

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE MR.
JUSTICE MCEWEN

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TUESDAY, THE 15th
DAY OF SEPTEMBER, 2020

**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 PAYLESS
SHOESOURCE CANADA INC. AND PAYLESS SHOESOURCE CANADA GP INC.**

(the "**Applicants**")

ORDER
(CCAA Termination)

THIS MOTION made by the Payless Canada Entities (as defined below), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), for an Order substantially in the form attached to the Motion Record dated September 3, 2020 was heard this day by judicial video conference via Zoom at Toronto, Ontario due to the COVID-19 crisis.

ON READING the Notice of Motion of the Payless Canada Entities, the Affidavit of Mario Zarazua sworn September 3, 2020 (the "**Zarazua Affidavit**"), and the exhibits thereto, the ninth report of FTI Consulting Canada Inc. ("**FTI**"), in its capacity as court-appointed monitor (the "**Monitor**") of the Applicants and Payless ShoeSource Canada LP (collectively, the "**Payless Canada Entities**") dated ●, 2020 (the "**Ninth Report**"); and on hearing the submissions of counsel for the Payless Canada Entities, the Monitor, and the other parties listed on the counsel slip, and no one else appearing although duly served as appears from the affidavit of service of Benjamin Goodis sworn September 8, 2020 filed;

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein be and is hereby abridged and validated so that the Motion is properly returnable today.
2. **THIS COURT ORDERS** that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Zarazua Affidavit.

STAY EXTENSION

3. **THIS COURT ORDERS** that the Stay Period be and is hereby extended until the date and time of filing of a certificate (the "**CCAA Termination Certificate**") substantially in the form attached hereto as Schedule "A".

DISCHARGE OF CHIEF RESTRUCTURING ORGANIZATION

4. **THIS COURT ORDERS** that effective on the date of this Order, Ankura Consulting Group, LLC ("**Ankura**") shall be discharged and relieved from any further obligations, responsibilities or duties in its capacity as Chief Restructuring Organization (the "**CRO**") pursuant to the Initial Order and any other Orders of this Court in the Payless Canada Entities' CCAA proceeding (the "**CCAA Proceedings**"), provided that notwithstanding its discharge herein, Ankura shall continue to have the benefit of the provisions of all Orders made in the CCAA Proceedings, including all approvals, protections and stays of proceedings in favour of Ankura in its capacity as CRO.
5. **THIS COURT ORDERS AND DECLARES** that Ankura be and is hereby released and discharged from any and all liability that Ankura now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Ankura while acting in its capacity as CRO herein, save and except for any gross negligence or wilful misconduct on Ankura's part. Without limiting the generality of the foregoing, Ankura is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the CCAA Proceedings, save and except for any gross negligence or wilful misconduct on Ankura's part.

PAYMENT OF OUTSTANDING INVOICES

6. **THIS COURT ORDERS** that, notwithstanding anything contained in the CCAA Plan or any other Order of this Court (including, without limitation, paragraph 43 of the Initial Order), the Monitor is authorized to pay outstanding post-filing invoices of the Payless Canada Entities from the Post-Filing Claim Reserve, including any professional fees and a retainer to a trustee in bankruptcy (subject to the terms of this Order), without further Court order or stakeholder approvals.

RELEASES

7. **THIS COURT ORDERS** that, without in any way limiting the releases set out in Article 8 of the CCAA Plan or the provisions of paragraphs 24-28 of the Sanction Order, the Payless Canada Entities, any Directors and Officers, employees, and their respective advisors, including legal counsel, and the Monitor, FTI, and their respective directors, officers, employees and advisors, including legal counsel (collectively, the "**Released Parties**"), shall be and are hereby forever irrevocably released and discharged from any and all present and future claims, liabilities, indebtedness, demands, actions, causes of action, suits, damages, judgments and obligations of whatever nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) based in whole or in part on any act, omission, or other occurrence existing or taking place prior to the date of this Order or completed pursuant to the terms of this Order in any way relating to, arising out of, or in respect of the implementation of the CCAA Plan or the terms of this Order (collectively, the "**Released Claims**"), which Released Claims are hereby fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties, provided that nothing herein shall release or discharge any Released Party if such Released Party is judged by the express terms of a judgment rendered on a final determination on the merits to have committed criminal, fraudulent or other wilful misconduct.

8. **THIS COURT ORDERS** that the Payless Canada Entities are each authorized to file an assignment into bankruptcy and to name FTI or such other trustee as the Payless Canada Entities determine as the trustee in bankruptcy.

RECORDS

9. **THIS COURT ORDERS** that all records of the Payless Canada Entities stored at any Iron Mountain Canada facility where records are currently being held (other than records identified by the proposed trustee in bankruptcy as required to administer a bankruptcy) may be destroyed prior to the filing of the CCAA Termination Certificate.

APPROVAL OF MONITOR'S REPORT, ACTIVITIES, FEES AND DISBURSEMENTS

10. **THIS COURT ORDERS** that the Ninth Report, and the activities of the Monitor referred to therein, be and are hereby 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.

11. **THIS COURT ORDERS** that the fees and disbursements of the Monitor and its counsel as set out in the affidavits of Toni Vanderlaan sworn September 3, 2020 and Sean H. Zweig sworn September 3, 2020 be and are hereby approved.

CCAA TERMINATION PROVISIONS

12. **THIS COURT ORDERS** that the Monitor shall, at least fourteen (14) days prior to the proposed date of filing the CCAA Termination Certificate (the "**CCAA Termination Date**"), provide notice to the Service List in the CCAA Proceedings: (i) of the Monitor's intention to file the CCAA Termination Certificate; and (ii) that, upon the filing of the CCAA Termination Certificate and subject to the provisions of this Order, the CCAA Proceedings shall be terminated without further Order or action by any party and the relief set out in paras 13-21 of this Order (the "**Termination Relief**") shall be automatically deemed to be effective.

13. **THIS COURT ORDERS** that effective upon the filing of the CCAA Termination Certificate, the Administration Charge and the Directors' Charge (each as defined in the Initial Order) are each hereby be discharged, released and terminated.

14. **THIS COURT ORDERS** that effective upon the filing of the CCAA Termination Certificate, the Monitor is authorized and directed to transfer the balance of the Reserves to the Payless Canada Entities (or their designee) without further consents or court approval, notwithstanding any assignment in bankruptcy made prior to or after the CCAA Termination Date.

15. **THIS COURT ORDERS AND DECLARES** that effective upon the filing of the CCAA Termination Certificate, the Payless Canada Entities and the Monitor will be deemed to have completed all of their obligations under the CCAA Plan and the Orders of this Court.

16. **THIS COURT ORDERS** that effective upon the filing of the CCAA Termination Certificate, the release and discharge from liability set out in paragraph 7 hereof shall be automatically deemed to be effective up to and including the CCAA Termination Date (the "**Release Extension**").

17. **THIS COURT ORDERS AND DECLARES** that, effective upon the filing of the CCAA Termination Certificate, FTI shall immediately be deemed discharged as Monitor and shall have no further duties, obligations, or responsibilities as Monitor, save and except as set out in paragraphs 14 and 19 herein.

18. **THIS COURT ORDERS** that, notwithstanding any provision of this Order, the termination of the CCAA Proceedings or the discharge of the Monitor, nothing herein shall affect, vary, derogate from, limit or amend, and FTI and its counsel shall continue to have the benefit of, the approvals and protections in favour of the Monitor and its counsel at common law or pursuant to the CCAA, the Initial Order, or any other Order of this Court in the CCAA Proceedings, all of which are expressly continued and confirmed, including in connection with any actions taken by the Monitor pursuant to this Order following the CCAA Termination Date.

19. **THIS COURT ORDERS** that notwithstanding the discharge of FTI as Monitor and the termination of these CCAA Proceedings, FTI shall remain Monitor and have the authority to complete or address any matters that may be ancillary or incidental to the CCAA Proceedings following the CCAA Termination Date, and in connection therewith FTI and its counsel shall continue to have the benefit of all approvals and protections in favour of the Monitor at common law or pursuant to the CCAA, the Initial Order and all other Orders made in the CCAA Proceedings.

20. **THIS COURT ORDERS** that in the event that any person objects to the Release Extension or any other relief that will become effective on the filing of the CCAA Termination Certificate, that person must send a written notice of the objection, and the grounds therefor, to the fax, email address or mailing address of the Monitor and its counsel as set out on the Service List, such that the objection is received by the Monitor prior to the proposed CCAA Termination Date. If no objection is received by the Monitor prior to the proposed CCAA Termination Date, the Monitor

shall file the CCAA Termination Certificate on the proposed CCAA Termination Date and the Termination Relief shall be deemed to be effective, without further Order of the Court.

21. **THIS COURT ORDERS** that if an objection is received by the Monitor in accordance with paragraph 20 hereof, the Monitor shall only file the CCAA Termination Certificate: (i) if the objection is resolved, whereupon the Termination Relief shall be deemed to have occurred, or (ii) on further Order of the Court.

GENERAL

22. **THIS COURT ORDERS** that notwithstanding the discharge of the Monitor and the termination of the CCAA Proceedings, this Court shall remain seized of any matter arising from these CCAA Proceedings, and each of the Payless Canada Entities, the Monitor and any other interested party shall have the authority from and after the date of this Order to apply to this Court to address matters ancillary or incidental to these CCAA Proceedings notwithstanding the termination thereof. The Monitor is authorized to take such steps and actions as the Monitor determines are necessary to give effect to this Order following the date of this Order until the CCAA Termination Date.

23. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or elsewhere, to give effect to this Order and to assist each of the Payless Canada Entities, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to each of the Payless Canada Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist each of the Payless Canada Entities and the Monitor and their respective agents in carrying out the terms of this Order.

24. **THIS COURT ORDERS** that each of the Payless Canada Entities and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that Payless ShoeSource Canada Inc. is authorized and

empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

SCHEDULE "A"
FORM OF CCAA TERMINATION CERTIFICATE

Court File No. CV-19-00614629-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
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(the "**Applicants**")

Monitor's Certificate
(CCAA Termination)

RECITALS

A. All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Order of the Honourable Justice McEwen made in these proceedings on September 15th, 2020 (the "**CCAA Termination Order**").

B. Pursuant to the CCAA Termination Order, upon FTI Consulting Canada Inc. ("**FTI**") in its capacity as Monitor filing the CCAA Termination Certificate, the CCAA proceedings of the Payless Canada Entities shall be terminated, the Administration Charge and the Directors' Charge shall be terminated, the Payless Canada Entities and the Monitor will be deemed to have completed all of their obligations under the CCAA Plan and Orders of the Court, the Release Extension will become effective, the Monitor shall be authorized to transfer the balance of the Reserves to the Payless Canada Entities, and FTI shall be discharged as the Monitor of the Payless Canada Entities, provided however that notwithstanding this discharge (a) FTI shall remain Monitor for the

performance of such ancillary and incidental duties as may be required to complete the administration of the Payless Canada Entities' CCAA proceedings; and (b) FTI shall continue to have the benefit of the provisions of all Orders made in the Payless Canada Entities' CCAA proceedings, including all approvals, protections and stays of proceedings in favour of FTI in its capacity as Monitor.

THE MONITOR CERTIFIES the following:

1. There are no unresolved objections to the Release Extension or any of the other Termination Relief.
2. Immediately following the filing of this CCAA Termination Certificate, the Monitor will pay the balance of the Reserves to the Payless Canada Entities or their designee.
3. The Monitor has completed the other activities described in the Ninth Report.

DATED at the City of Toronto, in the Province of Ontario, this ___ day of _____, 2020 at _____.

FTI CONSULTING CANADA INC., solely in its capacity as Court-appointed Monitor of the Payless Canada Entities and not in its personal or corporate capacity

By: _____
Name:
Title:

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PROCEEDING COMMENCED AT TORONTO

ORDER

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