

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
EDDIE BAUER OF CANADA, INC. AND EDDIE BAUER CUSTOMER SERVICES INC.**

Applicants

**MOTION RECORD
(returnable December 14, 2010)**

December 7, 2010

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TAB 1

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.
1985, c. C-36, AS AMENDED**

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

Applicants

**NOTICE OF MOTION
(returnable December 14, 2010)**

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**”) will make a motion to the Honourable Justice Morawetz of the Commercial List on December 14, 2010, at 10:00 a.m., 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:

- ☐ in writing under subrule 37.12.1(1) because it is on consent or unopposed or made without notice;
- ☐ in writing as an opposed motion under subrule 37.12.1(4);
- ☒ orally.

1. THE APPLICANTS MAKE A MOTION FOR AN ORDER:

- (a) If necessary, abridging the time for service of the Notice of Motion and Motion Record in respect of this motion and dispensing with further service thereof;
- (b) An Order extending the stay of proceedings through to and including June 30, 2011;

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- (c) An Order approving the conduct and activities of the Monitor as set out in the Tenth Report of the Monitor dated December 7, 2010 (the “**Tenth Report**”); and
- (d) Such further and other relief as counsel may request and this Honourable Court deems just.

2. THE GROUNDS FOR THE MOTION ARE:

Background

- (a) On June 17, 2009, the Honourable Mr. Justice Morawetz granted an Initial Order (as amended and restated, the “**Initial Order**”) in respect of the Applicants under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). The Initial Order appointed RSM Richter Inc. as the monitor of the Applicants (the “**Monitor**”) in the CCAA proceedings. Terms not otherwise defined herein shall have the meaning ascribed to them in the Initial Order;
- (b) Also on June 17, 2009, EBHI Holdings, Inc. (formerly Eddie Bauer Holdings, Inc.) (“**EBHI**”), the indirect parent of the Applicants, Amargosa, Inc. (formerly Eddie Bauer, Inc.) (“**Amargosa**”), the direct parent of the Applicants, and certain of EBHI’s subsidiaries (collectively, the “**US Debtors**” and, with the Applicants, the “**Company**”), commenced proceedings in the United States Bankruptcy Court for the District of Delaware (the “**US Bankruptcy Court**”) under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101-1330;
- (c) By Order dated July 14, 2009, this Honourable Court extended the Stay Period in respect of the Applicants until September 18, 2009, which Stay Period was subsequently extended to December 18, 2009, by a Stay Extension Order dated September 17, 2009, to April 30, 2010, by a Stay Extension Order dated December 8, 2010, to September 30, 2010, by an Order dated April 29, 2010, and to December 31, 2010, by an Order dated August 12, 2010;
- (d) Following a joint hearing with the US Bankruptcy Court on June 29, 2009, both this Honourable Court and the US Bankruptcy Court approved a stalking horse

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sale process, as well as certain bidding procedures (the “**Bidding Procedures**”) in connection with the sale of substantially all of the Company’s business and assets;

- (e) Following the completion of an auction held pursuant to the Bidding Procedures, Everest Holdings LLC (“**Everest**”), a subsidiary of Golden Gate Capital, was selected as the winning bidder and Everest, as buyer, entered into an asset purchase agreement dated July 17, 2009 (the “**Asset Purchase Agreement**”), with EBHI and each of the subsidiaries of EBHI listed on Schedule I of the Asset Purchase Agreement (including the Applicants), as vendors. The sale of the Company’s assets to Everest (the “**Everest Transaction**”) was approved by Orders of both this Honourable Court and the US Bankruptcy Court following a joint hearing on July 22, 2009;
- (f) On July 22, 2009, this Honourable Court also issued a Claims Procedure Order (the “**Claims Procedure Order**”) which established a Claims Bar Date (as defined in the Claims Procedure Order) in respect of claims against the Applicants, being 4:00 pm (EDT) on September 21, 2009;
- (g) On August 3, 2009, the Everest Transaction closed. In connection with the closing of the transaction, US\$11 million (the “**Sale Proceeds**”) was allocated to the assets of the Applicants and this amount was paid by Everest to the Monitor;
- (h) Everest now operates the worldwide “Eddie Bauer” business, including the Canadian business. The Applicants no longer have any active business operations, employees or assets (save for the funds on deposit in the Monitor’s trust account and certain other potential tax refunds);
- (i) On August 20, 2009, this Honourable Court made an Order expanding the Monitor’s powers to authorize it to take certain actions on behalf of the Applicants and make certain payments from the Sale Proceeds including, *inter alia*, the payment of federal and provincial sales taxes, the payment of amounts owing to former employees of the Applicants pursuant to settlement agreements reached regarding the termination of their employment, the payment of professional fees covered by the Administration Charge, and changing the names

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of the Applicants to Tenere and Yuma in accordance with the Asset Purchase Agreement;

- (j) On December 8, 2009, this Honourable Court made an Order authorizing the Monitor, for and on behalf of the Applicants, to engage Gowling Lafleur Henderson LLP (“**Gowling**”) on a contingency fee basis to perform services in furtherance of the recovery of potential tax refunds of the Applicants related to transfer pricing;
- (k) On May 12, 2010, this Honourable Court made an Order expunging the Intercompany Charge on the Property, approving the allocation of the Sale Proceeds as between Tenere and Yuma (approximately 99.3% or US\$10.9 million to Tenere, and approximately 0.7% or US\$77,000 to Yuma), authorizing the Monitor to distribute a portion of the Sale Proceeds to creditors of the Applicants (most notably US\$7.8 million to Amargosa) and establishing a holdback of the Sale Proceeds in the amount of \$2.5 million pending further Order of the Court;
- (l) On August 12, 2010, this Honourable Court made an Order authorizing the distribution of the balance of the Sale Proceeds to creditors, principally Amargosa, expunging the Directors’ Charge, and reducing the Administration Charge to \$250,000;
- (m) In its August 12, 2010, Order, this Court also authorized the Monitor to distribute any other funds held or received by the Monitor on behalf of Tenere to Amargosa on account of its admitted claim of approximately US\$11.2 million until such claim is paid in full, subject to a holdback at all times of \$250,000 on account of the Administration Charge;
- (n) Subsequent to the granting of the August 12 Order, approximately \$3.37 million has been distributed to Amargosa by the Monitor, representing the balance of the Sale Proceeds and a portion of certain tax refunds and other sundry amounts received by the Monitor on behalf of Tenere;

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Tax Refunds

- (o) On or about October 27, 2010, the Monitor received a federal tax refund for Tenere in the amount of approximately \$4.2 million. On November 8, 2010, the Monitor received an Alberta tax refund for Tenere in the amount of approximately \$530,000. These collections bring the cumulative tax refunds received over the course of the proceedings to approximately \$6.5 million. The Monitor expects to receive an Ontario tax refund for Tenere in the amount of approximately \$1 million in the near term (collectively, the “**Tax Refunds**”);
- (p) In light of the Tax Refunds and that all creditors of Tenere appeared to have been paid in full, the Monitor and Amargosa and their respective tax advisors began to discuss a distribution to Amargosa on account of its equity interest in Tenere and the issues arising in respect of same. At approximately the same time, and as a result of work being undertaken in connection with the filing of Amargosa’s and Tenere’s respective 2010 tax returns, it became evident that Amargosa’s claim against Tenere may, in fact, be greater than previously determined as it was identified that Tenere may not have been properly accounting for foreign exchange on pre-filing transactions between Amargosa and Tenere dating back to 2008. The Monitor and the Company’s tax advisors are continuing to review this issue as well as issues arising in the event of a potential distribution on account of Amargosa’s equity interest in Tenere, but have yet to definitively resolve these matters. It is expected that these issues will not be resolved until early 2011, at which point it is anticipated the Applicants will return before this Honourable Court to seek authority for the Monitor to make further distributions to Amargosa;
- (q) In addition to the Tax Refunds, Gowling continues to pursue transfer pricing related tax refunds on behalf of the Applicants on a contingency basis;

Stay Extension

- (r) The stay period provided for in the Initial Order currently expires on December 31, 2010;

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- (s) The Applicants are seeking an extension of the stay to June 30, 2010, to permit the Monitor and the Company to resolve the issues pertaining to the Tax Refunds and how such amounts will be distributed to Amargosa, as well as to allow for the continued pursuit of the transfer pricing related tax refunds and to otherwise deal with the winding up of the Applicants' affairs;
- (t) Since the granting of the Initial Order, the Applicants have acted in good faith and with due diligence;
- (u) No creditor of the Applicants will suffer material prejudice if the stay period is extended;

Miscellaneous

- (v) Rules 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194;
- (w) The provisions of the CCAA; and
- (x) Such further and other grounds as counsel may advise and this Honourable Court permit.

3. THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:

- (a) The Tenth Report; and
- (b) Such further and other material as counsel may advise and this Honourable Court may permit.

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December 7, 2010

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TO ATTACHED SERVICE LIST

Court File No.: CV-09-8240-CL

**ONTARIO
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**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
EDDIE BAUER OF CANADA, INC. AND EDDIE BAUER CUSTOMER SERVICES INC.**

Applicants

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Last updated April 29, 2010

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TAB 2

RSM Richter

**Tenth Report of RSM Richter Inc.
as CCAA Monitor of
Eddie Bauer of Canada, Inc. and
Eddie Bauer Customer Services Inc.**

RSM Richter Inc.
Toronto, December 7, 2010

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Appendix "A"	Amended and Restated Initial Order of the <i>Ontario</i> Superior Court of Justice (Commercial List) dated June 17, 2009
Appendix "B"	Statement of Receipts and Disbursements for the period ending December 6, 2010

Court File No. 09-8240-CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
- COMMERCIAL LIST -**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
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**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
EDDIE BAUER OF CANADA, INC. AND
EDDIE BAUER CUSTOMER SERVICES INC.**

**TENTH REPORT OF RSM RICHTER INC.
AS CCAA MONITOR OF
EDDIE BAUER OF CANADA, INC. AND
EDDIE BAUER CUSTOMER SERVICES INC.**

December 7, 2010

1. INTRODUCTION

Pursuant to an order of the Ontario Superior Court of Justice (the "Court") made on June 17, 2009, as amended and restated (the "Initial Order")¹, Tenere of Canada Inc. (formerly, Eddie Bauer of Canada, Inc.) ("Tenere") and Yuma Customer Services Inc. (formerly, Eddie Bauer Customer Services Inc.) ("Yuma") (jointly, the "Company") were granted protection under the *Companies' Creditors Arrangement Act* ("CCAA") and RSM Richter Inc. ("Richter") was appointed the Monitor (the "Monitor"). A copy of the Initial Order is attached as Appendix "A".

This report ("Report") is filed by Richter in its capacity as Monitor.

¹ The Initial Order was amended and restated on consent shortly after its issuance to include provisions requested by counsel to certain landlords and by counsel to the US DIP Lender.

On June 17, 2009, Amargosa, Inc. (formerly, Eddie Bauer, Inc.) (“Amargosa”), the Company’s US based parent company, and certain other US affiliates (collectively, “Eddie Bauer US”), commenced reorganization cases under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the “US Court”) (the “Chapter 11 Proceedings”). The Company is not subject to the Chapter 11 Proceedings. A cross-border protocol was approved by this Honourable Court on June 25, 2009.

1.1 Purposes of this Report

The purposes of this Report are to:

- a) Provide background information about the Company and these proceedings;
- b) Provide an update on the funds available for distribution, the status of potential tax refunds owing to Tenere and the issues preventing the Monitor from facilitating further distributions to Amargosa at this time;
- c) Provide an overview of the Monitor’s activities since August 12, 2010, the date on which its activities were previously approved; and
- d) Recommend that this Honourable Court make an order:
 - Granting the Company’s request for an extension of its stay of proceedings from December 31, 2010, the date that the stay expires, to June 30, 2011; and
 - Approving the Monitor’s activities, as described in this Report.

2. BACKGROUND

Eddie Bauer US and the Company (jointly, the “Eddie Bauer Group”) sold outerwear, apparel and accessories, as well as down products for the home, including comforters, pillows and throws. Eddie Bauer Holdings, Inc. was a publicly traded company, the shares of which were listed on the NASDAQ Global Market under the trading symbol “EBHI”. The Eddie Bauer brand is internationally recognized and Eddie Bauer products are available at approximately 370 retail and outlet stores, including approximately 36 retail stores located

throughout Canada, one Canadian warehouse store, catalogue sales and on the Eddie Bauer Group's website. At the commencement of these proceedings, the Company employed approximately 933 individuals in Canada.

2.1 The Transaction

At a joint hearing conducted on July 22, 2009, the US Court and this Honourable Court approved a transaction ("Transaction") between the Eddie Bauer Group and Everest Holdings LLC, an affiliate of Golden Gate Private Equity, Inc. (the "Purchaser"). The Transaction included, among other things, the purchase and sale of all of the Company's business and assets. The purchase price was US\$286 million, of which US\$11 million (the "Canadian Proceeds") was allocated to the Company's assets. The Transaction closed on August 3, 2009 and the Canadian Proceeds were paid to the Monitor and deposited into a trust account which it controls (the "Trust Account").

The Transaction did not set out an allocation of the Canadian Proceeds between Tenere and Yuma. Pursuant to a Court order dated May 12, 2010, the Court authorized the allocation of the Canadian Proceeds between Tenere and Yuma of approximately US\$10.923 million (99.3%) and US\$77,000 (0.7%), respectively.

2.2 Claims Procedure

Pursuant to a Court order dated July 22, 2009, the Monitor conducted a claims procedure which solicited pre-filing claims against the Company, post-filing restructuring claims and claims against the Company's directors and officers (the "Claims Procedure"). The results of the Claims Procedure were detailed in previous reports to Court, and are summarized as follows:

- The Company has no secured creditors;

- The principal creditor of Tenere is Amargosa – its admitted claim totalled approximately US\$11.2 million (C\$12 million);
- Tenere's other unsecured creditors were CRA, with an admitted claim of approximately \$195,000, and three creditors having claims totalling \$1,200. These unsecured claims have been paid in full; and
- CRA is the sole creditor of Yuma. CRA filed claims against Yuma totalling approximately \$6.3 million, of which approximately \$250,000 is undisputed and was admitted as an unsecured claim.

The limited number of claims filed in the Claims Procedure resulted from the assumption by the Purchaser of the majority of the Company's landlord and vendor obligations. Additionally, the Initial Order authorized the Company to pay for pre-filing goods and services, which payments were made over the course of these proceedings.

2.3 Distributions of the Canadian Proceeds and Certain Tax Refunds

Pursuant to orders of this Honourable Court made on May 12, 2010 and August 12, 2010, the Monitor has distributed:

- Approximately US\$11.2 million² to Amargosa to be applied against its unsecured claim against Tenere;
- Approximately \$1,200 to the holders of three admitted unsecured claims against Tenere. CRA released refunds owing to Tenere, net of CRA's admitted claim against Tenere; and
- US\$70,000 to CRA to be applied against its admitted claim against Yuma.

These distributions leave Amargosa as the sole remaining creditor of Tenere. CRA is the sole remaining creditor of Yuma; however, there are no remaining funds or realizable assets in Yuma's estate.

² Comprised of US\$9.98 million and C\$1.22 million.

3. ASSETS UNDER ADMINISTRATION

3.1 Cash

There is presently approximately \$5.1 million in the Monitor's Trust Account. All of the Canadian Proceeds have been distributed to the Company's creditors. The balance of the funds represent the proceeds of provincial and federal tax refunds collected on behalf of Tenere. A statement of receipts and disbursements for the period ending December 6, 2010 is attached as Appendix "B".

3.2 Potential Tax Refunds

The Monitor has corresponded routinely with Deloitte & Touche Inc. ("Deloitte"), the Company's tax advisor, in respect of potential tax refunds that may be owing to Tenere. The Monitor has received approximately \$6.5 million of such refunds to-date and is expecting additional provincial tax refunds of approximately \$1 million.

In addition to the tax refunds being pursued by Deloitte, there is an ongoing Competent Authority transfer pricing refund request being administered by Gowling Lafleur Henderson LLP ("Gowlings"). Gowlings was engaged on a contingency fee basis in accordance with a Court order made on December 8, 2009. The Monitor understands that this refund could be significant; however, the timing and quantum of the refund is uncertain. As at the date of this Report, the Competent Authority transfer request has been filed by Gowlings and it continues to pursue the refund with CRA. The Monitor understands that the timeline for refunds of this nature is protracted given that, *inter alia*, they include cross-border communications and administration between CRA and the US Internal Revenue Service.

Other than the funds on deposit in the Trust Account and these potential tax refunds, the Monitor is not aware of any significant assets remaining to be realized upon.

4. FURTHER DISTRIBUTIONS TO AMARGOSA

In the course of Deloitte's preparation of the Company's fiscal 2010 tax return, it was identified that the Company may not have been properly accounting for the foreign exchange on pre-filing transactions between Amargosa and Tenere dating back to 2008. The Monitor, Deloitte, Alvarez & Marsal ("Alvarez"), Eddie Bauer US' financial advisor, and the Company's former accounting personnel are in the process of reconciling certain accounting and tax accounts between the books and records of the Company and Amargosa. This reconciliation process will likely result in the filing of amendments to certain of Tenere's prior year tax returns for the inclusion of a foreign exchange gain, which may result in taxes owing by Tenere. It appears that the reconciliation may also increase the unsecured obligation owing from Tenere to Amargosa (currently US\$11.2 million, of which all but approximately \$20,000 has been paid pursuant to Court-approved distributions).

Excluding any tax that may be owing by Tenere following the filing of amendments to prior year or fiscal 2010 tax returns, any further distributions in these proceedings will be paid to Amargosa, either in its capacity as creditor or shareholder. The issues preventing further distributions to Amargosa at this time are as follows:

- The intercompany reconciliation outlined above is likely to result in taxes owing by Tenere on previously unrecorded foreign exchange gains. The Monitor requires further clarity from Deloitte on this potential obligation in order to determine an appropriate holdback for CRA, if any; and
- There would be a 25% withholding tax on distributions to Amargosa in its capacity as shareholder, to the extent those distributions exceed Tenere's paid up capital. Further clarity is required on the quantum of the distribution to Amargosa as shareholder in order for the Monitor to withhold an appropriate amount for this purpose.

Once these issues are addressed, or at least advanced such that the Monitor is in a position to make an interim distribution net of an appropriate holdback, the Company or the Monitor intends to bring a distribution motion before this Honourable Court.

5. COMPANY'S REQUEST FOR AN EXTENSION

The Monitor supports the Company's request for an extension of the stay of proceedings for the following reasons:

- The Company is acting in good faith and with due diligence;
- An extension will provide the Company and the Monitor with the opportunity to work with Deloitte and Gowlings to pursue the tax refunds that may be owing to the Company, as described in Section 3.2 of this Report; and
- An extension will enable the Monitor, Deloitte and Alvarez to finalize the intercompany reconciliation process, including resolving the accounting and tax issues described in Section 4 of this Report, which will ultimately result in further distributions to Amargosa.

Given the nature of the outstanding issues, being tax matters which typically require time to resolve, the Monitor believes an extension of the stay of proceedings until June 30, 2011 would be appropriate. There is likely to be a distribution motion prior to June 30, 2011 and, accordingly, it can be determined at that time whether a further extension of the stay of proceedings is required.

5.1 Cash Flow

A cash flow projection has not been prepared for the stay extension period. The remaining costs in these proceedings (largely professional fees) are to be funded from the funds in the Trust Account which are subject to the Administration Charge (as defined in the Initial Order). The Administration Charge was reduced to \$250,000 pursuant to a Court order made on August 12, 2010.

6. OVERVIEW OF THE MONITOR'S ACTIVITIES

In addition to the activities described in this Report, the Monitor's activities have included:

- Corresponding extensively with Deloitte and the Company's former in-house tax advisors, regarding tax issues;
- Corresponding with Deloitte and Alvarez in connection with the reconciliation between the books and records of the Company and those of Amargosa;
- Corresponding with Deloitte, Alvarez and the Company regarding tax issues, including the paid up capital of the Company's shareholdings and reviewing the Company's minute books in respect thereof;
- Corresponding with representatives from Gowlings with regards to the Competent Authority refund application process;
- Facilitating payments, filing tax returns and following up on potential tax refunds on behalf of the Company in accordance with a Court order dated August 20, 2009;
- Completing the administration of the Claims Procedure in accordance with the Claims Procedure Order;
- Facilitating the distributions authorized pursuant to the August 12, 2010 order;
- Reviewing documents filed with the US Court in the Chapter 11 Proceedings;
- Responding to creditor inquiries regarding the CCAA proceedings and the Claims Procedure;
- Placing on the Monitor's website copies of materials filed in these proceedings;
- Corresponding with counsel concerning the issues described in this Report;
- Drafting this Report; and
- Other matters pertaining to the administration of this mandate.

7. CONCLUSION AND RECOMMENDATION

Based on the foregoing, the Monitor respectfully recommends that this Honourable Court make an order granting the relief detailed in Section 1.1(d) of this Report.

* * *

All of which is respectfully submitted,

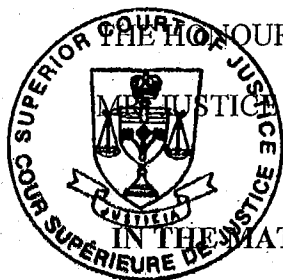
RSM Richter Inc.

**RSM RICHTER INC.
IN ITS CAPACITY AS CCAA MONITOR OF
EDDIE BAUER OF CANADA, INC. AND
EDDIE BAUER CUSTOMER SERVICES INC.
AND NOT IN ITS PERSONAL CAPACITY**

Appendix “A”

Court File No. 09-8240-CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**



THE HONOURABLE

JUDGE JUSTICE MORAWETZ

WEDNESDAY, THE 17TH

DAY OF JUNE, 2009

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.

Applicants

AMENDED AND RESTATED INITIAL ORDER

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Marvin Edward Toland sworn June 17, 2009 (the "Toland Affidavit"), and the Exhibits thereto, and on hearing the submissions of counsel for the Applicants, counsel for Rainier Holdings LLC, counsel for Bank of America, N.A., and counsel for the proposed monitor, RSM Richter Inc. ("**Richter**"), and on reading the consent of Richter to act as the monitor of the Applicants (in such capacity, the "**Monitor**"),

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged so that this Application is properly returnable today and hereby dispenses with further service thereof.

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APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies.

PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**") between, *inter alia*, the Applicants and one or more classes of their secured and/or unsecured creditors as they deem appropriate.

POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property. The Applicants shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. **THIS COURT ORDERS** that the Applicants shall be entitled to continue to utilize the central cash management system currently in place as described in the Toland Affidavit or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter

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defined) other than the Applicants, 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 the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. **THIS COURT ORDERS** that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay, bonuses and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their respective standard rates and charges; and
- (c) amounts owing for goods and services actually supplied to the Applicants prior to the date of this Order.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicants following the date of this Order.

8. **THIS COURT ORDERS** that the Applicants shall remit, in accordance with legal requirements, or pay:

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- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

9. **THIS COURT ORDERS** that, until such time as the Applicants deliver a notice in writing to repudiate a real property lease in accordance with paragraph 11(c) of this Order (a "Notice of Repudiation"), the Applicants shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicants and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order monthly, in advance. On the date of the first of such payments, any arrears relating to the period commencing from and including the date of this Order shall also be paid. Upon delivery of a Notice of Repudiation, the Applicants shall pay all Rent due for the notice period stipulated in paragraph 11(c) of this Order, to the extent that Rent for such period has not already been paid.

10. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to EB Inc. (as defined below) as of the date hereof; (b) to grant no security interests, trust, liens, charges or

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encumbrances upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

11. **THIS COURT ORDERS** that the Applicants shall, subject to any covenants contained in the New Intercompany Loan Documents (as defined below) except that subsection 11(c) below shall apply regardless of the covenants contained in the New Intercompany Loan Documents, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their business or operations and to dispose of redundant or non-material assets not exceeding \$250,000 in any one transaction or \$500,000 in the aggregate, subject to paragraph 11(c), if applicable;
- (b) terminate the employment of such of their employees or temporarily lay off such of their employees as they deem appropriate on such terms as may be agreed upon between the Applicants and such employee, or failing such agreement, to deal with the consequences thereof in the Plan;
- (c) in accordance with paragraphs 12 and 13, vacate, abandon or quit the whole but not part of any leased premises and/or repudiate any real property lease and any ancillary agreements relating to any leased premises, on not less than fourteen (14) days notice in writing to the relevant landlord on such terms as may be agreed upon between the Applicants and such landlord, or failing such agreement, to deal with the consequences thereof in the Plan; and
- (d) repudiate such of their arrangements or agreements of any nature whatsoever, whether oral or written, as the Applicants deem appropriate on such terms as may be agreed upon between the Applicants and such counter-parties, or failing such agreement, to deal with the consequences thereof in the Plan.

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the "**Restructuring**").

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12. **THIS COURT ORDERS** that the Applicants shall provide each of the relevant landlords with notice of the Applicants' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicants' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicants, or by further Order of this Court upon application by the Applicants on at least two (2) days notice to such landlord and any such secured creditors. If the Applicants repudiate the lease governing such leased premises in accordance with paragraph 11(c) of this Order and vacate such leased premises, they shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in paragraph 11(c) of this Order), and the repudiation of the lease shall be without prejudice to the Applicants' claim to the fixtures in dispute.

13. **THIS COURT ORDERS** that if a Notice of Repudiation is delivered, then (a) during the notice period prior to the effective time of the repudiation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice, and (b) at the effective time of the repudiation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicants of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

14. **THIS COURT ORDERS** that, subject to the rights of a trustee in bankruptcy, (i) subject to the paragraphs 9, 11, 12 and 13 of this Order, or except as expressly permitted by the terms of the Applicants' real property leases (collectively, the "**Leases**"), none of the Leases shall, absent further Order of the Court, be amended or varied, or deemed to be amended or varied, in any way without obtaining the prior written consent of the applicable landlords (collectively, the "**Landlords**"); and (ii) where any Leases are not, in accordance with their terms, transferable or

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assignable to a purchaser without first obtaining the consent of the applicable Landlord, none of the Leases shall, absent further Order of the Court, be transferred, conveyed, assigned or vested in a purchaser by operation of this Order, save and except to the extent that respective consents have been, or are in the future, obtained from the respective Landlords.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

15. **THIS COURT ORDERS** that until and including July 17, 2009, or such later date as this Court may order (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 Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of either of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

16. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of either of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (ii) exempt the Applicants from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

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

CONTINUATION OF SERVICES

18. **THIS COURT ORDERS** that, during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or the Applicants, 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 Applicants, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

19. **THIS COURT ORDERS** that, notwithstanding anything else contained herein, no creditor of the Applicants shall be under any obligation after the making of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

20. **THIS COURT ORDERS** that, during the Stay Period, and except as permitted by subsection 11.5(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

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DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

21. **THIS COURT ORDERS** that the Applicants shall indemnify their directors and officers from all claims, costs, charges and expenses relating to the failure of the Applicants, after the date hereof, to make payments of the nature referred to in subparagraphs 6(a), 8(a), 8(b) and 8(c) of this Order which they sustain or incur by reason of or in relation to their respective capacities as directors and/or officers of the Applicants except to the extent that, with respect to any officer or director, such officer or director has actively participated in the breach of any related fiduciary duties or has been grossly negligent or guilty of wilful misconduct.

22. **THIS COURT ORDERS** that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$2,000,000, as security for the indemnity provided in paragraph 21 of this Order. The Directors' Charge shall have the priority set out in paragraphs 39 and 41 herein.

23. **THIS COURT 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 Applicants' 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 indemnified in accordance with paragraph 21 of this Order.

APPOINTMENT OF MONITOR

24. **THIS COURT ORDERS** that Richter is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property and the Applicants' conduct of the Business with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations.

25. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

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- (a) monitor the Applicants' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicants, to the extent required by the Applicants, in their dissemination of financial and other information to EB Inc. and Bank of America, N.A. (as agent to the lenders providing certain debtor-in-possession financing to EB Inc. and certain of its affiliates in connection with EB Inc.'s and certain of its affiliates' bankruptcy petitions under chapter 11 of title 11 of the United States Code) (the "U.S. Lender") on a periodic basis as agreed to between the Applicants, the U.S. Lender and EB Inc., which information may be used in these proceedings;
- (d) advise the Applicants in their preparation of the Applicants' cash flow statements and reporting required by EB Inc., which information shall be reviewed with the Monitor;
- (e) advise the Applicants in their development of the Plan and any amendments to the Plan;
- (f) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the books, records and management, employees and advisors of the Applicants and to the Business and the Property to the extent required to perform its duties arising under this Order;
- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (i) consider, and if deemed advisable by the Monitor, prepare a report and assessment on the Plan; and

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- (j) perform such other duties as are required by this Order or by this Court from time to time.

26. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

27. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") 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*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

28. **THIS COURT ORDERS** that that the Monitor shall provide any creditor of the Applicants and the U.S. Lender with information provided by the Applicants in response to reasonable requests for information made in writing by such Person addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

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29. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

30. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants as and when accounts their respective accounts are rendered.

31. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

32. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and the Applicants' counsel and financial advisors shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$1,000,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 39 and 41 hereof.

INTERCOMPANY FINANCING

33. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to obtain and borrow under intercompany promissory grid notes (the "**New Intercompany Promissory Notes**") issued by the Applicants in favour of Eddie Bauer, Inc. ("**EB Inc.**") in order to finance the Applicants' working capital requirements and other general corporate purposes and capital expenditures (the "**Intercompany Financing**"), provided that borrowings in connection with such Intercompany Financing, from and after the date hereof, shall not exceed U.S.\$7,500,000 unless permitted by further Order of this Court.

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34. **THIS COURT ORDERS** that the Intercompany Financing shall be on the terms and subject to the conditions set forth in the New Intercompany Loan Documents.

35. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver the New Intercompany Promissory Notes, general security agreements and other definitive documents (collectively, the "**New Intercompany Loan Documents**"), as are contemplated in connection with the Intercompany Financing or as may be reasonably required by EB Inc. pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to EB Inc. under and pursuant to the New Intercompany Loan Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

36. **THIS COURT ORDERS** that the EB Inc. shall be entitled to the benefit of and is hereby granted a charge (the "**Intercompany Charge**") on the Property, which charge shall not exceed U.S.\$7,500,000 plus accrued and unpaid interest, allowable costs and expenses. The Intercompany Charge shall have the priority set out in paragraphs 39 and 41 hereof.

37. **THIS COURT ORDERS** that, subject to the provisions of this Order:

- (a) EB Inc. may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the Intercompany Charge or any of the New Intercompany Loan Documents;
- (b) upon the occurrence of an event of default under the New Intercompany Loan Documents, EB Inc., upon seven (7) days notice to the Applicants and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property (save that any such rights and remedies relating to Leases shall be subject to the terms of the applicable Leases) under or pursuant to the New Intercompany Loan Documents and the Intercompany Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by EB Inc. to the Applicants against the obligations of the Applicants to EB Inc. under the New Intercompany Loan Documents or the Intercompany Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver,

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receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants, and upon the occurrence of an event of default under the terms of the New Intercompany Loan Documents, EB Inc. shall be entitled to seize and retain proceeds from the sale of the Property and the cash flow of the Applicants to repay amounts owing to EB Inc. in accordance with the New Intercompany Loan Documents and the Intercompany Charge, but subject to the priorities as set out in paragraphs 39 and 41 of this Order; and

- (c) if, as and when EB Inc. executes a collateral assignment of the New Intercompany Loan Documents to the U.S. Lender, the foregoing rights and remedies of EB Inc. shall be enforceable by the U.S. Lender in accordance with the terms of the New Intercompany Loan Documents, including without limitation the agreement evidencing such collateral assignment,

the foregoing rights and remedies of EB Inc. and the U.S. Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

38. **THIS COURT ORDERS AND DECLARES** that EB Inc., solely in its capacity as the provider of the Intercompany Financing, and the U.S. Lender, solely in its capacity as collateral assignee of the New Intercompany Loan Documents, shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the New Intercompany Loan Documents..

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

39. **THIS COURT ORDERS** that the priorities of the Directors' Charge, the Administration Charge and the Intercompany Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$1,000,000);

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Second – Intercompany Charge (to the maximum amount of U.S.\$7,500,000 plus accrued and unpaid interest, allowable costs and expenses payable by the Applicants); and

Third – Directors' Charge (to the maximum amount of \$2,000,000).

40. **THIS COURT ORDERS** that the filing, registration or perfection of the Directors' Charge, the Administration Charge or the Intercompany Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

41. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

42. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants also obtain the prior written consent of the Monitor, EB Inc. and the beneficiaries of each of the Charges.

43. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

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- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the New Intercompany Loan Documents shall create or be deemed to constitute a breach by the Applicants of any Agreement to which they are a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges, or the execution, delivery or performance of the New Intercompany Loan Documents; and
- (c) the payments made by the Applicants pursuant to this Order, the New Intercompany Loan Documents, and the granting of the Charges, do not and will not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct, settlements or other challengeable, voidable or reviewable transactions under any applicable law.

44. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

SERVICE AND NOTICE

45. **THIS COURT ORDERS** that the Applicants shall, within ten (10) business days of the date of entry of this Order, send a copy of this Order to their known creditors, other than employees and creditors to which the Applicants owe less than CAD\$1,000, at their addresses as they appear on the Applicants' records, and shall promptly send a copy of this Order (a) to all parties filing a Notice of Appearance in respect of this Application, and (b) to any other interested Person requesting a copy of this Order, and the Monitor is relieved of its obligation under Section 11(5) of the CCAA to provide similar notice, other than to supervise this process.

46. **THIS COURT ORDERS** that the Applicants and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or notice by

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courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

47. **THIS COURT ORDERS** that the Applicants, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time and the Monitor may post a copy of any or all such materials on its website at: <http://www.rsmrichter.com/Restructuring/EddieBauer.aspx>.

GENERAL

48. **THIS COURT ORDERS** that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of their respective powers and duties hereunder.

49. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

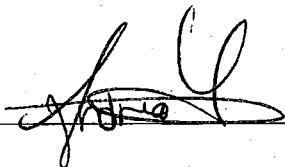
50. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this 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 to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this 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 Order.

51. **THIS COURT ORDERS** that each of the Applicants 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.

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52. **THIS COURT ORDERS** that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

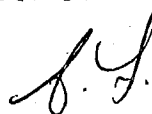
53. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

A handwritten signature in black ink, appearing to be "J. H. H.", is written over a horizontal line.

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

JUL 07 2009

PER / PAR:

A handwritten signature in black ink, appearing to be "J. H. H.", is written next to the "PER / PAR:" label.

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

Court File No: 09-8240-CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF EDDIE BAUER OF
CANADA, INC. AND EDDIE BAUER CUSTOMER SERVICES INC.

ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST Proceeding commenced at Toronto	
INITIAL ORDER	
GOODMANS LLP Barristers & Solicitors 250 Yonge Street, Suite 2400 Toronto, Canada M5B 2M6 L. Joseph Latham LSUC#: 32326A Frederick L. Myers LSUC#: 26301A Christopher G. Armstrong LSUC #: 55148B Tel: 416.979.2211 Fax: 416.979.1234 Lawyers for the Applicants	

Appendix “B”

RSM Richter Inc.
Eddie Bauer of Canada Inc.
Statement of Receipts and Disbursements
For the Period Ended December 6, 2010

	USD Account	CAD Account
Receipts		
Proceeds of sale of assets	11,000,000	-
Tax refunds	-	6,531,165
Sundry collections	100	133,254
Interest income	9,684	1,230
Transfers between estate accounts	-	1,069,606
	<u>11,009,784</u>	<u>7,735,254</u>
Disbursements		
Court approved distributions		
Amargosa, Inc.	9,983,500	1,224,020
Canada Revenue Agency	70,000	-
Other creditors	185	1,026
Transfers between estate accounts	955,392	-
Professional fees	281	1,066,164
GST/HST on disbursements	-	61,034
PST remittances (for July, 2009)	-	229,926
Publication costs	-	20,570
Payroll obligations	-	2,771
Miscellaneous expenses	426	5,488
	<u>11,009,784</u>	<u>2,610,999</u>
Balance in Estate Accounts	<u>-</u>	<u>5,124,255</u>

TAB 3

Court File No.: 09-8240-CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	THURSDAY, THE 14 th
)	
JUSTICE MORAWETZ)	DAY OF DECEMBER, 2010

**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.**

ORDER

THIS MOTION, made by Tenere of Canada, Inc. (formerly Eddie Bauer of Canada, Inc.) and Yuma Customer Services Inc. (formerly Eddie Bauer Customer Services Inc.) (collectively, the “**Applicants**”) for the relief set out in the Applicants’ notice of motion dated December 7, 2010 (the “**Notice of Motion**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Tenth Report of RSM Richter Inc. dated December 7, 2010 (the “**Tenth Report**”), in its capacity as monitor (the “**Monitor**”) of the Applicants, and on hearing submissions of counsel for the Applicants, the Monitor and ●, no one appearing for any other person on the service list, although duly served as appears from the Affidavit of Service of ● sworn December ●, 2010, filed.

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1. **THIS COURT ORDERS** that the time for the service of the Applicants' motion record and the Tenth Report be and is hereby abridged so that this Motion is properly returnable today and hereby dispenses with further service thereof.
 2. **THIS COURT ORDERS** that the Stay Period referred to in the Initial Order of the Honourable Mr. Justice Morawetz dated June 17, 2009, as amended and restated, be and is hereby extended until June 30, 2011, or such later date as this Court may order.
 3. **THIS COURT ORDERS** that the conduct and activities of the Monitor as set out and described in the Tenth Report be and are hereby approved.
-

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
EDDIE BAUER OF CANADA, INC. AND EDDIE BAUER CUSTOMER SERVICES INC.**

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

ORDER

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Christopher G. Armstrong LSUC #: 55148B

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Lawyers for the Applicants

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

Court File No: CV-09-8240-CL

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF EDDIE BAUER
OF CANADA, INC. AND EDDIE BAUER CUSTOMER SERVICES INC.**

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at Toronto

MOTION RECORD
(returnable December 14, 2010)

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