

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

No: 500-11-058761-202

DATE: September 14, 2020

PRESIDING: THE HONOURABLE MARTIN CASTONGUAY, J.S.C.

**IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:
LES ENTREPRISES ERNEST (MTL) LTÉE / ERNEST ENTERPRISES (MTL) LTD.**

Applicant

and-

ERNST & YOUNG INC.

Monitor

AMENDED AND RESTATED INITIAL ORDER

ON READING the Application of Les Entreprises Ernest (MTL) Ltée. / Ernest Entreprise (MTL) LTD. (the "**Applicant**") for the issuance of (i) a First-Day Initial Order and (ii) An Amended and Restated Initial Order pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C-36 (as amended the "**CCAA**") and the exhibits and the affidavit filed in support thereof (the "**Application**"), the consent of Ernst & Young Inc., a licensed insolvency trustee, to act as monitor (the "**Monitor**"), relying upon the submissions of counsel and being advised that the interested parties, including secured creditors who

are likely to be affected by the charges created herein were given prior notice of the presentation of the Application;

GIVEN the provisions of the CCAA;

WHEREFORE, THE COURT:

1. **GRANTS** the Application.
2. **ISSUES** an order pursuant to the CCAA (the "Order"), divided under the following headings:
 - Service
 - Application of the CCAA
 - Effective Time
 - Plan of Arrangement
 - Stay of Proceedings against the Applicant and the Property and Unaffected Creditors
 - Stay of Proceedings against the Directors and Officers
 - Possession of Property and Operations
 - No Exercise of Rights or Remedies;
 - No Interference with Rights
 - Continuation of Services
 - Non-Derogation of Rights
 - Interim Financing (DIP)
 - Cash Management
 - Directors' and Officers' Indemnification and Charge
 - Restructuring
 - Powers of the Monitor
 - Measures Relating to Rent Payments in Respect of Leases
 - Gift Cards and Loyalty Programs
 - Priorities and General Provisions Relating to CCAA Charges
 - General

Service

3. **DECLARES** that sufficient prior notice of the presentation of this Application has been given by the Applicant to interested parties, including the secured creditors who are likely to be affected by the charges created herein.

Application of the CCAA

4. **DECLARES** that the Applicant is a debtor company to which the CCAA applies.

Effective time

5. **DECLARES** that this Order and all of its provisions are effective as of 12:01 a.m. Montreal time, province of Quebec, on the date of this Order (the "**Effective Time**").

Plan of Arrangement

6. **DECLARES** that the Applicant shall have the authority to file with this Court and to submit to its creditors one or more plans of compromise or arrangement (collectively, the "**Plan**") in accordance with the CCAA.

Stay of Proceedings against the Applicant and the Property and Unaffected Creditors

7. **ORDERS** that, until and including October 29, 2020 (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicant, or affecting the Applicant's business operations and activities (the "**Business**") or the Property (as defined below), including as provided in paragraph 11 hereof except with leave of this Court. Any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court, the whole subject to subsection 11.1 CCAA.

8. **ORDER** that the rights of Her Majesty in right of Canada and Her Majesty in right of a Province are suspended in accordance with the terms and conditions of Subsection 11.09 CCAA.
9. **ORDERS** and **DECLARES** that HSBC Bank Canada ("**HSBC**") is an unaffected creditor in these CCAA proceedings and is not subject to the stay of proceedings or other limitations of creditors' rights herein ordered. Nothing in this Order shall prevent HSBC from enforcing its security (the "**HSBC Security**") against the Applicant's Property in conformity with its contractual rights, subject only to HSBC providing advance notice of its intention to do so as provided in paragraph 25.

Stay of Proceedings against the Directors and Officers

10. **ORDERS** that during the Stay Period and except as permitted under subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any former, present or future director or officer of the Applicant nor against any person deemed to be a director or an officer of the Applicant under subsection 11.03(3) CCAA (each, a "Director", and collectively the "**Directors**") in respect of any claim against such Director which arose prior to the Effective Time and which relates to any obligation of the Applicant where it is alleged that any of the Directors is under any law liable in such capacity for the payment of such obligation.

Possession of Property and Operations

11. **ORDERS** that the Applicant shall remain in possession and control of its present and future assets, rights, undertakings and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof (collectively the "**Property**"), the whole in accordance with the terms and conditions of this Order.

No Exercise of Rights or Remedies

12. **ORDERS** that during the Stay Period, and subject to, *inter alia*, subsection 11.1 CCAA, all rights and remedies of any individual, natural person, firm, corporation, partnership, limited liability company, trust, joint venture, association, organization, governmental body or agency, or any other entity (all of the foregoing, collectively being "Persons" and each being a "**Person**") against or in respect of the Applicant, or affecting the Business, the Property or any part thereof, are hereby stayed and suspended except with leave of this Court.

13. **DECLARES** that, to the extent any rights, obligations, or prescription, time or limitation periods, including, without limitation, to file grievances, relating to the Applicant or any of the Property or the Business may expire (other than pursuant to the terms of any contracts, agreements or arrangements of any nature whatsoever), the term of such rights, obligations, or prescription, time or limitation periods shall hereby be deemed to be extended by a period equal to the Stay Period. Without limitation to the foregoing, in the event that the Applicant becomes bankrupt or a receiver as defined in subsection 243(2) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") is appointed in respect of the Applicant, the period between the date of the Order and the day on which the Stay Period ends shall not be calculated in respect of the Applicant in determining the 30 day periods referred to in Sections 81.1 and 81.2 of the BIA.

No Interference with Rights

14. **ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, resiliate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or with leave of this Court.

Continuation of Services

15. **ORDERS** that during the Stay Period and subject to paragraph 17 hereof and subsection 11.01 CCAA, all Persons having verbal or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, utility or other goods or services made available to the Applicant, are hereby restrained until further order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses, domain names or other services, provided in each case that the normal prices or charges for all such goods or services received after the date of the Order are paid by the Applicant, without having to provide any security deposit or any other security, in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and the Applicant, with the consent of the Monitor, or as may be ordered by this Court.
16. **ORDERS** that, notwithstanding anything else contained herein and subject to subsection 11.01 CCAA, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided to the Applicant on or after the date of this Order, nor shall any Person be under any obligation on or after the date of the Order to make further advance of money or otherwise extend any credit to the Applicant.
17. **ORDERS** that, without limiting the generality of the foregoing and subject to Section 21 of the CCAA, if applicable, cash or cash equivalents placed on deposit by the Applicant with any Person during the Stay Period, whether in an operating account or otherwise for itself or for another entity, shall not be applied by such Person in reduction or repayment of amounts owing to such Person as of the date of the Order or due on or before the expiry of the Stay Period or in

satisfaction of any interest or charges accruing in respect thereof; however, this provision shall not prevent any financial institution from: (i) reimbursing itself for the amount of any cheques drawn by the Applicant and properly honoured by such institution, or (ii) holding the amount of any cheques or other instruments deposited into the Applicant's account until those cheques or other instruments have been honoured by the financial institution on which they have been drawn.

Non-Derogation of Rights

18. **ORDERS** that, notwithstanding the foregoing, any Person who provided any kind of letter of credit, guarantee or bond (the "**Issuing Party**") at the request of the Applicant shall be required to continue honouring any and all such letters, guarantees and bonds, issued on or before the date of the Order, provided that all conditions under such letters, guarantees and bonds are met save and except for defaults resulting from this Order; however, the Issuing Party shall be entitled, where applicable, to retain the bills of lading or shipping or other documents relating thereto until paid.

Interim Financing (DIP)

19. **ORDERS** that Applicant be and is hereby authorized to borrow, repay and reborrow from HSBC Bank Canada (the "**Interim Lender**") such amounts from time to time as the Applicant may consider necessary or desirable, up to a maximum principal amount of \$5,000,000 outstanding at any time, on the terms and conditions as set forth in the HSBC Facility Agreement filed as Exhibit P-5 (the "**Interim Financing Agreement**") and in the Interim Financing Documents (as defined hereinafter), to fund the ongoing expenditures of Applicant and to pay such other amounts as are permitted by the terms of the Order and the Interim Financing Documents (as defined hereinafter) (the "**Interim Facility**");
20. **ORDERS** that the Applicant is hereby authorized to execute and deliver such credit agreements, security documents and other definitive documents (collectively the "**Interim Financing Documents**") as may be required by the

Interim Lender in connection with the Interim Facility and the Interim Financing Agreement, and the Applicant is hereby authorized to perform all of its obligations under the Interim Financing Documents;

21. **ORDERS** that Applicant shall pay to the Interim Lender, when due, all amounts owing (including principal, interest, fees and expenses, including without limitation, all reasonable fees and disbursements of counsel and all other reasonably required advisers to or agents of the Interim Lender on a full indemnity basis (the “**Interim Lender Expenses**”) under the Interim Financing Documents and shall perform all of their other obligations to the Interim Lender pursuant to the Interim Financing Agreement, the Interim Financing Documents and the Order;
22. **DECLARES** that all of the Property of Applicant is hereby subject to a charge and security for an aggregate amount of \$7,000,000 (such charge and security is referred to herein as the “**Interim Lender Charge**”) in favour of the Interim Lender as security for all obligations of Applicant to the Interim Lender with respect to all amounts owing (including principal, interest and the Interim Lender Expenses) under or in connection with the Interim Financing Agreement and the Interim Financing Documents. The Interim Lender Charge shall have the priority established by paragraphs 47 and 48 of this Order;
23. **ORDERS** that the claims of the Interim Lender pursuant to the Interim Financing Documents shall not be compromised or arranged pursuant to the Plan or these proceedings and the Interim Lender, in that capacity, shall be treated as an unaffected creditor in these proceedings and in any Plan;
24. **ORDERS** that the Interim Lender may:
 - (a) notwithstanding any other provision of the Order, take such steps from time to time as it may deem necessary or appropriate to register, record or perfect the Interim Lender Charge and the Interim Financing Documents in all jurisdictions where it deems it is appropriate; and

- (b) notwithstanding the terms of the paragraph to follow, refuse to make any advance to Applicant if the Applicant fail to meet the provisions of the Interim Financing Agreement and the Interim Financing Documents;
25. **ORDERS** that the Interim Lender shall not take any enforcement steps under the Interim Financing Documents or the Interim Lender Charge without providing at least 5 business days written notice (the "Notice Period") of a default thereunder to the Applicant, the Monitor and to creditors whose rights are registered or published at the appropriate registers or requesting a copy of such notice. Upon expiry of such Notice Period, the Interim Lender shall be entitled to take any and all steps under the Interim Financing Documents and the Interim Lender Charge and otherwise permitted at law, but without having to send any demands under Section 244 of the BIA, the Civil Code of Quebec, the Personal Property Security Act (Ontario) or any other similar legislation;
26. **ORDERS** that, subject to further order of this Court, no order shall be made varying, rescinding, or otherwise affecting the Order unless either (a) notice of a motion for such order is served on the Interim Lender by the moving party within seven (7) days after that party was served with the Order or (b) the Interim Lender applies for or consents to such order;

Cash Management

27. **ORDERS** that the Applicant shall be entitled to continue to utilize the central cash management system currently in place, or replace it with another substantially similar cash management system offered by HSBC (the "Cash Management System"), as long as the Monitor shall have oversight over such system, and that the bank providing the Cash Management System shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor

under these CCAA proceedings with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

Directors' and Officers' Indemnification and Charge

28. **ORDERS** that the Applicant shall indemnify its Directors and Officers from all claims relating to any obligations or liabilities they may incur and which have accrued by reason of or in relation to their respective capacities as directors or officers of the Applicant after the Effective Time, except where such obligations or liabilities were incurred as a result of such directors' or officers' gross negligence, wilful misconduct or gross or intentional fault as further detailed in Section 11.51 CCAA.
29. **ORDERS** that the Directors of the Applicant shall be entitled to the benefit of and are hereby granted a charge and security in the Property to the extent of the aggregate amount of \$550,000 (the "**Directors' Charge**"), as security for the indemnity provided in paragraph 28 of this Order as it relates to obligations and liabilities that the Directors and Officers may incur in such capacity after the Effective Time. The Directors' Charge shall have the priority set out in paragraphs 47 and 48 of this Order.
30. **ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Directors and Officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts for which the Directors and Officers are entitled to be indemnified in accordance with paragraph 28 of this Order.

Restructuring

31. **DECLARES** that, to facilitate the orderly restructuring of its business and financial affairs (the "Restructuring") but subject to such requirements as are

imposed by the CCAA, the Applicant shall have the right, subject to approval of the Monitor or further order of the Court, to:

- (a) permanently or temporarily cease, downsize or shut down any of its operations or locations as it deems appropriate and make provision for the consequences thereof in the Plan;
- (b) pursue all avenues to finance or refinance, market, convey, transfer, assign or in any other manner dispose of the Business or Property, in whole or part, subject to further order of the Court and sections 11.3 and 36 CCAA, and under reserve of subparagraph (c);
- (c) convey, transfer, assign, lease, or in any other manner dispose of the Property, outside of the ordinary course of business, in whole or in part, provided that the price in each case does not exceed \$100,000 or \$500,000 in the aggregate;
- (d) terminate the employment of such of its employees or temporarily or permanently lay off such of its employees as it deems appropriate and, to the extent any amounts in lieu of notice, termination or severance pay or other amounts in respect thereof are not paid in the ordinary course, make provision, on such terms as may be agreed upon between the Applicant and such employee, or failing such agreement, make provision to deal with, any consequences thereof in the Plan, as the Applicant may determine;
- (e) subject to the provisions of section 32 CCAA, disclaim or resiliate, any of its agreements, contracts or arrangements of any nature whatsoever, with such disclaimers or resiliation to be on such terms as may be agreed between the Applicant and the relevant party, or failing such agreement, to make provision for the consequences thereof in the Plan; and
- (f) subject to section 11.3 CCAA, assign any rights and obligations of Applicant.

32. **DECLARES** that, if a notice of disclaimer or resiliation is given to a landlord of the Applicant pursuant to section 32 of the CCAA and subsection 31(e) of this Order, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours by giving the Applicant and the Monitor 24 hours prior written notice and (b) at the effective time of the disclaimer or resiliation, the landlord shall be entitled to take possession of any such leased premises and re-lease any such leased premises to third parties on such terms as any such landlord may determine without waiver of, or prejudice to, any claims or rights of the landlord against the Applicant, provided nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.
33. **ORDERS** that the Applicant shall provide to any relevant landlord notice of the Applicant's intention to remove any fittings, fixtures, installations or leasehold improvements at least seven (7) days in advance. If the Applicant has already vacated the leased premises, it shall not be considered to be in occupation of such location pending the resolution of any dispute between the Applicant and the landlord.
34. **DECLARES** that, in order to facilitate the Restructuring, the Applicant may, subject to the approval of the Monitor, or further order of the Court, settle claims of customers and suppliers that are in dispute.
35. **DECLARES** that, pursuant to sub-paragraph 7(3)(c) of the Personal Information Protection and Electronic Documents Act, S.C. 2000, c.5, and the equivalent provisions of the *Act Respecting the Protection of Personal Information in the Private Sector*, R.S.Q. c. P-39.1, the Applicant is permitted, in the course of these proceedings, to disclose personal information of identifiable individuals in its possession or control to stakeholders or prospective investors, financiers, buyers or strategic partners and to its advisers (individually, a "Third Party"), but only to the extent desirable or required to negotiate and complete the Restructuring or the preparation and implementation of the Plan or a transaction

for that purpose, provided that the Persons to whom such personal information is disclosed enter into confidentiality agreements with the Applicant binding them to maintain and protect the privacy of such information and to limit the use of such information to the extent necessary to complete the transaction or Restructuring then under negotiation. Upon the completion of the use of personal information for the limited purpose set out herein, the personal information shall be returned to the Applicant or destroyed. In the event that a Third Party acquires personal information as part of the Restructuring or the preparation or implementation of the Plan or a transaction in furtherance thereof, such Third Party may continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Applicant.

Powers of the Monitor

36. **ORDERS** that Ernst & Young Inc., a licensed insolvency trustee, is hereby appointed to monitor the business and financial affairs of the Applicant as an officer of this Court (the "Monitor") and that the Monitor, in addition to the prescribed powers and obligations, referred to in section 23 of the CCAA:

- (a) shall, without delay, (i) publish once a week for two (2) consecutive weeks in La Presse (ii) within five (5) business days after the date of this Order (A) post on the Monitor's website (the "**Website**") a notice containing the information prescribed under the CCAA, (B) make this Order publicly available in the manner prescribed under the CCAA, (C) send, in the prescribed manner, a notice to all known creditors having a claim against the Applicant of more than \$1,000, advising them that the Order is publicly available, and (D) prepare a list showing the names and addresses of such creditors and the estimated amounts of their respective claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder;
- (b) shall monitor the Applicant's receipts and disbursements;

- (c) shall assist the Applicant, to the extent required by the Applicant, in dealing with its creditors and other interested Persons during the Stay Period;
- (d) shall assist the Applicant, to the extent required by the Applicant, with the preparation of its cash flow projections and any other projections or reports and the development, negotiation and implementation of the Plan;
- (e) shall advise and assist the Applicant, to the extent required by the Applicant, to review the Applicant's business and assess opportunities for cost reduction, revenue enhancement and operating efficiencies;
- (f) shall assist the Applicant, to the extent required by the Applicant, with its negotiations with its creditors and other interested Persons and with the holding and administering of any meetings held to consider the Plan;
- (g) shall assist the Applicant with its reporting obligations to HSBC in accordance with the forbearance agreement entered into between the Applicant and HSBC prior to the commencement of these proceedings;
- (h) shall report to the Court on the state of the business and financial affairs of the Applicant or developments in these proceedings or any related proceedings within the time limits set forth in the CCAA and at such time as considered appropriate by the Monitor or as the Court may order;
- (i) shall report to this Court and interested parties, including but not limited to creditors affected by the Plan, with respect to the Monitor's assessment of, and recommendations with respect to, the Plan;
- (j) may retain and employ such agents, advisers and other assistants as are reasonably necessary for the purpose of carrying out the terms of the Order, including, without limitation, one or more entities related to or affiliated with the Monitor;

- (k) may engage legal counsel to the extent the Monitor considers necessary in connection with the exercise of its powers or the discharge of its obligations in these proceedings and any related proceeding, under the Order or under the CCAA;
- (l) may act as a “foreign representative” of the Applicant or in any other similar capacity in any insolvency, bankruptcy or reorganisation proceedings outside of Canada;
- (m) may give any consent or approval as may be contemplated by the Order or the CCAA; and
- (n) may perform such other duties as are required by the Order or the CCAA or by this Court from time to time.

Unless expressly authorized to do so by this Court, the Monitor shall not otherwise interfere with the business and financial affairs carried on by the Applicant, and the Monitor is not empowered to take possession of the Property nor to manage any of the business and financial affairs of the Applicant.

37. **ORDERS** that the Applicant and its Directors, officers, employees and agents, accountants, auditors and all other Persons having notice of the Order shall forthwith provide the Monitor with unrestricted access to all of the Business and Property, including, without limitation, the premises, books, records, data, including data in electronic form, and all other documents of the Applicant in connection with the Monitor’s duties and responsibilities hereunder.
38. **DECLARES** that the Monitor may provide creditors and other relevant stakeholders of the Applicant with information in response to requests made by them in writing addressed to the Monitor and copied to the Applicant’s counsel. In the case of information that the Monitor has been advised by the Applicant is confidential, proprietary or competitive, the Monitor shall not provide such information to any Person without the consent of the Applicant unless otherwise directed by this Court.

39. **DECLARES** that if the Monitor, in its capacity as Monitor, carries on the business of the Applicant or continues the employment of the Applicant's employees, the Monitor shall benefit from the provisions of section 11.8 of the CCAA.
40. **DECLARES** that no action or other proceedings shall be commenced against the Monitor relating to its appointment, its conduct as Monitor or the carrying out the provisions of any order of this Court, except with prior leave of this Court, on at least seven days' notice to the Monitor and its counsel. The entities related to or affiliated with the Monitor referred to in subparagraph 1(j) hereof shall also be entitled to the protection, benefits and privileges afforded to the Monitor pursuant to this paragraph.
41. **ORDERS** that Applicant shall pay the reasonable fees and disbursements of the Monitor, the Monitor's legal counsel, the Applicant's legal counsel and other advisers, directly related to these proceedings, the Plan and the Restructuring, whether incurred before or after the Order, and shall provide each with a reasonable retainer in advance on account of such fees and disbursements, if so requested.
42. **DECLARES** that the Monitor, the Monitor's legal counsel, if any, the Applicant's legal counsel and the Monitor and the Applicant's respective advisers, as security for the professional fees and disbursements incurred both before and after the making of the Order and directly related to these proceedings, the Plan and the Restructuring, be entitled to the benefit of and are hereby granted a charge and security in the Property to the extent of the aggregate amount of \$75,000 (the "**Administration Charge**"), having the priority established by paragraphs 47 and 48 hereof.

Measures Relating to Rent Payments in Respect of Leases

43. **ORDERS** that until a real property or immovable lease is disclaimed or resiliated in accordance with the CCAA, the Applicant shall pay amounts constituting rent

or payable as rent under real property or immovable leases (including for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the leases) or as otherwise may be negotiated between the Applicant and the landlord from time to time (the "Rent") for the period commencing from and including September 1, 2020. In the case of Fixed Rent Stores, as defined in the Application, the Applicant shall pay Rent twice monthly in equal payments on the first and fifteenth day of each month, payable in advance (but not in arrears). Notwithstanding the foregoing, the first payments of Rent for the Fixed Rent Stores shall be made on September 14, 2020 and shall cover Rent for the entire month of September, 2020. In the case of the Percentage Rent Stores, as defined in the Application, the Applicant shall pay Rent in arrears on the tenth or fifteenth day of each month, as applicable, with the first such payments due on October 15, 2020. Where a scheduled payment of Rent falls on a non business day, the payment shall be made on the next business day.

44. **ORDERS** that in the event that the Applicant disclaims or resiliates the lease in respect of any leased premises in accordance with the CCAA, the Applicant shall not be required to pay Rent under such lease pending resolution of any dispute concerning furnishings, fixtures, equipment or a combination thereof located in the premises under the lease (other than Rent payable for the notice period provided for in Section 32(5) CCAA) and the disclaimer of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute. Furthermore, in the event that any landlord for the said leased premises for which a notice of disclaimer has been sent contests the disclaimer or resiliation, Rent shall not be payable upon the expiry of the notice period provided for in Section 32(5) CCAA until the matter is determined by the Court.
45. **ORDERS** that, subject to paragraphs 31, 32 and 43, nothing in this Order shall amend or vary, or be deemed to amend or vary, the terms of the leases or other occupancy agreements related to the Stores (as defined in the Application).

Gift Card and Loyalty Program

46. **AUTHORIZES**, notwithstanding anything to the contrary in this Order, the Petitioners to continue to honour or comply with any customer deposits, pre-payments, gift-cards, loyalty programs and similar programs offered by the Applicant.

Priorities and General Provisions Relating to CCAA Charges

47. **DECLARES** that the priorities of the Administration Charge, the Interim Lender's Charge, the Directors' Charge (collectively, the "**CCAA Charges**") and the existing secured creditors, as between them with respect to any Property to which they apply, shall be as follows:
- first, the Administration Charge;
 - second, the Interim Lender's Charge; and
 - third, the Directors' Charge;
48. **DECLARES** that each of the CCAA Charges shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, encumbrances or security of whatever nature or kind (collectively, the "**Encumbrances**") affecting the Property charged by such Encumbrances.
49. **ORDERS** that, except as otherwise expressly provided for herein, the Applicant shall not grant any Encumbrances in or against any Property that rank in priority to, or *pari passu* with, any of the CCAA Charges unless the Applicant obtains the prior written consent of the Monitor and the Interim Lender and the prior approval of the Court.
50. **DECLARES** that each of the CCAA Charges shall attach, as of the Effective Time, to all present and future Property of the Applicant, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent.

51. **DECLARES** that the CCAA Charges and the rights and remedies of the beneficiaries of such Charges, as applicable, shall be valid and enforceable and shall not otherwise be limited or impaired in any way by: (i) these proceedings and the declaration of insolvency made herein; (ii) any application for a receiving order or bankruptcy order filed pursuant to the BIA in respect of the Applicant or any receiving order or bankruptcy order made pursuant to any such application or any assignment in bankruptcy made or deemed to be made in respect of the Applicant; or (iii) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any agreement, lease, sub-lease, offer to lease or other arrangement which binds the Applicant (a "**Third Party Agreement**"), and notwithstanding any provision to the contrary in any Third Party Agreement:
- (a) the creation of any of the CCAA Charges shall not create or be deemed to constitute a breach by the Applicant of any Third Party Agreement to which it is a party; and
 - (b) any of the beneficiaries of the CCAA Charges shall not have liability to any Person whatsoever as a result of any breach of any Third Party Agreement caused by or resulting from the creation of the CCAA Charges.
52. **DECLARES** that notwithstanding: (i) these proceedings and any declaration of insolvency made herein, (ii) any application for a receiving order or bankruptcy order filed pursuant to the BIA in respect of the Applicant and any receiving order or bankruptcy order allowing such application or any assignment in bankruptcy made or deemed to be made in respect of the Applicant, and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by the Applicant pursuant to the Order and the granting of the CCAA Charges, do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances, transfers at undervalue, or other challengeable or reviewable transactions or conduct meriting an oppression remedy under any applicable law.

53. **DECLARES** that the CCAA Charges shall be valid and enforceable as against all Property of the Applicant and against all Persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Applicant, for all purposes.

General

54. **DECLARES** that the Applicant is authorized, with the consent of the Monitor, but is not obliged, to continue making payments to Critical Service Providers (as defined in the Application) and Critical Suppliers (as defined in the Application) in the normal course of business, even if such payments relate to amounts owed by the Applicant prior to the Effective Date.
55. **ORDERS** that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order: all outstanding and future wages, salaries, employee benefits, vacation pay, expenses payable and any costs related to the maintenance thereof, collective insurance program premium, on or prior to the Effective Date, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements.
56. **ORDERS** that no Person shall commence, proceed with or enforce any Proceedings against any of the Directors, employees, legal counsel or financial advisers of the Applicant or of the Monitor in relation to the Business or Property of the Applicant, without first obtaining leave of this Court, upon five (5) days written notice to the Applicant's counsel and to all those referred to in this paragraph whom it is proposed be named in such Proceedings.
57. **DECLARES** that the Order and any proceeding or affidavit leading to the Order, shall not, in and of themselves, constitute a default or failure to comply by the Applicant under any statute, regulation, licence, permit, contract, permission, covenant, agreement, undertaking or other written document or requirement.
58. **DECLARES** that, except as otherwise specified herein, the Applicant and the Monitor are at liberty to serve any notice, proof of claim form, proxy, circular or

other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to Persons or other appropriate parties at their respective given addresses as last shown on the records of the Applicant and that any such service shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three business days after mailing if by ordinary mail.

59. **DECLARES** that the Applicant and any party to these proceedings may serve any court materials in these proceedings on all represented parties electronically, by emailing a PDF or other electronic copy of such materials to counsels' email addresses.
60. **DECLARES** that, unless otherwise provided herein, under the CCAA, or ordered by this Court, no document, order or other material need be served on any Person in respect of these proceedings, unless such Person has served a Notice of Appearance on the solicitors for the Applicant and the Monitor and has filed such notice with this Court, or appears on the service list prepared by the Monitor or its attorneys, save and except when an order is sought against a Person not previously involved in these proceedings.
61. **DECLARES** that the Applicant or the Monitor may, from time to time, apply to this Court for directions concerning the exercise of their respective powers, duties and rights hereunder or in respect of the proper execution of the Order on notice only to each other.
62. **DECLARES** that any interested Person may apply to this Court to vary or rescind the Order or seek other relief upon five (5) days notice to the Applicant, the Monitor and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order, such application or motion shall be filed during the Stay Period ordered by this Order, unless otherwise ordered by this Court.

63. **DECLARES** that the Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.
64. **DECLARES** that the Monitor, with the prior consent of the Applicant, shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement the Order and any subsequent orders of this Court and, without limitation to the foregoing, an order under Chapter 15 of the *U.S. Bankruptcy Code*, for which the Monitor shall be the foreign representative of the Applicant. All courts and administrative bodies of all such jurisdictions are hereby respectively requested to make such orders and to provide such assistance to the Monitor as may be deemed necessary or appropriate for that purpose.
65. **REQUESTS** the aid and recognition of any Court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order.
66. **ORDERS** that Exhibit P-7 shall be kept under seal until further order from this Court.
67. **ORDERS** the provisional execution of the Order notwithstanding any appeal.

Montreal, September 14, 2020


Honourable Martin Castonguay, J.S.C.