, September 25, 2017, the Canadian Class Claim Objection was not available on the website maintained by the Monitor in the CCAA Case. Bankruptcy counsel to Lead Plaintiff and the Putative Class are not included on the most recent e-mail service list in the CCAA Case, dated July 7, 2017.

the Class Claim was never filed in the CCAA Case, Lead Plaintiff has never submitted itself or the Class to the jurisdiction of the Ontario Superior Court, and neither the Class Claim nor the Individual Securities Damages Claim is a "Canadian Claim" or a "Cross-Border Claim" as defined in the claims resolution order entered in the CCAA Case on September 1, 2017 (the "Claims Resolution Order").[9] The Class Claim was filed only in, and thus remains within the exclusive jurisdiction of, this Court. Indeed, the Canadian Class Claim Objection, by its terms, is subject to Rule 5.04 of the *Ontario Rules of Civil Procedure*, which provides in pertinent part that the Ontario Court "may, in a proceeding, determine the issues in dispute so far as they affect the rights of the parties to the proceeding and pronounce judgment *without prejudice to the rights of all persons who are not parties*" (emphasis added). Neither Lead Plaintiff nor the Class are parties to the CCAA Case, and thus the Claims Resolution Order does not bind them.

23. The Debtors never sought this Court's approval of the Claims Resolution Order concurrently with seeking its entry in the Ontario Court. Instead, eleven days after the Claims Resolution Order was entered (effectively *ex parte*) by the Ontario Court, the Debtors filed a motion in this Court seeking an order "granting effect to and enforcing" the Claims Resolution Order (the "Claims Resolution Enforcement Motion") [D.I. 1326]. The Claims Resolution Enforcement Motion essentially treats as a fait accompli an order of the Ontario Court that purports to confer both subject-matter and personal jurisdiction on the Ontario Court to adjudicate the Class Claim, notwithstanding the fact that the

[9] The Debtors obtained entry of the Claims Resolution Order in the CCAA Case pursuant to a motion dated Friday, August 25, 2017, returnable the following Friday, September 1, 2017. Bankruptcy counsel for Lead Plaintiffs and the Putative Class did not receive the motion materials until the afternoon of September 1, after the Claims Resolution Order had already been entered. In any event, Lead Plaintiffs and the Putative Class remain strangers to the CCAA Case and the Ontario Court.

Class Claim (a) arises out of litigation pending solely before a United States court, (b) asserts claims arising solely under United States law, (c) was filed solely in this Court by a party that is domiciled in the United States and has taken no steps whatsoever to submit itself or the Class Claim to the jurisdiction of the Ontario Court. Through the Class Claim Objection, the Canadian Class Claim Objection, the Claims Resolution Order, and the Claims Resolution Enforcement Motion, the Debtors and the Equity Committee are attempting to completely disenfranchise the Class of defrauded purchasers of PSG Common Stock and thereby grant themselves the ability to forum-shop by pressing the same matter simultaneously in two separate courts, one of which lacks jurisdiction over the Class Claim, Lead Plaintiff, or the Class.

24. As noted in the cross-border protocol approved by this Court on November 29, 2016 (the "<u>Cross-Border Protocol</u>") [D.I. 220 Ex. 1], the Chapter 11 Cases and the CCAA Case "are full and separate proceedings[,]" this Court and the Ontario Court have independent jurisdiction that the Cross-Border Protocol "shall not divest nor diminish[,]" and this Court has "sole and exclusive jurisdiction and power over the conduct of the Chapter 11 Cases and the hearing and determination of matters arising in the Chapter 11 Cases." Cross-Border Protocol, ¶¶ 5, 6, 7. To the extent the Claims Resolution Order purports to confer on the Ontario Court the plenary authority to adjudicate or otherwise resolve the Class Claim, *which was filed solely in this Court*, the Claims Resolution Order violates paragraph 8(a) of the Cross-Border Protocol, which provides that nothing in the Cross-Border Protocol shall be construed to "increase . . . or otherwise modify the . . . jurisdiction of the U.S. Court, the Canadian Court . . . ."

25. In the interest of resolving the Class Claim in a timely manner, avoiding

conflicting decisions, and upholding this Court's exclusive subject-matter jurisdiction over the allowance and disallowance of the U.S.-only Class Claim and the treatment thereof under any chapter 11 plan of the Debtors and – most importantly – fundamental fairness,[10] this Court should direct the Debtors and the Equity Committee to immediately cease the jurisdictional chicanery in which they are attempting to engage and withdraw the Canadian Class Claim Objection.

26. On September 26, 2017, Lead Plaintiff filed an objection to the Claims Resolution Enforcement Motion (the "Claims Resolution Objection") [D.I. 1363]. Shortly after Lead Plaintiff filed the Disclosure Statement Objection (as defined below) and the Claims Resolution Objection, the Debtors adjourned the hearing on approval of the Disclosure Statement (as defined below) and the Claims Resolution Enforcement Motion to October 16, 2017, concurrent with the hearing on the Class Claim Objection.

27. The Debtors filed a joinder to the Class Claim Objection (the "Debtors' Joinder") [D.I. 1391] on October 5, 2017.

E. The Plan and Disclosure Statement

28. On August 9, 2017, the Debtors filed their *Joint Chapter 11 Plan of Liquidation of Old BPSUSH Inc. and Its Affiliated Debtors* (as subsequently re-filed, the "Plan") [D.I. 1240]. On August 25, 2017, the Debtors re-filed the Plan [D.I. 1283] and the accompanying disclosure statement (the "Disclosure Statement") [D.I. 1284], withdrew their prior motion to file the Plan without a disclosure statement, and scheduled October 3, 2017 as the hearing date with respect to the Disclosure Statement. See D.I.

[10] Nothing herein is intended to, does, or shall (a) waive any rights of Lead Plaintiff or the Putative Class to seek withdrawal of the bankruptcy reference with respect to the Class Claim or any other issue or (b) constitute consent by Lead Plaintiff, on behalf of itself or the Putative Class or any member thereof, to entry by this Court of a final order or judgment on any non-core issue.

1285. Lead Plaintiff filed an objection to approval of the Disclosure Statement (the "Disclosure Statement Objection") [D.I. 1357] on September 25, 2017.

Classification and Treatment of Claims and Interests

29. Three classes of claims and interests under the Plan are relevant to this Opposition:

a. general unsecured claims against the Parent Debtor, which are classified in Class P4, are allegedly being paid in full without interest despite junior classes receiving distributions, and are impaired, entitling the holders thereof to vote;

b. Lead Plaintiff's Individual Securities Damages Claim against the Parent Debtor, which is classified in Class P6 ("Class P6") and is allegedly (but, as discussed below, is not actually) being paid in full, and the holder of which (Lead Plaintiff) is not entitled to vote; and

c. equity interests in the Parent Debtor, which are classified in Class P7 ("Class P7") and are impaired, and the holders of which ("Class P7 Shareholders") are entitled to vote.

Composition of Class P7

30. Class P7 consists primarily, if not entirely, of recent purchasers of PSG Common Stock at deeply discounted prices, and the degree of overlap between Class P7 Shareholders and the Class is miniscule, to the extent there is any overlap at all. Thus, Class P7 Shareholders – the Equity Committee's constituents – are primarily speculators who bought PSG Common Stock for pennies on the dollar with the hope of a windfall, not the innocent victim investors who were defrauded by PSG and the Individual Defendants during the Class Period.

31. According to the Disclosure Statement, there are 45,861,205 shares of PSG Common Stock outstanding. Disclosure Statement at 19. The day after the end of the Class Period marked the beginning of a massive sell-off of the Parent Debtor's common stock, with 21.7 million shares – nearly half the total number outstanding – changing hands in fifteen trading days, and the equivalent of the entire float changing

hands in thirty-nine trading days.[11] Over 53 million shares of PSG Common Stock – more than the entire public float – traded during the barely two-month period between the end of the Class Period and the commencement of the Chapter 11 Cases.[12]

32. From the end of the Class Period through September 24, 2017, cumulative trading volume in PSG Common Stock was 251.8 million shares, or almost five times the total number of shares outstanding.[13] During the Chapter 11 Cases, 99.2 million shares have changed hands, more than twice the total number of shares outstanding.[14] This significant turnover strongly suggests, if not proves, that substantially all of the current holders of PSG Common Stock – the Class P7 Shareholders who are the Equity Committee's constituents – are recent purchasers, many during the Chapter 11 Cases, when PSG Common Stock has traded at a deep discount ($0.34-$1.90/share, as compared to $2.80-$21.72/share during the Class Period).[15]

33. The shift in the universe of major holders of PSG Common Stock since the end of the Class Period is striking and confirms that fact. At the end of the first quarter of 2016 (i.e., approximately two weeks after the end of the Class Period), the 20 largest reporting holders of PSG Common Stock held 29.4 million shares, or approximately 64% of all PSG Common Stock.[16] Only one of those reporting holders now appears on the list of the largest holders of PSG Common Stock, with just 2,127 shares remaining from its prior position of nearly 1.2 million shares.[17] There are now only fourteen reporting holders, with an aggregate position of just 934,076 shares, barely

[11] Behlmann Decl., Ex. B.
[12] Id.
[13] Id.
[14] Id.
[15] Id.
[16] Behlmann Decl., Ex. C, D.
[17] Id.

2% of all shares outstanding.[18] Indeed, one purchaser alone accumulated 13,666,112 shares of PSG Common Stock – representing *29.8% of all outstanding PSG Common Stock* – between January 23, 2017 and May 18, 2017, as reflected in a stipulation between the purchaser and the Debtors approved by the Court on July 13, 2017 [D.I. 1192 Ex. A]. That holder was subsequently required to unwind certain of its purchases, sell PSG Common Stock to a number of smaller holders, and otherwise divest itself of a substantial portion of its holdings of PSG Common Stock. Id., ¶ 2.

34. As fully discussed in the Disclosure Statement Objection, the proposed treatment of Lead Plaintiff's individual claim under the Plan, the complete absence of any classification or treatment of the Class Claim under the Plan, several conditions to confirmation of the Plan (including the obviously concocted condition that the Class Claim be expunged), and the Class Claim Objection is a scheme carefully engineered to achieve a singular end: getting the Class Claim out of the way to facilitate an undeserved windfall for the Equity Committee's constituency of penny-stock speculators.

OPPOSITION TO CLASS CLAIM OBJECTION

35. There can be no dispute that class proofs of claim are permitted in bankruptcy proceedings. In re Kaiser Group Int'l, Inc., 278 B.R. 58, 62 (Bankr. D. Del. 2002). Until the Seventh Circuit's decision in In re American Reserve Corp., 840 F.2d 487 (7th Cir. 1988), several courts held that the Bankruptcy Code did not permit class proofs of claim. However, since that decision, class proofs of claim have generally been permitted in bankruptcy proceedings. See, e.g., Birting Fisheries v. Lane (In re Birting Fisheries), 92 F.3d 939, 939-40 (9th Cir. 1996) (concurring with American Reserve that

[18] Id.

the Bankruptcy Code "should be construed to allow class claims"); Reid v. White Motor Corp., 886 F.2d 1462, 1469 (6th Cir. 1989) (allowing class proofs of claim is the more "equitable resolution"), cert. denied, 494 U.S. 1080 (1990); The Certified Class in the Chartered Securities Litig. v. The Charter Co. (In re The Charter Co.), 876 F.2d 866, 873 (11th Cir. 1989) ("[i]n light of Congress' inclusion of Rule 23 in bankruptcy proceedings [and] the clear congressional intent that the Bankruptcy Code encompass every type of claim . . . we conclude that class proofs of claim are allowable in bankruptcy"), petition for cert. dismissed, 496 U.S. 944 (1990).

36. Permitting class proofs of claim, as set forth in American Reserve, is the majority rule. See, e.g., In re Craft, 321 B.R. 189, 192 ("courts declining to permit class proofs of claim are recognized as being in the minority."). The trend in this District has been to follow the majority. Kaiser Group, 278 B.R. at 62 (collecting cases) ("The vast majority of courts have concluded that class proofs of claim are permissible in bankruptcy proceedings, pursuant to Bankruptcy Rules 7023 and 9014."); see also In re Pacific Sunwear of California, Inc., No. 16-10882 (LSS), 2016 WL 3564484, at *5 (Bankr. D. Del. June 22, 2016), reconsideration denied, No. 16-10882 (LSS), 2016 WL 4250681 (Bankr. D. Del. Aug. 8, 2016) (citing cases). These courts have recognized that the class action device is wholly consistent with the fundamental goals and objectives of the bankruptcy process:

> The bankruptcy statute has the goal of facilitating creditor compensation. It would be incongruous for this bedrock policy to be thwarted by reading a procedural limitation into the Code. Bankruptcy also seeks to achieve equitable distribution of the estate. Persons holding small claims, who absent class procedures might not prosecute them, are no less creditors under the Code than someone with a large easily filed claim. Applying Rule 23 to filing procedures will bring all claims forward, as contemplated by the Bankruptcy Code.

Charter Co., 876 F.2d at 871.

37. Notwithstanding the majority rule permitting class claims in bankruptcy cases, the right to proceed as a class in a bankruptcy proceeding "is not absolute." In re Musicland Holding Corp., 362 B.R. 644, 650 (Bankr. S.D.N.Y. 2007). The decision whether to certify a class claim is "within the discretion of the bankruptcy court." Kaiser Group, 278 B.R. at 62; see also Pacific Sunwear, 2016 WL 3564484, at *5 ("I will join the vast majority of courts holding that whether to permit a class action is a matter of discretion."). Conversely, courts may decline to apply Rule 23 if doing so would "'gum up the works' of distributing the estate." In re MF Global Inc., 512 B.R. 757, 763 (Bankr. S.D.N.Y. 2014). Because the Class Claim does not threaten to delay administration of the Debtors' estates or "gum up the works", the Court should exercise its discretion to apply Rule 7023 to the Class Claim. Indeed, the only consequence of such an appropriate result would be to thwart the Equity Committee's attempt, aided and abetted by the Debtors, to prevent defrauded investors from "bringing all claims forward as contemplated by the Bankruptcy Code." Charter Co., 876 F.2d at 871.

38. Courts apply a two-step analysis in determining whether to certify a class in bankruptcy. In re Chaparral Energy, Inc., 571 B.R. 642, 646 (Bankr. D. Del. May 24, 2017) (citing Pac. Sunwear, 2016 WL 3564484, at *5). First, the court must decide whether it is beneficial to apply Rule 7023, via Bankruptcy Rule 9014(c), to the claims administration process. Chaparral, 571 B.R. at 646. Second, the court must determine whether the class certification requirements of FRCP 23 have been satisfied. Id.

39. Only the first step of this analysis, whether to apply Rule 7023, is at issue in the Equity Committee's Objection, See Class Claim Obj., ¶ 27 ("This Objection

concerns only whether the Court should apply FRBP 7023 to the Putative Class Claim."). The Equity Committee has not argued that the Class does not meet the requirements of FRCP 23, but instead, has reserved all rights with respect to class certification. Id. For the reasons detailed below, the Court should reject the Equity Committee's attempts to prevent the application of Rule 7023 to the Class Claim and instead, exercise its discretion to apply Rule 7023, via Bankruptcy Rule 9014(c), to the Class Claim.[19]

I. SUFFICIENT CAUSE EXISTS FOR THIS COURT TO EXERCISE ITS DISCRETION TO INVOKE RULE 7023 AND FRCP 23.

40. Courts considering whether to exercise their discretion to invoke Rule 7023 often utilize the factors set forth in In re Musicland Holding Corp., 362 B.R. 644 (Bankr. S.D.N.Y. 2007);:

(i) whether the class was certified pre-petition;

(ii) whether the members of the putative class received notice of the bar date; and

(iii) whether class certification will adversely affect the administration of the estate.

362 B.R. at 654-55; Pacific Sunwear, 2016 WL 3564484 at *5. In applying these factors, courts have recognized that "no one factor is dispositive; a factor may take on more or less importance in any given case." Chaparral, 571 B.R. at 646.

A. The fact that the Class has not yet been certified does not preclude the application of Rule 7023.

41. In considering the first Musicland factor, courts have exercised their discretion to apply Rule 7023 even when a putative class was not certified prepetition.

[19] Lead Plaintiff reserves all rights with respect to the application of FRCP 23 to the Putative Class, regardless of whether such grounds are raised in this Opposition and Cross-Motion. As set forth in the Conclusion below, Lead Plaintiff requests, to the extent the Court grants the Cross-Motion, that the Court set a briefing schedule with respect to the class certification standards under FRCP 23.

Id.; Kaiser Group, 278 B.R. at 62-63 (certifying class where motion for class certification was filed a year after filing of the class proof of claim and four months after debtor's initial objection); MF Global, 512 B.R. at 763-65 (noting that where the claims of a class arose in tandem with the conduct that led to the debtor's SIPA liquidation, "the issue of prepetition certification loses its relevance, since there will seldom be time to file a class action complaint and certify a class before the petition date"); In re Connaught Group, Ltd., 491 B.R. 88, 98–100 (Bankr. S.D.N.Y. 2013) (same). Here, as in MF Global, the Debtors' descent into bankruptcy occurred alongside the malfeasance underlying the Securities Litigation, and the Debtors filed their bankruptcy cases barely two months after the end of the Class Period.

42. Indeed, a court in this District recently denied an objection to a class claim based on securities litigation even though the class had not been certified prepetition where, as here, the class proof of claim was filed before the applicable bar date. In re F-Squared Investment Management, LLC, 546 B.R. 538, 547 (Bankr. D. Del. 2016) (denying objection to class claim and citing Kaiser Group, Connaught Group, and MF Global); see also In re First Interregional Equity Corp., 227 B.R. 358, 371 (Bankr. D.N.J. 1998) (class treatment appropriate though class was not filed or certified pre-petition); In re CommonPoint Mortgage Co., 283 B.R. 469, 482 (Bankr. W.D. Mich. 2002) (certifying a class where class action had never been certified by a federal court under Rule 23, class representative timely filed proofs of claim and nine months later filed for class treatment); In re First Alliance Mortgage Co., 269 B.R. 428, 442-43, 447-48 (C.D. Cal. 2001) (bankruptcy court erred in denying application of Rule 7023 although class was not previously certified and Rule 7023 motion was filed after objection).

43. The Kaiser debtors argued, as the Equity Committee argues here, that filing a class claim on behalf of an uncertified class is categorically impermissible. 278 B.R. at 62-63. In rejecting that argument, the court stated that "[Bankruptcy] Rule 3001(b) does not prohibit the filing of class claims by a putative class representative. To hold otherwise 'would effectively prohibit the use of class actions in bankruptcy altogether' unless the class action had proceeded to a stage where a class representative had been appointed pre-petition." Id. at 63 (citing In re Zenith Laboratories, Inc., 104 B.R. 659, 663 (D.N.J. 1989)). The court added "[w]e do not believe that the timing of the bankruptcy filing should be determinative of whether a class proof of claim should be permitted." 278 B.R. at 62-63. Similarly, the Chaparral court exercised its discretion even though the class action at issue had been pending for almost five years before the bankruptcy cases were filed without a class being certified. 571 B.R. at 644, 646-47. The court noted that "[n]onetheless, the Court would not be alone in exercising its discretion to apply Rule 7023 in these circumstances." Id.[20]

44. Relying on In re Sacred Heart Hospital of Norristown, 177 B.R. 16 (Bankr. E.D. Pa. 1995), the Equity Committee misconstrues the nature and significance of prepetition certification in cases where the lack thereof was a substantial basis for the decision. The Sacred Heart court was concerned with "virgin" classes, such as the one at issue there, filed only 2 days prior to the petition, where the adequacy of the class representative was uncertain. Id. at 23. It thus concluded that the "best candidates" for class treatment in bankruptcy were "where a class has been certified pre-petition by a

[20] Further recognition of the status of a class action lead plaintiff in a bankruptcy case can be found in Bankruptcy Rule 2019(b)(2)(C), which exempts class action representatives from the disclosure requirements of Bankruptcy Rule 2019.

nonbankruptcy court and the representative files a claim on behalf of a class of parties the adequacy of the representation of whose interests is uncertain, or where a class action has been *filed a considerable time pre-petition* and allowed to proceed as a class action in a nonbankruptcy forum." Id. at 22, 23 (noting that in virgin classes it is impossible to draw inferences in favor of the propriety of the class) (emphasis added). The SDNY District Court has already determined the status of Lead Plaintiff and no issues as to the adequacy of Lead Plaintiff have been raised by either PSG (which was a defendant in the Securities Litigation until the Petition Date) or the Equity Committee (which likely has no standing to raise such issues in any event).

45. Here, the class action at issue was filed five and a half months prior to the Petition Date, the Lead Plaintiff Order had already been entered, and the matter was being litigated at the time the Debtors entered bankruptcy. The Debtors and other parties, including the Equity Committee, have had knowledge of the Securities Litigation since its filing, and have been well aware of the timely filed Class Claim. The Equity Committee, for instance, has devoted significant time and attention to the Class Claim since at least December 2016, as evidenced by the time records of counsel to the Equity Committee, which billed substantial amounts of time for, among other things:

- analyzing the SAC and related motions in December 2016 and January 2017, see D.I. 515 Ex. B at 34, 35;
- researching issues related to the SAC and the Class Claim in December 2016, see id. at 34;
- researching "CASE LAW RE SECTION 510(B) SUBORDINATION AND HOW TO VALUE A SUBORDINATED CLAIM FOR DISTRIBUTION PURPOSES" and "CASE LAW ON CLASS PROOF OF CLAIM" in March 2017, see D.I. 1054 Ex. B at 36;
- researching "TREATMENT OF 510(B) SUBORDINATED CLAIM FOR DISTRIBUTION PURPOSES" in April 2017, see D.I. 1137 Ex. B at 20;

- meeting with the Debtors' counsel to discuss the Class Claim in March 2017, see id. at 27;
- researching issues "RE CLASS ACTION CLAIMS AND SECTION 510(B)" and meeting with a working group with respect to those issues in April 2017, see id. at 33;
- researching the Court's discretion to apply FRCP 23 and permit class proofs of claim, analyzing case law on the allocation of distributions between equity interests and section 510(b) claims, and drafting a legal memorandum on "LITIGATION STRATEGY REGARDING CLASS PROOF OF CLAIM" in April 2017, see id. at 34;
- researching "CASE LAW RE NOTICE REQUIREMENTS FOR UNNAMED PUTATIVE CLASS MEMBERS AND WHETHER 'KNOWN' OR 'UNKNOWN' CREDITORS" in April 2017, see id.;
- meeting with the Equity Committee, the Debtors, and the monitor appointed in the CCAA Case to "DISCUSS PLAN TERM SHEET . . . AND CLASS ACTION" in May 2017, see D.I. 1185 Ex. B at 24;
- focusing on "CLASS CLAIM STRATEGIES" in May 2017, see id. at 38;
- drafting the Class Claim Objection in June 2017, months before it was actually filed, see D.I. 1286 Ex. B at 43, 44;
- researching whether "NOTICE TO DTC OR OTHER NOMINEE OF SHAREHOLDER . . . CAN BE IMPUTED TO BENEFICIAL OWNER[,]" "WHETHER UNNAMED MEMBERS OF PUTATIVE CLASS ARE 'UNKNOWN' CREDITOR[S] FOR NOTICE PURPOSES[,]" and "ABILITY TO IDENTIFY BENEFICIAL OWNERS OF PSG STOCK AND DTC NOTICE REQUIREMENTS" in June 2017, see id. at 44; and
- researching "AUTHORITY OF LEAD PLAINTIFF WHEN CLASS HAS NOT BEEN CERTIFIED" in June 2017, see id.

46. This sample of the time entries of the Equity Committee's counsel demonstrates one thing: the Equity Committee and the Debtors have been aware of the Class Claim for at least ten months, and counsel to the Equity Committee has invested significant effort – and estate resources – in engineering a Plan that would completely disenfranchise the Class for the exclusive benefit of the Equity Committee's constituency of penny-stock speculators. These time entries also reveal that the Equity Committee is acutely aware of the fact that the Debtors utterly failed to provide constitutionally

adequate notice to Class members. However, rather than attempting to cure those due process defects and risking dilution of the recovery by Class P7 Shareholders who purchased their stock for pennies, the Equity Committee focused instead on crafting dubious arguments around the lack of proper notice to the Class.

47. The Debtors' and the Equity Committee's awareness of the Class Claim is further evidenced by the Plan provisions that, in furtherance of the Equity Committee's scheme, explicitly condition confirmation on the disallowance and expungement of the Class Claim, in an attempt to create an artificial urgency and reason for the evisceration of the Class Claim. See Plan, Art. IX.A.3.

48. Moreover, in Sacred Heart and similar cases cited by the Equity Committee emphasizing pre-petition certification as a relevant factor, all or a substantial part of the absent class members received *actual notice* of the bar date. See Sacred Heart, 177 B.R. at 19, 24 (debtor provided individual notice to all known employee class members); In re Bally Total Fitness, 402 B.R. 616, 620 (Bankr. S.D.N.Y. 2009) (all present and former employees terminated after 2004 received actual notice), aff'd, 411 B.R. 142 (S.D.N.Y. 2009); Bailey v. Jamesway Corp. (In re Jamesway Corp.), No. 95 B 44821(JLG), 1997 WL 327105, at *8 (Bankr. S.D.N.Y. June 12, 1997) (actual notice provided to 11,700 employees).

49. As will be discussed more fully below, the Debtors failed to provide actual notice to the members of the Class, who are known creditors entitled to actual notice, and as to whom publication notice of the Bar Date was insufficient. As a result, the reasoning of cases such as Sacred Heart is completely inapposite here.

B. The Debtors failed to provide adequate notice of the Bar Date to members of the Class, who are known creditors entitled to actual notice.

50. The second Musicland factor, whether the members of the putative class received notice of the Bar Date, is crucial here because the Debtors failed to provide constitutionally adequate actual notice of the Bar Date to members of the Class (other than whatever small subset of Class members still hold PSG Common Stock and thereby might have received notice in that capacity).[21] See, e.g., Chaparral, 571 B.R. at 646 ("The second Musicland factor weighs in favor of applying Bankruptcy Rule 7023 to the Class Claim as not all putative class members were served with notice of the Bar Date."). The Equity Committee alleges that the Debtors provided adequate notice of the bar date because:

- the Debtors provided actual notice of the Bar Date (and the commencement of their Chapter 11 Cases) to all *then-current* holders of PSG Common Stock listed on PSG's official stock register, as well as CDS and DTC, see Class Claim Obj., ¶ 37; and
- the Debtors provided constructive notice of the Bar Date via publication in national publications in Canada and the United States which the Equity Committee asserts was "adequate as to all unnamed members of the Class, including those members of the Class who held their PSG shares in book-entry form through a custodian and/or CDS/DTC participant, because such unnamed Class members were 'unknown' creditors of the Debtors[,]" Id., ¶ 38.

The Equity Committee's conclusory assertions with respect to the adequacy of the Bar Date Notice and the Publication Notice are incorrect.

51. Constitutional due process requires that notice of any claims bar date "be fundamentally fair and reasonably calculated to apprise interested parties." In re ATD Corp., 278 B.R. 758, 763 (Bankr. N.D. Ohio 2002) (citing cases). A creditor who does

[21] Of note, the Publication Notice, which was not effective as to Class members in any event, made no mention of securities fraud claims as requiring the filing of a proof of claim. See, e.g., D.I. 528 Ex. A, B, C.

not receive proper notice of the claims bar date is not bound thereby. See City of New York v. New York, N.H. & H.R. Co., 344 U.S. 293, 296, 73 S.Ct. 299, 97 L.Ed. 333 (1953). In the face of a challenge to the receipt of a bar date notice, the burden rests with the debtor to show that it satisfied the notice requirements. See In re Freedom Commc'ns Holdings, Inc., 472 B.R. 257, 261 (Bankr. D. Del. 2012) (citing Dependable Ins. Co. v. Horton (In re Horton), 149 B.R. 49, 57 (Bankr.S.D.N.Y.1992)). Here, Class members are known creditors entitled to receive actual notice of the Bar Date, which the Debtors failed to provide. The Equity Committee cannot rely on the Publication Notice to salvage the Debtors' failure to serve the Bar Date Notice on Class members, because constructive notice is ineffective as to known creditors.

1. Class members are known creditors entitled to, but did not receive, actual notice of the Bar Date.

52. For purposes of notice, bankruptcy law differentiates between "known" and "unknown" creditors. See, e.g., Chemetron Corp. v. Jones, 72 F.3d 341, 346 (3d Cir. 1995). Known creditors are entitled to actual notice of the applicable claims bar date. Id. For unknown creditors, constructive notice by publication is generally sufficient. Id. A known creditor "is one whose identity is either known or 'reasonably ascertainable by the debtor.'" Id. at 346 (quoting Tulsa Prof'l Collection Serv., Inc. v. Pope, 485 U.S. 478, 490 (1988)). According to the Third Circuit, a creditor's identity is reasonably ascertainable

> if that creditor can be identified through reasonably diligent efforts . . . . Reasonable diligence does not require impracticable and extended searches . . . in the name of due process . . . . A debtor does not have a duty to search out each conceivable or possible creditor and urge that person or entity to make a claim against it . . . . The requisite search instead focuses on the debtor's own books and records. Efforts beyond a careful examination of these documents are generally not required . . . .

Chemetron, 72 F.3d at 346-47. (internal quotation marks and citations omitted).

53. By contrast, an unknown creditor "is 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 knowledge [of the debtor].'" Id. at 346 (quoting Mullane v. Central Hanover Bank & Trust, Co., 339 U.S. 306, 317 (1950)). Unknown creditors are only entitled to constructive notice – such as notice by publication – because, by definition, there is no other feasible alternative. See Mullane, 339 U.S. at 317 ("This Court has not hesitated to approve of resort to publication as a customary substitute in . . . cases where it is not reasonably possible or practicable to give more adequate warning."); City of New York, 344 U.S. at 296 (1953) ("[W]hen the names, interests and addresses of persons are unknown, plain necessity may resort to publication.").

54. Courts have recognized the inefficacy of constructive notice by publication as a basis for the allowance of a class claim. In Craft, which the Equity Committee identifies as "[t]he most relevant precedent", the court stated:

> Reliance on published notice to reach a class of claimants may not be adequate. It will not always reach every class member such that the rules of due process are satisfied. . . . If a class claim is not allowed, class members without notice will have non-dischargeable claims. While allowing a class claim may not wholly eliminate that exposure, it may foreclose the option of unnoticed members of a putative class commencing their own class action post-discharge.

321 B.R. at 194 (citations omitted).

55. The Third Circuit has recognized that "'individual notice to identifiable class members ***is not a discretionary consideration*** to be waived in a particular case. It is, rather, an unambiguous requirement of Rule 23 . . . . Accordingly, ***each class member who can be identified through reasonable effort must be notified*** . . . .'" Larson v. AT&T Mobility LLC, 687 F.3d 109, 123–24 (3d Cir. 2012) (quoting Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 176 (1974)) (emphasis added). The Third Circuit also

recognized that notice by publication "had long been recognized as a poor substitute for actual notice." Larson, 687 F.3d at 123-24 (citing Eisen, 417 U.S. at 175). "Eisen stands for the proposition that individual ***notice must be delivered to class members who can be reasonably identified***, and that the costs required to actually deliver notice should not easily cause a court to permit the less satisfactory substitute of notice by publication." Id. at 126 (emphasis added). "Where names and addresses of members of the class are easily ascertainable . . . due process would dictate that the 'best notice practicable under the circumstances . . . ' would be individual notice." Id.

56. The identities of Class members were readily and reasonably ascertainable by the Debtors. No protracted search was necessary to identify who purchased PSG Common Stock during the Class Period. All the Debtors needed to do was follow the exact same, straightforward procedures that would be used to provide actual notice to prior purchasers of publicly traded stock in any securities class action in compliance with the constitutional dictates discussed by the Supreme Court in Eisen. Instead, the Debtors, and now the Equity Committee, chose to rely on notice given to then-current holders of PSG Common Stock. In doing so, the Debtors failed to provide members of the Class with constitutionally adequate notice of the Bar Date.

57. As discussed above, massive amounts of PSG Common Stock have changed hands since the end of the Class Period, with approximately five times the entire public float changing hands during that time – and more than the entire public float trading between the end of the Class Period and the Petition Date. Substantially all of the reporting major holders of PSG Common Stock as of the end of the Class Period have exited their positions. One holder alone purchased 29.8% of all PSG Common Stock

during the first half of 2017. The likelihood of any meaningful overlap between Class members and current holders who received notice of the Bar Date via DTC is infinitesimal.

58. Actual notice to current holders of PSG Common Stock did absolutely nothing to provide notice to former purchasers who had already sold their shares (i.e., most, if not all, Class members). Cf. Chaparral Energy, 2017 WL 2292765, at *4 (rejecting an argument that providing notice only to then-current royalty interest owners was sufficient because court-approved settlements of similar class actions "have almost universally distributed payments to current royalty interest owners based on the understanding that former royalty interest owners either transferred their rights to payment to the current owner or current royalty owners will forward gains attributable to their predecessors to them directly.").

59. Similarly, in Pacific Sunwear, the court found that the second Musicland factor weighed in favor of certifying a class where, *inter alia*, "despite due process requiring actual notice to known creditors, the Debtors admittedly limited notice of the bar date to employees who worked for the company within the two years preceding the petition date." 2016 WL 3564484 at *6. The exact same reasoning applies here.

2. The Publication Notice was ineffective with respect to the Class.

60. Because the identities of Class members were reasonably ascertainable by the Debtors, Class members were entitled to actual notice of the Bar Date and constructive notice through the Publication Notice was constitutionally defective as to them. See, e.g., Chemetron, 72 F.3d at 346 ("Known creditors ***must be provided with actual written notice*** of a debtor's bankruptcy filing and bar claims date.") (emphasis added). Nevertheless, despite being well aware of the claims in the Securities Litigation

and the Class to which those claims pertain, the Debtors undertook no reasonably diligent efforts – or *any* efforts, for that matter – to identify members of the Class or provide them with actual written notice of the Bar Date.

61. Under similar circumstances, the court in In re Amdura Corp., 170 B.R. 445, 450-452 (D. Col. 1994), rejected an argument that actual notice did not need to be provided to the members of the class in securities fraud litigation who were no longer record owners because such service "would have been impracticable and expensive and they received notice by publication in the Wall Street Journal and seven other regional newspapers[.]" The Amdura court held that "publication alone as to members who no longer held securities, was insufficient to satisfy due process, where representatives had taken all necessary steps to file class proof of claim in bankruptcy case, both debtor and bankruptcy court were aware of existence of individual creditors, and debtor could have obtained list of creditors' names and addresses from representatives . . . ." Id. The Amdura court held that if Rule 7023 was not applied, actual notice of the bar date would have to be provided to all members of the class. Id. Clearly, applying Rule 7023 here is the better and more practical result to ensure that the rights of Class members are protected.

62. The Equity Committee's reliance on In re Circuit City Stores, Inc., 439 B.R. 652, 660-61 (E.D. Va. 2010), aff'd on other grounds sub nom. Gentry v. Siegel, 668 F.3d 83 (4th Cir. 2012) is misplaced.[22] In Circuit City, the court noted that the only way

[22] The Equity Committee's reliance on Gentry is also misplaced. In Gentry, the Fourth Circuit held, among other things, that a group of putative class representatives who themselves received actual notice of the bankruptcy cases and bar date lacked standing to object to the notice provided to absent class members. Gentry, 668 F.3d at 95. Unlike the putative class representatives in Gentry, Lead Plaintiff has been appointed as lead plaintiff by the District Court, which has tasked Lead Counsel with, among other things, "the supervision of all other matters concerning the prosecution or resolution of" the Securities Litigation. Lead Plaintiff Order, ¶ 4(i). Protecting the due process rights of members of the Class is clearly a "matter[] concerning the prosecution" of the Securities Litigation.

the putative class claimants could be determined would be by identifying specific employees who fell into the classes identified by the Class Claim or by serving all of [the] Debtors' employees in California for the ten year period prior to the Petition Date." 439 B.R. at 660. The Court further noted that the employees were spread broadly among over 100 separate geographical locations. Id. That is a significantly different scenario from simply obtaining stock purchase information from a third party whose sole function is administering the Debtors' stock transfer ledger, a relatively routine matter in securities class actions.[23]

63. Simply put, the Publication Notice did not, as it cannot, cure the Debtors' failure to serve the Bar Date Notice on Class members, and thus the second Musicland factor weighs decidedly in favor of the application of Rule 7023 to the Class Claim.

64. The Equity Committee's argument that applying Rule 7023 would provide Class members a "second bite" at the Bar Date that has long since passed, see Class Claim Obj., ¶ 36 n.32, is similarly unavailing. Given that Class members did not receive notice of the Bar Date the first time around, they never had a "first bite." Cases decided after Sacred Heart and Jamesway (cited by the Equity Committee) have held that the same tolling rule that applies generally to class actions also applies in bankruptcy, tolling the bar date for members of the putative class. Connaught, 491 B.R. at 97-98. The filing of a class proof of claim prior to the bar date preserves the claims of the individual class members pending resolution of the class certification issue such that the failure of a class

[23] The Equity Committee's reliance on Pacificorp and Vancott Bagley Cornwall & McCarthy v. W.R. Grace, 2006 WL 2375371, at *10 (D. Del. Aug. 16, 2006), see Class Claim Objection at 20 n.44, is nonsensical. In Pacificorp, an environmental creditor was unknown because it had no direct relationship with the debtor. See 2006 WL 2375371, *10. Here, Class members obviously had a direct relationship with PSG by virtue of the fact that *they owned stock in the company*.

member to file a proof of claim by the bar date is not fatal. MF Global, 512 B.R. at 764 (citing In re TWL Corp., 712 F.3d 886, 889 (5th Cir. 2013); Gentry, 668 F.3d at 91; Connaught, 491 B.R. at 97; Kaiser Group, 278 B.R. at 64).

65. Thus, even if the Court were to deny certification of the Class, members of the Class nevertheless would have an opportunity to file individual proofs of claim – placing the Equity Committee and Class P7 Shareholders in the exact same position they claim can be avoided by disallowance of the Class Claim.[24] See Conaught, 491 B.R. at 97 ("[i]f the [class] representative files a timely adversary proceeding or class proof of claim, and the Court denies a motion to certify the class, it should set a reasonable bar date to allow the members of the putative class to file individual claims.") (citations omitted).

C. Application of Rule 7023 will not negatively impact the administration of the Debtors' estates.

66. The third Musicland factor - whether class certification will adversely affect the administration of the estate - also supports applying Rule 7023 to the Class Claim. The Equity Committee alleges that the Court should not apply Rule 7023 here because (a) the Lead Plaintiff has not taken action in these Chapter 11 Cases to seek the application of Rule 7023, while the Chapter 11 Cases are nearing their end; Class Claim Obj., ¶¶ 29-30, 43; (b) the Plan has been negotiated and any delay to conduct a class certification hearing would be costly and time-consuming, impose unnecessary costs and delay, and substantially prejudice the Debtors, creditors, and equity holders, id., ¶ 31; (c)

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24 Somewhat paradoxically, the need to establish a new bar date and serve individual notice on all Class members would actually delay the administration of the Chapter 11 Cases *more* than simply directing the Rule 7023 applies at this stage, leaving certification of the Class and ultimate allowance of the Class Claim for a date after confirmation. Thus, applying Rule 7023 will help, not hinder, the administration of the estate.

Class members will be adequately protected through their ability to prosecute their claims against the Individual Defendants in the SDNY District Court proceeding, id., ¶ 32; (d) application of Rule 7023 will precipitate costly and time-consuming litigation regarding allocation of the estates' residual assets, id., ¶ 44; and (e) any benefit of class adjudication is far outweighed by the negative consequences of permitting the Class Claim to be filed. Id., ¶ 45.

67. As to the timing of this proceeding, the Equity Committee argues that the Court should disallow and expunge the Class Claim because the Lead Plaintiff had not previously sought application of Rule 7023 or class certification. However, it is not at all clear that class certification was ripe prior to the Equity Committee's filing of the Class Claim Objection. The Eleventh Circuit has held that: "absent an adversary proceeding, the first opportunity a claimant has to move under Bankruptcy Rule 9014, to request application of Rule 7023, occurs when an objection is made to a proof of claim. Prior to that time, invocation of Rule 23 procedures would not be ripe, because there is neither an adversary proceeding nor a contested matter." In re Charter Co., 876 F.2d 866, 874 (11th Cir. 1989); see also In re Spring Ford Indus., Inc., No. 02-15015DWS, 2004 WL 231010, at *4 (Bankr. E.D. Pa. Jan. 20, 2004) ("As such, it is the objection which initiates the contested matter, not the proof of claim.") Neither this Court, nor the District Court, nor the Third Circuit, has ruled on this matter, but if the Court follows the logic of Charter, which Lead Plaintiff submits that it should, then the Equity Committee's argument is wholly without merit. Requiring class representatives to seek certification before an objection to their claim is filed will lead to a waste of judicial resources and would have been wholly unnecessary if there were no estate assets to distribute to the Class.

68. Moreover, any purported delay does not bar the allowance of the Class Claim, particularly where the Debtors (and the Equity Committee) were well aware of the pendency of the Securities Litigation for several months pre-petition and chose to negotiate the Plan behind closed doors to the exclusion of Lead Plaintiff and its counsel with the clear intent of eviscerating the Class Claim. See, e.g., Musicland, 362 B.R. at 651 ("delay does not automatically disqualify the class claim"); Woodward, 205 B.R. at 370 ("failure to seek certification does not mandate denial in the absence of compelling circumstances").

69. The Equity Committee has cited no binding authority for the proposition that a claim should be prevented from proceeding on a class-wide basis simply because class certification was not sought within a certain time period. In fact, courts in this District have repeatedly certified class actions without regard to the timing of the certification motion. See In re United Companies Fin. Corp., 276 B.R. 368, 377 (Bankr. D. Del. 2002); Kaiser Group, 278 B.R. at 67 (certifying class after bar date where class claim was filed before the bar date). In fact, courts have certified class proofs of claim post-confirmation where, as here, the class proof of claim was filed before the applicable bar date. See id.; Connaught, 491 B.R. at 99; MF Global, 512 B.R. at 763.[25] Only the Debtors, the Equity Committee, and the Official Committee of Unsecured Creditors were privy to the information necessary to ascertain whether there would be a distribution to current holders of PSG Common Stock under a plan of liquidation. Until the Plan and Disclosure Statement were filed, Lead Plaintiff could not be expected to determine

[25] In Charter Co., the court held that it was also appropriate for class claimants to file a class proof of claim without immediately seeking class certification, and then to seek such certification once the debtor objects to the class proof of claim. 876 F.2d at 873-75.

whether there was any point to seeking application of Rule 7023 and class certification. Arguably, filing a motion for class certification with respect to the Class Claim before ascertaining whether the Class Claim had any value would have been a waste of estate resources in the first instance.[26]

70. In Connaught, the plaintiff asserted her class claim at the beginning of the case. 491 B.R. at 99. The debtors and creditors' committee negotiated a plan, which the debtors then proposed, all – just like the Debtors and the Equity Committee here – with full knowledge of the pending, unresolved class claim. Id. As here, there were sufficient funds to pay the class claims if eventually allowed without jeopardizing the consummation of the plan. Id. In certifying the class, the court noted that the liquidating trust that opposed certification failed to explain how a delay in certification would have a material effect on the administration of this estate. Id. The court also held that "[n]or would delay alone justify denial of the certification motion." Id. The outcome should be no different here, where the Class Claim will have no impact on the feasibility of the Plan or the fact, timing, or amount of distributions to any class of creditors.

71. Similarly, in MF Global, the Court granted certification, finding that class certification would not adversely affect the administration of the estate where the trustee was on notice that the class claimants were seeking vacation pay, the class claim was timely filed and the trustee had known for some time of the claimants' intent to pursue their claims through the claims process. 512 B.R. at 763.

[26] Early class certification was not feasible here in any event because under the PSLRA, to which the Securities Litigation is subject, stays all discovery and other proceedings are stayed while a motion to dismiss is pending. 15 U.S.C. § 78u–4(b)(3)(B); In re Salomon Analyst Litig., 373 F.Supp.2d 252, 256 (S.D.N.Y. 2005) (noting that the PSLRA stay applies broadly "until a complaint has been authoritatively sustained by the court.").

72. Here, there are no compelling circumstances mandating denial of the application of Rule 7023 to the Class Claim due to a delay. The Class Claim was timely filed. PSG was a defendant in the Securities Litigation, and thus the Debtors have had knowledge of the Securities Litigation since its inception. When the Individual Defendants improperly moved in the SDNY District Court for an order extending the automatic stay, the Debtors filed a joinder in an attempt to cure the Individual Defendants' lack of standing. Furthermore, the Lead Plaintiff has sought to protect the Class Claim in these Chapter 11 Cases by filing an objection to the sale of the Debtors' assets, seeking to preserve the Debtors' books, records, and other evidence potentially relevant to the Securities Litigation. See D.I. 646. The Lead Plaintiff has also filed objections to the Disclosure Statement [D.I. 1357] and Claims Resolution Enforcement Motion [D.I. 1363] to preserve the claims of the Class.

73. These Chapter 11 Cases differ substantially from the cases cited by the Equity Committee for the proposition that delay is grounds to bar class certification. In Craft, the court noted that "Mirant's chapter 11 cases are at a critical juncture. It would prejudice Mirant and its creditors to delay the plan process and claim objection process to conduct a Rule 7023 hearing." 321 B.R. at 199. The Craft court had set a stringent schedule for trying claim objections and planned to devote most of seven weeks to claim objection trials in an effort to assist in the formulation of a plan. Id. at 191. Under those circumstances, but without further elaboration, the court held that "[t]he putative class representatives in the Mirant Cases have also waited too long to seek invocation of Rule 7023." Id. at 191. In In re Ephedra Prods. Liability Litig., 329 B.R. 1, 5 (S.D.N.Y. 2005), the court refused to apply of FRCP 23 to multiple product liability class claims

with three putative class attorneys, two of whom were competing to represent the same consumers, because doing so would delay distributions on a plan for which votes had already been solicited. These Chapter 11 Cases present a very different situation.

74. The Equity Committee's generalized and conclusory assertions that class treatment will bog down these proceedings amount to little more than an argument that class treatment can never be appropriate. As noted in the Commonpoint decision, any administrative inconvenience resulting from class procedures must be balanced against the "interests of justice" and the policies of the Bankruptcy Code. Commonpoint, 283 B.R. at 480-481. The fact that it is simply easier and perhaps cheaper to cast the Class Claim aside, as the Debtors and the Equity Committee are attempting to do, is not a legitimate basis to deprive defrauded investors of the right to assert their claims like all other creditors and, if proven, to recover their fair share from the Debtors' bankruptcy estates. See In re Chateaugay Corp., 104 B.R. 626, 632 (S.D.N.Y. 1989) ("any potential marginal increase in delay or difficulty of valuation of claims would be justified in order to protect the rights of small claimants . . . to be represented by the filing of a class proof of claim."). Lining the pockets of vulture investors and satisfying a concocted condition to confirmation designed to ensure that result are not appropriate reasons to grant the Class Claim Objection.

75. There is no support for the Equity Committee's contention that class treatment will "bog down" these Chapter 11 Cases. As the Equity Committee notes "[t]he Debtors' assets have been substantially liquidated, the estates are solvent." Class Claim Obj., ¶ 44. All classes of claims senior to common stock will be paid in full in cash, without regard to the disposition of the Class Claim, the Class Claim Objection, or

the Cross-Motion. Distributions to Class P7 Shareholders are almost entirely contingent on the outcome of litigation and will not occur for years. Thus, the decision to apply Rule 7023 has essentially no impact on the administration of the estate.

76. Moreover, contrary to the Equity Committee's claims that the members of the Class will not be denied an opportunity for a recovery, that is precisely what the Equity Committee is attempting to do by its treatment of Lead Plaintiff under the Plan. Undoubtedly, the scheme engineered by the Equity Committee will negatively impact two of the primary goals of the Bankruptcy Code: (i) to ensure creditor compensation and (ii) to promote equality of distribution. Charter Co., 876 F.2d at 871 (11th Cir. 1989); American Reserve, 840 F.2d at 489. The members of the Class will bear a substantial risk of non-recovery under the Equity Committee's proposed course of action. In contrast, the benefits of the application of Rule 7023 and class certification will vastly outweigh any negative consequences and will promote the achievement of these critical bankruptcy goals. See, e.g., American Reserve, 840 F.2d at 489.

77. Lead Plaintiff respectfully submits, for the reasons set forth above, that the application of Rule 7023 to its Class Claim promotes bankruptcy policies, needs, and concerns and is the sole method by which defrauded investors can obtain any recovery from these Debtors for their losses. This is truly a case in which, "[i]f the class proof of claim process is not utilized, justice may be denied." Commonpoint, 283 B.R. at 480. Accordingly, the Court should overrule the Class Claim Objection.

II. CANADIAN LAW IS IRRELEVANT TO THE CLASS CLAIM.

78. The Equity Committee also, inexplicably, asks the Court to apply Canadian law to disallow the Class Claim. As discussed in the Claims Resolution Objection and below, the Equity Committee's jurisdictional gamesmanship is

unwarranted and inappropriate. There is no basis for applying Canadian law in this matter. Lead Plaintiff and the Class are strangers to the Canadian Court and the CCAA Case, and the Class Claim, which arose under United States law on account of purchases of PSG Common Stock traded on a United States exchange, was filed solely in this Court in the Chapter 11 Cases.

79. The fact that PSG is a Canadian entity has no bearing on what law should be applied in this matter. The causes of action underlying the Individual Securities Damages Claim and the Class Claim arose under the United States federal securities laws, and are direct claims of Lead Plaintiff and the Class in this Case. They are not derivative claims that otherwise might be governed by Canadian law pursuant to the internal affairs doctrine. The Class Claim is readily distinguishable from the Muscletech decisions cited by the Equity Committee, in which the issue was whether a class claim could be filed in a CCAA proceeding as opposed to a United States Bankruptcy Court. Here, Lead Plaintiffs have not filed claims in the CCAA Case, have not sued any of the Defendants in any Canadian court, have not taken any action to subject themselves to the jurisdiction of the Ontario Court, and have not asserted any claims against PSG or anyone else under Canadian law.

CROSS-MOTION

80. For the same reasons that the Court should deny the Class Claim Objection, Lead Plaintiff requests that the Court grant the Cross-Motion.

RESERVATION OF RIGHTS

81. Because the Debtors' Joinder was filed less than three hours before the response deadline for the Class Claim Objection, Lead Plaintiff reserves all rights to respond to any new arguments raised therein at or before the hearing on the Class Claim

Objection. Lead Plaintiff, for itself and the Class, further reserves all rights, arguments, counterarguments, and defenses with respect to the Chapter 11 Cases, the Class Claim, the Individual Securities Damages Claim, and the Securities Litigation.

CONCLUSION

82. Because the Musicland factors weigh in favor of applying Rule 7023 to the Class Claim, the Court should deny the Class Claim Objection in its entirety and grant the Cross-Motion. As detailed above, the Debtors failed to provide sufficient notice of the Bar Date to the Class members by unilaterally electing to serve only a small subset of the Class and application of Rule 7023 will not negatively impact the administration of these Chapter 11 Cases.

WHEREFORE, for all of the foregoing reasons, the Class Claim Objection should be denied in its entirety and the Cross-Motion should be granted.

Dated: October 5, 2017
Wilmington, Delaware

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
OLD BPSUSH INC., *et al.*,[1]	Case No. 16-12373 (KJC)
Debtors.	(Jointly Administered)

DECLARATION OF ANDREW BEHLMANN, ESQ. IN SUPPORT OF LEAD PLAINTIFF'S (I) OPPOSITION TO OBJECTION OF EQUITY COMMITTEE TO CLASS CLAIM AND (II) CROSS-MOTION FOR APPLICATION OF BANKRUPTCY RULE 7023 TO CLASS CLAIM

Andrew Behlmann, Esq., hereby declares as follows, pursuant to 28 U.S.C. § 1746:

1. I am Counsel with the law firm of Lowenstein Sandler LLP, bankruptcy counsel in the chapter 11 cases of the above-captioned debtors in possession (the "Debtors") to 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"). I submit this declaration in support of Lead Plaintiff's (a) opposition (the "Opposition") to the *Objection of Official Committee of Equity Security Holders, Pursuant To 11 U.S.C. § 502 and Fed R. Bankr.*

[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 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. (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., respectively). The Debtors' mailing address is 666 Burrard Street, Suite 1700, Vancouver, British Columbia, Canada, V6C 2X8.

P. 3007, 7023, and 9014, to Putative Class Claim Filed By Plumbers & Pipefitters National Pension Fund (Proof of Claim No. 444) (as amended on September 16, 2017, the "Class Claim Objection") [D.I. 1338, 1340] filed by the Official Committee of Equity Security Holders (the "Equity Committee") appointed in the chapter 11 cases (the "Chapter 11 Cases") of the above-captioned debtors in possession (the "Debtors") and (b) cross-motion (the "Cross-Motion") for an order applying Rule 7023 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and thus, Rule 23 of the Federal Rules of Civil Procedure ("FRCP 23") to the claim filed by the Lead Plaintiff on behalf of the Class (the "Class Claim") [Claim No. 444]. Capitalized terms used but not defined herein have the meanings given thereto in Lead Plaintiff's brief in support of the Opposition and Cross-Motion, filed contemporaneously herewith.

2. Annexed hereto as **Exhibit A** is a true and correct copy of the Lead Plaintiff Order entered by the SDNY District Court in the Securities Litigation on June 7, 2016.

3. Annexed hereto as **Exhibit B** is a schedule of daily prices and daily trading volume of PSG Common Stock from March 15, 2016 through October 4, 2017, retrieved from:

> https://finance.yahoo.com/quote/PSGLQ/history?period1=1458014400&period2=1507089600&interval=1d&filter=history&frequency=1d

Exhibit B also contains the cumulative trading volume of PSG Common Stock during the same period.

4. Annexed hereto as **Exhibit C** is a Bloomberg HDS historical report listing major holders of PSG Common Stock at the end of the first quarter of 2016.

5. Annexed hereto as **Exhibit D** is a Bloomberg HDS report schedule listing major holders of PSG Common Stock as of October 5, 2017.

I declare under penalty of perjury that the foregoing statements made by me are true and correct to the best of my knowledge, information, and belief, and I understand that I am subject to punishment if any of the foregoing statements made by me are willfully false.

Dated: October 5, 2017

/s/ Andrew Behlmann
Andrew Behlmann, Esq.

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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.

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.

Case 1:16-12375-KJC Do

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

EXHIBIT B

Date	Open	High	Low	Close	Adj Close	Daily Volume	Cumulative Volume
3/15/2016	$ 3.870	$ 3.980	$ 3.480	$ 3.550	$ 3.550	1,877,300	1,877,300
3/16/2016	$ 3.610	$ 3.745	$ 3.480	$ 3.560	$ 3.560	1,125,000	3,002,300
3/17/2016	$ 3.540	$ 3.590	$ 3.340	$ 3.380	$ 3.380	1,547,200	4,549,500
3/18/2016	$ 3.400	$ 3.480	$ 3.200	$ 3.300	$ 3.300	3,834,000	8,383,500
3/21/2016	$ 3.330	$ 3.620	$ 3.280	$ 3.600	$ 3.600	2,726,500	11,110,000
3/22/2016	$ 3.610	$ 3.615	$ 3.350	$ 3.510	$ 3.510	1,530,100	12,640,100
3/23/2016	$ 3.500	$ 3.650	$ 3.315	$ 3.340	$ 3.340	1,333,600	13,973,700
3/24/2016	$ 3.300	$ 3.427	$ 3.200	$ 3.330	$ 3.330	1,350,100	15,323,800
3/28/2016	$ 3.160	$ 3.230	$ 3.040	$ 3.100	$ 3.100	1,083,100	16,406,900
3/29/2016	$ 3.100	$ 3.185	$ 3.030	$ 3.170	$ 3.170	1,386,000	17,792,900
3/30/2016	$ 3.200	$ 3.379	$ 3.140	$ 3.220	$ 3.220	1,199,300	18,992,200
3/31/2016	$ 3.220	$ 3.300	$ 3.160	$ 3.180	$ 3.180	629,500	19,621,700
4/1/2016	$ 3.210	$ 3.210	$ 3.090	$ 3.100	$ 3.100	521,300	20,143,000
4/4/2016	$ 3.200	$ 3.255	$ 3.010	$ 3.030	$ 3.030	943,600	21,086,600
4/5/2016	$ 3.030	$ 3.140	$ 2.920	$ 3.030	$ 3.030	567,800	21,654,400
4/6/2016	$ 3.020	$ 3.170	$ 2.970	$ 3.080	$ 3.080	732,700	22,387,100
4/7/2016	$ 3.140	$ 3.140	$ 2.970	$ 3.020	$ 3.020	844,700	23,231,800
4/8/2016	$ 3.040	$ 3.100	$ 3.000	$ 3.060	$ 3.060	758,100	23,989,900
4/11/2016	$ 3.080	$ 3.140	$ 2.970	$ 3.080	$ 3.080	643,900	24,633,800
4/12/2016	$ 3.070	$ 3.360	$ 3.060	$ 3.350	$ 3.350	1,156,100	25,789,900
4/13/2016	$ 3.400	$ 3.940	$ 3.330	$ 3.850	$ 3.850	1,993,600	27,783,500
4/14/2016	$ 3.870	$ 4.000	$ 3.710	$ 3.820	$ 3.820	1,318,800	29,102,300
4/15/2016	$ 3.610	$ 3.810	$ 3.230	$ 3.230	$ 3.230	2,600,700	31,703,000
4/18/2016	$ 3.250	$ 3.490	$ 3.110	$ 3.490	$ 3.490	2,064,000	33,767,000
4/19/2016	$ 3.530	$ 3.660	$ 3.390	$ 3.590	$ 3.590	1,055,900	34,822,900
4/20/2016	$ 3.590	$ 3.710	$ 3.470	$ 3.540	$ 3.540	682,900	35,505,800
4/21/2016	$ 3.580	$ 3.660	$ 3.360	$ 3.400	$ 3.400	604,200	36,110,000
4/22/2016	$ 3.480	$ 3.650	$ 3.450	$ 3.640	$ 3.640	827,500	36,937,500
4/25/2016	$ 3.630	$ 3.660	$ 3.460	$ 3.550	$ 3.550	426,000	37,363,500
4/26/2016	$ 3.580	$ 3.700	$ 3.500	$ 3.650	$ 3.650	708,000	38,071,500
4/27/2016	$ 3.700	$ 3.790	$ 3.630	$ 3.680	$ 3.680	820,700	38,892,200
4/28/2016	$ 3.680	$ 3.710	$ 3.503	$ 3.520	$ 3.520	750,300	39,642,500
4/29/2016	$ 3.630	$ 3.760	$ 3.510	$ 3.710	$ 3.710	1,098,600	40,741,100
5/2/2016	$ 3.760	$ 3.930	$ 3.650	$ 3.670	$ 3.670	1,197,200	41,938,300
5/3/2016	$ 3.690	$ 3.810	$ 3.630	$ 3.760	$ 3.760	710,500	42,648,800
5/4/2016	$ 3.750	$ 3.780	$ 3.510	$ 3.660	$ 3.660	811,000	43,459,800
5/5/2016	$ 3.710	$ 3.720	$ 3.500	$ 3.500	$ 3.500	746,400	44,206,200
5/6/2016	$ 3.500	$ 3.620	$ 3.410	$ 3.450	$ 3.450	442,100	44,648,300
5/9/2016	$ 3.510	$ 3.600	$ 3.400	$ 3.560	$ 3.560	1,016,100	45,664,400
5/10/2016	$ 3.600	$ 3.610	$ 3.490	$ 3.530	$ 3.530	761,000	46,425,400
5/11/2016	$ 3.550	$ 3.580	$ 3.500	$ 3.510	$ 3.510	414,000	46,839,400
5/12/2016	$ 3.570	$ 3.570	$ 3.440	$ 3.470	$ 3.470	521,900	47,361,300
5/13/2016	$ 3.440	$ 3.530	$ 3.330	$ 3.520	$ 3.520	464,300	47,825,600
5/16/2016	$ 3.560	$ 3.590	$ 3.380	$ 3.410	$ 3.410	512,700	48,338,300
5/17/2016	$ 3.420	$ 3.420	$ 3.270	$ 3.300	$ 3.300	756,600	49,094,900

5/18/2016	$ 3.280	$ 3.290	$ 3.130	$ 3.190	$ 3.190	714,900	49,809,800
5/19/2016	$ 3.150	$ 3.210	$ 3.100	$ 3.190	$ 3.190	554,000	50,363,800
5/20/2016	$ 3.210	$ 3.280	$ 3.130	$ 3.240	$ 3.240	692,400	51,056,200
5/23/2016	$ 3.220	$ 3.320	$ 3.200	$ 3.270	$ 3.270	436,800	51,493,000
5/24/2016	$ 3.270	$ 3.280	$ 3.160	$ 3.170	$ 3.170	524,500	52,017,500
5/25/2016	$ 3.200	$ 3.410	$ 3.190	$ 3.330	$ 3.330	720,800	52,738,300
5/26/2016	$ 3.360	$ 3.400	$ 3.270	$ 3.270	$ 3.270	326,000	53,064,300
5/27/2016	$ 3.270	$ 3.350	$ 3.210	$ 3.260	$ 3.260	400,300	53,464,600
5/31/2016	$ 3.280	$ 3.320	$ 3.220	$ 3.250	$ 3.250	598,300	54,062,900
6/1/2016	$ 3.220	$ 3.360	$ 3.210	$ 3.270	$ 3.270	933,700	54,996,600
6/2/2016	$ 3.270	$ 3.330	$ 3.240	$ 3.320	$ 3.320	697,900	55,694,500
6/3/2016	$ 3.260	$ 3.430	$ 3.260	$ 3.420	$ 3.420	529,900	56,224,400
6/6/2016	$ 3.460	$ 3.530	$ 3.380	$ 3.470	$ 3.470	601,100	56,825,500
6/7/2016	$ 3.470	$ 3.530	$ 3.400	$ 3.500	$ 3.500	236,700	57,062,200
6/8/2016	$ 3.520	$ 3.590	$ 3.470	$ 3.490	$ 3.490	333,900	57,396,100
6/9/2016	$ 3.270	$ 3.330	$ 3.140	$ 3.170	$ 3.170	1,883,800	59,279,900
6/10/2016	$ 3.120	$ 3.190	$ 3.050	$ 3.150	$ 3.150	1,232,300	60,512,200
6/13/2016	$ 3.110	$ 3.160	$ 3.020	$ 3.020	$ 3.020	847,500	61,359,700
6/14/2016	$ 3.010	$ 3.090	$ 3.000	$ 3.080	$ 3.080	514,100	61,873,800
6/15/2016	$ 3.080	$ 3.160	$ 3.020	$ 3.030	$ 3.030	734,600	62,608,400
6/16/2016	$ 3.010	$ 3.100	$ 2.940	$ 3.010	$ 3.010	835,700	63,444,100
6/17/2016	$ 3.040	$ 3.105	$ 2.975	$ 3.020	$ 3.020	494,000	63,938,100
6/20/2016	$ 3.070	$ 3.240	$ 3.040	$ 3.060	$ 3.060	541,500	64,479,600
6/21/2016	$ 3.070	$ 3.090	$ 2.960	$ 3.030	$ 3.030	509,400	64,989,000
6/22/2016	$ 3.040	$ 3.060	$ 2.970	$ 2.990	$ 2.990	399,000	65,388,000
6/23/2016	$ 3.000	$ 3.060	$ 2.970	$ 3.050	$ 3.050	363,400	65,751,400
6/24/2016	$ 2.940	$ 2.980	$ 2.900	$ 2.960	$ 2.960	1,250,800	67,002,200
6/27/2016	$ 2.920	$ 2.920	$ 2.750	$ 2.790	$ 2.790	1,052,300	68,054,500
6/28/2016	$ 2.850	$ 2.950	$ 2.800	$ 2.910	$ 2.910	516,900	68,571,400
6/29/2016	$ 2.980	$ 3.080	$ 2.950	$ 3.070	$ 3.070	770,600	69,342,000
6/30/2016	$ 3.090	$ 3.110	$ 2.960	$ 3.000	$ 3.000	435,500	69,777,500
7/1/2016	$ 3.020	$ 3.150	$ 2.990	$ 3.020	$ 3.020	370,800	70,148,300
7/5/2016	$ 3.000	$ 3.050	$ 2.890	$ 2.940	$ 2.940	605,100	70,753,400
7/6/2016	$ 2.920	$ 3.010	$ 2.880	$ 3.010	$ 3.010	359,900	71,113,300
7/7/2016	$ 3.020	$ 3.070	$ 2.860	$ 2.900	$ 2.900	785,900	71,899,200
7/8/2016	$ 2.950	$ 3.050	$ 2.910	$ 3.030	$ 3.030	520,400	72,419,600
7/11/2016	$ 3.050	$ 3.120	$ 2.995	$ 3.070	$ 3.070	508,800	72,928,400
7/12/2016	$ 3.110	$ 3.170	$ 3.040	$ 3.100	$ 3.100	466,600	73,395,000
7/13/2016	$ 3.100	$ 3.150	$ 2.960	$ 2.980	$ 2.980	525,600	73,920,600
7/14/2016	$ 3.000	$ 3.170	$ 2.990	$ 3.170	$ 3.170	830,400	74,751,000
7/15/2016	$ 3.210	$ 3.210	$ 3.080	$ 3.100	$ 3.100	427,700	75,178,700
7/18/2016	$ 3.090	$ 3.150	$ 3.050	$ 3.140	$ 3.140	254,500	75,433,200
7/19/2016	$ 3.110	$ 3.150	$ 3.050	$ 3.060	$ 3.060	369,000	75,802,200
7/20/2016	$ 3.050	$ 3.120	$ 3.010	$ 3.080	$ 3.080	440,000	76,242,200
7/21/2016	$ 3.080	$ 3.164	$ 3.020	$ 3.030	$ 3.030	635,100	76,877,300
7/22/2016	$ 3.030	$ 3.120	$ 2.990	$ 3.070	$ 3.070	326,400	77,203,700
7/25/2016	$ 3.060	$ 3.235	$ 3.050	$ 3.230	$ 3.230	553,400	77,757,100

7/26/2016	$ 3.230	$ 3.355	$ 3.210	$ 3.350	$ 3.350	714,500	78,471,600
7/27/2016	$ 3.370	$ 3.390	$ 3.250	$ 3.310	$ 3.310	339,300	78,810,900
7/28/2016	$ 3.300	$ 3.390	$ 3.230	$ 3.390	$ 3.390	356,100	79,167,000
7/29/2016	$ 3.370	$ 3.400	$ 3.300	$ 3.330	$ 3.330	376,500	79,543,500
8/1/2016	$ 3.310	$ 3.330	$ 3.238	$ 3.320	$ 3.320	298,300	79,841,800
8/2/2016	$ 3.330	$ 3.350	$ 3.250	$ 3.270	$ 3.270	333,000	80,174,800
8/3/2016	$ 3.350	$ 3.420	$ 3.260	$ 3.360	$ 3.360	389,700	80,564,500
8/4/2016	$ 3.320	$ 3.380	$ 3.220	$ 3.240	$ 3.240	256,500	80,821,000
8/5/2016	$ 3.250	$ 3.320	$ 3.180	$ 3.290	$ 3.290	194,500	81,015,500
8/8/2016	$ 3.320	$ 3.375	$ 3.230	$ 3.300	$ 3.300	198,900	81,214,400
8/9/2016	$ 3.300	$ 3.350	$ 3.260	$ 3.330	$ 3.330	113,100	81,327,500
8/10/2016	$ 3.360	$ 3.380	$ 3.260	$ 3.260	$ 3.260	239,000	81,566,500
8/11/2016	$ 3.290	$ 3.370	$ 3.260	$ 3.360	$ 3.360	281,400	81,847,900
8/12/2016	$ 3.350	$ 3.480	$ 3.310	$ 3.480	$ 3.480	242,800	82,090,700
8/15/2016	$ 3.170	$ 3.180	$ 1.180	$ 1.850	$ 1.850	14,654,300	96,745,000
8/16/2016	$ 1.900	$ 2.150	$ 1.770	$ 2.090	$ 2.090	4,301,700	101,046,700
8/17/2016	$ 2.020	$ 2.030	$ 1.660	$ 1.830	$ 1.830	4,426,500	105,473,200
8/18/2016	$ 1.800	$ 1.980	$ 1.800	$ 1.940	$ 1.940	1,991,600	107,464,800
8/19/2016	$ 1.900	$ 1.900	$ 1.790	$ 1.790	$ 1.790	731,200	108,196,000
8/22/2016	$ 1.730	$ 1.840	$ 1.670	$ 1.840	$ 1.840	679,600	108,875,600
8/23/2016	$ 1.840	$ 1.840	$ 1.750	$ 1.810	$ 1.810	715,900	109,591,500
8/24/2016	$ 1.780	$ 1.900	$ 1.660	$ 1.820	$ 1.820	1,538,800	111,130,300
8/25/2016	$ 1.830	$ 1.850	$ 1.780	$ 1.800	$ 1.800	857,200	111,987,500
8/26/2016	$ 1.860	$ 2.690	$ 1.860	$ 2.530	$ 2.530	8,159,000	120,146,500
8/29/2016	$ 2.490	$ 2.520	$ 2.280	$ 2.470	$ 2.470	1,246,200	121,392,700
8/30/2016	$ 2.440	$ 2.740	$ 2.400	$ 2.680	$ 2.680	1,372,800	122,765,500
8/31/2016	$ 2.760	$ 2.810	$ 2.470	$ 2.710	$ 2.710	1,933,400	124,698,900
9/1/2016	$ 2.720	$ 2.761	$ 2.660	$ 2.710	$ 2.710	504,800	125,203,700
9/2/2016	$ 2.730	$ 3.640	$ 2.710	$ 3.560	$ 3.560	4,101,300	129,305,000
9/6/2016	$ 3.210	$ 3.280	$ 3.005	$ 3.220	$ 3.220	1,144,800	130,449,800
9/7/2016	$ 3.260	$ 3.360	$ 3.210	$ 3.310	$ 3.310	887,400	131,337,200
9/8/2016	$ 3.310	$ 3.470	$ 3.260	$ 3.450	$ 3.450	706,500	132,043,700
9/9/2016	$ 3.410	$ 3.510	$ 3.410	$ 3.430	$ 3.430	580,800	132,624,500
9/12/2016	$ 3.420	$ 3.515	$ 3.300	$ 3.450	$ 3.450	646,600	133,271,100
9/13/2016	$ 3.450	$ 3.530	$ 3.300	$ 3.340	$ 3.340	356,900	133,628,000
9/14/2016	$ 3.300	$ 3.510	$ 3.300	$ 3.460	$ 3.460	438,500	134,066,500
9/15/2016	$ 3.490	$ 3.550	$ 3.450	$ 3.510	$ 3.510	426,100	134,492,600
9/16/2016	$ 3.500	$ 3.560	$ 3.470	$ 3.540	$ 3.540	549,400	135,042,000
9/19/2016	$ 3.570	$ 3.790	$ 3.530	$ 3.750	$ 3.750	1,283,300	136,325,300
9/20/2016	$ 3.770	$ 3.780	$ 3.610	$ 3.650	$ 3.650	1,102,100	137,427,400
9/21/2016	$ 3.740	$ 3.770	$ 3.660	$ 3.750	$ 3.750	494,500	137,921,900
9/22/2016	$ 3.820	$ 3.940	$ 3.800	$ 3.900	$ 3.900	550,300	138,472,200
9/23/2016	$ 4.020	$ 4.060	$ 3.895	$ 3.970	$ 3.970	1,081,800	139,554,000
9/26/2016	$ 4.000	$ 4.065	$ 3.920	$ 3.970	$ 3.970	2,786,100	142,340,100
9/27/2016	$ 4.000	$ 4.100	$ 3.970	$ 4.010	$ 4.010	885,700	143,225,800
9/28/2016	$ 4.040	$ 4.080	$ 3.920	$ 3.980	$ 3.980	266,800	143,492,600
9/29/2016	$ 4.070	$ 4.070	$ 3.900	$ 3.920	$ 3.920	313,900	143,806,500

9/30/2016	$	3.870	$	4.100	$	3.760	$	4.060	$	4.060	429,100	144,235,600
10/3/2016	$	4.090	$	4.130	$	3.900	$	3.920	$	3.920	324,800	144,560,400
10/4/2016	$	3.920	$	4.040	$	3.920	$	3.940	$	3.940	276,800	144,837,200
10/5/2016	$	3.930	$	4.030	$	3.900	$	3.950	$	3.950	206,200	145,043,400
10/6/2016	$	3.920	$	3.960	$	3.820	$	3.880	$	3.880	187,200	145,230,600
10/7/2016	$	3.860	$	3.875	$	3.650	$	3.650	$	3.650	425,500	145,656,100
10/10/2016	$	3.630	$	3.710	$	3.580	$	3.590	$	3.590	157,400	145,813,500
10/11/2016	$	3.600	$	4.210	$	3.520	$	3.950	$	3.950	1,813,200	147,626,700
10/12/2016	$	3.940	$	4.180	$	3.817	$	4.070	$	4.070	900,700	148,527,400
10/13/2016	$	4.040	$	4.150	$	3.960	$	4.080	$	4.080	482,200	149,009,600
10/14/2016	$	4.130	$	4.150	$	4.040	$	4.060	$	4.060	271,900	149,281,500
10/17/2016	$	4.080	$	4.140	$	3.990	$	4.030	$	4.030	245,800	149,527,300
10/18/2016	$	4.020	$	4.070	$	3.980	$	4.050	$	4.050	409,500	149,936,800
10/19/2016	$	4.040	$	4.150	$	4.030	$	4.040	$	4.040	409,900	150,346,700
10/20/2016	$	4.010	$	4.052	$	3.970	$	4.000	$	4.000	237,700	150,584,400
10/21/2016	$	3.950	$	4.020	$	3.930	$	3.980	$	3.980	179,800	150,764,200
10/24/2016	$	4.000	$	4.020	$	3.950	$	3.970	$	3.970	529,000	151,293,200
10/25/2016	$	3.980	$	3.980	$	3.800	$	3.900	$	3.900	284,300	151,577,500
10/26/2016	$	3.860	$	3.900	$	3.740	$	3.850	$	3.850	250,400	151,827,900
10/27/2016	$	3.870	$	3.870	$	3.730	$	3.730	$	3.730	218,700	152,046,600
10/28/2016	$	3.730	$	3.790	$	3.440	$	3.480	$	3.480	469,600	152,516,200
10/31/2016	$	3.480	$	3.480	$	3.480	$	3.480	$	3.480	-	152,516,200
11/1/2016	$	1.850	$	2.050	$	1.570	$	1.670	$	1.670	8,735,300	161,251,500
11/2/2016	$	1.620	$	1.640	$	1.300	$	1.420	$	1.420	3,552,100	164,803,600
11/3/2016	$	1.430	$	1.430	$	1.250	$	1.340	$	1.340	3,525,900	168,329,500
11/4/2016	$	1.310	$	1.400	$	1.300	$	1.350	$	1.350	1,567,400	169,896,900
11/7/2016	$	1.375	$	1.460	$	1.340	$	1.460	$	1.460	673,200	170,570,100
11/8/2016	$	1.460	$	1.460	$	1.420	$	1.450	$	1.450	713,300	171,283,400
11/9/2016	$	1.440	$	1.540	$	1.418	$	1.520	$	1.520	333,500	171,616,900
11/10/2016	$	1.530	$	1.630	$	1.450	$	1.570	$	1.570	239,900	171,856,800
11/11/2016	$	1.550	$	1.610	$	1.520	$	1.520	$	1.520	1,008,200	172,865,000
11/14/2016	$	1.500	$	1.590	$	1.500	$	1.575	$	1.575	359,300	173,224,300
11/15/2016	$	1.560	$	1.650	$	1.560	$	1.640	$	1.640	463,500	173,687,800
11/16/2016	$	1.640	$	1.640	$	1.590	$	1.600	$	1.600	390,400	174,078,200
11/17/2016	$	1.600	$	1.620	$	1.580	$	1.600	$	1.600	402,700	174,480,900
11/18/2016	$	1.600	$	1.690	$	1.560	$	1.660	$	1.660	174,700	174,655,600
11/21/2016	$	1.685	$	1.740	$	1.670	$	1.720	$	1.720	237,600	174,893,200
11/22/2016	$	1.645	$	1.730	$	1.645	$	1.730	$	1.730	519,400	175,412,600
11/23/2016	$	1.660	$	1.730	$	1.620	$	1.710	$	1.710	156,300	175,568,900
11/25/2016	$	1.710	$	1.768	$	1.710	$	1.750	$	1.750	92,400	175,661,300
11/28/2016	$	1.750	$	1.754	$	1.660	$	1.730	$	1.730	384,300	176,045,600
11/29/2016	$	1.700	$	1.880	$	1.670	$	1.880	$	1.880	614,200	176,659,800
11/30/2016	$	1.880	$	1.880	$	1.810	$	1.870	$	1.870	656,300	177,316,100
12/1/2016	$	1.850	$	1.861	$	1.820	$	1.820	$	1.820	293,800	177,609,900
12/2/2016	$	1.810	$	1.850	$	1.790	$	1.790	$	1.790	401,100	178,011,000
12/5/2016	$	1.820	$	1.860	$	1.780	$	1.820	$	1.820	325,800	178,336,800
12/6/2016	$	1.830	$	1.830	$	1.800	$	1.830	$	1.830	145,000	178,481,800

12/7/2016	$ 1.800	$ 1.830	$ 1.800	$ 1.810	$ 1.810	213,100	178,694,900
12/8/2016	$ 1.800	$ 1.870	$ 1.790	$ 1.870	$ 1.870	73,800	178,768,700
12/9/2016	$ 1.870	$ 1.940	$ 1.780	$ 1.893	$ 1.893	447,200	179,215,900
12/12/2016	$ 1.850	$ 1.920	$ 1.800	$ 1.900	$ 1.900	254,900	179,470,800
12/13/2016	$ 1.880	$ 1.940	$ 1.790	$ 1.810	$ 1.810	442,800	179,913,600
12/14/2016	$ 1.810	$ 1.810	$ 1.695	$ 1.740	$ 1.740	1,086,500	181,000,100
12/15/2016	$ 1.760	$ 1.840	$ 1.740	$ 1.740	$ 1.740	2,780,200	183,780,300
12/16/2016	$ 1.740	$ 1.800	$ 1.700	$ 1.755	$ 1.755	1,075,300	184,855,600
12/19/2016	$ 1.750	$ 1.780	$ 1.640	$ 1.640	$ 1.640	160,400	185,016,000
12/20/2016	$ 1.610	$ 1.680	$ 1.500	$ 1.530	$ 1.530	545,900	185,561,900
12/21/2016	$ 1.540	$ 1.610	$ 1.500	$ 1.550	$ 1.550	961,700	186,523,600
12/22/2016	$ 1.540	$ 1.580	$ 1.530	$ 1.550	$ 1.550	126,800	186,650,400
12/23/2016	$ 1.550	$ 1.570	$ 1.530	$ 1.560	$ 1.560	142,400	186,792,800
12/27/2016	$ 1.540	$ 1.560	$ 1.520	$ 1.550	$ 1.550	27,900	186,820,700
12/28/2016	$ 1.550	$ 1.570	$ 1.540	$ 1.550	$ 1.550	27,600	186,848,300
12/29/2016	$ 1.550	$ 1.550	$ 1.470	$ 1.540	$ 1.540	495,800	187,344,100
12/30/2016	$ 1.540	$ 1.540	$ 1.490	$ 1.490	$ 1.490	101,000	187,445,100
1/3/2017	$ 1.490	$ 1.550	$ 1.480	$ 1.550	$ 1.550	55,800	187,500,900
1/4/2017	$ 1.550	$ 1.600	$ 1.550	$ 1.590	$ 1.590	26,400	187,527,300
1/5/2017	$ 1.600	$ 1.630	$ 1.600	$ 1.600	$ 1.600	163,200	187,690,500
1/6/2017	$ 1.600	$ 1.650	$ 1.570	$ 1.570	$ 1.570	213,600	187,904,100
1/9/2017	$ 1.570	$ 1.650	$ 1.540	$ 1.560	$ 1.560	65,900	187,970,000
1/10/2017	$ 1.550	$ 1.560	$ 1.490	$ 1.500	$ 1.500	390,700	188,360,700
1/11/2017	$ 1.500	$ 1.510	$ 1.450	$ 1.500	$ 1.500	230,100	188,590,800
1/12/2017	$ 1.490	$ 1.530	$ 1.480	$ 1.500	$ 1.500	56,700	188,647,500
1/13/2017	$ 1.490	$ 1.490	$ 1.430	$ 1.430	$ 1.430	208,400	188,855,900
1/17/2017	$ 1.430	$ 1.460	$ 1.300	$ 1.300	$ 1.300	223,100	189,079,000
1/18/2017	$ 1.310	$ 1.320	$ 1.140	$ 1.190	$ 1.190	797,600	189,876,600
1/19/2017	$ 1.190	$ 1.350	$ 1.130	$ 1.350	$ 1.350	442,100	190,318,700
1/20/2017	$ 1.390	$ 1.390	$ 1.230	$ 1.350	$ 1.350	1,250,800	191,569,500
1/23/2017	$ 1.320	$ 1.430	$ 1.320	$ 1.430	$ 1.430	381,900	191,951,400
1/24/2017	$ 1.420	$ 1.460	$ 1.340	$ 1.350	$ 1.350	3,020,000	194,971,400
1/25/2017	$ 1.350	$ 1.400	$ 1.350	$ 1.380	$ 1.380	20,800	194,992,200
1/26/2017	$ 1.030	$ 1.045	$ 0.570	$ 0.690	$ 0.690	6,957,500	201,949,700
1/27/2017	$ 0.695	$ 0.770	$ 0.690	$ 0.750	$ 0.750	783,800	202,733,500
1/30/2017	$ 0.770	$ 0.840	$ 0.760	$ 0.835	$ 0.835	1,154,600	203,888,100
1/31/2017	$ 0.840	$ 0.970	$ 0.840	$ 0.860	$ 0.860	1,757,500	205,645,600
2/1/2017	$ 0.860	$ 0.900	$ 0.800	$ 0.808	$ 0.808	1,043,100	206,688,700
2/2/2017	$ 0.810	$ 0.850	$ 0.810	$ 0.840	$ 0.840	867,300	207,556,000
2/3/2017	$ 0.850	$ 0.860	$ 0.790	$ 0.802	$ 0.802	571,600	208,127,600
2/6/2017	$ 0.802	$ 0.830	$ 0.795	$ 0.830	$ 0.830	1,810,900	209,938,500
2/7/2017	$ 0.810	$ 0.830	$ 0.800	$ 0.804	$ 0.804	100,800	210,039,300
2/8/2017	$ 0.800	$ 0.805	$ 0.770	$ 0.780	$ 0.780	131,800	210,171,100
2/9/2017	$ 0.780	$ 0.825	$ 0.780	$ 0.825	$ 0.825	185,100	210,356,200
2/10/2017	$ 0.815	$ 0.830	$ 0.800	$ 0.802	$ 0.802	33,300	210,389,500
2/13/2017	$ 0.800	$ 0.820	$ 0.790	$ 0.790	$ 0.790	45,800	210,435,300
2/14/2017	$ 0.790	$ 0.890	$ 0.790	$ 0.880	$ 0.880	1,040,500	211,475,800

2/15/2017	$	0.880	$	0.880	$	0.850	$	0.860	$	0.860	36,500	211,512,300
2/16/2017	$	0.850	$	0.860	$	0.850	$	0.850	$	0.850	85,700	211,598,000
2/17/2017	$	0.850	$	0.860	$	0.845	$	0.850	$	0.850	16,800	211,614,800
2/21/2017	$	0.850	$	0.860	$	0.850	$	0.850	$	0.850	70,200	211,685,000
2/22/2017	$	0.860	$	0.890	$	0.860	$	0.880	$	0.880	20,200	211,705,200
2/23/2017	$	0.880	$	0.900	$	0.880	$	0.890	$	0.890	47,500	211,752,700
2/24/2017	$	0.890	$	0.960	$	0.890	$	0.950	$	0.950	85,600	211,838,300
2/27/2017	$	0.930	$	0.960	$	0.930	$	0.950	$	0.950	43,200	211,881,500
2/28/2017	$	0.950	$	0.971	$	0.950	$	0.970	$	0.970	67,600	211,949,100
3/1/2017	$	0.990	$	1.000	$	0.970	$	1.000	$	1.000	56,200	212,005,300
3/2/2017	$	1.000	$	1.040	$	0.990	$	1.000	$	1.000	1,104,700	213,110,000
3/3/2017	$	1.020	$	1.100	$	1.000	$	1.010	$	1.010	1,794,700	214,904,700
3/6/2017	$	1.010	$	1.040	$	1.010	$	1.030	$	1.030	39,700	214,944,400
3/7/2017	$	1.020	$	1.030	$	1.000	$	1.020	$	1.020	66,200	215,010,600
3/8/2017	$	1.020	$	1.030	$	1.020	$	1.020	$	1.020	81,900	215,092,500
3/9/2017	$	1.020	$	1.060	$	1.020	$	1.040	$	1.040	47,200	215,139,700
3/10/2017	$	1.040	$	1.070	$	1.010	$	1.030	$	1.030	259,300	215,399,000
3/13/2017	$	1.030	$	1.070	$	1.030	$	1.050	$	1.050	92,000	215,491,000
3/14/2017	$	1.040	$	1.060	$	1.040	$	1.055	$	1.055	11,500	215,502,500
3/15/2017	$	1.040	$	1.050	$	1.030	$	1.030	$	1.030	87,200	215,589,700
3/16/2017	$	1.030	$	1.040	$	1.030	$	1.030	$	1.030	19,300	215,609,000
3/17/2017	$	1.030	$	1.060	$	1.030	$	1.030	$	1.030	65,400	215,674,400
3/20/2017	$	1.040	$	1.050	$	0.950	$	0.956	$	0.956	151,000	215,825,400
3/21/2017	$	0.975	$	1.040	$	0.960	$	0.960	$	0.960	33,900	215,859,300
3/22/2017	$	0.900	$	0.990	$	0.900	$	0.985	$	0.985	126,100	215,985,400
3/23/2017	$	0.990	$	0.990	$	0.970	$	0.975	$	0.975	297,700	216,283,100
3/24/2017	$	0.976	$	0.980	$	0.970	$	0.970	$	0.970	69,200	216,352,300
3/27/2017	$	0.960	$	0.970	$	0.960	$	0.970	$	0.970	26,600	216,378,900
3/28/2017	$	0.970	$	1.000	$	0.940	$	0.980	$	0.980	19,000	216,397,900
3/29/2017	$	0.955	$	0.965	$	0.940	$	0.940	$	0.940	39,200	216,437,100
3/30/2017	$	0.935	$	0.935	$	0.875	$	0.875	$	0.875	284,700	216,721,800
3/31/2017	$	0.875	$	0.880	$	0.820	$	0.825	$	0.825	388,600	217,110,400
4/3/2017	$	0.807	$	0.807	$	0.600	$	0.600	$	0.600	252,200	217,362,600
4/4/2017	$	0.580	$	0.685	$	0.495	$	0.685	$	0.685	9,061,000	226,423,600
4/5/2017	$	0.690	$	0.690	$	0.650	$	0.675	$	0.675	56,600	226,480,200
4/6/2017	$	0.660	$	0.690	$	0.660	$	0.671	$	0.671	3,019,400	229,499,600
4/7/2017	$	0.660	$	0.690	$	0.600	$	0.600	$	0.600	56,500	229,556,100
4/10/2017	$	0.600	$	0.675	$	0.510	$	0.530	$	0.530	425,200	229,981,300
4/11/2017	$	0.530	$	0.530	$	0.480	$	0.485	$	0.485	18,300	229,999,600
4/12/2017	$	0.470	$	0.480	$	0.440	$	0.478	$	0.478	96,700	230,096,300
4/13/2017	$	0.485	$	0.485	$	0.448	$	0.460	$	0.460	212,700	230,309,000
4/17/2017	$	0.460	$	0.490	$	0.460	$	0.480	$	0.480	4,700	230,313,700
4/18/2017	$	0.488	$	0.500	$	0.480	$	0.480	$	0.480	28,200	230,341,900
4/19/2017	$	0.490	$	0.490	$	0.471	$	0.471	$	0.471	9,100	230,351,000
4/20/2017	$	0.485	$	0.485	$	0.471	$	0.471	$	0.471	4,100	230,355,100
4/21/2017	$	0.470	$	0.485	$	0.458	$	0.470	$	0.470	16,800	230,371,900
4/24/2017	$	0.460	$	0.551	$	0.425	$	0.550	$	0.550	225,700	230,597,600

4/25/2017	$ 0.533	$ 0.600	$ 0.533	$ 0.580	$ 0.580	313,600	230,911,200
4/26/2017	$ 0.575	$ 0.585	$ 0.533	$ 0.533	$ 0.533	62,800	230,974,000
4/27/2017	$ 0.533	$ 0.533	$ 0.470	$ 0.475	$ 0.475	23,100	230,997,100
4/28/2017	$ 0.475	$ 0.485	$ 0.450	$ 0.450	$ 0.450	72,600	231,069,700
5/1/2017	$ 0.450	$ 0.450	$ 0.400	$ 0.400	$ 0.400	70,700	231,140,400
5/2/2017	$ 0.390	$ 0.450	$ 0.380	$ 0.380	$ 0.380	162,300	231,302,700
5/3/2017	$ 0.380	$ 0.420	$ 0.340	$ 0.350	$ 0.350	311,700	231,614,400
5/4/2017	$ 0.360	$ 0.360	$ 0.340	$ 0.340	$ 0.340	105,400	231,719,800
5/5/2017	$ 0.344	$ 0.450	$ 0.340	$ 0.420	$ 0.420	196,000	231,915,800
5/8/2017	$ 0.420	$ 0.450	$ 0.420	$ 0.435	$ 0.435	107,100	232,022,900
5/9/2017	$ 0.450	$ 0.450	$ 0.440	$ 0.440	$ 0.440	30,000	232,052,900
5/10/2017	$ 0.450	$ 0.510	$ 0.450	$ 0.510	$ 0.510	115,600	232,168,500
5/11/2017	$ 0.510	$ 0.555	$ 0.500	$ 0.520	$ 0.520	811,800	232,980,300
5/12/2017	$ 0.530	$ 0.558	$ 0.530	$ 0.550	$ 0.550	20,600	233,000,900
5/15/2017	$ 0.550	$ 0.580	$ 0.550	$ 0.580	$ 0.580	22,900	233,023,800
5/16/2017	$ 0.570	$ 0.600	$ 0.555	$ 0.555	$ 0.555	54,100	233,077,900
5/17/2017	$ 0.555	$ 0.560	$ 0.520	$ 0.550	$ 0.550	11,500	233,089,400
5/18/2017	$ 0.530	$ 0.640	$ 0.530	$ 0.590	$ 0.590	241,400	233,330,800
5/19/2017	$ 0.600	$ 0.650	$ 0.590	$ 0.640	$ 0.640	75,800	233,406,600
5/22/2017	$ 0.640	$ 0.650	$ 0.630	$ 0.650	$ 0.650	80,600	233,487,200
5/23/2017	$ 0.650	$ 0.670	$ 0.650	$ 0.670	$ 0.670	10,300	233,497,500
5/24/2017	$ 0.670	$ 0.715	$ 0.660	$ 0.670	$ 0.670	28,300	233,525,800
5/25/2017	$ 0.685	$ 0.700	$ 0.665	$ 0.690	$ 0.690	7,800	233,533,600
5/26/2017	$ 0.665	$ 0.700	$ 0.660	$ 0.660	$ 0.660	11,400	233,545,000
5/30/2017	$ 0.640	$ 0.690	$ 0.640	$ 0.690	$ 0.690	55,200	233,600,200
5/31/2017	$ 0.663	$ 0.680	$ 0.663	$ 0.680	$ 0.680	12,000	233,612,200
6/1/2017	$ 0.663	$ 0.700	$ 0.663	$ 0.700	$ 0.700	52,200	233,664,400
6/2/2017	$ 0.681	$ 0.681	$ 0.640	$ 0.680	$ 0.680	13,200	233,677,600
6/5/2017	$ 0.640	$ 0.700	$ 0.640	$ 0.650	$ 0.650	44,300	233,721,900
6/6/2017	$ 0.650	$ 0.660	$ 0.650	$ 0.650	$ 0.650	10,700	233,732,600
6/7/2017	$ 0.645	$ 0.660	$ 0.645	$ 0.645	$ 0.645	32,700	233,765,300
6/8/2017	$ 0.640	$ 0.690	$ 0.640	$ 0.640	$ 0.640	23,300	233,788,600
6/9/2017	$ 0.640	$ 0.640	$ 0.640	$ 0.640	$ 0.640	1,600	233,790,200
6/12/2017	$ 0.652	$ 0.690	$ 0.640	$ 0.690	$ 0.690	143,500	233,933,700
6/13/2017	$ 0.670	$ 0.690	$ 0.670	$ 0.685	$ 0.685	13,800	233,947,500
6/14/2017	$ 0.675	$ 0.690	$ 0.670	$ 0.680	$ 0.680	21,100	233,968,600
6/15/2017	$ 0.670	$ 0.670	$ 0.670	$ 0.670	$ 0.670	1,500	233,970,100
6/16/2017	$ 0.670	$ 0.685	$ 0.650	$ 0.680	$ 0.680	15,800	233,985,900
6/19/2017	$ 0.670	$ 0.670	$ 0.670	$ 0.670	$ 0.670	3,600	233,989,500
6/20/2017	$ 0.670	$ 0.680	$ 0.650	$ 0.680	$ 0.680	46,100	234,035,600
6/21/2017	$ 0.670	$ 0.680	$ 0.670	$ 0.676	$ 0.676	34,700	234,070,300
6/22/2017	$ 0.640	$ 0.660	$ 0.640	$ 0.640	$ 0.640	6,200	234,076,500
6/23/2017	$ 0.640	$ 0.650	$ 0.640	$ 0.640	$ 0.640	2,000	234,078,500
6/26/2017	$ 0.640	$ 0.650	$ 0.600	$ 0.640	$ 0.640	11,300	234,089,800
6/27/2017	$ 0.550	$ 0.650	$ 0.476	$ 0.650	$ 0.650	103,600	234,193,400
6/28/2017	$ 0.600	$ 0.630	$ 0.560	$ 0.560	$ 0.560	8,200	234,201,600
6/29/2017	$ 0.560	$ 0.630	$ 0.530	$ 0.600	$ 0.600	45,200	234,246,800

6/30/2017	$ 0.600	$ 0.600	$ 0.600	$ 0.600	$ 0.600	5,200	234,252,000
7/3/2017	$ 0.600	$ 0.600	$ 0.600	$ 0.600	$ 0.600	300	234,252,300
7/5/2017	$ 0.600	$ 0.607	$ 0.600	$ 0.607	$ 0.607	600	234,252,900
7/6/2017	$ 0.600	$ 0.610	$ 0.600	$ 0.610	$ 0.610	4,500	234,257,400
7/7/2017	$ 0.600	$ 0.630	$ 0.600	$ 0.630	$ 0.630	32,900	234,290,300
7/10/2017	$ 0.620	$ 0.630	$ 0.600	$ 0.620	$ 0.620	126,100	234,416,400
7/11/2017	$ 0.600	$ 0.600	$ 0.600	$ 0.600	$ 0.600	200	234,416,600
7/12/2017	$ 0.610	$ 0.650	$ 0.600	$ 0.630	$ 0.630	165,100	234,581,700
7/13/2017	$ 0.650	$ 0.650	$ 0.505	$ 0.550	$ 0.550	23,700	234,605,400
7/14/2017	$ 0.550	$ 0.600	$ 0.510	$ 0.600	$ 0.600	9,500	234,614,900
7/17/2017	$ 0.515	$ 0.600	$ 0.515	$ 0.600	$ 0.600	1,700	234,616,600
7/18/2017	$ 0.600	$ 0.600	$ 0.530	$ 0.600	$ 0.600	12,800	234,629,400
7/19/2017	$ 0.550	$ 0.600	$ 0.550	$ 0.550	$ 0.550	4,800	234,634,200
7/20/2017	$ 0.600	$ 0.610	$ 0.530	$ 0.560	$ 0.560	2,073,700	236,707,900
7/21/2017	$ 0.560	$ 0.600	$ 0.560	$ 0.600	$ 0.600	4,129,000	240,836,900
7/24/2017	$ 0.600	$ 0.620	$ 0.600	$ 0.600	$ 0.600	11,500	240,848,400
7/25/2017	$ 0.600	$ 0.640	$ 0.595	$ 0.600	$ 0.600	4,977,500	245,825,900
7/26/2017	$ 0.600	$ 0.620	$ 0.600	$ 0.620	$ 0.620	23,200	245,849,100
7/27/2017	$ 0.600	$ 0.610	$ 0.600	$ 0.610	$ 0.610	2,410,400	248,259,500
7/28/2017	$ 0.630	$ 0.640	$ 0.600	$ 0.640	$ 0.640	723,600	248,983,100
7/31/2017	$ 0.620	$ 0.620	$ 0.620	$ 0.620	$ 0.620	1,000	248,984,100
8/1/2017	$ 0.610	$ 0.610	$ 0.610	$ 0.610	$ 0.610	8,200	248,992,300
8/2/2017	$ 0.618	$ 0.618	$ 0.610	$ 0.610	$ 0.610	15,100	249,007,400
8/3/2017	$ 0.610	$ 0.617	$ 0.610	$ 0.616	$ 0.616	5,500	249,012,900
8/4/2017	$ 0.640	$ 0.640	$ 0.610	$ 0.610	$ 0.610	110,100	249,123,000
8/7/2017	$ 0.620	$ 0.620	$ 0.610	$ 0.610	$ 0.610	10,100	249,133,100
8/8/2017	$ 0.610	$ 0.620	$ 0.610	$ 0.614	$ 0.614	42,700	249,175,800
8/9/2017	$ 0.610	$ 0.610	$ 0.560	$ 0.610	$ 0.610	16,900	249,192,700
8/10/2017	$ 0.613	$ 0.613	$ 0.610	$ 0.610	$ 0.610	3,400	249,196,100
8/11/2017	$ 0.610	$ 0.610	$ 0.610	$ 0.610	$ 0.610	4,100	249,200,200
8/14/2017	$ 0.610	$ 0.630	$ 0.610	$ 0.614	$ 0.614	22,900	249,223,100
8/15/2017	$ 0.610	$ 0.630	$ 0.610	$ 0.610	$ 0.610	10,100	249,233,200
8/16/2017	$ 0.610	$ 0.630	$ 0.610	$ 0.630	$ 0.630	14,000	249,247,200
8/17/2017	$ 0.610	$ 0.630	$ 0.610	$ 0.630	$ 0.630	5,200	249,252,400
8/18/2017	$ 0.610	$ 0.610	$ 0.610	$ 0.610	$ 0.610	10,800	249,263,200
8/21/2017	$ 0.610	$ 0.610	$ 0.610	$ 0.610	$ 0.610	800	249,264,000
8/22/2017	$ 0.610	$ 0.620	$ 0.610	$ 0.620	$ 0.620	18,400	249,282,400
8/23/2017	$ 0.620	$ 0.630	$ 0.620	$ 0.620	$ 0.620	79,500	249,361,900
8/24/2017	$ 0.620	$ 0.630	$ 0.620	$ 0.630	$ 0.630	51,700	249,413,600
8/25/2017	$ 0.630	$ 0.640	$ 0.630	$ 0.630	$ 0.630	52,900	249,466,500
8/28/2017	$ 0.620	$ 0.625	$ 0.620	$ 0.620	$ 0.620	600	249,467,100
8/29/2017	$ 0.620	$ 0.630	$ 0.620	$ 0.625	$ 0.625	442,000	249,909,100
8/30/2017	$ 0.625	$ 0.630	$ 0.620	$ 0.625	$ 0.625	48,900	249,958,000
8/31/2017	$ 0.625	$ 0.630	$ 0.620	$ 0.620	$ 0.620	46,500	250,004,500
9/1/2017	$ 0.620	$ 0.650	$ 0.620	$ 0.640	$ 0.640	129,200	250,133,700
9/5/2017	$ 0.643	$ 0.643	$ 0.640	$ 0.640	$ 0.640	5,900	250,139,600
9/6/2017	$ 0.638	$ 0.650	$ 0.630	$ 0.650	$ 0.650	25,900	250,165,500

9/7/2017	$ 0.640	$ 0.640	$ 0.640	$ 0.640	$ 0.640	11,200	250,176,700
9/8/2017	$ 0.640	$ 0.660	$ 0.640	$ 0.655	$ 0.655	13,700	250,190,400
9/11/2017	$ 0.670	$ 0.670	$ 0.650	$ 0.670	$ 0.670	14,400	250,204,800
9/12/2017	$ 0.680	$ 0.680	$ 0.650	$ 0.650	$ 0.650	12,800	250,217,600
9/13/2017	$ 0.650	$ 0.650	$ 0.650	$ 0.650	$ 0.650	2,800	250,220,400
9/14/2017	$ 0.650	$ 0.680	$ 0.650	$ 0.665	$ 0.665	8,400	250,228,800
9/15/2017	$ 0.665	$ 0.720	$ 0.665	$ 0.720	$ 0.720	1,044,900	251,273,700
9/18/2017	$ 0.695	$ 0.745	$ 0.695	$ 0.730	$ 0.730	233,100	251,506,800
9/19/2017	$ 0.730	$ 0.730	$ 0.730	$ 0.730	$ 0.730	100,600	251,607,400
9/20/2017	$ 0.730	$ 0.731	$ 0.730	$ 0.730	$ 0.730	74,700	251,682,100
9/21/2017	$ 0.730	$ 0.731	$ 0.722	$ 0.722	$ 0.722	4,300	251,686,400
9/22/2017	$ 0.722	$ 0.722	$ 0.702	$ 0.702	$ 0.702	29,100	251,715,500
9/25/2017	$ 0.702	$ 0.702	$ 0.702	$ 0.702	$ 0.702	3,300	251,718,800
9/26/2017	$ 0.705	$ 0.705	$ 0.700	$ 0.700	$ 0.700	8,000	251,726,800
9/27/2017	$ 0.700	$ 0.700	$ 0.680	$ 0.680	$ 0.680	3,800	251,730,600
9/28/2017	$ 0.680	$ 0.680	$ 0.680	$ 0.680	$ 0.680	1,200	251,731,800
9/29/2017	$ 0.680	$ 0.685	$ 0.660	$ 0.685	$ 0.685	56,700	251,788,500
10/2/2017	$ 0.685	$ 0.685	$ 0.685	$ 0.685	$ 0.685	1,500	251,790,000
10/3/2017	$ 0.685	$ 0.685	$ 0.685	$ 0.685	$ 0.685	8,600	251,798,600
10/4/2017	$ 0.685	$ 0.685	$ 0.685	$ 0.685	$ 0.685	2,000	251,800,600

EXHIBIT C

PSGLQ US $ ↓ .7018 -- K.6995 / .72K 10 x 20

At 12:47 d Vol 3,300 O .7018V H .7018V L .7018V Val 2315.94

PSGLQ US Equity — Security Ownership

OLD PSG WIND-DOWN LTD — CUSIP 68020910

1) Current | 2) Historical | 3) Matrix | 4) Ownership Summary | 5) Insider Transactions | 6) Options | 7) Debt

Search Name: All Holders, Sorted by Size — Save Search — 22) Delete Search — Refine Search

Text Search — Holder Group: All Holders — Allocate Multi-Managed

Color Legend — Last four quarters as of 2016 Q1

	Holder Name	Portfolio Name	2015 Q2	2015 Q3	2015 Q4	2016 Q1	Position
1.	SAGARD CAPITAL PAR	SAGARD CAPITAL P			951,289	6,862,688	0
2.	BLACKROCK		2,019,775	2,695,741	3,270,122	3,552,503	0
3.	WELLINGTON MANAGEM	WELLINGTON MANAG	2,419,519	3,585,280	6,016,849	2,703,914	0
4.	COLISEUM CAP MGMT	COLISEUM CAPITAL				2,235,843	0
5.	ROYAL BANK OF CANA		2,063,404	2,061,130	2,113,249	1,931,300	0
6.	BANK OF NOVA SCOTI		1,428,578	1,667,495	1,684,020	1,311,061	0
7.	FIERA CAPITAL CORPO	FIERA CAPITAL COR	3,329,733	3,686,991	3,048,736	1,110,126	0
8.	PRUDENTIAL FINANCI		847,700	847,700	1,039,734	1,039,734	0
9.	SKYLANDS CAPITAL LL	SKYLANDS CAPITAL	386,250	415,550	579,450	1,018,620	0
10.	WEISS MULTI-STRATE	Multiple Portfolios			328,128	1,000,000	2,127
11.	OTTER CREEK ADVISO	OTTER CREEK ADVI	170,000	170,000	491,889	915,310	0
12.	MORGAN STANLEY		371,165	160,901	369,284	834,892	0
13.	CANADIAN IMPERIAL B		31,506	32,219	31,911	795,717	0
14.	RMB CAPITAL MANAGE	RMB CAPITAL MANA		115,000	515,000	765,000	0
15.	STATE STREET CORP		536,267	687,714	718,422	714,366	0
16.	NETOLS ASSET MANAG	NETOLS ASSET MAN		332,683	548,665	617,691	0
17.	EMERALD ACQUISITIO	EMERALD ACQUISIT	289,751	496,332	613,004	543,597	0
18.	NORTHERN TRUST COR	NORTHERN TRUST C	417,327	567,210	444,277	507,678	0
19.	KENNEDY CAPITAL MA	KENNEDY CAPITAL		109,400	249,378	492,209	0

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EXHIBIT D

PSGLQ US $ ↓ .7018 -- K.6995 / .72K 10 x 20
At 12:47 d Vol 3,300 O .7018V H .7018V L .7018V Val 2315.94

PSGLQ US Equity | 25) Export | Settings | Security Ownership

OLD PSG WIND-DOWN LTD CUSIP 68020910

1) Current | 2) Historical | 3) Matrix | 4) Ownership Summary | 5) Insider Transactions | 6) Options | 7) Debt

Search Name: All Holders, Sorted by Size | 21) Save Search | 22) Delete Search | Refine Search
Text Search | Holder Group: All Holders | Allocate Multi-Managed
Color Legend | Shrs Out 45.9M | % Out 2.16 | Float/Shrs Out 100.00 | SI % Out 0.55

	Holder Name	Portfolio Name	Source	Opt	Position	% Out	Latest Chg	File Dt
			All	All				
1.	METROPOLITAN COLLECTIVE IN	Multiple Portfolios	MF-AGG		247,925	0.54	-101,589	03/31/17
2.	BRITISH COLUMBIA INVESTME	Multiple Portfolios	MF-AGG		189,045	0.41	0	03/31/16
3.	CATERPILLAR INC	Multiple Portfolios	MF-AGG		130,846	0.29	0	12/31/15
4.	TEXTRON INC	Multiple Portfolios	MF-AGG		107,431	0.23	0	12/30/15
5.	THE GOLDMAN SACHS 401K PL	Multiple Portfolios	MF-AGG		81,376	0.18	0	12/31/15
6.	LOCKHEED MARTIN MASTER CO	Multiple Portfolios	MF-AGG		65,170	0.14	0	12/31/15
7.	IA CLARINGTON INVESTMENTS	Multiple Portfolios	MF-AGG		55,100	0.12	0	03/31/16
8.	CENTURYLINK INC	Multiple Portfolios	MF-AGG		29,212	0.06	0	12/31/15
9.	CI INVESTMENTS INC		ULT-AGG		24,250	0.05	24,250	12/30/16
10.	CBS CORPORATION	Multiple Portfolios	MF-AGG		20,800	0.05	0	12/31/15
11.	DUKE ENERGY CORPORATION	Multiple Portfolios	MF-AGG		20,270	0.04	0	12/31/15
12.	CONSOLIDATED EDISON NY PE	Multiple Portfolios	MF-AGG		10,074	0.02	0	12/31/15
13.	HEINZ ENDOWMENTS/THE	Multiple Portfolios	MF-AGG		5,300	0.01	0	12/31/15
14.	WEISS MULTI-STRATEGY ADVI	Multiple Portfolios	MF-AGG		2,127	0.00	0	06/30/17
15.	TAYLOR WEALTH MGMT PARTNE	TAYLOR WEALTH MANAGE	13F		250	0.00	0	06/30/17
16.	BANK OF NOVA SCOTIA		ULT-AGG		0	0.00	-1,185,320	06/30/17
17.	SKYLANDS CAPITAL LLC	SKYLANDS CAPITAL LLC	13F		0	0.00	-256,250	06/30/17
18.	ALPHAMARK ADVISORS LLC	ALPHAMARK ADVISORS L	13F		0	0.00	-2,500	06/30/17
19.	FEDERATED INVESTORS INC		ULT-AGG		0	0.00	-130,289	06/30/17

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TAB 5

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) **Proposed Hearing Date: October 16, 2017 at 10:00 a.m. (ET)** **Proposed Response Deadline: October 11, 2017 at 4:00 p.m. (ET)**

NOTICE OF SECURITIES PLAINTIFFS' CROSS-MOTION FOR APPLICATION OF BANKRUPTCY RULE 7023 TO CLASS CLAIM

TO: (I) THE DEBTORS; (II) THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS; (III) THE UNITED STATES TRUSTEE; and (IV) ALL PARTIES REQUESTING NOTICE PURSUANT TO BANKRUPTCY RULE 2002

PLEASE TAKE NOTICE that 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"), for itself and on behalf of the class that it represents in the Securities Litigation, has filed the attached *Securities Plaintiffs' Cross-Motion for Application of Bankruptcy Rule 7023 to Class Claim* (the "Cross-Motion").

PLEASE TAKE FURTHER NOTICE that contemporaneously with the Cross-Motion, Lead Plaintiff is filing a motion to shorten time with respect to the Cross-Motion (the "Motion to Shorten") requesting that the Cross-Motion be heard at the same time as 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)* (as amended on September 16, 2017, the "Class Claim Objection") [D.I. 1338, 1340] because the basis for the relief requested in the Cross-Motion is identical to the bases for Lead Plaintiff's opposition to the Class Claim Objection. Lead Plaintiff

[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 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. (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., respectively). The Debtors' mailing address is 666 Burrard Street, Suite 1700, Vancouver, British Columbia, Canada, V6C 2X8.

will file an amended notice with respect to the Cross-Motion in the event the Court denies the Motion to Shorten.

PLEASE TAKE NOTICE that if the Court grants the Motion to Shorten, any objections to the Cross-Motion must be filed on or before **October 11, 2017 at 4:00 p.m. (ET)** (the "Objection Deadline") with the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801. At the same time, you must serve a copy of the objection upon the undersigned counsel to Lead Plaintiff so as to be received on or before the Objection Deadline.

PLEASE TAKE FURTHER NOTICE THAT IF THE COURT GRANTS THE MOTION TO SHORTEN, A HEARING TO CONSIDER THE CROSS-MOTION WILL BE HELD ON **OCTOBER 16, 2017 AT 10:00 A.M. (ET)** BEFORE THE HONORABLE KEVIN J. CAREY AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 NORTH MARKET STREET, FIFTH FLOOR, COURTROOM NO. 5, WILMINGTON, DELAWARE 19801.

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

Dated: October 5, 2017
Wilmington, Delaware

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Lead Counsel to Lead Plaintiff and the Class

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) **Proposed[2] Hearing Date: October 16, 2017 at 10:00 a.m. (ET)** **Proposed Response Deadline: October 11, 2017 at 4:00 p.m. (ET)**

SECURITIES PLAINTIFFS' CROSS-MOTION FOR APPLICATION OF BANKRUPTCY RULE 7023 TO CLASS CLAIM

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"), for itself and on behalf of the putative class of purchasers (the "Class") of the common stock of Performance Sports Group Ltd., now known as Old PSG Wind-down Ltd., hereby cross-moves for entry of an order, substantially in the form submitted herewith, (a) directing that Rule 7023 of the Federal Rules of Bankruptcy Procedure ("Rule 7023") applies to the claim filed by Lead Plaintiff on behalf of the

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 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. (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., respectively). The Debtors' mailing address is 666 Burrard Street, Suite 1700, Vancouver, British Columbia, Canada, V6C 2X8.

2 Contemporaneously herewith, Lead Plaintiff is filing a motion to shorten time (the "Motion to Shorten") with respect to this Cross-Motion, requesting that the Cross-Motion be heard at the same time as the Official Committee of Equity Security Holders' objection to the Class Claim (as amended on September 16, 2017, the "Class Claim Objection") [D.I. 1338, 1340] because the basis for the relief requested in the Cross-Motion is identical to the bases for Lead Plaintiff's opposition to the Class Claim Objection. The Motion to Shorten requests that the deadline for objections to the Cross-Motion be set for October 11, 2017 at 4:00 p.m. (ET), the deadline for filing replies in support of the Class Claim Objection.

Class (the "Class Claim") [Claim No. 444] and (b) establishing a briefing schedule with respect to certification of the Class for purposes of the Class Claim pursuant to Rule 23 of the Federal Rules of Civil Procedure ("FRCP 23"), made applicable by Rule 7023, for the reasons set forth in the *Securities Plaintiffs' Brief (I) In Opposition to Objection of Equity Committee to Class Claim and (II) In Support of Cross-Motion for Application of Fed. R. Bankr. P. 7023 to Class Claim* (the "Brief") filed contemporaneously herewith, and respectfully represents as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over the Cross-Motion and the relief requested herein pursuant to 28 U.S.C. §§ 157 and 1334. The Cross-Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

RELIEF REQUESTED BY THE CROSS-MOTION AND BASIS THEREFOR

2. By the Cross-Motion, Lead Plaintiff respectfully requests, for the reasons set forth in the Brief, that the Court enter an order (a) directing that Rule 7023 applies to the Class Claim and (b) establishing a briefing schedule with respect to certification of the Class for purposes of the Class Claim pursuant to FRCP 23.

[*signature page follows*]

WHEREFORE, Lead Plaintiff respectfully requests that the Court grant the Cross-Motion.

Dated: October 5, 2017
Wilmington, Delaware

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Lead Counsel to Lead Plaintiff and the Class

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) **Re: Docket No. ___**

ORDER (I) DENYING OBJECTION OF EQUITY COMMITTEE TO CLASS CLAIM AND (II) GRANTING CROSS-MOTION FOR APPLICATION OF BANKRUPTCY RULE 7023 TO CLASS CLAIM

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)* (as amended on September 16, 2017, the "Class Claim Objection") [D.I. 1338, 1340] filed by the Official Committee of Equity Security Holders (the "Equity Committee") appointed in the chapter 11 cases (the "Chapter 11 Cases") of the above-captioned debtors in possession (the "Debtors") and (ii) cross-motion (the "Cross-Motion")[2] for an order applying Rule 7023 of the Federal Rules of Bankruptcy Procedure and thus, Rule 23 of the Federal Rules of Civil

---

[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 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. (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., respectively). The Debtors' mailing address is 666 Burrard Street, Suite 1700, Vancouver, British Columbia, Canada, V6C 2X8.

[2] Capitalized terms shall have the meanings ascribed to them in the Cross-Motion, unless defined otherwise herein.

Procedure to the claim (the "Class Claim") [Claim No. 444] filed 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, on behalf of itself and the putative class of purchasers of the common stock of Performance Sports Group Ltd., now known as Old PSG Wind-down Ltd. (the "Class"); and it appearing that the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409; adequate notice has been given and no other notice need be given; the Court considered the pleadings and argument of counsel; and good cause exists for the relief requested;

IT IS ORDERED that:

1. The Class Claim Objection be and hereby is DENIED.

2. The Cross-Motion be and hereby is GRANTED as set forth herein.

3. Pursuant to Fed. R. Bankr. P. 7023 and Fed. R. Bankr. P. 9014(c), Fed. R. Civ. P. 23 is applicable to the Class Claim.

4. Counsel for the Debtors, Lead Plaintiff, and the Equity Committee (the "Parties") shall meet and confer on an appropriate briefing schedule with respect to certification of the Class for purposes of the Class Claim under Fed. R. Civ. P. 23, provided that if the Parties cannot reach agreement on a consensual schedule, any of the Parties may seek entry of an order implementing an appropriate schedule.

Dated: October ____, 2017

____
HONORABLE KEVIN J CAREY
UNITED STATES BANKRUPTCY JUDGE

TAB 6

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. Docket Nos. 1357 & 1363**

REPLY OF THE DEBTORS IN FURTHER SUPPORT OF THE DEBTORS' MOTION FOR AN ORDER GRANTING EFFECT TO AND ENFORCING THE CLAIMS RESOLUTION ORDER

The Debtors, by and through their undersigned counsel, hereby file this reply (the "Reply") to objection of the Plumbers & Pipefitters National Pension Fund, on behalf of itself as lead plaintiff and on behalf of the Putative Class (the "Lead Plaintiff"), to the Debtors' motion for an order granting effect to and enforcing the Claims Resolution Order entered by the Ontario Superior Court of Justice (Commercial List).[2] The Debtors respectfully state as follows:

BACKGROUND

1. On August 24, 2017, the Debtors filed with the Ontario Superior Court of Justice (Commercial List) (the "Canadian Court") and served on the appropriate parties in

[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 666 Burrard Street, Suite 1700, Vancouver, British Columbia, Canada, V6C 2X8.

[2] *Securities Plaintiffs' Objection to Debtors' Motion, Pursuant to Section 105(a) of the Bankruptcy Code, for an Order Granting Effect to and Enforcing Claims Resolution Order* [D.I. 1363] (the "Claims Resolution Order Objection").

interest[3] the Debtors' motion for entry of the Claims Resolution Order. On September 1, 2017, the Ontario Superior Court of Justice entered the Claims Resolution Order.

2. On September 12, 2017, the Debtors filed a motion before this Court for an order granting effect to and enforcing the Claims Resolution Order (the "Recognition Motion"). As explained in the Recognition Motion, the Claims Resolution Order governs the allowance, reconciliation or disallowance of Canadian Claims and certain Cross-Border Claims (each as defined in the Claims Resolution Order).

3. On September 15, 2017, the Equity Committee filed an objection to the Class Claim before this Court, which objection was amended on September 16, 2017 (the "U.S. Class Claim Objection"). On October 5, 2017, the Debtors filed a joinder in support of the U.S. Class Claim Objection.

4. On September 25, 2017, the Debtors filed an objection to the Class Claim before the Canadian Court (the "Canadian Class Claim Objection").

5. The U.S. Class Claim Objection and the Canadian Class Claim Objection are scheduled to be heard by this Court and the Canadian Court, respectively, during a joint hearing on October 16, 2017.

REPLY

6. The Debtors and their stakeholders have been consistent in seeking orders from both this Court and the Canadian Court at joint hearings with respect to the major matters that have arisen in these cases, including approval of post-petition financing and other first-day

[3] Contrary to the allegations of the Lead Plaintiff, Michael Etkin and Andrew Behlmann, bankruptcy counsel to the Lead Plaintiff, were served by e-mail with the Debtors' motion filed with the Canadian Court for entry of the Claims Resolution Order on August 24, 2017 at the same time as other stakeholders were served with the motion. [See Affidavit of Service of Lee Nicholson sworn August 29, 2017]. In addition to customary e-mail service, hard copies were sent to counsel to the Lead Plaintiff. The Canadian Court validated service of the Debtors' motion and declared the motion properly returnable on September 1, 2017. See Claims Resolution Order ¶¶ 1.

relief, approval of the bid procedures and the sale of substantially all of the Debtors' assets. This Court and the Canadian Court have each been asked to rule concurrently on all major matters because, quite simply, the Debtors are before both Courts in dual, plenary proceedings. The adjudication of all key matters through joint hearings before both this Court and the Canadian Court avoids any perception of jurisdictional gamesmanship by the Debtors. Consistent with past practice, the Debtors are seeking concurrent rulings from this Court and the Canadian Court with respect to yet another critical matter – whether the Putative Class Claim should be disallowed, or allowed to proceed and substantially delay plan distributions to the extreme prejudice of equity holders.

7. Through its objection to the Claims Resolution Order, the Lead Plaintiff complains that the Debtors are using the Claims Resolution Order to forum shop the pending objections seeking to disallow the Putative Class Claim and attempting to imbue the Canadian Court with subject matter and personal jurisdiction that, in the Putative Class' view, it does not have.[4]

8. Citing to paragraph 13 of the Claims Resolution Order, the Putative Class asserts that the Claims Resolution Order provides "a basis to attempt to adjudicate the U.S.-only Class Claim in the Ontario Court" and confers jurisdiction on the Canadian Court to adjudicate the Class Claim that it does not have.[5] Accusing the Debtors of "jurisdictional chicanery", the Putative Class asserts that (a) the Debtors are required to immediately withdraw the Canadian Claims Objection and (b) recognition of the Claims Resolution Order must be denied unless it is

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[4] *See* Disclosure Statement Objection ¶ 18; Claims Resolution Order Objection ¶¶ 10-12.

[5] Claims Resolution Order Objection ¶ 15.

modified to expressly provide that this Court shall retain sole and exclusive jurisdiction to adjudicate the Class Claim.[6]

9. The Putative Class is wrong. Paragraph 13 of the Claims Resolution Order provides that the Debtors, Equity Committee, Monitor and liquidation trustee "may determine whether the Securities Law Claims [which term encompasses the Class Claim] 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." Nowhere in this paragraph or elsewhere in the Claims Resolution Order does it say that the Canadian Court shall have subject matter jurisdiction over the Class Claim or personal jurisdiction over the Putative Class. Rather, the language simply gives the Debtors and their stakeholders the ability to select the court or courts before which they will proceed with claims objections, without determining the question of whether that court has jurisdiction to hear the objection.

10. Using the veil of an objection to recognition of the Claims Resolution Order, the Lead Plaintiff's objection asks *this Court* to make a ruling in these dual, plenary proceedings establishing the scope and application of the *Canadian Court's* jurisdiction over adjudication of the Class Claim.[7] But the issue of the Canadian Court's jurisdiction over the Class Claim, or any other claim, is within the exclusive province of the Canadian Court. To be clear, the Claims Resolution Order, and recognition of the Claims Resolution Order, does not put either this Court or the Canadian Court in the position of deciding the other court's jurisdiction over claims. Instead, the Claims Resolution Order leaves the question of whether the Canadian

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[6] Claims Resolution Order Objection ¶ 16; *see also* Disclosure Statement Objection ¶ 20.

[7] Claims Resolution Order Objection ¶ 16; *see also* Disclosure Statement Objection ¶ 20.

Court has jurisdiction to hear claims, including the Class Claim, to the sound discretion of the Canadian Court.

11. The Debtors and the Equity Committee have chosen to litigate the Class Claim Objection before both Courts at a joint hearing. This approach to seeking disallowance of the Class Claim is hardly an attempt at forum shopping. Accordingly, the Court should decline the Lead Plaintiff's request to direct the Debtors to withdraw their objection to the Class Claim before the Canadian Court, and overrule the Lead Plaintiff's objections to the Claims Resolution Order.

12. Ultimately the arguments asserted by the Lead Plaintiff are irrelevant to the question of whether this Court should recognize the Claims Resolution Order. The Claims Resolution Order is consistent with standard claims resolution orders routinely entered by Canadian courts and routinely recognized and given effect by U.S. courts, and the Claims Resolution Order should be recognized by this Court.

WHEREFORE, the Debtors respectfully request that this Court (i) overrule the Objection and enter an order approving the Recognition Motion; and (ii) grant such other relief as it deems just and proper.

Dated: October 12, 2017
Wilmington, Delaware

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Co-Counsel to the Debtors and Debtors in Possession

TAB 7

**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 12, 2017 at 12:00 p.m. (ET)** **Ref Dkt. Nos. 1327, 1338, 1340, 1357, 1363, 1391, 1392, 1393, 1394, 1395**

OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS' (I) OBJECTION TO PUTATIVE CLASS' CROSS-MOTION FOR APPLICATION OF BANKRUPTCY RULE 7023 TO PUTATIVE CLASS CLAIM, AND (II) REPLY IN FURTHER SUPPORT OF OBJECTION TO PUTATIVE CLASS CLAIM

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 files this: (i) objection to the *Securities Plaintiffs' Cross-Motion for Application of Bankruptcy Rule 7023 to Class Claim* [D.I. 1393], and (ii) reply in further support 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)* (the "**Putative Class**

[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.

Claim Objection") [D.I. 1338, 1340].[2] In support hereof, the Official Equity Committee states as follows:

PRELIMINARY STATEMENT

1. Despite the rhetoric in the Putative Class' recently-filed pleadings,[3] disallowance of the contingent and unliquidated Putative Class Claim turns on uncontroverted legal principles and the application of those legal principles to uncontroverted facts. First (as the Putative Class concedes), there is no inherent right to file a class proof of claim in a U.S. (or Canadian) bankruptcy proceeding.[4] Second (as the Putative Class also concedes), the decision regarding whether to permit the filing of a class proof of claim is left to the sound discretion of the Bankruptcy Court.[5] Where, as here, proceeding with a putative class proof of claim would not benefit the estates, but rather would materially impede implementation of and distributions under a Chapter 11 plan, the Bankruptcy Court should exercise its discretion and disallow the putative class claim.

2. Throughout these Chapter 11 cases, the uncertified Putative Class has chosen not to take the steps necessary to assert its alleged rights in respect of the Putative Class Claim. The Putative Class never sought class certification in these Chapter 11 cases (or the underlying

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[2] Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Putative Class Claim Objection.

[3] *See Securities Plaintiffs' Objection to Approval of Disclosure Statement with Respect to Joint Chapter 11 Plan of Liquidation of Old BPSUSH Inc. and Its Affiliated Debtors* [D.I. 1357] (the "**Disclosure Statement Obj.**"); *Securities Plaintiffs' Objection to Debtors' Motion, Pursuant to Section 105(a) of the Bankruptcy Code, for an Order Granting Effect to and Enforcing Claims Resolution Order* [D.I. 1363]; *Lead Plaintiff's Brief (I) in Opposition to Objection of Equity Committee to Class Claim and (II) in Support of Cross-Motion for Application of Fed. R. Bankr. P. 7023 to Class Claim* [D.I. 1392, 1395] (the "**Individual Claimant's Obj.**"); *Securities Plaintiffs' Cross-Motion for Application of Bankruptcy Rule 7023 to Class Claim* [D.I. 1393]; and *Lead Plaintiff's Motion to Shorten Notice Period Application to and Expedite Consideration of Cross-Motion for Application of Bankruptcy Rule 7023 to Class Claim* [D.I. 1394].

[4] Individual Claimant's Obj. ¶ 37.

[5] *Id*.

District Court proceeding). Indeed, the Putative Class has ***still*** not sought certification of the Putative Class (here or in the District Court). Unless and until the Putative Class is ever certified, the Putative Class Claim is a facially deficient claim. Moreover, no request for class certification appears to be forthcoming, likely because the Putative Class is nowhere near being able to carry its substantial burden respecting class certification. Nor did the Putative Class file a motion seeking leave to file the Putative Class Claim prior to the Bar Date or timely *nunc pro tunc* relief after the Bar Date.[6] Rather, the Putative Class has only recently filed an untimely and procedurally deficient pleading styled a "cross-motion," which neither the Federal Rules of Bankruptcy Procedure nor the Local Rules for the United States Bankruptcy Court for the District of Delaware permit in contested matters. It is unclear what the Putative Class is seeking through its "cross-motion," which does not seek certification of the Putative Class, but rather appears to seek entry of a scheduling order regarding a certification motion that the Putative Class has still not filed and untimely authorization to file the Putative Class Claim under FRBP 7023. On top of this, the Putative Class seeks expedited relief on its "cross-motion," notwithstanding that it has had almost 1 year since the Petition Date and more than 8 months since the Bar Date to seek class certification in these cases and authorization to file the Putative Class Claim. The Putative Class' failures and inaction throughout these cases are alone sufficient grounds to disallow the Putative Class Claim, and the Court should deny the "cross-motion."

3. It bears emphasizing that, as the Putative Class acknowledges, the Putative Class has not been certified, whether by the Bankruptcy Court, District Court, or any other court of

[6] It should also be noted that the Individual Claimant did not file a motion in the District Court proceeding to seek to modify the order appointing the Individual Claimant the lead plaintiff to permit the Individual Claimant to represent the Putative Class in the bankruptcy cases.

competent jurisdiction. No party in interest knows whether the Putative Class is certifiable, and issues in respect of class certification do not appear to have progressed in the District Court action. Permitting the Putative Class Claim to proceed would likely materially delay the Debtors' bankruptcy cases — turning a successful case outcome into a potentially massive resource drain — for an uncertified Putative Class that may never be certified.

4. The Debtors and other stakeholders *(e.g.*, the Debtors' equity holders) would be substantially prejudiced if the Putative Class Claim were permitted to proceed. Permitting the contingent and unliquidated Putative Class Claim to proceed would result in the estates incurring substantial additional costs (including costs in respect of litigating class certification and, if necessary, the ultimate merits of the claims), and likely delay in the administration of the estates. Further, the Putative Class Claim would impair the Plan's current implementation and distribution architecture. The Putative Class' assertions that distributions to equity holders are "almost entirely (if not entirely) contingent on the outcome of litigation" and that application of FRBP 7023 to the Putative Class Claim would not delay distributions "one iota" are wrong.[7] Pursuant to the amended Disclosure Statement, the Debtors estimate that, after payment of (or reservation for) all allowed claims, they will have approximately $23 million – $27 million in "Shareholder Distributable Value" (*i.e.*, cash on hand exclusive of potential proceeds of any Retained Causes of Action) to distribute to holders of equity interests ($0.52 – $0.60 per share for the approximately 45 million PSG shares issued and outstanding).[8] The Plan architecture provides for the distribution of all available estate cash (after the payment of allowed claims and funding of reserves and certain post-confirmation administrative expenses) to the Debtors' equity

[7] Disclosure Statement Obj. ¶ 5; Individual Claimant's Obj. ¶ 4.

[8] *See* Disclosure Statement [D.I. 1411], Art. IX.A.1.

holders as soon as reasonably practicable after the Plan effective date. But, preventing the expeditious distribution of such estate cash is the unliquidated Putative Class Claim, which the Putative Class concedes is subordinated to the level of the Debtors' stock pursuant to Bankruptcy Code Section 510(b).[9] It is unsettled how residual estate cash should be apportioned among the Debtors' 45 million shares of stock (which, theoretically, have no ceiling on their value entitlement) and a subordinated Section 510(b) claim such as the Putative Class Claim. And, the Debtors cannot establish a reasonable reserve for the Putative Class Claim (absent relief of the Court) due to the lack of any information quantifying claimed damages in the underlying suit or the proof of claim (and the Putative Class' failure to provide any additional information in this regard).

5. The Putative Class' response is to have the post-confirmation entities hold all otherwise distributable estate cash indefinitely while the Putative Class Claim wends its way through a costly and protracted adjudication process that, today, is in its infancy and, unless dismissed, will likely take many years to develop. Adjudication of putative class claims typically involves: (i) litigation in respect of a motion to dismiss; (ii) if the claim survives a motion to dismiss, discovery in respect of class certification; (iii) a motion for and trial on class certification under Federal Rule 23; (iv) if the class is certified, discovery as to the merits of the claim; (v) a trial on the merits; and (vi) a trial on damages. Besides the likely substantial cost to the estates (and, thus, reduction in value available for distribution to equity holders), proceeding in this manner is inappropriate given the Putative Class' decision not to participate in these cases, and would be self-serving insofar as it would potentially provide the Putative Class with substantial bargaining leverage over equity holders in respect of the release of the estates'

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9 *See* Individual Claimant Obj. ¶ 4.

anticipated substantial cash. It is noteworthy that, following extensive discussions with the Debtors and Official Equity Committee, the SEC recently withdrew the claim that it had filed in the Debtors' cases.[10] With all principal stakeholders in agreement, only the Putative Class Claim could impede the orderly and expeditious administration of the estates and distributions to equity holders.

6. The Putative Class has other sources of potential recovery in respect of the Putative Class Claim. The Putative Class' contention that the Plan will "hamper" its ability to pursue D&O coverage in the District Court action is wrong.[11] Nothing in the Plan will affect or impair in any way the Putative Class' ability to pursue its alleged claims (and D&O coverage, if applicable) against the individual defendants (*i.e.*, PSG's former CEO and interim CEO) in the District Court action. Rather, the Putative Class will be able to continue to proceed against the individual defendants in the District Court, where (to the extent that the Putative Class is certified and prevails on the merits) a recovery there might be obtained from substantial insurance coverage — approximately USD $55 million (CAD $70 million) in aggregate D&O coverage, plus approximately USD $20 million (CAD $25 million) in Side-A DIC insurance.[12]

7. The Official Equity Committee feels compelled to address certain of the allegations made by the Putative Class in its pleadings. First, the Plan is the product of an extensive, collaborative and transparent process among the Debtors, the Official Equity Committee, the Official Creditors' Committee, the Canadian Monitor, the SEC, the OSC, and

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10 *See In re Old PSG Wind-Down Ltd.*, Case No. 16-12381, D.I. 6.

11 *See* Individual Claimant Obj. ¶ 1.

12 *See Debtors' Motion for Order Pursuant to Sections 105(a), 363 and 364 of the Bankruptcy Code: (I) Authorizing (A) Payment of Prepetition Obligations Incurred in the Ordinary Course of Business in Connection with Insurance Programs, Including Payment of Policy Premiums, and (B) Continuation of Insurance Premium Financing Programs; and (II) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto* [D.I. 8], at Exhibit A.

many other interested stakeholders that took many months of painstaking effort to resolve myriad complex issues (including numerous U.S.–Canadian cross border, structural, and tax issues). The Putative Class' unsupported allegations of "secret" negotiations and "schemes" is contrary to the record in these cases.[13] In fact, counsel to the Official Equity Committee contacted counsel to the Putative Class on or about March 16th (just as Plan negotiations with the various interested stakeholders were beginning in earnest) to discuss the Putative Class Claim, but nothing productive came from that discussion.

8. Second, the Putative Class' allegation that the Official Equity Committee and Debtors are engaged in jurisdictional gamesmanship is wrong. As an initial matter, whether the Canadian Court has jurisdiction over the Putative Class Claim is an issue for the Canadian Court to decide.[14] The Putative Class Claim is asserted against the parent Debtor (the entity that issued PSG's stock), which is organized under the laws of British Columbia and has filed parallel CCAA proceedings in Canada. It is unclear what recovery could be obtained on the Putative Class Claim if the claim was not allowed in the CCAA proceedings, but was allowed in the U.S.

[13] Since the Section 363 sale closed in late February, the Debtors (and Monitor) filed numerous pleadings in which the Debtors stated that they were working towards formulating and preparing a Chapter 11 plan prior to the first iteration of the Plan being filed on August 9, 2017. *See, e.g., Debtors' Motion to Authorize Change of Case Caption*, filed March 22, 2017 [D.I. 933]; *Debtors' Third Motion for an Order, Pursuant to 11 U.S.C. § 365 and Fed. R. Bankr. P. 6006, Authorizing Rejection of Unexpired Leases of Nonresidential Real Property*, filed March 22, 2017 [D.I. 935]; *Debtors' Motion for an Order, Pursuant to 11 U.S.C. § 365 and Fed. R. Bankr. P. 6006, Authorizing the Rejection of Certain Executory Contracts*, filed March 22, 2017 [D.I. 936]; *Debtors' Motion, Pursuant to Sections 365, 501, 502, and 503 of the Bankruptcy Code and Bankruptcy Rules 2002, 3002 and 3003, for an Order (I) Authorizing the Debtors to Reject Employment-Related Agreements, Nunc Pro Tunc to February 27, 2017 and (II) (A) Establishing a Bar Date for the Filing of Proofs of Claim by Employees, Independent Contractors, and Temporary Workers and (B) Approving the Form and Manner of Notice Thereof*, filed March 22, 2017 [D.I. 939]; *Debtors' Objection to Notices of Intent to Purchase, Acquire, or Otherwise Accumulate an Equity Interest Filed by Stornoway Portfolio Management Inc.*, filed April 17, 2017 [D.I. 1014]; *Debtors' Second Motion for Entry of an Order, Pursuant to Section 1121(d) of the Bankruptcy Code, Extending the Exclusive Periods for the Filing of a Chapter 11 Plan and Solicitation of Acceptances Thereof*, filed May 24, 2017 [D.I. 1103]; *Notice of Filing of Seventh Report of the Monitor in the Canadian Proceedings*, filed April 7, 2017 [D.I. 933]; *Notice of Filing of Eighth Report of the Monitor in the Canadian Proceedings*, filed April 27, 2017 [D.I. 1041].

[14] As set forth in the Official Equity Committee's amended factum filed in the Canadian proceedings (a copy of which is attached hereto as **Exhibit A**), the Canadian Court does have such jurisdiction.

bankruptcy cases, particularly given that such claim would ultimately have to be paid from the assets of the Canadian parent. In order to avoid any potential for issues in this regard, the Official Equity Committee and the Debtors collectively determined that the Putative Class Claim Objection should be simultaneously put before both the U.S. and Canadian Courts so that each may make a fully informed decision in respect thereof. In any event, U.S. and Canadian law in respect of the Putative Class Claim substantially overlap, with both legal regimes militating against permitting the Putative Class Claim to proceed.[15]

9. Finally, the Putative Class' allegations regarding the Official Equity Committee's constituency and motives are baseless and irrelevant. The Official Equity Committee is a fiduciary of the Chapter 11 estates and advocates for the interests of all present equity holders.[16]

RELEVANT FACTUAL BACKGROUND

10. The factual background relevant to this pleading is set forth in the Official Equity Committee's Putative Class Claim Objection, which the Official Equity Committee fully incorporates herein by reference.

ARGUMENTS IN OBJECTION AND REPLY

I. The Court Should Disallow And Expunge The Putative Class Claim.

11. As the Putative Class concedes, there is no inherent right to file a class proof of claim in a U.S. (or Canadian) bankruptcy case.[17] The determination of whether to permit the

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[15] Further, the hearing on the Debtors' motion seeking recognition of the claims resolution order [D.I. 1326] is now scheduled concurrently with the hearing on the Putative Class Claim Objection, so the Putative Class' contention of alleged procedural impropriety in respect of the recognition motion is moot.

[16] In this regard, the Official Equity Committee notes that the Putative Class does not include all holders or former holders of PSG stock that acquired their stock during the Putative Class period, but only a subset of such holders/former holders that acquired their stock on the NYSE (*i.e.*, not including any holders/former holders that acquired their stock on the Toronto Stock Exchange).

[17] *In re Musicland Holding Corp.*, 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).

filing of a class proof of claim is left to the sound discretion of the court.[18] In exercising their discretion regarding whether to permit the filing of a class proof of claim in bankruptcy, courts in the U.S. (and Canada) have analyzed numerous factors, including: (i) whether the putative class acted diligently in the case; (ii) whether permitting the filing of a putative class proof of claim would prejudice other stakeholders, such as by delaying administration of the estate or increasing the expense to the estate; and (iii) whether disallowing the putative class proof of claim would materially prejudice the interests of putative class members or, instead, whether such interests are adequately protected by other means.[19]

A. The Putative Class Chose Not To Act In These Cases; The Putative Class Claim Should Be Disallowed.

12. Throughout these Chapter 11 cases, the uncertified Putative Class chose not to assert its purported rights or otherwise participate in these cases. The Putative Class had the burden of timely seeking authorization to file the Putative Class Claim and of timely seeking class certification and failed to satisfy those burdens.[20] Unless and until the Putative Class is ever certified, the Putative Class Claim is facially deficient because the Individual Claimant is not the authorized agent of the uncertified Putative Class members and, therefore, lacked the authority to file the Putative Class Claim.[21] Here, the Putative Class has still not filed a motion

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[18] *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.").

[19] *See In re Craft*, 321 B.R. 189, 190-91, 199 (N.D. Tex. 2005); *Ephedra* 329 B.R. at 4-5, 8-10.

[20] *See Craft*, 321 B.R. at 199 (stating that it is "the burden of the class representatives to raise the issue of class certification."); *In re Computer Learning Ctrs., Inc.*, 344 B.R. 79, 87 (Bankr.E.D.Va.2006) ("[T]he proponent of the class proof of claim must seek and must obtain application of Rule 7023. The proponent is the one who wants the court to enter an order. Without that order, Rule 7023 is not applicable to the proof of claim and a class proof of claim is improper.").

[21] *See Musicland*, 362 B.R. at 652 ("[I]f the court declines to apply Rule 23 to the proof of claim, the putative agent never obtains the requisite authority. Until certification, the claim is in limbo.") (internal citations omitted); *In*

seeking class certification. Other than lodging the Putative Class Claim (and filing one "limited objection" to the 363 sale "which focused on document preservation"[22]), the Putative Class has chosen to be absent throughout these proceedings. The Putative Class' "cross-motion," which the Putative Class filed last week, merely asks the Court for permission to file a class proof of claim under FRBP 7023 (eight months after the Putative Class Claim was filed) and to enter a scheduling order for a certification motion that the Putative Class has yet to file and which, according to its response, it may not be in a position to file for some time. The Putative Class' inaction throughout these cases is sufficient grounds for the Bankruptcy Court, in its discretion, to disallow the Putative Class Claim.[23]

13. The Putative Class makes several arguments regarding its failure to timely seek authority to file the Putative Class Claim and/or class certification. The Putative Class contends that "it is not at all clear that class certification was ripe" until after an objection to the Putative Class Claim was filed.[24] The Putative Class cites to the Eleventh Circuit's opinion in *In re Charter, Co.*, in which the court held that invocation of FRBP 7023 would not be ripe until an adversary proceeding or a contested matter were initiated.[25] However, in *Charter* and unlike here, <u>the debtors filed their objection to the class proof of claim two months after the class had</u>

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re American Reserve, 840 F.2d 487, 493 (7th Cir. 1988) ("Not every effort to represent a class will succeed; the representative is an agent only if the class is certified. Putative agents keep the case alive pending the decision on certification. If the bankruptcy judge denies the request to certify a class, then each creditor must file an individual proof of claim; the putative agent never obtains 'authorized agent' status.") (internal citations omitted); *see also In re Kaiser Group Int'l, Inc.*, 278 B.R. 58, 63 (Bankr. D. Del. 2002) (quoting *American Reserve*); *In re Chateaugay Corp.*, 104 B.R. 626, 630 (S.D.N.Y. 1989) (quoting *American Reserve*).

[22] *See* Feb. 6, 2017 Hr'g Tr. at 29:1-4 ("[W]e filed a limited objection, which focused on document preservation….").

[23] *See Ephedra*, 329 B.R. at 8-10; *Craft* 321 B.R. at 199.

[24] Individual Claimant Obj. ¶ 67.

[25] 876 F.2d 866, 868 (11th Cir. 1989).

already been certified in the underlying class action proceeding.[26] Further, the *Charter* court's "ripeness" analysis of FRBP 7023 has been rejected by numerous other courts, which have "taken the more practical view,"[27] given that: (a) Bankruptcy Code Section 1109(b) provides a putative class member with the authority to seek class certification at any point in a Chapter 11 case,[28] and/or (b) the filing of an FRBP 7023 certification motion itself creates a contested matter to which FRBP 7023 may be applied.[29]

14. The Putative Class' contention that its failure to timely seek class certification was because "the Debtors filed their bankruptcy cases barely two months after the end of the Class Period" is factually wrong.[30] The Putative Class Period ran through March 14, 2016; the

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26 876 F.2d at 868.

27 *Musicland*, 362 B.R. at 651 ("Other courts have taken the more practical view that the class representative can move at any time for a declaration that it may file a class proof of claim.").

28 *Ephedra*, 329 B.R. at 8 ("From the moment the Chapter 11 petition was filed, Cirak and the other class claimants had the right to move for class certification by virtue of 11 U.S.C. § 1109(b), which provides: 'A party in interest, including ... a creditor, ... may raise and may appear and be heard on any issue in a case under this chapter.' They could have requested class certification even before they filed their proofs of claim. If a party in interest asks the bankruptcy court to certify a class, the class claim becomes a 'contested matter' *at least* as of the time that the request is opposed, and even before if opposition is known or reasonably foreseeable—in the words of the Advisory Committee, 'whenever there is an actual dispute.' Objection to the class proofs of claim was not a necessary prerequisite to a motion for class certification.").

29 *In re Computer Learning Centers, Inc.*, 344 B.R. 79, 88-89 (E.D. Va. 2006) ("The argument treats the objection to the proof of claim as the commencement of a contested matter that permits the filing of a Rule 7023 motion for the first time, and, silently, not earlier. In fact, the issue in controversy is whether the proof of claim may be filed as a class proof of claim in the first instance. This is the contested matter. It is resolved by filing a Rule 7023 motion which itself commences the contested matter. Logically, the Rule 7023 motion should be granted before a class proof of claim is filed. Objection to a purported class proof of claim on the ground that Rule 7023 has not been made applicable to it is only one ground upon which a valid objection might be made. A Rule 7023 motion is not a defense to such an objection since the objection is well taken at the moment that it is made. A Rule 7023 motion filed at that time is merely an attempt to remedy an obvious defect that will otherwise certainly result in disallowance of the claim. A Rule 7023 motion at that time may be untimely depending on the circumstances of the case. It may be denied at that time and if it is denied, the purported class proof of claim will necessarily be disallowed. Rule 9014 establishes no deadline for filing a Rule 7023 motion. In fact, it provides that 'The court may at any stage in a particular matter direct that one or more of the other rules in Part VII shall apply.' This is not, however, license to procrastinate. A Rule 7023 motion should be filed as soon as practicable and should be denied if it comes so late as to prejudice any party. Early application of Rule 7023 solves the logical problem of filing a class proof of claim before Rule 7023 is made applicable to the prospective class proof of claim and furthers the policy of an orderly and expeditious administration of the bankruptcy estate.").

30 Individual Claimant's Obj. ¶ 41.

Debtors filed their bankruptcy cases nearly 8 months later, on October 31, 2016. It has been nearly 19 months since the end of the Putative Class period and the Putative Class has still chosen not to seek class certification in the Bankruptcy Court (or the District Court). And, no motion for such relief appears to be forthcoming, likely because the Putative Class is nowhere near able to satisfy its substantial evidentiary burden. Indeed, should the Court decide to permit the Putative Class Claim to proceed, the Putative Class has already laid the groundwork for a protracted and costly battle over class certification, indicating that a request for class certification may be premature at this time purportedly because "discovery that may be necessary to support a motion for class certification is [ ] currently prohibited absent relief from the PSLRA stay and/or stay relief from this Court."[31] However, there was no stay as to discovery in the Chapter 11 cases and the Putative Class could have timely sought authorization to obtain discovery from the Bankruptcy Court in respect of class certification,[32] but the Putative Class chose not to do so. Further, the Putative Class could have sought relief from the PSLRA stay from the District Court to obtain such discovery, but chose not to do so.

B. Permitting The Putative Class Claim To Proceed Would Materially Prejudice The Debtors And Other Stakeholders And Have A Material Adverse Effect On The Administration Of The Estates.

15. A "pervasive theme" in respect of a court's determination whether to permit the filing of a class proof of claim "is avoiding undue delay in the administration of the case."[33]

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31 Individual Claimant's Obj. ¶ 41.

32 *See In re Dynegy, Inc.*, 770 F.3d 1064 n.3 (2d Cir. 2014) ("Lucas argues requiring him to make a motion under Rule 9014 for class representative status would have been 'impractical and absurd' given that discovery in the securities litigation was stayed and a responsive pleading was not yet filed. We see no reason why events in the securities litigation would affect his ability to initiate class action proceedings in the bankruptcy court. Lucas knew early on in the bankruptcy proceedings … that he objected to the opt-out procedures. Nothing stopped him from making a Rule 9014 motion when he became lead plaintiff in the securities litigation …, or at a minimum …, when the district court denied his request to expand the Lead Plaintiff Order to allow him to represent the putative class in the bankruptcy proceedings.").

33 *Ephedra*, 329 B.R. at 4.

Thus, a bankruptcy court "may decline to apply Rule 23 if doing so would … gum up the works of distributing the estate."[34] Indeed, the potential interference with timely distributions under a liquidating plan "itself presents sufficient grounds to expunge … class claims."[35]

16. These cases present a unique and complex issue respecting distributions to equity holders. The Official Equity Committee and the Debtors anticipate that there will be substantial residual cash in the estates (after payment of all allowed claims) available for distribution to equity holders. Pursuant to the amended Disclosure Statement, the Debtors anticipate approximately \$23 million – \$27 million in "Shareholder Distributable Value" under the Plan (*i.e.*, cash equal to approximately \$0.52 – \$0.60 per share for the approximately 45 million PSG shares issued and outstanding).[36] The Plan architecture provides for the distribution of all available estate cash (after the payment of allowed claims and funding of reserves and certain post-confirmation administrative expenses) to the Debtors' equity holders as soon as reasonably practicable after the Plan effective date. But, the Putative Class Claim asserts contingent, unliquidated alleged claims that (a) are subject to subordination to the level of common stock under Bankruptcy Code Section 510(b) (as the Putative Class concedes), (b) cannot be efficiently estimated (absent relief of the Court) because of the Putative Class' failure to provide any information quantifying claimed damages or to otherwise engage on this issue, and (c) may overlap with the interests of present equity holders.

17. And, even if the Putative Class Claim could be efficiently estimated (which it cannot), there is no easy solution as to how to allocate between the Putative Class Claim and

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[34] *Id*.

[35] *Id*. at 5.

[36] *See* Disclosure Statement Art. IX.A.1.

present equity holders. By way of illustration: assume (a) there is $20 million in residual cash or other estate assets to be administrated to the Debtors' equity holders (after the payment of allowed claims and funding of reserves and certain post-confirmation administrative expenses), and (b) the Putative Class Claim is eventually determined to be allowed in the aggregate amount of $10 million. It is not settled how the $20 million in distributable cash should be apportioned among PSG's 45 million shares and the $10 million subordinated claim, or, put another way, how the $10 million subordinated claim should be converted into equity interests to share pro rata in distributions with equity holders. It cannot be the case that the Putative Class Claim is paid in full ahead of the Debtors' equity holders because Section 510(b) provides that the Putative Class Claim is subordinated to the same priority level as PSG's stock "for the purpose of distribution."[37]

18. The Putative Class has proposed no solution to this issue. Rather, the Putative Class proposes to defer this issue and have the estates hold all residual estate cash (that would otherwise be available for distribution to the Debtors' equity holders) indefinitely while the Putative Class Claim matures (a process that, unless the claim is dismissed, will likely take several years at substantial cost to the estates). Such an outcome is inappropriate given the Putative Class' inaction throughout these cases, and insofar as it would potentially provide the Putative Class with substantial bargaining leverage over the Debtors' equity holders vis-à-vis the distribution of estate cash.

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[37] 11 U.S.C. § 510(b) ("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.").

19. Further, the cross-border nature of the Debtors' businesses implicated several structural and tax issues that the Debtors, Official Equity Committee, and other stakeholders worked for months to resolve. The plan is intended to mitigate potential adverse tax consequences that could arise for the Debtors and equity holders in respect of distributions. In this regard, the Plan provides for the apportionment of the Retained Causes of Action (and other estate assets) between the U.S. Liquidation Trust and the Reorganized Canadian Parent in accordance with the proportion of equity holders selecting "Option 1" under the Plan (*i.e.*, to receive beneficial interests in the U.S. Liquidation Trust) and those selecting "Option 2" (*i.e.*, to retain their equity interests in the Reorganized Canadian Parent).[38] Permitting the unliquidated Putative Class Claim to proceed would potentially jeopardize this structure, as the Debtors would likely be unable to determine what proportion of the Retained Causes of Action (and other estate assets) should be apportioned to the U.S. Liquidation Trust and the Reorganized Canadian Parent, respectively, until the Putative Class Claim was subsequently resolved (which could take many years).

20. At a minimum, permitting the Putative Class Claim to proceed would introduce additional and wholly unnecessary layers of procedural and factual complexity to the Chapter 11 cases (such as issues respecting class certification and, if necessary, the merits and amount of the claim), and require the estates to expend potentially substantial additional resources in respect of such matters, thereby reducing assets available for distribution to equity holders.[39] Indeed, the Putative Class has already previewed its arguments for why class certification is allegedly not

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[38] *See* Plan Art. IV.B.7, V.B.3.

[39] *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.").

ripe at this time (while simultaneously seeking entry of a scheduling order respecting class certification, notwithstanding that it has not filed a motion seeking class certification). And, the Putative Class' purported reservation of rights to seek to withdraw the reference from this Court in respect of the merits of the Putative Class Claim ("or any other issues"), and with respect to this Court's entry of a final order "on any non-core issues"[40], suggests that any subsequent adjudication in respect of the Putative Class Claim in the Bankruptcy Court will likewise be a protracted and costly process.

C. The Putative Class Has <u>Other Sources For Potential Recovery</u>.

21. The Debtors maintain directors and officers insurance providing aggregate coverage (exclusive of accrued defense costs) of approximately USD $55 million (CAD $70 million), plus approximately USD $20 million (CAD $25 million) of Side-A Difference in Conditions (DIC) insurance.[41] The Putative Class has been proceeding in the District Court with respect to the individual defendants since the stay was lifted as to them on May 9, 2017. Nothing in the Plan will impair or affect the ability of the Putative Class to proceed in the District Court action against the individual defendants as against insurance coverage, if applicable. And, in fact, the Individual Defendant cites to no provision of the Plan that would affect such ability. In this regard, the Debtors recently filed modified versions of the Plan and Disclosure Statement to make this point even clearer, adopting certain suggestions from the Putative Class.[42]

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[40] Individual Claimant Obj. ¶ 25 n.10.

[41] *See Debtors' Motion for Order Pursuant to Sections 105(a), 363 and 364 of the Bankruptcy Code: (I) Authorizing (A) Payment of Prepetition Obligations Incurred in the Ordinary Course of Business in Connection with Insurance Programs, Including Payment of Policy Premiums, and (B) Continuation of Insurance Premium Financing Programs; and (II) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto* [D.I. 8], at <u>Exhibit A</u>.

[42] *See* D.I. 1410, 1411.

II. The Members Of The Putative Class Received Adequate Notice Of The Bar Date.

22. The members of the Putative Class received adequate notice of the Bar Date through the actual notice provided to registered holders and/or the Publication Notice. Pursuant to the Bar Date Order, the Court approved the form and manner of notice (including the Publication Notice for any unknown creditors), and found that such notice satisfied the notice requirements of the Bankruptcy Code and Bankruptcy Rules.[43] The Putative Class did not object to the Bar Date Motion, or the form and manner of notice that was requested therein and approved pursuant to the Bar Date Order. Nor did the Putative Class engage with the Debtors or propose any feasible alternative methods of providing direct notice to members of the Putative Class.

23. With respect to the unnamed Putative Class members, the Publication Notice satisfied due process requirements, as such members were "unknown" creditors. The Third Circuit has held that "a 'known' creditor is one whose identity is either known or 'reasonably ascertainable' by the debtor."[44] The Third Circuit has explained that:

> [a] creditor's identity is reasonably ascertainable if that creditor can be identified through reasonably diligent efforts. Reasonable diligence does not require impracticable and extended searches … in the name of due process… The requisite search instead focuses on the debtor's own books and records. Efforts beyond a careful examination of these documents are generally not required.[45]

24. On the other hand, "an 'unknown' creditor is one whose 'interests are either conjectural or future or, although they could be discovered upon investigation, do not in due

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43 Bar Date Order ¶ 3.

44 *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) (citing *Chemetron Corp. v. Jones*, 72 F.3d 341, 346 (3d Cir. 1995)).

45 *Id.* (quoting *Chemetron*, 72 F.3d at 346-47.

course of business come to the knowledge [of the debtor].'"[46] In this regard, "[a] debtor need not be omnipotent or clairvoyant, but need only do what is reasonable under the circumstances to provide notice to ascertainable creditors."[47]

25. Here, a review of the Debtors' books and records would not have revealed the names and addresses of the Putative Class members, and the Putative Class does not allege anything to the contrary.[48] Nor would such a review have revealed that any as-yet unidentified Putative Class members held any claims against the Debtors.[49] The Debtors had no reasonably practicable means of identifying or providing actual notice to the Putative Class members. Indeed, the Individual Claimant itself does not know the names or addresses of the Putative Class members, and has not proposed any method by which such names or addresses may be ascertained.

26. The cases cited by the Individual Claimant regarding notice are misplaced. In *In re Amdura Corp.*,[50] the representative of a class that had already been certified appealed a bankruptcy court's ruling that publication notice to members of the certified class satisfied due process requirements. The District Court ruled that, because the debtors could have easily obtained the names and addresses of the certified class members from the class representative,

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46 *White v. New Century TRS Holdings, Inc. (In re New Century TRS Holdings, Inc.)*, 450 B.R. 504, 512 (Bankr. D. Del. 2011) (citing *Chemetron*, 72 F.3d at 346).

47 *Id*. at 513 (citing *Gentry v. Circuit City Stores, Inc. (In re Circuit City Stores, Inc.)*, 439 B.R. 652, 660 (E.D. Va. 2010)).

48 *Id*. ("The Whites themselves admit that they were not aware of their claims against the Debtors until a mortgage foreclosure action was filed in May 2008. Neither do the Whites allege that, at the time the Bar Date Notice was served, a review of the Debtors' records would have revealed that the Whites held potential claims that could be filed against the Debtors in the future. Therefore, the Whites were unknown creditors at the time the Bar Date Notice was being served and constructive notice by publication notice could satisfy due process concerns."); *In re New Century TRS Holdings, Inc.*, 465 B.R. at 46.

49 *Id*.

50 170 B.R. 445 (D. Colo. 1994).

actual notice to such creditors was practicable and publication notice was not sufficient to satisfy due process.[51] Here, neither the Debtors nor the Individual Claimant (nor any other party) knows the names or addresses of the Putative Class members. As a result, actual notice to the Putative Class members was not practicable or required.

27. *Eisen v. Carlisle & Jacquelin* (a non-bankruptcy case) concerned the notice requirements under Federal Rule 23 to members of a certified class.[52] Federal Rule 23 provides that, "[f]or any class certified under Rule 23(b)(3), the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort".[53] In *Eisen*, the Supreme Court held that, where the names and addresses of certified class members were easily ascertainable and there was no showing that individualized notice could not be mailed, actual notice to members of a certified class was required under Federal Rule 23. Here, Federal Rule 23 did not apply because, among other reasons, the Putative Class has never been certified. Further, the names and addresses of the uncertified Putative Class members were not easily ascertainable, and there was no practicable way for the Debtors to mail individualized actual notice to the unnamed Putative Class members.

28. *Larson v. AT&T Mobility LLC* (a non-bankruptcy case) similarly concerned the notice requirements under Federal Rule 23 to members of a certified class in respect of a proposed settlement agreement.[54] In *Larson*, certain class members appealed the District Court's

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[51] *See id.* at 451-52 (stating that debtor "could have obtained a list of these creditors' names and addresses from [the class representatives]….").

[52] 417 U.S. 156 (1974).

[53] *Id*. at 175-76; Fed. R. Civ. P. 23(c)(2).

[54] 687 F.3d 109 (3d Cir. 2012)

ruling that AT&T was not required under Federal Rule 23 to conduct a search of its records and provide actual notice of a class settlement to certain certified class members (all of whom were customers or former customers of AT&T), but rather could provide notice of the class settlement via publication. The Third Circuit reversed, finding that the District Court had failed to properly exercise its discretion when it determined that it would be unreasonable to require AT&T to conduct a search of its records, which would purportedly have taken approximately 4-5 months and cost approximately $100,000, for the purpose of providing actual notice to class members.[55] Here, as noted above, Federal Rule 23 did not apply because, among other reasons, the Putative Class has never been certified. Further, a search of the Debtors' records (no matter how extensive) would not have revealed the identities of the unnamed Putative Class members.

III. <u>The Putative Class' Jurisdictional Arguments Are A Red Herring</u>.

29. The Putative Class' arguments regarding jurisdiction miss the mark. First, the question of whether the Canadian Court has jurisdiction over the Putative Class Claim is an issue to be decided by the Canadian Court. Second, due to the Debtors having substantial operations in, and being subject to the jurisdictions of, both the U.S. and Canada, these restructuring proceeding have, from their inception, implicated myriad complex cross-border attributes. Such was the nature and scope of these cross-border attributes that the Debtors sought and obtained an order approving a cross-border protocol, which had the stated goals of harmonizing and coordinating the Debtors' restructuring proceedings and facilitating the fair, open, and efficient administration of the estates.[56] In accordance therewith, the Official Equity Committee determined to put the Putative Class Claim Objection before both Courts at the same time so that

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[55] *Id*. at 122.

[56] *See Order Approving Cross-Border Protocol* [D.I. 220].

each may make a fully informed decision. The Putative Class Claim is asserted against the parent Debtors, which is organized under the laws of British Columbia and subject to parallel CCAA proceedings, and would be paid from the parent Debtors' assets. Fortunately, as set forth in the Putative Class Claim Objection (and the amended factum attached hereto), the law of the U.S. and Canada in respect of whether to permit the filing of the Putative Class Claim substantially overlaps, with both legal regimes militating in favor of disallowing the Putative Class Claim.

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CONCLUSION

WHEREFORE, the Official Equity Committee respectfully requests that the Court: (i) deny the relief requested in the Putative Class' cross-motion; (ii) sustain the Putative Class Claim Objection and enter the Proposed Order attached as **Exhibit A** thereto disallowing and expunging the Putative Class Claim in its entirety; and (iii) grant such other and further relief to the Official Equity Committee as the Court deems just and proper.

Dated: October 12, 2017
Wilmington, Delaware

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Official Committee of Equity Security Holders

62882907 v3

Exhibit A

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 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)

FACTUM OF OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS TO PUTATIVE CLASS PROOF OF CLAIM FILED BY PLUMBERS & PIPEFITTERS NATIONAL PENSION FUND (PROOF OF CLAIM NO. 444)

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TO: **SERVICE LIST**

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PART I - OVERVIEW

1. The Official Committee of Equity Security Holders (the "**Official Equity Committee**") of Old BPSUSH Inc. (f/k/a BPS US Holdings Inc.), *et al.*, support the Applicants' motion for an Order disallowing the proof of claim bearing no. 444 (the "**Putative Class Proof of Claim**").

2. The Plumbers & Pipefitters National Pension Fund (the "**Individual Claimant**"), on behalf of certain shareholders (the "**Class Action**") that purchased or acquired common stock of PSG on the New York Stock Exchange during the period from January 15, 2015 through March 14, 2016, filed the Putative Class Proof of Claim against Old PSG Wind-down Ltd. (f/k/a Performance Sports Group Ltd.) ("**PSG**").

3. In the Putative Class Proof of Claim, the Individual Claimant alleges that PSG and the Individual Defendants (defined below) made materially false and misleading statements regarding the PSG's financial performance.

4. The Official Equity Committee submits that this Court should disallow the Putative Class Proof of Claim on the basis that:

(a) the Individual Claimant had no authority from class members to file the Putative Class Proof of Claim. The relevant laws in Canada require judicial determination before a class is certified and deemed worthy of legal recognition;

(b) the Claims Procedure Order does not permit the filing of proof of claims by individuals who are not the proper legal representative of the claimant;

(c) even if the Individual Claimant had authority to file a class proof of claim, there is no inherent right to file a representative class proof of claim in a CCAA proceeding and class counsel has not sought this Court's authority to file the Putative Class Proof of Claim to date;

(d) the CCAA process, including the claims procedure, adequately protected the interests of the other potential individual claimants such that a "class" claim is not necessary;

(e) notwithstanding that the Applicants have been in CCAA and Chapter 11 protection for nearly a year, to date, the Class Action lawsuit has not been certified as a class action in Canada or in the United States. Accordingly, the Putative Class Claim is entirely contingent and unliquidated and is subject to a court process in the Southern District of New York that is currently in its infancy, and may take many years to complete;

(f) at this late stage in the restructuring, allowance of the Putative Class Claim will disable resolution of the Restructuring Proceedings. The disallowance of the U.S. Court or this Court of the Putative Class Claim is a condition precedent to confirmation of the *Joint Chapter 11 Plan of Liquidation of Old BPSUSH Inc. and Its Affiliated Applicants* filed on August 25, 2017 (the "**Plan**"), which Plan is to be recognized in Canada. Permitting the claim to proceed would be costly and materially delay distributions to equity holders.

PART II - FACTS

A. Background with Respect to Putative Class Proceeding in the Context of This CCAA Proceeding

5. 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**").[1]

6. The Putative Class has not been certified in the Putative Class Proceeding, and to date, no motion or other pleading requesting class certification has yet been filed with the District Court or any other court.[2]

7. On June 7, 2016, the District Court entered an order appointing the Individual Claimant as the lead plaintiff in the Putative Class Proceeding.[3]

8. On August 15, 2016, the Individual Claimant filed its first amended putative class claim with the District Court. Pursuant to this amended complaint, 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

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[1] Affidavit of Keisha Lackpatiah-Sealy, sworn September 20, 2017, Motion Record of the Applicants, Tab 2 ("Lackpatiah-Sealy Affidavit ") at para 7 and Exhibit F.
[2] Lackpatiah-Sealy Affidavit at para 8 and Exhibit F.
[3] Lackpatiah-Sealy Affidavit at para 10 and Exhibit F.

of the Securities and Exchange Commission; and (ii) one count for alleged violation of Section 20(a) of the Exchange Act.[4]

9. On October 13, 2016, the Defendants filed a joint motion to dismiss the putative class complaint.[5]

10. On October 31, 2016 (the "**Filing Date**"), the Applicants made an application for protection from their creditors under the CCAA in the Ontario Superior Court of Justice (Commercial List) (the "**CCAA Court**", and the proceedings therein, the "**CCAA Proceedings**").[6] In addition, the Applicants commenced bankruptcy proceedings under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court (the "**US Court**") for the District of Delaware (the "**Chapter 11 Proceedings**") As a result, the Putative Class Proceeding was stayed as against PSG.

11. On November 3, 2016, the Individual Claimant filed its second amended putative class complaint, which did not name PSG as a defendant.[7]

12. On January 17, 2017, the District Court entered an order extending the automatic stay to the Individual Defendants.[8]

13. 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,

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[4] Lackpatiah-Sealy Affidavit at para 11 and Exhibit F.
[5] Lackpatiah-Sealy Affidavit at para 12 and Exhibit F.
[6] Lackpatiah-Sealy Affidavit at para 164 and Exhibit A.
[7] Lackpatiah-Sealy Affidavit at para 13 and Exhibit F
[8] Lackpatiah-Sealy Affidavit at para 13 and Exhibit F.

2017 was established for the Individual Defendants to answer or otherwise respond to the second amended putative class complaint.[9]

14. On June 22, 2017, the Individual Defendants filed their joint motion to dismiss the second amended putative class complaint. On July 24, 2017, the Individual Claimant filed its opposition to the joint motion to dismiss. Pursuant to an order of the District Court, the Individual Defendants have until three weeks after service of such opposition to file any consolidated reply.[10]

B. Relevant Background with Respect to the CCAA and Chapter 11 Cases

i. Scope and Progress of the Claims Procedure

15. On December 19, 2016, the Applicants obtained approval by the CCAA Court of the entry of an order soliciting claims against the Applicants and approving certain claims bar dates for the submission of claims against the Applicants and approving the form and manner of notice of such bar dates to creditors (the "**Canadian Claims Order**"). At the same time, the US Court also entered the *Order (I) Establishing Bar Dates for Filing Claims and (II) Approving the Form and Manner of Notice Thereof* (Docket No. 327) (the "**US Claims Order**" together with the Canadian Claims Order, the "**Claims Procedure Orders**").

16. The Claims Procedure Orders provide for, among other things, the solicitation of claims that relate to the acquisition of shares of PSG, which includes claims for any misrepresentation of financial statements. In particular, the Claims Procedure Orders provide the following:

> Interest Holders [defined as any person holding any stock in PSG or any warrants, rights to purchase, sell or subscribe to any such stock] who want to assert claims against the Applicants that arise out of or relate to the

[9] Lackpatiah-Sealy Affidavit at para 14 and Exhibit F.
[10] Lackpatiah-Sealy Affidavit at para 15 and Exhibit F.

> 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.[11]

17. The Canadian Claims Order and the US Claims Order are substantially the same in substance and provide a mechanism for the solicitation of all claims against the Applicants, without regard to the jurisdiction of the claim. Accordingly, there is only one single claims process.

18. Under the Canadian Claims Order and the US Claims Order all claimants were required to file proofs of claims with Prime Clerk LLC regardless of whether the claim was a Canadian claim against the Applicants or a US claim. The form of proof of claim is the same for both the US and Canada and the filing of a proof of claim results in the submission of such claim in both jurisdictions.

19. The Claims Procedure Orders provide for a claims bar date of February 6, 2017 for the submission of general claims against the Applicants (the "**Claims Bar Date**"). Pursuant to the Claims Procedure Orders, the CCAA Court and the Bankruptcy Court approved the form and manner of notice of the Claims Bar Date and the General Bar Date, as applicable, to creditors, including the Publication Notice (each as defined in the Claims Procedure Orders).[12]

20. On December 23, 2016, the Applicants served the bar date notice on, among other parties in interest: (i) all registered holders of PSG stock; and (ii) the Individual Claimant (and the named plaintiff) in the Putative Class Proceeding.[13]

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[11] Lackpatiah-Sealy Affidavit at para 19 and Exhibit F.
[12] Lackpatiah-Sealy Affidavit at para 20 and Exhibit F.
[13] Lackpatiah-Sealy Affidavit at para 21 and Exhibit F.

21. Among the entities served with actual notice of the Claims Bar Date were CDS & Co. (the nominee company for the Canadian Depository for Securities Ltd., which, as of the Filing Date, was the registered owner of approximately 38,553,857 PSG shares (or approximately 84.06% of PSG's issued and outstanding stock), and CEDE & Co. (the nominee company for the Depository Trust Company, which, as of the Filing Date, was the registered owner of approximately 6,184,432 PSG shares (or approximately 13.49% of PSG's issued and outstanding stock).[14]

22. Pursuant to and in accordance with the Claims Procedure Orders, the Applicants also provided constructive notice of the Claims Bar Date/General Bar Date, via Publication Notice, to all "unknown" creditors of the Applicants.[15]

23. In accordance with the Claims Procedure Orders, the Publication Notice was approved by the CCAA Court and the Bankruptcy Court 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.[16]

24. On February 6, 2017, the Individual Plaintiff submitted its individual claim and the Putative Class Proof of Claim with Prime Clerk LLC. No other individual claimant submitted a claim.

25. On September 1, 2017, this Court granted an Order for the resolution of claims (the "**Claims Resolution Order**"). Under the Claims Resolution Order, the Applicants, in

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[14] Lackpatiah-Sealy Affidavit at para 22 and Exhibit F.
[15] Lackpatiah-Sealy Affidavit at para 23 and Exhibit F.
[16] Lackpatiah-Sealy Affidavit at para 23 and Exhibit F.

consultation with the Monitor and with the consent of the Equity Committee, may determine whether the Putative Class Claim is adjudicated in the CCAA Proceedings or the Chapter 11 Proceedings.

26. On August 9, 2017, the Applicants filed their *Joint Chapter 11 Plan of Liquidation of Old BPSUSH Inc. and Its Affiliated Applicants* and, on August 25, 2017, the Applicants filed a revised version of the Plan and a disclosure statement.

27. A condition precedent to Plan confirmation, as set out in section IX(A)(3) of the Plan, is that the Putative Class Claim is disallowed or estimated at $0.00 by the Bankruptcy Court, the CCAA Court or other court of competent jurisdiction.

28. The recognition of Plan, and other relief, including authority to make distributions will be sought by the Applicants in the CCAA proceedings.

PART III - ISSUES

29. The issues on this motion are as follows:

(a) Whether this Court has jurisdiction to disallow the Putative Class Proof of Claim; and

(b) In the event that the Court answers (a) above in the affirmative, whether the Putative Class Proof of Claim should be disallowed.

PART IV - ARGUMENTS

A. The CCAA Court has the jurisdiction to disallow the Putative Class Claim

30. The Individual Claimant submitted the Putative Class Proof of Claim to Prime Clerk LLC in accordance with the Claims Procedure Orders. There is only one single claims process and the filing of the Putative Class Proof of Claim results in the submission of such claim in both jurisdictions. Pursuant to the Canadian Claims Order, the Putative Class Claim may be adjudicated in the CCAA Proceedings. Accordingly, pursuant to the Canadian Claims Order, the CCAA Court has the jurisdiction to disallow the Putative Class Claim.

31. In addition, while the Putative Class Claim is a class action commenced in the District Court, it is also claim against the Canadian parent company, PSG, subject to these CCAA proceedings. This Court's inherent jurisdiction under the CCAA as well as the requirement under the CCAA to summarily determine claims against a debtor, gives this Court the discretion to grant the relief sought by the Applicants.

32. Specifically, section 11 of the CCAA gives this Court the power "to make any order that it considers appropriate in the circumstances".[17] Courts have held that the discretion provided for in section 11 should be "interpreted widely" and that it is "the engine that drives the broad and flexible statutory scheme" of the CCAA.[18]

33. Section 21(1) of the CCAA mandates that any dispute about a claim will be determined in a summary manner by the Court.[19] Specifically, the CCAA provides for a summary

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[17] *Companies' Creditors Arrangement Act*, RSC 1985 c C-36, s 11, Schedule "B", page 23.
[18] *Stelco, Re* (2005), 253 DLR (4th) 109 at para 36, 2005 CarswellOnt 1188 (Ont Sup Ct (Comm List)), Applicant's Book of Authorities, Tab 8; see also *Dylex Ltd., Re* (1995), 31 CBR (3d) 106, 1995 CarswellOnt 54 (Ont Sup Ct (Comm List)), Applicant's Book of Authorities, Tab 1.
[19] *Companies' Creditors Arrangement Act*, RSC 1985 c C-36, s 21(1), Schedule "B", page 23.

determination of the validity of a disputed claim, such as the claim asserted here by the Putative Class.

34. Canadian courts, including the Supreme Court of Canada and this Court, have consistently held that disputes relating to debtor companies involved in CCAA proceedings should be resolved by the CCAA court and that principles of private international law relating to jurisdiction and forum selection must be applied with modifications in the insolvency context.

35. In *Eagle River International Ltd, Re* ["*Sam Levy*"], a trustee in bankruptcy of a bankrupt Quebec company moved in Quebec to recover certain assets of the bankrupt from a British Columbia company.[20] The British Columbia defendant company sought to transfer the proceeding to British Columbia, arguing the Quebec Court lacked jurisdiction to hear the exclusively contractual claim against it. At the time of the trustee's motion, the British Columbia defendant company had filed no proof of claim in the bankruptcy. The British Columbia defendant gave notice of its counterclaim only after the trustee brought its motion.

36. The Supreme Court of Canada upheld the decisions of the motions judge and the Quebec Court of Appeal, holding that the Quebec Court had jurisdiction and was the proper forum to determine the trustee's claim. The Supreme Court of Canada applied the "single control" model that favours litigation involving an insolvent company to be dealt with in one jurisdiction and stated, in part:

> In the present case, we are confronted with a federal statute that prima facie establishes one command centre or "single control" for all proceedings related to the bankruptcy (s. 183(1)), Single control is not necessarily inconsistent with transferring particular disputes elsewhere, but a creditor (or debtor) who wishes to fragment the proceedings, and

[20] *Eagle River International Ltd, Re*, 2001 SCC 92, [2001] 3 SCR 978 [*Sam Levy*], Applicant's Book of Authorities, Tab 2.

> who cannot claim to be a "stranger to the bankruptcy", has the burden of demonstrating "sufficient cause" to send the trustee scurrying to multiple jurisdictions. Parliament was of the view that a substantial connection sufficient to ground bankruptcy proceedings in a particular district or division is provided by proof of facts within the statutory definition of "locality of a debtor" in s. 2(1). The trustee in that locality is mandated to "recuperate" the assets, and related proceedings are to be controlled by the bankruptcy court of that jurisdiction. The Act is concerned with the economy of winding up the bankrupt estate, even at the price of inflicting additional cost on its creditors and debtors.[21] [Citations omitted.]

37. The Supreme Court of Canada also reasoned that, in light of the very important public policy favouring a "single control" of bankruptcy proceedings and opposition to their fragmentation, the general principles of private international law should not necessarily govern in the context of an insolvency proceeding.[22]

38. The Quebec Superior Court followed *Sam Levy* in *Montreal, Maine*[23] where the CCAA court was asked to consider a dispute regarding the CCAA debtor's claim against its American insurer that arose under an insurance contract governed by Maine law.[24] As between the Quebec Court or the Maine Court, the Quebec Court had jurisdiction over the insurer and the dispute under the "single proceeding model."[25]

39. Further, this Court recently held in *Essar Steel Algoma Inc., Re*[26] that, applying the single control model, the CCAA Court had jurisdiction to determine whether the debtor had breached

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[21] *Eagle River International Ltd, Re*, 2001 SCC 92 at para 77, [2001] 3 SCR 978 [*Sam Levy*], Applicant's Book of Authorities, Tab 2.
[22] *Eagle River International Ltd, Re*, 2001 SCC 92 at para 77, [2001] 3 SCR 978; Applicant's Book of Authorities, Tab 2.
[23] *Montréal, Maine & Atlantic Canada Co./Montréal, Maine & Atlantique Canada cie*, *Re*, 2013 QCCS 5194, 2013 CarswellQue 10709 [*Montreal, Maine*], Applicant's Book of Authorities, Tab 4.
[24] *Montréal, Maine & Atlantic Canada Co./Montréal, Maine & Atlantique Canada cie*, *Re*, 2013 QCCS 5194 at para 20, 2013 CarswellQue 10709, Applicant's Book of Authorities, Tab 4.
[25] *Montréal, Maine & Atlantic Canada Co./Montréal, Maine & Atlantique Canada cie*, *Re*, 2013 QCCS 5194 at para 24, 2013 CarswellQue 10709, Applicant's Book of Authorities, Tab 4.
[26] *Essar Steel Algoma Inc., Re*, 2016 ONSC 595 at para 29, 33 CBR (6th) 313, Applicant's Book of Authorities, Tab 3.

its contractual obligations to a supplier, notwithstanding that there was already pending litigation in Ohio.

40. For the single control model to apply, the third-party must not be a stranger to the insolvency proceedings.[27] Here, the Putative Class has filed a proof of claim and raised damages against the Applicants through the class action. The Putative Class is therefore not a stranger to these proceedings.

41. While the Equity Committee contends that this CCAA Court has jurisdiction to disallow the Putative Class Proof of Claim, this does not preclude the US Court in the Chapter 11 proceedings from also determining whether the Putative Class Claim should be disallowed under US law.

B. The Putative Class Proof of Claim should be Disallowed

i. No Legal Authority by Class Members to file Proof of Claim

42. The persons who filed the Putative Class proof of claim against PSG had no legal authority to file the Putative Class Proof of Claim on behalf of any putative class member.

43. A "class" is a legal fiction. Thus, a class has no inherent entitlement to access the courts as a "class" in Canada or in the U.S. The relevant laws in Canada require judicial determination before a class is certified and deemed worthy of legal recognition.[28]

44. Even if there had been a certification of a claim in a foreign court, however, no steps have been taken to certify or recognize a class proceeding or claim in Canada. The relevant laws

[27] *Essar Steel Algoma Inc.*, *Re*, 2016 ONSC 595 at para 33, 33 CBR (6th) 313, Applicant's Book of Authorities, Tab 3.
[28] Lackpatiah-Sealy Affidavit at para 3 and Exhibit F.

in Canada require judicial determination before a class is certified and deemed worthy of legal recognition.

45. Under Ontario's *Class Proceedings Act, 1992*, a class proceeding will not be authorized unless:

(a) the pleadings or the notice of application discloses a cause of action;

(b) there is an identifiable class of two or more persons that would be represented by the representative plaintiff or defendant;

(c) the claims or defences of the class members raise common issues

(d) a class proceeding would be the preferable procedure for the resolution of the common issues; and

(e) there is a representative plaintiff or defendant who, (i) would fairly and adequately represent the interests of the class, (ii) has produced a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying class members of the proceeding, and (iii) does not have, on the common issues for the class, an interest in conflict with the interests of other class members.[29]

46. The persons who filed the Putative Class Proof of Claim also did not, prior to the Claims Bar Date, seek to lift the stay of proceedings in order to obtain class certification in the Southern District of New York or in Canada. No motion has been filed since that time to lift the stay of proceedings to obtain class certification.

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[29] *Class Proceedings Act, 1992*, SO 1992, c 6, ss 2(2), 2(3), 5(1), Schedule "B", page 22.

47. Even if there had been the requisite certification of claims in another proceeding, however, the persons who filed the Putative Class Proof of Claim did not have the requisite legal authority to file such claim in these CCAA Proceedings. Leave was neither sought nor granted to pursue or in any way recognize a class proceeding before this Court or any Ontario court. The Individual Claimant did not take any steps before the Canadian Court to seek the appointment of representative counsel or any form of representative status under Canadian law vis-à-vis the Putative Class.

48. The Court has authority to give a party representative status or appoint representative counsel in CCAA proceedings under section 11 of the CCAA and Rule 10.01 of the *Rules of Civil Procedure*.[30] Here, it was open to the Individual Claimant to seek an order under and Rule 10.01 of the Rules of Civil Procedure and Section 11 of the CCAA but the Individual Claimant chose not to. Accordingly, there can be no reasonable expectation that any "class" claim was either advanced or preserved.

49. As the class has not been certified in either the U.S or in Canada, and representative status was not obtained in these CCAA proceedings, the persons who filed the Putative Class Proof of Claim did not have the requisite legal authority to file such proof of claim in these proceedings.

ii. The Claims Procedure Order Does Not Provide for Submission of the Putative Class Proof of Claim

50. The Putative Class Proof of Claim is not properly filed pursuant to and in accordance with the Claims Procedure Orders and therefore the claim should be disallowed.

[30] *Nortel Networks Corp., Re* (2009), 2009 CarswellOnt 3028 at paras 10-13 (Ont Sup Ct (Comm List)) [*Nortel*], Applicant's Book of Authorities, Tab 7.

51. The Claims Procedure Orders do not permit the filing of representative claims, rather in order for a claim to be filed the person filing such claim must either be the claimant's lawyer or their authorized agent.[31]

52. The Court has authority to give a party representative status or appoint representative counsel in CCAA proceedings under section 11 of the CCAA and, where persons "cannot be readily ascertained, found or served", under Rule 10.01 of the *Rules of Civil Procedure.*

53. Before exercising its discretion to permit a representative claim, the Canadian court has considered whether there was a qualified legal representative and certification of the class action prior to the claims bar date.[32]

54. In *Muscletech Research & Development Inc., Re*, the 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 potential claimant was not a "legal personal representative" for purposes of a proof of claim.[33]

55. Here, the Individual Claimant did not take, prior to the claims bar date or even to date, any steps before the Canadian court to seek recognition of any representative status, class certification or authorization, the appointment of representative counsel appropriately qualified

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[31] Notice of Motion returnable October 16, 2017, Application Record, Tab 1 at para 7.
[32] *Muscletech Research & Development Inc.,Re* (2006), 2006 CarswellOnt 7877 at para 35 (Ont Sup Ct), Applicant's Book of Authorities, Tab 6.
[33] *Muscletech Research & Development Inc., Re* (2006), 2006 CarswellOnt 7877 at para 32 (Ont Sup Ct), Applicant's Book of Authorities, Tab 6.

before the Canadian court, or seeking a representation order or any form of representative status under Canadian law.[34]

56. As the Individual Claimant did not take any steps before the Canadian Court to seek recognition, certification, authorization, appointment of qualified representative counsel or any form of representative status under applicable Canadian law prior to the Claims Bar Date, the Putative Class Claim should be disallowed.

iii. The Court Should Exercise Its Discretion And Disallow the Putative Class Claim in Any Event

57. Canadian law does not recognize a right to file a class proof of claim in a CCAA proceeding. In Canada, the CCAA is silent as to "class" proofs of claims and whether they can be filed in a CCAA proceeding.[35]

58. Although the court has inherent jurisdiction to permit a representative proof of claim, 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.[36]

59. Before exercising its discretion to permit a representative claim, the Canadian court has considered whether the orders within the CCAA proceeding gave adequate protection to the potential group of creditors.[37]

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[34] Lackpatiah-Sealy Affidavit at para 47 and Exhibit F.
[35] *Muscletech Research & Development Inc.,Re* (2006), 2006 CarswellOnt 7877 at para 19 (Ont Sup Ct), Applicant's Book of Authorities, Tab 6.
[36] *Muscletech Research & Development Inc.,Re* (2006), 2006 CarswellOnt 7877 at para 24 (Ont Sup Ct), Applicant's Book of Authorities, Tab 6.
[37] *Muscletech Research & Development Inc.,Re* (2006), 2006 CarswellOnt 7877 at para 35 (Ont Sup Ct), Applicant's Book of Authorities, Tab 6.

60. A class proof of claim should not be accepted where the CCAA process, including a claims procedure thereunder, adequately protects the interests of the potential claimants such that a "class" claim is not necessary.[38]

61. In *Muscletech Research & Development Inc., Re*, the Court, in refusing to exercise its jurisdiction to allow the filing of a representative claim, considered that the CCAA process gave adequate opportunity for anyone with a claim to file a proof of claim.[39]

62. In this case, appropriate notice of the Claims Procedure Order and the Claims Bar Date was provided to all potential individual class claimants and not a single one (besides the Individual Claimant) filed a proof of claim or otherwise asserted any entitlement in these proceedings.[40] In addition, given that the class was not certified in Canada and no representative status was sought in the CCAA proceedings, individual claimants could not reasonably assume that they need not comply with the Claims Procedure Order, including the Claims Bar Date.

iv. Any Request for Recognition of the Putative Class Claim Is Untimely and Prejudicial To the Applicants' Other Stakeholders

63. The Individual Claimant has not, to date, sought certification of the Class Action in the District Court.

64. In the U.S., a claimant bears a particularly heavy burden to earn such class recognition before its case can proceed.[41] The U.S court would need to determine whether the certification requirements of Rule 23 of the Federal Rules of Civil Procedure have been met including

[38] *Muscletech Research & Development Inc.,Re* (2006), 2006 CarswellOnt 4929 at paras 37-40 (Ont Sup Ct (Comm List)), Applicant's Book of Authorities, Tab 5.
[39] *Muscletech Research & Development Inc.,Re* (2006), 2006 CarswellOnt 4929 at para 44 (Ont Sup Ct (Comm List)), Applicant's Book of Authorities, Tab 5.
[40] Lackpatiah-Sealy Affidavit at para 3 and Exhibit F.
[41] Lackpatiah-Sealy Affidavit at para 29 and Exhibit F.

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.[42] The fact that the Individual Plaintiff has not sought certification of the Class Action in the District Court will necessarily result in a significant delay in the administration of this estate, including distributions to stakeholders.

65. The Individual Claimant also has still not: (i) made an application to seek representative or certification status in Canada, notwithstanding that the claims bar date passed nearly seven (7) months ago and that these Chapter 11 and CCAA cases are rapidly nearing their conclusion; or (ii) made an application in the Chapter 11 court as to whether the bankruptcy court should permit the filing of a class proof of claim (via application of Bankruptcy Rule 7023 to the claim) and whether the filing would be beneficial to the case[43].

66. The failure of the Individual Claimant to take proper steps in connection with the Putative Class Claim frustrates the statutory purpose underlying the authority of the Court under section 21(1) of the CCAA to summarily deal with the Putative Class Claim.[44] The authority to summarily determine claims is intended to resolve claims without undue costs and to facilitate timely distributions to stakeholders. The Individual Claimant should not be able to frustrate the policy objectives of the statute through wilful delay. .

67. Because the Putative Class has not been certified (and discovery has not yet begun), allowing the Putative Class Claim at this time will precipitate costly and time-consuming

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[42] Lackpatiah-Sealy Affidavit, footnote 4, at para 4 and Exhibit F.
[43] Lackpatiah-Sealy Affidavit at paras 2, 26, 28, 30,43 and Exhibit F.
[44] *Companies' Creditors Arrangement Act*, RSC 1985 c C-36, s 21(1), Schedule "B", page 23.

litigation regarding class certification, which would further prejudice the Applicants' equity holders by imposing unnecessary delay and burden on the Applicants' remaining resources.[45]

68. The absence of any certification in the U.S. or in Canada and the fact that nothing has been done to advance the Class Action in the CCAA proceedings implies that the Putative Class Claim is of little merit. If the claim had any merit, one would reasonably expect that steps to advance the claim would have been taken in these proceedings.

69. The Individual Claimant has simply waited too long and any such application at this point in the cases would prejudice the Applicants' other stakeholders by jeopardizing Plan confirmation and likely substantially delaying distributions to equity holders.[46]

v. Recognizing the Unauthorized Class is Unnecessary and Would Adversely Affect The Administration Of The Estates

70. Under Canadian law, a class proof of claim may be disallowed where the court determines that permitting the claim to proceed would disrupt or extend the case (and consideration of a plan), increase costs, and delay distributions to creditors.[47]

71. The Applicants' CCAA proceedings and Chapter 11 cases are nearing their end. The sale closed several months ago, the claims bar date passed nearly seven (7) months ago, and, as a result of the Court's approval of the Claims Resolution Order, the process to determine and resolve submitted claims is well underway. A Chapter 11 plan and a concurrent Canadian Order in the CCAA proceedings have been fully negotiated and a hearing is scheduled for November 21, 2017.

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[45] Lackpatiah-Sealy Affidavit at para 44 and Exhibit F.
[46] Lackpatiah-Sealy Affidavit at para 44 and Exhibit F.
[47] See e.g. *Muscletech Research & Development Inc., Re* (2006), 2006 CarswellOnt 7877 at para 34 (Ont Sup Ct), Applicant's Book of Authorities, Tab 6.

72. Denying the disallowance of the Putative Class Claim at this time would jeopardize the Plan process, introduce additional and wholly unnecessary layers of procedural and factual complexity to the Chapter 11 and CCAA cases, and require the estates to expend additional resources to adjudicate issues such as class certification and the merits of the Putative Class Claim.[48]

73. Further, the Putative Class Claim is a securities fraud claim based on an ownership interest in shares of PSG. Accordingly, even if the Putative Class Claim was a proper claim with merit it would nevertheless constitute an equity claim under the CCAA. The recognition of the Putative Class Claim may result in costly litigation over the distribution of residual sale proceeds among the Putative Class members and the Applicants' other equity holders. At the very least, it would likely result in a substantial delay of any distributions to the Applicants' equity holders under any Chapter 11 plan and Canadian Order pending the disposition of the class litigation (or estimation of the Putative Class Claim).[49]

74. Any benefit of class adjudication is far outweighed by the negative consequences in these cases. The members of the Putative Class had an opportunity to file individual claims pursuant to the Claims Procedure Order, yet no individual class member did so. In any event, members of the Putative Class continue to have an alternative and adequate forum for pursuing claims. The claims in the second amended putative class complaint continue in the District Court as against the Individual Defendants. That proceeding is the appropriate venue, and contains the appropriate defendants for the putative class claim.[50]

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[48] Lackpatiah-Sealy Affidavit at para 43 and Exhibit F.
[49] Lackpatiah-Sealy Affidavit at para 44 and Exhibit F.
[50] Lackpatiah-Sealy Affidavit at para 45 and Exhibit F.

PART V - RELIEF REQUESTED

75. The Official Equity Committee respectfully requests that the Court disallow the Putative Class Claim or in the alternative, recognize an Order of the US Court disallowing the Putative Class Claim.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 10th day of October, 2017.

Andy Kent
Per: Caitlin Fell
McMillan LLP

Lawyers for the Applicants

SCHEDULE "A"

LIST OF AUTHORITIES

1. *Dylex Ltd., Re* (1995), 31 CBR (3d) 106, 1995 CarswellOnt 54 (Ont Sup Ct (Comm List)).
2. *Eagle River International Ltd, Re*, 2001 SCC 92, [2001] 3 SCR 978.
3. *Essar Steel Algoma Inc., Re*, 2016 ONSC 595, 33 CBR (6th) 313.
4. *Montréal, Maine & Atlantic Canada Co./Montréal, Maine & Atlantique Canada cie, Re*, 2013 QCCS 5194, 2013 CarswellQue 10709.
5. *Muscletech Research & Development Inc., Re* (2006), 2006 CarswellOnt 4929 (Ont Sup Ct (Comm List)).
6. *Muscletech Research & Development Inc., Re* (2006), 2006 CarswellOnt 7877 (Ont Sup Ct).
7. *Nortel Networks Corp., Re* (2009), 2009 CarswellOnt 3028 (Ont Sup Ct (Comm List)).
8. *Stelco, Re* (2005), 253 DLR (4th) 109, 2005 CarswellOnt 1188 (Ont Sup Ct (Comm List)).
9. *Urbancorp Toronto Management Inc., Re*, 2016 ONSC 5426, 2016 CarswellOnt 13839.

SCHEDULE "B"

RELEVANT STATUTES

Class Proceedings Act, 1992, SO 1992, c 6.

Motion for certification

2 (2) A person who commences a proceeding under subsection (1) shall make a motion to a judge of the court for an order certifying the proceeding as a class proceeding and appointing the person representative plaintiff. SO 1992, c 6, s 2 (2).

Idem

(3) A motion under subsection (2) shall be made,

- **(a)** within ninety days after the later of,
  - **(i)** the date on which the last statement of defence, notice of intent to defend or notice of appearance is delivered, and
  - **(ii)** the date on which the time prescribed by the rules of court for delivery of the last statement of defence, notice of intent to defend or a notice of appearance expires without its being delivered; or
- **(b)** subsequently, with leave of the court. SO 1992, c 6, s 2(3).

Certification

5 (1) The court shall certify a class proceeding on a motion under section 2, 3 or 4 if,

(a) the pleadings or the notice of application discloses a cause of action;

(b) there is an identifiable class of two or more persons that would be represented by the representative plaintiff or defendant;

(c) the claims or defences of the class members raise common issues;

(d) a class proceeding would be the preferable procedure for the resolution of the common issues; and

(e) there is a representative plaintiff or defendant who,

- **(i)** would fairly and adequately represent the interests of the class,
- **(ii)** has produced a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying class members of the proceeding, and
- **(iii)** does not have, on the common issues for the class, an interest in conflict with the interests of other class members. SO 1992, c 6, s 5 (1).

Companies' Creditors Arrangement Act, RSC 1985, c C-36.

General power of court

11 Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances. RSC 1985 c C-36, s 11.

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.

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

ONTARIO
SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST

Proceeding commenced at Toronto

FACTUM OF OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS TO PUTATIVE CLASS PROOF OF CLAIM FILED BY PLUMBERS & PIPEFITTERS NATIONAL PENSION FUND (PROOF OF CLAIM NO. 444)

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Lawyers for the Respondent,
Official Committee of Equity Holders

TAB 8

Schedule 1

Cross-Border Restructuring Protocol

Between the United States Bankruptcy Court for the District of Delaware (Case No. 16-12373 (KJC)) and the Ontario Superior Court of Justice (Court File No. CV-16-11582-00CL)

This cross-border insolvency protocol (the "**Protocol**") shall govern the conduct of all parties in interest in the Restructuring Proceedings (as such term is defined herein).

The Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases (the "**Guidelines**") attached hereto as Schedule "A" are hereby incorporated by reference and form part of this Protocol. Where there is any discrepancy between the Protocol and the Guidelines, this Protocol shall govern.

A. Background

1. Performance Sports Group Ltd. ("**PSG**"), a company incorporated in the Province of British Columbia, is the ultimate parent company of an international enterprise that designs, develops and manufactures high performance sports equipment and related apparel through its various subsidiaries and affiliates in the United States of America (the "**U.S.**"), Canada and other countries. On October 31, 2016 (the "**Filing Date**"), PSG and its direct and indirect subsidiaries listed on Schedule "B" (collectively, the "**Debtors**") commenced cases (the "**Chapter 11 Cases**") under chapter 11 of title 11 of the United States Bankruptcy Code (the "**Bankruptcy Code**") in the U.S. in the United States Bankruptcy Court for the District of Delaware (the "**U.S. Court**") and commenced a reorganization proceeding in Canada (the "**Canadian Proceeding**" and together with the Chapter 11 Cases, the "**Restructuring Proceedings**") by filing an application under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, (the "**CCAA**") with the

Ontario Superior Court of Justice (the "**Canadian Court**" and together with the U.S. Court, the "**Courts**" and each individually, a "**Court**").

2. On the Filing Date, the Canadian Court issued an Order (as may be amended from time to time, the "**Initial Order**") which, *inter alia*: (a) granted the Debtors relief under the CCAA; (b) appointed Ernst & Young Inc. as monitor of the Debtors (in that capacity, the "**Monitor**"), with the rights powers, duties and limitations upon liabilities set forth in the CCAA and the Initial Order; and (c) granted a stay of proceedings in respect of the Debtors.

3. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession under the supervision of the Courts pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the CCAA and the Initial Order. In connection with the Restructuring Proceedings, a Superpriority Debtor-In-Possession Term Loan Credit Agreement dated as of October 31, 2016, was entered into between the Debtors and 9938982 Canada Inc. and the other lenders party to such agreement (collectively, the "**Term Loan DIP Lenders**").

4. The Office of the United States Trustee (the "**U.S. Trustee**") has appointed an official committee of unsecured creditors (the "**Creditors' Committee**") in the Chapter 11 Cases.

B. Purpose and Goals

5. While the Chapter 11 Cases and the Canadian Proceeding are full and separate proceedings pending in the U.S. and Canada, the implementation of administrative procedures and cross-border guidelines is both necessary and desirable to coordinate certain activities in the Restructuring Proceedings, protect the rights of parties thereto, ensure the maintenance of each Court's respective independent

jurisdiction and give effect to any applicable doctrines, including, comity. Accordingly, this Protocol has been developed to promote the following mutually desirable goals and objectives in the Restructuring Proceedings:

a. harmonize and coordinate activities in the Restructuring Proceedings before the Courts;

b. promote the orderly and efficient administration of the Restructuring Proceedings to, among other things, maximize the efficiency of the Restructuring Proceedings, reduce the costs associated therewith and avoid duplication of effort;

c. honor the independence and integrity of the Courts and other courts and tribunals of the U.S. and Canada, respectively;

d. promote international cooperation and respect for comity among the Courts, the Debtors, the Creditors' Committee, the U.S. Representatives (defined below), the Canadian Representatives (defined below), the U.S. Trustee, the Term Loan DIP Lenders and other creditors and interested parties in the Restructuring Proceedings;

e. facilitate the fair, open and efficient administration of the Restructuring Proceedings for the benefit of all of the Debtors' creditors and other interested parties, wherever located; and

f. implement a framework of general principles to address basic administrative issues arising out of the cross-border nature of the Restructuring Proceedings.

As the Restructuring Proceedings progress, the Courts may also jointly determine that other cross-border matters that may arise in the Restructuring Proceedings should be dealt with under and in accordance with the principles of this Protocol. Subject to the provisions of this Protocol, where an issue is to be addressed only to one Court, in rendering a determination in any cross-border matter, such Court may: (a) to the extent practical or advisable, consult with the other Court; and (b) in its sole discretion while considering principles of comity, either (i) render a binding decision after such consultation; (ii) defer to the determination of the other Court by transferring the matter, in whole or part, to the other Court; or (iii) seek a joint hearing of both Courts.

C. Comity and Independence of the Courts

6. The approval and implementation of this Protocol shall not divest nor diminish the U.S. Court's and the Canadian Court's respective independent jurisdiction of the subject matter of the Chapter 11 Cases and the Canadian Proceeding, respectively. By approving and implementing this Protocol, neither the U.S. Court, the Canadian Court, the Debtors, the Canadian Representatives (as defined below), the U.S. Representatives (as defined below), nor any creditors or interested parties shall be deemed to have approved or engaged in any infringement on the sovereignty of the U.S. or Canada.

7. The U.S. Court shall have sole and exclusive jurisdiction and power over the conduct of the Chapter 11 Cases and the hearing and determination of matters arising in the Chapter 11 Cases. The Canadian Court shall have sole and exclusive jurisdiction and power over the conduct of the Canadian Proceeding and the hearing and determination of matters arising in the Canadian Proceeding.

8. In accordance with the principles of comity and independence recognized herein, nothing contained herein shall be construed to:

a. increase, decrease or otherwise modify the independence, sovereignty or jurisdiction of the U.S. Court, the Canadian Court or any other court or tribunal in the U.S. or Canada, including the ability of any such court or tribunal to provide appropriate relief under applicable law on an *ex parte* or "limited notice" basis;

b. require the U.S. Court to take any action that is inconsistent with its obligations under the laws of the U.S.;

c. require the Canadian Court to take any action that is inconsistent with its obligations under the laws of Canada or the laws of the applicable Province therein;

d. require the U.S. Representatives, the Canadian Representatives (collectively, the "**Estate Representatives**"), the Debtors, the Monitor, the Creditors' Committee, or the U.S. Trustee to take any action or refrain from taking any action that would result in a breach of any duty imposed on them by any applicable law;

e. authorize any action that requires the specific approval of one or both of the Courts under the Bankruptcy Code or the CCAA after appropriate notice and a hearing (except to the extent that such action is specifically described in this Protocol); or

f. preclude the Debtors, the Monitor, the Creditors' Committee, the Estate Representatives, the U.S. Trustee, the Term Loan DIP Lenders, any creditor or other interested party from asserting such party's substantive rights under the applicable laws of the U.S., Canada or any other relevant jurisdiction including, without limitation, the rights of parties in interest to appeal from the decisions taken by one or both of the Courts.

9. The Debtors, the Creditors' Committee, the Estate Representatives and their respective employees, members, agents and professionals shall respect and comply with the independent, non-delegable duties imposed upon them by the Bankruptcy Code, the CCAA, the Initial Order, other applicable laws and orders of the Courts.

D. Cooperation

10. To assist in the efficient administration of the Restructuring Proceedings and in recognizing that the Debtors may each be creditors of another Debtor's estate, each of the Debtors and its respective Estate Representatives shall, where appropriate: (a) cooperate with the others in connection with actions taken in both the U.S. Court and the Canadian Court; and (b) take any other appropriate steps to coordinate the

administration of the Restructuring Proceedings for the benefit of the Debtors' respective estates and stakeholders.

11. To harmonize and coordinate the administration of the Restructuring Proceedings, the U.S. Court and the Canadian Court each may coordinate activities and consider whether it is appropriate to defer to the judgment of the other Court. In furtherance of the foregoing:

a. The U.S. Court and the Canadian Court may communicate with one another, with or without counsel present, with respect to any procedural matter relating to the Restructuring Proceedings.

b. If the issue of the proper jurisdiction of either Court to determine an issue is raised by an interested party in either of the Restructuring Proceedings or a written request for a Joint Hearing (as defined below) is made with respect to any relief sought in either Court, the Courts may consult with one another to determine an appropriate process by which the issue of jurisdiction will be determined. Such process shall be subject to submissions by the Debtors, the U.S. Trustee, the Creditors Committee, the Estate Representatives, the Monitor, the Term Loan DIP Lenders and any interested party prior to any determination on the issue of jurisdiction or Joint Hearing request being made by either Court, and such issue of jurisdiction or Joint Hearing request shall be decided prior to the adjudication of the matter in the Court such matter was originally brought.

c. The Courts may, but are not obligated to, coordinate activities in the Restructuring Proceedings such that the subject matter of any particular action, suit, request, application, contested matter or other proceeding is determined in a single Court.

d. The U.S. Court and the Canadian Court may conduct joint hearings (each a "**Joint Hearing**") with respect to any matter relating to the conduct, administration, determination, or disposition of any aspect of the Chapter 11 Cases or the Canadian Proceeding, including, the interpretation or implementation of this Protocol, where both Courts consider such a Joint Hearing to be necessary or advisable, or as otherwise provided herein. With respect to any Joint Hearings, unless otherwise ordered or otherwise agreed to by the Courts, the following procedures will be followed:

i. A telephone or video link shall be established so that both the U.S. Court and the Canadian Court shall be able to simultaneously hear the proceedings in the other Court.

ii. Notices, submissions, motions or applications by any party (collectively, the "**Pleadings**") that are or become the subject of a Joint Hearing shall be made or filed initially only to the Court in which such party is appearing and seeking relief. Promptly after the scheduling of any Joint Hearing, the party submitting such Pleadings to one Court shall file courtesy copies with the other Court. In any event, Pleadings in respect of relief sought from both Courts shall be filed with both Courts.

iii. Any party intending to rely on any written evidentiary materials in support of a submission to the U.S. Court or the Canadian Court in connection with any Joint Hearing or application (collectively, the "**Evidentiary Materials**") shall file or otherwise submit such materials to both Courts in advance of the Joint Hearing. To the fullest extent possible, the Evidentiary Materials filed in each Court shall be identical and shall be consistent with the procedural and evidentiary rules and requirements of each Court.

iv. If a party has not previously appeared in or attorned or does not wish to attorn to the jurisdiction of a Court, it shall be entitled to file Pleadings or Evidentiary Materials in connection with the Joint Hearing without, by the mere act of such filings or appearance, being deemed to have attorned to the jurisdiction of the Court in which such material is filed, so long as it does not request in its materials or submissions any affirmative relief from such Court.

v. The Judge of the U.S. Court and the Justice of the Canadian Court who will preside over the Joint Hearings shall be entitled to communicate with each other in advance of any Joint Hearing, with or without counsel being present, to: (a) establish guidelines for the orderly submission of Pleadings, Evidentiary Materials, and other papers and for the rendering of decisions by the Courts; and (b) to address any related procedural, administrative or preliminary matters.

vi. The Judge of the U.S. Court and the Justice of the Canadian Court who preside over any Joint Hearing, shall be entitled to communicate with each other during or after any Joint Hearing, with or without counsel present, for the purposes of (a) determining whether consistent rulings can be made by both Courts; (b) coordinating the terms upon the Courts' respective rulings; and (c) addressing any other procedural or administrative matters.

12. Notwithstanding the terms of paragraph 11 above, this Protocol recognizes that the U.S. Court and the Canadian Court are independent courts. Accordingly, although the Courts will seek to cooperate and coordinate with each other in good faith, each Court shall be entitled at all times to exercise its independent jurisdiction and authority with respect to: (a) matters presented to and properly before such Court; and (b) the conduct of the parties appearing in such matters.

13. Notwithstanding the foregoing, or anything to the contrary herein, in the interest of cooperation and coordination of these proceedings, each Court shall recognize and consider all privileges applicable to communications between counsel and parties, including those contemplated by the "common interest doctrine " or like privileges, which would be applicable in each respective Court. Such privileges in connection with communications shall be applicable in both Courts with respect to all parties to these proceedings having any requisite common interest.

14. Where one Court has jurisdiction over a matter which requires the application of the law of the jurisdiction of the other Court in order to determine an issue before it, the Court with jurisdiction over such matter may, among other things,

hear expert evidence or seek the advice and direction of the other Court in respect of the foreign law to be applied, subject to paragraph 30 herein.

E. Recognition of Stay of Proceedings

15. The Canadian Court hereby recognizes the validity of the stay of proceedings and actions against or respecting the Debtors and their property under section 362 of the Bankruptcy Code (the "**U.S. Stay**"). In implementing the terms of this paragraph, the Canadian Court may consult with the U.S. Court regarding: (a) the interpretation, extent, scope and applicability of the U.S. Stay and any orders of the U.S. Court modifying or granting relief from the U.S. Stay; and (b) the enforcement of the U.S. Stay in Canada.

16. The U.S. Court hereby recognizes the validity of the stay of proceedings and actions against or respecting the Debtors, their property and the directors and officers of the Debtors under the CCAA and the Initial Order (the "**Canadian Stay**"). In implementing the terms of this paragraph, the U.S. Court may consult with the Canadian Court regarding: (a) the interpretation, extent, scope and applicability of the Canadian Stay and any orders of the Canadian Court modifying or granting relief from the Canadian Stay; and (ii) the enforcement of the Canadian Stay in the U.S.

17. Nothing contained herein shall affect or limit the Debtors' or other parties' rights to assert the applicability or nonapplicability of the U.S. Stay or the Canadian Stay to any particular proceeding, property, asset, activity or other matter, wherever pending or located. Subject to the terms hereof, (a) any motion with respect to the application of the stay of proceedings issued by the Canadian Court in the CCAA shall be heard and determined by the Canadian Court and (b) any motion with respect

to the application of the stay under section 362 of the Bankruptcy Code shall be heard and determined by the U.S. Court.

F. Retention and Compensation of Representatives and Professionals

18. The Monitor, its officers, directors, employees, counsel, agents, and any other professionals retained therefor, wherever located, (collectively, the "**Monitor Parties**") and any other estate representatives in the Canadian Proceeding, including any Company representatives who appear in the Canadian Proceeding (collectively, the "**Canadian Representatives**") shall be subject to the sole and exclusive jurisdiction of the Canadian Court with respect to all matters, including: (a) the Canadian Representatives' appointment and tenure in office; (b) the retention and compensation of the Canadian Representatives; (c) the Canadian Representatives' liability, if any, to any person or entity, including the Debtors and any third parties, in connection with the Restructuring Proceedings; and (d) the hearing and determination of any other matters related to the Canadian Representatives arising in the Canadian Proceeding under the CCAA or other applicable Canadian law. Additionally, the Canadian Representatives: (x) shall not be required to seek approval of their retention in the U.S. Court for services rendered to the Debtors; (y) shall be compensated for their services solely in accordance with the CCAA, the Initial Order and other applicable laws of Canada and the applicable Provinces, or orders of the Canadian Court; and (z) shall not be required to seek approval of their compensation in the U.S. Court.

19. The Monitor Parties shall be entitled to the protections of section 306 of the Bankruptcy Code, the same protections and immunities in the U.S. as those granted to them under the CCAA and the Initial Order. In particular, except as otherwise provided in any subsequent order entered in the Canadian Proceeding, the Monitor

Parties shall incur no liability or obligations as a result of the appointment of the Monitor, the carrying out of its duties or the provisions of the CCAA and the Initial Order by the Monitor Parties, except any such liability arising from actions of the Monitor Parties constituting gross negligence or willful misconduct.

20. Any estate representative appointed in the Chapter 11 Cases, including without limitation, any restructuring officer appointed under section 363 of the Bankruptcy Code and any examiners or trustees appointed in accordance with section 1104 of the Bankruptcy Code (collectively, the "**U.S. Representatives**") shall be subject to the sole and exclusive jurisdiction of the U.S. Court with respect to all matters, including: (a) the U.S. Representatives' appointment and tenure in office; (b) the retention and compensation of the U.S. Representatives; (c) the U.S. Representatives' liability, if any, to any person or entity, including the Debtors and any third parties, in connection with the Restructuring Proceedings; and (d) the hearing and determination of any other matters related to the U.S. Representatives arising in the Chapter 11 Cases under the Bankruptcy Code or other applicable laws of the U.S. Additionally, the U.S. Representatives and their counsel and other professionals retained therefor (in all cases, whether in Canada or U.S.): (x) shall not be required to seek approval of their retention in the Canadian Court; (y) shall be compensated for their services to the Debtors solely in accordance with the Bankruptcy Code and other applicable laws of the U.S. or orders of the U.S. Court; and (z) shall not be required to seek approval of their compensation in the Canadian Court.

21. Any professionals retained by or with the approval of the Debtors for activities performed in Canada or in connection with the Canadian Proceeding, including, in each case, counsel, financial advisors, accountants, consultants and experts

(collectively, the "**Canadian Professionals**") shall be subject to the sole and exclusive jurisdiction of the Canadian Court. Accordingly, the Canadian Professionals: (a) shall be subject to the procedures and standards for retention and compensation applicable in the Canadian Court under the CCAA, the Initial Order any other applicable Canadian law or orders of the Canadian Court; and (b) shall not be required to seek approval of their retention or compensation in the U.S. Court.

22. Any professionals retained by or with approval of the Debtors for activities performed in the U.S. or in connection with the Chapter 11 Cases, including, in each case, counsel, financial advisors, accountants, consultants and experts (collectively, the "**U.S. Professionals**") shall be subject to the sole and exclusive jurisdiction of the U.S. Court. Accordingly, the U.S. Professionals: (a) shall be subject to the procedures and standards for retention and compensation applicable in the U.S. Court under the Bankruptcy Code and any other applicable laws of the U.S. or orders of the U.S. Court; and (b) shall not be required to seek approval of their retention of compensation in the Canadian Court.

23. Subject to paragraph 24 herein, any professional retained by the Creditors' Committee, including in each case, without limitation, counsel and financial advisors (collectively, the "**Committee Professionals**") shall be subject to the sole and exclusive jurisdiction of the U.S. Court. Such Committee Professionals: (a) shall be subject to the procedures and standards for retention and compensation applicable in the U.S. Court under the Bankruptcy Code and any other applicable laws of the United States or orders of the U.S. Court; and (b) shall not be required to seek approval of their retention or compensation in the Canadian Court or any other court.

G. Appearances

24. Upon any appearance or filing, as may be permitted or provided for by the rules of the applicable Court, the Debtors, their creditors and other interested parties in the Restructuring Proceedings, including the Monitor Parties, Creditors Committee, the Estate Representatives, the U.S. Trustee and the Term Loan DIP Lenders, each of which parties shall have the right to appear and be heard in the Chapter 11 Cases and Canadian Proceeding, shall be subject to the personal jurisdiction of the Canadian Court or the U.S. Court, as applicable, with respect to the particular matters as to which they appear before that Court.

H. Claims Protocol

25. It may be necessary to implement a specific claims protocol to address, among other things and without limitation, the timing process, jurisdiction and applicable governing law to be applied to the resolution of claims filed by the Debtors' creditors (including intercompany claims) in the Canadian Proceeding and the Chapter 11 Cases. In such event, and in recognition of the inherent complexities of the inter-company claims that may be asserted in the Restructuring Proceedings, the Debtors shall use commercially reasonable efforts to negotiate a specific claims protocol, in form and substance satisfactory to the Debtors, the Monitor, and the Creditors' Committee, which protocol shall be submitted to the Canadian Court and the U.S. Court for approval. In the event that the Debtors fail to reach agreement among such parties, the Debtors shall file a motion in both the Canadian Court and the U.S. Court seeking approval of such claims protocol.

I. Notices

26. Notice of any Pleading or paper filed in one or both of the Restructuring Proceedings involving or relating to matters addressed by this Protocol and notice of any related hearings or other proceedings shall be given by appropriate means (including, where circumstances warrant, by courier, telecopier, email or other electronic forms of communication) to the following: (a) creditors and interested parties, in accordance with the practice and procedural rules of the jurisdiction where the papers are filed or the proceedings are to occur and orders of the applicable Court; and (b) to the extent not otherwise entitled to receive notice under clause (a) of this paragraph, to counsel to the (i) the Debtors; (ii) the Monitor; (iii) the U.S. Trustee; (iv) the Creditors' Committee; (v) the agents under the Debtors' debtor-in-possession financing facilities; (vi) the agent under the Debtors' prepetition term loan facility and counsel to the ad hoc committee of certain lenders under the prepetition term loan facility (until such facility has been refinanced); (vii) the agent under the Debtors' prepetition ABL facility; (viii) any other statutory committee appointed in the Restructuring Proceedings and such other parties as may be designated by either of the Courts from time to time. Notice in accordance with this paragraph shall be given by the party otherwise responsible for effecting notice in the jurisdiction where the underlying papers are filed or the proceedings are to occur. In addition to the foregoing, upon request by either Court, the Debtors shall provide the U.S. Court or the Canadian Court, as the case may be, with copies of any orders, decisions, opinions, or similar papers issued by the other Court in the Restructuring Proceedings.

27. When any cross-border issues or matters addressed by this Protocol are to be addressed before a Court, notices shall be provided in the manner and to the parties referred to in paragraph 26 above.

J. Effectiveness; Modification

28. This Protocol shall become effective only upon its approval by both the U.S. Court and the Canadian Court.

29. This Protocol may not be supplemented, modified, terminated, or replaced in any manner except upon the approval of both the U.S. Court and the Canadian Court after notice and a hearing. Notice of any legal proceedings to supplement, modify, terminate, or replace this Protocol shall be given in accordance with the notice provisions set forth in paragraph 26 above.

K. Procedure for Resolving Disputes Under This Protocol

30. Disputes relating to the terms, intent, or application of this Protocol may be addressed by interested parties to the U.S. Court, the Canadian Court, or both Courts upon notice in accordance with the notice provisions outlined in paragraph 26 above. In rendering a determination in any such dispute, the Court to which the issue is addressed: (a) shall consult with the other Court; and (b) may, in its sole and exclusive discretion, either: (i) render a binding decision after such consultation; (ii) defer to the determination of the other Court by transferring the matter, in whole or in part, to such other Court; or (iii) seek a Joint Hearing of both Courts in accordance with paragraph 11 above. Notwithstanding the foregoing, in making a determination under this paragraph, each Court shall give due consideration to the independence, comity, and inherent jurisdiction of the other Court established under existing law.

31. In implementing the terms of this Protocol, the U.S. Court and the Canadian Court may, in their sole discretion, provide advice or guidance to the other Court with respect to legal issues in accordance with the following procedures:

a. the U.S. Court or the Canadian Court, as applicable, may determine that such advice or guidance is appropriate under the circumstances;

b. the Court issuing such advice or guidance shall provide it to the other Court in writing;

c. copies of such written advice or guidance shall be served by the applicable Court in accordance with paragraph 26 hereof; and

d. the Courts may jointly decide to invite the Debtors, the Estate Representatives, the U.S. Trustee, the Monitor, the Creditors' Committee, the Term Loan DIP Lenders and any other affected or interested party to make submissions to the appropriate Court in response to or in connection with any written advice or guidance received from the other Court.

32. For clarity, the provisions of paragraph 31 shall not be construed to restrict the ability of either Court to confer as provided in paragraph 11 above whenever it deems it appropriate to do so.

L. Preservation of Rights

33. Except as specifically provided herein, neither the terms of this Protocol nor any actions taken under the terms of this Protocol shall: (a) prejudice or affect the powers, rights, claims, and defenses of the Debtors and their respective estates, the Creditors' Committee, the Estate Representatives, the U.S. Trustee, the Term Loan DIP Lenders or any of the Debtors' creditors under applicable law, including the Bankruptcy Code and the CCAA, and the orders of the Courts; or (b) preclude or prejudice the rights

of any person to assert or pursue such person's substantive rights against any other person under the applicable laws of Canada or the U.S.

Schedule 1

Schedule "B" – List of Debtor Entities

Corporation(s) incorporated under the laws of British Columbia

1. Performance Sports Group Ltd.

Corporation(s) incorporated under the laws of Canada

2. KBAU Holdings Canada, Inc.
3. Bauer Hockey Corp.
4. Easton Baseball/Softball Corp.
5. BPS Diamond Sports Corp.
6. Bauer Hockey Retail Corp.
7. PSG Innovation Corp.
8. Bauer Performance Sports Uniforms Corp.
9. Performance Lacrosse Group Corp.
10. BPS Canada Intermediate Corp.

Corporation(s) incorporated under the laws of Vermont

11. Bauer Hockey, Inc.

Corporation(s) incorporated under the laws of Delaware

12. BPS U.S. Holdings Inc.
13. Easton Baseball/Softball Inc.
14. BPS Diamond Sports Inc.
15. Bauer Hockey Retail Inc.
16. PSG Innovation Inc.
17. Bauer Performance Sports Uniforms Inc.
18. Performance Lacrosse Group Inc.

Schedule 1

TAB 9

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., 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")

THIRD REPORT OF THE MONITOR

December 16, 2016

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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., 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")

THIRD REPORT OF THE MONITOR

December 16, 2016

INTRODUCTION AND BACKGROUND

1. On October 31, 2016 (the "**Petition Date**"), the Ontario Superior Court of Justice – Commercial List (the "**Court**") granted an order (as amended and restated, the "**Initial Order**"), among other things: (i) declaring that Performance Sports Group Ltd. ("**PSG**") and certain of its subsidiaries and affiliates (collectively, the "**Applicants**")[1] were companies to which the *Companies' Creditors Arrangement Act* ("***CCAA***")[2] applied; (ii) granting certain relief including, *inter alia*, a stay of proceedings in favour of the Applicants (the "**Stay of Proceedings**"); and (iii) appointing Ernst & Young Inc. ("**EY**") as monitor (in such capacity, the "**Monitor**") of the Applicants.

2. On the same date, the Applicants commenced proceedings (the "**Chapter 11 Proceedings**") in the United States ("**U.S.**") under Chapter 11 of the *U.S. Bankruptcy Code* (the "***Code***")[3] in the Bankruptcy Court for the District of Delaware (the "**U.S. Court**").

3. PSG is a public corporation whose securities were traded on the New York and the Toronto Stock Exchanges under the symbol "PSG" before trading was suspended by both exchanges on October 31, 2016. The Toronto Stock Exchange delisted the securities effective December 8, 2016, and the New York Stock Exchange has announced that it will apply to delist the securities.

4. Background on the Applicants, including their business operations, causes of insolvency and various other matters are described in more detail in the affidavit of Mark Vendetti[4] sworn October 31, 2016 in support of the Initial Order ("**Initial Affidavit**").

5. Information regarding the Chapter 11 Proceedings, including copies of the "First day" orders entered by the U.S. Court are located on a website managed by the Applicants' claims agent, Prime Clerk LLC ("**Prime Clerk**"), at the following URL: https://cases.primeclerk.com/psg/ (the "**Prime Clerk**

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1 The Applicants in the present proceedings are comprised 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.

2 *Companies' Creditors Arrangement Act,* RSC 1985, c. C-36, as amended.

3 11 U.S.C §§ 101 *et seq.*

4 Mr. Vendetti is PSG's chief financial officer and an executive vice president.

Website"). Information regarding the Applicants' proceedings under the *CCAA* (the "***CCAA* Proceedings**", and together with the Chapter 11 Proceedings, the "**Restructuring Proceedings**"), including court orders and other materials related to the proceedings, are on the Monitor's website at the following URL: www.ey.com/ca/psg (the "**Monitor's Website**").

6. The Applicants have filed a motion seeking approval of:

   a) the payment of severance amounts owing to PSG employees dismissed prior to and subsequent to the commencement of these current proceedings (the "**Severance Motion**");[5]

   b) the establishment of claims bar dates for various claims arising prior to or as a result of the current proceedings (the "**Bar Dates Motion**"); and

   c) a modification to the Initial Order to increase the amount that the Applicants are authorized to pay in connection with liens that may be asserted against any Property (as defined in the Initial Order) by contractors, builders or repairers ("**Mechanics' Liens Motion**").

7. This third report of the Monitor (the "**Third Report**") provides the Court with information relevant to the *CCAA* Proceedings to date, in particular the matters referred to above.

8. This Third Report is presented under the following headings:

   a) Introduction and background;
   b) Terms of reference and disclaimer;
   c) Update on the restructuring proceedings to date;
   d) Comparison of actual and projected cash flow results;
   e) The proposed Claims Bar Dates (as defined below);
   f) Mechanics' lien motion; and
   g) Overall comments and conclusions.

---

[5] The Applicants have agreed to put the Severance Motion scheduled for December 19, 2016 over to January 10, 2016. The Severance Motion will be discussed in the Fourth Report of the Monitor, to be filed.

TERMS OF REFERENCE AND DISCLAIMER

9. The Monitor has prepared several reports since the commencement of the Restructuring Proceedings, each of which is accessible on the Monitor's Website. The Third Report should be read in conjunction with the previous reports.

10. In preparing this Third Report and making the comments herein, the Monitor has been provided with and has relied upon certain unaudited, draft and/or internal financial information, company records, management prepared financial information and projections, discussions with management and employees of the Applicants, and information from other third party sources, including the Applicants' Chief Restructuring Officer, Brian J. Fox of Alvarez & Marsal North America LLC, and other personnel from Alvarez & Marsal North America LLC ("**A&M**") and its affiliates ("**CRO**") (collectively, the "**Information**").

11. The Monitor has assumed the integrity and truthfulness of the Information and explanations provided to it, within the context in which it was presented. To date, nothing has come to the attention of the Monitor that would cause it to question the reasonableness of this assumption.

12. Finally, the Monitor has requested that management and the CRO bring to its attention any significant matters that were not addressed in the course of its specific inquiries. Accordingly, this Third Report is based solely on the Information (financial or otherwise) provided to the Monitor.

13. Except as described in this Third Report, the Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with generally accepted assurance standards and accordingly the Monitor expresses no opinion or other form of assurance in respect of the Information.

14. In view of the purpose of the Third Report, some of the financial information herein may not comply with generally accepted accounting principles.

15. Some of the information referred to in this Third Report consists of forecasts and projections that were prepared based on management's current estimates and assumptions. Such estimates and assumptions are, by their nature, not ascertainable and as a consequence no assurance can be

provided regarding the forecasted or projected results. Actual results will likely vary from the forecasts or projections, even if the assumptions materialize, and the variations could be significant.

16. The Monitor has prepared this Third Report in its capacity as the court-appointed Monitor in the *CCAA* Proceedings in order to provide additional information to the Court in connection with the *CCAA* Proceedings to date. This Third Report may not be appropriate for any other purpose and consequently should not be used for any other purpose.

17. Unless otherwise stated, all monetary amounts contained herein are expressed in U.S. dollars and all terms not otherwise defined herein shall have the meaning ascribed to them in the Initial Order and in the Monitor's previous reports.

UPDATE ON THE RESTRUCTURING PROCEEDINGS TO DATE

18. Since the Monitor's Second Report, filed December 13, 2016 (the "**Second Report**"), the U.S. Court issued the following orders:

    a) *Paul Weiss Retention Order:* an order authorizing the Applicants to employ and retain Paul Weiss, Rifkind, Wharton & Garrison LLP, to act as counsel to the Applicants *nunc pro tunc* to the Petition Date; and

    b) *UCC Professionals Retention Orders*: orders authorizing the Official Committee of Unsecured Creditors (the "**UCC**") to retain the following firms: (i) Blank Rome LLP, to act as counsel to the UCC *nunc pro tunc* to November 10, 2016; (ii) Cassels Brock & Blackwell LLP, to act as Canadian co-counsel to the UCC *nunc pro tunc* to November 14, 2016; and (iii) Province, Inc., to act as financial advisor to the UCC effective as of November 10, 2016.

19. Additionally, the following documents have been filed in the Chapter 11 Proceedings since the filing of the Second Report:

    a) *Equity Committee Retention Motions*: motions seeking authorization for the Official Committee of Equity Security Holders (the "**Equity Committee**") to retain the following firms *nunc pro tunc* to November 28, 2016: (i) Brown Rudnick LLP, to act as co-counsel to the Equity Committee; (ii) Montgomery, McCracken, Walker & Rhoads LLP, to act as Delaware bankruptcy counsel to the Equity Committee; (iii) McMillan LLP, to act as Canadian co-counsel to the Equity Committee; and (iv) Houlihan Lokey Capital, Inc., to act as financial advisor and investment banker to the Equity Committee;

b) *Applicants' Statements of Financial Affairs and Schedules of Assets and Liabilities* were filed on December 15, 2016;

c) *Proposed Form of Consumer Privacy Ombudsman Order*: a proposed form of order filed by the Applicants in consultation with the Office of the United States Trustee for the District of Delaware (the "**U.S. Trustee**") to appoint a consumer privacy ombudsman pursuant to section 332 of the *Code* to consider issues such as privacy of customer personal identity information in connection with the sale;

d) *Objections to Severance Payment Motion*: objections filed by the Equity Committee and UCC asserting that the Applicants' pending motion to pay certain severance obligations is premature until there is greater clarity regarding the claims pool and the status of ongoing internal investigations that may involve individuals who may receive severance payments.

COMPARISON OF ACTUAL AND PROJECTED CASH FLOW RESULTS

20. Pursuant to its duties as set out in the Initial Order, the Monitor has monitored the Applicants' receipts and disbursements since the commencement of the *CCAA* Proceedings. Attached as **Appendix "A"** to this Third Report, and summarized below, is a comparative analysis of the statement of receipts and disbursements covering the period from October 31 to December 9, 2016 (6 weeks).

Performance Sports Group Ltd. and its Applicant subsidiaries Comparison of actual and projected receipts and disbursements For the period from October 31 to December 9, 2016 (6 weeks) In US $000's			
	Budget	Actual	Variance
Cash receipts	57,800	67,386	9,586
Cash disbursements	(79,148)	(52,127)	27,021
Net cash Flow	(21,348)	15,259	36,607
Cash reconciliation			
Opening cash balance	-	**3,202**	**3,202**
Net cash Flow	(21,348)	15,259	36,607
Net ABL and DIP Facility draw / (paydown)	22,333	(16,257)	(38,590)
Term Loan DIP draw (paydown)	6,515	4,313	(2,202)
Ending cash balance	**7,500**	**6,517**	**(983)**
ABL balance:			
ABL Facility	103,744	96,485	(7,259)
ABL DIP Facility	80,132	46,604	(33,528)
Letters of Credit	1,001	1,001	-
Ending ABL balance (A)	184,877	144,090	(40,787)
ABL Borrowing Base (B)	184,970	174,334	(10,636)
ABL availability (B-A)	93	30,245	30,152
Non-restricted cash	7,500	6,517	(983)
Term Loan DIP availability	23,485	25,687	2,202
Total Availability	**31,078**	**62,449**	**31,371**

21. The actual results for the 6-week period from October 31 to December 9, 2016 indicate a favourable variance in receipts and disbursements of $36.6 million and a variance arising from the additional cash on hand at October 31, 2016 of $3.2 million. These variances do not result in additional liquidity of $39.8 million, as the favourable variances in receipts caused a decrease in the borrowing base and thus on the available credit. The additional liquidity generated from the favourable variances is reported to be $31.4 million[6].

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6 The report prepared by the Applicants indicates a surplus availability of $33.2 million. The difference relates to cheques in circulation that are added back to the availability in the Applicants' reporting. Considering that these funds have already been allocated, the Monitor does not consider that they form part of the available funds.

22. The cash flow variance for the period is principally attributable to:

    a) *opening balances* (favourable variances of $3.2 million in cash and of $2.7 million in the ABL Facility (as defined in the Initial Order) balance) - The Applicants' collections were higher than anticipated in the week ended October 28, 2016 resulting in a favourable variance as at October 31, 2016;

    b) *receipts* (favourable variance of $9.6 million) - The Applicants attribute the variance to timing differences; and,

    c) *disbursements* (favourable variance of $27.0 million) - The Applicants attribute the variance to timing differences. The variances relate primarily to payments for current purchases, which are continuing to be paid on normal credit terms, and amounts due to foreign and domestic essential suppliers, for which delays are being encountered in implementing the payments that were contemplated in the cash flow forecast appended to the Monitor's First Report, filed November 28, 2016 (the "**Cash Flow Forecast**"). In addition, an unfavourable foreign exchange adjustment and miscellaneous bank charges totalling $500,000 were incurred and applied directly to the ABL Facility (as defined in the Initial Order).

23. Although the aggregate favourable variance in receipts and disbursements is reported to be $36.6 million, the cash on hand at November 18, 2016 is $983,000 lower than the projected amount, in view of the fact that the Applicants repaid amounts greater than budgeted on the ABL Facility and drew lower amounts under the ABL DIP Facility (each as defined in the Initial Order) for a combined amount of $38.6 million and borrowed less than projected on the Term Loan DIP Facility (as defined in the Initial Order) by $2.2 million.

24. Overall, the Applicants' liquidity position as at December, 2016 appears to be more favourable than originally projected by $31.4 million. The Applicants are of the view that the improvement in liquidity is largely due to timing differences that will reverse in the near term. The Monitor believes that this assertion is reasonable.

PROPOSED CLAIMS PROCEDURES

25. The Applicants anticipate that the current sale process will likely generate sufficient funds to allow for a distribution to the unsecured creditors. Accordingly, the Applicants seek authority to call for

claims in order to obtain complete and accurate information regarding the nature and amounts of claims asserted against each of the Applicants, with a view to preparing for an eventual distribution. The claims procedure (the "**Claims Procedure**") is more fully described in the Applicants' motion record filed in connection with the motion returnable December 19, 2016.

26. The proposed Claims Procedure streamlines certain typical procedures in order to: i) limit duplication between the parallel processes in the Chapter 11 Proceedings and the *CCAA* Proceedings; ii) enhance efficiency; iii) simplify the process for creditors; and iv) preserve flexibility. Further, the Claims Procedure allows creditors to file a claim in a single coordinated process in the Restructuring Proceedings.

27. To date, the Applicants, in consultation with the Monitor, have made significant efforts to develop the following documents in a manner that conforms to the requirements under both the Chapter 11 Proceedings and the *CCAA* Proceedings, to avoid duplication of the claims documentation: i) a proof of claim form (the "**Proof of Claim**"); ii) a letter of instructions intended to assist claimants in completing the Proof of Claim; iii) the Claims Notice; and iv) a notice to be published in newspapers in each Canada and the U.S. The documentation is intended to be used in both the Chapter 11 Proceedings and the *CCAA* Proceedings so that claimants only have to file a single Proof of Claim.

28. To that end, the Applicants are coordinating the Claims Procedure with the Chapter 11 Proceedings in order to develop a common single stream process that will be efficient and non-duplicative, which includes the following:

    a) Prime Clerk will act as claims and noticing agent to mail a claims package (the "**Claims Package**") to each known creditor consisting of a notice (the "**Claims Notice**") which, among other things, will list the classification and amount of such person's claim as of October 31, 2016, based on the Applicants' books and records (the "**Scheduled Claim**"), and will send a blank Proof of Claim by prepaid ordinary mail to each of the known potential claimants listed in the books and records of the Applicants to their last known address within five (5) business days after an order is made by the Court on the Bar Dates Motion (the "**Claims Bar Date Order**");

    b) Prime Clerk will maintain a central registry of all filed Claims;

c) Prime Clerk will arrange for publication of a notice of the Claims Bar Dates (as defined below) in *La Presse* and *The Globe and Mail* in Canada and in *USA Today* and *The Wall Street Journal* in the U.S.; and

d) the use of a "reverse" claims procedure whereby the creditors will not be required to submit a Proof of Claim if they agree with the information provided in the Claims Notice. In the event that a claimant objects to the information in the Claims Notice, including the quantum or classification of such claim, the claimant will have to complete the Proof of Claim and return it to Prime Clerk or to the Monitor on or before the relevant bar date.

29. The Monitor notes that there is an implicit risk in the "reverse" claim process as it may not provide assurance that a claim is accurate in the following circumstances (i) if the creditor does not reside at the address indicated in the Applicants' records, because of a change of address or a recording error, and thus does not receive the notice of the claims bar date; or (ii) if the creditor's claim is lower than the amount listed on the Applicants' records, for any reason, including due to an accounting error. However, the Monitor understands that the Applicants are confident that their records, which have been reviewed by A&M, have been reconciled and are reasonably accurate, that the risk of error is slight and that the efficiency and cost savings expected from the reverse claims process far exceeds the potential for overpayment of a claim. The Monitor believes this assertion is reasonable. The risk listed in (i) above is further mitigated by the broad publication of the Claims Bar Dates and having the relevant information promptly posted on the Monitor's Website.

30. The claims bar dates proposed in the Restructuring Proceedings are as follows (collectively, the "**Claims Bar Dates**"):

a) February 6, 2017, 5:00 p.m. (Eastern time) as a general claims bar date (the "**General Bar Date**);

b) May 1, 2017, 5:00 p.m. (Eastern time) for all claims of a governmental entity for taxes or provided by statute (the "**Governmental Bar Date**");

c) The later of February 6, 2017, 5:00 p.m. (Eastern time) or 30 days after the issuance of a contract repudiation, rejection, disclaimer or resiliation notice, for restructuring claims of parties whose contracts are being disclaimed or resiliated (the "**Rejection Bar Date**"); and,

d) 30 days following the issuance of a notice of an amendment made to a Scheduled Claim for creditors whose Scheduled Claim has been modified due to:

i. new information having been obtained by the Applicants;

ii. the payment of pre-filing amounts owing to such creditor as critical vendor or foreign vendor; or,

iii. other reasonable business considerations.

31. The following parties are not required to file a Proof of Claim:

a) the Applicants or affiliates thereof, as defined under section 3(2) of the *CCAA*;

b) any current officer, director or employee of the Applicants for indemnification, contribution or reimbursement;

c) the Pre-Filing ABL Lenders and the Pre-Filing Term Lenders (as each term is defined in the Initial Order); and

d) certain ordinary creditors, such as creditors who do not disagree with the amount presented in their Claims Notice, or creditors who have already filed a claim with Prime Clerk or the Monitor or with the U.S. Trustee, or any entity whose claim against an Applicant previously has been allowed by, or paid pursuant to, an order of the Court.

32. The Monitor intends to make the claims information available on the Monitor's Website and to work in collaboration with Prime Clerk to ensure that a proper claims database is developed and maintained by Prime Clerk, for use in both the Chapter 11 Proceedings and the *CCAA* Proceedings.

33. As a result of the procedures developed to date, the Monitor is of the view that claimants should have sufficient information to file claims against the Applicants and that the Claims Bar Dates are reasonable in that they provide sufficient time during which potential claimants may evaluate and submit any claim they may have against the Applicants.

34. Accordingly, the Monitor recommends that this Court approve the Claims Procedure.

35. At this time, the Claims Procedure is limited to the procedures to call for claims, set the Claims Bar Dates and maintain a record of the filed claims. The Applicants intend to seek a further Order from

this Court authorizing procedures with respect to the approval or contestation of claims, the valuation of contingent or unliquidated claims, an appeal process to deal with disputed claims, or any other factor pertaining to the determination of claims in the proceedings. The Monitor intends to continue working with Prime Clerk and with the Applicants' Canadian and U.S. counsel to develop an efficient process to deal with the approval and contestation of claims and valuation of contingent or unliquidated claims, as the case may be.

MECHANICS' LIENS MOTION

36. The Initial Order currently provides that the Applicants may pay amounts due to third parties such as contractors, builders and repairers who may potentially assert liens under applicable law against the Applicants' property, with the Monitor's consent, up to an amount of $3 million in certain circumstances (see paragraph 6(c)(iii) of the Initial Order).

37. The Applicants have determined that the limit set out in the Initial Order is insufficient, in view of the fact that construction work has been performed on a leased property in Van Nuys, California, for which an amount of $3.4 million remains outstanding. The Applicants informed the Monitor that the third party builder to whom the amount is due has filed liens against the property, which constitutes a breach of the lease for the said property. Further, the Applicants have advised that failure to pay the liens perpetually increases their costs and it is in their best interests to pay the lien amounts.

38. The Applicants seek authority to increase the amount that they are allowed to disburse to third parties who may assert a lien, to be authorized to pay an amount of up to $4 million in aggregate, with the Monitor's consent.

39. The rationale for the increase in the amount has been discussed with the Monitor and the Monitor agrees that this request is reasonable.

OVERALL COMMENTS AND CONCLUSIONS

40. The Applicants have filed a motion seeking, among other things, approval of the Claims Procedure and a modification of the amount that can be paid to third party builders, constructors or repairers to avoid their filing liens against the Applicants' property. For the reasons described above, the Monitor supports these requests and recommends that this Court grant the relief sought.

All of which is respectfully submitted this 16th day of December, 2016.

ERNST & YOUNG INC.
In its capacity as the Monitor
in the matter of a proposed plan of compromise or
arrangement of Performance Sports Group Ltd. *et al.*

Per:

Brian M. Denega, CPA, CA, CIRP, LIT
Jean-Daniel Breton, CPA, CA, FCIRP, LIT
Martin Daigneault, CPA, CA, CIRP, LIT
Senior Vice-Presidents

APPENDIX “A”

Appendix "A"

Performance Sports Group Ltd and its Applicant subsidiaries

Budget to Actual results for the 6 weeks ended December 9, 2016

	Compared to Initial Budget			Compared to Initial Budget		
	3 Weeks Ended 12/9/16			6 Weeks Ended 12/9/16		
	Forecast	Actual	Variance	Forecast	Actual	Variance
Cash Receipts:						
Total Receipts	**$ 34,701**	**$ 36,839**	**$ 2,139**	**$ 57,800**	**$ 67,836**	**$ 10,037**
Cash Disbursements:						
Payroll, Benefits and Temps.	(4,387)	(4,973)	(586)	(7,097)	(7,222)	(126)
Finished Goods / Materials	(12,361)	(7,664)	4,697	(21,014)	(9,085)	11,929
Distribution	(736)	(830)	(94)	(1,335)	(1,169)	167
Marketing / R+D (Excl. Labor)	(1,488)	(623)	865	(2,252)	(1,112)	1,140
Freight	(2,246)	(3,237)	(991)	(3,912)	(3,688)	224
Utilities	(119)	(101)	18	(200)	(110)	90
Insurance	(148)	(174)	(26)	(296)	(297)	(1)
Property, Sales and Other Taxes	(1,530)	(677)	853	(1,895)	(1,146)	749
Facilities / Rent / Leases	(531)	(563)	(33)	(1,062)	(651)	411
Other Operating Disbursements	(3,106)	(1,354)	1,753	(5,334)	(2,494)	2,841
Total Operating Disbursements	**$ (26,653)**	**$ (20,197)**	**$ 6,456**	**$ (44,397)**	**$ (26,973)**	**$ 17,424**
Total Operating Cash Flow	**$ 8,048**	**$ 16,643**	**$ 8,595**	**$ 13,402**	**$ 40,863**	**$ 27,461**
Capex	(437)	(86)	351	(959)	(286)	673
Interest Payments	(10,941)	(11,092)	(151)	(11,732)	(11,812)	(80)
Professional Fees	-	(2,833)	(2,833)	-	(2,842)	(2,842)
Other Non-Operating Disbursements	(706)	(137)	569	(1,009)	(255)	754
Total Non-Operating Disbursements	**$ (12,084)**	**$ (14,148)**	**$ (2,064)**	**$ (13,700)**	**$ (15,196)**	**$ (1,496)**
Chapter 11 / CCAA Items:						
Utilities Deposit	-	-	-	(300)	-	300
503b9 Claims	(700)	-	700	(1,167)	-	1,167
Foreign / Critical Vendor Payments	(10,250)	(9,089)	1,161	(17,083)	(9,870)	7,214
Other Chapter 11 / CCAA Prepayments	-	-	-	-	-	-
Shippers and Warehousemen	(1,500)	(405)	1,095	(2,500)	(538)	1,962
KEIP / KERP	-	-	-	-	-	-
Total Chapter 11 / CCAA Items	**(12,450)**	**(9,494)**	**2,956**	**(21,050)**	**(10,408)**	**10,642**
Total Disbursements	**$ (51,187)**	**$ (43,839)**	**$ 7,348**	**$ (79,147)**	**$ (52,577)**	**$ 26,570**
Net Cash Flow	**$ (16,486)**	**$ (7,000)**	**$ 9,486**	**$ (21,348)**	**$ 15,259**	**$ 36,607**
Cash Balance:						
Beginning Cash Book Balance	$ 7,500	$ 6,681	$ (820)	$ 0	$ 3,202	$ 3,201
Net Cash Flow (excl. Draws/Paydowns)	(16,486)	(7,000)	9,486	(21,348)	15,259	36,607
Revolver Draws / (Paydowns)	9,970	2,523	(7,447)	22,332	(16,257)	(38,589)
Delayed Draw DIP Term Loan Draws/(Paydowns)	6,515	4,313	(2,202)	6,515	4,313	(2,202)
Ending Cash Book Balance	7,500	6,517	(983)	7,500	6,517	(983)
Outstanding Checks	-	1,872	1,872	-	1,872	1,872
(A) Ending Cash Bank Balance (Excl. Restricted Cash)	**$ 7,500**	**$ 8,389**	**$ 889**	**$ 7,500**	**$ 8,389**	**$ 889**
Restricted Cash	$ 4,000	$ 4,000	$ -	$ 4,000	$ 4,000	$ -
Ending Cash Bank Balance (incl. Restricted Cash)	$ 11,500	$ 12,389	$ 889	$ 11,500	$ 12,389	$ 889
Ending Prepetition Revolver Balance	$ 103,744	$ 96,485	$ (7,259)	$ 103,744	$ 96,485	$ (7,259)
Ending DIP Revolver Balance	80,132	46,604	(33,528)	80,132	46,604	(33,528)
Letters of Credit	1,001	1,001	(0)	1,001	1,001	(0)
	$ 184,876	$ 144,089	$ (40,787)	$ 184,876	$ 144,089	$ (40,787)
Borrowing Base	**$ 184,970**	**$ 174,334**	**$ (10,636)**	**$ 184,970**	**$ 174,334**	**$ (10,636)**
(B) Effective Availability - Revolving Credit Facility	**$ 94**	**$ 30,245**	**$ 30,151**	**$ 94**	**$ 30,245**	**$ 30,151**
(C) Delayed Draw Term Loan Availability	**$ 23,485**	**$ 25,687**	**$ 2,202**	**$ 23,485**	**$ 25,687**	**$ 2,202**
(A+B+C) Total Availability	**$ 31,079**	**$ 64,321**	**$ 33,243**	**$ 31,079**	**$ 64,321**	**$ 33,243**

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

THIRD REPORT OF THE MONITOR

December 16, 2016

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Lawyers for Ernst & Young Inc.,
the Court-appointed Monitor

TAB 10

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 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)

AFFIDAVIT OF SERVICE
OF LEE NICHOLSON
(Sworn August 29, 2017)

I, Lee Nicholson, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am an Associate with Stikeman Elliott LLP ("**Stikeman Elliott**"), lawyers for 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**" or the "**PSG Entities**").

2. On August 25, 2017, I served a PDF copy of the Motion Record of the Applicants (Re: Claims Resolution Order) which included an unsworn Affidavit, dated August 25, 2017, returnable September 1, 2017, on the parties shown on the e-mail attached hereto as Exhibit "**A**".

3. On August 28, 2017, I served a PDF copy of the Motion Record of the Applicants (Re: Claims Resolution Order) which included the sworn Affidavit, dated August 25, 2017, returnable September 1, 2017, on the parties shown on the e-mail attached hereto as Exhibit "**B**".

4. On August 28, 2017 I couriered a copy of the Motion Record of the Applicants (Re: Claims Resolution Order) which included an unsworn Affidavit, dated August 25, 2017, returnable September 1, 2017, on the parties listed below.

Couriered Parties:

1. c/o Lowenstein Sandler LLP
   65 Livingston Avenue
   Roseland, New Jersey 07068
   Attention: Michael S. Etkin and Andrew Behlmann;

2. 204-18500 J.A. Bombardier
   Mirabel QC J7J 0R3
   Attention: Normand Nadeau; and

3. 6A Boul St-Jean
   Pointe-Claire QC H9S 4Y8
   Attention: Ken Covo

SWORN BEFORE ME at the City of Toronto, on August 29, 2017.	
Commissioner for taking affidavits Sanja Sopic	**Lee Nicholson**

Keisha Lackpatiah-Sealy

From:	Lee Nicholson
Sent:	Friday, August 25, 2017 6:16 PM
To:	Adam Slavens; Alice Eaton; Andrew Kent; Asim Iqbal; Bentley Gaikis; Bernard Boucher; Brendan O'Neill; Brian Corio; Brian Denega; Brian Fox; Bruce Stratton; Caitlin Fell; Catherine Dine; Christopher Marcus; Claudia Tobler; D.J. Miller; Daniel Boudreault; Daniel Guyder; David Bish; David Cohen; David Zubricki; Doug Gooding; Evan Cobb; Frank Selke; Gaberiel Morgan; Geoff Mowatt; George Klidonas; Gerry Apostolatos; Greg Karpel; Gregory Kress; Jean-Daniel Breton; Jeffrey Levine; Jennifer L. Nassiri; Jennifer Whincup; Joe Latham; John Tuzyk; John Ventola; Jonah Mann; Jonathan Marshall; Josh Neifeld; Julia Dmitrijeva; Justin Rucki; Kathryn Esaw; Kelly Cornish; Ken Coleman; Kevin Zych; Kristopher Hanc; Lee Nicholson; Marc Puntus; Maria Konyukhova; Martin Daigneault; Marvin Yontef; Matt Barr; Matthew Merkley; Michael Stewart; Monique Sassi; Natalie Levine; Pauline Morgan; Peter Howard; Philippe Bourassa; Pierre Jobidon; Rachel Bengino; Robert Staley; Robert Thornton; Ryan Kielty; Ryan Baulke; Ryan Jacobs; Sean Greecher; Sean Zweig; Sebastien Guy; Shayne Kukulowicz; Tony Reyes; Vlad Calina; Yannick Beaudoin; normandnadeau.inc@gmail.com; kencovo@hotmail.com; metkin@lowenstein.com; abehlmann@lowenstein.com
Subject:	Re Old PSG Wind-down Ltd. (CV-16-11582-00CL) - Motion Record of the Applicants
Attachments:	Motion Record of the Applicants returnable September 1, 2017.pdf

To the Service List:

Please find attached the motion record of the Applicants in respect of a motion for a claims resolution order returnable September 1, 2017, which is hereby served upon you pursuant to the *Rules of Civil Procedure*.

Please note the motion record contains an unsworn affidavit. We will provide a sworn copy as soon as it is available.

Regards,
Lee

Lee Nicholson
Tel : (416) 869-5604
Mobile : (647) 821-1931
leenicholson@stikeman.com

This is Exhibit "A" *referred to in the affidavit of* LEE NICHOLSON
sworn before me, this 29th
day of AUGUST 2017

A COMMISSIONER FOR TAKING AFFIDAVITS

Keisha Lackpatiah-Sealy

From:	Lee Nicholson
Sent:	Monday, August 28, 2017 4:31 PM
To:	Adam Slavens; Alice Eaton; Andrew Kent; Asim Iqbal; Bentley Gaikis; Bernard Boucher; Brendan O'Neill; Brian Corio; Brian Denega; Brian Fox; Bruce Stratton; Caitlin Fell; Catherine Dine; Christopher Marcus; Claudia Tobler; D.J. Miller; Daniel Boudreault; Daniel Guyder; David Bish; David Cohen; David Zubricki; Doug Gooding; Evan Cobb; Frank Selke; Gaberiel Morgan; Geoff Mowatt; George Klidonas; Gerry Apostolatos; Greg Karpel; Gregory Kress; Jean-Daniel Breton; Jeffrey Levine; Jennifer L. Nassiri; Jennifer Whincup; Joe Latham; John Tuzyk; John Ventola; Jonah Mann; Jonathan Marshall; Josh Neifeld; Julia Dmitrijeva; Justin Rucki; Kathryn Esaw; Kelly Cornish; Ken Coleman; Kevin Zych; Kristopher Hanc; Lee Nicholson; Marc Puntus; Maria Konyukhova; Martin Daigneault; Marvin Yontef; Matt Barr; Matthew Merkley; Michael Stewart; Monique Sassi; Natalie Levine; Pauline Morgan; Peter Howard; Philippe Bourassa; Pierre Jobidon; Rachel Bengino; Robert Staley; Robert Thornton; Ryan Kielty; Ryan Baulke; Ryan Jacobs; Sean Greecher; Sean Zweig; Sebastien Guy; Shayne Kukulowicz; Tony Reyes; Vlad Calina; Yannick Beaudoin; normandnadeau.inc@gmail.com; kencovo@hotmail.com; metkin@lowenstein.com; abehlmann@lowenstein.com
Subject:	RE: Re Old PSG Wind-down Ltd. (CV-16-11582-00CL) - Motion Record of the Applicants
Attachments:	Motion Record of the Applicants returnable September 1, 2017.pdf

To the Service List:

Please find attached a copy of the Applicants' motion record that contains a sworn affidavit.

Regards,
Lee

Lee Nicholson

Direct: +1 416 869 5604
Mobile: +1 647 821 1931
Email: leenicholson@stikeman.com

From: Lee Nicholson
Sent: Friday, August 25, 2017 6:16 PM
To: 'Adam Slavens'; 'Alice Eaton'; 'Andrew Kent'; 'Asim Iqbal'; 'Bentley Gaikis'; 'Bernard Boucher'; 'Brendan O'Neill'; 'Brian Corio'; 'Brian Denega'; 'Brian Fox'; 'Bruce Stratton'; 'Caitlin Fell'; 'Catherine Dine'; 'Christopher Marcus'; 'Claudia Tobler'; 'D.J. Miller'; 'Daniel Boudreault'; 'Daniel Guyder'; 'David Bish'; 'David Cohen'; 'David Zubricki'; 'Doug Gooding'; 'Evan Cobb'; 'Frank Selke'; 'Gaberiel Morgan'; 'Geoff Mowatt'; 'George Klidonas'; 'Gerry Apostolatos'; 'Greg Karpel'; 'Gregory Kress'; 'Jean-Daniel Breton'; 'Jeffrey Levine'; 'Jennifer L. Nassiri'; 'Jennifer Whincup'; 'Joe Latham'; 'John Tuzyk'; 'John Ventola'; 'Jonah Mann'; 'Jonathan Marshall'; 'Josh Neifeld'; 'Julia Dmitrijeva'; 'Justin Rucki'; 'Kathryn Esaw'; 'Kelly Cornish'; 'Ken Coleman'; 'Kevin Zych'; 'Kristopher Hanc'; 'Lee Nicholson'; 'Marc Puntus'; 'Maria Konyukhova'; 'Martin Daigneault'; 'Marvin Yontef'; 'Matt Barr'; 'Matthew Merkley'; 'Michael Stewart'; 'Monique Sassi'; 'Natalie Levine'; 'Pauline Morgan'; 'Peter Howard'; 'Philippe Bourassa'; 'Pierre Jobidon'; 'Rachel Bengino'; 'Robert Staley'; 'Robert Thornton'; 'Ryan Kielty'; 'Ryan Baulke'; 'Ryan Jacobs'; 'Sean Greecher'; 'Sean Zweig'; 'Sebastien Guy'; 'Shayne Kukulowicz'; 'Tony Reyes'; 'Vlad Calina'; 'Yannick Beaudoin'; 'normandnadeau.inc@gmail.com'; 'kencovo@hotmail.com'; 'metkin@lowenstein.com'; 'abehlmann@lowenstein.com'
Subject: Re Old PSG Wind-down Ltd. (CV-16-11582-00CL) - Motion Record of the Applicants

To the Service List:

Please find attached the motion record of the Applicants in respect of a motion for a claims resolution order returnable September 1, 2017, which is hereby served upon you pursuant to the *Rules of Civil Procedure*.

Please note the motion record contains an unsworn affidavit. We will provide a sworn copy as soon as it is available.

Regards,
Lee

Lee Nicholson
Tel : (416) 869-5604
Mobile : (647) 821-1931
leenicholson@stikeman.com

This is Exhibit "B" *referred to in the affidavit of* LEE NICHOLSON *sworn before me, this* 29th *day of* AUGUST 20 17

[signature]

A COMMISSIONER FOR TAKING AFFIDAVITS

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 SERVICE
OF LEE NICHOLSON
(SWORN AUGUST 29, 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
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

6772682 v1

TAB 11

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 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)

AFFIDAVIT OF SERVICE
OF LEE NICHOLSON
(Sworn September 22, 2017)

I, Lee Nicholson, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am an Associate with Stikeman Elliott LLP ("**Stikeman Elliott**"), lawyers for 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**" or the "**PSG Entities**").

2. On September 21, 2017, I served a PDF copy of the Motion Record of the Applicants (Re: Disallowance of Putative Class Claim) dated September 21, 2017, returnable October 16, 2017, on the parties shown on the e-mail attached hereto as Exhibit "**A**".

3. On September 22, 2017, I served a couriered copy of the Motion Record of the Applicants (Re: Disallowance of Putative Class Claim) dated September 21, 2017, returnable October 16, 2017, on the party shown on the attached hereto as Exhibit "**B**".

SWORN BEFORE ME at the City of Toronto, on September 22, 2017.	
Commissioner for taking affidavits Sanja Sopic	**Lee Nicholson**

Keisha Lackpatiah-Sealy

From:	Lee Nicholson
Sent:	Thursday, September 21, 2017 7:10 PM
To:	abehlmann@lowenstein.com; metkin@lowenstein.com; Adam Slavens; Alice Eaton; Andrew Kent; Asim Iqbal; Bentley Gaikis; Bernard Boucher; Brendan O'Neill; Brian Corio; Brian Denega; Brian Fox; Bruce Stratton; Caitlin Fell; Catherine Dine; Christopher Marcus; Claudia Tobler; D.J. Miller; Daniel Boudreault; Daniel Guyder; David Bish; David Cohen; David Zubricki; Doug Gooding; Evan Cobb; Frank Selke; Gaberiel Morgan; Geoff Mowatt; George Klidonas; Gerry Apostolatos; Greg Karpel; Gregory Kress; Jean-Daniel Breton; Jeffrey Levine; Jennifer L. Nassiri; Jennifer Whincup; Joe Latham; John Tuzyk; John Ventola; Jonah Mann; Jonathan Marshall; Josh Neifeld; Julia Dmitrijeva; Justin Rucki; Kathryn Esaw; Kelly Cornish; Ken Coleman; Kevin Zych; Kristopher Hanc; Lee Nicholson; Marc Puntus; Maria Konyukhova; Martin Daigneault; Marvin Yontef; Matt Barr; Matthew Merkley; Michael Stewart; Monique Sassi; Natalie Levine; Pauline Morgan; Peter Howard; Philippe Bourassa; Pierre Jobidon; Rachel Bengino; Robert Staley; Robert Thornton; Ryan Kielty; Ryan Baulke; Ryan Jacobs; Sean Greecher; Sean Zweig; Sebastien Guy; Shayne Kukulowicz; Tony Reyes; Vlad Calina; Yannick Beaudoin
Subject:	RE: Re Old PSG Wind-down Ltd. et. al. - Motion Record of the Applicants returnable October 16, 2017 - Part 1 of 3
Attachments:	Motion Record of the Applicants (returnable October 16, 2017) Part 3 of 3.pdf

Part 3 of 3.

Lee Nicholson

Direct: +1 416 869 5604
Mobile: +1 647 821 1931
Email: leenicholson@stikeman.com

From: Lee Nicholson
Sent: Thursday, September 21, 2017 7:09 PM
To: 'abehlmann@lowenstein.com'; 'metkin@lowenstein.com'; 'Adam Slavens'; 'Alice Eaton'; 'Andrew Kent'; 'Asim Iqbal'; 'Bentley Gaikis'; 'Bernard Boucher'; 'Brendan O'Neill'; 'Brian Corio'; 'Brian Denega'; 'Brian Fox'; 'Bruce Stratton'; 'Caitlin Fell'; 'Catherine Dine'; 'Christopher Marcus'; 'Claudia Tobler'; 'D.J. Miller'; 'Daniel Boudreault'; 'Daniel Guyder'; 'David Bish'; 'David Cohen'; 'David Zubricki'; 'Doug Gooding'; 'Evan Cobb'; 'Frank Selke'; 'Gaberiel Morgan'; 'Geoff Mowatt'; 'George Klidonas'; 'Gerry Apostolatos'; 'Greg Karpel'; 'Gregory Kress'; 'Jean-Daniel Breton'; 'Jeffrey Levine'; 'Jennifer L. Nassiri'; 'Jennifer Whincup'; 'Joe Latham'; 'John Tuzyk'; 'John Ventola'; 'Jonah Mann'; 'Jonathan Marshall'; 'Josh Neifeld'; 'Julia Dmitrijeva'; 'Justin Rucki'; 'Kathryn Esaw'; 'Kelly Cornish'; 'Ken Coleman'; 'Kevin Zych'; 'Kristopher Hanc'; 'Lee Nicholson'; 'Marc Puntus'; 'Maria Konyukhova'; 'Martin Daigneault'; 'Marvin Yontef'; 'Matt Barr'; 'Matthew Merkley'; 'Michael Stewart'; 'Monique Sassi'; 'Natalie Levine'; 'Pauline Morgan'; 'Peter Howard'; 'Philippe Bourassa'; 'Pierre Jobidon'; 'Rachel Bengino'; 'Robert Staley'; 'Robert Thornton'; 'Ryan Kielty'; 'Ryan Baulke'; 'Ryan Jacobs'; 'Sean Greecher'; 'Sean Zweig'; 'Sebastien Guy'; 'Shayne Kukulowicz'; 'Tony Reyes'; 'Vlad Calina'; 'Yannick Beaudoin'
Subject: RE: Re Old PSG Wind-down Ltd. et. al. - Motion Record of the Applicants returnable October 16, 2017 - Part 1 of 3

Part 2 of 3.

Lee Nicholson

Direct: +1 416 869 5604
Mobile: +1 647 821 1931
Email: leenicholson@stikeman.com

From: Lee Nicholson
Sent: Thursday, September 21, 2017 7:08 PM

To: 'abehlmann@lowenstein.com'; 'metkin@lowenstein.com'; 'Adam Slavens'; 'Alice Eaton'; 'Andrew Kent'; 'Asim Iqbal'; 'Bentley Gaikis'; 'Bernard Boucher'; 'Brendan O'Neill'; 'Brian Corio'; 'Brian Denega'; 'Brian Fox'; 'Bruce Stratton'; 'Caitlin Fell'; 'Catherine Dine'; 'Christopher Marcus'; 'Claudia Tobler'; 'D.J. Miller'; 'Daniel Boudreault'; 'Daniel Guyder'; 'David Bish'; 'David Cohen'; 'David Zubricki'; 'Doug Gooding'; 'Evan Cobb'; 'Frank Selke'; 'Gaberiel Morgan'; 'Geoff Mowatt'; 'George Klidonas'; 'Gerry Apostolatos'; 'Greg Karpel'; 'Gregory Kress'; 'Jean-Daniel Breton'; 'Jeffrey Levine'; 'Jennifer L. Nassiri'; 'Jennifer Whincup'; 'Joe Latham'; 'John Tuzyk'; 'John Ventola'; 'Jonah Mann'; 'Jonathan Marshall'; 'Josh Neifeld'; 'Julia Dmitrijeva'; 'Justin Rucki'; 'Kathryn Esaw'; 'Kelly Cornish'; 'Ken Coleman'; 'Kevin Zych'; 'Kristopher Hanc'; 'Lee Nicholson'; 'Marc Puntus'; 'Maria Konyukhova'; 'Martin Daigneault'; 'Marvin Yontef'; 'Matt Barr'; 'Matthew Merkley'; 'Michael Stewart'; 'Monique Sassi'; 'Natalie Levine'; 'Pauline Morgan'; 'Peter Howard'; 'Philippe Bourassa'; 'Pierre Jobidon'; 'Rachel Bengino'; 'Robert Staley'; 'Robert Thornton'; 'Ryan Kielty'; 'Ryan Baulke'; 'Ryan Jacobs'; 'Sean Greecher'; 'Sean Zweig'; 'Sebastien Guy'; 'Shayne Kukulowicz'; 'Tony Reyes'; 'Vlad Calina'; 'Yannick Beaudoin'
Subject: Re Old PSG Wind-down Ltd. et. al. - Motion Record of the Applicants returnable October 16, 2017 - Part 1 of 3

To the Service List:

Please find attached part 1 of the motion record of the Applicants in respect of a motion to disallow the Putative Class Claim filed by the Plumbers & Pipefitters National Pension Fund returnable October 16, 2017 at 10:00 a.m., which is hereby served on you pursuant to the *Rules of Civil Procedure*.

Due to size constraints the motion record will be sent in three separate parts.

Regards,

Lee

Lee Nicholson

Direct: +1 416 869 5604
Mobile: +1 647 821 1931
Email: leenicholson@stikeman.com

This is Exhibit "A" *referred to in the affidavit of* LEE NICHOLSON *sworn before me, this* 22nd *day of* SEPTEMBER 2017

A COMMISSIONER FOR TAKING AFFIDAVITS

COURIERED PARTY

1. c/o Lowenstein Sandler LLP
   Attn: Michael S. Etkin and Andrew Behlmann
   65 Livingston Avenue
   Roseland, New Jersey 07068

This is Exhibit "B" referred to in the affidavit of LEE NICHOLSON sworn before me, this 22ND day of SEPTEMBER 2017

A COMMISSIONER FOR TAKING AFFIDAVITS

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 SERVICE
OF LEE NICHOLSON
(SWORN SEPTEMBER 22, 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
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

6781998 v1

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

COMPENDIUM OF U.S. FILINGS AND OTHER DOCUMENTS

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

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

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

Lawyers for the Applicants