

RSM Richter

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

RSM Richter Inc.
Toronto, June 13, 2011

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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.**

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

June 13, 2011

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. Pursuant to the First Amended Joint Plan of Liquidation filed in the Chapter 11 Proceedings (the “Plan”), EBHI Liquidating Trust, successor-in-interest to Amargosa (“EBHI Trust”) was formed. Pursuant to the Plan, the shares of Tenere were transferred to EBHI Trust.

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 the potential tax refunds owing to Tenere and an amended proof of claim filed by EBHI Trust;
- c) Summarize the terms and conditions of a settlement agreement dated May 10, 2011 between the Company and Canada Revenue Agency (“CRA”) (“Settlement Agreement”);
- d) Set out the Company’s proposed distributions totalling approximately \$5.4 million (“Proposed Distributions”);
- e) Provide an overview of the Monitor’s activities since December 7, 2010, the date of its last report; and
- f) Recommend that this Honourable Court make an order:
 - Approving the Settlement Agreement;
 - Authorizing and directing the Monitor to make the Proposed Distributions on the Company’s behalf;
 - Authorizing further distributions from Tenere to EBHI Trust, in its capacity as Tenere’s sole shareholder, without further Court order;

- Granting the Company's request for an extension of its stay of proceedings from June 30, 2011, the date that the stay expires, to December 31, 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 approved an allocation of the Canadian Proceeds of approximately US\$10.923 million (99.3%) to Tenere and US\$77,000 (0.7%) to Yuma.

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 EBHI Trust – its admitted claim totalled approximately US\$11.2 million (C\$12 million). This claim was subsequently amended to approximately US\$13 million (C\$14 million using the exchange rate specified by the Claims Procedure of US\$1 to C\$1.0777), as discussed in Section 4 of this Report;
- Tenere's other unsecured creditors were CRA, with an admitted claim of approximately \$195,000, and three creditors having claims totalling approximately \$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 EBHI Trust to be applied against its unsecured claim against Tenere;
- Approximately \$1,200 to the holders of three admitted unsecured claims against Tenere. CRA has released refunds owing to Tenere, net of CRA's admitted claim against Tenere (\$195,000); and
- US\$70,000 to CRA to be applied against its admitted claim against Yuma.

These distributions leave EBHI Trust 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.

3. ASSETS UNDER ADMINISTRATION

3.1 Cash

There is presently approximately \$5.7 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 June 8, 2011 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

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

Monitor has received approximately \$7.4 million of such refunds to date and is expecting additional federal and provincial tax refunds of approximately \$200,000.

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. AMENDED CLAIM OF EBHI TRUST

As discussed in the Monitor’s tenth report to Court dated December 7, 2010, the Monitor, Deloitte, Alvarez & Marsal (“Alvarez”), Eddie Bauer US’ financial advisor, and the Company’s former accounting personnel have been engaged in the process of reconciling certain accounting and tax accounts between the books and records of the Company and EBHI Trust. The initial claim filed by Amargosa did not consider certain foreign exchange gains/losses between Eddie Bauer US and Tenere which came to light when the Company’s 2009 and other pre-filing tax returns were being prepared and reconciled with those of Eddie Bauer US. The reconciliation process is now complete and resulted in EBHI Trust filing an amended proof of claim on June 1, 2011 for approximately US\$13 million (the

“Amended Claim”). The Amended Claim represents an increased claim of approximately US\$1.8 million³. The Company and the Monitor were involved in the reconciliation process and have reviewed the Amended Claim, including the supporting documentation and analyses. The Amended Claim has been admitted in the Claims Procedure.

5. CRA SETTLEMENT AGREEMENT

At the stay extension motion before this Honourable Court on December 14, 2010 (the “December 14th Motion”), CRA expressed its intention to object to any distribution being made to EBHI Trust as shareholder while CRA’s claims against Yuma remain unpaid. CRA advised that it intended to use a “substantive consolidation” argument in relation to the Tenere and Yuma estates as the basis for its position.

Following the December 14th Motion, the Company, CRA, the Monitor and their respective legal counsel exchanged correspondence on this issue. As a result of these discussions and negotiations, CRA and the Company have entered into the Settlement Agreement, pursuant to which, *inter alia*:

- CRA has agreed that it will not object to any distributions from Tenere to EBHI Trust or other stakeholders of Tenere;
- CRA has acknowledged that all remaining funds held by the Monitor on behalf of Tenere are assets of Tenere and that CRA has no claim in respect thereof;
- \$75,000 is to be paid by Tenere to CRA; and
- The approval of this Honourable Court is the sole condition precedent to the Settlement Agreement, following which the Monitor is to remit \$75,000 from the Trust Account to CRA.

A copy of the Settlement Agreement is attached as Appendix “C”.

³ Translates to approximately C\$1.93 million using the foreign exchange rate specified in the Claims Procedure (1.0777).

5.1 Recommendation re: Settlement Agreement

The Monitor recommends that this Honourable Court approve the Settlement Agreement on the basis that EBHI Trust, being the sole creditor of Tenere, has consented to the Settlement Agreement. In addition, the Settlement Agreement avoids litigation costs that Tenere would incur, which would likely exceed the amount payable to CRA under the Settlement Agreement.

6. PROPOSED DISTRIBUTIONS

The Company is seeking approval to fund distributions totalling approximately \$5.4 million, comprised of the following:

Description	(C\$)			
	EBHI Trust	CRA (withholding taxes)	CRA (other)	Total
Distribution to EBHI Trust as creditor	1,888,613	91,023	-	1,979,636
Distribution to EBHI Trust as shareholder	2,531,250	843,750	-	3,375,000
Payment to CRA re Settlement Agreement	-	-	75,000	75,000
Total – Proposed Distributions	4,419,863	934,773	75,000	5,429,636

The basis for each distribution included in the above table is provided in the following sections of this Report.

6.1 EBHI Trust

6.1.1 Distribution as Creditor

The Proposed Distribution to EBHI Trust of approximately \$1.9 million⁴ (translated to Canadian dollars using the exchange rate specified under the Claims Procedure) represents the unpaid portion of the Amended Claim. The Amended Claim includes unpaid interest and royalties totalling approximately \$364,000, on which a 25% withholding tax is payable

⁴ Net of withholding taxes on accrued interest and royalties.

to CRA. As noted above, the Amended Claim has been admitted under the Claims Procedure.

6.1.2 *Distribution as Shareholder*

Subject to the payment of the remaining portion of the Amended Claim, all claims against Tenere have been paid in full. After payment of the CRA settlement amount and the distribution to EBHI Trust on its Amended Claim (together with the related withholding taxes), there would be approximately \$3.65 million in the Trust Account. Accordingly, the Company is seeking approval for a \$3.375 million distribution to EBHI Trust in its capacity as Tenere's sole shareholder. Of the \$3.375 million proposed distribution, \$843,750 (25%) is payable to CRA for withholding taxes.

The Company is also seeking this Honourable Court's approval to make further distributions to its shareholder, EBHI Trust, without further order of this Honourable Court, should additional monies become available through the potential tax refunds discussed in Section 3.2, or otherwise. Any further distributions to EBHI Trust as shareholder would also be subject to a 25% withholding tax payable to CRA.

6.2 CRA

6.2.1 *Withholding Taxes*

A 25% withholding tax is payable to CRA on the portion of the Amended Claim related to accrued interest and royalty expenses (approximately \$364,000). The amount of the withholding tax owing to CRA in respect of these obligations totals \$91,023.

In addition, there are withholding taxes payable to CRA on any distributions to EBHI Trust in its capacity as shareholder, to the extent that the distributions exceed Tenere's paid-up-capital, being \$1. The Company's tax advisors have advised that the withholding tax rate on

shareholder distributions can range from 5% to 25% depending on, *inter alia*, the residency status and treaty eligibility of the beneficiaries of EBHI Trust. Since the number of beneficiaries is significant, it was determined to be impractical and costly to assess these and other attributes for each beneficiary - such an exercise would not be cost effective nor would it eliminate the risk of penalties being assessed against Tenere for failing to withhold the applicable taxes. As a result, the Trustee of EBHI Trust instructed the Company to withhold 25% of the dividend, being the maximum withholding tax that may be owing. Should the beneficiaries of EBHI Trust wish to claim treaty benefits in order to have a portion of the withholding taxes refunded, the Trustee of EBHI Trust will advise these beneficiaries the mechanism by which these parties can apply for such refunds, if applicable. The total amount of withholding taxes that are to be remitted to CRA in connection with the proposed dividend paid to EBHI Trust is \$843,750.

6.2.2 Payment under Settlement Agreement

The Company is seeking approval to fund the amount payable to CRA under the Settlement Agreement (\$75,000). For the reasons set out in Section 5.1 of this Report, the Monitor is of the view that the Settlement Agreement is appropriate.

6.3 Holdback

The Proposed Distributions would leave approximately \$250,000 in the Trust Account, being the amount withheld for costs to completion of these proceedings⁵. The Administration Charge (as defined in the Initial Order) was reduced to \$250,000 pursuant to a Court order made on August 12, 2010.

⁵ As at the date of this Report, the professional fees have been paid current.

6.4 Recommendation re: Proposed Distributions

The Monitor is of the view that the Proposed Distributions are appropriate given that the administration of the Claims Procedure is complete and the holdback is sufficient to cover any potential priority claims under the Administration Charge. In addition, there are no secured creditors and the other two charges created under the Initial Order, being the Intercompany Charge and the Directors' Charge, were discharged and released previously in these proceedings.

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; and
- 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.

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 December 31, 2011 would be appropriate.

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 funds in the Trust Account which are subject to the Administration Charge.

8. 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 inhouse 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 Eddie Bauer US;
- Corresponding with Deloitte in connection with the preparation of the Company's 2010 tax returns;
- Reviewing the Company's fiscal 2010 tax returns for the periods ending April 5, 2010 and December 31, 2010;
- Corresponding with Deloitte, Alvarez and the Company regarding the tax matters detailed in this Report;
- Reviewing correspondence between CRA and the Company's legal counsel in connection with the Settlement Agreement;
- Reviewing and commenting on a Notice of Appeal filed with the Tax Court of Canada between Yuma and Her Majesty the Queen on March 8, 2011;
- Reviewing and commenting on a schedule of Proposed Distributions and discussing with legal counsel implications of certain of the distributions;
- Corresponding with Bederson & Company LLP ("Bederson"), the US based accountants for EBHI Trust, and facilitating Bederson's information requests;
- Corresponding with representatives of Gowlings with regard 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, particularly as it relates to the Amended Claim filed by EBHI Trust;
- 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.

9. 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(f) of this Report.

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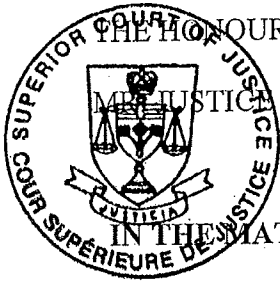
All of which is respectfully submitted,

A handwritten signature in black ink that reads "RSM Richter Inc." in a cursive, flowing script.

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

Appendix “A”

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**



HONOURABLE

MR. 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.

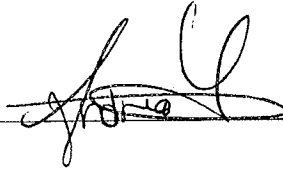
49. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

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.

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

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

Appendix “B”

RSM Richter Inc.

Tenere of Canada, Inc. and Yuma Customer Services Inc.

Statement of Receipts and Disbursements

For the Period Ended June 8, 2011

	USD Account	CAD Account
Receipts		
Proceeds of sale of assets	11,000,000	-
Tax refunds	-	7,362,936
Sundry collections	100	133,254
Interest income	9,684	7,180
Transfers between estate accounts	-	1,069,606
	<u>11,009,784</u>	<u>8,572,975</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	1,295,978
GST/HST on disbursements	-	89,918
PST remittances (for July, 2009)	-	229,926
Publication costs	-	20,570
Payroll obligations	-	2,771
Miscellaneous expenses	426	5,614
	<u>11,009,784</u>	<u>2,869,822</u>
Balance in Estate Accounts	<u>-</u>	<u>5,703,152</u>

Appendix “C”

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Settlement Agreement") is dated this 10th day of May, 2011.

B E T W E E N:

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA,
as represented by the Minister of National Revenue ("CRA")**

- and -

**TENERE OF CANADA. INC.
(formerly, Eddie Bauer of Canada, Inc.) ("Tenere")**

- and -

**YUMA CUSTOMER SERVICES INC.
(formerly, Eddie Bauer Customer Services Inc.) ("Yuma")**

WHEREAS the assets of Tenere and Yuma were sold, together with the assets of their parent, Amargosa, Inc. (formerly, Eddie Bauer Inc.) ("**Amargosa**"), in August of 2009 pursuant to Court Orders in the Chapter 11 proceedings involving Amargosa and the *Companies' Creditors Arrangement Act* ("**CCAA**") proceedings of Tenere and Yuma;

AND WHEREAS the proceeds of sale allocable to the Canadian assets of the Eddie Bauer enterprise were allocated between Tenere and Yuma by Order of the Court dated May 12, 2010, resulting in USD\$77,000 being allocable to the estate of Yuma and the amount USD\$10,923,000 being allocable to Tenere;

AND WHEREAS CRA is the only creditor of Yuma and has filed claims against Yuma totalling approximately \$6.3 million, of which RSM Richter Inc. (the "**Monitor**"), in its capacity as the Monitor of Tenere and Yuma, had allowed the amount of approximately CAD\$250,000;

AND WHEREAS the Minister of National Revenue has assessed Yuma as being liable for failing to collect Harmonized Sales Tax and whereas Yuma has appealed those assessments;

AND WHEREAS CRA received payment in the amount of USD\$70,000 in respect of its allowed claim against Yuma, representing the net proceeds of sale for the assets of Yuma;

AND WHEREAS the net proceeds of sale allocable to Tenere were used to repay, in part, the intercompany obligations of Tenere to Amargosa and to repay in full the other remaining creditors of Tenere;

AND WHEREAS there presently remains approximately CAD\$5.8 million in the estate of Tenere, which funds Tenere had indicated to the Court that it would be seeking Court approval to distribute to Amargosa, in its capacity as Tenere's sole remaining creditor and as the sole shareholder of Tenere, net of any costs to complete Tenere's insolvency proceedings;

AND WHEREAS CRA had expressed an intention to object to any distribution being made to Amargosa while CRA's claims against Yuma remained unpaid;

AND WHEREAS, subject to the terms and conditions hereof, CRA, Tenere and Yuma have agreed that, in exchange for a payment of CDN\$75,000 to CRA from the Tenere estate, CRA will no longer object to any distribution of remaining funds in the estate of Tenere to Amargosa;

NOW THEREFORE, in consideration of the agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by all parties:

1. Subject to the approval of the CCAA Court, the estate of Tenere hereby agrees to pay to CRA the amount of CDN \$75,000 in exchange for the undertakings in paragraph 2 hereof.
2. In consideration of the payment referenced in paragraph 1 hereof, CRA agrees that it shall not object to any distributions or requests to make further distributions or payments of any kind by Tenere to Amargosa or to other stakeholders of Tenere. For greater certainty, save for the amount to be paid to CRA under paragraph 1 above, CRA hereby acknowledges that all remaining funds presently held by the Monitor on behalf of Tenere are assets of Tenere and that CRA has no claim in respect thereof.
3. Tenere and Yuma acknowledge that CRA shall continue to have unsecured claims against Yuma.
4. Yuma has appealed the Minister of National Revenue's assessment, Notice of which was dated January 26, 2010, as confirmed by Notice of Confirmation dated December 8, 2010, in respect of HST which CRA alleges was collectable by Yuma. Notice of such appeal was received by CRA on March 21, 2011 from the Tax Court of Canada ("TCC"). The parties agree that, since there are no funds presently anticipated to be received by the estate of Yuma, proceeding further with the appeal would be an unnecessary burden. However, in the event that funds come into the estate of Yuma, such appeal should not at this time be dismissed. Accordingly, the estate of Yuma hereby consents to extend indefinitely the time within which CRA has to respond to the Notice of Appeal. Both Yuma and CRA agree that, if the TCC shall direct the appeal to proceed, then Yuma shall be free to prosecute the appeal as it deems appropriate and CRA shall be free to respond to such appeal as it deems appropriate.
5. This document may be executed by counsel on behalf of any of the parties and may be executed in counterparts, all of which counterparts when taken together shall form one agreement.
6. This Settlement Agreement shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein.

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IN WITNESS WHEREOF, the parties have caused this Settlement Agreement to be duly executed as of the date first above written.

**HER MAJESTY THE QUEEN IN RIGHT OF
CANADA as represented by the Minister of
National Revenue**

Per: 

Name: CANAAN GOLDSMAN

Title: MANAGER, INSOLVENCY

I/We have the authority to bind the organization.

TENERE OF CANADA. INC.

(formerly, Eddie Bauer of Canada, Inc.), by its
counsel, Goodmans LLP

Per: 

YUMA CUSTOMER SERVICES INC.

(formerly, Eddie Bauer Customer Services Inc.),
by its counsel, Goodmans LLP

Per: 

ACKNOWLEDGMENT

The undersigned, being the Court-appointed Monitor of Tenere and Yuma, acknowledges and agrees to the foregoing terms and agrees that it shall, upon the CCAA Court approving such payment, process a cheque to CRA for CDN\$75,000 from the Tenere estate account maintained by the Monitor to facilitate the settlement noted above.

Dated this 12th day of May, 2011.

RSM RICHTER INC., in its capacity as the Court-appointed Monitor of Tenere of Canada. Inc. (formerly, Eddie Bauer of Canada, Inc.) and Yuma Customer Services Inc. (formerly, Eddie Bauer Customer Services Inc.), and not in its personal capacity

Per: 

Name: DAVID SIERADZKI

Title: V.P.