

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**



**THE HONOURABLE
JUSTICE MCEWEN**

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**TUESDAY, THE 17TH
DAY OF JULY, 2018**

**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
EDDIE BAUER OF CANADA, INC. AND EDDIE BAUER CUSTOMER SERVICES INC.**

CCAA TERMINATION ORDER

THIS MOTION made by Tenere of Canada, Inc. (formerly Eddie Bauer of Canada, Inc.) ("Tenere") and Yuma Customer Services Inc. (formerly Eddie Bauer Customer Services Inc.) ("Yuma" and, with Tenere, the "**Applicants**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for the relief set out in the Applicants' notice of motion returnable July 17, 2018, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Twenty-Third Report of KSV Kofman Inc. ("**KSV**") in its capacity as the Court-appointed monitor (the "**Monitor**") of the Applicants dated July 10, 2018 (the "**Twenty-Third Report**"), and on hearing submissions of counsel for the Applicants and the

Monitor, no one appearing for any other person on the service list although duly served as appears from the Affidavit of Service of Jennifer Messier sworn July 10, 2018, filed.

SERVICE AND DEFINED TERMS

1. **THIS COURT ORDERS** that the time for the service of the Applicants' Motion Record and the Twenty-Third Report is hereby abridged so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that capitalized terms used and not otherwise defined herein shall have the meanings given to them in the Initial Order of this Court dated June 17, 2009 (as amended, the "**Initial Order**").

EXTENSION OF THE STAY PERIOD

3. **THIS COURT ORDERS** that the Stay Period be and is hereby extended to the filing of the Monitor's Certificate (as defined below).

APPROVAL OF THE MONITOR'S REPORT, ACTIVITIES AND FEES

4. **THIS COURT ORDERS** that the Twenty-Third Report and the conduct and activities of the Monitor as set out and described therein, be and are hereby approved.

5. **THIS COURT ORDERS** that (a) the fees and disbursements of the Monitor in the amount of approximately \$67,000 (excluding HST) for the period from June 1, 2017 to June 30, 2018, inclusive, and (b) the fees and disbursements of Lax O'Sullivan Lisus Gottlieb LLP ("**LOLG**"), in its capacity as counsel to the Monitor, in the amount of approximately \$2,000 (excluding HST) for the period from June 1, 2017 to June 30, 2018, inclusive, all as described in the Twenty-Third Report, are hereby authorized and approved.

6. **THIS COURT ORDERS** that the fees and disbursements of the Monitor, LOLG, Goodmans LLP (“**Goodmans**”), as counsel to the Applicants, and Deloitte LLP (“**Deloitte**”), the Applicants’ tax advisor, for the completion of remaining activities in connection with these CCAA proceedings, estimated not to exceed \$50,000, are hereby authorized and approved.

TERMINATION OF THE CCAA PROCEEDINGS

7. **THIS COURT ORDERS** that, upon the filing of a certificate of the Monitor substantially in the form attached hereto as Schedule A (the “**Monitor’s Certificate**”) certifying that (a) the fees and disbursements of the Monitor, LOLG, Goodmans and Deloitte have been paid in full, and (b) any and all matters that may be incidental to the termination of the CCAA proceedings, and any other matters necessary to complete the CCAA proceedings as requested by the Applicants and agreed to by the Monitor, have been completed, the CCAA Proceedings shall be terminated without any further act or formality (the “**CCAA Termination Date**”).

8. **THIS COURT ORDERS** that the Administration Charge provided for in the Initial Order shall be discharged and released as of the CCAA Termination Date.

9. **THIS COURT ORDERS** that, prior to the CCAA Termination Date, the Monitor shall have distributed the remaining proceeds of Tenere to EBHI Liquidating Trust (as successor of Amargosa, Inc., the indirect parent of the Applicants) as shareholder, net of withholdings taxes to be paid to the Canada Revenue Agency, in accordance with the Order of this Court dated June 23, 2011.

DISCHARGE OF THE MONITOR

10. **THIS COURT ORDERS** that effective on the filing of the Monitor’s Certificate, KSV shall be immediately discharged as Monitor of the Applicants and shall have no further

obligations, liabilities, responsibilities or duties as Monitor or under any Court order in these proceedings, subject to paragraph 11 hereof.

11. **THIS COURT ORDERS** that notwithstanding the discharge of KSV as Monitor and the termination of these CCAA proceedings, the Monitor shall remain as Monitor and have the authority to complete or address any matters that may be ancillary or incidental to the termination of the CCAA proceedings following the CCAA Termination Date, and in completing or addressing any such ancillary or incidental matters following the CCAA Termination Date, KSV shall continue to have the benefit of the provisions of all Orders made in these CCAA proceedings.

RELEASE

12. **THIS COURT ORDERS** that, effective on the filing of the Monitor's Certificate, (i) the Monitor and LOLG, and their respective affiliates and officers, directors, partners, employees and agents, and (ii) the Applicants' legal counsel and its respective officers, directors, partners, employees and agents (the persons listed in clauses (i) to (ii) being collectively, the "**Released Parties**") are hereby forever irrevocably released and discharged from any and all present and future claims (including, without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, recoveries, 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 or omission, transaction, dealing or other occurrence existing or taking place prior to the CCAA Termination Date or completed pursuant to the terms of this

Order, or arising out of or in respect of these CCAA proceedings (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, save and except for any Released Claims arising from gross negligence or wilful misconduct on the part of the Released Parties, provided that nothing in this paragraph 12 shall waive, discharge, release, cancel or bar any claim against the directors and officers of the Applicants that is not permitted to be released pursuant to section 5.1(2) of the CCAA.

13. THIS COURT ORDERS that no action or other proceeding shall be commenced against any of the Released Parties in respect of any of the Released Claims except with prior leave of this Court on at least seven days’ prior written notice to the applicable Released Party and upon further securing, as security for costs, the full indemnity costs of the applicable Released Party in connection with any proposed action or proceeding as the Court hearing the motion for leave to proceed may deem just and appropriate.

14. THIS COURT ORDERS that, notwithstanding any provision of this Order and the termination of these CCAA proceedings, nothing herein shall affect, vary, derogate from, limit or amend any of the protections in favour of the Monitor at law or pursuant to the CCAA, the Initial Order or any other Order of this Court in these CCAA proceedings.

GENERAL

15. THIS COURT ORDERS that the Applicants or the Monitor may apply to the Court as necessary to seek further orders and directions to give effect to this Order.

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

other foreign jurisdiction, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and the Monitor and their respect agents as may be necessary or desirable to give effect to this Order or to assist the Applicants and the Monitor and their respect agents in carrying out the terms of this Order.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

JUL 17 2018

PER / PAR:



SCHEDULE A – FORM OF MONITOR’S CERTIFICATE

Court File No. 09-8240-CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE *COMPANIES’ CREDITORS ARRANGEMENT ACT*, R.S.C.
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EDDIE BAUER OF CANADA, INC. AND EDDIE BAUER CUSTOMER SERVICES INC.**

Applicants

MONITOR’S CERTIFICATE

RECITALS

- A. Pursuant to an Initial Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated June 17, 2009, RSM Richter Inc. was appointed as the monitor of the Applicants in the within proceedings (the “**CCAA Proceedings**”).
- B. Pursuant to an Order of the Court dated July 10, 2015, the role of monitor in the CCAA Proceedings was transferred to KSV Kofman Inc. (the “**Monitor**”).
- C. The CCAA Proceedings have been completed in accordance with the Orders of this Court and under the supervision of the Monitor.
- D. Pursuant to the Order of this Court dated July 17, 2018 (the “**CCAA Termination Order**”), the Monitor shall be discharged and these proceedings shall be terminated upon the filing of this Monitor’s Certificate with the Court.
- E. Unless otherwise indicated herein, capitalized terms used in this Monitor’s Certificate shall have the meanings given to them in the CCAA Termination Order.

THE MONITOR CERTIFIES the following:

- 1. The fees and disbursements of the Monitor, the Monitor’s counsel, Lax O’Sullivan Lisus Gottlieb LLP, and the Applicants’ legal counsel and tax advisors have been paid in full.

2. Any and all matters that may be incidental to the termination of the CCAA Proceedings, and any other matters necessary to complete the CCAA Proceedings as requested by the Applicants and agreed to by the Monitor, have been completed.

ACCORDINGLY, the CCAA Termination Date has occurred on the date set forth below.

DATED at Toronto, Ontario this ____ day of _____, 2018.

**KSV KOFMAN INC., in its capacity as CCAA
Monitor of Tenere of Canada, Inc. and Yuma
Customer Services Inc., and not in its personal
capacity**

Per: _____

Name:

Title:

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.
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**ONTARIO
SUPERIOR COURT OF JUSTICE
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Proceeding commenced at Toronto

CCAA TERMINATION ORDER

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