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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N :

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 SPSUSH INC., OLD EBS INC., OLD PLG INC., AND OLD PSGI INC.

Applicants

MOTION RECORD OF THE MOVING APPLICANTS

(Returnable December 13, 2019)

December 6, 2019

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Lawyers for the Applicants

TO: THE SERVICE LIST

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TAB 1

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

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

Applicants

NOTICE OF MOTION
(Returnable December 13, 2019)

Old PSG Wind-down Ltd. ("**PSG**" or the "**Parent Debtor**"), Old BHR Wind-down Corp., Old BPSU Wind-down Corp., Old BPSDS Wind-down Corp., Old EBS Wind-down Corp., Old EBS Wind-down Corp., Old PLG Wind- down Corp., Old PSGI Wind-down Corp., Old BHR Inc., Old BH Inc., Old BPSU Inc., Old BPSCI Inc., Old BPSCI Inc., Old BPSUSH Inc., Old EBS Inc., Old PLG Inc., and Old PSGI Inc. (collectively, the "**Applicants**"), will make a motion before a judge of the Ontario Superior Court of Justice (Commercial List) (the "**Court**"), on December 13, 2019 at 10:00 am or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

(a) An Order extending the Stay Period (as defined and referred to in the Order of Justice Newbould dated October 31, 2016, as amended and restated (the "**Initial Order**")), until March 31, 2020, and for approval of the fees and activities of the Ernst & Young Inc. in its capacity court appointed monitor (the "**Monitor**") and the fees and disbursements of counsel to the Monitor in the form of draft order attached hereto as Schedule "A"; and

(b) Such further and other relief as this Court deems just.

THE GROUNDS FOR THE MOTION ARE:

Background

(a) The Applicants formerly designed, developed, manufactured, marketed and sold performance sports equipment, accessories, and related apparel under the brand names of BAUER, EASTON, MISSION, MAVERIK, CASCADE, INARIA and COMBAT;

(b) On October 31, 2016 (the "**Filing Date**"), the Applicants were granted protection from their creditors under the *Companies' Creditors Arrangement Act* (the "**CCAA**") pursuant the Initial Order of this Court;

(c) Also on the Filing Date, the Applicants filed for creditor protection (the "**Chapter 11 Cases**") in the U.S. Bankruptcy Court for the District of

Delaware (the "**Bankruptcy Court**" and together with this Court, the "**Courts**") under the U.S. Bankruptcy Code;

(d) Pursuant to the Initial Order, Ernst & Young Inc. was appointed Monitor in these CCAA proceedings (the "**CCAA Proceedings**" and together with the Chapter 11 Cases, the "**Insolvency Proceedings**"). The Applicants' restructuring included the going concern sale of substantially all of their assets (the "**Sale**");

(e) Following the Sale, the Applicants' DIP Facilities were fully repaid. It was anticipated that residual funds in the estate (the "**Sale Proceeds**") would (i) repay the Holders of General Unsecured Creditors' Claims (in Canada and the U.S.) in full, upon resolution of those claims in accordance with the claims procedures described below; and (ii) would be used to make a distribution to the holders of equity claims in the Parent Debtor ("**Holders of Parent Equity Interests**");

The Joint Plan

(f) The Applicants, the Monitor, and various stakeholders negotiated an agreement to wind-up the Insolvency Proceedings - the First Amended Joint Chapter 11 Plan of Liquidation of Old BPSUSH Inc. and its affiliated debtors, as further amended, modified or supplemented (the "**Joint Plan**") was the result of these negotiations;

(g) The Joint Plan is a global settlement reached between the parties to resolve the Insolvency Proceedings in an efficient manner, and provides for the successful completion of the Applicants' liquidation and distribution of approximately $50 million in remaining Sale Proceeds;

(h) There was a joint hearing of this Court and the Bankruptcy Court to consider confirmation of the Joint Plan on December 20, 2017. The Joint Plan was approved by the Order of Justice Hainey dated December 20, 2017 (the "**Plan Approval Order**"), and the Bankruptcy Court approved the Joint Plan by Order of the same date;

(i) The Plan Approval Order extended the Stay Period until December 31, 2018 to provide time to carry out various distributions and other liquidation measures contemplated under the Joint Plan;

(j) The terms of the Joint Plan require either receipt of applicable clearance certificates or a comfort letter from the Canadian Revenue Agency (the "**CRA**"), and Quebec Revenue Agency ("**QRA**"), or such other arrangements as are satisfactory to the Monitor, in order to be in a position to make a distribution to Holders of Parent Equity Interests. Since the Plan Approval Order, the Monitor and the Parent Debtor have received comfort letters to enable distributions to Holders of General Unsecured Claims, and have been working towards securing applicable clearance certificates from the relevant taxing authorities in order to enable distributions to Holders of Parent Equity Interests;

Necessity for an Extension Order

(k) Throughout 2018 and to date in 2019, the Applicants and the Monitor have expended significant efforts in order to resolve the CRA and QRA claims and obtain the relevant clearance certificates from these authorities. On two occasions, however, since the Applicants were not yet in receipt of the necessary clearance certificates, the Applicants have moved for an extension of the Stay Period in order to enable to the Applicants to:

(i) resolve unresolved Claims, including those as filed by the CRA and QRA and complete all Initial Cash Distributions to Holders of Allowed General Unsecured Claims; and

(ii) complete the filings of any required tax reporting to receive the applicable clearance certificates, as required under the Joint Plan and Plan Approval Order so that distributions to Holders of Parent Equity Interests may be made;

(l) On December 3, 2018, the Court ordered the extension of the Stay Period to June 30, 2019;

(m) On June 26, 2019, the Court ordered a further extension of the Stay Period to December 31, 2019 (the "**June 2019 Extension Order**");

(n) Since the June 2019 Extension Order, the Applicants have completed Initial Cash Distributions to Holders of Allowed General Unsecured

Claims and have been in consistent communication with the CRA and QRA regarding the status of the requisite clearance certificates;

(o) Continuing until November 2019, the CRA and QRA made several requests to the Applicants for additional information in respect of the documentation filed by the Applicants in support of the clearance certificates (the "**CRA Queries**");

(p) Although the Applicants have collected and provided the majority of the additional requested information to the CRA and QRA, a minority of the CRA Queries remain outstanding. As a result, the CRA and QRA have not yet provided the relevant clearance certificates and as such, and in accordance with the Joint Plan, distributions to Holders of Parent Equity Interests cannot yet be made;

(q) The Applicants are continuing to work diligently to collect the balance of the information requested in the CRA Queries and provide to the CRA and QRA as soon as possible;

(r) As a result, the Applicants seek an extension of the the Stay Period until March 31, 2020, to permit the Applicants additional time to respond to the CRA Queries so that the Applicants can obtain the necessary clearance certificates and affect distributions to Holders of Parent Equity Interests;

(s) The Applicants and the Monitor continue to have sufficient cash on hand to fund all costs in connection with such extension of the Stay Period;

(t) No creditor would be materially prejudiced by the extension of the Stay of Proceedings;

(u) The Applicants have acted in good faith and with due diligence in these CCAA Proceedings since the Initial Order;

(v) *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, s. 11 and 11.02;

(w) Rules 1.05, 2.03, 3.02, 5.04 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and

(x) Such further and other grounds as counsel may advise and this Court may permit.

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

(a) The Affidavit of Mark Palmer to be sworn, and the exhibits attached thereto;

(b) The Fifteenth Report of the Monitor, to be filed;

(c) The Affidavit of Martin Daigneault to be sworn;

(d) The Affidavit of Robert Thornton to be sworn;

(e) The Affidavit of Ken Coleman sworn December 3, 2019; and

(f) Such further and other materials as counsel may advise and this Honourable Court may permit.

December 6, 2019

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Lawyers for the Applicants

TO: THE SERVICE LIST

TAB A

Schedule “A”

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	))))	FRIDAY, THE 13TH DAY OF DECEMBER, 2019

B E T W E E N :

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 SPSUSH INC., OLD EBS INC., OLD PLG INC., AND OLD PSGI INC.

Applicants

ORDER

THIS MOTION, made by 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 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**”) for an extension of the Stay Period (as defined in the CCAA Initial Order dated October 31, 2016) to March 31, 2020, and for approval of the fees and activities of the Ernst & Young Inc. in its capacity court appointed monitor (the “**Monitor**”) and the fees and disbursements of counsel to the Monitor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the motion record of the Applicants, the Factum and Authorities of the Applicants, the Fifteenth of the Monitor, and on hearing the submissions of the lawyers for the Applicants and the lawyers for the Monitor:

1. THIS COURT ORDERS that the Stay Period, as defined in the CCAA Initial Order, is hereby further extended to March 31, 2020.

APPROVAL OF FEES AND ACTIVITIES

2. THIS COURT ORDERS that the Fifteenth Report and actions, decisions and conduct of the Monitor as set out in the Fifteenth Report are hereby authorized and approved; provided, however, that only the Monitor, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

3. THIS COURT ORDERS that the professional fees and disbursements of the Monitor as set out in the Fifteenth Report and the Daigneault Affidavit are hereby approved and the Monitor is authorized and directed to pay all such fees and disbursements.

4. THIS COURT ORDERS that the professional fees and disbursements of Thornton Grout Finnigan LLP, as counsel to the Monitor, as set out in the Fifteenth Report and the Thornton Affidavit are hereby approved and the Monitor is authorized and directed to pay all such fees and disbursements.

5. THIS COURT ORDERS that the professional fees and disbursements of Allen & Overy LLP, as U.S. counsel to the Monitor, as set out in the Fifteenth Report and the Coleman Affidavit are hereby approved and the Monitor is authorized and directed to pay all such fees and disbursements.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF OLD PSG WIND-DOWN LTD., et al.
Applicants

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

ORDER

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

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(Returnable December 13, 2019)

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Lawyers for the Applicants

TAB 2

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N :

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

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Applicants

AFFIDAVIT OF MARK PALMER
(Sworn December , 2019)

I, **MARK PALMER**, of the City of New York, in the State of New York, in the United States of America, **MAKE OATH AND SAY**:

1. I am the Managing Director of Theseus Strategy Group LLC ("**Theseus**") and the Court-appointed Chief Wind-Down Officer of Old PSG Wind-down Ltd. ("**PSG**" or the "**Parent Debtor**"), 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**").

2. As described in detail below, I was appointed Chief Wind-Down Officer by Order of Justice Hainey dated December 20, 2017 ("**Plan Approval Order**"), which approved

the First Amended Joint Chapter 11 Plan of Liquidation of Old BPSUSH Inc. and its affiliated debtors, as further amended, modified or supplemented (the "**Joint Plan**"). A copy of the Plan Approval Order is attached as Exhibit "A". The Plan Approval Order also extended the Stay Period (as defined in the Initial Order (defined below)) until December 31, 2018, to provide time for the implementation of various distributions and other liquidation measures contemplated under the Joint Plan.

3. I swear this affidavit in support of the Applicants' motion for an Order further extending the Stay Period to March 31, 2020.

4. As Chief Wind-Down Officer, I have knowledge of the matters to which I hereinafter depose. Where I have relied on information from others, I have identified the source of my information and believe it to be true.

5. Capitalized terms not otherwise defined herein have the meaning ascribed to them in the Joint Plan as appended to the Plan Approval Order, a copy of which is available at the Monitor's website at: www.ey.com/ca/psg.

6. References to currency in this affidavit are references to U.S. dollars unless otherwise stated.

A. Background and Commencement of the CCAA Proceedings

7. The Applicants formerly designed, developed, manufactured, marketed and sold performance sports equipment, accessories, and related apparel for a variety of sporting activities under the brand names of BAUER, EASTON, MISSION, MAVERIK, CASCADE, INARIA and COMBAT.

8. On October 31, 2016 (the "**Filing Date**"), the Applicants were granted protection from their creditors under the *Companies' Creditors Arrangement Act* (the "**CCAA**") pursuant to an Order (as amended and restated, the "**Initial Order**") of this Court (the "**Canadian Court**"). Also on the Filing Date, the Applicants filed for creditor protection (the "**Chapter 11 Cases**") in the U.S. Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**" and together with the Canadian Court, the "**Courts**") under the U.S. Bankruptcy Code.

9. Pursuant to the Initial Order, Ernst & Young Inc. was appointed as the Monitor (the "**Monitor**") in these CCAA proceedings (the "**CCAA Proceedings**" and together with the Chapter 11 Cases, the "**Insolvency Proceedings**"). The Applicants' restructuring included the going concern sale of substantially all of their assets. On November 30, 2016, the Courts issued and entered orders approving a sales process (the "**Sales Process**"), including a stalking horse asset purchase agreement dated October 31, 2016, (as amended, the "**Purchase Agreement**") for the sale of substantially all of the Applicants' assets.

10. On February 6, 2017, the Courts issued and entered orders approving, among other things, the Purchase Agreement vesting the purchased assets in the purchaser free and clear (the "**Sale Orders**"), and the sale closed on February 28, 2017 (the "**Sale**"). Following the Sale, the Applicants' DIP Facilities were fully repaid. It was anticipated that residual funds in the estate (the "**Sale Proceeds**") would (i) repay the Holders of General Unsecured Claims (in Canada and the U.S.) in full, upon resolution of those claims in accordance with the claims procedures described below; and (ii) would be used to make a distribution to the holders of equity claims in the Parent Debtor.

B. Joint Plan and Approval

11. After the Sale closed, the Applicants, the Monitor, and various stakeholders negotiated an agreement to wind-up the Insolvency Proceedings. These stakeholders included the statutory committee of equity holders (the "**Equity Committee**") and the statutory committee of unsecured creditors (the "**Creditors' Committee**") each appointed in the Chapter 11 Cases. The Joint Plan was the result of these negotiations.

12. The Joint Plan is a global settlement reached between the parties in order to resolve the Insolvency Proceedings in an efficient manner. The Joint Plan provides for the successful completion of the Applicants' liquidation and distribution of approximately $50 million in remaining Sale Proceeds.

13. Following a vote, every class voted at least 88.24% in number and 99% in amount to accept the Joint Plan. At a joint hearing on December 20, 2017, the Courts approved the Joint Plan and the Canadian Court granted the Plan Approval Order.

a) Substantive Details of the Joint Plan

14. The Joint Plan incorporates two settlements that resolve certain obstacles to winding up the Insolvency Proceedings:

(a) A global settlement (the "**Global Settlement**") reached between the parties in order to resolve the Insolvency Proceedings. Under the Global Settlement there is: (a) payment in full of all Allowed General Unsecured Claims; (b) resolution of all disputes regarding the treatment of Intercompany Claims and Equity Interests; (c) the resolution of all disputes regarding allocation of value among the Applicants and the allocation of the Sale Proceeds; and (d) the resolution of all disputes regarding substantive consolidation of the Applicants.

(b) A class settlement (the "**Class Settlement**") between the Applicants and a representative plaintiff (the "**Lead Plaintiff**"), acting for itself and on behalf of the putative class of purchasers of common shares of PSG (the "**Putative Class**"). Under the Class Settlement:

(A) the Lead Plaintiff will receive (on behalf of itself and each member of the Putative Class) a distribution of $1.15 million of Cash from the Sale Proceeds prior to Cash distributions of Sale Proceeds made to Holders of Parent Equity Interests;

(B) the Lead Plaintiff will thereafter receive (on behalf of itself and each member of the Putative Class) forty percent (40%) participation in net recoveries from Retained Causes of Action, up to an aggregate maximum amount of $2.5 million; and

(C) the Liquidation Trust agreed to provide a one-time delivery of documentary discovery to the Lead Plaintiff subject to the certain limitations described in previous affidavits I have sworn in these CCAA Proceedings.

b) Corporate Governance

15. The Equity Committee recommended my appointment to act as Chief Wind-Down Officer to wind-up and dissolve each of the Applicants other than PSG. The Plan Approval Order provided for my appointment. My duties include assisting the Applicants in completing the necessary intercompany transactions to implement the Global Settlement.

16. As part of the Joint Plan and Plan Approval Order, the Applicants' current directors and officers resigned or were deemed to have resigned. The Joint Plan recommended a new board, and this board (the "**PSG Board**") was appointed under the Plan Approval Order.

17. A Liquidation Trust was created as part of the Joint Plan to provide Holders of Parent Equity Interests with an option to exchange their equity interests for beneficial interests in the Liquidation Trust due to differing tax consequences in Canada and the U.S. The Chapter 11 Plan provided that the Applicants would automatically transfer to the Liquidation Trust assets allocable to those exchanged equity interests, along with certain Liquidation Trust expense reserves. The Equity Committee selected members for a Liquidation Trust Advisory Board (the "**Trust Advisory Board**") to review decisions made regarding the Liquidation Trust, among other things. These positions became effective through the Plan Approval Order.

18. The Plan Approval Order also appointed Theseus to the role of trustee of the Liquidation Trust ("**Liquidation Trustee**"). Theseus also acts as Litigation Representative of the Applicants and Liquidation Trust in prosecuting any Retained

Causes of Action for the benefit of Holders of Parent Equity Interests (and the Lead Plaintiff and Putative Class in accordance with the Class Settlement).

C. Claims Procedure

19. On December 19, 2016, the Canadian Court issued a claims procedure order (the "**Claims Procedure Order**") to solicit claims against the Applicants. On April 10, 2017, the Canadian Court also issued a claims procedure order for the solicitation of claims from the Applicants' former employees (the "**Employee Claims Procedure Order**"). The Bankruptcy Court granted a similar orders.

20. On September 1, 2017, the Canadian Court granted an order (the "**Claims Resolution Order**") regarding the resolution of claims against the Canadian-incorporated Applicants (the "**Canadian Debtors**"). The Claims Resolution Order also set out a protocol to resolve cross-border claims filed against both the Canadian Debtors and the American-incorporated Applicants (the "**U.S. Debtors**"). On October 19, 2017, the Bankruptcy Court granted a reciprocal order.

21. Following the issuance of the Claims Resolution Order, the Applicants and the Monitor worked diligently to reconcile and resolve claims filed against the Applicants. As set out more particularly below, the efforts expended have led to the resolution of all claims, and as a result, the Monitor, the PSG Board and the Trust Advisory Board approved certain distributions.

D. Performance of the Joint Plan Following the Plan Approval Order and Distributions

22. Following the issuance of the Plan Approval Order, the Parent Debtor took steps to implement the transactions contemplated therein with the advice and direction of the PSG Board and Trust Advisory Board (collectively, the "**Boards**") to ensure that the Applicants are liquidated and disbursements are made to their creditors.

(i) Trust Beneficiary Elections

23. As noted above, under the Chapter 11 Plan, certain Holders of Parent Equity Interests exchanged their equity interests in the Parent Debtor for beneficial interests in the Liquidation Trust. The exercise of this election resulted in a countervailing transfer of the assets of the Parent Debtor to the Liquidation Trust in an amount equal to such electing equity holder's pro rata interest in such assets. In order to assess the total quantum of assets so transferred between the Applicants and the Liquidation Trust, the Liquidation Trustee was required to undertake a good faith valuation of the Applicants' and Liquidation Trust's assets (including the potential value of the Retained Causes of Action). FTI Consulting Inc. ("**FTI**") was engaged to conduct the valuation and prepare a report, and was authorized by the Boards to enter into this retainer.

24. In connection with this contemplated valuation by FTI, the Boards approved the valuation of the Liquidation Trust's assets as of two valuation dates:

(a) the effective date of the Chapter 11 Plan (being the day following the Plan Approval Order: December 21, 2017); and

(b) the effective date on which equity holders in the Parent Debtor who elected to exchange their shares for beneficial interests in the Liquidation Trust would be deemed to have so exchanged such shares for beneficial interests in the Liquidation Trust (the "**Split Date**").

25. On May 24, 2018, the PSG Board and Trust Advisory Board resolved to establish May 31, 2018 as the Split Date, and provided authorization to implement any adjustments necessary to effect this exchange in an administratively efficient manner.

(ii) Distributions to Creditors

26. Under the Joint Plan, the Parent Debtor and the Monitor act as Distribution Agent for all distributions to Holders of General Unsecured Claims. Distributions may be made to such Holders following either receipt of applicable clearance certificates or a comfort letter from the relevant taxing authorities, including the Canadian Revenue Agency (the "**CRA**") and Quebec Revenue Agency ("**QRA**"), or such other arrangements as are satisfactory to the Monitor.

27. Since the Plan Approval Order was granted, the Monitor and the Parent Debtor received applicable comfort letters to enable distributions to Holders of General Unsecured Claims.

28. As of October, 2019, all creditor claims against the Applicants are resolved. Distributions on account of resolved claims in the approximate amount of $12 million have been made.

(iii) Distributions to Equity

29. Following distributions to creditors, the estate retained approximately $30 million for distribution to Holders of Parent Equity Interests.

30. Pursuant to the Joint Plan, receipt of applicable clearance certificates from the relevant taxing authorities are required prior to making distributions to Holders of Parent Equity Interests.

31. It is currently contemplated that residual cash on hand (currently, approximately $30 million), subject to applicable reserves in the total approximate amount of $5 million, will be distributed to Holders of Allowed Parent Equity Interests after receipt of applicable clearance certificates. Such contemplated distribution would consist of an interim distribution of approximately $20 million with the balance to be distributed in a subsequent distribution based on upon the status of pending matters. The reserves are comprised of the Liquidation Trust Expense Reserve (approximately $3.6 million) and a reserve for the Shareholder Distributable Assets (approximately $1.15 million).

(iv) Retained Causes of Action

32. The Chapter 11 Plan contemplated the prosecution of certain Retained Causes of Action. The Chief Wind-Down Officer and the Liquidation Trustee, in his capacity as Litigation Representative, (with the input of the Boards) and their advisors engaged in material diligence and analysis of the Retained Causes of Action. Ultimately, the Chief Wind-Down Officer and the Liquidation Trustee were instructed by the Board to pursue

such litigation against, among others, certain former officers and directors of the U.S. and Canadian Debtors.

33. Before any proceeding was commenced, the former officers and directors against whom the Chief Wind-Down Officer and the Liquidation Trustee had decided to pursue litigation commenced an adversary proceeding in the Chapter 11 Proceedings on October 23, 2019. A copy of the Adversary Complaint is attached as Exhibit "B."

34. On November 22, 2019, Theseus, in its capacity as Litigation Representative, filed and Answer and Counterclaim in the same adversary proceeding. A copy of the Answer and Counterclaim is attached as Exhibit "C."

35. Other sources of recovery to the estates of the Applicants have included Canadian tax refunds approximating $5.2 million.

E. Necessity for an Extension Order

36. As described above, the terms of the Joint Plan require receipt of applicable clearance certificates prior to the Distribution Agent making a distribution to Holders of Parent Equity Interests.

37. Throughout 2018 and to date in 2019, the Monitor and I expended significant efforts in order to resolve the CRA and QRA claims and obtain the relevant clearance certificates from these authorities. On two occasions, however, since the Applicants were not yet in receipt of the necessary clearance certificates, the Applicants have moved for an extension of the Stay Period in order to enable the Applicants to:

(a) resolve unresolved Claims, including those as filed by the CRA and QRA and complete all Initial Cash Distributions to Holders of Allowed General Unsecured Claims; and

(b) complete the filings of any required tax reporting to receive the applicable Clearance Certificates, as required under the Joint Plan and Plan Approval Order so that distributions to Holders of Parent Equity Interests may be made.

38. On December 3, 2018, Justice Chiappetta ordered the extension of the Stay Period to June 30, 2019 (the "**December 2018 Extension Order**"). A copy of the December Extension Order is attached as Exhibit "D."

39. On June 26, 2019, Justice Penny ordered the extension of the Stay Period to December 31, 2019 ("**June 2019 Extension Order**"). A copy of the June 2019 Extension Order is attached as Exhibit "E."

40. Since the June 2019 Extension Order, the Applicants have been in consistent communication with the CRA and QRA regarding those entities' provision of the clearance certificates.

41. Continuing until November 2019, the CRA and QRA made several requests to the Applicants for additional information in respect of the documentation filed by the Applicants in support of the clearance certificates (the "**CRA Queries**").

42. The Applicants have collected and provided the majority of the additional requested information to the CRA and QRA. Despite the Applicants' diligent efforts,

however, a minority of the CRA Queries remain outstanding. As a result, the CRA and QRA have not yet provided the relevant clearance certificates and as such, and in accordance with the Joint Plan, distributions to Holders of Parent Equity Interests cannot yet be made.

43. The Applicants are continuing to work diligently to collect the balance of the information requested in the CRA Queries and provide it to the CRA and QRA as soon as possible.

44. As a result, the Applicants seek an extension of the Stay Period until March 31, 2020, to permit the Applicants additional time to respond to the CRA Queries so that the Applicants can obtain the necessary clearance certificates and affect distributions to Holders of Parent Equity Interests.

45. The sought extension would enable the Applicants to conclude the distributions and liquidation measures contemplated in the Plan Approval Order. The Applicants continue to have sufficient cash on hand to fund all costs in connection with such extension of the Stay Period. I have acted in good faith and with diligence in the Insolvency Proceedings.

SWORN BEFORE ME at the City of Manhasset ~~New York~~, this 12th day of December, 2019.

A Notary Public

WOOCHUL KIM
Notary Public, State of New York
No. 01KI6232939
Qualified in Nassau County
Commission Expires Dec 20, 2022

MARK PALMER

TAB A

This is Exhibit "A" referred to in the affidavit of

MARK PALMER

sworn before me this day of December, 2019.

Notary

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	WEDNESDAY, THE 20th DAY
	)	
JUSTICE HAINEY	)	OF DECEMBER, 2017

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

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

(Applicants)

CCAA APPROVAL ORDER

THIS MOTION, made by Old PSG Wind-down Ltd. ("**Parent Debtor**"), 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**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, (the "**CCAA**") for an order (the "**CCAA Approval Order**"), *inter alia*, (a) approving distributions to the Applicants' stakeholders; (b) approving certain transactions in respect of the Applicants; and (c) granting certain ancillary relief in respect of the First Amended Joint Chapter 11 Plan of Liquidation of Old BPSUSH Inc. and its affiliated debtors filed in the U.S. Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**") on October 31, 2017 and attached hereto as Schedule "A", and the plan supplement documents substantially in the form attached hereto as Schedule "B" and "C" (the "**Plan Supplement**") (collectively, as further amended, restated, modified and supplemented, from time to time, including pursuant to the Confirmation Order, the "**Joint Plan**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Brian Fox sworn December 7, 2017 and the Exhibits thereto, Declaration of Christina Pullo dated December 15, 2017, and the Twelfth Report of Ernst

& Young Inc. in its capacity as monitor (the "**Monitor**") to the Applicants dated December 14, 2017, and on hearing the submissions of counsel for the Applicants, the Monitor, the Creditors' Committee and the Equity Committee, no one appearing for any other party although duly served as appears from the affidavit of service of Lee Nicholson, filed.

DEFINITIONS

1. THIS COURT ORDERS that all capitalized terms not otherwise defined in this CCAA Approval Order shall have the respective meanings ascribed to them in the Joint Plan.

JOINT PLAN

2. THIS COURT ORDERS that the Joint Plan is hereby approved.

3. THIS COURT ORDERS that upon the Effective Date, the Joint Plan including, without limitation, the distributions, transactions, releases, exculpations and injunctions provided for therein, shall be in full force and effect in Canada and binding on the Applicants, the Equity Committee, the Creditors' Committee, Holders of Claims, Holders of Equity Interests, the Lead Plaintiff, all members of the Putative Class and Holders of Securities Claims, and all other Persons, including their respective heirs, administrators, executors, legal personal representatives, successors and assigns.

4. THIS COURT ORDERS that the Global Settlement, as described in the Joint Plan, is hereby approved and, on the Effective Date, shall become effective and binding on the Applicants, the Equity Committee, the Creditors' Committee, Holders of Claims and Holders of Equity Interests in accordance with the Joint Plan and this CCAA Approval Order.

5. THIS COURT ORDERS that the Applicants, the Distribution Agent, the Monitor, the Chief Wind-Down Officer, the Litigation Representative, the Claims and Solicitation Agent, the Liquidation Trust and the Liquidation Trustee, as the case may be, are hereby authorized and directed to take all steps and actions necessary or appropriate to implement the Joint Plan and this CCAA Approval Order, including the Plan Transactions, and enter into, execute, deliver, complete, implement and consummate all of the steps, transactions, distributions, deliveries, allocations, instruments and agreements contemplated by the Joint Plan or this CCAA Approval Order, and all such steps and actions are hereby authorized, ratified and approved. Neither the Applicants, including their directors, officers, employees and agents, the Chief Wind-Down Officer, the Litigation Representative, the Liquidation Trust Advisory Board, the Liquidation

Trustee nor the Monitor nor any professionals employed by any of the foregoing, shall incur any liability as a result of acting in accordance with, and in furtherance of, the terms of the Joint Plan and this CCAA Approval Order.

6. THIS COURT ORDERS that, on the Effective Date, any contingent or unexercised option, warrant, or right, contractual or otherwise, to acquire or be awarded any interest in an Applicant, including but not limited to unvested restricted share units, or other such forms of interest, including those held by former officers, employees or directors of the Applicants as a form of compensation, except for restricted share units and deferred share units identified in Exhibit "E" of the Plan Supplement, shall be cancelled without the exchange of any similar interest or other form of consideration.

7. THIS COURT ORDERS that, notwithstanding:

(a) the pendency of the CCAA Proceedings;

(b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act (Canada)* in respect of any of the Applicants and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made in respect of any of the Applicants;

the transactions, distributions, deliveries, allocations, instruments and agreements contemplated by the Joint Plan shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicants and shall not be void or voidable by creditors of the Applicants, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act (Canada)* or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. THIS COURT ORDERS that the Confirmation Order is enforceable in Canada and the CCAA Proceedings as if it was an Order granted by this Canadian Court.

GOVERNANCE

9. THIS COURT ORDERS that upon the Effective Date, all of the then serving officers and directors of each Applicant shall be deemed to resign and the five (5) duly qualified nominees identified in Exhibit "A" of the Plan Supplement shall be appointed to the board of directors of the Reorganized Parent Debtor. The board of directors of the Reorganized Parent Debtor shall appoint directors to serve on the board of directors of each Subsidiary Debtor pending the Subsidiary Debtors' anticipated dissolution.

10. THIS COURT ORDERS that upon the Effective Date, the Chief Wind-Down Officer identified in the Plan Supplement shall be validly and duly appointed and shall be authorized and empowered to carry out its obligation set forth in the Joint Plan, including, among other things, winding-up the Applicants' estates.

11. THIS COURT ORDERS that the amended articles of the Parent Debtor, substantially in the form attached as Exhibit "F" of the Plan Supplement, are hereby approved and shall be effective upon the Effective Date.

12. THIS COURT ORDERS that, during the pendency of the CCAA Proceedings, the Applicants and the Liquidation Trust, to the extent applicable, shall not be required to comply with any applicable reporting or disclosure requirements or the obligations requiring, among other things, the holding of shareholders' meetings under applicable corporate law governing the Applicants, namely the *Business Corporations Act* (British Columbia) (the "***BCBCA***") in respect of the Parent Debtor, the *Securities Act* (Ontario) and the applicable securities laws of each of the other provinces and territories of Canada, the regulations and rules made and forms prescribed thereunder or any applicable published rules, instruments, policy statements and blanket orders and rulings of Canadian securities regulatory authorities and in so doing none of the Applicants, the Monitor, the Chief Wind-Down Officer, the Litigation Representative, the Liquidation Trust, the Liquidation Trustee or any of their respective directors, officers, employees or agents shall be liable for any such non-compliance.

13. THIS COURT ORDERS that, on and following the Effective Date, the Applicants shall be entitled to proceed with the implementation of the Joint Plan on the basis that the Applicants are deemed to be in compliance with the corporate law under *BCBCA*.

CLASS SETTLEMENT

14. THIS COURT ORDERS that the Class Settlement, as described in the Joint Plan and Class Plaintiff Stipulation, is hereby approved and, on the Effective Date, shall become effective and binding on the Applicants, the Liquidation Trust, the Equity Committee, the Lead Plaintiff , each member of the Putative Class, Holders of Securities Claims, Holders of Claims and Holders of Parent Equity Interests and all other Persons, including, their respective heirs, administrators, executors, legal representatives, successors and assigns. The Joint Plan shall not be modified or amended in any manner that alters or otherwise impacts the terms of the Class Settlement or the treatment of the Securities Claims under the Joint Plan, without the consent of the Lead Plaintiff.

15. THIS COURT ORDERS that the distribution protocol for individual members of the Putative Class with respect to the Class Settlement Cash Consideration and any Class Settlement Litigation Proceeds shall be addressed by the District Court and an order of the District Court entered in the Securities Litigation (or, if necessary, the Bankruptcy Court, pursuant to and in accordance with the Joint Plan), and such distribution protocol shall not require any further Order of the Canadian Court. The Applicants, the Chief Wind-Down Officer, the Monitor, the Liquidation Trust, the Liquidation Trustee, and the Liquidation Trust Advisory Board shall have no responsibility or liability for any distributions or payments of the Class Settlement Cash Consideration or any Class Settlement Litigation Proceeds to the individual members of the Putative Class.

CCAA CHARGES

16. THIS COURT ORDERS that the Term Loan DIP Charge, ABL DIP Charge, Bid Protection Charge, Intercompany Charge, and Key Employee Charge, each as defined in the CCAA Initial Order or the Order of the Canadian Court dated January 10, 2017, are hereby terminated, released and discharged on the Effective Date and the Administration Charge and the Directors' Charge as defined in the CCAA Initial Order, shall continue and attach against the Applicants' Cash, including the Sale Proceeds, from and after the Effective Date, as hereafter amended.

17. THIS COURT ORDERS that on the Effective Date, the Administration Charge shall be reduced to US$5,000,000 and, in addition to the obligations presently secured thereby, shall also on and after Effective Date secure all obligations of the Applicants to pay or indemnify the

Chief Wind-Down Officer or the Litigation Representative for fees, expenses or liabilities, and the Director's Charge on and after the Effective Date shall secure only the claims of directors serving after the Effective Date.

18. THIS COURT ORDERS that notwithstanding paragraph 10 of the CCAA Initial Order, the Litigation Representative, on behalf of the Applicants and the Liquidation Trust, may enter into third-party funding arrangements as contemplated by Article V.E.2 of the Joint Plan, and the Directors' Charge may be subordinated or postponed to any Encumbrances, including any future security interests or mortgages in respect of the Applicants' or Liquidation Trust's current and future assets, undertakings and properties, by written agreement of the Board of Directors of the Reorganized Parent Debtor, without any further Order of the Canadian Court.

FEE AND PRIORITY TAX CLAIMS

19. THIS COURT ORDERS that the Applicants or the Monitor, as applicable, shall pay or cause to be paid, as applicable, on the Effective Date, to the extent not already paid:

(a) the Canadian Fee Claims in Cash in the ordinary course as such Canadian Fee Claims become due and payable;

(b) to the Holder of an Allowed CCAA Charge Claim, an amount equal to such Allowed Claim in Cash each pursuant to, and in accordance with, the Joint Plan; and

(c) to the Holder of an Allowed Priority Tax Claim, the amount equal to such Allowed Claim either in Cash or by deferred cash payments, each pursuant to and in accordance with the Joint Plan.

20. THIS COURT ORDERS that any Claim or demand for fines or penalties related to a Priority Tax Claim assessed after October 31, 2016 shall be disallowed and the Holder of an Allowed Priority Tax Claim shall not assess or attempt to collect any such fine or penalty.

FUNDING OF RESERVES

21. THIS COURT ORDERS that the Liquidation Trust Expense Reserve and the Holdback Amount Reserve are hereby approved and, on the Effective Date, the Distribution Agent shall fund the Reserves with Cash in the manner and amounts specified in the Joint Plan, which

Reserves shall be held by Reorganized Parent Debtor until (a) the issuance of applicable Clearance Certificates (except in the case of the Holdback Amount Reserve); or (b) the decision of the Board of Directors of the Reorganized Parent Debtor to disburse such Reserves that are held by the Reorganized Parent Debtor.

22. THIS COURT ORDERS that notwithstanding paragraph 16 of this CCAA Approval Order, on the Effective Date, the Applicants are hereby directed to cause at least US$100,000 of the Liquidation Expense Trust Reserve to be funded into the Liquidation Trust pursuant to and in accordance with the Joint Plan and this CCAA Approval Order within sixty (60) days following the Effective Date, unless the Board of Directors of the Reorganized Parent Debtor, with the consent of the Liquidation Trustee, which consent shall not be unreasonably withheld, reasonably determines that such funding should not be made.

LIQUIDATION TRUST AND LIQUIDATION TRUSTEE

23. THIS COURT ORDERS that the formation of the Liquidation Trust pursuant to and in accordance with the Joint Plan and the Liquidation Trust Agreement is hereby approved.

24. THIS COURT ORDERS that upon the Effective Date, the Liquidation Trustee and the members of the Liquidation Trust Advisory Board, identified in Exhibit "C" of the Plan Supplement, respectively, shall be validly and duly appointed and shall be authorized and empowered to carry out its obligation set forth in the Joint Plan and Liquidation Trust Agreement.

25. THIS COURT ORDERS that the Liquidation Trust Agreement and the Cost Sharing Agreement, substantially in the forms attached as Exhibits "D" and "G" of the Plan Supplement, respectively, are hereby approved, and the Reorganized Parent Debtor and the Liquidation Trust are hereby authorized to enter into and carry out their obligations set forth in the the Liquidation Trust Agreement and the Cost Sharing Agreement.

26. THIS COURT ORDERS that the Theseus Strategy Group LLC is hereby appointed as Litigation Representative of the Applicants under the Joint Plan and shall have the sole power and authority on behalf of the Applicants to investigate, prosecute and abandon, settle, liquidate or otherwise resolve the Retained Causes of Action and to exercise all powers, rights and privileges pursuant to, and in accordance with, the Joint Plan without further Order of the Canadian Court.

27. THIS COURT ORDERS that, as soon as reasonably practicable after the Effective Date, the Parent Equity Interests of those Holders of Allowed Parent Equity Interests who elect Option 1 in accordance with the Joint Plan shall be deemed to be mandatorily purchased and cancelled in exchange for the property, assets, distributions and rights to be received by such Holders under, and in accordance with, the Joint Plan.

28. THIS COURT ORDERS that, as soon as reasonably practicable after the Effective Date, the Liquidation Trust Assets shall vest in the Liquidation Trust in accordance with the Joint Plan, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise including, without limiting the generality of the foregoing: (i) any of the CCAA Charges, and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the "**Encumbrances"**), except as expressly provided to the contrary in the Joint Plan, including, but not limited to, the obligation to pay any Class Settlement Litigation Proceeds to the Lead Plaintiff as provided in the Plan and the Class Settlement Stipulation.

29. THIS COURT ORDERS that the Liquidation Trustee, the Chief Wind-Down Officer and the Litigation Representative shall not take possession of the Applicants' current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the "**Property**") and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the business or the Property, or any part thereof. Without limiting the foregoing, the Liquidation Trustee, the Chief Wind-Down Officer and the Litigation Representative shall not, as a result of this CCAA Approval Order or anything done pursuant to its duties and powers pursuant to this CCAA Approval Order or the Joint Plan, be deemed to occupy or to take control, care, charge, possession or management of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, or the

Ontario *Occupational Health and Safety Act* and regulations thereunder; provided however, if the Liquidation Trustee, the Chief Wind-Down Officer or the Litigation Representative is nevertheless later found to be in possession of any Property, then the Liquidation Trustee, the Chief Wind-Down Officer and the Litigation Representative shall be deemed to be Persons who has been lawfully appointed to take, or has lawfully taken, possession or control of such Property for the purposes of section 14.06(1.1)(c) of the *Bankruptcy and Insolvency Act* (the "**BIA**") and shall be entitled to the benefits and protections in relation to the Applicants or the Liquidation Trust and such Property as provided by section 14.06(2) of the BIA to a "trustee" in relation to an insolvent Person and its property.

30. THIS COURT ORDERS that the Liquidation Trustee, the Chief Wind-Down Officer and the Litigation Representative shall not incur any liability or obligation as a result of their appointment or the carrying out of the provisions of this CCAA Approval Order or the Joint Plan and the Liquidation Trustee, the Chief Wind-Down Officer and the Litigation Representative shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any Person from and after the date of this CCAA Approval Order except to the extent such losses, claims, damages or liabilities result from the gross negligence or willful misconduct on the part of the Liquidation Trustee, Chief Wind-Down Officer or Litigation Representative, as applicable.

31. THIS COURT ORDERS that no action or other proceeding shall be commenced directly, or by way of counterclaim, third party claim or otherwise, against or in respect of the Liquidation Trustee, the Chief Wind-Down Officer or the Litigation Representative and all rights and remedies of any Person against or in respect of the Liquidation Trustee, the Chief Wind-Down Officer and the Litigation Representative are hereby stayed and suspended, except with leave of this Court on notice to the Applicants, the Monitor and the Liquidation Trustee, the Chief Wind-Down Officer or the Litigation Representative, as applicable. Notice of any such motion seeking leave of this Court shall be served upon the Applicants and the Monitor, and the Liquidation Trustee, the Chief Wind-Down Officer or the Litigation Representative, as applicable, at least seven (7) days prior to the return date of any such motion for leave.

32. THIS COURT ORDERS that, without limiting any other provision of this CCAA Approval Order, the Applicants shall indemnify the Chief Wind-Down Officer and the Litigation Representative for obligations and liabilities that it may incur as result of their appointment under the Joint Plan and this CCAA Approval Order, in accordance with the terms of the Joint

Plan, except to the extent that such obligation or liability was incurred as a result of gross negligence or willful misconduct on the part of the Chief Wind-Down Officer and the Litigation Representative, as applicable.

DISTRIBUTIONS

33. THIS COURT ORDERS that, on the Effective Date, the Distribution Agent is hereby authorized and directed to complete distributions to Holders of Allowed Claims and to take any related steps or actions, as the case may be, in accordance with the Joint Plan, and such distributions, steps and actions related thereto, are hereby approved.

34. THIS COURT ORDERS that distributions to Holders of Allowed Claims shall be made free and clear of all Encumbrances, including the CCAA Charges.

35. THIS COURT ORDERS that the aggregate recovery under the Joint Plan and this CCAA Approval Order shall not exceed 100% of the Allowed amount of any Claim for which more than one Applicant is liable, whether on account of a theory of primary or secondary liability, by reason of a guarantee agreement, indemnity agreement, joint and several liability or otherwise, as determined in accordance with the Joint Plan, this CCAA Approval Order or the Claims Resolution Order.

36. THIS COURT ORDERS that, following the Initial Cash Distributions and receipt of applicable Clearance Certificates, the Distribution Agent is hereby authorized and directed to distribute the Equity Available Cash to Holders of Allowed Parent Equity Claims and to take any related steps or actions, as the case may be, in accordance with the Joint Plan, and such distributions and steps and actions related thereto, are hereby approved.

37. THIS COURT ORDERS that, following the Initial Cash Distributions and receipt of applicable Clearance Certificates, the Distribution Agent is hereby authorized and directed to distribute the Class Settlement Cash Consideration and the Class Settlement Litigation Proceeds to the Lead Plaintiff (on behalf of itself and the Putative Class) in accordance with the Joint Plan and Class Plaintiff Stipulation and to take any related steps or actions, as the case may be, in accordance with the Joint Plan and Class Plaintiff Stipulation, and such distributions, steps and actions related thereto, are hereby approved.

38. THIS COURT ORDERS that distributions to Holders of Allowed Parent Equity Interests and the Lead Plaintiff (on behalf of itself and the Putative Class) shall be made free and clear of

all Encumbrances, including the CCAA Charges, provided that the Holders of Allowed Claims have been Paid in Full in Cash and cash reserves have been established for the payment of each Disputed Claim in an amount equal to the amount of such Disputed Claim or such lesser amount as may be agreed by the holder of the applicable Disputed Claim or as determined by the Canadian Court or the Bankruptcy Court, as applicable, subject to any applicable withholding taxes or any other sources deductions required by law to be paid in accordance with paragraph 42 of this CCAA Approval Order, on the date of such distribution.

39. THIS COURT ORDERS that no distribution shall be made with respect to any Disputed Claim until all disputes with respect to such Claim are resolved by the Liquidation Trustee or the Monitor, as applicable and such Disputed Claim becomes an Allowed Claim.

40. THIS COURT ORDERS that distributions to Holders of Allowed Claims and Holders of Allowed Parent Equity Interests shall occur in accordance with Article VII.B of the Joint Plan and at such times contemplated by Article VII.C of the Joint Plan.

41. THIS COURT ORDERS AND DECLARES that:

(a) the directors, officers, employees or agents of the Applicants, the Monitor, the Distribution Agent, the Chief Wind-Down Officer, the Liquidation Trust, the Litigation Representative or the Liquidation Trustee do not hold any Assets of the Applicants or make, authorize, acquiesce or participate in any distributions, payments and/or disbursements under the Joint Plan or this CCAA Approval Order (other than a distribution or payment of Cash to a Holder of Parent Equity Interests), and no provision under the Joint Plan or this CCAA Approval Order shall be construed to have such effect; and

(b) in respect of the payment, distribution and/or disbursement to any Person under the Joint Plan or this CCAA Approval Order (other than a payment, distribution and/or disbursement of Cash to a Holder of Parent Equity Interests), the directors and officers of the Applicants, the Monitor, the Distribution Agent, the Chief Wind-Down Officer, the Liquidation Trust, the Litigation Representative or the Liquidation Trustee shall not be an assignee, liquidator, liquidator of succession, receiver, receiver-manager, curator, receiver of any kind, trustee, trustee in bankruptcy, heir, administrator, executor, liquidator of succession, committee or any other like person, administering, winding-up, controlling or otherwise dealing with the property, business, succession, income or commercial activity of the Applicants.

42. THIS COURT ORDERS that any tax amounts or other source deductions required by law to be withheld from distributions made in accordance with the Joint Plan and this CCAA Approval Order shall be withheld and remitted to the appropriate tax authority in accordance with the Joint Plan and this CCAA Approval Order on a best efforts basis, without any obligation of the Distribution Agent to withhold and remit such funds and that any amounts so withheld and remitted shall be considered to be paid to the Person entitled to receive the distribution in respect of which such withholdings were made. The Applicants, the Chief Wind-Down Officer, the Liquidation Trust, the Litigation Representative or the Liquidation Trustee (and their respective directors and officers) and the Distribution Agent shall have no liability to any party, including any taxing authority, for failure to withhold such amounts or for incorrectly calculating the amounts to be withheld.

MONITOR'S ACTIVITIES

43. THIS COURT ORDERS that the powers granted to the Monitor in the CCAA Initial Order include those as set out in this CCAA Approval Order, including, without limitation, the power to act as Distribution Agent in accordance with this CCAA Approval Order and the Joint Plan.

44. THIS COURT ORDERS that (a) in carrying out the terms of this CCAA Approval Order and the Joint Plan, the Monitor shall have all of the protections given to it by the CCAA, the CCAA Initial Order, the Joint Plan, and as an officer of the Canadian Court, including the stay of proceedings in its favour, and (b) the Monitor shall incur no liability or obligation for any act or omission as a result of carrying out the provisions of this CCAA Approval Order and the Joint Plan, save and except for any gross negligence or wilful misconduct on its part.

RELEASES AND INJUNCTIONS

45. THIS COURT ORDERS AND DECLARES that the compromises, releases, exculpations and injunctions set out in Article X of the Joint Plan are hereby approved and shall be binding and effective as at the Effective Date in accordance with and subject to the Joint Plan. For the avoidance of doubt, consistent with paragraph 10(b) of the Class Plaintiff Stipulation, the releases in Article X.B of the Joint Plan are not intended to, and shall not, release any claims set forth in the Securities Litigation against any non-Applicant defendant.

46. THIS COURT ORDERS that, as of the Effective Date, the Exculpated Parties (which, for greater certainty, includes the Applicants' former directors) shall not have or incur any liability to any Holder of any Claim or Equity Interest, the Applicants' estates or any successor thereto, or any other Person (including any Affiliate of any of the foregoing) for, or be subject to any right of action in respect of, any act or omission on or after the Petition Date and on or before the Effective Date in connection with, related to, or arising out of the Chapter 11 Cases or the CCAA Proceedings, provided that, nothing in the Joint Plan and this CCAA Approval Order shall release the Applicants' directors and former directors from Claims specified in section 5(2) of the CCAA.

47. THIS COURT ORDERS AND DECLARES that, pursuant to section 142 of the *Courts of Justice Act* (Ontario), no Person shall be liable for any act done in good faith in accordance with any Order issued in the CCAA Proceedings, and any Person who takes any action whatsoever in reliance on this CCAA Approval Order prior to the commencement of any appeal hereof or the expiry of any appeal period shall not be prejudiced or harmed in any manner by any such subsequent appeal.

48. THIS COURT ORDERS that the Holder of any Claim for which a proof of Claim has not been filed by the applicable Bar Date, or which was not scheduled on the Applicants' Schedules, shall be and is hereby forever barred from making any Claim and such Claim shall be and is hereby forever barred and extinguished.

49. THIS COURT ORDERS that the Holder of any Administrative Claim, other than (a) a Fee Claim; (b) claims of Alvarez & Marsal North America, LLC, (c) an Administrative Claim that has that has been Allowed on or before the Effective Date; (d) a claim for U.S. Trustee Fees, (e) a Canadian Fee Claim; or (f) any claim of the CRA or any other Canadian or provincial taxing authority for which a post-petition tax return is still required to be filed, must file a proof of Claim with Claims and Solicitation Agent in accordance with the Joint Plan within thirty (30) days after service of the notice of the Effective Date, and any Holder that does not submit such proof of Claim shall be and is hereby forever barred from making any Administrative Claim and such Administrative Claim shall be and is hereby forever barred and extinguished.

50. THIS COURT ORDERS if any Canadian or provincial taxing authority, including CRA, asserts an Administrative Claim for which a post-petition tax return must be filed, the applicable taxing authority shall submit to the Claims and Solicitation Agent or the Monitor a request for

such Administrative Claim in accordance with the Joint Plan within ninety (90) days after the applicable post-petition tax return has been filed by Applicants, and any Canadian or provincial taxing authority that does not submit such proof of Claim shall be and is hereby forever barred from making any Administrative Claim and such Administrative Claim shall be and is hereby forever barred and extinguished.

STIPULATION

51. THIS COURT ORDERS that the Order of the Bankruptcy Court approving the stipulation among the Applicants, Equity Committee, and certain of the Applicants' former directors (the "**Stipulation**"), resolving certain claims filed by the Applicants' former directors, shall be enforceable in Canada and the CCAA Proceedings. The Monitor shall be authorized and directed to take any and all actions necessary or appropriate to enforce such Stipulation and the Order of the Bankruptcy Court approving the same.

MISCELLANEOUS

52. THIS COURT ORDERS that notwithstanding anything to the contrary in the Joint Plan or this CCAA Approval Order, (a) the stay of proceedings in respect of the Applicants contained in the CCAA Initial Order shall be lifted solely to permit the action styled as Milner v. AIG Commercial Insurance Company of Canada (insurer of Mission-ITECH Hockey Ltd. a/k/a/ Mission Roller Hockey, Bauer Hockey Corporation; and Bauer Performance Sports Ltd.); Filochrome Inc. and Acufil, Inc., Case No. 12-6441, pending before the Superior Court of Rhode Island, to proceed to its conclusion solely against AIG Commercial Insurance Company of Canada and any non-Applicants; and (b) to the extent the Claim of William J. Milner (represented by Proof of Claim number 442) is Allowed, such Claim may be entitled to a distribution under the Joint Plan only up to the US$50,000, the self-insured retention that is required under the insurance policy applicable to the Claim.

53. THIS COURT ORDERS that no distributions under Joint Plan shall be made on account of an Allowed Claim, other than the Securities Claims, that is payable pursuant to the Applicants' or the Liquidation Trust's insurance policies until the Holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy, except as required under any such insurance policy with respect to a deductible or retention.

MONITOR'S CERTIFICATE

54. THIS COURT ORDERS that, as soon as practicable following the Effective Date, the Monitor shall be authorized and directed to serve on the service list in the CCAA Proceedings and post on the website established by the Monitor in respect of the CCAA Proceedings a certificate in the form attached hereto as Schedule "D" (the "**Monitor's Certificate**"), signed by the Monitor, certifying that the Effective Date has occurred. The Monitor shall file the Monitor's Certificate with the Canadian Court as soon as reasonably practicable.

55. THIS COURT ORDERS that, with respect to the delivery of the Monitor's Certificate, the Monitor may rely on written notice from the Applicants, the Creditors' Committee and the Equity Committee, or each of their respective counsel, that the conditions to the occurrence of the Effective Date have been satisfied or waived pursuant to the Joint Plan, and shall incur no liability with respect to delivery of the Monitor's Certificate.

STAY EXTENSION

56. THIS COURT ORDERS that the Stay Period, as defined in the CCAA Initial Order, is hereby further extended to December 31, 2018.

GENERAL

57. THIS COURT ORDERS that this Canadian Court shall continue to have jurisdiction over all matters and issues arising in the CCAA Proceedings, including without limitation such matters as are contemplated by the Joint Plan, and the Liquidation Trust Agreement shall in no way limit or impair this Canadian Court's jurisdiction with respect to this CCAA Approval Order and the CCAA Proceedings.

58. THIS COURT ORDERS that the Applicants, the Monitor, the Chief Wind-Down Officer, the Litigation Representative and the Liquidation Trustee shall each have standing to apply to this Court for advice and directions concerning the implementation and carrying out of the Joint Plan, this CCAA Approval Order and any related matters.

59. THIS COURT ORDERS that this CCAA Approval Order shall have full force and effect in all provinces and territories in Canada and abroad and as against all Persons against whom it may be otherwise enforceable.

60. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal or regulatory or administrative body having jurisdiction in Canada or in the United States, to give

effect to this CCAA Approval Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this CCAA Approval Order. All courts, tribunals and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of the Canadian Court, as may be necessary or desirable to give effect to this CCAA Approval Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this CCAA Approval Order.

Hainey J

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ON / BOOK NO:
LE / DANS LE REGISTRE NO:

DEC 2 0 2017

PER / PAR:

Schedules to Plan Approval Order omitted for length

TAB B

This is Exhibit "B" referred to in the affidavit of

MARK PALMER

sworn before me this day of December, 2019.

Notary

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re Old BPSUSH, Inc., et al., Debtors.	Chapter 11 Bankr. Case No. 16-12373 (BLS)
KARYN BARSA, JOAN DEA, C. MICHAEL JACOBI, MATTHEW MANNELLY, BERNARD MCDONELL, BOB NICHOLSON, MARK VENDETTI and JULIE ZALESKI, Plaintiffs, v. THESEUS STRATEGY GROUP LLC, Defendant.	Adv. Proc. No. 19-_____ (BLS)

ADVERSARY COMPLAINT

1. This is a complaint against Theseus Strategy Group LLC ("Theseus" or "Defendant") for monetary, injunctive, and declaratory relief in connection with its meritless and hindsight-based effort to second guess the business judgment exercised by highly qualified and diligent former directors and officers of Performance Sports Group, Inc. ("PSG" or the "Company"), once a leading developer and manufacturer of sports equipment and apparel under such iconic brands as Bauer Hockey and Easton.

2. As detailed below, Theseus, in its capacity as Liquidation Trustee for PSG (which was renamed for restructuring purposes as Old PSG Wind-Down Ltd.), has threatened to sue two former PSG officers, Plaintiffs Mark Vendetti and Julie Zaleski—even though both individuals skillfully managed the financial accounting of PSG and exercised sound business judgment. Vendetti and Zaleski worked diligently in the face of unrelenting demands to prepare financial

statements for PSG's 2016 fiscal year that were fully in compliance with applicable accounting standards and free from material misstatement.

3. Theseus also has targeted Plaintiffs Karyn Barsa, Joan Dea, C. Michael Jacobi, Matthew Mannelly, Bernard McDonell, and Bob Nicholson—all of them independent directors (the "Director Plaintiffs") and, in the case of Jacobi, Mannelly, McDonell, and Dea, members of PSG's Audit Committee (the "Audit Committee").[1] Along with Plaintiffs Vendetti and Zaleski, these directors, with decades of business experience between them, guided PSG through a time of unprecedented challenges that included multiple bankruptcies by major PSG customers, a sudden devaluation of the Canadian dollar, public attacks by an activist shareholder, and slower-than-expected sales that led to significant revisions to Company guidance.

4. The facts show that each Plaintiff exercised prudent business judgment throughout the relevant time period. By way of just a few examples, between 2008 and 2014, as PSG grew through multiple acquisitions, the Board strengthened the Company's operational efficiency and internal controls by expanding the internal audit function, appointing an officer to oversee PSG's then-growing stable of brands, and taking other concrete steps. Then, in 2015, when PSG's former CEO accused the Company of engaging in improper sales practices, the Director Plaintiffs immediately ordered an investigation (which ultimately found no wrongdoing) with the assistance of respected outside advisors, including the former Chair of the Ontario Securities Commission. And in 2016, when KPMG voiced concerns about several of the Company's vendor relationships (detailed below), Plaintiffs acted promptly—and with the timely assistance of two prominent law firms—to create the conditions necessary for KPMG to finish its

[1] As detailed below, prior to February 2017, the Audit Committee was composed of Plaintiffs Dea, McDonell, and Jacobi. The Complaint refers to Plaintiffs Dea, McDonell, and Jacobi as the "Audit Committee Plaintiffs." From February 2017 to August 2017, the Audit Committee was composed of Plaintiffs Dea, McDonell, and Mannelly.

audit. Finally, when it became apparent that PSG would have to seek bankruptcy protection, Plaintiffs, with the advice of outside professionals, acted diligently to preserve the Company's assets.

5. Plaintiffs' efforts at asset preservation proved successful—so successful that PSG was awarded the Large Company Transaction of the Year by the Turnaround Management Association ("TMA") in 2018. As TMA explained, Plaintiffs and their advisors, under trying circumstances, obtained the best possible result for creditors, equity holders, and employees alike:

> Staring down a debt default within 60 days due to [PSG's] inability to file timely audited financial statements, the [C]ompany and its advisors were forced to work with critical urgency to make quick decisions and identify a path forward. The result: selling the company through a multi-jurisdictional bankruptcy process with a two-part [debtor-in-possession] financing.
>
> . . . The transaction resulted in new ownership, produced full recovery to unsecured creditors, yielded consequential recovery to equity holders, provided lawsuit settlement funds, preserved nearly all jobs, and reset the game clock for some of the most beloved brands in sports.

In other words, Plaintiffs acted in good faith by exercising prudent business judgment—the exact opposite of what Theseus is claiming here.

6. Undeterred by these objective and irrefutable facts, Theseus has falsely asserted that Plaintiffs are responsible for PSG's bankruptcy. In a move that will prolong its tenure as Liquidation Trustee, and the guaranteed salary of up to $150,000 per year for its principal that comes with it, Theseus has told Plaintiffs that if they do not accede to its demands, it will file a complaint against them based on the same facts that multiple, independent third parties have already found nonactionable.

7. The cornerstone of Defendant's theory is a single revenue entry for a single sale of bats between PSG's subsidiary, Easton, and a sporting goods retailer, Dunham's (the

"Immaterial Revenue Entry"). That entry represented less than one-half of one percent of PSG's quarterly revenues. Due to an ambiguous term in a one-off contract on Dunham's (not PSG) letterhead, the Immaterial Revenue Entry was adjusted at Vendetti and Zaleski's direction in June 2016 (to be recorded in the FY 2016 financial statements), only one month after they had learned about and investigated it. Vendetti and Zaleski then disclosed the adjusting entry and the details of the transaction to the Audit Committee and PSG's auditors when asked about it during an Audit Committee meeting on or about August 5, 2016, weeks before the deadline under PSG's credit facility to file audited financial statements. The Immaterial Revenue Entry did not cause PSG's financials in the relevant reporting periods to be materially misstated or to require restatement, nor did it help PSG to meet guidance or turn a net loss into a net profit. All of these facts are well-documented and indisputable.

8. By pursuing litigation based on this triviality, it is Theseus that is breaching its fiduciary duty to act in the interest of the Liquidation Trust and its beneficiaries, which include at least Plaintiff Mark Vendetti (who holds 20,000 shares of stock). Defendant is using money that rightfully belongs to equity holders to reap a handsome salary for itself and its principal, Mark Palmer, who (on information and belief) pockets the trustee fees for scant effort and almost no overhead so long as the trust remains in existence.

9. Theseus has a powerful incentive to pursue factually unsupported and protracted litigation instead of paying equity holders their money: the ability to generate more fees. While returning funds to equity holders now would cut off Theseus's guaranteed revenue stream as Trustee, engaging in litigation—despite its lack of legal merit—keeps the spigot running. This is a straightforward breach of Theseus's non-waivable duties of loyalty and good faith, which has damaged all beneficiaries of the Liquidation Trust in amounts that continue to accrue.

10. To remedy Theseus's misconduct, Plaintiffs seek the following relief:

(a) Monetary damages and disgorgement for Theseus's breaches of its duties of loyalty and good faith, in amounts to be determined at trial.

(b) A declaration that:

(i) Plaintiffs have not breached their fiduciary duties to PSG or any of its affiliates, successors, or assigns;

(ii) Plaintiffs' conduct did not cause PSG's bankruptcy;

(iii) Plaintiffs are not liable for any alleged damages caused by PSG's bankruptcy; and

(c) A permanent injunction removing Theseus as Liquidation Trustee.

Jurisdiction and Venue

11. This Court has jurisdiction over the parties and the subject matter of this proceeding pursuant to 28 U.S.C. §§ 157, 2201(a), and 1334.

12. This adversary proceeding is a "core" proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O). Alternatively, this proceeding is related to a bankruptcy filing. 28 U.S.C. § 157(c).

13. Furthermore, this Court explicitly retained jurisdiction over the "Chapter 11 Cases and all matters arising under, arising out of, or related to, the Chapter 11 Cases and the Plan (i) as provided for in the Plan, (ii) as provided for in this Order, and (iii) for the purposes set forth in Bankruptcy Code Sections 1127 and 1142." *See In re: Old BPSUSH Inc., et al.*, No. 16-12373 (BLS), ECF 1566, at ¶ 38 (Bankr. D. Del. Dec. 20, 2017).[2] Pursuant to the Plan, this Court "shall retain the broadest jurisdiction over the Chapter 11 Cases after the Effective Date as legally

[2] The "Plan" refers to the First Amended Joint Chapter 11 Plan of Liquidation of Old BPSUSH Inc. and Its Affiliated Debtors. *See id.*, ECF 1473.

permissible, including jurisdiction to: . . . determine any other matters that may arise in connection with or relate to this Plan, the Confirmation Order, or any contract, instrument, release, or other agreement or document created in connection with this Plan; . . . hear and determine any matters involving the Liquidation Trust; . . . and hear any other matter not inconsistent with the Bankruptcy Code or CCAA." *See id.*, ECF 1473, at Article XII (Bankr. D. Del. Nov. 2, 2017).

14. Venue of this adversary proceeding is proper in this district pursuant to 28 U.S.C. § 1409.

15. The facts alleged in this Complaint present an "actual controversy" pursuant to 28 U.S.C. § 2201(a).

The Parties

I. Plaintiffs

16. Plaintiff Karyn Barsa is a former member of PSG's board of directors (the "Board") and a resident of the State of Oregon. Barsa resigned from the Board in February 2017. Barsa, since receiving a Bachelor's Degree from Connecticut College and a Master of Business Administration from the University of Southern California, has established herself as a successful business leader with years of various executive experience. For example, she has served as the Chief Executive Officer ("CEO") of Smith & Hawken Ltd., Embark Stores Inc., The Investors Circle, and Coyuchi LLC, among other companies. In addition to her experience as a director of PSG, Barsa has served on a number of other corporate boards, including for Directors' Organization Ltd., NESsT, and Deckers Outdoor Corp. Recently, Barsa served in several executive capacities for Golden Leaf Holdings, including as Chief Financial Officer ("CFO").

17. Plaintiff Joan Dea is a former member of the Board (Spring 2015 to August 2017) and former Chair of the Audit Committee (December 2016 to August 2017). A California resident, Dea has decades of business experience including as a former Partner and Director of Boston Consulting Group in the Consumer Goods and Retail and Financial Services Practices and as an Executive Vice President and member of the Executive Committee of BMO Financial Group. She has extensive experience as a corporate director on several public company boards and has also voluntarily dedicated years of time to non-profit and educational institutions in an executive capacity. Dea received a Bachelor of Arts from Yale University and a Master of Science from The London School of Economics and Political Science.

18. Plaintiff C. Michael Jacobi is a former member of the Board, a former member of the Audit Committee, and a resident of the State of Connecticut. Jacobi served as a member of the Board and Audit Committee at all relevant times until his resignation in February 2017. Jacobi has also distinguished himself as a successful executive throughout his decades-long career. He has helmed at least seven different companies, including Beepware Paging Products LLC, Katy Industries, Inc., Timex Group USA, and Callanen International, Inc., and has served on the board of directors of three other public companies. Additionally, Jacobi is currently a member of the board of directors of Sturm, Ruger & Co., Inc. He received an undergraduate degree from the University of Connecticut and is a Certified Public Accountant.

19. Plaintiff Matthew Mannelly is a former member of the Board, a former member of the Audit Committee, and a resident of the State of Connecticut. Mannelly served on the Board at all relevant times and on the Audit Committee from February 2017 until his resignation in August 2017. As with the other Plaintiffs, Mannelly has distinguished himself in the business world. After obtaining a Bachelor's Degree from Boston College and a Master of Business

Administration from the University of North Carolina, Mannelly served as the Director of Marketing for Gatorade Ltd. and the Chief Marketing Officer for the United States Olympic Committee. Mannelly also served as the President and CEO of Cannondale and Prestige Brands Holdings Inc. In addition to his time on the PSG Board, Mannelly has served on several other corporate boards, including for Collier Creek Holdings and Spartannash Co.

20. Plaintiff Bernard McDonell is the former Chairman of the Board, a former Chair (until December 2015) and member of the Audit Committee, and a resident of the Province of Ontario, Canada. McDonell first became Chairman of the Board in 2012, replacing W. Graeme Roustan. McDonell served as a member of the Audit Committee until his resignation in August 2017. Since receiving a Bachelor of Arts in Commerce from Concordia University in 1977, McDonell has embarked on a successful career in business and real estate. For example, McDonell was previously the Head of Quebec Operations for Loblaw Companies Ltd. and the President and Vice Chairman of Provigo Inc. He additionally served as the CEO of Capital Wapiti Inc. and the Interim CEO of Investus Real Estate, Inc. McDonell has also distinguished himself on the boards of directors for other companies, including First Capital Reality Inc., where he currently serves as the Chairman.

21. Plaintiff Bob Nicholson is a former member of the Board and a resident of the Province of Alberta, Canada. Nicholson served as a member of the Board at all relevant times until his resignation in February 2017. Prior to joining PSG's Board, Nicholson had established himself as one of the foremost names in the world of hockey. After a playing career at Providence College and several minor league teams, Nicholson transitioned to management. Nicholson was a Technical Director with the British Columbia Amateur Hockey Association from 1979 to 1989. Nicholson then joined Hockey Canada as President and CEO from 1988 to

2014, where he oversaw all operations for Canada's international competitions. Additionally, Nicholson served as Senior Vice President for the Canadian Hockey Association from 1992 to 1998, and is currently the Vice President of the International Ice Hockey Federation, a position he has held since May 2016. He is also currently the Chairman of the Edmonton Oilers, a professional sports team that plays in the National Hockey League, for which he also serves as an Alternate Governor. Nicholson's accomplishments have been recognized multiple times, including in 2016 when he was awarded the Order of Hockey in Canada.

22. Plaintiff Mark Vendetti is the former CFO of PSG and is a resident of the State of California. Vendetti has had a distinguished career with more than thirty years of diverse business experience, including in retail, e-commerce, and financial services. He received a Bachelor of Arts in Mathematics from Amherst College in 1983, and a Master of Business Administration from Harvard Business School in 1989. PSG announced his appointment as its CFO on December 1, 2015, and he assumed his duties in that role in mid-December 2015. Prior to joining PSG, Vendetti served as the CFO of Francesca's Holdings Corporation, a women's specialty retailer with over 600 locations and fiscal year 2014 revenue of $374 million. He previously also served as the Vice President of Finance for Abercrombie & Fitch from 2009 to 2013, and as Senior Vice President for XM Satellite Radio Inc. from 2005 to 2008.

23. When Vendetti became PSG's CFO, the finance organization of the Company was decentralized, which he quickly worked to change. In his first few months as CFO, Vendetti strived to improve communication across the Company and implemented a number of changes, including the adoption of new processes for sales forecasting and operational planning. He also improved controls across the organization, promoted key personnel (including Julie Zaleski),

revamped the processes for accruing bad debt reserves, and moved the Company towards a more centralized accounting function based out of its headquarters.

24. Plaintiff Julie Zaleski is the former Controller of PSG and is a resident of the State of Massachusetts. Zaleski received a Bachelor of Science in Business Administration in Accounting from John Carroll University in 1992. Zaleski initially joined Bauer Hockey (a predecessor company) in 2003 as an accounting manager. She has been promoted over the years to a variety of finance and accounting positions at Bauer and thereafter at PSG, where she worked through the Company's 2017 acquisition by Peak Achievement Athletics ("Peak"),[3] her current employer. During the relevant period at PSG, Zaleski held the positions of Senior Director, Corporate Controller and Treasurer. Her primary responsibilities included overseeing the corporate accounting function and the integrity of the Company's financial statements and reports. Zaleski also had oversight responsibility for the Credit and Treasury departments.

25. Zaleski is a skilled professional who has exhibited the highest level of integrity throughout her career. As a testament to her integrity and lasting value to the organization, Peak elected to retain Zaleski, promoting her to Vice President, Corporate Controller and Treasurer. She has more than twenty years of experience in accounting, finance, and auditing work, and has been a Certified Public Accountant since 1994.[4] Zaleski started her career as an accountant at Arthur Andersen, where she worked for approximately two years before joining the finance and accounting department of a small, privately held manufacturing firm.

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[3] The actual purchasing entities were private equity interests, but the new company was referred to as Peak. For ease of reference, this Complaint refers to the acquiring entity as Peak.

[4] Zaleski's CPA license is currently inactive.

II. Defendant

26. Theseus is an LLC organized under the laws of New York with its principal office at an apartment in Glen Cove, New York, that is, on information and belief based on searches of public records, leased by its principal and sole member, Mark Palmer, as a personal residence. On information and belief based on a docket search, prior to this case Theseus had no experience serving as a Liquidation Trustee and no other previous engagements serving as a court-appointed trustee in any capacity.

27. Under the terms of the Liquidation Trust Agreement, Theseus receives annual compensation of up to $150,000 for the lifetime of the Liquidation Trust. Theseus also receives a percentage of any recovery on litigation claims it asserts. Theseus appears to have been selected by counsel to the Equity Committee, Brown Rudnick.

Non-Parties

I. Performance Sports Group Ltd.

28. PSG was a developer and manufacturer of ice hockey, roller hockey, lacrosse, baseball and softball sports equipment, as well as sports apparel. The Company owned and sold internationally recognized sporting brands such as Bauer, Easton, Mission, Cascade, Maverik, and Combat, among others, to specialty retail stores, sporting goods and national retail chains, as well as directly to sports teams, primarily within the United States.

29. The historical foundation and core of the Company was Bauer, which was founded in 1927 in Kitchener, Ontario. In the mid-1990s, Bauer was acquired by Nike, which co-branded its products in the decade that followed. In 2008, Kohlberg & Co, a U.S. private equity firm, acquired Bauer. A series of strategic acquisitions followed, involving eight hockey, lacrosse and baseball brands, including most prominently Easton in April 2014. The Company

had its Canadian IPO in 2011 and its U.S. IPO in June of 2014 (following which the Company changed its name from Bauer Performance Sports Ltd. to PSG).

30. The Company was publicly-traded on the New York Stock Exchange. PSG's fiscal year ran from June 1 through May 31. In February of 2017, the Company's operational assets were acquired out of bankruptcy by Peak, a privately held company which continues to operate and sell many of the brands formerly owned by PSG.

II. KPMG

31. PSG's outside auditor was KPMG starting in 2010, and David Wilson was the audit engagement partner from the beginning.[5] As the engagement partner, Wilson had signed unqualified audit opinions on behalf of KPMG on PSG financial statements covering eight fiscal years (2008-15), and the fiscal year ending May 31, 2016 was to be Wilson's last year as engagement partner as part of mandatory auditor rotation requirements.

32. Even without these requirements, Wilson's tenure as audit partner was on shaky ground. Indeed, Wilson had lost the confidence of the Audit Committee, which had grown unhappy with the quality of Wilson's performance, judgment, and transparency. Put simply, the Audit Committee Plaintiffs had concluded that Wilson was a weak audit partner, and they were already deliberating internally on whether to replace him.

33. Ultimately, KPMG never completed its audit for PSG's 2016 fiscal year. The circumstances will be discussed in greater detail below, but on August 15, 2016, PSG announced that the filing of its annual audited financial statements would be delayed and that its Audit

[5] When Bauer was spun off from Nike in 2008, PSG continued to use Deloitte as its auditors through the fiscal year ended May 31, 2009. However, when KPMG took over the 2010 fiscal-year audit, KPMG performed a re-audit of the financial statements for the 2008 and 2009 fiscal years. Wilson has served as PSG's audit partner since 2008.

Committee had engaged independent legal counsel to conduct an internal investigation of the Company's accounting practices.

34. PSG's inability to file audited financial statements by August 28, 2016 created a potential covenant default under its secured debt facilities. With no other source of liquidity, PSG immediately negotiated an amendment to its secured credit facilities, which extended the deadline to file audited financials until October 28, 2016. Despite the Company's best efforts, the audit was not completed within the extension period, and on October 31, 2016, PSG commenced bankruptcy proceedings to pursue a sale of its businesses at the highest and best value. An auction was held on January 30, 2017, and the bankruptcy court approved the sale of substantially all of the Company's assets for $575 million to Peak, which closed on February 27, 2017.

Factual Allegations

I. PSG's Market Landscape and Other Background Information

35. Between 2008 and 2014, PSG (then known as Bauer Performance Sports Ltd.) engaged in several acquisitions that significantly expanded its brand both within and beyond the world of hockey. Among the companies acquired were Mission-Itech (hockey), Maverik (lacrosse), Cascade (lacrosse), Inaria (soccer apparel), and Easton (baseball and softball).[6]

36. To help ensure that PSG could manage its increasingly diverse portfolio of brands, the Board took several steps to enhance the Company's operational efficiency and corporate governance. For instance, the Board created a new position—President of PSG Brands—for an individual whose main function would be to oversee PSG's seven-brand portfolio. The Board appointed Amir Rosenthal, PSG's then-CFO, to this position on or about

[6] In January 2016, PSG made another acquisition, adding Easton Hockey to its portfolio.

May 28, 2015. To ensure a seamless transition, Rosenthal maintained his responsibilities as CFO while the Board conducted a search for his replacement.

37. The Board's Audit Committee was equally proactive in shoring up PSG's corporate governance and oversight functions. These steps included, but were not limited to, adding a role for an internal audit employee, requiring greater transparency on accounts receivable and timing of accounts receivable, and setting in motion a process to bring down accounts receivable.

38. This multi-faceted plan was aimed at helping PSG navigate through market conditions that had grown increasingly turbulent. In late 2015 and into early 2016, traditional brick-and-mortar players in the retail sports equipment and apparel market, including several of PSG's largest clients, were facing severe pressure, largely from online retailers. For example, on or about December 16, 2015, Team Express, one such retailer, filed for bankruptcy. Shortly before the bankruptcy, PSG's accounts receivable for Team Express were $4.5 million, with approximately $4 million listed as past due.

39. As these tectonic shifts were taking place in the industry, PSG also found itself responding to attacks from its former chief executive. On or about June 12, 2015, W. Graeme Roustan, PSG's former CEO and Chairman, sent the Company a letter alleging that Bauer had engaged in what he described as improper sales practices. In addition to sharing the results of "an informal survey" that he had conducted, Roustan claimed that the alleged practices included improperly "pulling forward" sales by offering retailers discounts to purchase more goods in earlier quarters so as to meet certain financial targets. On or about December 24, 2015, Roustan sent the Company another letter again discussing the results of his "survey" and discussing his

"desire to the return to the Board." In the second letter, he also called for Rosenthal to be elevated to Interim CEO.[7]

40. The Company, under the Board's leadership, took immediate steps to investigate Roustan's claims. In response to the first letter, for instance, several Board members—Plaintiffs Barsa, McDonell, and Nicholson—met with Roustan to better understand the nature of his allegations.

41. The Board also directed Rosenthal, with the assistance of outside counsel, to examine the Company's internal accounting and control processes with regard to the recognition of revenue. When Plaintiff Dea became Chair of the Audit Committee, she reviewed the results of Rosenthal's assessment. Even though it found no issues of concern, Dea, out of an abundance of caution, called for a further review of Roustan's allegations.

42. To this end, the Audit Committee designed a review process with the assistance of outside advisers, including the former Chair of the Ontario Securities Commission ("OSC") and AlixPartners, a well-respected global consulting firm that specializes in helping companies address their most complex and critical challenges. The Audit Committee received updates throughout the life of the review.

43. The results of this investigation were shared with the Board in the Spring of 2016. Although AlixPartners identified several minor control issues (which the Audit Committee immediately mandated for correction), the overall conclusion was positive: no issues of revenue recognition were identified. KPMG was intimately involved in designing and executing the review, and KPMG was present at all update meetings with the Audit Committee. KPMG representatives were also on hand when the results were shared with the Board.

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[7] The Board elevated Rosenthal to Interim CEO on March 22, 2016, as detailed below.

II. Plaintiffs Fulfilled Their Duties of Care, Loyalty, and Good Faith Under Challenging Circumstances

44. PSG's challenges continued to mount throughout 2016. On January 13, PSG announced disappointing financial results for the second quarter of fiscal year 2016 and lowered its previously issued guidance for adjusted net income for the year to a range of $0.66 to $0.69 per share.[8]

45. That same month, the Canadian Dollar fell in value suddenly, putting pressure on PSG's financial covenants under its loan agreements. Up to this point, PSG had displayed a history of sound collections and had not recorded meaningful accounts receivable write-offs.

46. Scott Frerichs, who had served as PSG's Vice President of Finance since 2011 and was planning to report to Vendetti, resigned from the Company just two days after Vendetti's start date of January 15, 2016. In spite of the timing, Frerichs' resignation was not related to the lower financial results.

47. The next several months were equally challenging, as three of PSG's largest retailers—the Sports Authority, Sports Chalet, and Total Hockey—filed for Chapter 11 bankruptcy in quick succession. This, coupled with other adverse market conditions and overall weakness in the baseball/softball market, caused the Company, at management's recommendation (including Vendetti's), to significantly reduce its earnings guidance again and take several large write-offs.

48. On March 8, 2016, the Company issued a press release of its third quarter earnings and announced that it was reducing fiscal year 2016 EPS guidance by approximately $0.55 per diluted share to a new range of $0.12 to $0.14 per diluted share. Following the

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[8] *See* January 14, 2016 Ex. 99.1 to Form 8-K filed by Old PSG Wind-Down Ltd.

announcement, class action lawsuits were filed against PSG alleging that the Company had failed to disclose the risk to its business caused by the wave of retailer bankruptcies.

49. On or about March 22, 2016, the Board asked for the resignation of Kevin Davis, who had been the Company's CEO since 2008. Davis had previously expressed a desire to leave PSG, and the Board had already been searching for his replacement. While this search was underway, the Board lost confidence in Davis—in part because of his desire to leave the position—and determined that his immediate removal was warranted. Rosenthal was named as Interim CEO until a permanent replacement was chosen.

50. Around the same time, both the U.S. Securities and Exchange Commission ("SEC") and the OSC initiated investigations into the business practices of PSG, and outside counsel was retained to investigate the circumstances surrounding the revised guidance, which was the subject of the SEC and OSC investigations.[9]

51. Soon thereafter, on or about June 8, 2016, PSG announced the hiring of Harlan Kent as the new CEO, effective June 20, 2016. *See* March 22, 2016 Ex. 99.1 to Form 8-K filed by Old PSG Wind-Down Ltd. Kent's hiring was part of a comprehensive plan for the Company that Plaintiffs had put in place to ensure the Company's viability going forward.

52. As these events unfolded, PSG's accounting and finance departments continued to work diligently with KPMG to evaluate and address a host of complex accounting and related issues, including the annual impairment testing process for goodwill and intangible assets, valuation of deferred tax assets and certain investments, evaluation of allowance for bad debt and the write down of accounts receivable, integration issues related to the Easton Hockey acquisition, analysis of the accounting impact of a large corporate structuring, upgrades to the

[9] The SEC investigation has since been closed with no charges brought.

Company's SAP system, and the ongoing testing and assessment of internal controls. This, of course, was in addition to facilitating the ongoing investigations into PSG's business and reporting to the Audit Committee.

A. Plaintiffs Identified and Investigated Red Flags at Combat

53. In connection with his overall review of forecasting and collectability issues, Vendetti became increasingly concerned during the third quarter with Combat, a small business unit focused on manufacturing softball bats. Combat was acquired in 2013 and represented a small percentage of PSG's overall business. In fact, Combat was so small that it was out of scope for both PSG's internal audit and KPMG's audit, which might explain how the issues at Combat arose.

54. In reviewing Combat's receivables aging, Vendetti became increasingly concerned with the growing receivable balance. Unlike Easton, which dealt mostly with large retail customers like Dick's Sporting Goods and the Sports Authority, Combat serviced mostly small "mom and pop" retailers and had historically offered extended payment terms of 150 to 240 days. For fiscal year 2016, Vendetti was especially concerned that Combat was projecting total revenues for the year at $10 million (substantially below the budget targets of $23 million set at the beginning of the fiscal year) while at the same time Combat's gross accounts receivable balance was approaching $12 million. In fact, given its poor performance and losses, PSG had made the decision to close the Combat business by June of 2016.

55. As a result, Vendetti asked Shelley Filocamo, a Director of Financial Planning and Analysis, to analyze Combat's aging receivable balance to better understand the delinquency profile. Based on this analysis, PSG increased Combat's bad debt reserve to $2.5 million in the third quarter (up from $850,000 in the second quarter) and then $3.9 million in the fourth

quarter. Even with the increase in the bad debt reserve, Vendetti was still concerned with the collectability of the net $8 million receivable balance.

56. Against this backdrop, in early June 2016 Vendetti learned of a $214,000 return of product to Combat. Vendetti was concerned about this return, especially given the prior work that was done on Combat and the receivable risk.[10] Thus, the totality of the circumstances presented at Combat caused Vendetti to question whether there might be a larger issue.

57. In response, and to help analyze accounting that would need to be done in anticipation of the closure of the Combat division in the summer of 2016, Vendetti instructed Alex Byrne, the head of PSG's Internal Audit group, to travel to Combat's sales office in Kent, Washington on June 20 and 21, 2016, to conduct interviews and review documentation. Following the Kent visit, Byrne continued to perform detailed invoice and credit memo testing through July 24, 2016. His audit work ultimately identified five transactions from the sample selection that had rights of return or other potential revenue recognition issues. Based on the audit, PSG recorded a current period adjustment to correct for improperly recognized revenue in prior periods during fiscal year 2016. In total, the financial impact of the Combat adjustment was $426,000 (with a P&L impact of $335,000), which was well below the materiality thresholds utilized by the Company.

58. The results of the Combat audit were presented to PSG's Audit Committee at an Audit Committee meeting on or about July 26, 2016. The Audit Committee Plaintiffs shared the results of the Combat audit with KPMG in advance of the meeting. At no time during the discussions with KPMG about the Combat audit (both before and immediately after the July 26

[10] The Combat bad debt reserve (approximately $4 million) represented 30% of the total Combat receivable balance. By way of comparison, the Easton bad debt reserve (approximately $8.6 million) represented 23% of its receivable balance. However, $7.6 million of the Easton reserve related to customers that were bankrupt (Team Express, Sports Authority and Sport Chalet).

Audit Committee meeting) did KPMG object to PSG's materiality conclusions or assert that the identification of multiple right of return agreements suggested fraud or warranted an independent investigation.

B. Plaintiffs Discovered a Guaranteed Sale Agreement at Easton and Corrected the Accounting Entry

59. In May of 2016, a credit supervisor at Easton (Stephanie Maghakian) became aware of a guaranteed sale agreement with Dunham's for the purchase of $513,400 worth of high-end bats, which was signed on a Dunham's form in connection with a Dunham's program. The agreement provided that, in the event that 60% of the bats were not sold by August 1, 2016, Dunham's had the right to return the unsold product. The agreement was uncovered through Easton's normal credit management process, which included analysis of customer receivable balances and follow-up on unpaid balances.

60. This was a non-standard agreement that was entered into by an Easton sales representative and Dunham's without the knowledge of the accounting and finance group at Easton, PSG's corporate offices, or PSG's Board. As a result, the full amount of the sale ($513,400) was recognized as revenue on November 25, 2015 upon the shipment of the bats, per the terms of the invoice and the Company's standard revenue recognition policy.

61. The discovery of the guaranteed sale resulted in further inquiry by Ricky Helland, the financial director of Easton, and Easton's VP of sales, David Lockridge, followed by a consultation with Byrne before the matter was elevated to Vendetti and Zaleski.

62. On May 16, 2016, Helland e-mailed Lockridge and Ryan Weller, the Strategic Account Manager at Easton, to set up a discussion about the transaction. In the e-mail, Helland asked why a guaranteed sale agreement had been entered into and whether there were any more customers with guaranteed sales agreements. Helland noted in his e-mail that this "is another

example of a bad deal . . . we can't do this going forward." He followed up by asking, "why would we guarantee sales? Who else are we doing this with?" Thereafter, Helland raised the matter with Byrne, who directed him to discuss the correct accounting for the transaction with Zaleski.

63. Helland reached out to Zaleski on June 14, 2016 and forwarded the guaranteed sale agreement to her on June 15, 2016. Zaleski then provided Vendetti with a broad overview of the Dunham's transaction on June 18, 2016.

64. Two days later, on June 20, 2016, Helland wrote to Lockridge informing him that he had received instructions to reverse the sale and to have Dunham's return the unsold product. Helland also once again asked Lockridge whether this was the only guaranteed sale, to which Lockridge responded that he would investigate. The following day, Helland directed Caryl Dolabson, the Accounting Manager of Easton, to make a journal entry reversing the revenue for the Dunham's guaranteed sale. This adjustment was to be recorded in the Company's FY 2016 financial statements.

65. Thus, shortly after learning of the agreement, Vendetti and Zaleski took steps to correct PSG's internal books and records, while Helland worked with Lockridge to confirm that no other guaranteed sales existed. Lockridge later confirmed that he had spoken with each individual sales representative and had confirmed that there were no additional guaranteed sales or agreements contemplating the same.

66. In considering the impact of the error and implications on the Company's financial statements and accounting controls, both Vendetti and Zaleski determined that the error was clearly immaterial. The impact of the error (an overstatement of approximately $412,000 in revenue) was a trivial amount for a company with $153 million and $126 million in reported

revenue for the second and third quarters, respectively, and $586 million in projected revenue for the fiscal year 2016. Both knew that the Company typically used 1% as a materiality threshold, which the Dunham's transaction was nowhere near. Both were intimately familiar with PSG's reported financial results for the year, and did not need a calculator to see that the impact on revenue was well below 1%. They further knew that the Company had reported a net loss for the second and third quarters, having revised the annual guidance downward significantly. Thus, it was apparent to both of them that the Dunham's transaction would not have changed the results during these reporting periods from a net loss to a net income position, nor would it have caused PSG to meet its earnings guidance.

67. Additionally, neither Vendetti nor Zaleski saw anything to indicate that the Dunham's transaction was a result of fraud or indicated a widespread problem at Easton. Both concluded it was unlikely that other rights of return or guaranteed sales agreements existed at Easton. For one, because the market and Easton were in decline, Vendetti reasonably expected that customers with such rights would have already attempted to return product given the difficult sales environment. Yet, after reviewing Easton's return statistics, there was nothing to suggest that returns were occurring outside of normal trends.

68. More importantly, Easton had an experienced finance and accounting team and strong internal controls, having been SOX compliant since before the 2014 acquisition by PSG. Unlike Combat, Easton was subject to regular audits by the Internal Audit group, which included sample testing of revenue transactions and credit memos and other substantive procedures. In fact, the internal controls that were in place to detect potential revenue recognition issues were responsible for uncovering the guaranteed sale in the first instance.

69. Moreover, unlike Combat, which had extended payment schedules that enabled non-standard agreements to delay detection, the majority of customers at Easton, who were typically large, brand-name retail customers, were on shorter, sixty-day payment terms. Easton and Combat were separate companies that operated independently of one another, and both Vendetti and Zaleski viewed the guaranteed sale agreement as a customer issue unique to Dunham's—not endemic of larger problems at Easton.

70. All of these factors led Vendetti and Zaleski to conclude that the Dunham's matter had been appropriately addressed—it was a single transaction amounting to an immaterial error that was corrected in the ordinary course. After the error was corrected, it simply did not occur to them to disclose the Dunham's transaction to KPMG affirmatively, as there were a myriad of other, material items to address regarding the audit and everything else going on at the Company.

71. In spite of reaching this conclusion, Vendetti informed the Audit Committee of the Dunham's transaction on or about August 5, 2016. The Audit Committee Plaintiffs questioned Vendetti about the transaction. He explained how his department had become aware of the sales contract and its right of return characteristic and described the financial details of the transaction, including the actions taken to correct the accounting for the transaction. Vendetti also explained the diligence described above that his department had taken to ensure that Easton had not entered into other similar contracts.

72. Nonetheless, out of an abundance of caution, the Audit Committee Plaintiffs asked the Company's outside counsel, Paul, Weiss, Rifkind, Wharton & Garrison LLP ("Paul Weiss"), to conduct a preliminary review of the Easton and Combat transactions over the upcoming weekend. The Audit Committee Plaintiffs also discussed with Paul Weiss the

possibility of hiring additional outside counsel to perform a more thorough investigation. At the time, KPMG felt that such an investigation was not acceptable, and KPMG instead expressed the opinion that an investigation of unlimited scope would be necessary.

C. KPMG's Audit of PSG's Financial Statements for Fiscal Year 2016

1. The Initial Planning and Expansion of the Scope of KPMG's Audit

73. For the 2016 fiscal year audit, KPMG significantly expanded the approach and scope of its audit work plan throughout the course of the audit. In designing its audit procedures, KPMG followed a substantive approach that did not consider or rely on any of the Company's internal controls. This resulted in a substantially larger selection of sample testing, as KPMG's scoping coverage was extraordinarily high. While it is difficult to estimate (in part because KPMG did not provide the Company with a single master document tracking all of the various prepared by client ("PBC") lists and incremental follow-up requests sent during the audit to the corporate and business units), it is likely that KPMG selected over 500 samples for its revenue testing, with the volume of requests increasing as the audit progressed. By way of comparison, KPMG's June 9, 2016 PBC List shows 81 items on the worksheet listing the consolidated PBC list, whereas the July 30, 2016 version of the same worksheet shows 196 items.[11] The increase in audit work is likewise illustrated by the increase in audit fees from what KPMG originally projected—the $1.75 million budget approved by the Audit Committee on June 8, 2016, to the $3.3 million in total fees paid by the end for the 2016 fiscal year audit (an audit that never was completed).

74. Revenue testing, moreover, was only a small part of KPMG's focus. Among the most material and time-consuming issues impacting the audit were impairments and deferred

[11] It is worth noting that each PBC document, an Excel spreadsheet often consisting of multiple tabs, contained a multitude of requests.

taxes. For example, the Company recorded a $145 million impairment of intangibles/goodwill for the third quarter and projected a total impairment of $205.3 million impairment for the fiscal year ended May 31, 2016.

75. For these reasons, among others, the audit was extremely difficult from a process standpoint, and while the Company's finance team remained professional, the relationship with KPMG was admittedly strained. Throughout the audit, PSG and Plaintiffs continued to add resources to meet the incremental demands from KPMG. This included hiring additional accounting, tax and valuation experts from PwC, Deloitte, RSM McGladrey ("RSM") and Valuation Research Corporation ("VRC").[12] These outside resources were in addition to the RSM and PwC accountants who had already been brought on to assist with the Company's testing and analysis of internal controls. To respond to the volume of audit requests, the Company also added accounting resources from Accountemps and Robert Half Finance and Accounting.

76. Both KPMG and PSG acknowledged the hard work being done on both sides to get through the year-end process in an extremely challenging environment, which included, as noted previously, bankruptcy filings by major customers and general softness in the marketplace. Wilson recognized, for example, that the business issues "have contributed significantly to the time commitment required from all of us to make sure the accounting is finalized and appropriately documented." Key members of the PSG accounting team were working late nights and weekends until the audit was complete. While difficult to predict the workload and completions, as requests from KPMG continued to mount, PSG management was diligently working as hard as they could to meet the deadline to file the audited financials.

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[12] In particular, PSG retained one manager and one senior from PwC to work on impairments and provide technical accounting research; one manger from Deloitte to assist on tax matters; two staff accountants from RSM to assist in base audit work; and VRC, a valuation firm, to assist with the impairment analysis.

77. All of this context is important when considering how the right of return transactions surfaced and how they were addressed by PSG. The Dunham's transaction was not the only issue that arose during the audit and paled in comparison to numerous more significant challenges the Company was working through.

2. Discussion of the Combat Audit and Dunham's Transaction at Easton

78. Although Combat was outside the scope of KPMG's audit, the Company, at the insistence of the Audit Committee Plaintiffs, shared the results of the Combat audit with KPMG in July, prior to the July 26, 2016 Audit Committee meeting. The identification of multiple Combat customers with right of return agreements did not appear to set off any alarm bells with the auditors, and KPMG appeared to agree that the items were immaterial and had been appropriately addressed. There was no suggestion by Wilson, for example, that the Combat transactions were the result of fraud or warranted an independent investigation.

79. Following the July 26 Audit Committee presentation (at which the Audit Committee Plaintiffs were present), Wilson and KPMG's forensics director, Peter Blessing, met with Vendetti and Byrne to discuss the Combat audit process and obtain a more detailed understanding of the scope, procedures and results of the Company's review and analysis. Blessing's notes from the meeting confirm the discussion focused almost entirely on the Combat audit and other concerns regarding the Combat issues. Vendetti did not recall discussing the materiality of these rights of return or the likelihood of fraud during this meeting; however, they did discuss overlapping customers between Combat and Easton. Vendetti did not understand them to be interested in whether there were rights of return spanning across both companies, but rather on the collectability of outstanding balances at Combat (*i.e.*, whether Easton could leverage its ties to common customers to exact payments).

80. Nonetheless, after meeting with Wilson and Blessing of KPMG, Vendetti and Zaleski disclosed the right of return involving Dunham's at Easton on August 4—only six days later. In connection with KPMG's testing to reconcile the debits for returns with the sales return reserves, Holland became aware of the manual journal entry that included the reversal of revenue for Dunham's transaction. On August 3, 2016, Holland received an internal e-mail from Stephanie Cahill, another member on the KPMG audit team, attaching the manual journal entries that were posted as of May 31, 2016. On information and belief, the spreadsheet was created by KPMG based on journal entry data included in the Easton GL data dump.[13] Holland flagged the Dunham's entry and followed up with Helland for more information, who initially indicated that the entry related to a consignment sale. Shortly thereafter, in reviewing the journal entry, Zaleski realized that the journal entry did not relate to a consignment sale, but to a guaranteed sale. Zaleski and Vendetti met with KPMG on August 4, 2016 to clarify what the journal entry represented.

81. In the days that followed, Wilson became increasingly concerned over the Dunham's disclosure and the fact that the issue had not been brought to his attention sooner. At the Audit Committee meeting on August 8, 2016, Wilson delivered an ultimatum: either retain outside counsel to determine if management had intentionally concealed non-standard agreements with rights of return, or KPMG would resign as PSG's auditor immediately. Wilson emphasized that in order to be acceptable to KPMG, this investigation would have to be unlimited in scope. Plaintiff McDonell informed KPMG during the meeting that such an investigation would push PSG into bankruptcy proceedings.

[13] Significantly, the Easton GL data dump would have been provided to KPMG mid-July. KPMG worked directly with the Easton IT Department to extract data directly from the GL so that KPMG could then export the data it needed into an excel spreadsheet. As the review of manual entries is always a necessary and critical part of the audit, AS 2401.58, it is unclear why this work was not done until August 3.

3. Plaintiffs Worked Diligently to Complete the Audit as Soon as Practicable

82. In response to Wilson's demand, and consistent with their duties to the Company, the Audit Committee Plaintiffs retained outside counsel at the law firm of Richards Kibbe & Orbe LLP ("RKO") to conduct an independent investigation of the issues raised by KPMG. RKO was chosen by the Audit Committee Plaintiffs after being recommended by other outside counsel. The Audit Committee Plaintiffs, at the request of RKO, retained the forensic accounting firm AlixPartners to assist in the investigation and conduct transaction testing. Plaintiff Dea confirmed that KPMG was satisfied with the choice of both RKO and AlixPartners.

83. However, it became clear to Plaintiffs that the Company would not be able to meet the needs of the RKO investigation and KPMG's increased demands regarding the audit by the Company's required filing date of August 15, 2016. As a result, on or about August 15, 2016, the Company announced that its Form 10-K would not be filed by the required filing date, which the Company explained was "a result of the decision of [PSG's] Audit Committee to conduct an internal investigation in connection with the finalization of the Company's financial statements and the related certification process."

84. In addition to explaining that the Audit Committee Plaintiffs had retained RKO and AlixPartners, the Company stated, "The Audit Committee and its advisors are working diligently to complete the investigation with a view to having the Company finalize the Form 10-K as soon as practicable, although at this time it is uncertain when this will occur."[14] This uncertainty stemmed in part from KPMG's expanded audit procedures.

[14] *See* August 15, 2016 Ex. 99.1 to Form 8-K filed by Old PSG Wind-Down Ltd.

4. KPMG's Audit Work Continued Through the Date of the Bankruptcy Filing

85. Following the disclosure of the Dunham's transaction, Vendetti and Zaleski—alongside and with the guidance of the Audit Committee Plaintiffs—continued to cooperate with KPMG and provide requested information to address any right of return issues. KPMG developed expanded audit procedures, which is expected and required under PCAOB standards if the auditor discovers information during the course of the audit that causes the auditor to revise its overall risk assessment. *See* AS 2810.14, .36. KPMG also maintained or increased its staffing levels on the audit.

86. In an August 17, 2016 e-mail, Wilson outlined the expanded procedures KPMG set out to perform based on its updated risk assessment and guidance from KPMG's National Office. The expanded procedures included:

- extending the review of post period end credit memos to the current date;
- expanded sampling of credit memos / debits to revenue during FY 16;
- additional "revenue" confirmations to a selection of customers across the businesses, including Combat;
- analysis of the nature and the timing of the change to the bad debt policy during the fourth quarter; and
- additional procedures over some of the information that was provided to the SEC.

KPMG vowed to work with the RKO team handling the independent investigation to make sure they were coordinated and efficient to the extent there were overlapping data requests to the Company.[15] Indeed, KPMG and RKO met regularly to discuss the investigation. During these meetings, RKO not only provided KPMG with regular updates but also reviewed and solicited feedback from KPMG on the original scoping and workplan for the investigation.

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[15] Wilson also explained that it was KPMG's policy to shadow the internal investigation by assisting in the up-front review of the workplan, providing feedback and monitoring the progress as the investigation moved forward.

87. In many ways, the audit work continued on its normal course. KPMG continued to request documents and information and selected more samples for testing, sent third-party confirm letters, and consulted with PSG, RKO, and AlixPartners.[16] Indeed, KPMG billed a significant amount of time for audit work during this period. Based on information and belief, KPMG billed to the audit at a higher run rate after the disclosure of the Dunham's transaction than they did prior—of the total $3.3 million in fees for the fiscal 2016 audit, roughly $1.4 million were incurred after August 26, 2016. From what the Audit Committee Plaintiffs, Vendetti, and Zaleski observed, there was nothing to suggest that KPMG was not working on the audit throughout this period.

88. By September 2016, Vendetti and Zaleski had prepared financial statements for PSG's 2016 fiscal year that were correct in all material respects. These financial statements were used by Peak post-acquisition as a basis for accounting in subsequent fiscal years, and they were never amended or restated.

89. By early October it appeared that KPMG was working to complete its incremental revenue testing on Easton. On October 4, 2016, Holland provided KPMG's revised incremental PBC list of "what we will need to sample down to date and to perform procedures to close out the issue of return rights found at Easton." In the e-mail, Holland noted: "We are trying to navigate this process with AlixPartners and RK&O to keep it as efficient as possible but will need obtain information directly from the Company for us to use as audit evidence."

90. KPMG's audit work appears to have stopped as a result of PSG's filings for bankruptcy on October 31, 2016. However, during the nearly three-month period following the August 4, 2016 disclosure of the Dunham's transaction, no additional guaranteed sale or right of return agreements were uncovered. In fact, throughout the entire audit KPMG never identified a

[16] There were over a dozen incremental PBC requests between August 24, 2016 and October 20, 2016.

single uncorrected accounting error, as evidenced by the lack of any summary of accounting differences presented to PSG by KPMG. While AS 2810.15 requires an auditor to promptly report any accounting errors uncovered during the course of the audit and propose (or accumulate) a correcting adjustment, after all of the audit work that was done, and the thousands of hours in fees billed, KPMG proposed no adjustments.

D. PSG's Bankruptcy and Plaintiffs' Additional Attempts to Limit Damage to the Company

91. As the audit process progressed, Plaintiffs made several decisions that were reasonably designed to prevent, or at least mitigate, any potential harm to the Company. For example, on or about August 11, 2016, the Company, under Plaintiffs' guidance and direction, initiated discussions with Alvarez & Marsal ("A&M"), a global professional services firm, about representing PSG in possible United States and Canadian bankruptcy filings. With Plaintiffs' guidance, PSG also hired Centerview Partners, a restructuring expert, to provide advice in the event that bankruptcy proceedings became necessary.

92. On or about August 29, 2016, the Company sought and was able to obtain amendments to its current lending agreements that provided PSG with a 60-day extension to file its Form 10-K. Pursuant to these amendments, PSG was required to provide its Form 10-K (and other documentation) to its lenders by October 28, 2016.[17]

93. By October 24, 2016, however, it had become apparent that PSG would not be able to meet the October 28 deadline (despite Plaintiffs' best efforts to conclude the internal investigation and complete the audit). Accordingly, that same day, the Company engaged A&M to represent it in bankruptcy filings in both the U.S. and Canada.

[17] *See* August 30, 2016 Ex. 99.1 to Form 8-K filed by Old PSG Wind-Down Ltd.

94. Due to the complexity of the dual bankruptcy filings, the Director Plaintiffs solicited advice and guidance from several legal and financial authorities before exercising their business judgment. This included having the bankruptcy monitor in the Canadian filings attend all Board meetings. The Canadian monitor approved all the Board's approaches and expenses under the Canadian bankruptcy process.

95. On or about October 28, 2016, the Company terminated Rosenthal and the Executive Vice President of Baseball/Softball, Todd Harman. At this point in time, Kent was now in place as the CEO.

96. Three days later, on October 31, 2016, PSG filed for bankruptcy protection in the United States Bankruptcy Court for the District of Delaware. As a result of the bankruptcy filings, the Board's duties changed. In particular, the Board was now required to try to maintain the Company's assets. In an effort to preserve the Company's assets, the RKO investigation was temporarily suspended, which was approved by the Canadian bankruptcy monitor.

97. On December 19, 2016, the Audit Committee Plaintiffs, along with the Canadian bankruptcy monitor, authorized RKO to resume its internal investigation.

98. Eventually, Plaintiffs oversaw the Company's sale of substantially all of its assets to Peak on or about February 27, 2017. At the time, Centerview Partners had advised that the Company's assets were only worth $330 million. Yet in the end, Plaintiffs successfully negotiated a sale price of $575 million plus all operational liabilities—an objective testament to their skillful stewardship. What is more, Plaintiffs accomplished this result while fending off attempts by several parties to block the sale so that they could pick up the Company's debt. During the unusually seamless and efficient bankruptcy process achieved under Plaintiffs'

stewardship (and under this Court's supervision), Vendetti and Zaleski worked extremely long hours and put in exceptional effort to make the restructuring a success.

99. The sale was completed on or about February 27, 2017. On or about the same day, Plaintiffs Barsa, Jacobi, and Nicholson resigned from the Company. At the same time, Plaintiffs Dea, McDonell, and Mannelly agreed to remain on the Board and as members of the Audit Committee.

100. Plaintiffs Dea, McDonell, and Mannelly, as the remaining members of the Audit Committee, then oversaw the completion of RKO's investigation on or around March 6, 2017. Plaintiffs Dea, McDonell, and Mannelly also oversaw the maximization of the Company's assets before resigning from their roles in August 2017 when the Company had approximately $56 million in cash.[18]

E. Findings of the RKO Internal Investigation

101. Although the scope of the RKO investigation was necessarily impacted by PSG's filing for bankruptcy and subsequent acquisition by Peak, it nonetheless was a comprehensive investigation.

102. RKO is an experienced law firm specializing in internal investigations and was retained as independent counsel by the Audit Committee Plaintiffs to report directly to the Audit Committee. In consultation with KPMG at the start of the investigation, RKO developed a workplan that included the collection and review of a substantial volume of e-mails and

[18] Company filings show "Total Bank Account Cash" of $56,244,689 through June 30, 2017. *See In re Old BPSUSH Inc., et al.*, No. 16-12373 (BLS), ECF 1221, at 4.

documents (from 42 e-mail custodians and nine imaged hard drives from individuals in finance) and interviews of ten PSG employees starting in August 2016.[19]

103. The Audit Committee Plaintiffs, at the request of RKO, retained AlixPartners as its forensic accounting experts to perform transaction testing and other substantive procedures. AlixPartners collected and assembled general ledger documentation (2.7 terabytes of data), and the Company granted AlixPartners access to the shared folders on PSG's network. Their sample testing included the review of 108 Easton transactions with the supporting documents. AlixPartners also performed a trend analysis for sales, EBITDA and bad debt, reviewed sales and credit return activity by customer and performed customer analysis based on analytics. Among other things, AlixPartners looked for large credit memos at quarter end and credit memos for key customers, and further investigated issues identified by KPMG and the Company. AlixPartners's transaction testing looked at PSG's 2015 and 2016 fiscal years, as well as the first quarter of 2017.

104. All of this detailed forensic accounting work is exactly what one would expect from an internal investigation involving revenue recognition issues. At the end of the day, AlixPartners uncovered nothing suggesting a widespread pattern of improper revenue recognition practices or use of undisclosed side letters, guaranteed sale or right of return agreements. Indeed, the RKO investigation confirmed what Vendetti and Zaleski concluded in June of 2016: The Dunham's transaction was an isolated customer issue, and not indicative of a larger problem at Easton or the Company as a whole.

105. Time has borne out that conclusion as well. The PSG books remained open until the closing of Peak's acquisition of PSG. During that period, PSG's credit monitoring and other

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[19] While they did not formally interview Wilson, RKO consulted with him throughout the process and were aware of, and considered, his views in reaching their final conclusions.

revenue controls continued and there was no dramatic uptick in returns or side letters uncovered or customers coming forward claiming to exercise a right of return. Ernst & Young ("EY"), the accounting experts retained by Peak as part of its pre-acquisition diligence, prepared an Integrity of Earnings Report and identified no revenue recognition issues or undisclosed problems. And widespread rights of return, if they existed, would have been of critical importance to Peak, as it was buying PSG's open receivable balance and the deal was closing, with full disclosure of the issues raised by KPMG, before the completion of the audit and RKO investigation. While Peak is now privately held, the Company still prepares audited financial statements—yet its new auditor, PwC, has not identified any pre-acquisition revenue recognition issues or concluded that there is any reason why they cannot rely on Zaleski's integrity or her representations.

106. RKO's conclusions were no different. On March 6, 2017, RKO presented its findings to Plaintiffs Dea, McDonell, and Mannelly, as members of the Audit Committee. RKO explained that they had done a complete and thorough investigation of the integrity of PSG's finance function, including KPMG's specific allegations regarding Vendetti and Zaleski surrounding the disclosure of the Dunham's agreement.[20] RKO reported that its independent investigation revealed no basis for concluding that management—in particular Vendetti and Zaleski—had intentionally or fraudulently recognized revenue in association with rights of return, or concealed information from KPMG about those transactions. RKO's investigation further found nothing to suggest that Vendetti or Zaleski—or any of the Plaintiffs for that matter—were not acting in good faith or were unfit for reliance in a financial review. In

[20] RKO further explained that the scope of testing of historic revenue recognition practices was truncated as a result of Bankruptcy filing, and management integrity became the focus of the investigation. Nevertheless, RKO used AlixPartners to analyze the full scope of the accounting system to try and identify right of return or other similar agreements. Based on AlixPartners' transaction testing and review, they did not identify a pattern or practice that would call into question integrity of senior management.

particular, RKO did not believe that the failure to raise the Dunham's right of return agreement until August 4, 2016 amounted to anything more than an inadvertent oversight by people who were overburdened with the audit and other work being done at the same time.

107. Nonetheless, Wilson and KPMG refused to accept the findings of the independent investigation. Though all of the Company's assets had been sold and PSG (which had been renamed Old PSG Wind-Down Ltd. and existed solely to wind down the remaining bankruptcy items) was no longer an SEC issuer reporting its financial results, KPMG resigned as auditor. As for its stated reason for resigning, KPMG asserted that it "does not consider the Investigation to have had an adequate scope or depth"[21]; "because the Investigation will not be completed, KPMG is unable to complete its audit"; and "it has not concluded on the various items set forth in Section 10A(b)(2)" given the timing of the resignation.[22]

108. In essence, Theseus claims that officers and directors must create a control environment in which each and every immaterial transaction must be accounted for and booked in the general ledger correctly from the moment it is recorded, and that any subsequent correction shows that senior staff breached duties to maintain a flawless system. But directors and officers are not held to such a stringent standard of care. The fact that a single contract for an immaterial sum was initially booked incorrectly and then caught a few months later in connection with other accounting controls at PSG simply does not show a breach of any duty. Nor was it a breach of duty for PSG's independent directors to determine, in the exercise of their business judgment, that it was in the Company's best interest to retain—rather than terminate—officers who had caught and promptly corrected the mistake. And indeed, extensive post-hoc

[21] KPMG was apprised of the scope and depth of the investigation throughout its life, and at no point did KPMG raise this concern with the Audit Committee Plaintiffs.

[22] *See* March 31, 2017 Form 8-K filed by Old PSG Wind-Down Ltd., at 2.

auditing procedures and investigations—performed at KPMG's demand, under heightened scrutiny—revealed nothing further and found no one at fault.

F. Defendant's Frivolous Allegations.

109. Numerous independent entities, including PSG's Audit Committee, RKO, AlixPartners, and EY, have reviewed these facts in detail and concluded that none of the Plaintiffs, particularly Vendetti and Zaleski, engaged in any wrongdoing whatsoever. These disinterested, independent reviews were done at great cost to PSG and each reached the same conclusion. There is no reason to burn through more valuable dollars that could be returned to equity-holdings on a meritless lawsuit that will enrich only the professionals paid for pursuing it.

110. Nonetheless, the Trustee seeks to revive long-dead allegations that, because KPMG decided it would not sign off on the audit, this was somehow Plaintiffs' fault. There is not a grain of truth to this. The facts, all of which are known to the Trustee, show that KPMG never intended to sign off on the 2016 audit. Specifically:

(a) David Wilson was at the end of his run as lead audit partner, and would need to be replaced in the following year in any event. In February of 2016, KPMG introduced Wilson's replacement, Chris Valhallah, who had been jointly agreed among KPMG and the Audit Committee as a welcome replacement to Wilson. In July, Vendetti reached out to Valhallah to involve him in the audit so he could start to come up to speed on PSG's business. Valhallah did not return the outreach; instead, Wilson contacted Vendetti and informed him that Valhallah would be unable to assume the role as the new lead audit partner on the account due to health issues. This had never previously been disclosed to PSG, nor did KPMG propose another replacement. That is highly irregular and suggests KPMG had no intent of continuing as PSG's auditor.

(b) Previously undisclosed internal KPMG correspondence now known to Plaintiffs shows that KPMG was going to refuse to sign-off on the audit "for a long time" before Wilson learned of the Dunham's guaranteed sale.

(c) The guaranteed sale itself is entirely immaterial, was not part of a pattern of broader accounting failures, was corrected quickly by Vendetti and Zaleski when they learned of it, and Vendetti and Zaleski, with the guidance of the Audit Committee Plaintiffs, affirmatively disclosed it to KPMG while the audit was ongoing.

111. The Trustee is nonetheless threatening litigation against Plaintiffs.

112. There is no value to equity holders in this litigation. PSG's equity-holders have already footed the bill for multiple investigations of this same issue.

113. Threatening Plaintiffs with litigation based on the same facts that multiple independent entities, including the Audit Committee, RKO, AlixPartners, Peak, EY, and the SEC, have already reviewed therefore amounts to an unethical shakedown. It is also a breach of Theseus' fiduciary duties to the Liquidation Trust's beneficiaries, and is damaging them financially. This conduct must stop.

COUNT I

(Declaratory Judgment)

114. Plaintiffs repeat and reallege the foregoing paragraphs, which are incorporated by reference herein.

115. In an apparent effort to continue getting paid, Theseus is threatening to pursue what it knows to be frivolous litigation against Plaintiffs. The indisputable factual record demonstrates that Defendant's threatened claims are baseless. Indeed, the very facts that allegedly support those claims have already been reviewed many times, including by PSG's Audit Committee, RKO, AlixPartners, Peak, EY, and the SEC. None has found wrongdoing.

116. Nevertheless, on June 28, 2019, Theseus sent Plaintiffs a demand letter, attaching a draft complaint, and then informed Plaintiffs on or about September 27, 2019 that it intends to file the complaint.

117. To protect themselves and the Liquidation Trust's beneficiaries against this imminent risk of injury, Plaintiffs thus seek a declaratory judgment that they:

(a) did not breach their fiduciary duties to PSG or any of its affiliates;

(b) did not cause PSG's bankruptcy; and

(c) are not liable for damages caused by PSG's bankruptcy.

COUNT II

(Breach of Fiduciary Duty of Loyalty)

118. Plaintiffs repeat and reallege the foregoing paragraphs, which are incorporated by reference herein.

119. Theseus owes a fiduciary duty of loyalty to the Liquidation Trust and its beneficiaries, which include Vendetti (who holds 20,000 shares of stock).

120. Theseus has breached, and continues to breach, its duty of loyalty by using money that rightfully belongs to equity holders in order to threaten what it knows to be frivolous litigation against Plaintiffs.

121. Every day that Theseus spends trying to extract funds from Plaintiffs is money in Theseus' pocket that should be returned to equity holders. Theseus' ongoing breaches have therefore caused, and will continue to cause, damages to the Liquidation Trust's beneficiaries, including Vendetti.

COUNT III

(Breach of Fiduciary Duty of Good Faith)

122. Plaintiffs repeat and reallege the foregoing paragraphs, which are incorporated by reference herein.

123. Theseus owes a fiduciary duty of good faith to the Liquidation Trust and its beneficiaries, including Vendetti (who holds 20,000 shares of stock).

124. Theseus has breached, and continues to breach, its duty of good faith by using money that rightfully belongs to equity holders in order to threaten what it knows to be frivolous litigation against Plaintiffs.

125. Every day that Theseus spends trying to extract funds from Plaintiffs is money in Theseus' pocket—money that should be returned to equity holders now. Theseus' ongoing breaches have therefore caused, and will continue to cause, damages to the Liquidation Trust's beneficiaries, including Vendetti, in an amount to be determined.

COUNT IV

(Permanent Injunction)

126. Plaintiffs repeat and reallege the foregoing paragraphs, which are incorporated by reference herein.

127. From the beginning, Theseus was an unusual, if not risky, choice to serve as Liquidation Trustee. On information and belief, Theseus has no prior experience serving as a Liquidation Trustee, and no other active engagements serving as a court-appointed trustee in any capacity.

128. While that should have prevented Theseus' initial appointment to serve as Trustee, its conduct warrants immediate removal. Theseus' actions do not reflect a good faith review of the factual record, but instead can only be explained by a desire to keep getting paid—to the detriment of the Liquidation Trust, its beneficiaries, and Plaintiffs.

129. As a result, Plaintiffs seek an order removing Theseus as Liquidation Trustee pursuant to Section 2.7 of the Liquidation Trust Agreement and/or as otherwise permitted by law.

Jury Trial

130. Plaintiffs demand a jury trial on all issues so triable.

Prayer for Relief

131. For the foregoing reasons, Plaintiffs respectfully request that the Court grant the following relief:

(a) Declaring that Plaintiffs have not breached their fiduciary duties to PSG or any of its affiliates, successors, or assigns, did not cause PSG's bankruptcy, and are not liable for damages caused by PSG's bankruptcy (Count I);

(b) Entering judgement against Defendant and finding it breached its fiduciary duty of loyalty to the Liquidation Trust and its beneficiaries, and awarding damages as a result of such breach in an amount to be determined at trial (Count II);

(c) Entering judgement against Defendant and finding it breached its fiduciary duty of good faith to the Liquidation Trust and its beneficiaries, and awarding damages as a result of such breach in an amount to be determined at trial (Count III);

(d) Permanently enjoining Defendant from pursuing its course of conduct and removing it as Liquidation Trustee (Count IV); and

(e) Awarding Plaintiffs attorneys' fees and costs, to the extent allowable by law.

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Dated: October 23, 2019
Wilmington, Delaware

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Counsel to Plaintiffs Mark Vendetti and Julie Zaleski

TAB C

This is Exhibit "C" referred to in the affidavit of

MARK PALMER

sworn before me this day of December, 2019.

Notary

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: OLD BPSUSH, INC., *et al*., Debtors.	Chapter 11 Case No. 16-12373 (BLS)
KARYN BARSA, JOAN DEA, C. MICHAEL JACOBI, MATTHEW MANNELLY, BERNARD MCDONELL, BOB NICHOLSON, MARK VENDETTI, and JULIE ZALESKI, Plaintiffs, v. THESEUS STRATEGY GROUP LLC, Defendant.	Adv. Pro. No. 19-50726-BLS
THESEUS STRATEGY GROUP LLC, in its capacity as Litigation Representative for and on behalf of the Old PSG Wind Down Liquidation Trust, Old BPSUSH Inc. (f/k/a BPS US Holdings Inc.), Old BH Inc. (f/k/a Bauer Hockey, Inc.), Old EBS Inc. (f/k/a Easton Baseball/Softball Inc.), Old BHR Inc. (f/k/a Bauer Hockey Retail Inc.), Old BPSU Inc. (f/k/a Bauer Performance Sports Uniforms Inc.), Old PLG Inc. (f/k/a Performance Lacrosse Group Inc.), Old BPSCI Inc. (f/k/a BPS Diamond Sports Inc.), Old PSGI Inc. (f/k/a PSG Innovation Inc.), Old BHR Wind-down Corp. (f/k/a Bauer Hockey Retail Corp.), Old EBS Winddown Corp. (f/k/a Easton Baseball/Softball Corp.), Old PSGI Wind-down Corp. (f/k/a PSG Innovation Corp.), Old BPSDS Wind-down Corp. (f/k/a BPS Diamond Sports Corp.), Old BPSU Wind-down Corp. (f/k/a Bauer Performance Sports Uniforms Corp.), Old PLG Wind-down Corp. (f/k/a Performance Lacrosse Group Corp.), and Old PSG	

Wind-down Ltd. (f/k/a Performance Sports Group Ltd.), KBAU Holdings Canada, Inc., Bauer Hockey Corp., BPS Canada Intermediate Corp., Counterclaim Plaintiff, v. KARYN BARSA, JOAN DEA, C. MICHAEL JACOBI, MATTHEW MANNELLY, BERNARD MCDONELL, BOB NICHOLSON, MARK VENDETTI, and JULIE ZALESKI, Counterclaim Defendants.

ANSWER AND COUNTERCLAIMS

Theseus Strategy Group LLC (the "**Litigation Representative**"), as the Court-appointed Litigation Representative for and on behalf of the Old PSG Wind Down Liquidation Trust (the "**PSG Trust**") and Old BPSUSH Inc. (f/k/a BPS US Holdings Inc.), Old BH Inc. (f/k/a Bauer Hockey, Inc.), Old EBS Inc. (f/k/a Easton Baseball/Softball Inc.), Old BHR Inc. (f/k/a Bauer Hockey Retail Inc.), Old BPSU Inc. (f/k/a Bauer Performance Sports Uniforms Inc.), Old PLG Inc. (f/k/a Performance Lacrosse Group Inc.), Old BPSCI Inc. (f/k/a BPS Diamond Sports Inc.), Old PSGI Inc. (f/k/a PSG Innovation Inc.), Old BHR Wind-down Corp. (f/k/a Bauer Hockey Retail Corp.), Old EBS Winddown Corp. (f/k/a Easton Baseball/Softball Corp.), Old PSGI Wind-down Corp. (f/k/a PSG Innovation Corp.), Old BPSDS Wind-down Corp. (f/k/a BPS Diamond Sports Corp.), Old BPSU Wind-down Corp. (f/k/a Bauer Performance Sports Uniforms Corp.), Old PLG Wind-down Corp. (f/k/a Performance Lacrosse Group Corp.), and Old PSG Wind-down Ltd. (f/k/a Performance Sports Group Ltd.) (including KBAU Holdings Canada, Inc., Bauer Hockey Corp., BPS Canada Intermediate Corp.) (the foregoing, collectively, "**PSG**" or "**Old PSG**"), denies all allegations contained in the headings and sub-headings preceding individually numbered paragraphs of the Adversary Complaint (the "**Complaint**"). The Litigation Representative denies all allegations to the extent not expressly admitted. The Litigation Representative hereby responds to the individually numbered paragraphs of the Complaint as follows:

1. Paragraph 1 consists of characterizations that are not factual allegations, such that no response is required. Further answering, the Litigation Representative admits that Karyn Barsa, Joan Dea, C. Michael Jacobi, Matthew Mannelly, Bernard McDonell, Bob Nicholson, Mark Vendetti, and Julie Zaleski filed a complaint against it for monetary, injunctive, and declaratory relief, and that Performance Sports Group, Inc. was once a developer and manufacture of sports equipment and apparel under such brands as Bauer Hockey and Easton. To the extent a further response is required, the Litigation Representative denies the remaining allegations in Paragraph 1.

2. Paragraph 2 consists of characterizations that are not factual allegations, such that no response is required. Further answering, the Litigation Representative admits that in its capacity as Court-appointed Litigation Representative for and on behalf of the PSG Trust and Old PSG, the Litigation Representative is vested with the exclusive responsibility, power, and authority to investigate, prosecute, settle or otherwise liquidate certain retained claims and/or causes of action on behalf of the PSG Trust and Old PSG. The Litigation Representative further admits that it has determined that Mark Vendetti and Julie Zaleski (together, the "**Officer Defendants**") breached fiduciary duties that they respectively owed to PSG, and that Old PSG and the PSG Trust hold claims and causes of action against the Officer Defendants. The Litigation Representative denies the remaining allegations in Paragraph 2.

3. Paragraph 3 consists of characterizations that are not factual allegations, such that no response is required. Further answering, the Litigation Representative admits that in its capacity as Court-appointed Litigation Representative for and on behalf of the PSG Trust and Old PSG, the Litigation Representative is vested with the exclusive responsibility, power, and authority to investigate, prosecute, settle or otherwise liquidate certain retained claims and/or causes of action on behalf of the PSG Trust and Old PSG. The Litigation Representative further admits that it has determined that Karyn Barsa, Joan Dea, C. Michael Jacobi, Matthew Mannelly, Bernard McDonell, and Bob Nicholson (collectively, the "**Director Defendants**") breached fiduciary duties that they respectively owed to PSG, and that Old PSG and the PSG Trust hold claims and causes of action against the Director Defendants. The Litigation Representative denies the remaining allegations in Paragraph 3.

4. Paragraph 4 consists of characterizations that are not factual allegations, such that no response is required. To the extent a response is required, the Litigation Representative denies the allegations in Paragraph 4.

5. The Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 5, and thus denies. To the extent that Paragraph 5 purports to quote, paraphrase, or characterize a document, the document speaks for itself. To the extent a further response is required, the Litigation Representative denies the remaining allegations in Paragraph 5.

6. Paragraph 6 consists of characterizations that are not factual allegations, such that no response is required. To the extent a further response is required, the Litigation Representative denies the allegations in Paragraph 6. Further answering, the Litigation Representative notes that, pursuant to the *Findings of Fact, Conclusions of Law and Order*

Confirming First Amended Joint Chapter 11 Plan of Liquidation of Old BPSUSH Inc. and Its Affiliated Debtors [D.I. 1566] (the "**Confirmation Order**"), the *First Amended Joint Chapter 11 Plan of Liquidation of Old BPSUSH Inc. and Its Affiliated Debtors* [D.I. 1473] (the "**Plan**"), and the Old PSG Wind Down Liquidation Trust Agreement [D.I. 1532] (the "**Trust Agreement**"), on December 21, 2017 (the "**Effective Date**"), the reorganized Old PSG and the PSG Trust were established, all of PSG's assets were vested jointly in Old PSG and the PSG Trust, and Theseus Strategy Group LLC was appointed Litigation Representative for Old PSG and the PSG Trust, with all of the rights, powers, and interests as set forth in the Confirmation Order, the Plan, and the Trust Agreement. Pursuant to the Confirmation Order, the Plan, and the Trust Agreement, all of PSG's assets, including all of the "Retained Causes of Action" under the Plan, were expressly preserved and, on the Effective Date, automatically vested jointly in Old PSG and the PSG Trust. Confirmation Order ¶ 18; Plan Art. X.E.1 and 2; Trust Agreement § 1.3. Under the Plan, the "Retained Causes of Action" were defined to include all causes of action of PSG as of the Effective Date, including, but not limited to, "any and all causes of action against any party relating to or arising from the Debtors' failure to file their Annual Report for the fiscal year ended May 31, 2016 or alleged irregularities in the Debtors' sales practices." Plan Art. I.A.164. Further, on the Effective Date, Theseus Strategy Group LLC, as the Litigation Representative for both Old PSG and the PSG Trust, was vested with the exclusive responsibility, power, and authority to investigate, prosecute, settle or otherwise liquidate the Retained Causes of Action jointly on behalf of Old PSG and the PSG Trust. Confirmation Order ¶ 17; Plan Art. V.E.2 and 12; Trust Agreement § 4.1.

7. Paragraph 7 consists of characterizations that are not factual allegations, such that no response is required. Paragraph 7 also consists of legal argument to which no response is

required. To the extent a further response is required, the Litigation Representative denies the allegations in Paragraph 7.

8. Paragraph 8 consists of characterizations that are not factual allegations, such that no response is required. Paragraph 8 also consists of legal argument to which no response is required. To the extent that a further response is required, the Litigation Representative denies the allegations in Paragraph 8 of the Complaint. Further answering, the Litigation Representative states that, pursuant to the Confirmation Order and the Plan, to the extent any holders of any shares of stock of PSG elected to participate in the PSG Trust, such holders' shares were cancelled on the Plan effective date and exchanged for Beneficial Trust Interests (as defined under the Plan).

9. Paragraph 9 consists of characterizations that are not factual allegations, such that no response is required. Paragraph 9 also consists of legal argument to which no response is required. To the extent that a further response is required, the Litigation Trustee denies the allegations in Paragraph 9. The Litigation Representative further states that, since the Effective Date, the substantial accomplishments of Old PSG, led by the Court-appointed Chief Wind-down Officer, Mark E. Palmer in conjunction with the Canadian Monitor, and the PSG Trust, led by Theseus Strategy Group LLC, as the Court-appointed trustee of the PSG Trust (and Mark E. Palmer, and Managing Director of Theseus), speak for themselves. Old PSG and the PSG Trust have, among other things: (i) resolved and made full and final distributions in respect of all allowed general unsecured claims (except for one Canadian claim that is pending resolution); (ii) recovered approximately $7.321 million in incremental recoveries for the benefit of Old PSG shareholders and PSG Trust beneficiaries (with the potential for additional incremental recoveries); and (iii) worked extensively with Canadian taxing authorities, as required under the

Plan, to make an interim distribution to Old PSG shareholders and PSG Trust beneficiaries, which interim distribution Old PSG and the PSG Trust presently anticipates will be within the ranges previously set forth in PSG's disclosure statement. *See Fifth Status Report of Liquidation Trustee* [D.I. 1887]. In addition, and as required under and pursuant to the Confirmation Order, the Plan, and the Trust Agreement, and with the approval of the Old PSG board of directors and the PSG Trust advisory board, Old PSG and the PSG Trust have conducted an extensive and good faith investigation into the Retained Causes of Action, pursuant to which, and as set forth more fully in the Counterclaims, Old PSG and the PSG Trust have determined that the Officer Defendants and Director Defendants breached their fiduciary duties to PSG.

10. Paragraph 10 is a prayer for relief and does not contain factual allegations, such that no response is required.

11. Paragraph 11 consists of legal argument to which no response is required.

12. Paragraph 12 consists of legal argument to which no response is required. The Litigation Representative further answers that, pursuant to Local Rule 7008-1, the Officer Defendants and Director Defendants have failed to include a statement in their Complaint stating whether they do or do not consent to the entry of final orders or judgments by the Court and have, therefore, waived the right to contest the authority of the Court to enter final orders or judgments. The Litigation Representative further answers that, pursuant to Fed. R. Bankr. P. 7012 and Local Rule 7012-1, the Litigation Representative consents to the entry of final orders or judgments by this Court.

13. Paragraph 13 consists of legal argument to which no response is required. To the extent that Paragraph 13 purports to quote, paraphrase, or characterize a document, the document speaks for itself.

14. Paragraph 14 consists of legal argument to which no response is required.

15. Paragraph 15 consists of legal argument to which no response is required.

16. Paragraph 16 consists of characterizations that are not factual allegations, such that no response is required. Further answering, the Litigation Representative admits that Karyn Barsa is a former member of PSG's board of directors. The Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 16. To the extent a response is required, the Litigation Representative denies the remaining allegations in Paragraph 16.

17. Paragraph 17 consists of characterizations that are not factual allegations, such that no response is required. Further answering, the Litigation Representative admits that Joan Dea is a former member of PSG's board of directors and the former chair of PSG's audit committee. The Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 17. To the extent a response is required, the Litigation Representative denies the remaining allegations in Paragraph 17.

18. Paragraph 18 consists of characterizations that are not factual allegations, such that no response is required. Further answering, the Litigation Representative admits that C. Michael Jacobi is a former member of PSG's board of directors and a former member of PSG's audit committee. The Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 18. To the extent a response is required, the Litigation Representative denies the remaining allegations in Paragraph 18.

19. Paragraph 19 consists of characterizations that are not factual allegations, such that no response is required. Further answering, the Litigation Representative admits that

Matthew Mannelly is a former member of PSG's board of directors and a former member of PSG's audit committee. The Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 19. To the extent a response is required, the Litigation Representative denies the remaining allegations in Paragraph 19.

20. Paragraph 20 consists of characterizations that are not factual allegations, such that no response is required. Further answering, the Litigation Representative admits that Bernard McDonell is the former chairman of PSG's board of directors and a former member of PSG's audit committee. The Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 20. To the extent a response is required, the Litigation Representative denies the remaining allegations in Paragraph 20.

21. Paragraph 21 consists of characterizations that are not factual allegations, such that no response is required. Further answering, the Litigation Representative admits that Bob Nicholson is a former member of PSG's board of directors. The Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 21. To the extent a response is required, the Litigation Representative denies the remaining allegations in Paragraph 21.

22. Paragraph 22 consists of characterizations that are not factual allegations, such that no response is required. Further answering, the Litigation Representative admits that Mark Vendetti is the former CFO of PSG. Further answering, the Litigation Representative admits that PSG announced Vendetti's appointment as its CFO on or about December 1, 2015 and that Vendetti assumed his duties as CFO in mid-December 2015. The Litigation Representative lacks

sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 22. To the extent a response is required, the Litigation Representative denies the remaining allegations in Paragraph 22.

23. Paragraph 23 consists of characterizations that are not factual allegations, such that no response is required. Further answering, the Litigation Representative admits that PSG's finance organization was decentralized. To the extent a further response is required, the Litigation Representative denies the remaining allegations in Paragraph 23 of the Complaint.

24. The Litigation Representative admits that Julie Zaleski is PSG's former Senior Director, Controller, and Treasurer. The Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 24. To the extent a response is required, the Litigation Representative denies the remaining allegations in Paragraph 24.

25. Paragraph 25 consists of characterizations that are not factual allegations, such that no response is required. Further answering, the Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 25. To the extent a further response is required, the Litigation Representative denies the remaining allegations in Paragraph 25.

26. The Litigation Representative admits that Theseus Strategy Group LLC is an LLC organized under the laws of New York. The Litigation Representative further answers that the principal place of business of the PSG Trust is located at 270 Lafayette Street, Suite 502, New York, New York 10012. The Litigation Representative further answers that Theseus Strategy Group LLC was nominated to serve as trustee of the PSG Trust and Litigation Representative by the former equity committee formed in PSG's bankruptcy cases after a review and interview

process involving several firms. Further answering, Theseus Strategy Group LLC's appointment as trustee of the PSG Trust and Litigation Representative was approved by the Court and by the Ontario Superior Court of Justice (Commercial List), pursuant to the Confirmation Order and the Plan (and the accompanying approval order entered in the CCAA proceedings), on notice to all parties in interest to PSG's bankruptcy cases (including the Officer Defendants and Director Defendants), and with no party in interest raising any objections to or otherwise responding to such appointment. Further answering, the restructuring and other advisory experience of Theseus Strategy Group LLC and/or Mr. Palmer include the following: (i) serving on the board of directors and/or litigation trusts of BFC Enterprises d/b/a GetSmart, VentureOne, Crescent Communities, Global Aviation Holdings, Arrow Air, Advantix/duCool, Idearc Litigation Trust, Boston Generating Litigation Trust, and Global Aviation Holdings; (ii) Chief Transformation Officer for Loot Crate, Inc. and its affiliated debtors in their Chapter 11 cases; (iii) restructuring consultant to Ad Hoc Consortium of holders of $215 million in outstanding EPL notes in the Energy XXI Ltd. Chapter 11 cases; (iv) transaction consultant to SportsDirect.com Retail Ltd. in its acquisition through a Section 363 sale of the assets of Eastern Outfitters LLC; and (v) advisor to a US-based global enterprise software technology company in the potential acquisition, multi-stage corporate reorganization, and general liability management from legacy activities. Further answering, Mr. Palmer's extensive professional experience further includes: (a) corporate mergers and acquisitions attorney at Sullivan & Cromwell LLP; (b) Director of Strategic Transactions at Reuters America; (c) General Counsel at TIBCO Finance, a technology subsidiary of Reuters; (d) Head of Business Affairs and VP, Americas, of NextSet Software; (e) corporate restructuring partner at Stroock, Stroock & Lavan LLP; (f) partner and head of the New York Corporate practice at Linklaters LLP; (g) partner and head of Corporate and Private

Funds practice at Bracewell & Giuliani LLP; and (h) Managing Director and Investment Partner at MatlinPatterson.

27. To the extent that Paragraph 27 purports to quote, paraphrase, or characterize a document, the document speaks for itself. The Litigation Representative denies the last sentence in Paragraph 27.

28. Admitted.

29. Admitted.

30. Admitted. The Litigation Representative notes that substantially all of Old PSG's assets were acquired by Peak Achievement Athletics Inc. ("**Peak**"), an entity formed by Sagard Capital Partners and Fairfax Financial Holdings.

31. The Litigation Representative admits that KPMG was PSG's outside auditor since 2010 and that David Wilson was historically the audit engagement partner. Further answering, the Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 31. To the extent a response is required, the Litigation Representative denies the remaining allegations in Paragraph 31.

32. Paragraph 32 consists of characterizations that are not factual allegations, such that no response is required. Further answering, the Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 32. To the extent a response is required, the Litigation Representative denies the remaining allegations in Paragraph 32.

33. The Litigation Representative admits that KPMG never completed the annual audit for PSG's fiscal year ended May 31, 2016. Further answering, the Litigation Representative admits that, on August 15, 2016, PSG announced that it would fail to timely file

its annual report and audited financial statements. The Litigation Representative further admits that PSG released a statement with respect to its failure to timely file its annual report and audited financial statements, which read as follows:

> 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. To assist with this matter, the Audit Committee has retained independent counsel, Richards Kibbe & Orbe LLP, and independent financial advisors. The Audit Committee and its advisors are working diligently to complete the investigation with a view to having the Company finalize the Form 10- K as soon as practicable, although at this time it is uncertain when this will occur. The failure to file the Annual Report on Form 10-K on time is expected to result in a default under the Company's credit facilities. The Company has initiated discussions with its lenders to address this issue. There can be no assurances as to the outcome of such discussions.

Further answering, the Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 33. To the extent a further response is required, the Litigation Representative denies the remaining allegations in Paragraph 33.

34. The words and/or phrases "With no other source of liquidity", "immediately", "Despite the Company's best efforts", and "PSG commenced bankruptcy proceedings to pursue a sale of its businesses at the highest and best value" consists of characterizations that are not factual allegations, such that no response is required and to the extent a response is required, that allegation is denied. The Litigation Representative admits that substantially all of PSG's assets were sold to Peak for an aggregate gross purchase price of $575 million, subject to certain adjustments, set-offs, and/or reductions (including with respect to certain capitalized lease obligations).

35. Admitted.

36. Paragraph 36 consists of characterizations that are not factual allegations, such that no response is required. The Litigation Representative admits that Amir Rosenthal was PSG's former CFO and, thereafter, served as PSG's President of PSG Brands. Further answering, the Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 36. To the extent a further response is required, the Litigation Representative denies the remaining allegations in Paragraph 36.

37. Paragraph 37 consists of characterizations that are not factual allegations, such that no response is required. Further answering, the Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 37. To the extent a further response is required, the Litigation Representative denies the allegations in Paragraph 37.

38. Paragraph 38 consists of characterizations that are not factual allegations, such that no response is required. Further answering, the Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 38. To the extent a further response is required, the Litigation Representative denies the allegations in Paragraph 38, except that the Litigation Representative admits that Team Express filed for Chapter 11 relief in or around December 2015.

39. The Litigation Representative admits that PSG's former CEO and Chairman sent the company two letters on or about June 12, 2015 and December 24, 2015, respectively, alleging that PSG had been engaging in improper sales practices. The remainder of Paragraph 39 consists of characterizations that are not factual allegations, such that no response is required.

To the extent that Paragraph 39 purports to quote, paraphrase, or characterize a document, the document speaks for itself.

40. Paragraph 40 consists of characterizations that are not factual allegations, such that no response is required. Further answering, the Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 40. To the extent a further response is required, the Litigation Representative denies the allegations in Paragraph 40.

41. Paragraph 41 consists of characterizations that are not factual allegations, such that no response is required. Further answering, the Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 41. To the extent a further response is required, the Litigation Representative denies the allegations in Paragraph 41.

42. Paragraph 42 consists of characterizations that are not factual allegations, such that no response is required. Further answering, the Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 42. To the extent a further response is required, the Litigation Representative denies the allegations in Paragraph 42, except that the Litigation Representative admits that AlixPartners assisted PSG with a review of the allegations of improper sales practices made by PSG's former CEO and Chairman.

43. Paragraph 43 consists of characterizations that are not factual allegations, such that no response is required. Further answering, the Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 43. To

the extent a further response is required, the Litigation Representative denies the allegations in Paragraph 43.

44. The first sentence of Paragraph 44 consists of characterizations that are not factual allegations, such that no response is required. To the extent that Paragraph 44 purports to quote, paraphrase, or characterize a document, the document speaks for itself. The Litigation Representative admits the second sentence of Paragraph 44.

45. Paragraph 45 consists of characterizations that are not factual allegations, such that no response is required. Further answering, the Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 45. To the extent a further response is required, the Litigation Representative denies the allegations in Paragraph 45.

46. Paragraph 46 consists of characterizations that are not factual allegations, such that no response is required. Further answering, the Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 46, except that the Litigation Trustee admits that Vendetti started work with PSG as CFO on or about December 15, 2015, and Scott Frerichs resigned from his position with PSG in or around January 2016. To the extent a further response is required, the Litigation Representative denies the remaining allegations in Paragraph 46.

47. Paragraph 47 consists of characterizations that are not factual allegations, such that no response is required. Further answering, the Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 47, except that the Litigation Representative admits that The Sports Authority, Sports Chalet, and

Total Hockey filed for Chapter 11 bankruptcy in 2016. To the extent a further response is required, the Litigation Representative denies the remaining allegations in Paragraph 47.

48. To the extent that Paragraph 48 purports to quote, paraphrase, or characterize a document, the document speaks for itself. The Litigation Trustee admits that two securities fraud class action lawsuits were filed against PSG and other defendants after the March 8, 2018 press release was issued.

49. Paragraph 49 consists of characterizations that are not factual allegations, such that no response is required. Further answering, the Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 49, except that the Litigation Representative admits that former CEO Kevin Davis left PSG in March 2016 and Amir Rosenthal was thereafter named as Interim CEO. To the extent a further response is required, the Litigation Representative denies the remaining allegations in Paragraph 49.

50. Admitted, except that the Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the allegations in footnote 9 of the Complaint. The Litigation Representative further states that the scope of the SEC and OSC investigations was not limited to the circumstances surrounding the revised earnings guidance.

51. To the extent that the first sentence of Paragraph 51 purports to quote, paraphrase, or characterize a document, the document speaks for itself. The second sentence of Paragraph 51 consists of characterizations that are not factual allegations, such that no response is required. To the extent a further response is required, the Litigation Representative denies the allegations in the second sentence of Paragraph 51.

52. Paragraph 52 consists of characterizations that are not factual allegations, such that no response is required. Further answering, the Litigation Representative admits that prior to and throughout the annual audit process for fiscal year ended May 31, 2016, KPMG worked with Old PSG's accounting and finance departments, and specifically Vendetti and Zaleski, with respect to the annual audit. The Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 52. To the extent a further response is required, the Litigation Representative denies the remaining allegations in Paragraph 52.

53. The first and last sentences of Paragraph 53 consist of characterizations that are not factual allegations, such that no response is required. To the extent a response is required, the Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of such allegations, except that the Litigation Representative admits that Combat was out of the scope of KPMG's annual audit process.

54. Paragraph 54 consists of characterizations that are not factual allegations, such that no response is required. Further answering, the Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 54, except that the Litigation Representative admits that PSG had made the decision to close the Combat business by June 2016.

55. Paragraph 55 consists of characterizations that are not factual allegations, such that no response is required. Further answering, the Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 55, except that the Litigation Representative admits that Vendetti, Zaleski, and Shelley Filocamo were aware of right of return issues in the Combat segment by no later than June 2016. To the

extent a further response is required, the Litigation Representative denies the remaining allegations in Paragraph 55.

56. The Litigation Representative admits that, by no later than early June 2016, Vendetti learned of a large return of product at Combat by customer Dunham's Sports ("**Dunham's**"). The remainder of Paragraph 56 consists of characterizations that are not factual allegations, such that no response is required. To the extent a response is required, the Litigation Representative denies the remaining allegations in Paragraph 56.

57. The Litigation Representative admits that on or about June 12, 2016, Vendetti determined to conduct an internal audit of the Combat segment. Further answering, commencing on June 20, 2016, Alex Byrne, at Vendetti's direction, conducted a two-day field audit on-site at Combat's offices in Kent, Washington and Byrne completed the audit by mid-July. Through the audit, Byrne discovered the existence of four Combat customers with non-standard-term contracts containing guaranteed rights of return. One of the Combat customers with guaranteed return rights was Dunham's. Further answering, these four contracts were entered into in contravention of stated PSG policy and had resulted in improper revenue recognition by PSG. Further answering, Byrne, thereafter, engaged in an extensive sampling regimen to ensure that no other non-standard-term contracts existed at Combat. In or around mid-July, Byrne advised both Vendetti and Zaleski of his findings regarding his internal audit and the rights of return at Combat. Further answering, Vendetti and Zaleski did not immediately inform KPMG of the existence of these non-standard-term contracts at Combat, including the Dunham's right-of-return agreement. Upon information and belief, Vendetti did not immediately inform KPMG of non-standard-term contracts at Combat out of his subjective concern that KPMG would, in his view, overreact. The remainder of Paragraph 57 consists of characterizations that are not factual

allegations, such that no response is required. To the extent a response is required, the Litigation Representative denies the remaining allegations in Paragraph 57.

58. The Litigation Representative admits that on or about July 26, 2016, in an in-person meeting between Vendetti and KPMG lead audit partner, David Wilson, Vendetti informed Wilson of the results of the Combat internal audit. Further answering, during this meeting, Vendetti informed Wilson that the internal audit had uncovered non-standard-term contracts involving guaranteed rights of return for four different customers, one of which was Dunham's, each of which had initially been improperly accounted for and later corrected. Further answering, Vendetti informed Wilson of the sampling protocol employed by Byrne to ensure that no additional non-standard-term contracts existed, or if they did, did not result in improper accounting treatment. Further answering, Vendetti and Wilson agreed that the issue of the non-standard-term contracts uncovered in the Combat internal audit should be brought to the attention of the audit committee meeting scheduled for later that day. The remainder of Paragraph 58 consists of characterizations that are not factual allegations, such that no response is required. To the extent a further response is required, the Litigation Representative denies the remaining allegations in Paragraph 58.

59. The Litigation Representative admits the allegation in the first sentence of Paragraph 59. To the extent that the second sentence of Paragraph 59 purports to quote, paraphrase, or characterize a document, the document speaks for itself. The Litigation Representative denies the allegations in the third sentence of Paragraph 59.

60. The Litigation Representative admits that the Dunham's agreement was a non-standard-term agreement (i.e., a guaranteed sale contract with a right of return) entered into by an Easton sales representative. Further answering, Easton's Vice President of Sales, Robert

Diebold, was aware of the Dunham's contract at the time that it was entered into in August 2015. Further answering, the full amount of the sale ($513,400) was improperly recognized as revenue on or about November 25, 2015, in violation of PSG's standard revenue recognition policy.

61. The Litigation Representative admits that, no later than on or around May 16, 2016, Ricky Helland informed both Vendetti and Zaleski about the Dunham's guaranteed sale contract at Easton. Further answering, the Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 61.

62. To the extent that Paragraph 62 purports to quote, paraphrase, or characterize a document, the document speaks for itself. Further answering, the Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 62.

63. To the extent that Paragraph 63 purports to quote, paraphrase, or characterize a document, the document speaks for itself. Further answering, the Litigation Representative admits that between May and June 2016, Vendetti, Zaleski, and Rickey Helland engaged in a number of conversations and meetings with Easton personnel regarding the Dunham's guaranteed sale contract. Further answering, the Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 63.

64. To the extent that Paragraph 64 purports to quote, paraphrase, or characterize a document, the document speaks for itself. Further answering, the Litigation Representative admits that in or around June 2016, Vendetti directed Zaleski to correct the accounting treatment of previously recognized revenue associated with product shipped under the Dunham's guaranteed sale contract. Further answering, Zaleski, in turn, directed Helland to make a manual

journal entry reversing the previously recognized revenue in the amount of $421,000, which manual journal entry was entered on June 22, 2016. Further answering, the Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 64.

65. Paragraph 65 consists of characterizations that are not factual allegations, such that no response is required. To the extent a response is required, the Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 65.

66. Paragraph 66 consists of characterizations that are not factual allegations, such that no response is required. To the extent a response is required, the Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 66 of the Complaint.

67. Paragraph 67 consists of characterizations that are not factual allegations, such that no response is required. Paragraph 67 further consists of legal arguments to which no response is required. The Litigation Trustee admits that neither Vendetti nor Zaleski informed KPMG of the Dunham's guaranteed sale contract at Easton (or right of return thereunder) at any time between May and June 2016, or corrected prior erroneous representations regarding the Dunham's accounts receivable balance that were previously made to KPMG. Further answering, upon information and belief, this is because Vendetti and Zaleski recklessly and in breach of their fiduciary duties determined that the Dunham's right of return under its non-standard contract with Easton did not need to be disclosed to KPMG absent a specific request from KPMG, notwithstanding numerous general requests from KPMG that otherwise covered and/or implicated the Dunham's guaranteed sale contract. To the extent a further response is required,

the Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 67.

68. Paragraph 68 consists of characterizations that are not factual allegations, such that no response is required. To the extent a response is required, the Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 68.

69. Paragraph 69 consists of characterizations that are not factual allegations, such that no response is required. The Litigation Representative admits that Easton and Combat were separate segments of PSG's business. To the extent a further response is required, the Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 69.

70. Paragraph 70 consists of characterizations that are not factual allegations, such that no response is required. Paragraph 70 also consists of legal arguments to which no response is required. To the extent a further response is required, the Litigation Representative denies the allegations in Paragraph 70.

71. Paragraph 71 consists of characterizations that are not factual allegations, such that no response is required. Further answering, the Litigation Representative admits that Vendetti informed the audit committee of the Dunham's guaranteed sale contract on or about August 5, 2016 at an emergency meeting convened one day after Vendetti finally admitted to David Wilson, of KPMG, the existence of the Dunham's guaranteed sale contract at Easton (after initially denying the existence of such contract to Wilson). To the extent a further response is required, the Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 71.

72. Paragraph 72 consists of characterizations that are not factual allegations, such that no response is required. Further answering, the Litigation Representative admits that the audit committee asked outside counsel Paul, Weiss, Rifkind, Wharton & Garrison LLP to conduct a review in respect of the Dunham's guaranteed sale contract and related issues, and the audit committee discussed the possibility of hiring additional counsel to perform a review of the same. To the extent a further response is required, the Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 72.

73. Paragraph 73 consists of characterizations that are not factual allegations, such that no response is required. The Litigation Representative admits that, for the reasons more fully explained in paragraphs 64-82 of the Counterclaims, KPMG increased the risk assessment with respect to the FYE 2016 annual audit, which resulted in KPMG increasing the level and degree of testing during the FYE 2016 audit, and applying increased scrutiny to PSG's responses to audit inquiries. Further answering, Vendetti and Zaleski interpreted KPMG's increased testing and scrutiny negatively, internally ascribing to KPMG and its interactions with PSG management negative attributes such as "agitated", "stressed" and "dark". To the extent that the Paragraph 73 purports to quote, paraphrase, or characterize a document, the document speaks for itself. To the extent a further response is required, the Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 73.

74. Paragraph 74 consists of characterizations that are not factual allegations, such that no response is required. To the extent a response is required, the Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the allegations in

Paragraph 74, except that the Litigation Representative admits that, on or about April 14, 2016, PSG disclosed its consolidated financial results for Q3 2016, reporting (i) a decrease in year-over-year total revenues of 8% (to $126.1 million), (ii) adjusted EBITDA of negative $11 million (down from positive $14.6 million year-over-year), and (iii) a net loss of $188.1 million that included a non-cash impairment of $145.1 million related to PSG's $330 million acquisition of Easton in 2014

75. Paragraph 75 consists of characterizations that are not factual allegations, such that no response is required. To the extent a response is required, the Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 75, except that the Litigation Representative admits that, throughout the FYE 2016 annual audit, the relationship between KPMG and PSG's finance team, including, specifically, Vendetti and Zaleski, was strained.

76. Paragraph 76 consists of characterizations that are not factual allegations, such that no response is required. To the extent a response is required, the Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 76.

77. Paragraph 77 consists of characterizations that are not factual allegations, such that no response is required. To the extent a response is required, the Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 77.

78. Paragraph 78 consists of characterizations that are not factual allegations, such that no response is required. Further answering, the Litigation Representative admits that Combat was outside the scope of KPMG's annual audit. To the extent a further response is

required, the Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 78.

79. The Litigation Representative admits the first sentence of Paragraph 79, but clarifies that the meeting between Vendetti, Byrne, Wilson and Blessing occurred on July 28, 2016. To the extent that the second sentence of Paragraph 79 purports to quote, paraphrase, or characterize a document, the document speaks for itself. Further answering, the remaining allegations in Paragraph 79 include characterizations that are not factual allegations, such that no response is required, except that the Litigation Representative admits that, during the July 28th meeting, Wilson inquired as to whether any of the four Combat customers with rights of return, including Dunham's, were also customers of Easton, and, if so, whether there was a risk of similar non-standard-term contracts at Easton. Further answering, Vendetti confirmed that there were overlapping customers between Combat and Easton, but that the two divisions operated entirely separately from one another (*e.g.*, different employees, sales staffs), and there was no reason to believe that anything that occurred between Combat and its customers could occur between Easton and its customers. Further answering, despite this inquiry from Wilson and Blessing, Vendetti did not disclose the existence of the Dunham's guaranteed sale contract at Easton previously discovered internally in May 2016. To the extent a further response is required, the Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 79.

80. The Litigation Representative admits that, following the July 28, 2016 meeting and despite Vendetti's assertion that no similar issues could exist at Easton, KPMG requested additional materials from Zaleski related to crossover customers, expressly stating that the additional requests were designed "to understand whether or not these things could be happening

at Easton." Further answering, the Litigation Representative admits that Vendetti and Zaleski, recognizing that KPMG's follow-up inquiries regarding Dunham's accounts with Easton would lead KPMG to discover the Dunham's guaranteed sale contract at Easton, considered disclosing the information to KPMG in a memorandum in which the transactions under the Dunham's guaranteed sale contract would be characterized as being part of a consignment arrangement. Further answering, Vendetti and Zaleski concluded that the "consignment" explanation would not pass muster and decided that the disclosure had to accurately describe the guaranteed return feature. Accordingly, in the late afternoon of August 4, 2016, after previously advising David Wilson and KPMG that there were no right of return issues at Easton, Vendetti and Zaleski approached Wilson and informed him about the guaranteed sale contract and right of return that Dunham's had at Easton, and that Easton's Vice President of Sales, Robert Diebold, was aware of the Dunham's contract at the time that it was entered into in August 2015. The remainder of Paragraph 80 consists of characterizations that are not factual allegations, such that no response is required. To the extent a response is required, the Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 80.

81. The Litigation Representative admits that after Vendetti and Zaleski finally disclosed the existence of the Dunham's guaranteed sale contract at Easton with him, David Wilson became very concerned about the fact that Vendetti had previously denied the existence of any such agreement at Easton and failed to timely disclose such information. The Litigation Representative further admits that at the August 8, 2016 audit committee meeting, KPMG informed the audit committee that it would not complete the FYE 2016 audit without the completion of an internal investigation, conducted by independent outside counsel, into the

events surrounding the disclosure of the Dunham's guaranteed sale contract at Easton, including a review of management's integrity with respect to the timing of the disclosure to KPMG. The remainder of Paragraph 81 consists of characterizations that are not factual allegations, such that no response is required. To the extent a response is required, the Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 81.

82. Paragraph 82 consists of characterizations that are not factual allegations, such that no response is required. Further answering, the Litigation Representative admits that, based solely on the recommendation of its Canadian corporate counsel, Stikeman Elliott LLP, the audit committee retained Richards Kibbe & Orbe LLP ("**RKO**") on August 10, 2016 in connection with its investigation into the issues raised by KPMG, and that RKO and/or the audit committee, in turn, retained AlixPartners to assist in such investigation. Further answering, the audit committee decided to retain RKO despite the fact that RKO refused to commit to completing the investigation in a timeframe that would allow PSG to address KPMG's concerns, secure a completed audit, timely file its annual report and audited financial statements, and thereby remain in compliance with its secured loans. To the extent a further answer is required, the Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 82.

83. Paragraph 83 consists of characterizations that are not factual allegations, such that no response is required. Further answering, the Litigation Representative admits that on August 15, 2016, PSG announced that it would fail to timely file its 2015 annual report, and attributed this failure to "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." To the extent a further answer is required, the Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 83.

84. To the extent Paragraph 84 purports to quote, paraphrase, or characterize a document, the document speaks for itself. Further answering, the Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the last sentence in Paragraph 84.

85. Paragraph 85 consists of characterizations that are not factual allegations, such that no response is required. To the extent a further answer is required, the Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 85.

86. To the extent the first three sentences of Paragraph 86 purport to quote, paraphrase, or characterize a document, the document speaks for itself. The remaining allegations in Paragraph 86 consist of characterizations that are not factual allegations, such that no response is required. To the extent a further answer is required, the Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 86.

87. The first sentence of Paragraph 87 consists of characterizations that are not factual allegations, such that no response is required. Further answering, the Litigation Representative answers that, from August 15, 2016 through October 31, 2016, neither the audit committee nor the PSG board of directors took any steps to ensure the timely completion of the audit committee investigation so that the FYE 2016 audit could be completed, the annual report filed, and PSG's secured loan default avoided. Further answering, on or around August 25, 2016, the PSG board

considered slowing down or stopping RKO's investigation altogether in light of board's decision to file for bankruptcy, but ultimately decided not to end RKO's investigation at the time because that would require public disclosure. Further answering, as of August 29, 2016, the audit committee investigation had not yet materially progressed. For example, neither Vendetti nor Zaleski (nor Rickey Helland, Alex Byrne, or George Tadros) had been interviewed at that time in connection with the investigation. To the extent a further answer is required, the Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 87.

88. The phrase "that were correct in all material respects" includes both characterizations that are not factual allegations and legal conclusions, neither of which requires a response. The Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 88.

89. The first sentence of Paragraph 89 consists of characterizations that are not factual allegations, such that no response is required. To the extent the remainder of Paragraph 89 purports to quote, paraphrase, or characterize a document, the document speaks for itself.

90. The first sentence of Paragraph 90 consists of characterizations that are not factual allegations, such that no response is required. The Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 90. To the extent that Paragraph 90 includes statements regarding AS 2810.15, the text of AS2810.15 speaks for itself and such statements in Paragraph 90 are legal conclusions to which no response is required.

91. The Litigation Representative denies the first sentence of Paragraph 91. Further answering, the Litigation Representative admits that, on August 11, 2016, PSG retained Alvarez

& Marsal North America, LLC ("**A&M**") to assist PSG in preparing for a bankruptcy filing, and on August 19, 2016, PSG retained Centerview Partners LLC as investment banker to market PSG's assets for sale and provide restructuring advice.

92. Admitted.

93. The first sentence of Paragraph 93 consists of characterizations that are not factual allegations, such that no response is required. Further answering, as stated above, PSG retained A&M on August 11, 2016 to assist PSG in preparing for a bankruptcy filing.

94. The first sentence of Paragraph 94 consists of both characterizations that are not factual allegations and legal conclusions, neither of which requires a response. Further answering, the Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 94.

95. Admitted.

96. The Litigation Representative admits the first sentence of Paragraph 96. The second and third sentences of Paragraph 96 consist of legal argument to which no response is required. The phrase "[i]n an effort to preserve the Company's assets," is a characterization that is not a factual allegation, such that no response is required. The Litigation Representative admits that, following PSG's October 31, 2016 bankruptcy filings, the audit committee suspended the RKO investigation. The Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 96.

97. The Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 97.

98. The Litigation Representative admits that: (a) PSG and an entity formed by Sagard and Fairfax (which entity was subsequently renamed Peak) entered into a stalking horse

asset purchase agreement, dated as of October 31, 2016 (the "**Stalking Horse APA**"), which Stalking Horse APA was filed on October 31, 2016 in PSG's bankruptcy cases; (b) the base purchase price contemplated under the Stalking Horse APA was $575 million, subject to certain adjustments, set-offs, and/or reductions (including with respect to certain capitalized lease obligations); and (c) PSG and Peak closed the sale pursuant to the Stalking Horse APA on February 28, 2017. The Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the allegations in the second sentence of Paragraph 98. The remaining sentences in Paragraph 98 consist of both characterizations that are not factual allegations and legal conclusions, neither of which requires a response. To the extent that a response is required, the Litigation Representative denies that any of the Officer Defendants or Director Defendants exhibited "skillful stewardship" or "exceptional effort", or in orchestrating the sale of PSG's operating business to Sagard, realized a price approaching PSG's total enterprise value before the bankruptcy.

99. The Litigation Representative answers that the sale to Peak pursuant to the Stalking Horse APA closed on February 28, 2017. The Litigation Representative admits the second sentence of Paragraph 99. The Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in the last sentence of Paragraph 99, except that the Litigation Representative admits that McDonell, Dea, and Mannelly remained on the PSG board and audit committee after the sale to Peak closed.

100. The Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in the first sentence of Paragraph 100. The Litigation Representative denies the allegation in Paragraph 100 that McDonell, Dea, and Mannelly "oversaw the maximization of the Company's assets." The Litigation Representative

admits that McDonell, Dea, and Mannelly resigned from the PSG board and audit committee in August 2017. To the extent Paragraph 100 purports to quote, paraphrase, or characterize a document, the document speaks for itself.

101. Denied.

102. The first sentence of Paragraph 102 is a characterization that is not a factual allegation, such that no response is required, except that the Litigation Representative admits that the audit committee retained RKO and that RKO reported directly to the audit committee. To the extent Paragraph 100 purports to quote, paraphrase, or characterize a document, the document speaks for itself. The Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 102, except that the Litigation Representative admits that RKO developed a work plan.

103. The Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 103, except that the Litigation Representative admits that either the audit committee or RKO retained AlixPartner in connection with the investigation. To the extent Paragraph 103 purports to quote, paraphrase, or characterize a document, the document speaks for itself.

104. Paragraph 104 consists of both characterizations that are not factual allegations and legal conclusions, neither of which requires a response. To the extent Paragraph 104 purports to quote, paraphrase, or characterize a document, the document speaks for itself. To the extent that a further responses if required, the Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 105, except that the Litigation Representative denies the last sentence in Paragraph 104.

105. Paragraph 105 consists of both characterizations that are not factual allegations and legal conclusions, neither of which requires a response. To the extent that a further responses if required, the Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 105, except that the Litigation Representative admits that Ernst & Young prepared an earnings report in connection with the sale of PSG's assets.

106. Paragraph 106 consists of both characterizations that are not factual allegations and legal conclusions, neither of which requires a response. To the extent that a further response is required, the Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 106. To the extent Paragraph 106 purports to quote, paraphrase, or characterize a document, the document speaks for itself.

107. Paragraph 107 consists of both characterizations that are not factual allegations and legal conclusions, neither of which requires a response. To the extent that a further response is required, the Litigation Representative lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 107, except that the Litigation Representative admits that KPMG resigned as PSG's auditor on or about March 27, 2017 and, in so resigning, cited "possible illegal acts" that came to KPMG's attention during the course of the FYE 2016 annual audit. To the extent Paragraph 107 purports to quote, paraphrase, or characterize a document, the document speaks for itself.

108. The Litigation Representative denies the first and last sentences of Paragraph 108. The remainder of Paragraph 108 consists of legal argument to which no response is required. To the extent a further response is required, the Litigation Representative denies the remaining statements in Paragraph 108.

109. Denied.

110. The Litigation Representative denies the first three sentences in Paragraph 110. The remainder of the allegations in Paragraph 110 consist of characterizations that are not factual allegations, such that no response is required. The Litigation Representative admits that David Wilson was scheduled to be replaced as lead audit partner the following year after the FYE 2016 audit. To the extent a further response is required, the Litigation Representative denies the remaining allegations in Paragraph 110.

111. The Litigation Representative denies the characterization that it is "threatening" any party, but admits that it has determined that Old PSG and the PSG Trust hold certain claims and causes of action against the Officer Defendants and Board Defendants, all as more fully set forth in the Counterclaims.

112. Denied.

113. Denied.

COUNT I

114. The Litigation Representative repeats, realleges, and incorporates by reference each of the foregoing responses as if fully set forth herein.

115. Denied.

116. The Litigation Representative admits that (i) on or about June 28, 2019, it sent counsel to the Officer Defendants and Director Defendants a letter regarding the claims set forth in the Counterclaims; (ii) the Officer Defendants and Director Defendants agreed to enter into a tolling agreement regarding the dispute; and (iii) on or about September 27, 2019, the Litigation Representative terminated such tolling agreement in accordance with its terms.

117. Paragraph 117 is a prayer for relief and does not contain factual allegations, such that no response is required.

COUNT II

118. The Litigation Representative repeats, realleges, and incorporates by reference each of the foregoing responses as if fully set forth herein.

119. Paragraph 119 consists of legal argument to which no response is required.

120. Paragraph 120 consists of legal argument to which no response is required. To the extent a response is required, the Litigation Representative denies the allegations in Paragraph 120.

121. Paragraph 121 consists of legal argument to which no response is required. To the extent a response is required, the Litigation Representative denies the allegations in Paragraph 121.

COUNT III

122. The Litigation Representative repeats, realleges, and incorporates by reference each of the foregoing responses as if fully set forth herein.

123. Paragraph 123 consists of legal argument to which no response is required.

124. Paragraph 124 consists of legal argument to which no response is required. To the extent a response is required, the Litigation Representative denies the allegations in Paragraph 124.

125. Paragraph 125 consists of legal argument to which no response is required. To the extent a response is required, the Litigation Representative denies the allegations in Paragraph 125.

COUNT IV

126. The Litigation Representative repeats, realleges, and incorporates by reference each of the foregoing responses as if fully set forth herein.

127. Paragraph 127 consists of characterizations that are not factual allegations, such that no response is required. To the extent a response is required, the Litigation Representative denies the allegations in Paragraph 127.

128. Denied.

129. Paragraph 129 is a prayer for relief and does not contain factual allegations, such that no response is required.

130. The Litigation Representative denies that the Officer Defendants and Director Defendants can demand a jury trial in this Court. Further answering, pursuant to 28 U.S.C. § 157(e), the bankruptcy judge cannot conduct a jury trial in this case because (1) the bankruptcy judge has not been designated to exercise such jurisdiction by the district court, and (2) the Litigation Representative does not consent to the bankruptcy judge conducting a jury trial in this adversary proceeding. Further answering, the Officer Defendants and Director Defendants must withdraw their jury demand or move to withdraw the reference pursuant to 28 U.S.C. § 157(d) or the Court must, on its own motion, withdraw this proceeding to the United States District Court for the District of Delaware.

131. Paragraph 131 is a prayer for relief and does not contain factual allegations, such that no response is required. The Litigation Representative denies that the Officer Defendants and Director Defendants are entitled to any of the relief sought in the Complaint. Upon resolution of the Litigation Representative's Counterclaims, the Litigation Representative

respectfully requests that the Court award the relief set forth in the Counterclaims and any other relief the Court deems just and appropriate.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

Failure to State a Claim

132. The Complaint fails to state a claim on which relief can be granted.

SECOND DEFENSE

Standing

133. All plaintiffs other than Vendetti lack standing to assert breach of fiduciary duty and permanent injunction claims.

THIRD DEFENSE

Immunity

134. Plaintiff Vendetti's claims of breach of fiduciary duty and permanent injunction (Counts II-IV) are barred on the basis of quasi-judicial immunity and any other applicable form of immunity.

FOURTH DEFENSE

Claims Barred Under Trust Agreement, Plan, and Confirmation Order

135. Plaintiff Vendetti's breach of fiduciary duty and permanent injunction claims (Counts II-IV) are barred by applicable law and the exculpation provisions accorded the Litigation Representative under the express terms of the Confirmation Order, the Plan, and the Trust Agreement.

FIFTH DEFENSE

Business Judgment Rule

136. Plaintiff Vendetti's breach of fiduciary duty and permanent injunction claims (Counts II-IV) are barred by the business judgment rule.

SIXTH DEFENSE

Waiver

137. Plaintiff Vendetti's fiduciary duty and permanent injunction claims (Counts II-IV) are barred by the doctrine of waiver.

SEVENTH DEFENSE

138. Count I is not a proper declaratory judgment claim.

EIGHTH DEFENSE

139. At all times, Theseus Strategy Group LLC acted within the scope of its authority as the Litigation Representative for Old PSG and the PSG Trust, and as the trustee of the PSG Trust.

NINTH DEFENSE

140. Counts II-IV fail because they are premature and, therefore, not ripe.

PRAYER FOR RELIEF

The Litigation Representative requests that the Court dismiss the Complaint in its entirety, with prejudice, and award such other and further relief as the court deems just and appropriate.

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COUNTERCLAIMS

This is an action for breaches of fiduciary duty against (i) certain former officers of Performance Sports Group Ltd. (n/k/a Old PSG Wind-down Ltd.) ("**PSG**") and PSG's wholly-owned direct and indirect subsidiaries, and (ii) the former directors of PSG, which was at all relevant times a limited company organized under the laws of British Columbia, including against certain directors in their capacities as members of the audit committee formed by the board of directors of PSG. Specifically, this is an action for:

(i) breach of fiduciary duty against the former chief financial officer of PSG and each of the PSG Subsidiaries (as defined below), and the former controller and treasurer of PSG and each of the PSG Subsidiaries, for grossly mismanaging the fiscal year 2016 audit process for PSG and each of the PSG Subsidiaries, which resulted in PSG's auditor, KPMG LLP, refusing to complete PSG's fiscal year 2016 audit in the absence of the completion of an internal investigation conducted by outside independent counsel;

(ii) breach of the fiduciary duty of loyalty and good faith against the former directors of PSG for abdicating their duty to ensure that the aforementioned internal investigation and annual audit were timely completed; and

(iii) breach of fiduciary duty and the duty of care under applicable British Columbia law against the former directors of PSG for failing to adequately oversee the finance function of PSG (and the PSG Subsidiaries), failing to adequately oversee and mismanaging the fiscal year 2016 audit process, and abdicating their duty to ensure that the aforementioned internal investigation and annual audit were timely completed.

The result of these collective breaches of duty directly and proximately caused each of PSG and the PSG Subsidiaries to unnecessarily file for bankruptcy, incur tens of millions of dollars in associated wasteful expenses (both on a futile investigation and the bankruptcy itself), and sell their operating businesses in a distressed sale for substantially less than their intrinsic value. The breaches by the officers and directors, as set forth herein, were the result of grossly negligent and reckless behavior.

The facts set forth below are based on the results of an investigation conducted pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure by Theseus Strategy Group LLC, trustee of the Old PSG Wind Down Liquidation Trust, and court-appointed Litigation Representative for and on behalf of PSG, the PSG Subsidiaries, and the Trust. Unless otherwise stated as "upon information and belief," all allegations set forth herein are predicated on the aforementioned investigation.

JURISDICTION

1. This Court has subject matter jurisdiction over this action pursuant to §§ 157, 1332, and 1334, paragraph 38 of the Confirmation Order (defined below), and Section 12.7 of the Plan (defined below). Venue is proper in this District pursuant to 18 U.S.C. § 1391(b) and 28 U.S.C. § 1409(a). This adversary proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

TOLLING

2. On July 10, 2019, the parties described below entered into a tolling agreement ("**Tolling Agreement**"), which tolled the limitations periods applicable to the claims in this complaint. Pursuant to its terms, the Tolling Agreement could be terminated upon 30 days written notice. Attached as Exhibit A is a copy of the Tolling Agreement.

3. On September 27, 2019, the Plaintiff sent a certified letter Notice of Termination in accordance with Section 2 and 8 of the Tolling Agreement. The Tolling Agreement therefore terminated on October 27, 2019 and Plaintiff thereafter filed this lawsuit. Attached as Exhibit B is a copy of the Notice of Termination.

PARTIES

I. Plaintiff.

4. Plaintiff Theseus Strategy Group LLC ("**Theseus**" or "**Plaintiff**") is a New York company with a principal place of business in New York, New York.

5. Pursuant to the *Findings of Fact, Conclusions of Law and Order Confirming First Amended Joint Chapter 11 Plan of Liquidation of Old BPSUSH Inc. and Its Affiliated Debtors* (the "**Confirmation Order**"), the *First Amended Joint Chapter 11 Plan of Liquidation of Old BPSUSH Inc. and Its Affiliated Debtors* (including all exhibits and supplements thereto and, as amended, modified or further supplemented from time to time, the "**Plan**"), and the *Old PSG Wind Down Liquidation Trust Agreement* (the "**Trust Agreement**"), Theseus was appointed to serve as trustee of the Old PSG Wind Down Liquidation Trust (the "**Trust**").

6. Pursuant to the Confirmation Order, Plan, and Trust Agreement, Theseus has also been appointed to serve as Litigation Representative, and brings this action solely in its capacity as Litigation Representative, for: (a) the Trust; (b) PSG, a British Columbia limited company which, at all relevant times, had a principal place of business located in Exeter, New Hampshire; and (c) each of the following wholly-owned subsidiaries of PSG (which subsidiaries are referred to herein, collectively, as the "**PSG Subsidiaries**"):

(i) Old BPSUSH Inc. (f/k/a BPS US Holdings Inc.), a Delaware corporation which, at all relevant times, had a principal place of business located in Exeter, New Hampshire.

(ii) Old BH Inc. (f/k/a Bauer Hockey, Inc.), a Vermont corporation which, at all relevant times, had a principal place of business located in Exeter, New Hampshire.

(iii) Old EBS Inc. (f/k/a Easton Baseball/Softball Inc.), a Delaware corporation which, at all relevant times, had a principal place of business located in Exeter, New Hampshire.

(iv) Old BHR Inc. (f/k/a Bauer Hockey Retail Inc.), a Delaware corporation which, at all relevant times, had a principal place of business located in Exeter, New Hampshire.

(v) Old BPSU Inc. (f/k/a Bauer Performance Sports Uniforms Inc.), a Delaware corporation which, at all relevant times, had a principal place of business located in Exeter, New Hampshire.

(vi) Old PLG Inc. (f/k/a Performance Lacrosse Group Inc.), a Delaware corporation which, at all relevant times, had a principal place of business located in Exeter, New Hampshire.

(vii) Old BPSCI Inc. (f/k/a BPS Diamond Sports Inc.), a Delaware corporation which, at all relevant times, had a principal place of business located in Exeter, New Hampshire.

(viii) Old PSGI Inc. (f/k/a PSG Innovation Inc.), a Delaware corporation which, at all relevant times, had a principal place of business located in Exeter, New Hampshire.

(ix) Old BHR Wind-down Corp. (f/k/a Bauer Hockey Retail Corp.), a Canadian corporation which, at all relevant times, had a principal place of business located in Exeter, New Hampshire.

(x) Old EBS Winddown Corp. (f/k/a Easton Baseball/Softball Corp.), a Canadian corporation which, at all relevant times, had a principal place of business located in Exeter, New Hampshire.

(xi) Old PSGI Wind-down Corp. (f/k/a PSG Innovation Corp.), a Canadian corporation which, at all relevant times, had a principal place of business located in Exeter, New Hampshire.

(xii) Old BPSDS Wind-down Corp. (f/k/a BPS Diamond Sports Corp.), a Canadian corporation which, at all relevant times, had a principal place of business located in Exeter, New Hampshire.

(xiii) Old BPSU Wind-down Corp. (f/k/a Bauer Performance Sports Uniforms Corp.), a Canadian corporation which, at all relevant times, had a principal place of business located in Exeter, New Hampshire.

(xiv) Old PLG Wind-down Corp. (f/k/a Performance Lacrosse Group Corp.), a Canadian corporation which, at all relevant times, had a principal place of business located in Exeter, New Hampshire.

(xv) KBAU Holdings Canada, Inc., a Canadian corporation which, at all relevant times, had a principal place of business located in Exeter, New Hampshire.

(xvi) Bauer Hockey Corp., a Canadian corporation which, at all relevant times, had a principal place of business located in Exeter, New Hampshire.

(xvii) BPS Canada Intermediate Corp., a Canadian corporation which, at all relevant times, had a principal place of business located in Exeter, New Hampshire.

7. Pursuant to the Confirmation Order, Plan, and Trust Agreement, Theseus, as Litigation Representative, was vested with the exclusive responsibility, power, and authority to investigate, prosecute, settle or otherwise liquidate certain "Retained Causes of Action" jointly on behalf of PSG and the PSG Subsidiaries (referred to herein, collectively, as the "**Company**" or the "**Debtors**"), and the Trust, all as more fully set forth in the Confirmation Order, Plan, and Trust Agreement.

8. Under the Plan, the Debtors' "Retained Causes of Action" were defined to include all causes of action of the Debtors as of the Effective Date, including, but not limited to, "any and all causes of action against any party relating to or arising from the Debtors' failure to file their Annual Report for the fiscal year ended May 31, 2016 or alleged irregularities in the Debtors' sales practices."

9. Pursuant to the Confirmation Order, Plan, and Trust Agreement, all of the Debtors' assets, including all of the Debtors' "Retained Causes of Action," were expressly preserved and, on the Effective Date, automatically vested jointly in the Debtors and the Trust.

II. **Defendants**.

10. Defendant Karyn O. Barsa was at all relevant times a member of the Board of Directors of Performance Sports Group Ltd. (n/k/a Old PSG Wind-down Ltd.) (the "**Board**"). Upon information and belief, Barsa presently resides and maintains her domicile in Oregon.

11. Defendant Joan T. Dea was at all relevant times a member of the Board and the chairperson of the Audit Committee of the Board of Directors of Performance Sports Group Ltd. (n/k/a Old PSG Wind-down Ltd.) (the "**Audit Committee**"). Upon information and belief, Dea presently resides and maintains her domicile in California.

12. Defendant C. Michael Jacobi was at all relevant times a member of the Board and a member of the Audit Committee. Upon information and belief, Jacobi presently resides and maintains his domicile in Connecticut.

13. Defendant Matthew M. Mannelly was at all relevant times a member of the Board. Upon information and belief, Mannelly presently resides and maintains his domicile in Connecticut.

14. Defendant Bernard J. McDonell was at all relevant times the chairperson of the Board and a member of the Audit Committee. Upon information and belief, McDonell presently resides and maintains his domicile in Ontario, Canada.

15. Defendant Robert Nicholson was at all relevant times a member of the Board. Upon information and belief, Nicholson presently resides and maintains his domicile in Alberta, Canada.

16. Defendant Mark J. Vendetti was at all relevant times the Chief Financial Officer of PSG and each of the PSG Subsidiaries. Upon information and belief, Vendetti presently resides and maintains his domicile in California.

17. Defendant Julie L. Zaleski was at all relevant times the Controller and Treasurer of PSG and each of the PSG Subsidiaries. Upon information and belief, Zaleski presently resides and maintains her domicile in Massachusetts.

FACTUAL ALLEGATIONS

I. General Audit Overview And Relationship.

18. PSG was, at all relevant times, a publicly traded company whose stock traded on both United States and Canadian stock exchanges. PSG traded on the New York Stock Exchange under the call letters: "PSG". PSG operated, at all relevant times, on a fiscal year basis beginning on June 1 and ending May 31.

19. KPMG LLP ("**KPMG**") was, at all relevant times, a public accounting firm providing auditing services to the Company pursuant to a written engagement letter. KPMG assembled a team of professionals (hereafter, the "**KPMG Audit Team**") to conduct and complete the Company's annual audit, including the audit for the fiscal year ended May 31, 2016 (the "**FYE 2016 Audit**"). The lead audit partner assigned by KPMG to the Company's account was David Wilson. David Wilson was assisted by James Holland, Matthew Warden, and Peter Blessing, among others.

20. Audits are an interactive process between the auditor and the company being audited in which the auditor relies on the company's management to provide it with all information requested by the auditor and to inform it of any other information not requested that could inform the auditor in arriving at its opinion as to whether the company's financial statements are fairly stated.

21. Because audits of publicly traded companies can be lengthy, complex and sample-driven exercises, it is critical that the auditor repose trust and confidence in the company's management, both in terms of faith that it is receiving fulsome responses to its information requests, as well as confidence that it can rely on management representations for those areas not directly sampled.

22. Beginning in August 2015 and throughout FYE 2016, KPMG informed the Board, Audit Committee, Vendetti, and Zaleski that, according to KPMG, there was a significant deficiency in respect of the Company's contract management practices and policies, specifically, that the Company did not maintain a central repository for their customer contracts, and that, as a result, the Company's finance department was unable to properly monitor and account for all of the Company's contracts. Notwithstanding multiple warnings from KPMG, the Board, Audit Committee, Vendetti, and Zaleski recklessly failed to take necessary, appropriate, and timely action to remediate what KPMG determined to be the Company's significantly deficient contract management practices, and instead permitted such reckless practices to continue throughout FYE 2016. These persistent and reckless contract management practices resulted in (i) the Board, Audit Committee, Vendetti, and Zaleski not having complete and accurate information regarding the material terms of all of the Company's customer contracts (including whether such terms included impermissible provisions such as offering a customer a right to return goods or guaranteeing the sale of a certain percentage of goods), and (ii) the Company, including Vendetti and Zaleski, being unable to promptly respond to KPMG inquiries regarding customer contracts and providing inaccurate responses to initial KPMG inquiries regarding specific customer contracts, which, in turn, contributed to the erosion of trust and deterioration of the relationship between KPMG and the Company's management.

23. As CFO, Vendetti was the officer for PSG and the PSG Subsidiaries responsible for overseeing the preparation of the Company's financial statements. Vendetti was hired as the Company's CFO on or about December 15, 2015. Vendetti had nearly thirty years of experience in corporate finance, including a previous tenure as the chief financial officer of a public

company responsible for overseeing the annual audit of that company in the years immediately prior to joining PSG.

24. As Controller, Zaleski was the officer for PSG and the PSG Subsidiaries responsible for managing the day-to-day accounting functions of the Company. Zaleski maintained certified public accountant licenses in both New York and Ohio, was a member of the America Institute of Certified Public Accountants, had substantial finance and accounting experience, including approximately 15 years of experience with PSG, and was responsible for overseeing the Company's annual audit process from 2009 through 2016.

25. As CFO and Controller, Vendetti and Zaleski were the officers responsible for managing the FYE 2016 Audit process on behalf of PSG and the PSG Subsidiaries. Vendetti and Zaleski were the principal points of contact with the KPMG Audit Team, and were responsible for ensuring that the KPMG Audit Team received all requested information in a timely manner, and maintaining open, healthy, and trusting communication with the KPMG Audit Team.

26. As CFO and Controller, Vendetti and Zaleski owed PSG and the PSG Subsidiaries the duty of care, loyalty, and good faith to, among other things, (i) ensure that KPMG received timely responses to requested information, (ii) openly and honestly respond to all questions posed by the KPMG Audit Team, and (iii) otherwise refrain from taking any actions that would negatively impact the relationship of trust between KPMG and Company management.

27. As detailed below, Vendetti and Zaleski recklessly failed to timely implement and enforce reasonable contract management procedures and practices to ensure that the Company's finance department was able to properly monitor and account for all of the Company's contracts,

even after being expressly informed by KPMG that, according to KPMG, the Company's contract management controls were significantly deficient. As a result, Vendetti and Zaleski were unable (and, irrespective, were simply unwilling at obviously critical points) to promptly respond to KPMG inquiries regarding the Company's customer contracts during the FYE 2016 Audit. Thereafter, Vendetti and Zaleski (i) recklessly withheld information from the KPMG Audit Team during the course of the FYE 2016 Audit that they knew, or should have known, would be considered by KPMG relevant, or that they knew, or should have known, they had a duty to disclose, and then (ii) recklessly made late disclosures to KPMG of such previously withheld information in such a manner as to create the impression to the KPMG Audit Team that management was attempting to mislead it.

28. Specifically, when the KPMG Audit Team queried Vendetti, Zaleski, and the Company's finance department regarding particular customer contracts, Vendetti and Zaleski acted in a grossly negligent and reckless manner and in breach of their fiduciary duties by, among other things, making determinations of the timing and content of disclosures to the KPMG Audit Team based on Vendetti's and Zaleski's perception of how KPMG would react to such information. Vendetti and Zaleski recklessly and in breach of their fiduciary duties determined not to timely disclose certain adverse information based on their belief that KPMG would react negatively to such disclosure, and that such disclosure could have resulted in KPMG demanding more testing and analysis, thus making timely completion of the FYE 2016 Audit more uncertain and expensive. Vendetti and Zaleski recklessly and in breach of their fiduciary duties gambled that, with respect to certain information, KPMG's sampling protocol would not require a response that disclosed such information. That gamble proved wrong and caused KPMG to conclude that the Company's management was intentionally misleading and

concealing information from it, which, in turn, caused KPMG to refuse to complete the FYE 2016 Audit unless and until an internal investigation was completed. An ordinarily careful and prudent officer would have disclosed such information to KPMG as early as possible to avoid these dire consequences.

29. The Board was ultimately responsible for ensuring that PSG timely completed the annual audit and timely filed the annual report and consolidated financial statements for PSG and the PSG Subsidiaries so that the Company remained in compliance with its secured loan agreements. To assist it in fulfilling these responsibilities, the Board formed the Audit Committee as a sub-committee of the Board and appointed its members (who were required to also serve as directors). The Audit Committee was responsible for, among other things, overseeing the Company's annual audit on behalf of the Board, interfacing with KPMG throughout the audit process, and resolving any disagreements between Company management and KPMG regarding financial reporting. KPMG reported directly to the Audit Committee throughout the annual audit process.

30. As detailed below, the members of the Board and Audit Committee breached their fiduciary duties to PSG by, among other things: (i) failing to implement a Company policy requiring the Company's finance department to inform the Audit Committee and KPMG of any non-standard customer contracts entered into without proper authorization, upon discovering or learning of the same, to the extent such contracts led to improper revenue recognition, particularly given what KPMG found to be a significant deficiency in the Company's contract management controls that was known to the Audit Committee, the context of the FYE 2016 Audit, and the critical importance of ensuring the timely completion of the FYE 2016 Audit; (ii) mismanaging the FYE 2016 Audit process, including failing to take reasonable action to ensure

the timely completion of the audit so as to enable the Company to timely complete the FYE 2016 Audit, file its annual report and financial statements, and provide the same to its secured lenders; and (iii) after KPMG demanded the completion of an internal investigation as a precondition to completing the FYE 2016 Audit, acceding to KPMG's demand but thereafter completely abdicating their responsibilities in respect of the investigation and audit, including by recklessly failing to take reasonable steps to ensure that both were timely completed so as to enable the Company to timely complete the FYE 2016 Audit, file its annual report and financial statements, and provide the same to its secured lenders.

31. Instead of fulfilling their fiduciary duties and preserving value and doing what was needed to complete the investigation and audit for the sake of *all* the Company's shareholders, members of the Board and Audit Committee focused their efforts on selling the company to its largest shareholder, Sagard Capital Partners, L.P. ("**<u>Sagard</u>**"). Indeed, discussions with Sagard regarding a potential sale transaction began immediately after the August 8, 2016 Audit Committee meeting in which KPMG demanded an internal investigation.

32. The Audit Committee's failure to ensure the timely completion of the FYE 2016 Audit was particularly egregious given that completion of the audit was necessary to the Company's ability to continue as a going concern. The Board and Audit Committee knew that the failure to timely complete the FYE 2016 Audit on or before the August 15, 2016 deadline would result in a default under the Company's secured loans, the acceleration of such loans, and a crippling of the Company's liquidity. Moreover, the Board and Audit Committee were made aware of numerous issues prior to and throughout the FYE 2016 Audit that they knew or should have known could materially affect the Company's ability to timely complete the FYE 2016

Audit by the August 15, 2016 deadline, yet in breach of their fiduciary duties, failed to take appropriate action to adequately and timely address such issues.

II. <u>Company Background</u>.

33. Prior to filing for bankruptcy on October 31, 2016, the Company was engaged in the manufacture and sale or sporting goods equipment and apparel in the hockey, baseball, softball, lacrosse and soccer sporting segments.

34. As of October 31, 2016, the Company generated annual revenues of approximately $600M, of which approximately 60% was derived from hockey sales, approximately 30% from baseball/softball sales, and approximately 10% from lacrosse, soccer and apparel sales collectively.

35. The Company maintained its corporate headquarters in Exeter, New Hampshire; however, critical accounting and finance functions, as detailed below, were located in different company offices over which corporate headquarters had limited oversight and control.

36. The Company began as principally a hockey-only company under the Bauer hockey brand. After April 2008, when it was sold by Nike, Inc. to private equity firm Kohlberg & Company ("**<u>Kohlberg</u>**"), Kohlberg took the Company public in Canada through an initial public offering on the Toronto Stock Exchange.

37. Thereafter the Company engaged in a series of acquisitions, including the purchase of Cascade Helmet Holdings, Inc., a supplier of lacrosse equipment, for $64 million in cash; the purchase of Inaria International, Inc., a soccer apparel company, for approximately Cdn $7 million in cash; the purchase of Combat Sports ("**<u>Combat</u>**"), a supplier of baseball and softball bats, for approximately Cdn $4 million in cash; and the purchase of Easton Baseball/Softball ("**<u>Easton</u>**"), a supplier of baseball and softball equipment, for approximately

$330 million in cash, plus a net working capital adjustment of approximately $21.7 million. These acquisitions occurred between 2012 and 2014; Easton being the last and largest.

38. In or about June 2014, the Company engaged in an initial public offering in the United States and began trading on the New York Stock Exchange.

39. As a result of having its stock listed on a public U.S. stock exchange, PSG was required to be compliant with the Sarbanes-Oxley Act of 2002 ("**SOX**") rules and regulations. Pursuant to SOX, PSG was required to: (i) have management certify the financial results of the Company; (ii) ensure the accuracy of its financial statements, including ensuring that such financial statements did not contain incorrect statements or omit to state material information; and (iii) include an internal control report in its annual report, including an assessment by management of the effectiveness of the Company's internal control structure.

40. SOX also established the Public Company Accounting Oversight Board ("**PCAOB**") and empowered the same to establish auditing standards for public companies and supervise auditors of public reporting companies. Pursuant to SOX, auditors must report all material accounting policies and practices to a company's audit committee, and must report on management's assertions about a company's financial system.

41. The Company was engaged in the business of selling sports equipment and apparel to large and small retail customers. The Company's internal sales policy was to sell product to customers pursuant to written contracts that transferred title to the product to the customer upon delivery; payment was subject to credit terms set forth in the contract such as net 90 days or net 120 days. Such contracts within the Company were referred to as "standard-term contracts."

42. Any contracts with customers which deviated from those set forth in the standard-term contract were referred to within the Company as "non-standard-term contracts." According to Company policy, a salesperson required prior authorization before entering into any non-standard-term contract.

43. The two non-standard-term contracts of relevance here include so-called "consignment" contracts and "guaranteed sale" or "right-of-return" contracts. Under a consignment contract, the Company would ship product to the customer but would retain title to that product until the product was sold by the customer to its end-user. Payment by the customer to the Company was due upon sale, but only upon sale. The Company could only properly recognize revenue once the customer reported product sold. Under a guaranteed sale or right-of-return contact, the customer retained the right to return all previously shipped unsold product if a certain percentage of the shipped product was not sold by a date certain. The Company could only properly recognize revenue under such a contract if the customer reported the sale of product or the return right contingency expired without the customer exercising its return rights.

III. <u>Inadequate Integration</u>.

44. The various stand-alone businesses acquired by the Company were operated as separate business segments and were never properly or adequately integrated into a cohesive or coherent business.

45. For example, the Company did not develop or maintain a centralized and coordinated accounting function, finance team, financial planning and analysis team, sales team, credit and collections team, or customer service staff. Rather, Combat, Easton, and Bauer each maintained their own separate staff for each of these functions, which were located at geographically different offices, utilized their own separate accounting systems, and did not coordinate with each other.

46. One example of this uncoordinated system involved the process of managing contracts entered into with customers. Contracts entered into between Easton and its distributor customers were physically maintained in Van Nuys (and later, Thousand Oaks), California, where Easton's manufacturing facility was located. Easton personnel from its customer service department were responsible for reviewing contract terms once entered and for invoicing customers in accordance with the terms of any given contract. As a consequence, the Company's corporate accounting department located in Exeter, New Hampshire, never had possession of the customer contracts, never reviewed the terms and conditions for compliance with Company policy, was not involved in invoicing the customer in accordance with contract terms, and did not interface with the customer to ensure compliance with contract delivery or payment terms. Instead, the Company's corporate accounting department relied entirely on the various staffs at the individual business segments' offices.

47. As a result of this structure, corporate management, especially Vendetti and Zaleski, possessed an attenuated understanding of many aspects of business fundamentals, such as contract management, customer credit and other critical accounting and financial controls.

48. The Board, Audit Committee, and Company management, including Vendetti and Zaleski, failed to take timely and adequate action to better integrate the different financial systems across the Company's various divisions.

IV. KPMG Found That The Company's Internal Controls, Specifically Regarding Contract Management, Were Significantly Deficient Prior To And Throughout FYE 2016 Audit.

49. In addition to the lack of integration and coordination among the Company's various business segments, the Company's internal sales, accounting, and finance controls, including, specifically with respect to the Company's contract management, were found by KPMG to be significantly deficient and remained un-remediated throughout the FYE 2016

Audit, despite the fact that KPMG advised the Company of the significant deficiency with respect to its contract management no later than August 2015. Pursuant to 17 C.F.R. 240.12b-2, a "significant deficiency" is defined as "a combination of deficiencies, in internal control over financial reporting that is less severe than a material weakness, yet important enough to merit attention by those responsible for oversight of the registrant's financial reporting."

50. On August 24, 2015, David Wilson, KMPG lead audit partner, sent an email to Defendant Zaleski and Scott Frerichs, the Company's then Vice President of Finance, informing them of a "significant deficiency" in respect of the Company's contract management controls (the "**Contract Management Significant Deficiency**"), specifically that "there [was] a lack of communication between sales/operations personnel who have the ability to enter into customer agreements and finance to properly monitor the accounting consequences," and that such "lack of communication" had resulted in accounting errors and revenue reversals in fiscal years 2012, 2013 and 2014.

51. On August 25, 2015, KPMG informed the Audit Committee of the Contract Management Significant Deficiency. Specifically, KPMG informed the Audit Committee of the existence of a significant deficiency in respect of the Company's control associated with identifying the total population of customer contracts, and reported that such internal control was "not designed appropriately."

52. KPMG further reported that "[i]t appear[ed] there [was] a lack of communication between sales/operations personnel who have the ability to enter into customer agreements and finance to properly monitor the accounting consequences," and advised the Audit Committee that the Company had to correct revenue in the prior three fiscal years because of inappropriate revenue recognition as a consequence of the improperly designed control.

53. Notwithstanding being first identified in August 2015, the Contract Management Significant Deficiency remained un-remediated throughout fiscal year 2016 and thereafter. The Board, Audit Committee, Vendetti, and Zaleski recklessly failed to take necessary, appropriate, and timely action to remediate the Contract Management Significant Deficiency, and instead permitted such reckless practices underlying the deficiency to continue throughout FYE 2016. As a result, the Board, Audit Committee, Vendetti, and Zaleski did not possess complete and accurate information regarding the Company's universe of customer contracts, including information critical to properly accounting for such contracts.

V. Secured Loans And Legal Requirements Related To Annual Audit.

54. Prior to filing for bankruptcy relief, the Company was party to two secured debt facilities: (i) an ABL Credit Agreement dated as of April 15, 2014 (the "**ABL Loan**"), and (ii) a Term Loan Credit Agreement dated as of April 15, 2014 (the "**Term Loan**") (collectively, the ABL Loan and Term Loan are referred to hereafter as the "**Secured Loans**").

55. As of the Company's bankruptcy filings, the Company's outstanding obligations under the Secured Loans totaled approximately $490 million. At all relevant times, the Company was compliant with its payment obligations under the Secured Loans.

56. The Secured Loans contained covenants requiring the Company to provide its secured lenders with its annual report on Form 10-K, including its annual consolidated audited financial statements for each fiscal year, within 90 days of the end of each fiscal year.

57. With respect to fiscal year 2016, the Company was obligated to provide its annual report on Form 10-K and audited financial statements no later than August 29, 2016. PSG's failure to timely provide its annual report and audited financial statements on or before August 29, 2016 would result in a default, which, if uncured for thirty (30) days after the Company received written notice of the default, would result in an event of default under the Secured

Loans. A default would permit the secured lenders to accelerate the debt, and refuse to extend new revolving borrowings relied upon by the Company for the liquidity necessary for day-to-day operations of the Company's business.

58. Additionally, as a reporting company under the Securities Exchange Act of 1934, the Company was obligated to file its annual report on Form 10-K, including its audited financial statements, within seventy-five (75) days of the end of its May 31, 2016 fiscal year, or August 15, 2016. To the extent that the Company would be unable to timely file its annual report on Form 10-K, including its audited financial statements, on or before August 15, 2016, the Company could obtain a fifteen (15) day extension of the deadline by filing a notification of late filing on Form 12b-25.

59. In each fiscal year from 2009 through 2015, the Company was able to timely complete its annual audit, including the audit of its consolidated financial statements, and, in respect of fiscal year 2015, was able to timely file its annual report on Form 10-K, including its consolidated audited financial statements.

60. As a registered public accounting firm, KPMG was obligated to conduct the Company's annual audit in accordance with Generally Accepted Auditing Standards ("**GAAS**"), the standards set forth by the PCAOB, and U.S. securities laws, including Section 10A of the Securities Exchange Act of 1934 ("**Section 10A**").

61. Section 10A(b) provides, among other things, that if, "in the course of conducting an audit," an accountant becomes aware of a possible "illegal act (whether or not perceived to have a material effect on the financial statements of the issuer)," the accountant must assure that the audit committee is "adequately informed" of the illegal act, unless the illegal act is "clearly

inconsequential." Section 10A defines an "illegal act" as "an act or omission that violates any law, or any rule or regulation."

62. The Code of Federal Regulations provides that "[n]o director or officer of an issuer shall, directly or indirectly: (1) [m]ake or cause to be made a materially false or misleading statement to an accountant in connection with; or (2) [o]mit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading, to an accountant in connection with: (i) [a]ny audit, review or examination of the financial statements of the issuer required to be made pursuant to this subpart; or (ii) [t]he preparation or filing of any document or report required to be filed with the Commission pursuant to this subpart or otherwise."

63. Under Section 10A, an auditor that suspects it has been misled in the course of an audit must follow the protocols set forth therein, including investigate whether an "illegal act" is likely to have occurred and its effect on the financial statements. If the auditor concludes that the act has a material effect on the financial statements, and that the company has failed to take "timely and appropriate remedial action," the auditor must report such conclusions to the company's board. In addition to Section 10A, the PCAOB and GAAS provide guidance on an auditor's responsibilities similar to Section 10A in material respects.

VI. <u>The FYE 2016 Audit</u>.

64. Beginning in December 2015, the Company was involved with or the subject of, among other things, numerous allegations, governmental investigations/inquiries, and securities fraud lawsuits that, collectively, increased the risk assessment of the FYE 2016 Audit and caused KMPG to substantially increase the level and degree of testing during the FYE 2016 Audit and to apply increased scrutiny to the Company's responses to audit inquiries.

65. For example, on or about June 12, 2015 and December 24, 2015, the Company's former chairman and chief executive officer, W. Graeme Roustan, sent the Company letters in which he alleged, among other things, that he had evidence that the Company was engaged in what he considered to be improper sales practices, including pressuring its retailers to move sales orders forward into earlier quarters and offering "extreme discounting" in an effort by the Company to make quarterly revenue and sales projections.

66. In addition, on January 13, 2016, the Company announced its financial results for the quarter ended November 30, 2016 ("**Q2 2016**"), reporting a decrease of 11% year-over-year in total revenues ($153 million), a decrease of 19% year-over-year in adjusted gross profit ($50.6 million), a decrease of 18.1% year-over-year in EBITDA ($15.3 million), and a net loss of $4.5 million; but, nonetheless, PSG projected for the next quarter ended February 29, 2016 ("**Q3 2016**"): "Adjusted Net Income to range between $0.66 and $0.69 per share, . . . [and that] our businesses will outpace the growth of the markets we serve, resulting in revenue gains and increased profitability . . . ."

67. However, fewer than eight weeks later, on March 8, 2016, the Company reported that it was substantially reducing projected earnings for Q3 2016 by 80%, from the previously announced between $0.66 and $0.69 per diluted share, to between $0.12 and $0.14 per diluted share.

68. As a result of this announcement, the trading price of PSG's common stock dropped from approximately $8.66 per share to $2.91 per share.

69. On March 13, 2016, five days after the announcement of the revised Q3 2016 earnings guidance, a putative securities fraud class action complaint was filed in the United States District Court for the Central District of California against PSG, Kevin Davis, the

Company's CEO, Amir Rosenthal, the Company's President of Brands and former CFO, and Defendant Vendetti, the Company's CFO, alleging violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, 15 U.S.C. § 78a *et seq.*, and Rule 10b-5 of the Securities and Exchange Commission.

70. On April 14, 2016, the Company disclosed its consolidated financial results for Q3 2016, reporting a decrease in year-over-year total revenues of 8% (to $126.1 million) and adjusted EBITDA of negative $11 million (down from positive $14.6 million year-over-year). The Company also reported a net loss of $188.1 million that included a non-cash impairment of $145.1 million related to the Company's $330 million acquisition of Easton in 2014.

71. A second putative class action complaint was filed on May 13, 2016, this time in the United States District Court for the Southern District of New York, asserting the same causes of action as the first complaint. In connection with the filing of this class action complaint, the first class action filed in California was voluntarily dismissed without prejudice.

72. As a result of the Q3 2016 results, between March and May 2016, a series of governmental investigations involving PSG commenced, including:

(a) a Financial Industry Regulatory Authority (FINRA) investigation into the trading of PSG common stock prior to and during the announcement of the Company's revised Q3 2016 earnings;

(b) an Ontario Securities Commission investigation into the Company's revenue forecasts and revised Q3 2016 earnings; and

(c) a U.S. Securities and Exchange Commission ("**SEC**") investigation into the Company's revised Q3 2016 earnings report, forecasts and revisions.

73. On or about March 22, 2016, the Company announced that it had terminated then-CEO Kevin Davis, effective immediately, because the Board had lost confidence in his leadership as a result of the Company's Q3 2016 substantial earnings miss.

74. On the day he was terminated, Davis re-set his Company-issued cell phone to original factory settings, thus deleting stored text messages, telephone logs, voice mails, e-mails, and other data. Immediately after re-setting his phone, Davis informed the Company of his conduct and worked with the Company to retrieve the deleted data. Not all data was retrieved.

75. Although the Company advised the KPMG Audit Team that Davis had been terminated, it did not immediately inform KPMG that Davis had deleted the contents of his cell phone. It was not until nearly three months later, on or about June 8, 2016, that the Company informed KPMG that Davis had deleted the contents of his Company-issued cell phone. Upon information and belief, the decision by Company representatives to delay promptly notifying the KPMG Audit Team of Davis's conduct and the remedial steps taken contributed to the KPMG Audit Team's concern that PSG management was dilatory in providing the KPMG Audit Team with relevant information for its consideration.

76. As a result of the foregoing events, KPMG increased the risk assessment with respect to the FYE 2016 Audit, which resulted in KPMG increasing the level and degree of testing during the FYE 2016 Audit, and applying increased scrutiny to PSG's responses to audit inquiries.

77. Vendetti and Zaleski interpreted the KPMG Audit Team's increased testing and scrutiny negatively, internally ascribing to the KPMG Audit Team and its interactions with PSG management negative attributes such as "agitated", "stressed" and "dark".

78. For example, despite being informed in May 2016, in connection with planning and scoping the FYE 2016 Audit, that KPMG had increased the risk assessment with respect to the FYE 2016 Audit, principally as a result of the Company's Q3 2016 earnings forecast miss, Zaleski interpreted the increased sample sizes and enhanced scrutiny as indicating that the KPMG Audit Team was stressed and agitated and the "audit environment" was different in a negative way than in previous years.

79. Vendetti similarly interpreted the increased sampling and elevated scrutiny as meaning that KPMG had "take[n] a very negative approach to how we have managed the business which creates an interesting dynamic."

80. In internal communications, Vendetti further described David Wilson as "think[ing] very little of PSG management."

81. Zaleski also stated in internal communications that, upon receiving news of potential irregularities in PSG's accounting, finance, or sales practices, David Wilson was prone to going to "a very dark place too fast," and that the Company, in the eyes of the KPMG Audit Team, was "guilty until proven innocent."

82. As a result of their interpretation of the KPMG Audit team's behavior, Vendetti and Zaleski, upon information and belief, became increasingly hesitant to share information with KPMG that Vendetti and/or Zaleski believed the KPMG Audit Team would, in their view, overreact or react negatively.

VII. Easton Entered Into Two Non-Standard-Term Contracts With Dunham's Sports That Resulted In Improper Recognition Of Revenue.

83. Dunham's Sports ("**Dunham's**") was a long-time customer of Easton. Dunham's was one of Easton's largest customers and typically a focus of any audit. Zaleski and Vendetti were aware of this fact throughout the FYE 2016 Audit period.

84. Over the course of time, Dunham's entered into three discrete contractual relationships with Easton. The first was a standard form Easton contract that contained shipping and payment terms consistent with internal PSG policy.

85. The other two relationships involved non-standard-term contracts that ultimately resulted in the improper recognition of revenue, its later correction, and substantial discussion between the KPMG Audit Team on the one hand, and Vendetti and/or Zaleski on the other.

86. The first non-standard-term contract was a consignment arrangement (the "**Dunham's Consignment (PBS) Arrangement**") entered into in or around 2014. The Dunham's Consignment (PBS) Arrangement was also referred to as a "pay-by-scan" or "PBS" arrangement. The Dunham's Consignment (PBS) Arrangement was not formally documented; rather, it was agreed to orally.

87. Pursuant to the oral Dunham's Consignment (PBS) Arrangement, Easton would agree to ship product to Dunham's; the product would remain as inventory on Easton's books with no immediate transfer of title; Dunham's would pay Easton for the product as it was sold through to retail customers; and Easton would recognize revenue only once product was sold through to retail customers.

88. On or about August 25, 2015, Easton entered into a second non-standard-term contract with Dunham's (the "**Dunham's Guaranteed Sale Contract**"). The Dunham's Guaranteed Sale Contract was memorialized pursuant to a two-page contract. It was not on an Easton or PSG form or letterhead; rather, it was a Dunham's program documented on a Dunham's form.

89. The first page of the Dunham's Guaranteed Sale Contract was entitled "Dunham's Sports Over & Above Agreement"; the second page was a form entitled "Guarantee Sale

Worksheet." The Dunham's Guaranteed Sale Contract provided that "if 60% of the bats [we]re not sold by August 1, 2016 … Dunham's ha[d] the right to return the unsold product."

90. The Dunham's Guaranteed Sale Contract was entered into on Easton's behalf by Ryan Weller, an Easton sales representative, with the knowledge of Robert Diebold, Easton's Vice President of Sales.

91. PSG's corporate policy at the time, as communicated to KPMG, prohibited customer returns (other than for a defective product).

92. Due to what KPMG found to be the Company's significantly deficient contract management practices, a copy of the Dunham's Guaranteed Sale Contract was not provided to the Company's corporate finance or accounting staff at the time the contract was entered into; rather, it was maintained in Easton's facility in Van Nuys, California. Moreover, the Dunham's Guaranteed Sale Contract was not provided by the Easton sales office to the Easton accounting staff or reviewed by that staff prior to invoicing. As a result, the Company's finance and accounting staff did not know how to properly account for transactions under the agreement.

93. As a result, neither the Company's corporate finance department nor the Easton accounting staff knew the terms of the Dunham's Guaranteed Sale Contract and the proper accounting for shipments under that agreement.

94. Goods were shipped in 2015 pursuant to both the oral Dunham's Consignment (PBS) Arrangement (under invoice 97833092) and the Dunham's Guaranteed Sale Contract (under invoice 97833086). In both instances, the product shipped was incorrectly accounted for as arising under the PSG standard-term contract (*i.e.*, revenue was improperly recognized at a date before title irrevocably passed from PSG).

95. In March 2016, the Company became aware that it had improperly accounted for approximately $200,000 in revenue arising from shipments made pursuant to the oral Dunham's Consignment (PBS) Arrangement. At that time, Ricky Helland, Easton's Director of Finance, approved a manual journal entry to the Company's general ledger (also referred to as a "sales cut-off entry") to correct for approximately $200,000 in revenue that was previously improperly recognized because the product had been shipped pursuant to the Dunham's Consignment (PBS) Arrangement, and Dunham's had yet to report any of that product as sold. This manual journal entry was entered effective as of February 29, 2016, the final day of Q3 2016. Zaleski approved the manual journal entry and reported the accounting correction to Vendetti. Despite knowledge of this accounting error resulting from discovery of an improper contract term, neither Vendetti nor Zaleski took timely or adequate action at this time to remediate what KPMG found to be the Company's deficient contract management processes and controls.

96. In April 2016, as part of closing Q3 2016, the KPMG Audit Team asked Zaleski about the $200,000 manual journal entry. It was this inquiry that resulted in Zaleski disclosing to KPMG the existence of the oral Dunham's Consignment (PBS) Arrangement. Zaleski only discovered the Dunham's Consignment (PBS) Arrangement herself when she was informed by Ricky Helland at the time the manual journal entry was made. Nonetheless, in response to KPMG's inquiry regarding the overall Dunham's receivable of $2.2 million and what component represented consignment shipments that might be improperly accounted for, Zaleski assured the KPMG Audit Team that other than the $200,000 represented by the manual journal entry, the balance represented shipments made pursuant to a standard-term contract. This assurance was reckless when made, as Zaleski had no basis on which to give such an assurance. After KPMG requested confirmation from Vendetti, Helland confirmed Zaleski's assurance on behalf of PSG

finance. In fact, these assurances were inaccurate as over twenty percent (20%) of the remaining Dunham's receivable related to product shipped pursuant to a different non-standard-term contract—the Dunham's Guaranteed Sale Contract. At the time these assurances were given to KPMG, neither Vendetti nor Zaleski were aware of the existence of the Dunham's Guaranteed Sale Contract.

97. In April 2016, also as part of closing Q3 2016, KPMG informed Company management and the Audit Committee of three significant deficiencies, all relating to the Company's contract management controls. Specifically, KPMG informed PSG management and the Audit Committee that the Company's processes for reviewing customer contracts, identifying terms and conditions, and monitoring customer credit limits were, according to KPMG, significantly deficient. KPMG further informed Company management and the Audit Committee that it was planning to test for the aforementioned deficiencies in connection with the FYE 2016 Audit.

98. Subsequently, in or about May 2016, in connection with planning and scoping the FYE 2016 Audit, KPMG advised Vendetti that it was planning to evaluate and test the Company's control deficiencies, including, specifically, the significant deficiencies identified by KPMG in respect of the Company's contract management controls.

99. On May 2 and 3, 2016, in connection with the FYE 2016 Audit, KPMG sent the Company sample invoice requests for revenue testing. Included among the requested invoices was invoice 97833086—the Dunham's Guaranteed Sale Contract transaction from November 2015.

100. On information and belief, near or around this time, KPMG had numerous conversations with Vendetti and Zaleski, as well as Alex Byrne, the Company's Internal Audit

Manager, about PSG's application of revenue recognition in respect of Dunham's, and the fact that it may not be appropriate because of the undocumented, informal Dunham's Consignment (PBS) Arrangement.

101. On May 3, 2016, Ryan Weller, the Easton sales representative who entered into the Dunham's Guaranteed Sale Contract, sent Stephanie Maghakian, a member of the Easton accounting staff, an email with the subject line "Dunham's guaranteed sale invoices," and advised Maghakian of the terms of the Dunham's Guaranteed Sale Contract and the fact that Dunham's was now exercising its right of return. Maghakian forwarded the e-mail to Ricky Helland.

102. In or around May 16, 2016, Helland informed both Vendetti and Zaleski about the Dunham's Guaranteed Sale Contract and its material terms, and provided them with a copy of the agreement. Over the next several weeks, Vendetti and Zaleski engaged in a number of conversations and meetings with Easton personnel regarding the Dunham's Guaranteed Sale Contract. Following these meetings, Vendetti directed Zaleski to correct the accounting treatment of previously recognized revenue associated with product shipped under the agreement. Zaleski, in turn, directed Helland to make a manual journal entry reversing the previously recognized revenue in the amount of $421,000. The manual journal entry was entered on June 22, 2016.

103. Neither Vendetti nor Zaleski informed KPMG of the Dunham's Guaranteed Sale Contract or right of return thereunder at any time between May and June 2016, or corrected the prior erroneous representations regarding the Dunham's accounts receivable balance made the previous month. Upon information and belief, this is because Vendetti and Zaleski recklessly determined that the Dunham's right of return under its non-standard contract did not need to be

disclosed to KPMG absent a specific request from KPMG, notwithstanding the numerous general requests from KPMG that otherwise covered and/or implicated the Dunham's Guaranteed Sale Contract. Given the scrupulous nature of KPMG's audit, Vendetti and Zaleski knew or should have known that KPMG would likely have needed this information in order to complete the FYE 2016 Audit. Vendetti and Zaleski were grossly negligent and reckless in making these decisions.

104. Vendetti and Zaleski also failed to take timely and adequate action to remediate what KPMG found to be contract management deficiencies, which contributed to the Company's finance department being unaware of the Dunham's Guaranteed Sale Contract in the first place.

105. At the same time that Vendetti and Zaleski were dealing with the Dunham's Guaranteed Sale Contract at Easton, a large return at the Combat business segment occurred. Specifically, on June 8, 2016, George Tadros, Combat's Interim Director of Finance, sent Shelley Filocamo, PSG's Director of Supply Chain Finance, an email, copying Zaleski, and informed both of a potentially large return at Combat in respect of customer Academy Sports + Outdoors ("**Academy**"). Pursuant to Academy's agreement with Combat, Combat agreed to accept returns from Academy "up to a 70% sell through number."

106. Combat represented an immaterial portion of the Company's business, less than approximately 2% of the Company's gross revenue. Easton, by contrast, typically comprised approximately 30% of the Company's gross revenue.

107. Combat's contribution to revenue was so immaterial, in fact, that KPMG did not include any sampling or analysis of this business segment within the scope of the FYE 2016 Audit.

108. Zaleski and Vendetti were in possession of information evidencing, and had knowledge of, returns and rights of return at Combat as early as February and March 2016, respectively.

109. Nevertheless, following the Academy return, on or about June 12, 2016, Vendetti determined to conduct an internal audit of the Combat segment. Commencing on June 20, 2016, Alex Byrne, at Vendetti's direction, conducted a two-day field audit on-site at Combat's offices in Kent, Washington. Byrne analyzed Combat customer contracts, sales and cash receipts, and quarterly analyses, and discussed the same with members of the Combat sales team.

110. Byrne completed the audit by mid-July. Through the audit, Byrne discovered the existence of four Combat customers with non-standard-term contracts containing guaranteed rights-of-return. One of the Combat customers with guaranteed return rights was Dunham's.

111. These four contracts were entered into in contravention of stated Company policy and had resulted in improper revenue recognition by the Company. Thereafter, Byrne engaged in an extensive sampling regimen to ensure that no other non-standard-term contracts existed at Combat.

112. In or around mid-July, Byrne advised both Vendetti and Zaleski of his findings regarding his internal audit and the rights of return at Combat. Vendetti and Zaleski did not immediately inform KPMG of the existence of these non-standard-term contracts at Combat, including the Dunham's right-of-return agreement. Upon information and belief, Vendetti did not immediately inform KPMG of non-standard-term contracts at Combat out of his subjective concern that KPMG would, in his view, overreact.

113. On or about July 26, 2016, in an in-person meeting between Vendetti and KPMG lead audit partner, David Wilson, Vendetti informed Wilson of the results of the Combat internal

audit. During this meeting, Vendetti informed Wilson that the internal audit had uncovered non-standard-term contracts involving guaranteed rights of return for four different customers, each of which had initially been improperly accounted for and later corrected. One of the four customers included Dunham's.

114. Vendetti further informed Wilson of the sampling protocol employed by Byrne to ensure that no additional non-standard-term contracts existed, or if they did, did not result in improper accounting treatment.

115. Vendetti and Wilson agreed that the issue of the non-standard-term contracts uncovered in the Combat internal audit should be brought to the attention of the Audit Committee meeting scheduled for later that day.

116. During this meeting, Vendetti did not inform Wilson of the existence of the Dunham's Guaranteed Sale Contract at Easton that also involved a guaranteed right of return.

117. At the Audit Committee meeting later that day, attended by Vendetti, Zaleski, Alex Byrne, and David Wilson, among others, Byrne provided the Audit Committee with his findings in respect of the Combat audit, including the right of return issues.

118. Neither Vendetti, Zaleski, nor Byrne, discussed the existence of the Dunham's Guaranteed Sale Contract between Easton and Dunham's at this Audit Committee meeting.

119. The Audit Committee's response to the Combat audit results was grossly deficient. In the wake of the Combat audit results, the Audit Committee failed to take reasonable action to ensure that no similar issues existed anywhere else within the Company. On information and belief, the Audit Committee made no inquiry as to whether similar non-standard contracts might exist at other divisions of the Company, including at Easton, which also manufactured and sold baseball equipment, shared many customers with Combat, but comprised

a substantially larger percentage of the Company's revenue. Nor did the Audit Committee insist that Vendetti or Zaleski make appropriate inquiry or investigation to ensure that no such similar non-standard contracts existed at other divisions of the Company. This failure of basic oversight was particularly reckless given: (i) the late stage of the FYE 2016 Audit process and the proximity to the Company's annual report filing deadline of August 15, 2016; and (ii) the fact that the existence of similar contracts or issues at Easton (which comprised almost 30% of the Company's yearly gross revenue) would likely be materially relevant to the FYE 2016 Audit. Moreover, the Audit Committee's failure to ensure a full and complete analysis of the issue was particularly egregious given the context of the FYE 2016 Audit, including the allegations made by the Company's former chairman and CEO regarding overly-aggressive sales practices, the Company's missed Q3 earnings forecast and subsequent impairment at Easton, and the multiple government investigations and class action lawsuits then pending.

120. Later in the Audit Committee meeting, Vendetti presented "the timeline of key dates until the filing of the 10-K" and "discussed the additional resources the Company [was] adding to meet the audit requirements."

121. According to presentation materials prepared in connection with the Audit Committee meeting, the Company was targeting August 9, 2016 as the "tentative 10K filing" date; the statutory deadline to file their annual report was August 15, 2016.

122. Zaleski then presented "the key open items for the audit…," including inventory, revenue recognition, impairments, and accounts receivable and allowance for doubtful accounts. With respect to all but one outstanding item, Zaleski projected completion by the following week. As for the final item, accounts receivable and allowance for doubtful accounts, Zaleski

reported that information previously provided to KPMG in response to sample requests was under review and that PSG was "waiting to hear from KPMG on testing procedures."

123. Vendetti and Zaleski had numerous opportunities to inform the KPMG Audit Team of the Dunham's Guaranteed Sale Contract. For example, at approximately the same time that Vendetti and Zaleski were learning the results of the Combat audit, including that Dunham's had a right of return under an agreement with Combat (in addition to the previously-known Dunham's Guaranteed Sale Contract at Easton), the KPMG Audit Team was inquiring about the Company's accounts receivable aging, allowance for doubtful accounts, and bad debt reserves.

124. On June 29, 2016, approximately one week after Zaleski ordered Helland to reverse revenue previously and erroneously recognized under the Dunham's Guaranteed Sale Contract, Zaleski sent Vendetti an email with the subject line "AR File," attaching an accounts receivables aging and reserve report, which, among other things, removed the portion of the outstanding Dunham's receivable associated with the Dunham's Guaranteed Sale Contract, since that amount had already been reversed and was accounted for in a separate sales reserve. On July 11, 2016, Zaleski sent to the KPMG Audit Team this report, which stated in relevant part:

> Based on risk profile of the customer [Dunham's], the reserve was calculated to be 75 percent. The company has adjusted the reserve to zero as the past due balances are reserved in the sales reserves.

125. According to Zaleski:

> The past due balances, there was a reserve booked in sales reserve. So there was a reserve booked for consignment inventory and also guaranteed sales…. At the time when I wrote the document, I was simply stating that we didn't need the reserve for bad debt, but we did, you know, have a reserve in the sales reserves.

126. In a separate email to Vendetti on or about July 11, 2016, Zaleski explained that the Dunham's sales reserves referenced in the report included the two Dunham's transactions reversed on June 22, 2016: (i) invoice 97833086 in the amount of $502,140.00, entered into

under the Dunham's Guaranteed Sale Contract; and (ii) invoice 97833092 in the amount of $11,260.00, entered into under the Dunham's Consignment (PBS) Arrangement. Neither Vendetti nor Zaleski disclosed this more detailed information to the KPMG Audit Team.

127. Zaleski subsequently sent a revised report to the KPMG Audit Team, which changed the description of the Dunham's account as follows:

> The past due balances are driven by a consignment program with the customer. The orders were entered by customer services as regular orders as opposed to consignment orders. Therefore, invoices were posted to the customer account. The company recorded a journal entry to reverse the revenue and cost of goods sold that posted and also properly state inventory on accounts receivable.

128. This statement was inaccurate and misleading because it did not include the existence of the Dunham's Guaranteed Sale Contract and resulting accounting issues. Zaleski purports to have forgotten about the existence of the Dunham's Guaranteed Sale Contract at the time of the communication, but concedes that, at a minimum, she improperly conflated the accounting issues under that contract with those arising from the Dunham's Consignment (PBS) Arrangement, and that this conflation rendered the statement misleading. Zaleski acknowledges that she was aware of the Dunham's Guaranteed Sale Contract at Easton at this time, and that an accurate description would have included a statement that "500,000 of the accounts receivable had been reversed as a result of a journal entry because of the guaranteed sale that was discovered for Dunham's at Easton."

129. As another example, on July 14, 2016, KPMG Audit Team member James Holland sent an email to Matt Herring, the Company's Accounting Manager, copying Zaleski, and John Siegal, the Company's Assistant Controller, stating:

> One of the takeaways from the meeting was to have a discussion on obtaining evidence of collectability for invoices that haven't been fully paid. The attached summaries of Grizzly, Dunham, and Olympia are reports we reviewed in Q3 to finalize our quarterly procedures.

130. Despite knowing that Holland was inquiring about the collectability of invoices outstanding as of Q3 2016, Zaleski failed to disclose to Holland that a large portion of the Dunham's receivable at Easton that was outstanding at the end of Q3 2016 was reversed on June 22, 2016, and effective as of May 31, 2016, due to the exercise by Dunham's of its right of return under the Dunham's Guaranteed Sale Contract.

131. As yet another example, in early July, David Wilson inquired of Zaleski regarding the Company's return policy, specifically a provision of the policy that read: "If a right of return exists but it is normal with industry practice." Wilson's question read: "Not sure what this is trying to say. I thought the company did not grant the right of return?" On July 6, 2016, Zaleski responded to Wilson's question by advising Wilson that PSG did not grant a right of return "as a normal practice". In this same inquiry, Wilson further stated that KPMG needed to understand company policy regarding returns and whether any return rights were being granted apart from an infrequent customer accommodation. Zaleski responded by stating that the section of the policy Wilson was commenting on referred only to defective allowances; other returns were handled on a customer-by-customer basis. At this time, Zaleski failed to disclose to Wilson the existence of the Dunham's Guaranteed Sale Contract with Easton. Zaleski failed to disclose this information based on her subjective view that she was responding to "policy comments" only, and it was not necessary to identify any "exceptions . . . for each aspect of the policy."

132. Two days after the July 26, 2016 Audit Committee meeting, on July 28, 2016, Vendetti and Alex Byrne met with David Wilson and Peter Blessing, KPMG's internal forensic accounting expert, to further discuss the Combat internal audit conducted by Byrne.

133. During this meeting, Byrne presented in detail how the non-standard-term contracts had been uncovered, as well as the additional steps taken by Byrne to satisfy himself that no additional like-contracts existed.

134. During the meeting, Wilson inquired as to whether any of the four Combat customers with rights of return, including Dunham's, were also customers of Easton, and, if so, whether there was a risk of similar non-standard-term contracts at Easton.

135. Vendetti confirmed that there were overlapping customers between Combat and Easton, but that the two divisions operated entirely separately from one another (*e.g.*, different employees, sales staffs), and there was no reason to believe that anything that occurred between Combat and its customers could occur between Easton and its customers.

136. Despite this inquiry from Wilson and Blessing, Vendetti did not disclose the existence of the Dunham's Guaranteed Sale Contract at Easton previously discovered internally in May 2016.

137. Following the July 28, 2016 meeting and despite Vendetti's assertion that no similar issues could exist at Easton, the KPMG Audit Team requested additional materials from Zaleski related to crossover customers, expressly stating that the additional requests were designed "to understand whether or not these things could be happening at Easton." Specifically, on July 29, 2016, KPMG Audit Team member Matthew Warden sent Matt Herring, a PSG accounting employee, an email, copying Vendetti, Zaleski, and Wilson, and attaching a request for an updated analysis of crossover customers of Easton and Combat.

138. On August 2, 2016, Peter Blessing (KPMG) forwarded to Alex Byrne an email from Julie Zaleski and asked Byrne specifically for data regarding fiscal year 2016 sales by

Easton to the three common customers that were flagged in Byrne's Combat audit (Dunham's, Academy, and D-Bat Inc.).

139. Also on August 2, 2016, Byrne sent Zaleski and Helland an email, alerting them to follow-up questions from KPMG regarding Dunham's, Academy and any other customers with non-standard-term contracts involving guaranteed rights of return.

140. On August 3, 2016, the Company, in response to KPMG's direct inquiries, provided the KPMG Audit Team with additional general ledger information regarding manual journal entries related to Dunham's, but with no specific explanation of those entries.

141. Upon reviewing the additional general ledger information, KPMG Audit Team member James Holland noticed a manual journal entry titled "Dunham RTV [return to vendor]." Holland immediately made inquiries of the Company's finance team regarding the Dunham's June 22, 2016 manual journal entry and return.

142. During this time period, Vendetti stated that "we were at a point where everything with Dave [Wilson] was very tense."

143. Upon information and belief, throughout this time period, Vendetti was concerned that the Company would not be able to satisfy KPMG's audit requests timely such that the FYE 2016 Audit could be satisfactorily completed and the Company's annual report and audited financial statements filed with the SEC on or before August 15, 2016.

144. In one internal e-mail exchange on August 2, 2016, Vendetti informed the PSG accounting staff that failing to get KPMG all requested information that day risked the timely completion of the FYE 2016 Audit and would be a "disaster" for the Company.

145. Recognizing that the follow-up inquiries regarding Dunham's accounts with Easton would lead KPMG to discover the Dunham's Guaranteed Sale Contract, Vendetti and

Zaleski considered disclosing the information to KPMG in a memorandum in which the transactions under the Dunham's Guaranteed Sale Contract would be characterized as being part of the Dunham's Consignment (PBS) Arrangement.

146. In a series of internal e-mails on August 4, 2016, Helland, Zaleski and Vendetti exchanged copies of drafts describing the relationship between Dunham's and Easton as one of consignment.

147. Upon information and belief, Vendetti and Zaleski (and Helland) engaged in this internal exercise because the consignment relationship between Dunham's and Easton had already been disclosed to KPMG in April 2016, and they believed that explaining the June 22, 2016 manual journal entry as part of that relationship would be less likely to raise "red flags" for KPMG that, in turn, would prompt demands for additional sampling. Upon information and belief, Vendetti and Zaleski made these decisions under the belief that the KPMG Audit Team would overreact in a negative way to the disclosure of the Dunham's Guaranteed Sale Contract and insist upon additional testing and other measures that could have made completing the FYE 2016 Audit in a timely fashion uncertain. Ultimately, they concluded that the "consignment" explanation would not pass muster and decided that the disclosure had to accurately describe the guaranteed return feature.

148. Accordingly, in the late afternoon of August 4, 2016, after previously advising David Wilson and KPMG that there were no right of return issues at Easton, Vendetti and Zaleski approached Wilson and informed him about the Dunham's Guaranteed Sale Contract and right of return at Easton, and that Easton's Vice President of Sales, Robert Diebold, was aware of the Dunham's Guaranteed Sale Contract at the time that it was entered into in August 2015.

149. Despite this disclosure, Vendetti and Zaleski nonetheless failed to disclose that they had been were aware of the Dunham's Guaranteed Sale Contract as early as May 2016.

150. Wilson informed Vendetti that the Dunham's Guaranteed Sale Contract was a "significant issue" because "Easton [was] a much bigger operation than Combat," and because Diebold was a senior member of the sales group and one of senior management responsible for signing representation letters that were submitted to KPMG on a quarterly basis.

151. The following day, August 5, 2016, the Audit Committee convened an emergency meeting, which was attended by, among others, Wilson and Peter Blessing, of KPMG (both telephonically), Vendetti, and each member of the Audit Committee, and an attorney from the Company's outside counsel, Paul Weiss.

152. At this meeting, Vendetti informed the Audit Committee of the Dunham's Guaranteed Sale Contract at Easton, how the agreement was originally discovered, when the initial accounting treatment was originally corrected, and steps taken to ensure that no other such contracts existed.

153. Upon information and belief, the disclosure to the Audit Committee of when the existence of the Dunham's Guaranteed Sale Contract was discovered was the first time the KPMG Audit Team understood the length of time between discovery and disclosure.

154. On behalf of KPMG, Wilson informed the Audit Committee that the existence and late disclosure of the Dunham's Guaranteed Sale Contract raised certain issues, including (a) whether there were other such contracts with customers at Easton, (b) the integrity of the Easton sales executive who had previously signed management representations letters expressly verifying the opposite, and (c) the steps necessary to satisfy KPMG that the issue was not one that could impact the veracity of the Company's financial statements.

155. Wilson then raised the question regarding steps to be taken by the Audit Committee to confirm whether Easton entered into other such contracts that had not been disclosed to KPMG and about the reliability of the management representation letters that had been provided by Easton's former Vice President of Sales.

156. It was suggested by the Audit Committee that corporate counsel, Paul Weiss, could conduct interviews of Easton's sales personnel and obtain affidavits from them about their sales practices. Wilson agreed such information would be useful, but also "suggested that the Audit Committee consider retaining an independent counsel to review the entire situation." At this time, KPMG was not demanding a full internal investigation and the retention of independent outside counsel.

157. On August 6, 2016, Wilson approached Vendetti in his Exeter, New Hampshire office to specifically discuss the timing between knowledge of the Dunham's Guaranteed Sale Contract and disclosure to KPMG.

158. Vendetti acknowledged that he and the Company's finance team (including Zaleski) were aware of the Dunham's Guaranteed Sale Contract by no later than June 2016, when the manual journal entry correcting and reversing improperly recognized revenue was made.

159. Wilson specifically asked Vendetti why he had not disclosed the existence of the Dunham's Guaranteed Sale Contract earlier, such as when the disclosures regarding the Combat contracts were made. Vendetti responded by saying that he thought that the Dunham's Guaranteed Sale Contract was immaterial and that KPMG would overreact in a negative way to the information.

160. As a result of this revelation following the months of earlier inquiries, Wilson believed that Vendetti and Zaleski had intentionally misrepresented information to KPMG. This, in turn, caused the KPMG Audit Team to lose faith in management's integrity and their representations, which are required as part of the conclusion of the audit process.

161. Wilson and Howard Meltzer, KPMG's securities regulation partner, discussed these issues with Defendants Dea and McDonell on a call later that evening.

162. Following the call, Defendant McDonell asked Vendetti why he had not disclosed the Dunham's Guaranteed Sale Contract to KPMG earlier. Vendetti told McDonell: "[L]ook, I found it, I fixed the situation, that was it, I didn't think I had to take it to these people." This was all the inquiry made by the Audit Committee of the Company's employees. None of the Audit Committee members interviewed Vendetti, Zaleski, Helland, or Byrne to determine the complete picture of the disclosure of the Dunham's Guaranteed Sale Contract in order to determine what, if any, remedial measures were required.

163. The failure to timely and adequately remediate what KPMG found to be the Contract Management Significant Deficiency made it so that no one within the Company could provide KPMG with a credible representation that all of Easton's contracts had been properly reviewed and accounted for.

164. Vendetti and Zaleski failed to timely and appropriately disclose the existence of the Dunham's Guaranteed Sale Contract despite knowing that Dunham's was one of Easton's largest customers and, as such, virtually certain to be a focal point of audit sampling.

165. Vendetti and Zaleski failed to timely and appropriately disclose the Dunham's Guaranteed Sale Contract despite knowing that that contract resulted in initial erroneous

recognition of revenue, later corrected by a manual journal entry, and such manual journal entry would be subject to follow-up inquiry by KPMG if identified in sampling.

166. In reckless disregard for the interests of the Company, Vendetti and Zaleski made the unilateral determination that the Dunham's Guaranteed Sale Contract did not need to be disclosed to the KPMG Audit Team because, in their view, KPMG would react negatively to the disclosure.

167. Vendetti's and Zaleski's decision to not timely disclose the Dunham's Guaranteed Sale Contract to KPMG was reckless and grossly negligent, particularly in the context of the FYE 2016 Audit, as Vendetti and Zaleski were aware, prior to and throughout the FYE 2016 Audit, both that KPMG was focused on what it found to be deficiencies in the Company's contract management controls, and that the Dunham's Guaranteed Sale Contract and the circumstances in which it was entered into were material to the Company's contract management controls and the issues on which KPMG was focused. KPMG had identified the Contract Management Significant Deficiency as early as August 2015, and, in connection with KPMG's interim review of PSG's Q3 2016 close, KPMG identified three significant deficiencies, all of which related to PSG's contract management (*i.e.*, PSG's processes for reviewing customer contracts, identifying terms and conditions, and monitoring customer credit limits were significantly deficient), and informed PSG management that it was planning to test for such deficiencies through the FYE 2016 Audit. Indeed, KPMG's audit plan for the FYE 2016 Audit included a planned evaluation of PSG's control deficiencies.

168. Upon information and belief, Vendetti and Zaleski also failed to disclose to, and/or withheld from, the KPMG Audit Team the existence of the Dunham's Guaranteed Sale Contract because they were concerned that such disclosure could potentially result in the KPMG

Audit Team insisting upon further testing or other measures to ensure no other similar contracts existed and that this might delay or prevent the timely completion of the FYE 2016 Audit.

169. As a result, and in reckless disregard of their responsibilities to the Company, Vendetti and Zaleski risked withholding the existence of the Dunham's Guaranteed Sale Contract in the hope that the KPGM Audit Team would fail to ask the "right" question of the Company's accounting staff that would lead to the discovery of that contract as part of the FYE 2016 Audit.

170. Ultimately the KPMG Audit Team did ask the "right" question regarding Dunham's, but even then Vendetti and Zaleski scrambled to come up with a response that they hoped would obfuscate the true nature of the agreement so as not to jeopardize the timely completion of the FYE 2016 Audit.

171. When Vendetti and Zaleski finally disclosed the actual agreement to the KPMG Audit Team just days before the FYE 2016 Audit was scheduled to be completed, the late disclosure and the explanations given caused the KPMG Audit Team to conclude that Vendetti and Zaleski had intentionally misled them in the hopes of concealing the Dunham's Guaranteed Sale Contract's existence. This caused KPMG to question Vendetti's and Zaleski's integrity, and resulted in KPMG demanding that the Audit Committee conduct an independent investigation into Vendetti's and Zaleski's integrity and the potential for the existence of other such contracts that could in theory materially impact the accuracy of the Company's financial statements. KPMG insisted that this investigation be completed before KPMG would issue its audit report in respect of the FYE 2016 Audit.

172. Following the August 6, 2016 telephone conversation between McDonell and Dea, on the one hand, and Wilson and Meltzer, on the other, Audit Committee members

McDonell, Dea, and Jacobi directed Paul Weiss to prepare a written explanation of the Dunham's issue to be delivered to KPMG at the scheduled August 8, 2016 Audit Committee meeting, as well as a work plan to provide additional information to convince KPMG that there was no issue that materially impacted the veracity of the Company's financial statements.

173. Paul Weiss prepared both documents on August 6 and 7, 2016. The work plan developed by Paul Weiss outlined a series of actions to be completed by no later than August 11, 2016.

174. Neither document was delivered to KPMG at the August 8, 2016 Audit Committee meeting. Instead, at the start of the meeting, KPMG informed the Audit Committee that it would not complete the FYE 2016 Audit without the completion of an internal investigation, conducted by independent outside counsel, into the events surrounding the disclosure of the Dunham's Guaranteed Sale Contract at Easton, including a review of management's integrity with respect to the timing of the disclosure to KPMG.

175. The Audit Committee members responded by initially arguing that the Dunham's Guaranteed Sale Contract was immaterial in amount and that Vendetti's failure to disclose it earlier was at worst a mistake in judgment that should not be a basis for KPMG's insistence on an internal investigation that could delay the timely completion of the FYE 2016 Audit and the filing of the Company's annual report and audited financial statements.

176. KPMG refused to alter its stance and the Audit Committee, at the conclusion of the August 8, 2016 meeting, agreed to retain independent outside counsel to conduct the independent investigation demanded by KPMG (the "**Audit Committee Investigation**"). At the time it agreed to conduct the Audit Committee Investigation, the Audit Committee knew (i) that the deadline for filing the Company's annual report on Form 10-K, including is consolidated

audited financial statements, was August 15, 2016, (ii) that failure to make a timely filing of the annual report would result in a default under the Company's Secured Loans, and (iii) that such a default, would, if not cured within any applicable grace period or extensions otherwise negotiated with its lenders, necessitate the Company filing for bankruptcy.

177. At a meeting of the full Board convened later that day, the Board adopted the recommendation of the Audit Committee with regard to the necessity to conduct an internal investigation as demanded by KPMG.

178. In addition, at the time the Audit Committee and the full Board agreed to conduct the Audit Committee Investigation as a precondition to KPMG completing the FYE 2016 Audit, the Audit Committee members believed that there was no systemic problem with its customer contracts and that its financial statements then under review were in all respects materially accurate. This view was communicated by the Audit Committee to the full Board.

179. As of the time the Audit Committee and full Board agreed to conduct the Audit Committee Investigation, PSG remained a robust operating business. At the time, PSG's common stock was trading at approximately $3.40 per share, implying a market capitalization for PSG's stock of approximately $150,000,000. And, the Company was in good standing with its secured lenders.

180. Despite KPMG's assertion that it had lost faith in management integrity due to the manner in which Vendetti and Zaleski addressed disclosure of the Dunham's Guaranteed Sale Contract, neither the Audit Committee nor the full Board (i) removed Vendetti or Zaleski from their respective positions, (ii) interviewed them in any comprehensive way, or (iii) took any measures to install new personnel that KPMG had experience and faith in, such as former CFO Amir Rosenthal, to execute necessary management representation letters.

181. Moreover, the Audit Committee did not engage in interviews of more than one law firm to secure a firm that would commit to completing the Audit Committee Investigation in a timely manner. Rather, based solely on the recommendation of its Canadian corporate counsel, Stikeman Elliott LLP, the Audit Committee retained Richards Kibbe & Orbe LLP ("**RKO**") on August 10, 2016 in connection with the Audit Committee Investigation. The Audit Committee decided to retain RKO despite the fact that RKO refused to commit to completing the Audit Committee Investigation in a timeframe that would allow the Company to address KPMG's concerns, secure a completed audit, timely file its annual report and audited financial statements, and thereby remain in compliance with its Secured Loans. Indeed, there were discussions regarding whether RKO would accelerate the work plan to accommodate the company's needs to secure KPMG's sign-off on the audit in a timely fashion. RKO decided not to accelerate the work. Thereafter, despite the looming regulatory deadline and the concomitant impact a delay in filing could have on the Company's Secured Loans, neither the Board nor the Audit Committee took any action to ensure that RKO would complete the investigation in a timely manner. Instead, the Board and Audit Committee ignored its fiduciary duty to the company and immediately "threw in the towel" and determined to file for bankruptcy relief, notwithstanding that the Company was otherwise healthy and profitable, and had not previously contemplated filing for bankruptcy.

182. On August 11, 2016, the day after retaining RKO, the Company asked Sagard, its largest shareholder, whether it was interested in "taking the Company private." Sagard indicated that it would "in a heartbeat." The Company thereafter immediately commenced negotiations with Sagard for the purchase of the Company's operating business as a going concern.

183. On August 11, 2016, the Company retained Alvarez & Marsal North America, LLC to assist the Company in preparing for a bankruptcy filing.

184. On August 15, 2016, the Company announced that it would not be filing its fiscal year 2016 annual report and audited financial statements on or before the original August 15, 2016 deadline, or an extended August 29, 2016 deadline. The Company attributed this failure to the decision to conduct the Audit Committee Investigation.

185. On August 19, 2016, the Company retained Centerview Partners LLC as investment banker to market the Company's assets for sale and provide restructuring advice. Centerview focused its initial efforts on negotiating a sale of the Company to, and purchase agreement with, Sagard, which was completed no later than mid-September, 2016.

186. On or around August 25, 2016, the Board considered slowing down or stopping RKO's investigation altogether in light of the decision to file for bankruptcy. The Board decided not to end RKO's investigation at the time because that would require public disclosure.

187. On or about August 29, 2016, the Company announced that it had entered into amendments to the Secured Loans, pursuant to which the Company was granted a 60-day extension (*i.e.*, until October 28, 2016) to provide the Company's fiscal year 2016 annual report and consolidated audited financial statements, the failure of which would result in an immediate event of default under the Secured Loans.

188. Internal investigations like the one demanded by KPMG are not an infrequent occurrence for publicly-traded companies and are routinely conducted and completed under extremely tight deadlines.

189. Despite PSG receiving a 60-day extension from its lenders, neither the Audit Committee nor the Board took any steps to ensure the timely completion of the Audit Committee

Investigation so that the FYE 2016 Audit could be completed, the annual report filed, and the Secured Loan default avoided. Indeed, as of August 29, 2016, the Audit Committee Investigation had not yet materially progressed. For example, neither Vendetti nor Zaleski (nor Helland, Byrne, or Tadros) had been interviewed at that time in connection with the investigation.

190. At the time that KPMG demanded that an investigation take place, no one within the Company believed that there was any material problem with the Company's customer contracts or the accuracy of the Company's financial statements. Rather, all of the Company's officers and Board members believed that KPMG was overreacting to the circumstances surrounding the disclosure of the Dunham's Guaranteed Sale Contract.

191. Despite this belief, instead of ensuring that the Audit Committee Investigation was completed in a timely manner, the decision was made to immediately plan for a bankruptcy filing and the sale of the Company's business.

192. Upon information and belief, the internal investigation conducted by RKO was never intended by the Audit Committee or the Board to be completed in a timeframe that would allow for the completion of the FYE 2016 Audit, the filing of the Company's annual report and audited financial statements, and the avoidance of a Secured Loan default.

193. The over $6 million dollars expended by the Company on the investigation amounted to a waste of corporate assets.

194. In fact, much of the critical investigatory work undertaken by RKO, including the interviews of relevant witnesses, was not performed until after the Company had filed for bankruptcy protection, entered into a stalking horse agreement for the sale of the Company's operating business, participated in a bankruptcy-run auction process, and signed a definitive

agreement with the ultimate buyer of the Company's operating business. For example, none of Vendetti, Zaleski, Helland, Byrne, or Tadros was interviewed until February 2017, months after the purpose of the investigation was rendered meaningless by subsequent events.

195. The members of both the Audit Committee and the full Board consciously chose to disregard their fiduciary responsibilities of loyalty and good faith to the Company and its shareholders by failing to perform duties that were incumbent upon them and necessary for the continuing health and viability of the Company. The Audit Committee and Board knowingly chose to steer the Company down a path that was designed to lead to the Company filing for bankruptcy, despite the fact that the Company was in good financial health at the time. Specifically, both the Audit Committee and the Board failed to ensure or even attempt to ensure that the Audit Committee Investigation and, in turn, the FYE 2016 Audit was timely completed. This failure resulted in the FYE 2016 Audit remaining uncompleted and the Company's annual report and financial statements unfiled as of October 28, 2016. Accordingly, an immediate event of default occurred under the Secured Loans as of October 28, 2016.

196. As a result, on October 31, 2016, the Company and all of its U.S. and Canadian subsidiaries filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**"), and commenced creditor protection proceedings under the Companies' Creditors Arrangement Act in the Ontario Superior Court of Justice (Commercial List) (the "**Canadian Court**").

197. According to the Company, the "most significant[]" cause of its bankruptcy filings was its failure to "file [its] Annual Report, including [its] annual audited financial statements for the fiscal year ended May 31, 2016, by the required filing date. . . ."

198. Also on October 31, 2016, the Company entered into a "stalking horse" asset purchase agreement (the "**Purchase Agreement**") with 9938982 Canada Inc. (the "**Purchaser**"), an acquisition entity co-owned by Sagard and Fairfax Financial Holdings Limited, pursuant to which the Purchaser agreed to purchase substantially all of the Company's assets for aggregate gross consideration of approximately $575,000,000, subject to certain adjustments, set-offs, and/or reductions (including with respect to certain capitalized lease obligations). After repayment of the Company's funded debt and unsecured liabilities, the purchase price agreed to represented substantially less than the Company's pre-bankruptcy market capitalization and the total enterprise value of the Company.

199. On February 6, 2017, the Bankruptcy Court and Canadian Court entered orders approving the sale of substantially all of the Company's assets to the Purchaser pursuant to the Purchase Agreement (as modified, amended, and/or supplemented), which sale closed effective as of February 28, 2017. As of that date, the Company substantially ceased all business operations.

200. On or about March 27, 2017, RKO conveyed an oral report to the Audit Committee, attended by KPMG, summarizing the results and conclusions from its investigation to date, and announcing that no further investigation would be conducted as the purpose was mooted by the sale.

201. On March 27, 2017, KPMG resigned as the Company's auditor pursuant to a letter written in conformance with Section 10A of the Securities Exchange Act of 1934. KPMG identified as reasons for its withdrawal: (1) potential illegal acts by PSG officers and/or Board members; (2) an inadequate investigation by RKO; and (3) failure to remediate the issues raised by KPMG.

202. On December 20, 2017, the Bankruptcy Court and Canadian Court entered orders confirming the Company's Chapter 11 Plan.

203. On December 21, 2017, the Plan went effective, PSG and the Trust were established, all of the Company's remaining assets were vested jointly in PSG and the Trust, and the Trustee was appointed Litigation Representative for PSG and the Trust, with all of the rights, powers, and interests as set forth in the Confirmation Order, the Plan, and the Liquidation Trust Agreement.

204. As a direct and proximate result of the breaches of duty by the defendants, PSG incurred substantial damages including:

(a) over $6 million in costs, fees, and expenses incurred in conducting the useless and unnecessary Audit Committee Investigation;

(b) over $62 million in costs, fees, and expenses arising from the Company's unnecessary bankruptcy filings in the U.S. and Canada; and

(c) substantial damages arising from the forced distressed sale of the Company's assets for substantially less than the intrinsic value of such assets.

FIRST CAUSE OF ACTION

(Breach of Fiduciary Duty of Care – Defendants Vendetti, as CFO of PSG and the PSG Subsidiaries, and Zaleski, as Controller and Treasurer of PSG and the PSG Subsidiaries)

205. Plaintiff repeats and realleges the foregoing paragraphs, which are incorporated by reference as if fully set forth herein.

206. As officers of PSG and the PSG Subsidiaries, Defendants Vendetti and Zaleski owed fiduciary duties of care to PSG and the PSG Subsidiaries.

207. Defendants Vendetti and/or Zaleski breached their fiduciary duties to PSG and the PSG Subsidiaries, and acted grossly negligent and with reckless disregard for the interests of the Company when, among other things:

(a) Vendetti and Zaleski failed to disclose to, and/or withheld from, KPMG the existence of the Dunham's Guaranteed Sale Contract in May 2016 after being informed of the same by Ricky Helland and meeting and discussing the issue with Helland;

(b) Vendetti and Zaleski failed to disclose to, and/or withheld from, KPMG the existence of the Dunham's Guaranteed Sale Contract in June 2016 after Zaleski ordered Rickey Helland to reverse the Dunham's November 25, 2015 transaction through a manual journal entry on June 22, 2016 because of the right of return attributes under the Dunham's Guaranteed Sale Contract;

(c) Vendetti and Zaleski failed to disclose to, and/or withheld from, KPMG the existence of the Dunham's Guaranteed Sale Contract in June 2016 after being informed in connection with the Combat internal audit that Dunham's also had a right of return under a customer agreement with Combat;

(d) Vendetti and Zaleski failed to disclose to, and/or withheld from, KPMG the existence of the Dunham's Guaranteed Sale Contract in July 2016 after informing KPMG of the Dunham's right of return at Combat;

(e) Zaleski failed to disclose to, and/or withheld from, KPMG the existence of the Dunham's Guaranteed Sale Contract in July 2016 after David Wilson inquired about the Company's return policy and whether the Company was granting any rights of return other than customer accommodations;

(f) Vendetti failed to disclose to, and/or withheld from, KPMG the existence of the Dunham's Guaranteed Sale Contract on July 28, 2016 after David Wilson asked Vendetti whether any customers of Easton, including Dunham's, had a right of return or similar attribute;

(g) Vendetti and Zaleski failed to disclose to, and/or withheld from, KPMG the existence of the Dunham's Guaranteed Sale Contract between July 28, 2016 and August 4, 2016, despite repeated inquiries from KPMG regarding whether any crossover customers between Easton and Combat (including Dunham's) had a right of return or similar attribute at Easton; and

(h) Vendetti and Zaleski repeatedly failed to correct the erroneous representations made to KPMG in April 2016 that, except for the $200,000 that was reversed in March 2016, the accounts receivable balance attributable to Dunham's represented standard-term contract sales with no right of return attribute, notwithstanding that Vendetti and Zaleski knew by no later than May 2016 that such representations were erroneous.

208. Vendetti and Zaleski failed to consider that KPMG would have required timely disclosure of the Dunham's Guaranteed Sale Contract in order to complete the FYE 2016 Audit, and that withholding this information from KPMG could raise concerns regarding management integrity if the issue were to be subsequently discovered. Vendetti and Zaleski also failed to

consider that it would have been in the best interests of the Company to disclose this information to KPMG as soon as practicable so as to avoid any delays in completion of the FYE 2016 Audit.

209. An ordinarily careful and prudent CFO and Controller under similar circumstances, including with the knowledge that KPMG was conducting a more detailed and rigorous FYE 2016 Audit, would have known that they had a duty to disclose the existence of the Dunham's Guaranteed Sale Contract to KPMG as soon as they became aware of such agreement.

210. But for Vendetti's and Zaleski's failure to timely disclose and forthrightly answer KPMG's questions regarding non-standard-term contracts at Easton, KPMG would not have required the Company to conduct an independent investigation of management integrity.

211. But for Vendetti's and Zaleski's breaches of fiduciary duty, the Company would have been able to timely file its annual report on Form 10-K, including its consolidated audited financial statements either on or before August 15, 2016, or within any extensions reasonably obtainable, timely provide the same to the secured lenders under the Secured Loans, and, thus, would not have filed for bankruptcy protection or sold its operating business.

212. Prior to Vendetti's and Zaleski's breaches of fiduciary duty, the Company was experiencing no liquidity issues that would have led it to bankruptcy; was not contemplating filing for bankruptcy; had not retained any restructuring professionals; and was not in default under any of the Company's Secured Loans.

213. Vendetti's and Zaleski's breaches of their fiduciary duties resulted in damages to PSG, the PSG Subsidiaries, and their businesses and prospects as set forth herein, in an amount to be determined at trial.

SECOND CAUSE OF ACTION

(Breach of Fiduciary Duty of Loyalty and Good Faith – Defendants Vendetti, as CFO of PSG and the PSG Subsidiaries, and Zaleski, as Controller and Treasurer of PSG and the PSG Subsidiaries)

214. Plaintiff repeats and realleges the foregoing paragraphs, which are incorporated by reference as if fully set forth herein.

215. As officers of PSG and the PSG Subsidiaries, Defendants Vendetti and Zaleski owed fiduciary duties of care to PSG and the PSG Subsidiaries.

216. Vendetti and Zaleski breached their fiduciary duties to PSG and the PSG Subsidiaries, and acted with conscious disregard for their duties and not in the best interests of the Company, when, among other things:

(a) Vendetti and Zaleski failed to disclose to, and/or withheld from, KPMG the existence of the Dunham's Guaranteed Sale Contract in May 2016 after being informed of the same by Ricky Helland and meeting and discussing the issue with Helland;

(b) Vendetti and Zaleski failed to disclose to, and/or withheld from, KPMG the existence of the Dunham's Guaranteed Sale Contract in June 2016 after Zaleski ordered Rickey Helland to reverse the Dunham's November 25, 2015 transaction through a manual journal entry on June 22, 2016 because of the right of return attributes under the Dunham's Guaranteed Sale Contract;

(c) Vendetti and Zaleski failed to disclose to, and/or withheld from, KPMG the existence of the Dunham's Guaranteed Sale Contract in June 2016 after being informed in connection with the Combat internal audit that

Dunham's also had a right of return under a customer agreement with Combat;

(d) Vendetti and Zaleski failed to disclose to, and/or withheld from, KPMG the existence of the Dunham's Guaranteed Sale Contract in July 2016 after informing KPMG of the Dunham's right of return at Combat;

(e) Zaleski failed to disclose to, and/or withheld from, KPMG the existence of the Dunham's Guaranteed Sale Contract in July 2016 after David Wilson inquired about the Company's return policy and whether the Company was granting any rights of return other than customer accommodations;

(f) Vendetti failed to disclose to, and/or withheld from, KPMG the existence of the Dunham's Guaranteed Sale Contract on July 28, 2016 after David Wilson asked Vendetti whether any customers of Easton, including Dunham's, had a right of return or similar attribute;

(g) Vendetti and Zaleski failed to disclose to, and/or withheld from, KPMG the existence of the Dunham's Guaranteed Sale Contract between July 28, 2016 and August 4, 2016, despite repeated inquiries from KPMG regarding whether any crossover customers between Easton and Combat (including Dunham's) had a right of return or similar attribute at Easton; and

(h) Vendetti and Zaleski repeatedly failed to correct the erroneous representations made to KPMG in April 2016 that, except for the $200,000 that was reversed in March 2016, the accounts receivable balance attributable to Dunham's represented ordinary retail sales with no right of return attribute, notwithstanding that Vendetti and Zaleski knew by no later than May 2016 that such representations were erroneous.

217. Vendetti and Zaleski failed to consider that KPMG would have required timely disclosure of the Dunham's Guaranteed Sale Contract in order to complete the FYE 2016 Audit, and that withholding this information from KPMG could raise concerns regarding management integrity if the issue were to be subsequently discovered. Vendetti and Zaleski also failed to consider that it would have been in the best interests of the Company to disclose this information to KPMG as soon as practicable so as to avoid any delays in completion of the FYE 2016 Audit.

218. An ordinarily careful and prudent CFO and Controller under similar circumstances, including with the knowledge that KPMG was conducting a more detailed and rigorous FYE 2016 Audit, would have known that they had a duty to disclose the existence of the Dunham's Guaranteed Sale Contract to KPMG as soon as they became aware of such agreement.

219. But for Vendetti's and Zaleski's failure to timely disclose and forthrightly answer KPMG's questions regarding non-standard-term contracts at Easton, KPMG would not have required the Company to conduct an independent investigation of management integrity.

220. But for Vendetti's and Zaleski's breaches of fiduciary duty, the Company would have been able to timely file its annual report on Form 10-K, including its consolidated audited financial statements either on or before August 15, 2016, or within any extensions reasonably obtainable, timely provide the same to the secured lenders under the Secured Loans, and, thus, would not have filed for bankruptcy protection or sold its operating business.

221. Prior to Vendetti's and Zaleski's breaches of fiduciary duty, the Company was experiencing no liquidity issues that would have led it to bankruptcy; was not contemplating

filing for bankruptcy; had not retained any restructuring professionals; and was not in default under any of the Company's Secured Loans.

222. Vendetti's and Zaleski's breaches of their fiduciary duties resulted in damages to the Company and its business and prospects as set forth herein, in an amount to be determined at trial.

THIRD CAUSE OF ACTION

(Breach of Fiduciary Duty and Duty of Care – British Columbia Business Corporations Act Section 142 – Defendants Vendetti, as CFO of PSG, and Zaleski, as Controller and Treasurer of PSG)

223. Plaintiff repeats and realleges the foregoing paragraphs, which are incorporated by reference as if fully set forth herein.

224. As officers of PSG, Defendants Vendetti and Zaleski owed fiduciary duties to PSG pursuant to Section 142 of the British Columbia Business Corporations Act ("**BCBCA**") and an obligation to satisfy their duties of care in tort owed to PSG under the common law of British Columbia by, pursuant to Section 142 of the BCBCA, exercising care, diligence and skill that a reasonably prudent individual would exercise in comparable circumstances.

225. Defendants Vendetti and/or Zaleski breached their fiduciary duties and acted grossly negligent and with reckless disregard for the interests of the Company when, among other things:

(a) Vendetti and Zaleski failed to disclose to, and/or withheld from, KPMG the existence of the Dunham's Guaranteed Sale Contract in May 2016 after being informed of the same by Ricky Helland and meeting and discussing the issue with Helland;

(b) Vendetti and Zaleski failed to disclose to, and/or withheld from, KPMG the existence of the Dunham's Guaranteed Sale Contract in June 2016 after Zaleski ordered Ricky Helland to reverse the Dunham's November 25, 2015 transaction through a manual journal entry on June 22, 2016 because of the right of return attributes under the Dunham's Guaranteed Sale Contract;

(c) Vendetti and Zaleski failed to disclose to, and/or withheld from, KPMG the existence of the Dunham's Guaranteed Sale Contract in June 2016 after being informed in connection with the Combat internal audit that Dunham's also had a right of return under a customer agreement with Combat;

(d) Vendetti and Zaleski failed to disclose to, and/or withheld from, KPMG the existence of the Dunham's Guaranteed Sale Contract in July 2016 after informing KPMG of the Dunham's right of return at Combat;

(e) Zaleski failed to disclose to, and/or withheld from, KPMG the existence of the Dunham's Guaranteed Sale Contract in July 2016 after David Wilson inquired about the Company's return policy and whether the Company was granting any rights of return other than customer accommodations;

(f) Vendetti failed to disclose to, and/or withheld from, KPMG the existence of the Dunham's Guaranteed Sale Contract on July 28, 2016 after David Wilson asked Vendetti whether any customers of Easton, including Dunham's, had a right of return or similar attribute;

(g) Vendetti and Zaleski failed to disclose to, and/or withheld from, KPMG the existence of the Dunham's Guaranteed Sale Contract between July 28, 2016 and August 4, 2016, despite repeated inquiries from KPMG regarding whether any crossover customers between Easton and Combat (including Dunham's) had a right of return or similar attribute at Easton; and

(h) Vendetti and Zaleski repeatedly failed to correct the erroneous representations made to KPMG in April 2016 that, except for the $200,000 that was reversed in March 2016, the accounts receivable balance attributable to Dunham's represented standard-term contract sales with no right of return attribute, notwithstanding that Vendetti and Zaleski knew by no later than May 2016 that such representations were erroneous.

226. Vendetti and Zaleski failed to consider that KPMG would have required timely disclosure of the Dunham's Guaranteed Sale Contract in order to complete the FYE 2016 Audit, and that withholding this information from KPMG could raise concerns regarding management integrity if the issue were to be subsequently discovered. Vendetti and Zaleski also failed to consider that it would have been in the best interests of the Company to disclose this information to KPMG as soon as practicable so as to avoid any delays in completion of the FYE 2016 Audit.

227. An ordinarily careful and prudent CFO and Controller under similar circumstances, including with the knowledge that KPMG was conducting a more detailed and rigorous FYE 2016 Audit, would have disclosed the existence of the Dunham's Guaranteed Sale Contract to KPMG as soon as they became aware of such agreement.

228. But for Vendetti's and Zaleski's failure to timely disclose and forthrightly answer KPMG's questions regarding non-standard-term contracts at Easton, KPMG would not have required the Company to conduct an independent investigation of management integrity.

229. But for Vendetti's and Zaleski's breaches of fiduciary duty, the Company would have been able to timely file its annual report on Form 10-K, including its consolidated audited financial statements either on or before August 15, 2016, or within any extensions reasonably obtainable, timely provide the same to the secured lenders under the Secured Loans, and, thus, would not have filed for bankruptcy protection or sold its operating business.

230. Prior to Vendetti's and Zaleski's breaches of fiduciary duty, the Company was experiencing no liquidity issues that would have led it to bankruptcy; was not contemplating filing for bankruptcy; had not retained any restructuring professionals; and was not in default under any of the Company's Secured Loans.

231. Vendetti's and Zaleski's breaches of their fiduciary duties and duties of care prescribed by Section 142 of the BCBCA resulted in damages to PSG and its business and prospects as set forth herein, in an amount to be determined at trial.

FOURTH CAUSE OF ACTION

**(Breach of Fiduciary Duty of Loyalty and Good Faith –
Defendants Barsa, Dea, Jacobi, Mannelly, McDonell, and Nicholson, as Directors of PSG, and with respect to Dea, Mannelly, and McDonell, as members of the Audit Committee)**

232. Plaintiff repeats and realleges the foregoing paragraphs, which are incorporated by reference as if fully set forth herein.

233. Defendants Barsa, Dea, Jacobi, Mannelly, McDonell, and Nicholson owed fiduciary duties of loyalty and good faith to PSG as directors of PSG and, with respect to Dea, Mannelly, and McDonell, also as members of the Audit Committee.

234. As alleged herein, Defendants Barsa, Dea, Jacobi, Mannelly, McDonell, and Nicholson breached their fiduciary duties when, among other things:

(a) The members of the Audit Committee and, subsequently, the full Board acceded to KPMG's demand for the Audit Committee Investigation as a precondition to completion of the FYE 2016 Audit, but thereafter completely abdicated their duties to ensure the timely completion of the Audit Committee Investigation and, in turn, the FYE 2016 Audit;

(b) Neither the Audit Committee nor the full Board removed Vendetti or Zaleski from their respective positions, despite KPMG's assertion that it had lost faith in management integrity due to the manner in which Vendetti and Zaleski addressed disclosure of the Dunham's Guaranteed Sale Contract;

(c) Neither the Audit Committee nor the full Board interviewed Vendetti or Zaleski in any comprehensive way, or took any measures to install new personnel that KPMG had experience and faith in to execute necessary management representation letters;

(d) Neither the Audit Committee nor the full Board retained a law firm with both the experience and resources necessary to complete the Audit Committee Investigation in a timely manner; rather, based solely on the recommendation of Canadian corporate counsel Stikeman Elliott LLP, the Audit Committee determined to retain RKO to conduct the Audit Committee Investigation, despite the fact that RKO refused to commit to completing the Audit Committee Investigation in a timeframe that would allow the Company to address KPMG's concerns, secure a completed FYE 2016 Audit, timely file its annual report, and remain in compliance with the financial covenants under the Secured Loans; and

(e) The Audit Committee and the Board thereafter failed to take reasonable steps to ensure that the Audit Committee Investigation was timely completed so that the FYE 2016 Audit could be timely completed, the annual report filed, and a Secured Loan default avoided.

235. As alleged herein, but for the breaches of fiduciary duty of Defendants Barsa, Dea, Jacobi, Mannelly, McDonell, and Nicholson, the Audit Committee and Board would have been able to ensure the timely completion of the Audit Committee Investigation; the Company would have been able to timely complete the FYE 2016 Audit; the Company would have been able to timely file its annual report on Form 10-K, including its consolidated audited financial statements, on or before October 28, 2016 and would have been able to provide the same to their secured lenders; and, as a result, the Company would not have needed to file their bankruptcy cases in October 2018; and, instead, would have been able to avoid filing their bankruptcy cases and continue operating as a going concern.

236. Barsa's, Dea's, Jacobi's, Mannelly's, McDonell's, and Nicholson's breaches of their fiduciary duties resulted in damages to PSG, the PSG Subsidiaries, and their businesses and prospects as set forth herein, in an amount to be determined at trial.

FIFTH CAUSE OF ACTION

(Breach of Fiduciary Duty and Duty of Care – British Columbia Business Corporations Act Section 142 – Defendants Barsa, Dea, Jacobi, Mannelly, McDonell, and Nicholson, as Directors of PSG, and with respect to Dea, Mannelly, and McDonell, as members of the Audit Committee)

237. Plaintiff repeats and realleges the foregoing paragraphs, which are incorporated by reference as if fully set forth herein.

238. Defendants Barsa, Dea, Jacobi, Mannelly, McDonell, and Nicholson owed fiduciary duties to PSG, as directors of PSG and, with respect to Dea, Mannelly, and McDonell,

also as members of the Audit Committee, pursuant to Section 142 of the BCBCA and an obligation to satisfy their duties of care in tort owed to PSG under the common law of British Columbia by, pursuant to Section 142 of the BCBCA, exercising diligence and skill that a reasonably prudent individual would exercise in comparable circumstances.

239. As alleged herein, Defendants Barsa, Dea, Jacobi, Mannelly, McDonell, and Nicholson breached their fiduciary duties and duties of care owed to the Company when, among other things:

(a) The members of the Board and Audit Committee failed to timely or adequately remediate, or ensure the timely or adequate remediation of, what KPMG found to be the Contract Management Significant Deficiency, or otherwise ensure that the Company's contract management function adequately identified the material terms of the Company's customer contracts, to ensure that the Company's finance function was able to adequately monitor and account for the same.

(b) The members of the Board and Audit Committee failed to adequately oversee the FYE 2016 Audit, and failed to take reasonable steps to ensure the timely completion of the FYE 2016 Audit, including, without limitation, after being advised of the Combat audit results at the July 26, 2016 Audit Committee meeting, failing to inquire as to, or instruct the Company's management to investigate, whether any contracts with rights of return or similar attributes existed at Easton or any of the Company's other divisions.

(c) The members of the Audit Committee and, subsequently, the full Board acceded to KPMG's demand for the Audit Committee Investigation as a precondition to completion of the FYE 2016 Audit, but thereafter completely abdicated their duties to ensure the timely completion of the Audit Committee Investigation and, in turn, the FYE 2016 Audit;

(d) Neither the Audit Committee nor the full Board removed Vendetti or Zaleski from their respective positions, despite KPMG's assertion that it had lost faith in management integrity due to the manner in which Vendetti and Zaleski addressed disclosure of the Dunham's Guaranteed Sale Contract;

(e) Neither the Audit Committee nor the full Board interviewed Vendetti or Zaleski in any comprehensive way, or took any measures to install new personnel that KPMG had experience and faith in to execute necessary management representation letters;

(f) Neither the Audit Committee nor the full Board retained a law firm with both the experience and resources necessary to complete the Audit Committee Investigation in a timely manner; rather, based solely on the recommendation of Canadian corporate counsel Stikeman Elliott LLP, the Audit Committee determined to retain RKO to conduct the Audit Committee Investigation, despite the fact that RKO refused to commit to completing the Audit Committee Investigation in a timeframe that would allow the Company to address KPMG's concerns, secure a completed

FYE 2016 Audit, timely file its annual report, and remain in compliance with the financial covenants under the Secured Loans; and

(g) The Audit Committee and the Board thereafter failed to take reasonable steps to ensure that the Audit Committee Investigation was timely completed so that the FYE 2016 Audit could be timely completed, the annual report filed, and a Secured Loan default avoided.

240. As alleged herein, but for the breaches of fiduciary duties and duties of care of Defendants Barsa, Dea, Jacobi, Mannelly, McDonell, and Nicholson, the Audit Committee and Board would have been able to ensure the timely completion of the Audit Committee Investigation; the Company would have been able to timely complete the FYE 2016 Audit; the Company would have been able to timely file its annual report on Form 10-K, including its consolidated audited financial statements, on or before October 28, 2016 and would have been able to provide the same to their secured lenders; and, as a result, the Company would not have needed to file their bankruptcy cases in October 2018; and, instead, would have been able to avoid filing their bankruptcy cases and continue operating as a going concern.

241. Barsa's, Dea's, Jacobi's, Mannelly's, McDonell's, and Nicholson's breaches of their fiduciary duties and duties of care resulted in damages to PSG, the PSG Subsidiaries, and their businesses and prospects as set forth herein, in an amount to be determined at trial.

SIXTH CAUSE OF ACTION

(Corporate Waste – Defendants Barsa, Dea, Jacobi, Mannelly, McDonell, and Nicholson, as Directors of PSG, and with respect to Dea, Mannelly, and McDonell, as members of the Audit Committee)

242. Plaintiff repeats and realleges the foregoing paragraphs, which are incorporated by reference as if fully set forth herein.

243. Defendants Barsa, Dea, Jacobi, Mannelly, McDonell, and Nicholson owed fiduciary duties of loyalty and good faith to PSG as directors of PSG and, with respect to Dea, Mannelly, and McDonell, also as members of the Audit Committee.

244. As alleged herein, Defendants Barsa, Dea, Jacobi, Mannelly, McDonell, and Nicholson breached their duties when, among other things:

(a) The members of the Audit Committee and, subsequently, the full Board acceded to KPMG's demand for the Audit Committee Investigation as a precondition to completion of the FYE 2016 Audit, but thereafter completely abdicated their duties to ensure the timely completion of the Audit Committee Investigation and, in turn, the FYE 2016 Audit;

(b) Neither the Audit Committee nor the full Board removed Vendetti or Zaleski from their respective positions, despite KPMG's assertion that it had lost faith in management integrity due to the manner in which Vendetti and Zaleski addressed disclosure of the Dunham's Guaranteed Sale Contract;

(c) Neither the Audit Committee nor the full Board interviewed Vendetti or Zaleski in any comprehensive way, or took any measures to install new personnel that KPMG had experience and faith in to execute necessary management representation letters;

(d) Neither the Audit Committee nor the full Board retained a law firm with both the experience and resources necessary to complete the Audit Committee Investigation in a timely manner; rather, based solely on the recommendation of Canadian corporate counsel Stikeman Elliott LLP, the

Audit Committee determined to retain RKO to conduct the Audit Committee Investigation, despite the fact that RKO refused to commit to completing the Audit Committee Investigation in a timeframe that would allow the Company to address KPMG's concerns, secure a completed FYE 2016 Audit, timely file its annual report, and remain in compliance with the financial covenants under the Secured Loans; and

(e) The Audit Committee and the Board thereafter failed to take reasonable steps to ensure that the Audit Committee Investigation was timely completed so that the FYE 2016 Audit could be timely completed, the annual report filed, and a Secured Loan default avoided.

245. The Company received nothing of value from the Audit Committee Investigation. The substance of the Audit Committee Investigation was not completed until long after the Company determined to file for bankruptcy relief, negotiated a stalking horse agreement for the sale of its assets, conducted a sale process for such assets, sought approval of the sale of its assets to the stalking horse purchaser, and, thereafter, ceased material operations. Accordingly, the Audit Committee Investigation served no corporate purpose and was beyond the bounds of reasonable business judgment.

246. Through these and other wrongful actions alleged herein, Barsa, Dea, Jacobi, Mannelly, McDonell, and Nicholson wasted corporate assets by egregiously and irrationally squandering millions of dollars on a useless and unnecessary Audit Committee Investigation at a time when the Board had already decided to pursue bankruptcy and a sale of substantially all of the Company's assets, and had no intention of completing the FYE 2016 Audit.

247. Barsa's, Dea's, Jacobi's, Mannelly's, McDonell's, and Nicholson's waste of corporate assets resulted in damages to the Company and its business and prospects as set forth herein, in an amount to be determined at trial.

ATTORNEYS' FEES AND COSTS

248. To the extent allowable by applicable law, Plaintiff requests that the Court award reasonable attorneys' fees and costs.

JURY TRIAL

249. Plaintiff demands a jury trial on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, by reason of the foregoing, Plaintiff requests that the Court grant the following relief:

(a) On Count I, entering judgment against Defendants Vendetti and Zaleski, finding that Defendants breached their fiduciary duties of care to the Company, and awarding damages as a result of such conduct in an amount to be determined at trial.

(b) On Count II, entering judgment against Defendants Vendetti and Zaleski, finding that Defendants breached their fiduciary duties of loyalty and good faith to the Company, and awarding damages as a result of such conduct in an amount to be determined at trial.

(c) On Count III, entering judgment against Defendants Vendetti and Zaleski, finding that Defendants breached their fiduciary duties and duties of care owed to the Company pursuant to Section 142 of the BCBCA, and awarding damages as a result of such conduct in an amount to be determined at trial.

(d) On Count IV, entering judgment against Defendants Barsa, Dea, Jacobi, Mannelly, McDonell, and Nicholson, finding that Defendants breached their fiduciary duties of loyalty and good faith to the Company, and awarding damages as a result of such conduct in an amount to be determined at trial.

(e) On Count V, entering judgment against Defendants Barsa, Dea, Jacobi, Mannelly, McDonell, and Nicholson, finding that Defendants breached their fiduciary duties and duties of care owed to the Company pursuant to Section 142 of the BCBCA, and awarding damages as a result of such conduct in an amount to be determined at trial.

(f) On Count VI, entering judgment against Defendants Barsa, Dea, Jacobi, Mannelly, McDonell, and Nicholson, finding that Defendants committed corporate waste, and awarding damages as a result of such conduct in an amount to be determined at trial.

[Remainder of page intentionally left blank.]

Dated: November 22, 2019

HOGAN MCDANIEL

/s/ Garvan McDaniel

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Counsel to Theseus Strategy Group LLC, in its capacity as Litigation Representative for Old PSG and the PSG Trust

TAB D

This is Exhibit "D" referred to in the affidavit

of MARK PALMER

sworn before me this day of December, 2019.

Notary

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

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE MADAM	)	MONDAY, THE 3rd
	)	
JUSTICE CHIAPPETTA	)	DAY OF DECEMBER, 2018
	)	

SUPERIOR COURT OF JUSTICE
COUR SUPÉRIEURE DE JUSTICE

B E T W E E N :

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 SPSUSH INC., OLD EBS INC., OLD PLG INC., AND OLD PSGI INC.

Applicants

ORDER

THIS MOTION, made by 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 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**") for an extension of the Stay Period (as defined in the CCAA Initial Order dated October 31, 2016) to June 30, 2019, was heard this day at 330 University Avenue, Toronto Ontario.

ON READING the motion record of the Applicants, the Factum and Authorities of the Applicants, the Thirteenth Report of the Monitor, and on hearing the submissions of the lawyers for the Applicants and the lawyers for the Monitor:

1. THIS COURT ORDERS that the Stay Period, as defined in the CCAA Initial Order, is hereby further extended to June 30, 2019.

SUPERIOR COURT OF JUSTICE
ENTERED

DEC 04 2018

RW

COUR SUPÉRIEURE DE JUSTICE
ENTRÉ

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF OLD PSG WIND-DOWN LTD., et al.
Applicants

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

ORDER

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Lawyers for the Applicants

TAB E

This is Exhibit "E" referred to in the affidavit of

MARK PALMER

sworn before me this day of December, 2019.

Notary

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE ~~MADAM~~ MR.	)	WEDNESDAY, THE 26TH
	)	
JUSTICE ~~CHIAPPETTA~~ PENNY	)	DAY OF JUNE, 2019
	)	

NAP

SUPERIOR COURT OF JUSTICE
COUR SUPÉRIEURE DE JUSTICE

B E T W E E N :

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 SPSUSH INC., OLD EBS INC., OLD PLG INC., AND OLD PSGI INC.

Applicants

ORDER

THIS MOTION, made by 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 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**") for an extension of the Stay Period (as defined in the CCAA Initial Order dated October 31, 2016) to December 31, 2019, was heard this day at 330 University Avenue, Toronto Ontario.

ON READING the motion record of the Applicants, the Factum and Authorities of the Applicants, the Fourteenth Report of the Monitor, and on hearing the submissions of the lawyers for the Applicants and the lawyers for the Monitor:

1. THIS COURT ORDERS that the Stay Period, as defined in the CCAA Initial Order, is hereby further extended to December 31, 2019.

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

JUN 2 6 2019

PER / PAR:

SUPERIOR COURT OF JUSTICE
COUR SUPÉRIEURE DE JUSTICE
RECEIVED/REÇU

JUN 2 6 2019

LOCAL REGISTRAR / GREFFIER LOCAL

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF OLD PSG WIND-DOWN LTD., et al.
Applicants

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

ORDER

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AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF OLD PSG WIND-DOWN LTD., et al.
Applicants

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

AFFIDAVIT OF MARK PALMER
(Sworn December , 2019)

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AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF OLD PSG WIND-DOWN LTD., et al.
Applicants

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

MOTION RECORD OF THE MOVING APPLICANTS
(Returnable December 13, 2019)

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