

RSM Richter

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

RSM Richter Inc.
Toronto, April 20, 2010

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**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.**

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

April 20, 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* (the "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, Eddie Bauer Holdings, Inc., 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) Summarize the proposed allocation of the proceeds of the Transaction (as defined below) allocated to the Company (US\$11 million) as between Tenere and Yuma;
- c) Summarize the results of the claims procedure ("Claims Procedure") administered by the Monitor in accordance with an Order made on July 22, 2009 (the "Claims Procedure Order");
- d) Set out the proposed distributions to Tenere's unsecured creditors with admitted claims in the Claims Procedure, net of a holdback in the amount of \$2.5 million (the "Holdback");
- e) Summarize potential tax refunds from Canada Revenue Agency ("CRA") to the Company;
- f) Provide an overview of the Monitor's activities since December 8, 2009, the date on which its activities were previously approved; and
- g) Recommend that this Honourable Court make an order:
 - Approving the proposed allocation of the Transaction proceeds between Tenere and Yuma;
 - Reducing the Administration Charge from \$1 million to \$500,000;
 - Releasing and discharging the Intercompany Charge (as defined in the Initial Order), as consented to by Eddie Bauer US, the beneficiary of the Intercompany Charge;
 - Authorizing and directing the Monitor to make a distribution in the amount of US\$7.8 million to Eddie Bauer US;

- Authorizing and directing the Monitor to make a distribution totalling approximately \$1,200 in respect of three admitted claims against Tenere in the Claims Procedure;
- Approving the Holdback;
- Granting the Company's request for an extension of its stay of proceedings from April 30, 2010, the date that the stay expires, to September 30, 2010; 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 and one warehouse store located throughout Canada, through 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 pursuant to the Transaction was US\$286 million, of which US\$11 million (the "Canadian Proceeds") was allocated to the Company's assets. The Transaction did not set out an allocation of the Canadian Proceeds between Tenere and

Yuma. The allocation was to be addressed subsequent to closing. 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”).

3. ALLOCATION OF THE CANADIAN PROCEEDS

As detailed in the affidavit filed in the accompanying motion materials, it is proposed that of the Canadian Proceeds, US\$10.923 million (99.3%) be allocated to Tenere and US\$77,000 (0.7%) be allocated to Yuma. The proposed allocation is based on the fair market value of the respective purchased assets as determined for US Federal tax purposes per the I.R.C. Section 1060 allocation.

The proposed allocation has been reviewed by the Monitor, the Company and Deloitte & Touche Inc. (“Deloitte”), the Company’s tax advisor. Those parties have worked with Alvarez & Marsal Taxand, LLC (“Alvarez”), Eddie Bauer US’ financial advisor in the Chapter 11 Proceedings, to review the calculations and documentation supporting the proposed allocation.

In its assessment of the proposed allocation, the Monitor considered the following:

- The principal Canadian assets acquired by the Purchaser, being retail inventory and the Canadian realty leases, were assets of Tenere. In this regard, the closing balance sheets used for tax and accounting purposes by the Company reflect a book value of the assets of Tenere and Yuma of approximately US\$26.1 million and US\$468,000, respectively;
- The Purchaser’s opening balance sheet reflects a book value of the assets of Tenere and Yuma of approximately US\$24.3 million and US\$172,000, respectively;
- The Monitor understands that the Purchaser is in the process of winding down Yuma’s operations. The call centre functions at Yuma ceased in early April, 2010 and the entire operation is scheduled to be discontinued by May 30, 2010. The Yuma business has no tangible assets and is not saleable independent of Tenere; and

- The consistency of the treatment of the allocation of the Canadian Proceeds in the CCAA proceedings and the Chapter 11 Proceedings. In this regard, the proposed allocation has been used by the Company, the Purchaser and Eddie Bauer US in their respective tax filings and other Canadian and US reporting obligations resulting from the Transaction.

Based on the foregoing, and for the reasons set out in the accompanying affidavit, the Monitor believes the proposed allocation is reasonable and appropriate in the circumstances.

4. CLAIMS PROCEDURE

The Claims Procedure Order solicited pre-filing claims against the Company, post-filing restructuring claims and claims against the Company's directors and officers. A summary of the results of the Claims Procedure is provided in the table below:

Creditor ²	No. of Claims Filed	Claims Filed (\$)	Claims Disallowed ³ and Withdrawn (\$)	Allowed Claims (\$)
<u>Tenere</u>				
Eddie Bauer US (unsecured)	1	12,049,434	-	12,049,434
CRA (property claim)	1	130,490	-	130,490
CRA (unsecured)	4	183,393	(118,451)	64,942
Contingent claim (unsecured)	1	1,000,000	(1,000,000)	-
BC Workers Compensation Board ("WCB") (unsecured)	1	804	-	804
UPS Canada Ltd. ("UPS") (unsecured)	1	222	-	222
Shoppertrak RCT Corp. ("Shoppertrak") (unsecured)	1	8,166	(7,981)	185
Other trade claims (unsecured)	11	57,752	(57,752)	-
Subtotal	21	13,430,261	(1,184,184)	12,246,077
<u>Yuma</u>				
CRA (property claim)	1	3,709,652	(3,459,260)	250,392
CRA (unsecured)	2	2,635,076	(1,451,238)	1,183,838
Other sundry claims (unsecured)	1	137	(137)	-
Subtotal	4	6,344,865	(4,910,635)	1,434,230
Total	25	19,775,126	(6,094,819)	13,680,307

² Certain creditors filed their claims against both entities. Those claims are reflected in the chart as claims filed against Tenere.

³ Represents claims that have been disallowed or are in the process of being disallowed.

As the table reflects, the Company does not have any secured obligations. The property claims filed by CRA (discussed in Section 4.2 below) against Tenere and Yuma reflect the only potential priority claims against the Company, other than the claims covered by the charges created under the Initial Order (discussed in Section 5.2 below). The limited number of claims filed in the Claims Procedure is a result of the assumption by the Purchaser of the majority of the Company's landlord and vendor obligations and the fact that the Initial Order permitted the Company to pay for pre-filing goods and services. Further information on the claims filed in the Claims Procedure is provided in the following sections of this Report.

4.1 Eddie Bauer US

Eddie Bauer US financed the Company's operations prior to and during the restructuring proceedings. The Monitor reviewed the proof of claim filed by Eddie Bauer US, including banking and other documentation supporting Eddie Bauer US' advances to the Company. The Monitor worked with Alvarez on certain adjustments to Eddie Bauer US' claim, including to the foreign exchange rate utilized therein and an adjustment resulting from a tax refund received by Eddie Bauer US which reduced the intercompany claim. Eddie Bauer US has since filed an amended proof of claim in the amount of approximately \$12 million. The Monitor is satisfied that the amended claim reconciles to Tenere's books and records and accurately reflects Tenere's obligations to Eddie Bauer US.

The claim of Eddie Bauer US includes a contingent claim under a letter of credit provided by Eddie Bauer US in respect of a bond posted by Tenere in the amount of US\$430,000. The letter of credit expires on May 5, 2010 and it is not anticipated that there will be any exposure under the letter of credit. The Monitor intends to request that Eddie Bauer US file an amended proof of claim adjusting for this contingency when its exposure under the letter of credit, if any, is crystallized⁴.

4.2 CRA

Prior to the claims bar date (September 21, 2009), CRA filed three proofs of claim totalling approximately \$2.6 million and 11 “placeholder” claims - one for each of the Company’s tax accounts and “placeholder” claims against the Company’s directors. CRA has since completed its audits and filed amended proofs of claim, which claims are reflected in the table above.

CRA’s amended claims against Tenere total approximately \$314,000, including a property claim for unremitted GST in the amount of approximately \$130,000. Based on a review performed by the Monitor and Deloitte, on March 9, 2010, the Monitor issued a Notice of Disallowance reducing CRA’s unsecured claim against Tenere by approximately \$118,000. On March 23, 2010, CRA filed a Notice of Dispute. Under the Claims Procedure Order, there is no deadline for the Monitor to refer the matter to a Claims Officer or this Honourable Court. Accordingly, the Monitor intends to continue to work with CRA to try to resolve this claim.

⁴ The forthcoming amendment to the claim of Eddie Bauer US is not expected to have a consequence on any further distributions in these proceedings as Eddie Bauer US will be Tenere’s only unsecured creditor following the proposed distributions and the setoff by CRA of its claim against Tenere.

As at the date of this Report, CRA is holding refunds owing to Tenere totalling approximately \$1 million. There are further refunds owing by CRA to Tenere of approximately \$700,000 which are in the process of being assessed by CRA. The Monitor has requested that CRA release the refunds owing to Tenere, net of the claims admitted by the Monitor in the Claims Procedure (totalling \$313,000, of which \$118,000 is subject to the Notice of Dispute). As at the date of this Report, CRA has not released the refunds. Should the Monitor and the Company be unable to resolve these issues with CRA in the short term, it may be necessary to seek an Order from this Honourable Court regarding this matter.

CRA has also filed amended claims against Yuma totalling approximately \$6.3 million, including a property claim in the amount of \$3.7 million for unremitted HST. CRA is the only creditor of Yuma. The Monitor is in the process of disallowing Yuma's property claim on the basis that the services rendered by Yuma were "zero-rated" for the purposes of HST. The Notice of Disallowance is expected to be issued shortly and will be issued at the Company's request as a result of the potential Directors' obligations in connection with this claim. Deloitte advises that there are further discrepancies in the amounts claimed by CRA against Yuma, which would result in further Notices of Disallowance totalling approximately \$1.5 million; however, other than for the HST property claim, the Monitor does not intend to advance the Claims Procedure as it relates to Yuma given that there are no proceeds available for distribution from Yuma's estate, subject to the Court's approval of the proposed purchase price allocation.

4.3 Contingent Claim

A contingent claim of \$1 million was filed in respect of a "slip and fall" incident that allegedly took place outside one of the Company's retail locations on March 25, 2008. This claim was disallowed in accordance with the Claims Procedure on November 23, 2009 on the basis that

there is no evidence that the injury that may have resulted from the incident was caused by the Company. The claimant did not file a Notice of Dispute and the deadline for it to do so (December 8, 2009) has passed.

4.4 Trade Claims

Given that the Purchaser assumed the majority of the Company's trade obligations and that the Initial Order permitted the Company to pay pre-filing trade obligations, the majority of the trade claims filed in the Claims Procedure were either misfiled claims that were actually claims against Eddie Bauer US or claims that had been assumed or paid by the Purchaser. Accordingly, the majority of those claims were either disallowed or withdrawn by the creditors when contacted by the Monitor. The Monitor did not receive any Notices of Dispute in response to the disallowances and the deadline for filing a Notice of Dispute has also passed. The Monitor has admitted the claims of WCB, UPS and Shoppertrak, totalling approximately \$1,200.

5. DISTRIBUTION OF FUNDS

The Company is seeking this Honourable Court's approval of the following distributions from the Canadian Proceeds in the Monitor's possession:

- US\$7.8 million to Eddie Bauer US, as a partial distribution to be applied against its admitted claim against Tenere in the Claims Procedure; and
- \$804.24 to WCB, \$221.51 to UPS and \$185 to Shoppertrak, representing payment in full of their respective admitted claims against Tenere in the Claims Procedure.

The Monitor is proposing to pay WCB, UPS and Shoppertrak the full amount of their admitted claims given their nominal value and the professional costs associated with dealing with them otherwise - the costs of additional partial distributions to, and further correspondence with, these creditors would exceed the value of their claims.

5.1 Holdback

The proposed distributions would leave approximately \$2.5 million in the Trust Account. The Holdback is comprised of the Administration Charge (\$500,000) and the Directors' Charge (\$2 million). The Monitor believes that the Holdback of \$500,000 under the Administration Charge is sufficient to fund the costs incurred, or to be incurred, to the completion of these proceedings.

5.2 Potential Priority Claims

The Initial Order created the following charges (collectively, the "Charges"):

- Administration Charge (up to \$1 million). The Administration Charge provides a charge in favour of certain professionals involved in these proceedings in the event that their fees are unpaid at the time of distribution, or otherwise. As of the date of this Report, the majority of the professional fees through to the end of March, 2010 have been paid.

The Monitor intends to withhold \$500,000 from the Transaction proceeds and, accordingly, is proposing to reduce the Administration Charge from \$1 million to \$500,000.

- Intercompany Charge (up to US\$7.5 million, plus interest). The Intercompany Charge provides a charge in favour of Eddie Bauer US for any advances made to the Company over the course of the CCAA proceedings. The Intercompany Charge was created in order to allow Eddie Bauer US to continue to fund the Company's operations through its pre-filing cash management system. The Intercompany Charge contemplated that Eddie Bauer US could advance up to US\$7.5 million to the Company pursuant to New Intercompany Loan Documents (as defined in the Initial Order).

As at the date of this Report, there are no amounts outstanding that are secured by the Intercompany Charge - Eddie Bauer US' claim was filed on an unsecured basis. Accordingly, the Company is proposing to release and discharge the Intercompany Charge. Eddie Bauer US, the beneficiary of the Intercompany Charge, has consented to this relief.

- The Directors' Charge (up to \$2 million). The Directors' Charge is for claims, costs, charges and expenses relating to the failure of the Company to make payments of the nature referred to in subparagraphs 6(a), 8(a), 8(b) and 8(c) of the Initial Order. Based on the results of the Claims Procedure, the Monitor understands that:
 - The potential HST obligation of Yuma referred to in Section 4.2 of this Report will be disallowed. This is the only potential GST/HST claim submitted in the Claims Procedure resulting from the audits conducted by CRA;
 - The Company does not have a provincial sales tax obligation. No claims were filed in the Claims Procedure by the Ontario Ministry of Finance or other Provincial taxing authorities;
 - The Company is current on its payroll remittances; and
 - The Company's accrued vacation pay obligation was assumed by the Purchaser pursuant to the Transaction.

Should any amounts covered by the Directors' Charge remain outstanding, the full amount of the Directors' Charge (\$2 million) will be available to satisfy these obligations from the Holdback. The Monitor is in discussions with the Company's counsel regarding the elimination of the Directors' Charge; however, the Directors' Charge is likely to remain in place until the resolution of CRA's HST claim against Yuma.

Other than the claims that are subject to the Charges, the Monitor is not aware of any other claim that ranks in priority to the Company's unsecured creditors with admitted claims under the Claims Procedure.

5.3 Recommendation

Given that the administration of the Claims Procedure is complete and that the Holdback is sufficient to cover any potential priority claims, the Monitor is of the view that the proposed distributions, Holdback and amendments to the Charges are appropriate in the circumstances.

6. ASSETS UNDER ADMINISTRATION

6.1 Cash

As at the date of this Report, there is approximately US\$10.3 million on deposit in the Trust Account. A statement of receipts and disbursements for the period ending April 16, 2010 is attached as Appendix “B”.

6.2 Potential Tax Refunds

Based on discussions with Deloitte, the Monitor understands that there may be additional tax refunds available to the Company (over and above the refunds currently held by CRA), as follows:

- A refund resulting from losses incurred in fiscal 2009. In order to quantify and realize this potential refund, the Company’s 2009 fiscal tax return must be prepared and filed. Deloitte is in the process of preparing the tax returns and the Monitor expects to file those returns shortly on the Company’s behalf⁵ (the deadline for doing so is June 30, 2010); and
- The completion of the Competent Authority transfer pricing refund request being administered by Gowling Lafleur Henderson LLP (“Gowlings”), 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 material; however, the timing and quantum of the refund is highly speculative and uncertain.

Other than the funds on deposit in the Trust Account and these potential tax refunds, the Monitor is not aware of any further material assets yet to be monetized.

⁵ Pursuant to an Order made on August 20, 2009, the Monitor’s powers were expanded to include, *inter alia*, filing tax returns on the Company’s behalf.

7. 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;
- It will enable the Monitor to complete the outstanding matters in the Claims Procedure and to facilitate the proposed distributions detailed in this Report, subject to the approval of this Honourable Court; and
- An extension will provide the Company and the Monitor with the opportunity to work with Deloitte to pursue the tax refunds that may be owing to the Company, as described in Section 6.2 of this Report.

Given the nature of the outstanding issues, being tax matters which typically are not resolved on a timely basis, the Monitor believes an extension of the stay of proceedings until September 30, 2010 is reasonable as it should eliminate the need to bring a further motion solely for the purpose of extending the stay of proceedings. The Monitor does not expect there to be material developments through to that date.

7.1 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 Holdback. The Monitor believes the Holdback is sufficient to cover post-filing expenses incurred, or to be incurred, through to the completion of these proceedings.

8. CHAPTER 11 PROCEEDINGS

Recent material developments in the Chapter 11 Proceedings include the following:

- March 18, 2010 – The US Court entered an order confirming Eddie Bauer US' First Amended Joint Plan of Liquidation (the "Plan");
- March 29, 2010 – Pursuant to Section 7.2 of the Plan, Larry Waslow of Recovery Services, Inc. was appointed as the Liquidating Trustee and the assets of the US Debtors (including the equity interests in Tenere and Yuma) were transferred to a liquidating trust established pursuant to the Plan. The Liquidating Trustee's appointment effectively replaces Kugman Partners, Inc. as the Chief Restructuring Officer of Eddie Bauer US; and
- April 6, 2010 – The Plan became effective on this date. A copy of the Notice of Effective Date is attached as Appendix "C".

The Monitor has corresponded with the Liquidating Trustee following its appointment in order to, *inter alia*, update the Liquidating Trustee on the Company's CCAA proceedings, including the quantum and timing of distributions to Eddie Bauer US and further potential refunds that may be available to the Company, as described in this Report.

9. OVERVIEW OF THE MONITOR'S ACTIVITIES

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

- Corresponding with legal counsel in connection with all matters in these proceedings, including the proposed allocation, distribution issues and Claims Procedure issues generally;
- Corresponding extensively with Deloitte and the Company's former in-house tax advisors, regarding tax issues;
- Corresponding with representatives from Gowlings with regards to the Competent Authority refund application process;
- Facilitating payments, filing certain tax returns and following up on potential tax refunds on behalf of the Company in accordance with a Court Order dated August 20, 2009;

- Carrying out the Claims Procedure in accordance with the Claims Procedure Order, including issuing notices of disallowance;
- Corresponding with Alvarez on financial and accounting matters in connection with the Company's books and records;
- 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;
- Corresponding with the Liquidating Trustee;
- Drafting this Report; and
- Other matters pertaining to the administration of this mandate.

10. 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(g) of this Report.

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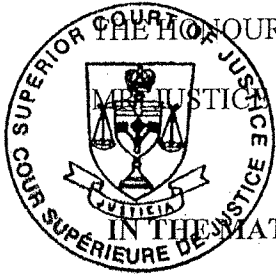
All of which is respectfully submitted,

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**

Court File No. 09-8240-CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**



THE HONOURABLE
JUSTICE MORAWETZ

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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.

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

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:

- (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

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**").

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

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.

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:

- (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

- (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.

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.

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,

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);

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:

- (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

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.

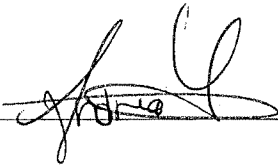
49. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

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.

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.



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

JUL 07 2009

PER / PAR:



IN 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

RSM Richter Inc.
Eddie Bauer of Canada Inc.
Statement of Receipts and Disbursements
For the Period Ended April 16, 2010

	USD Account	CAD Account
Receipts		
Proceeds of sale of assets	11,000,000	-
Sundry collections	100	199,872
Interest income	7,743	-
Transfers between estate accounts	-	761,650
	<u>11,007,843</u>	<u>961,522</u>
Disbursements		
Transfers between estate accounts	700,000	-
Professional fees	281	670,646
GST on disbursements	-	33,566
PST remittances (for July, 2009)	-	229,926
Publication costs	-	20,570
Payroll obligations	-	2,771
Miscellaneous expenses	113	321
	<u>700,394</u>	<u>957,799</u>
Balance in Estate Accounts	<u><u>10,307,449</u></u>	<u><u>3,723</u></u>

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

EBHI HOLDINGS, INC.,
et al.,¹

Debtors.

Chapter 11

Case No. 09-12099 (MFW)

Jointly Administered

**NOTICE OF (A) THE EFFECTIVE DATE OF THE DEBTORS'
FIRST AMENDED JOINT PLAN OF LIQUIDATION OF EBHI HOLDINGS,
INC., *ET AL.*, (B) THE SUBSTANTIAL CONSUMMATION OF THE PLAN; AND
(C) BAR DATES FOR CERTAIN CLAIMS**

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. **Confirmation of the Plan.** The above-captioned debtors and debtors in possession (as reorganized, collectively, the "Debtors") hereby give notice (the "Notice") that, on March 18, 2010 (the "Confirmation Date"), the Honorable Mary F. Walrath, United States Bankruptcy Judge, entered the Order Confirming Debtors' First Amended Joint Plan of Liquidation (the "Confirmation Order") [Docket No. 1450]. Unless otherwise defined in the Notice, capitalized terms used herein have the meanings set forth in the First Amended Joint Plan of Liquidation of EBHI Holdings, Inc., *et al.* (the "Plan") [Docket No. 1269].
2. **Effective Date.** Pursuant to the Confirmation Order, the Debtors hereby certify and give notice that the Plan became effective in accordance with its terms, and the Effective Date occurred, on April 6, 2010 (the "Effective Date").
3. **Substantial Consummation.** The Debtors hereby give notice that, pursuant to section 1101(2) of the Bankruptcy Code, the Plan has been substantially consummated.
4. **Effect of the Occurrence of the Effective Date.** Pursuant to section 1141 of the Bankruptcy Code, and except as otherwise provided in the confirmed Plan or the Confirmation Order, upon the occurrence of the Effective Date, the distributions and rights provided in the Plan and the treatment of Claims and Interests under the Plan, shall be in exchange for, and in complete satisfaction, discharge, and release of all Claims against and Interests in the Debtors. The provisions of the confirmed Plan and the

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: EBHI Holdings, Inc., a Delaware corporation (2352); Amargosa, Inc., a Delaware corporation (9737); Gobi Fulfillment Services, Inc., a Delaware corporation (0882); Arabian Diversified Sales, LLC, a Delaware limited liability company (1567); Gibson Services, LLC, an Ohio limited liability company (disregarded); Karalcum International Development, LLC, a Delaware limited liability company (1571); Simpson Information Technology, LLC, a Delaware limited liability company (disregarded); Sandy Financial Services Acceptance Corporation, a Delaware corporation (7532); and Sonoran Acceptance Corporation, a Delaware corporation (7253). The mailing address for EBHI Holdings, Inc. is 10401 N.E. 8th Street, Suite 500, Bellevue, WA 98004. On or about the Petition Date, Tenere of Canada, Inc. and Yuma Customer Services, Inc., affiliates of the Debtors, commenced a proceeding before the Superior Court of Justice, Commercial List, for the Judicial District of Ontario, for a plan of compromise or arrangement under the Companies' Creditors Arrangement Act.

Confirmation Order, pursuant to section 1141(a) of the Bankruptcy Code, are binding upon all Persons, including each of the Debtors and any and all Holders of Claims or Interests (irrespective of whether such Claims or Interests are Impaired under the Plan or whether the Holders of such Claims or Interests accepted, rejected, or are deemed to have accepted or rejected the Plan), any and all non-debtor parties to executory contracts and unexpired leases with any of the Debtors, and any and all Persons who are parties to or are subject to the settlements, compromises, releases, waivers, discharges and injunctions described in the Plan, and the respective heirs, executors, administrators, trustees, affiliates, officers, directors, agents, representatives, attorneys, beneficiaries, guardians, successors or assigns, if any, of any and all of the foregoing.

5. Release, Injunction, Exculpation and Indemnification Provisions. The Plan and Confirmation Order also contain additional protections, including certain release, injunction, exculpation and indemnification provisions, in favor of the Debtors, the Liquidating Trustee, their respective assets, property and estates, and certain other parties, as set forth in greater detail in (among other things) Article 11 of the confirmed Plan and pages 37-41 of the Confirmation Order, respectively.

6. Bar Date for Professional Fee Claims. On or prior to **May 21, 2010 at 4:00 P.M. (ET)** (i.e. forty-five (45) days following the Effective Date) (the “**Administrative Expense Claims Bar Date**”), each Professional shall File with the Bankruptcy Court its final fee application seeking final approval of all fees and expenses from the Petition Date through the Effective Date. Within ten (10) days after entry of a Final Order with respect to its final fee application, the Liquidating Trustee shall pay the Allowed Claims of each Professional solely from the Cash in the Carve-Out Escrow or from Other Assets Proceeds.

7. Bar Date for Certain Administrative Expenses. Other than with respect to (i) Administrative Expense Claims for which the Bankruptcy Court previously has established a bar date, and (ii) Tax Claims addressed in section 8 below, any and all requests for payment or proofs of Administrative Expense Claims, including Claims of all Professionals or other Entities requesting compensation or reimbursement of expenses pursuant to Bankruptcy Code sections 327, 328, 330, 331, 503(b) or 1103 for services rendered on or before the Effective Date (including any compensation requested by any Professional or any other Entity for making a substantial contribution in the Chapter 11 Cases), must be Filed and served on the Liquidating Trustee and its counsel no later than the Administrative Expense Claims Bar Date. Objections to any such Administrative Expense Claims must be Filed and served on the claimant no later than ninety (90) days after the Administrative Expense Claims Bar Date, which date may be extended by application to the Bankruptcy Court. The Liquidating Trustee shall use reasonable efforts to promptly and diligently pursue resolution of any and all disputed Administrative Expense Claims.

Holders of Administrative Expense Claims, including all Professionals or other Entities requesting compensation or reimbursement of expenses pursuant to Bankruptcy Code sections 327, 328, 330, 331, 503(b) or 1103 for services rendered on or before the Effective Date (including any compensation requested by any Professional or any other Entity for making a substantial contribution in the Chapter 11 Cases), that are required to File a request for payment or proof of such Claims and that do not File such requests or proofs of Claim on or before the Administrative Expense Claims Bar Date shall be forever barred from asserting such Claims against the any of the Debtors, their Estates, the Liquidating Trust, the Liquidating Trustee, any other Person or Entity, or any of their respective property.

8. Tax Claims. All requests for payment of Claims by a Governmental Unit (as defined in Bankruptcy Code section 101(27)) for Taxes (and for interest and/or penalties or other amounts related to such Taxes) for any tax year or period, all or any portion of which occurs or falls within the period from and including the Petition Date through and including the Effective Date, and for which no bar date has

otherwise been previously established, must be Filed on or before the later of: (a) **June 5, 2010 at 4:00 P.M. (ET)** (i.e. sixty (60) days following the Effective Date); or (b) to the extent applicable, ninety (90) days following the filing of a tax return for such Taxes (if such Taxes are assessed based on a tax return) for such tax year or period with the applicable Governmental Unit. Any holder of a Claim for Taxes that is required to File a request for payment of such Taxes and other amounts due related to such Taxes and which does not File such a Claim by the applicable bar date shall be forever barred from asserting any such Claim against any of the Debtors or any non-Debtor member of the Debtors' consolidated tax group, the Estates, the Liquidating Trust, the Liquidating Trustee or any other Entity, or their respective property, whether any such Claim is deemed to arise prior to, on, or subsequent to the Effective Date, and shall receive no distribution under the Plan or otherwise on account of such Claim.

9. Bar Date for Rejection Damages Claims. If the rejection of an executory contract or unexpired lease pursuant to Section 6.5 of the Plan gives rise to a Claim by the other party or parties to the executory contract or unexpired lease, such Claim shall receive no distribution under the Plan or otherwise on account of such Claim unless a proof of Claim is filed on or before **April 18, 2010 at 4:00 P.M. (ET)** (i.e. thirty (30) days after the mailing of notice of the entry of the Confirmation Order).

10. Copies of Plan and Confirmation Order. Copies of the Confirmation Order may be obtained by written request to Kurtzman Carson Consultants LLC, 2335 Alaska Avenue, El Segundo, California 90245, and may be examined by any party in interest during normal business hours at the Office of the Clerk of the Court, United States Bankruptcy Court, 824 Market Street, Wilmington, Delaware 19801. You may also obtain copies of the Confirmation Order or of any pleadings filed in these Chapter 11 Cases for a fee via PACER at: <http://www.deb.uscourts.gov> or free of charge at <http://www.kccllc.net/eddiebauer>.

Dated: April 6, 2010

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