

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**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 CLOTHING FOR MODERN TIMES LTD.**

**A COMPANY DULY INCORPORATED IN THE PROVINCE OF ONTARIO
WITH A HEAD OFFICE IN THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO**

**MOTION RECORD
(returnable August 31, 2012)**

August 24, 2012

Norton Rose Canada LLP
Royal Bank Plaza,
South Tower, Suite 3800
200 Bay Street, P.O. Box 84
Toronto, Ontario M5J 2Z4 CANADA

Mario Forte LSUC#: 27293F
Tel: 416.216.4870
Fax: +1 416.216.3930

Lawyers for the Monitor

TO: The Service List

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY**

**IN THE MATTER OF THE NOTICE OF INTENTION
TO MAKE A PROPOSAL OF
CLOTHING FOR MODERN TIMES LTD.**

E-MAIL SERVICE LIST

CHAITONS LLP

5000 Yonge Street, 10th Floor
Toronto, Ontario M2N 7E9

**Lawyers for Clothing for Modern Times Ltd.
("CMT")**

Harvey Chaiton

Tel: 416.218.1129
Fax: 416.218.1866
Email: Harvey@chaitons.com

Maya Poliak

Tel: 416.218.1161
Fax: 416.218.1844
Email: maya@chaitons.com

Ernst & Young Orenda Corporate Finance Inc..

200 King Street West
Suite 1100, P.O. Box 48
Toronto, Ontario M5H 3T4

Financial Advisor to CMT

Andrew Schaefer

Tel: 416.932.6244
Email: Andrew.Schaefer.ca.ey.com

FARBER FINANCIAL GROUP

150 York Street, Suite 1600
Toronto, ON M5H 3S5

Monitor of CMT

Allan Nackan

Tel: 416.496.3732
Fax: 416.496.3839
Email: anackan@afarber.com

Hylton Levy

Tel: 416.496.3070
Fax: 416.496.3839
Email: hlevy@farberfinancial.com

NORTON ROSE CANADA LLP

Royal Bank Plaza South Tower
Suite 3800, 200 Bay Street
Toronto, Ontario M5J 2Z4

Lawyers for the Monitor

Mario Forte

Tel: 416.216.4870
Fax: 416.216.3930
E-mail: mario.forte@nortonrose.com

AIRD & BERLIS LLP

Brookfield Place 181 Bay St
Suite 1800 Box 754
Toronto, Ontario M5J 2T9

**Lawyers for Roynat Asset Finance, a division of
Roynat Inc.**

CROWN CAPITAL PARTNERS INC.

Suite 1704
95 Wellington Street West
Toronto, ON M5J 2N7

**Authorized Agent for CIC Asset Management
Inc.**

TORYS LLP

3000-79 Wellington St W
TD Centre PO Box 270
Toronto, Ontario M5K 1N2

**Lawyers for The Cadillac Fairview Corporation
Limited**

MCLEAN & KERR LLP

2800-130 Adelaide St W
Toronto, Ontario M5H 3P5

**Lawyers for Ivanhoe Cambridge Inc., Oxford
Properties Group Inc., Primaris Retail Estate
Investment Trust, Morguard Investments
Limited and 20 VIC Management Inc.**

CMT Sourcing Group**114 RIDEAU**

Rideau Centre
50 Rideau Street, Suite 300
Ottawa, ON K1N 9J7

119 CANADA ONE

H&R Developments
3625 Dufferin Street. Suite 500
Toronto, Ontario
M3K 1N4

D. Robb English

Tel: 416.865.4748
Fax: 416.863.1515
Email: renglish@airdberlis.com

Ian Aversa

Tel: 416.865.3082
Fax: 416.863.1515
Email: iaversa@airdberlis.com

Chris Johnson

Tel: 416 927-0863
Fax: 416 640-6722
Email: cjohnson@group-cmt.com

David Bish

Tel: 416.865.7353
Fax: 416.865.7380
Email: dbish@torys.com

Wally Stevenson

Tel: 416.364.5371
Fax: 416.771.9998
Email: wstevenson@mcleankerr.com

Linda Galessiere

Tel: 416.369.6609
Fax: 416.366.8571
Email: lgalessiere@mcleankerr.com

Brian Anyon

Email: banyon@group-cmt.com

Sue Fortin

Leasing Coordinator
Tel: 613.236-6565 x 232
Fax: 613.236-5728
Email: Sue.Fortin@rideaucentre.net

Lorraine Maton

Director of Leasing
Tel: 416.635.7520 ext. 531
Fax: 416.635.9921
Email: lmaton@canadaoneoutlets.com

LONDONDERRY

High Peak Realities Inc.
21 St. Clair Avenue East Suite 1201
Toronto, Ontario
M4T 1L9

Brittany Heath

Senior Leasing Manager/ Broker of Record
Tel: 647.722.6472
Fax: 647.722.6475
Email: brittany@highpeak.ca

EASTGATE SQUARE HOLDING INC.

c/o Redcliff Realty Management Inc.
40 University Avenue
Suite 1200
Toronto, Ontario M5J 1T1

Rick Saker

General Manager
Tel: 905.561.2444 ext 226
Email: rsaker@redcliffrealty.com

INTERCITY CENTRE HOLDINGS INC.

c/o Redcliff Realty Management Inc.
Real Estate Brokerage
40 University Avenue, Suite 1200
Toronto, Ontario
M5J 1T1

Toran Eggert

Vice President, Development Leasing
Sales Representative
Tel: 416.941.1732
Email: teggert@redcliffrealty.com

SURREY CC PROPERTIES INC.

2153 Central City Shopping Centre
10153 King George Blvd.
Surrey, BC V3T 2W1

Lorelei Guthrie

Property Manager
Tel: 604.587.7762
Fax: 604.588.8124
Email: lguthrie@blackwoodpartners.com

West Edmonton Mall

3000, 8882 170 Street
Edmonton, AB T5T 4J2

John T. C. Colbert

Corporate Controller
Tel: 780.444.8138
Fax: 780.444.8130
Email: john.colbert@wem.ca

PLACE VERSAILLES INC.

5125 Du Trianon
Suite 300
Montreal, Quebec H1M 2S5

Lyne Martins

Tel: 514.352.1441
Email: lynemartin@placeversailles.com

CARREFOUR RICHELIEU REALITIES LTD.

600 De Maisonneuve Blvd. West
Suite 2600
Montreal, Quebec H3A 3J2

Cathy Goralczyk

Tel: 514.363.9413
Fax: 514.363.0512
Email: cgoralczyk@carrefourangrignon.com

CUSHMAN & WAKEFIELD LTD.

2235 Sheppard Avenue East, Suite 1600
Toronto, ON, M2J 5B8

Goran Brelih

Broker, Vice President, Industrial
Tel: 416.756.5456
Fax: 416.987.5673
Email: goran.brelh@ca.cushwake.com

Representative for RHYL Realty Inc. and Ganz Realty**ORLANDO CORPORATION**

6205 Airport Road, 5th Floor
Mississauga, Ontario L4V 1E3

Dan Hyde

Property Manager
Tel: 905.677.5480 x 226
Fax: 905.677.2825
Email: hyded@orlandocorp.com

DEPARTMENT OF JUSTICE

Ontario Regional Office
The Exchange Tower
130 King Street West, Suite 3400
Toronto, ON M5X 1K6

Attention: P. Tamara Sugunasiri

Tel: 416.973.0706
Fax: 416.973.0810
Email: tsugunas@justice.gc.ca

**HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF ONTARIO AS REPRESENTED
BY THE MINISTER OF FINANCE**

(Income Tax, PST)
PO Box 620
33 King Street West, 6th Floor
Oshawa, ON L1H 8E9

Attention: Kevin J. O'Hara

Email: kevin.ohara@ontario.ca

JOHN ROWINSKI

42 Baldwin Street
Brooklin, Ontario L1M 1A4

Tel: 905.655.6375
Fax: 1.866.295.9813
Email: jr@brooklinlawyer.com

**Lawyers for The Mackenzie Construction
Group, Inc.**

DAOUST VUKOVICH LLP

Barristers and Solicitors
20 Queen Street West, Suite 3000
Toronto, Ontario M5H 3R3

Gasper Galati

Tel: 416.598.7050
Fax: 416.597.8897
Email: ggalati@dv-law.com

DICKINSON WRIGHT LLP

222 Bay Street, 18th Floor
P.O. Box 124
Toronto, Ontario M5K 1H1

Mark Shapiro

Tel: 416.646.4603
Fax: 416.865.1398
Email: mshapiro@dickinson-wright.com

Lawyers for YM Inc.

Michael Weinczok

Tel: 416.777.4026
Fax: 416.865.1398
Email: mweinczok@dickinson-wright.com

Lisa S. Corne

Tel: 416.646.4608
Fax: 416.865.1398
Email: lcorne@dickinson-wright.com

PATERSON, MACDOUGALL LLP

1 Queen Street East
Suite 900
Toronto, ON M5C 2W5

Peter F. M. Jones

Tel: 416.366.9607
Fax: 416.366.3743
Email: pfmjones@pmlaw.com

**Lawyers for Wellton Express International
(Ontario) Inc.**

**LENCZNER SLAGHT ROYCE SMITH GRIFFIN
LLP**

2600 – 130 Adelaide Street West
Toronto, ON M5H 3P5

Peter Osborne

Tel: 416.865.3094
Fax: 416.865.9010
Email: posborne@litigate.com

Lawyers for Arif Noor

COURIER SERVICE LIST

GE CAPITAL CANADA
(formerly) CITICORP VENDOR FINANCE, LTD.
5500 North Service Road
Suite 801
Burlington, Ontario L7L 6W6

Tel: 1.800.263.0521
Fax: 1.800.232.4860

XEROX CANADA LTD.
33 Bloor Street East
3rd Floor
Toronto, Ontario M4W 3H1

DELL FINANCIAL SERVICES CANADA LIMITED
155 Gordon Baker Road
Suite 501
North York, Ontario M2H 3N5

HAV-A-KAR LEASING LTD.
4077 Chesswood Drive
Toronto, Ontario M3J 2R8

IMMOBILIER MEGA CENTRE INC.
c/o Devimco Inc.
Tour Champlain, 2700 Boul. Laurier
Bureau 3200
Quebec, Quebec G1V 4K5

WOODBINE SHOPPING CENTRE
500 Rexdale Boulevard
Etobicoke, Ontario
M9W 6K5

Peter McCallion
General Manager
Tel: 416.674.5200 ext. 306

WHITE OAKS MALL HOLDINGS INC.
c/o Redcliff Realty Management Inc.
40 University Avenue
Suite 1200
Toronto, Ontario
M5J 1T1

Jim Hewer
General Manager
Tel: 519.681.0434
Fax: 519.668.1381

GESTIONS RIOCAN (BROSSARD) INC.
BB REAL ESTATE INVESTMENT TRUST
c/o Devimco Inc.
Tour Champlain, 2700 Boul. Laurier
Bureau 3200
Quebec, Quebec G1V 4K5

SELIRA LIMITED & BIRENBAUM
CONSULTANTS
10 Torresdale Avenue
Suite 508
North York, ON M2R 3V8

INDEX

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**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 CLOTHING FOR MODERN TIMES LTD.**

**A COMPANY DULY INCORPORATED IN THE PROVINCE OF ONTARIO
WITH A HEAD OFFICE IN THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO**

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TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE**

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 CLOTHING FOR MODERN TIMES LTD.
A COMPANY DULY INCORPORATED IN THE PROVINCE OF ONTARIO
WITH A HEAD OFFICE IN THE CITY OF TORONTO IN THE PROVINCE OF
ONTARIO

**NOTICE OF MOTION
(returnable August 31, 2012)**

A. Farber & Partners Inc. in its capacity as monitor in these proceedings (the "**Monitor**") will make a motion to a Judge of the Commercial List on August 31, 2012, at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR: an order

- (a) abridging, if necessary, the time for service of this notice of motion so that the motion is properly returnable on August 31, 2012;
- (b) advice and direction on terminating CMT's restructuring proceeding under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended ("**CCAA**");
- (c) approving and authorizing the Monitor to distribute \$867,527.64 and such further amounts as may come into its hands from time to time to CIC Management Inc., the prior ranking secured creditor of Clothing for Modern Times Ltd. ("**CMT**"); and
- (d) approving the activities of the Proposal Trustee and Monitor, and its fees and any disbursements and those of its counsel incurred in such capacities;

- (e) discharging the Monitor in these CCAA proceedings, pursuant to the terms of the draft order sought herein; and
- (f) discharging all court ordered charges provided for in the CCAA proceedings.

THE GROUNDS FOR THE MOTION ARE:

Termination of CCAA Proceeding

- (a) Since March 27, 2012 following the completion of the sale of substantially all of the assets of CMT pursuant to a transaction (the "**Transaction**") which received court approval on February 17, 2012, CMT has conducted no operations for its own or anyone's account.
- (b) On June 6, 2012 CMT filed an assignment in bankruptcy and Farber was appointed trustee in bankruptcy therein reflecting the fact that CMT's operating assets had been sold and there was no longer a possibility of a viable restructuring or a plan emerging from such proceedings.
- (c) As contemplated in the Transaction, a reserve was provided to enable the satisfaction of employee obligations pursuant to sections 81.3 and 81.4 of the *Bankruptcy and Insolvency Act* ("**BIA**") and all obligations, fees, costs and expenses of the CCAA Proceedings secured by the Administration Charge (as defined in the CCAA proceedings) to the termination thereof and any subsequent bankruptcy proceeding arising thereafter.
- (d) The Monitor has with the consent of CMT and pursuant to the terms of the CCAA proceedings paid the fees, costs and disbursements of the firms entitled to the benefit of the Administration Charge save and except for those fees, costs and expenses incurred in preparation for this motion.
- (e) On July 22, 2011 the court ordered that a charge be created in favour of certain real property landlords who were party to a written agreement for amendments to base and additional monthly rental payments, to a

maximum of one-half of one month's rent, exclusive of damages or other amounts recoverable as rent under any relevant lease.

- (f) Since March 27, 2012 CMT has not operated nor occupied any retail location and all former locations have either been assigned to the purchasers pursuant to the Transaction or liquidators and discharged in accordance with various orders of this Honourable Court.
- (g) CMT has advised the Monitor that all post-filing rental obligations were fully paid to the date of the disclaimer notice or upon assignment to the Purchaser.
- (h) In any event, no landlord who might have had the benefit of the landlord charge has claimed any post-filing rental payments.

Distribution to Secured Creditor

- (i) The Monitor in its former capacity as Proposal Trustee received the favourable opinion of its counsel that CIC's security was valid and enforceable in the Provinces of Ontario, Quebec, British Columbia, Manitoba, New Brunswick, Nova Scotia and Alberta, subject to the usual assumptions and qualifications contained therein.
- (j) Subject to certain priority payables in favour of certain employees pursuant to section 81.3 or 81.4 of the BIA in the approximate amount of \$10,509, CIC would appear to have prior ranking security interests in the remaining assets and cash of CMT.

Approval of Activities and Accounts

- (k) The activities of A. Farber & Partners Inc. in its capacities as Proposal Trustee and Monitor have been reported to the court in six reports as Proposal Trustee and 3 reports as Monitor, all of which are filed herein without exhibits, with the exception of the Monitor's third report which contains exhibits.

- (l) The total fees and disbursements of the Monitor and Proposal Trustee are set out in the Affidavit of Hylton Levy attached as "Exhibit L" to the Monitor's third report ("**Levy Affidavit**").
- (m) The total fees and disbursements of counsel to the Proposal Trustee and the Monitor are set out in the Affidavit of Mario J. Forte, filed in these proceedings ("**Forte Affidavit**").
- (n) The facts set out in the Levy and Forte Affidavits.
- (o) Section 23(2) of the CCAA;
- (p) Sections 81.3, 81.4 and 192(2) of the BIA;
- (q) Rule 37 of the *Rules of Civil Procedure* (Ontario); and
- (r) Such other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) The Affidavit of Hylton Levy;
- (b) The Affidavit of Mario J. Forte;
- (c) The third report of the Monitor; and
- (d) Such other material as counsel may advise and this Honourable Court may permit.

August 24, 2012

Norton Rose Canada LLP
Royal Bank Plaza,
South Tower, Suite 3800
200 Bay Street, P.O. Box 84
Toronto, Ontario M5J 2Z4 CANADA

Mario Forte LSUC#: 27293F
Tel: 416.216.4870
Fax: +1 416.216.3930

Lawyers for the Monitor

TO: The Service List

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

Court File No: CV-11-9535-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CLOTHING
FOR MODERN TIMES LTD. A COMPANY DULY INCORPORATED IN THE PROVINCE OF
ONTARIO WITH A HEAD OFFICE IN THE CITY OF TORONTO IN THE PROVINCE OF
ONTARIO

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

NOTICE OF MOTION
(returnable August 31, 2012)

Norton Rose Canada LLP
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84
Toronto, Ontario M5J 2Z4 CANADA

Mario Forte LSUC#: 27293F
Tel: +1 416.216.4870
Fax: +1 416.216.3930

Lawyers for the Monitor

TAB 2

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) FRIDAY, THE 31ST
)
JUSTICE) DAY OF AUGUST, 2012

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 CLOTHING FOR MODERN TIMES LTD.
A COMPANY DULY INCORPORATED IN THE PROVINCE OF ONTARIO
WITH A HEAD OFFICE IN THE CITY OF TORONTO IN THE PROVINCE OF
ONTARIO

**ORDER
(Discharging Monitor and advice and direction and other relief)**

THIS MOTION, made by A. Farber & Partners Inc. ("**Farber**") in its capacity as Monitor in these proceedings for an order substantially in the form attached to the Motion Record herein was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the third report of the Monitor dated August 23, 2012 (the "**Third Report**") and on hearing the submissions of counsel for CIC and Farber & Partners Inc. (the "**Monitor**") and such other counsel as were present and wished to be heard,

SERVICE

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

DISTRIBUTION ORDER

2. THIS COURT ORDERS that the Monitor be and his hereby authorized and directed to distribute to CIC Asset Management Inc. ("**CIC**") the sum of \$867,527.64, and to make subsequent distributions to CIC from time to time, without further order of this Court as the Monitor in its discretion may determine, taking into account any funds necessary to satisfy any charges having priority to the interests of CIC.

THE MONITOR

Approval of Activities

3. THIS COURT ORDERS that the activities of the Monitor described in the Third Report of the Monitor filed in this court (the "**Monitor's Report**") be and is hereby approved, that all actions and conduct of Farber including the actions of the Monitor described in the Monitor's reports and those reports of Farber in its capacity as Proposal Trustee filed in these proceedings are hereby approved, and the Monitor has satisfied all of its obligations up to and including the date of this Order and shall not be held liable for loss or damage to any person with respect to its acts, errors or omissions.

Approval of Fees and Disbursements

4. THIS COURT ORDERS that the fees and expenses of Farber in its capacities as Proposal Trustee and Monitor and those of its counsel, Norton Rose Canada LLP, be and are hereby approved.

5. THIS COURT ORDERS AND DECLARES that effective upon the filing of the Termination Certificate (as defined below) and subject to any acts of gross negligence or wilful misconduct, Farber is hereby released and discharged from any and all liability that Farber now has or may hereafter have by reason of, or in any way arising out of the acts, errors and omissions of Farber while acting as Monitor or Proposal Trustee.

Termination and Discharge of Monitor

6. THIS COURT ORDERS that effective upon the filing of the Termination Certificate (as defined below), the Monitor shall be discharged of its duties and obligations pursuant to this Order and all other Orders made in the CCAA proceedings, and all other matters for which it is responsible in its capacity as Monitor, which to the best of the Monitor's knowledge are substantially completed.

Termination of Court Charges

7. THIS COURT ORDERS that effective upon the filing of the Termination Certificate, the Administration Charge, as defined in the Initial Order and the Landlord's

Charge as defined in the order of this Honourable Court made July 22, 2011 be and are hereby discharged and terminated.

TERMINATION OF CCAA PROCEEDINGS

8. THIS COURT ORDERS that subject to the terms of this Order, these proceedings are hereby terminated effective upon the filing of the monitor's Certificate in the form of Schedule "A" hereto (the "**Termination Certificate**").

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 CLOTHING
FOR MODERN TIMES LTD. A COMPANY DULY INCORPORATED IN THE PROVINCE OF
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ONTARIO

Court File No: CV-11-9535-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

ORDER
**(Discharging Monitor and advice and direction
and other relief)**

Norton Rose Canada LLP
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84
Toronto, Ontario M5J 2Z4 CANADA

Mario Forte LSUC#: 27293F
Tel: +1 416.216.4870
Fax: +1 416.216.3930

Lawyers for the Monitor

TAB 3

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**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
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**A COMPANY DULY INCORPORATED IN THE PROVINCE OF ONTARIO
WITH A HEAD OFFICE IN THE CITY OF TORONTO IN THE PROVINCE OF
ONTARIO**

**MONITOR'S CERTIFICATE
(regarding Termination of Proceedings and other matters)**

RECITALS

A. Pursuant to an Order of Justice Brown of the Ontario Superior Court of Justice (the "**Court**") made December 11, 2011, A. Farber and Partners Inc. was appointed monitor in the proceedings commenced by Clothing for Modern Times Ltd. ("**CMT**") (the "**CCAA Proceedings**"), continuing the restructuring initially commenced by CMT pursuant to the proposal provisions of the *Bankruptcy and Insolvency Act* (Canada).

B. Pursuant to an Order of the Court made August 31, 2012, (the "**Termination Order**") the Court authorized the termination of the CCAA Proceedings upon the filing of a Termination Certificate substantially in the form hereof, authorizing the making of a certain distribution to the senior secured creditor, CIC Asset Management Inc., and authorizing the termination and discharge of the Administration Charge and Landlord Charge (together the "**Charges**") more particularly described therein.

THE MONITOR CERTIFIES the following:

1. The Monitor has made all distributions to CIC Asset Management Inc. as contemplated in the Termination Order;
2. There are no outstanding claims under the Charges; and

3. There are no outstanding matters which the Monitor is required to address in these proceedings.

DATED this _____ day of August, 2012.

**A. FARBER & PARTNERS INC., in its
capacity as monitor of Clothing for Modern
Times Ltd.**

Per: _____
Name: Hylton Levy
Title: Title

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 CLOTHING
FOR MODERN TIMES LTD. A COMPANY DULY INCORPORATED IN THE PROVINCE OF
ONTARIO WITH A HEAD OFFICE IN THE CITY OF TORONTO IN THE PROVINCE OF
ONTARIO

Court File No: CV-11-9535-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**MONITOR'S CERTIFICATE
(regarding Termination of Proceedings
and other matters)**

Norton Rose Canada LLP
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84
Toronto, Ontario M5J 2Z4 CANADA

Mario Forte LSUC#: 27293F
Tel: +1 416.216.4870
Fax: +1 416.216.3930

Lawyers for the Monitor

TAB 4

Court File No. CV-11-9535-00CL

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
CLOTHING FOR MODERN TIMES LTD.
A COMPANY DULY INCORPORATED IN THE PROVINCE OF ONTARIO WITH A
HEAD OFFICE IN THE CITY OF TORONTO
IN THE PROVINCE OF ONTARIO**

THIRD REPORT OF THE MONITOR

AUGUST 23, 2012

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INTRODUCTION

1. Clothing for Modern Times Ltd. (“**CMT**” or the “**Company**”) is an Ontario-incorporated company that designed, produced and marketed trendy apparel styles under the retail banners: Urban Behavior (“**UB**”), Costa Blanca (“**CB**”) and Costa Blanca X (“**CBX**”), with a head office premises located at 300 Supertest Road, Toronto.
2. On June 27, 2011, the Company filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”). A. Farber & Partners Inc. (“**Farber**”) was appointed as Trustee in the Proposal of the Company (the “**Proposal Trustee**”). At the time of filing the NOI, the Company operated 116 stores and employed 1,682 employees, of which approximately 1,316 were hourly retail employees.
3. CIC Asset Management Inc. (“**CIC**”) and CMT Sourcing Group Ltd. (“**CMT Sourcing**”) are the Company’s primary secured creditors. In addition, CIC is a 5% minority shareholder of CMT and CMT Sourcing was the Company’s largest inventory supplier. CMT Sourcing is 50% owned by an arm’s length third party with the remaining shareholding owned by Mr. Arif Noor (“**Noor**”), the majority shareholder of CMT.
4. The Company determined, based on its financial performance during the proposal process and its discussions with certain landlords and other stakeholders, that the nominal amount it could afford to offer to unsecured creditors would be insufficient to obtain a requisite majority of support for its proposal. Accordingly, the Company

concluded that a going concern sale of its remaining business would be in the best interests of its stakeholders.

5. The NOI six month stay extension period expired on December 22, 2011. The Company was unable to seek a further extension to file a proposal or conduct a marketing and sales process of the CB business under the provisions of the BIA.
6. On December 16, 2011, an order (the **“Initial Order”**) was sought and granted by the Court authorizing the Company to, *inter alia*, continue its restructuring proceeding under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the **“CCAA”**), for the purpose of attempting to complete a going concern sale of substantially all the remaining assets of the Company. Farber was appointed monitor (the **“Monitor”**). A copy of the Initial Order and Justice Brown’s Endorsement are attached hereto as **Appendix “A” and “B”**.
7. On January 20, 2012, the Court granted an Order (the **“January 20 Order”**) authorizing an extension to the stay period set out in the Initial Order. The extension of the stay period allowed the Monitor additional time to review the offers received for the CB business and negotiate and complete an agreement of purchase and sale with a prospective purchaser. A copy of the January 20 Order is attached hereto as **Appendix “C”**.
8. On February 17, 2012, the Court, *inter alia*, granted an Order (the **“February 17 Order”**) extending the stay period to March 27, 2012, authorizing the liquidation of eight Costa Blanca stores (the **“CB Stores”**), extending the key employee retention plan (approved in the July 11 Order) for employees employed at the CB Stores,

extending the liquidation guidelines for the sale and removal of fixtures (approved in the July 22 Order) at the CB Stores, approving the full repayment of the Company's loans to Roynat Asset Finance, a Division of Roynat Inc. ("**Roynat**") and declaring the repayment no longer subject to the reimbursement provisions of the July 11 Order and the Initial Order.

9. In addition, on February 17, 2012, the Court granted an approval and vesting order (the "**Approval and Vesting Order**") authorizing CMT to sell substantially all of CMT's remaining assets to 2313329 Ontario Inc., which transaction was completed on March 22, 2012. A copy of the February 17 Order and Approval and Vesting Order are attached hereto as **Appendix "D"** and **Appendix "E"**..
10. On March 27, 2012, the Court granted an Order (the "**March 27 Order**") extending the stay period to May 18, 2012. All operations ceased as of March 27, 2012. A copy of the March 27 Order is attached hereto as **Appendix "F"**.
11. As more particularly set out below, the Company filed an assigned in bankruptcy on June 6, 2012, in which Farber was appointed trustee.

PURPOSE OF THIS REPORT

12. The purpose of this Third Report of the Monitor ("**Third Report**") is to:
 - a) provide the Court with a summary of the activities of Farber, in its capacity as Proposal Trustee and Monitor and as set out in the previous Proposal Trustee and Monitor Reports (attached hereto, without exhibits) ;
 - b) seek approval of the activities of the Proposal Trustee and Monitor;

- c) seek approval of the statement of receipts and disbursements of the Monitor;
- d) to provide the Court with information in support of the Proposal Trustee and Monitor's request for an Order approving the accounts of the Proposal Trustee and Monitor in the amount of \$327,135.17 (including H.S.T.) for the period June 8, 2011 to August 17, 2012;
- e) to provide to the Court information in support of the Proposal Trustee and Monitor's request for an Order approving the accounts of the Proposal Trustee and Monitor's counsel, Norton Rose Canada LLP ("NRC") in the amount of \$133,587.89 (including H.S.T.) for the period June 15, 2011 to June 21, 2012;
- f) to seek approval for the distribution of proceeds net of funds required to be held to satisfy any outstanding priority charges, to CIC up to the amount of the indebtedness outstanding to CIC; and
- g) to seek advice and direction of this Court with respect to terminating the CCAA proceedings and an order discharging the Monitor on terms more specifically set out in the draft order filed.

DISCLAIMER

13. In preparing the Third Report, the Monitor has relied upon the unaudited financial records and financial statements of CMT, as well as other information supplied by management, accountants, auditors and financial advisors to CMT. Our procedures and enquiries did not constitute any audit or review engagement. Accordingly, the

Monitor expresses no opinion or other form of assurance on the information contained in this Third Report or relied on in its preparation. Any use which any party, other than Court, makes of this Third Report or any reliance on or a decision made based upon it is the responsibility of such party.

THE SALES TRANSACTION

14. The Monitor conducted a Sales Process to the satisfaction of this Honourable Court which culminated in the terms of an agreement with 2313329 Ontario Inc. (“**231**” or the “**Purchaser**”) on February 3, 2012 (the “**Sale Agreement**”). The terms of the Sale Agreement were acceptable to the Company and the two remaining principal secured lenders, CIC and CMT Sourcing and was at a value substantially in excess of any other offer received in the sales process.
15. The parties to the Sale Agreement worked diligently to close the Sale Agreement on or before March 15, 2012, however, it became apparent to the Monitor that a few outstanding items remained and additional time was required to complete the Sale Agreement.
16. On March 14, 2012, the Honourable Mr. Justice Brown approved, by way of an endorsement (the “**March 14 Endorsement**”), an extension of the deadline to close the Sale Agreement to March 22, 2012. A copy of the March 14 Endorsement is attached hereto as **Appendix “G”**.
17. The transaction contemplated by the Sale Agreement closed on March 21, 2012. The Sales Transaction contemplated the Monitor receiving \$354,938 on closing related to certain closing adjustments. The Monitor deposited the closing funds in its general

trust account pending further direction or Order of this Honourable Court. In addition, the Monitor filed the Monitor's Certificate, as defined in the Approval and Vesting Order, with the Court on March 22, 2012. A copy of the Monitor's Certificate is attached hereto as **Appendix "H"**. The Company continued to operate the CB Stores until the effective date of the disclaimer, March 27, 2012. The Monitor has been advised that the Company liquidated and vacated the CB Stores in accordance with the July 22 Order as extended by the February 17 Order. Since March 27, 2012 the Company ceased operations.

RECENT BANKRUPTCY PROCEEDINGS AND OTHER ACTIVITIES

18. CMT filed an assignment in bankruptcy on June 6, 2012 (the "**Date of Bankruptcy**") and Farber was appointed the Trustee in Bankruptcy ("**Bankruptcy Trustee**"). The first meeting of creditors was held in Toronto on June 19, 2012. A copy of the certificate of assignment is attached hereto as **Appendix "I"**.
19. Prior to the Date of Bankruptcy, the Company prepared and paid the final payroll to all employees. A number of employees were not fully paid their total vacation pay entitlement. These employees are still owed an amount for outstanding vacation pay. The Monitor has summarized the outstanding indebtedness to these employees in greater detail below.
20. The Company filed its HST and/or GST returns to the month ended May 2012, however, it failed to remit payment for outstanding HST and GST prior to the Date of Bankruptcy. At the Date of Bankruptcy the net HST payable calculated by the Company was approximately \$1.95 million. In accordance with its obligation, the

Bankruptcy Trustee has calculated and filed the Company's HST return to the Date of Bankruptcy.

21. In addition to the HST liability noted above, the Company also filed RST returns in the Provinces that did not adopt HST. A combined total of \$23,309.61 is owed in respect of RST to the Ministries of Finance for the Provinces of Saskatchewan, Manitoba and Prince Edward Island.
22. The HST, GST and RST are unsecured claims in the bankruptcy and accordingly rank behind any distributions to secured creditors.
23. Canada Revenue Agency ("CRA") has advised the Bankruptcy Trustee that they have set-off all unpaid tax liabilities from the corporate tax refund owing to the Company. CRA has advised that the unpaid tax liability includes unpaid HST and customs duties and confirmed that the net amount owing to the Company after set-off is approximately \$1.337 million.
24. The Company did not have the ability to pay a number of suppliers who supplied products and services between the filing of the NOI and the Date of Bankruptcy. The Company provided the Monitor a schedule detailing its outstanding post filing obligations owing at the Date of Bankruptcy in the amount of \$1,695,276. The Monitor is not aware of any priority which would attach to the post filing obligations and is of the view that these outstanding amounts are unsecured claims in the Bankruptcy and accordingly rank behind any distribution to secured creditors.

25. The Statement of Receipts and Disbursements (attached hereto as **Appendix "J"**) for the Monitor has been prepared for the period March 16, 2012 to August 23, 2012.

THE ADMINISTRATION CHARGE AND LANDLORD CHARGE

26. The Initial Order granted an Administration Charge as security for professional fees and disbursements incurred by the Monitor, its counsel, E&Y and CMT's counsel limited to a maximum amount of \$400,000.

27. The Sale Agreement established a cash reserve to be held and distributed by the Monitor in an amount not less than that required to satisfy all priority payable obligations to employees pursuant to sections 81.3 and 81.4 of the BIA and all obligations, fees, costs and expenses of the CCAA Proceedings secured by the Administration Charge (as defined in the CCAA Proceedings), to the termination thereof and any subsequent bankruptcy proceedings arising thereafter.

28. The Monitor has, with the consent of the Company, paid the fees, costs and disbursements of the professional firms entitled to the benefit of the Administration Charge. The Monitor and its counsel have ongoing costs associated with the CCAA Proceedings, which will continue to be paid in accordance with the Administration Charge.

29. The July 22 Order established a charge in the CCAA Proceedings for a charge on the assets of CMT in favour of real property landlords (the "**Landlord Charge**") that were party to a written agreement for amendments to the base and additional monthly rental payments, to a maximum amount of one half of one month's rent. The

Landlord Charge excludes damages or other amounts recoverable as rent under relevant lease.

30. As noted above, the Company has not operated a retail location since March 27, 2012. All former locations have either been assigned to Purchasers or liquidated and disclaimed in accordance with Orders of this Honourable Court.
31. The Company advised the Monitor that all post filing rental obligations were fully paid to the date of the disclaimer notice or upon assignment to the Purchasers. Furthermore, no landlord who might have the benefit of the Landlord Charge has claimed any outstanding post filing rental payments.

SECURED CREDITORS

32. CIC has provided a statement of indebtedness to the Monitor showing they are owed \$5,674,570. The Monitor believes that this is an accurate accounting. Based on the distributions contemplated herein and the recovery of any remaining assets of CMT (inclusive of the prospective corporate tax refund) CIC will continue to suffer a shortfall.
33. The Proposal Trustee provided detailed information in its first and second report regarding the secured debt owing by the Company to both Roynat and CIC as secured lenders.
34. Specifically, NRC has provided a favourable opinion on CIC's security subject to the assumptions and qualifications contained therein for the Provinces of Ontario, Quebec, British Columbia, Manitoba, New Brunswick, Nova Scotia and Alberta..

Such opinions conclude that subject to the assumptions and qualifications contained therein, the interests created by the security instruments in the collateral described therein have been perfected under the relevant personal property security regime (to the extent required) and rank in priority to the interest of a trustee in bankruptcy in the property, assets and undertaking of the Company which are described in the security instruments.

35. The Company has paid all employee wages in full. Certain employees still have a balance owing for unpaid vacation pay. The Bankruptcy Trustee has calculated the outstanding charge pursuant to section 81.3 or 81.4 of the BIA to be approximately \$10,509, which ranks ahead of the interests of the secured creditors. These funds have been transferred to the bankruptcy estate and will be paid to the respective employees pending Service Canada clearance. The Company has no pension plan and therefore no subsisting charge under sections 81.5 and 81.6 of the BIA.

PRE-CCAA AND POST-CCAA ACTIVITIES

36. The activities of the Monitor in its capacity as Proposal Trustee are detailed in the attached Proposal Trustee's Reports (without appendices) filed in the Company's Proposal Proceedings as well as the report filed in connection with the CCAA proceeding commenced in December 2011 as **Appendix "K"** (the "**Proposal Trustee's Reports**").
37. 36. The Monitor's Post-CCAA activities are largely outlined in this report.

FEES AND DISBURSEMENTS

38. 37. The total fees and disbursements of the Monitor and Proposal Trustee for the period from June 8, 2011 to June 1, 2012 amount to \$327,135.17 (including HST) of which \$313,203.11 (including HST) was paid, subject to the approval of those fees by this Honourable Court. Full particulars of the fees and disbursements of the Monitor and Proposal Trustee are set out in the Affidavit of Hylton Levy sworn August 23, 2012, which is attached hereto as **Appendix "L"** (the "**Farber Affidavit**"). The Farber Affidavit also contains particulars of hours spent, hourly rates, average hourly rates, total fees and disbursements of the Monitor and Proposal Trustee.
39. 38. The total fees and disbursements for counsel to the Monitor and Proposal Trustee for the period from July 15, 2011 to June 21, 2012 amount to \$133,587.89 (including HST) of which \$18,217.35 (including HST) has not been paid. Counsel has estimated that in addition to approximately \$2,272.21 of additional fees and expenses to August 17, 2012, there will be a further \$5,000 of fees and costs incurred to and including hearing of the motion contemplated. Full particulars of the fees and disbursements for counsel to the Monitor and Proposal Trustee are set out in the Affidavit of Mario Forte sworn August 23, 2012, which is attached hereto as **Appendix "M"** (the "**Monitor Counsel Fee Affidavit**"). The Monitor Counsel Fee Affidavit also contains particulars of hours spent, hourly rates, average hourly rates, total fees and disbursements for counsel to the Monitor and Proposal Trustee.
40. 39. The Monitor estimates that its fees and disbursements and those of its counsel, NRC, to complete the administration of the CCAA proceedings (including preparing for and attendance at this final motion) will not exceed \$15,000 plus applicable taxes.

RECOMMENDATIONS

41.40. As a result of the above, the Monitor respectfully recommends that this Honourable Court approve:

- a) the Monitor's Statement of Receipts and Disbursements herein;
- b) the activities of the Proposal Trustee, Monitor and counsel to the Proposal Trustee and Monitor, as described herein;
- c) approving the fees and disbursements of the Proposal Trustee and Monitor herein and authorizing payment of any outstanding fees from the funds held in trust by Farber;
- d) approving the fees and disbursements of counsel to the Proposal Trustee and Monitor, and authorizing the payment of any outstanding fees from the funds held in trust by Farber;
- e) an order declaring that the Administration Charge and Landlord Charge be discharged and terminated upon filing of a monitor's certificate indicating no further amounts have been claimed under such charges (the "**Monitor's Certificate**");
- f) approving a distribution of proceeds net of funds required to be held to satisfy any outstanding priority charges, to CIC up to the amount of the indebtedness outstanding to CIC;
- g) an Order discharging Farber as Monitor of the assets, undertaking and property of CMT, and releasing and discharging the Monitor of and from

any and all liability that Farber may have by reason in any way arising from the acts or omissions of Farber while acting in its capacity as Monitor herein save and except for any gross negligence or willful misconduct on the part of the Monitor; and

- h) if directed by the Court, an order terminating the CCAA proceedings effective upon the filing of the Monitor's Certificate.

All of which is respectfully submitted this 23 day of August, 2012.

**A. FARBER & PARTNERS INC.
IN ITS CAPACITY AS MONITOR OF
CLOTHING FOR MODERN TIMES LTD.**

A. Farber & Partners Inc.

TAB 'A'

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) FRIDAY, THE 16TH
)
JUSTICE BROWN) DAY OF DECEMBER, 2011

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
CLOTHING FOR MODERN TIMES LTD.

INITIAL ORDER

THIS MOTION, made by Clothing for Modern Times Ltd. ("**CMT**"), 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 Chris Johnson sworn December 13, 2011 and the exhibits thereto, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for CMT, A. Farber & Partners Inc. ("**Farber**") in its capacity as the proposed Monitor (the "**Monitor**"), Roynat Asset Finance, a division of Roynat Inc. and certain landlords, and on reading the consent of Farber to act as the Monitor,

SERVICE

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

SEALING

2. **THIS COURT ORDERS** that the Confidential Appendix to the Johnson Affidavit shall be sealed until the completion of the transaction (the "**YM Transaction**") contemplated by the Sale Agreement between 7951388 Canada Inc. and CMT (the "**YM Agreement**").

CONTINUANCE UNDER THE CCAA

3. **THIS COURT ORDERS AND DECLARES** that CMT is a company to which the CCAA applies.

4. **THIS COURT ORDERS AND DECLARES** that effective December 22, 2011, CMT's restructuring proceeding (the "**Proposal Proceeding**") commenced under Part III of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") is hereby taken up and continued under the CCAA and that as of such date, the provisions of Part III of the BIA shall have no further application to CMT, save that any and all steps, agreements and procedures validly taken, done or entered into by CMT during the Proposal Proceeding shall remain valid and binding notwithstanding the termination of the Proposal Proceedings and the commencement of the within CCAA proceedings, including, without limitation: (a) the sale of any assets, property or undertaking of CMT that was approved by the Court in the Proposal Proceedings, including, but not limited to, the YM Transaction; and (b) any disclaimers, resiliations and/or assignment of leases or other agreements given or entered into by CMT during the Proposal Proceedings, as amended from time to time.

5. **THIS COURT ORDERS AND DECLARES** that all orders of this Court granted in the Proposal Proceeding shall continue to be in full force and effect, except to the extent that such orders are inconsistent with the terms of this Order or the CCAA, or on further Order of this Court. For greater clarity, paragraphs 2 to 6 of the Order of the Honourable Madam Justice Hoy dated July 11, 2011 (the "**July 11 Order**") shall continue to be in full force and effect with such procedural or administrative amendments as are necessary to give effect to this order.

POSSESSION OF PROPERTY AND OPERATIONS

6. **THIS COURT ORDERS** that CMT shall remain in possession and control of its 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, CMT shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. CMT 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 it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

7. **THIS COURT ORDERS** that CMT 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 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; and
- (b) the fees and disbursements of any Assistants retained or employed by CMT in respect of these proceedings, at their standard rates and charges.

8. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, CMT shall be entitled but not required to pay all reasonable expenses incurred by CMT 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 CMT following the date of this Order.

9. **THIS COURT ORDERS** that CMT 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 CMT in connection with the sale of goods and services by CMT, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, 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 CMT.

10. **THIS COURT ORDERS** that until a real property lease is assigned, disclaimed or resiliated in accordance with the CCAA, CMT 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 CMT and the landlord from time to time ("**Rent**"), for the period commencing from and including June 27, 2011, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

11. **THIS COURT ORDERS** that, except as specifically permitted herein, CMT is 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 CMT to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

12. **THIS COURT ORDERS** that CMT shall, subject to such requirements as are imposed by the CCAA, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations; and
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate,

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

13. **THIS COURT ORDERS** that CMT shall provide each of the relevant landlords with notice of CMT's 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 CMT's 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 CMT, or by further Order of this Court upon application by CMT on at least two (2) days notice to such landlord and any such secured creditors. If CMT disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it 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 Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to CMT's claim to the fixtures in dispute.

14. **THIS COURT ORDERS** that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time

of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving CMT and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, 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 CMT in respect of such lease or leased premises and such landlord shall be entitled to notify CMT 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.

NO PROCEEDINGS AGAINST CMT OR THE PROPERTY

15. **THIS COURT ORDERS** that until and including January 23, 2012, 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 CMT or the Monitor, or affecting the Business or the Property, except with the written consent of CMT and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of CMT 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 CMT or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of CMT and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower CMT to carry on any business which CMT is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (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 CMT, except with the written consent of CMT 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 CMT 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 CMT, 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 CMT, and that CMT shall be entitled to the continued use of its 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 CMT in accordance with normal payment practices of CMT or such other practices as may be agreed upon by the supplier or service provider and each of CMT and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

19. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to CMT. 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 11.03(2) of the CCAA, or on further Order of this Court, no Proceeding may be

commenced or continued against any of the former, current or future directors or officers of CMT with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of CMT 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.

APPOINTMENT OF MONITOR

21. **THIS COURT ORDERS** that A. Farber & Partners Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of CMT with the powers and obligations set out in the CCAA or set forth herein and that CMT and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by CMT pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

22. **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 CMT's 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) advise CMT in its preparation of CMT's cash flow statements;
- (d) notwithstanding paragraph 3 of this Order, effective immediately, conduct a process for the sale of CMT's business and assets used in connection with the ownership, operation or conduct of the business carried on by CMT under the retail banner Costa Blanca substantially in accordance with the sale process described in **Schedule "A"** hereto (the "**Sale Process**") and for the purpose of conducting the Sale Process, the Monitor shall retain Ernst & Young Orenda Corporate Finance Inc. ("**E&Y**");

- (e) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of CMT, to the extent that is necessary to adequately assess CMT's business and financial affairs or to perform its duties arising under this Order;
- (f) 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; and
- (g) perform such other duties as are required by this Order or by this Court from time to time.

23. **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.

24. **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.

25. **THIS COURT ORDERS** that that the Monitor shall provide any creditor of CMT with information provided by CMT in response to reasonable requests for information made in writing by such creditor 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 CMT 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 CMT may agree.

26. **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 and E&Y 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.

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

28. **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.

29. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, E&Y and CMT's counsel shall be entitled to the benefit of and are hereby granted a charge (the "**CCAA Administration Charge**") on the Property 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 CCAA Administration Charge shall have the priority set out in paragraph 31 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED IN THE PROPOSAL PROCEEDING

30. **THIS COURT ORDERS** that the Administration Charge (the "**Proposal Administration Charge**"), the Roynat Borrowings Charge and the Landlord's Charge created by the July 11 Order and the Order of the Honourable Madam Justice Hoy dated July 22, 2011 shall continue in this proceeding with the priority provided for in paragraph 31 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

31. **THIS COURT ORDERS** that the priorities of the CCAA Administration Charge, the Proposal Administration Charge, the Roynat Borrowings Charge and the Landlord's Charge (collectively, the "**Charges**"), as among them, shall be as follows:

First – the Roynat Borrowings Charge to the extent of any unpaid Overadvances (as defined in the July 11 Order);

Second (*pari passu*) – the Proposal Administration Charge and the CCAA Administration Charge to a maximum amount of \$400,000;

Third – any other indebtedness of CMT to Roynat secured by the Roynat Borrowings Charge or by a valid and perfected security interest in favour of Roynat;

Fourth (*pari passu*) – the balance of any indebtedness under the Proposal Administration Charge and the CCAA Administration Charge to a maximum amount of \$400,000; and

Fifth– the Landlord's Charge.

32. **THIS COURT ORDERS** that the filing, registration or perfection of 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.

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

34. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, CMT shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless CMT also obtains the prior written consent of the Monitor and the beneficiaries of the Charges, or on further Order of this Court.

35. **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**") thereunder 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 CMT, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by CMT of any Agreement to which it is 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 the creation of the Charges; and
- (c) the payments made by CMT pursuant to this Order and the granting of the Charges, does not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

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

SERVICE AND NOTICE

37. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in the Globe and Mail (Toronto edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against CMT of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

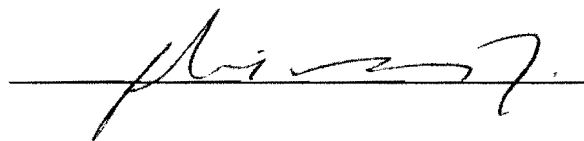
38. **THIS COURT ORDERS** that CMT and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to CMT's creditors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

39. **THIS COURT ORDERS** that CMT, 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 farberfinancial.com.

GENERAL

40. **THIS COURT ORDERS** that CMT or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

41. **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 CMT, the Business or the Property.
42. **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 CMT, 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 CMT 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 CMT and the Monitor and their respective agents in carrying out the terms of this Order.
43. **THIS COURT ORDERS** that CMT and the Monitor each be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
44. **THIS COURT ORDERS** that any interested party (including CMT 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.
45. **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, written over a horizontal line. The signature is cursive and appears to be "J. Smith".

SCHEDULE "A"

THE SALE PROCESS

The Sale Process will be carried out by the Monitor with the assistance of Ernst & Young Orenda Corporate Finance Inc. ("E&Y") on the following terms:

- (i) The Monitor, with E&Y's assistance, will compile a listing of prospective purchasers. E&Y would contact all parties identified in the list as well as any additional parties that come to its attention.
- (ii) By December 16, 2011, E&Y will distribute to prospective purchasers a solicitation letter summarizing the acquisition opportunity. The solicitation letter will include a confidentiality agreement ("CA") that prospective purchasers will be required to sign in order to gain access to confidential information and to perform diligence.
- (iii) The Monitor, with E&Y's assistance, will prepare a confidential information memorandum ("CIM") to be made available to prospective purchasers that execute a CA. The CIM will provide an overview of the CB and Wholesale businesses and assets.
- (iv) Prospective purchasers that have executed a CA will be provided with an opportunity to review financial and other information in the Monitor's online data room and will also be provided with an opportunity to visit store locations and meet with CMT's management.
- (v) An asset purchase agreement will be provided to those prospective purchasers who wish to make a bid. Prospective purchasers will be requested to submit offers in these formats (or substantially in these formats), as appropriate.
- (vi) The Monitor will require that all offers be submitted by the offer bid deadline of January 16, 2011 or such other date as the Monitor may permit.

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CLOTHING FOR MODERN TIMES LTD.

Court File No.

**ONTARIO
SUPERIOR COURT OF ONTARIO
IN BANKRUPTCY**

Proceedings commenced at TORONTO

INITIAL ORDER

CHAITONS LLP

Barristers and Solicitors
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

Harvey Chaiton (LSUC #21592F)

Tel: (416) 218-1129

Fax: (416) 218-1849

Maya Poliak (LSUC #54100A)

Tel: (416) 218-1161

Fax: (416) 218-1844

Lawyers for Clothing for Modern Times Ltd.

TAB 'B'

CITATION: (Re) Clothing for Modern Times Ltd., 2011 ONSC 7522
COURT FILE NO.: 31-1513595
DATE: 20111216

SUPERIOR COURT OF JUSTICE – ONTARIO

COMMERCIAL LIST

RE: IN THE MATTER OF THE Notice of Intention to make a Proposal of Clothing for Modern Times Ltd.

BEFORE: D. M. Brown J.

COUNSEL: M. Poliak and H. Chaiton, for the Applicant

M. Forte, for A. Farber & Partners Inc., the Proposal Trustee and Proposed Monitor

I. Aversa, for Roynat Asset Finance

D. Bish, for Cadillac Fairview

L. Galessiere, for Ivanhoe Cambridge Inc., Oxford Properties Group Inc., Primaris Retail Estate Investment Trust, Morguard Investment Limited and 20 VIC Management Inc.

M. Weinczuk, for 7951388 Canada Inc.

HEARD: December 16, 2011

REASONS FOR DECISION

I. Motion to continue *BIA* Part III proposal proceedings under the *CCAA*

[1] Clothing for Modern Times Ltd. (“CMT”), a retailer of fashion apparel, filed a Notice of Intention to Make a Proposal pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, on June 27, 2011. A. Farber & Partners Inc. was appointed CMT’s proposal trustee. At the time of the filing of the NOI CMT operated 116 retail stores from leased locations across Canada. CMT sold fashion apparel under the trade names Urban Behavior, Costa Blanca and Costa Blanca X.

[2] CMT has obtained from this Court several extensions of time to file a proposal. That time will expire on December 22, 2011. Under section 50.4(9) of the *BIA*, no further extensions are possible.

[3] Accordingly, CMT moves under section 11.6(a) of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 for an order, effective December 22, 2011, continuing CMT's restructuring proceeding under the *CCAA* and granting an Initial Order, as well as approving a sale process as a going concern for part of CMT's business.

II. Key background events

[4] Following the filing of the NOI, pursuant to orders of this Court, CMT conducted a self-liquidation of underperforming stores across Canada and, as well, a going-concern sale of its Urban Behavior business. The latter transaction is scheduled to close on January 16, 2012.

[5] At the time of the filing of the NOI there were three major secured creditors of CMT: Roynat Asset Finance, CIC Asset Management Inc., and CMT Sourcing. The company's indebtedness to those creditors totaled approximately \$28.3 million. CMT anticipates that the proceeds from the Urban Behavior transaction and the liquidation of under-performing stores will prove sufficient to repay its loan obligations to Roynat in full before the expiration of a forbearance period on January 16, 2012.

[6] When CMT was last in court on November 7, 2011 it stated it intended to make a proposal to its unsecured creditors, an intention supported by the two remaining secured creditors, CIC and CMT Sourcing. Subsequently CMT met with representatives of certain landlords and commenced discussions about its proposed restructuring plan. As a result of those discussions CMT lacks the confidence that its proposal would be approved by the requisite majority of its unsecured creditors, and it does not believe that it can make a viable proposal to its creditors. Instead, CMT thinks that a going-concern sale of its Costa Blanca business would be in the best interests of stakeholders and would preserve employment for about 500 remaining employees, both full-time and hourly retail staff.

[7] In its Sixth Report dated December 14, 2011 Farber agrees that a going concern sale of the Costa Blanca business would be in the best interests of CMT's stakeholders, maximize recoveries to the two secured creditors, CIC and CMT Sourcing, and preserve employment for CMT's remaining employees. Farber supports CMT's request to continue its restructuring under the *CCAA*. Farber consents to act as the Monitor under *CCAA* proceedings and to administer the proposed sale process.

III. Continuation under the CCAA

A. Principles governing motions to continue *BIA* Part III proposal proceedings under the *CCAA*

[8] Continuations of *BIA* Part III proposal proceedings under the *CCAA* are governed by section 11.6(a) of that Act which provides:

11.6 Notwithstanding the *Bankruptcy and Insolvency Act*,

(a) proceedings commenced under Part III of the *Bankruptcy and Insolvency Act* may be taken up and continued under this Act only if a proposal within the meaning of the *Bankruptcy and Insolvency Act* has not been filed under that Part.

[9] It strikes me that on a motion to continue under the *CCAA* an applicant company should place before the court evidence dealing with three issues:

- (i) The company has satisfied the sole statutory condition set out in section 11.6(a) of the *CCAA* that it has not filed a proposal under the *BIA*;
- (ii) The proposed continuation would be consistent with the purposes of the *CCAA*; and,
- (iii) Evidence which serves as a reasonable surrogate for the information which section 10(2) of the *CCAA* requires accompany any initial application under the Act.

Let me deal with each in turn

B. The applicant has not filed a proposal under the *BIA*

[10] The evidence shows that CMT has satisfied this statutory condition.

C. The continuation would be consistent with the purposes of the *CCAA*

[11] In *Century Services Inc. v. Canada (Attorney General)*,¹ the Supreme Court of Canada articulated the purpose of the *CCAA* in several ways:

- (i) To permit the debtor to continue to carry on business and, where possible, avoid the social and economic costs of liquidating its assets;²
- (ii) To provide a means whereby the devastating social and economic effects of bankruptcy or creditor initiated termination of ongoing business operations can be avoided while a court-supervised attempt to reorganize the financial affairs of the debtor company is made;³
- (iii) To avoid the social and economic losses resulting from liquidation of an insolvent company;⁴
- (iv) To create conditions for preserving the *status quo* while attempts are made to find common ground amongst stakeholders for a reorganization that is fair to all.⁵

¹ 2010 SCC 60.

² *Century Services*, para. 15.

³ *Ibid.*, para. 59.

⁴ *Ibid.*, para. 70.

⁵ *Ibid.*, para. 77.

As the Supreme Court noted in *Century Services*, proposals to creditors under the *BIA* serve the same remedial purpose, though this is achieved “through a rules-based mechanism that offers less flexibility.”⁶ In the present case CMT bumped up against one of those less flexible rules – the inability of a court to extend the time to file a proposal beyond six months after the filing of the NOI.

[12] The jurisprudence under the *CCAA* accepts that in appropriate circumstances the purposes of the *CCAA* will be met even though the re-organization involves the sale of the company as a going concern, with the consequence that the debtor no longer would continue to carry on the business, as is contemplated in the present case. In *Re Stelco Inc.* Farley J. observed that if a restructuring of a company is not feasible, “then there is the exploration of the feasibility of the sale of the operations/enterprise as a going concern (with continued employment) in whole or in part”.⁷ It also is well-established in the jurisprudence that a court may approve a sale of assets in the course of a *CCAA* proceeding before a plan of arrangement has been approved by creditors.⁸ In *Re Nortel Networks Inc.* Morawetz J. set out the rationale for this judicial approach:

The value of equity in an insolvent debtor is dubious, at best, and, in my view, it follows that the determining factor should not be whether the business continues under the debtor's stewardship or under a structure that recognizes a new equity structure. An equally important factor to consider is whether the case can be made to continue the business as a going concern.⁹

[13] The evidence filed by CMT and Farber supports a finding that a continuation under the *CCAA* to enable a going-concern sale of the Costa Blanca business and assets would be consistent with the purposes of the *CCAA*. Such a sale likely would maximize the recovery for the two remaining secured creditors, CIC and CMT Sourcing, preserve employment for many of the 500 remaining employees, and provide a tenant to the landlords of the 35 remaining Costa Blanca stores. Avoidance of the social and economic losses which would result from a liquidation and the maximization of value would best be achieved outside of a bankruptcy.

D. Evidence which serves as a reasonable surrogate for *CCAA* s. 10(2) information

[14] As the Supreme Court of Canada observed in *Century Services*, “the requirements of appropriateness, good faith, and due diligence are baseline considerations that a court should always bear in mind when exercising *CCAA* authority.”¹⁰ On an initial application under the *CCAA* a court will have before it the information specified in section 10(2) which assists it in

⁶ *Ibid.*, para. 15.

⁷ (2004), 6 C.B.R. (5th) 316 (Ont. S.C.J.), para. 1. In *Consumers Packaging Inc., Re*, 2001 CarswellOnt 3482 the Court of Appeal held that a sale of a business as a going concern during a *CCAA* proceeding is consistent with the purposes of that Act.

⁸ See the cases collected by Morawetz J. in *Re Nortel Networks Corp.* (2009), 55 C.B.R. (5th) 229 (Ont. S.C.J.), paras. 35 to 39. See also section 36 of the *CCAA*.

⁹ *Ibid.*, para. 40.

¹⁰ *Century Services*, para. 70.

considering the appropriateness, good faith and due diligence of the application. Section 10(2) of the *CCAA* provides:

10. (2) An initial application must be accompanied by

(a) a statement indicating, on a weekly basis, the projected cash flow of the debtor company;

(b) a report containing the prescribed representations of the debtor company regarding the preparation of the cash-flow statement; and

(c) copies of all financial statements, audited or unaudited, prepared during the year before the application or, if no such statements were prepared in that year, a copy of the most recent such statement.

[15] Section 11.6 of the *CCAA* does not stipulate the information which must be filed in support of a continuation motion, but a court should have before it sufficient financial and operating information to assess the viability of a continuation under the *CCAA*. In the present case CMT has filed, on a confidential basis,¹¹ cash flows for the period ending January 31, 2012, which show a net positive cash flow for the period and that CMT has sufficient resources to continue operating in the *CCAA* proceeding, as well as to conduct a sale process without the need for additional financing.

[16] In addition, the Proposal Trustee filed on this motion its Sixth Report in which it reported on its review of the cash flow statements. Although its opinion was expressed in the language of a double negative, I take from its report that it regards the cash flow statements as reasonable.

[17] Finally, the previous extension orders made by this Court under section 50.4(9) of the *BIA* indicate that CMT satisfied the Court that it has been acting in good faith and with due diligence.

E. Conclusion

[18] No interested person opposes CMT's motion to continue under the *CCAA*. Its two remaining secured creditors, CIC and CMT Sourcing, support the motion. From the evidence filed I am satisfied that CMT has satisfied the statutory condition contained in section 16(a) of the *CCAA* and that a continuation of its re-structuring under the *CCAA* would be consistent with the purposes of that Act.

¹¹ CMT has filed evidence explaining that disclosure of the cash flows prior to the closing of the Urban Behavior transaction would make public the proceeds expected from that transaction. I agree that such information should not be made public until the deal has closed. CMT has satisfied the principles set out in *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002] 2 S.C.R. 522 and a sealing order should issue.

IV. Sale Process

[19] In *Re Nortel Networks Corp.* Morawetz J. identified the factors which a court should consider when reviewing a proposed sale process under the *CCAA* in the absence of a plan:

- (a) is a sale transaction warranted at this time?
- (b) will the sale benefit the whole "economic community"?
- (c) do any of the debtors' creditors have a *bona fide* reason to object to a sale of the business?
- (d) is there a better viable alternative?¹²

[20] No objection has been taken to CMT's proposed sale of its Costa Blanca business or the proposed sale process under the direction of Farber as Monitor. Chris Johnson, CMT's CFO, deposed that CMT is not in a position to make a viable proposal to its creditors and has concluded that a going-concern sale of the Costa Blanca business would be the most appropriate course of action. The Proposal Trustee concurs with that assessment. In light of those opinions, an immediate sale of the Costa Blanca business would be warranted in order to attract the best bids for that business on a going-concern basis. Such a sale, according to the evidence, stands the best chance of maximizing recovery by the remaining secured creditors and preserving the employment of a large number of people. No better viable alternative has been put forward.

[21] Accordingly, I approve the proposed sale process as described in paragraph 37 of the affidavit of Chris Johnson.

V. Administration Charges

[22] CMT seeks approval under section 11.52 of the *CCAA* of an Administration Charge over the assets of CMT to secure the professional fees and disbursements of Farber as Monitor and its counsel, as well as the fees of Ernst & Young Orenda Corporate Finance Inc. ("E&Y"), who has been acting as CMT's financial advisor, together with its counsel. The order sought reflects, in large part, the priorities of various charges approved during the *BIA* Part III proposal process. CMT proposes that the Professionals Charge approved under the *BIA* orders and the *CCAA* Administration Charge rank *pari passu*, and that whereas the *BIA* orders treated as ranking fourth "the balance of any indebtedness under the Professionals Charge", the *CCAA* order would place a cap of \$250,000 on such portions of the Professionals and *CCAA* Administration Charges.

[23] No interested person opposes the charges sought.

¹² *Nortel Networks, supra.*, para. 49. See also *Re Brainhunter Inc.* (2009), 62 C.B.R. (5th) 41 (Ont. S.C.J.), para. 13.

[24] I am satisfied that the charge requested is appropriate given the importance of the professional advice to the completion of the Urban Behavior transaction and the sale process for the Costa Blanca business.

VI. Order granted

[25] I have reviewed the draft Initial Order submitted by CMT and am satisfied that an order should issue in that form.

[26] CMT also seeks a variation of paragraph 3 of the Approval and Vesting Order of Morawetz J. made November 7, 2011 in respect of the Urban Behavior transaction to include, in the released claims, the Professionals Charge and the CCAA Administration Charge. None of the secured creditors objects to the variation sought and it is consistent with the intent of the existing language of that order. I therefore grant the variation sought and I have signed the order.

(original signed by)

D. M. Brown J.

Date: December 16, 2011

TAB 'C'



Court File No. CV-11-9535-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)

FRIDAY, THE 20TH

)

JUSTICE SPENCE)

DAY OF JANUARY, 2012

**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
CLOTHING FOR MODERN TIMES LTD.**

(the "Applicant")

ORDER

THIS MOTION, made by Clothing For Modern Times Ltd. ("CMT") for an Order, *inter alia*:

1. abridging the time for service of CMT's Notice of Motion and Motion Record so that the motion is properly returnable on January 20, 2012; and
2. approving an extension of the initial stay of proceedings to February 27, 2012,

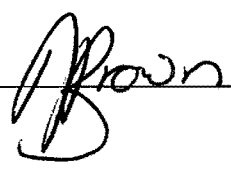
was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of CMT, including the Affidavit of Chris Johnson sworn January 17, 2012, the First Report of A. Farber & Partners Inc., in its capacity as the Monitor of CMT, and on hearing the submissions of counsel for the Monitor, CMT, ^{and} Roynat Asset Finance, a Division of Roynat Inc. ~~and certain CMT's landlords~~, no one appearing for any

other person on the service list, although duly served as appears from the affidavit of service of Lynn Lee sworn January 18, 2012, filed,

1. **THIS COURT ORDERS** that the time for service and filing of the notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that the Stay Period set out in paragraph 15 of the Order of the Honourable Mr. Justice Brown dated December 16, 2011 is hereby extended to February 27, 2012.



Natasha Brown
Registrar

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

JAN 20 2012

MB

**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 CLOTHING FOR MODERN TIMES LTD.**

Court File No. CV-11-9535-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

ORDER

(Motion Returnable January 20, 2012)

CHAITONS LLP
Barristers and Solicitors
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

Harvey Chaiton (LSUC #21592F)
Tel: (416) 218-1129
Fax: (416) 218-1849
E-mail: harvey@chaitons.com

Maya Poliak (LSUC# 54100A)
Tel: (416) 218-1161
Fax: (416) 218-1844
E-mail: maya@chaitons.com

Lawyers for Clothing for Modern Times Ltd.

TAB 'D'



Court File No. CV-11-9535-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) FRIDAY, THE 17TH
)
JUSTICE BROWN) DAY OF FEBRUARY, 2012

**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
CLOTHING FOR MODERN TIMES LTD.**

(the "Applicant")

ORDER

THIS MOTION, made by Clothing For Modern Times Ltd. ("CMT") for an Order, *inter alia*:

1. abridging the time for service of CMT's Notice of Motion and Motion Record so that the motion is properly returnable on February 17, 2012;
2. extending the stay of proceedings to March 27, 2012;
3. approving the liquidation of eight Costa Blanca stores (the "**Additional Stores**") set out at **Schedule "A"** hereto;
4. extending the key employee retention plan approved at paragraph 10 of the Order of Madam Justice Hoy dated July 11, 2011 (the "**July 11 Order**") to the Key Store Employees (as such term was defined in the Affidavit of Chris Johnson sworn July 5, 2011, filed with this Court) employed at the Additional Stores;

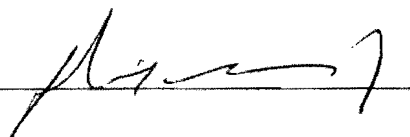
5. extending the guidelines for the sale and removal of fixtures approved at paragraph 4 of the Order of Madam Justice Hoy dated July 22, 2011 (the “**Fixture Removal Guidelines**”) to the liquidation of fixtures at the Additional Stores;
6. approving the repayment in full (the “**Repayment**”) by CMT of its loans from Roynat Asset Finance, a Division of Roynat Inc. (“**Roynat**”) in accordance with the Amended and Restated Forbearance Agreement dated November 3, 2011 (the “**Forbearance Agreement**”); and
7. declaring that the Repayment is no longer subject to the reimbursement provisions of the Order of the Honourable Madam Justice Hoy dated July 11, 2011 (the “**July 11 Order**”) or the Order of the Honourable Mr. Justice Brown dated December 16, 2011 (the “**Initial Order**”),

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of CMT, including the Affidavit of Chris Johnson sworn February 14, 2012, the Second Report of A. Farber & Partners Inc., in its capacity as the Monitor of CMT, and on hearing the submissions of counsel for the Monitor, CMT, Roynat and certain CMT’s landlords, no one appearing for any other person on the service list, although duly served as appears from the affidavit of service of Lynn Lee sworn February 15, 2012, filed,

1. **THIS COURT ORDERS** that the time for service and filing of the notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that the Stay Period set out in paragraph 15 of the Initial Order is hereby extended to March 27, 2012.
3. **THIS COURT ORDERS** that CMT is authorized to self-liquidate inventory and fixtures at the Additional Stores.
4. **THIS COURT ORDERS** that the Repayment by CMT of its loans from Roynat in accordance with the Forbearance Agreement is hereby approved.

5. **THIS COURT ORDERS AND DECLARES** that the Repayment is no longer subject to the reimbursement provisions of the July 11 Order or the Initial Order.
6. **THIS COURT ORDERS** that CMT's key employee retention plan approved at paragraph 10 of the July 11 Order is hereby extended to the Key Store Employees employed at the Additional Stores.
7. **THIS COURT ORDERS** that the sale and removal of fixtures at the Additional Stores shall be conducted in accordance with the Fixture Removal Guidelines.



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

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

FEB 23 2012

SCHEDULE "A"**List of Additional Stores**

1. Store # 235 – Les Promenade St. Bruno
2. Store #265 – Angrignon
3. Store # 211 – Promenade Mall
4. Store #215 – Carrefour Laval
5. Store # 271 – St. Laurent Shopping Centre
6. Store #273 – Place Rosemere
7. Store #277 – Polo Park
8. Store #278 – Galeries d'Anjou

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

ORDER
(Motion February 17, 2012)

CHAITONS LLP
Barristers and Solicitors
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

Harvey Chaiton (LSUC #21592F)
Tel: (416) 218-1129
Fax: (416) 218-1849
E-mail: harvey@chaitons.com

Maya Poliak (LSUC# 54100A)
Tel: (416) 218-1161
Fax: (416) 218-1844
E-mail: maya@chaitons.com

Lawyers for Clothing for Modern Times Ltd.

TAB 'E'

Court File No. CV-11-9535-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR.) FRIDAY, THE 17TH
)
 JUSTICE BROWN) DAY OF FEBRUARY, 2012

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 CLOTHING FOR MODERN TIMES LTD. A COMPANY
 DULY INCORPORATED IN THE PROVINCE OF ONTARIO
 WITH A HEAD OFFICE IN THE CITY OF TORONTO
 IN THE PROVINCE OF ONTARIO

APPROVAL AND VESTING ORDER

THIS MOTION, made by A. Farber & Partners Inc. in its capacity as court appointed monitor (the "**Monitor**") of Clothing for Modern Times Ltd. (the "**Applicant**") for an order approving the sale transaction (the "**Transaction**") contemplated by an sale agreement dated February 3, 2012 (the "**Sale Agreement**") among 2313329 Ontario Inc. (the "**Purchaser**"), as buyer, and CMT, by the Monitor (the "**Seller**") in respect of the sale of the Assets (as defined in the Sale Agreement), and vesting in the Purchaser, the Seller's right, title and interest in and to the Assets was heard this day at 393 University Avenue, Toronto, Ontario.

ON READING the Second Report of the Monitor dated February 13, 2012 and on hearing the submissions of counsel for the Applicant and for the Monitor and those other parties present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Devka Sakhrani sworn February 14, 2012 and filed:

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

2. THIS COURT ORDERS that capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Report or the Sale Agreement as applicable.

3. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved. The execution of the Sale Agreement and any ancillary documents by the Seller party thereto is hereby authorized and approved, and the Applicant and the Monitor are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Seller's right, title and interest in and to the Assets to the Purchaser.

4. THIS COURT ORDERS that: (a) nothing in this Order shall amend or vary, or be deemed to amend or vary the terms of a real property lease; (b) where any real property leases are not, in accordance with their terms, transferable or assignable to the Purchaser without first obtaining the consent of the applicable landlord, none of the real property leases shall be transferred, conveyed, assigned or vested in the 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 or on further order of the Court.

5. THIS COURT ORDERS that the Seller is authorized and directed to perform its obligations under the Sale Agreement and any ancillary documents related thereto.

6. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor's certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "**Monitor's Certificate**"), all of the Seller's right, title and interest in and to the Assets shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, pledges, deeds of trust, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens (statutory or otherwise), executions, levies, charges, or other financial or monetary claims, encumbrances, conditional sale arrangements or other similar restrictions of any kind, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, options, rights of use, rights of first offer or first refusal, or claims of equity security holders (collectively, the "**Claims**"),

including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Brown dated December 16, 2011; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system, provided however that nothing herein shall affect the rights and remedies of the applicable landlord against the Purchaser that may exist or arise under or in respect of any real property lease that is assigned to the Purchaser in connection with the Transaction, except as may otherwise be agreed to by the landlord and the Purchaser or on further order of the Court.

7. THIS COURT ORDERS that the Seller and the Monitor are hereby authorized to execute any agreements, instruments, applications, consents, or other documents that may be necessary or appropriate to effectuate the Transaction.

8. THIS COURT ORDERS AND DIRECTS the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof.

9. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Applicants and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Applicants;

the provisions of the Transaction documents, the vesting of the Seller's right, title and interest in and to the Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Seller and shall not be void or voidable by creditors of the Seller, nor shall it constitute oppressive conduct nor constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue, or other challengeable or voidable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

10. THIS COURT ORDERS that the Sale Agreement and any ancillary documents related thereto shall not be repudiated, disclaimed or otherwise compromised in these proceedings.

11. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

12. THIS COURT ORDERS that confidential appendices "A", "B" and "C" to the Second Report be and are hereby sealed pending further Order of the Court.

13. THIS COURT ORDERS that the Cash Reserve as defined in the Initial Order is hereby deemed to form part of the Administration Charge as defined in the Initial Order and the Administration Charge and available solely to the Monitor for the purpose of discharging those liabilities contemplated in the Cash Reserve is hereby amended accordingly.

14. THIS COURT ORDERS that if the Sale Agreement does not close on or before March 15, 2012, CMT and/or the Monitor shall apply to the Court for further directions regarding the transaction and the reorganization of CMT's business.

15. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, the United Kingdom or elsewhere, to give effect to this Order and to assist the Applicant, 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 Applicant 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 Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

16. 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.

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

FEB 24 2012 D01187573v1

MB


Natasha Brown

Schedule A – Form of Monitor's Certificate

Court File No. CV-11-9535-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE**

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 CLOTHING FOR MODERN TIMES LTD. A COMPANY
DULY INCORPORATED IN THE PROVINCE OF ONTARIO
WITH A HEAD OFFICE IN THE CITY OF TORONTO
IN THE PROVINCE OF ONTARIO

MONITOR'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Brown of the Ontario Superior Court of Justice (the "**Court**") made December 16, 2011, Clothing for Modern Times Ltd. (the "**Applicant**") commenced proceedings pursuant to the *Companies' Creditors Arrangement Act* (Canada) and A. Farber & Partners Inc. was appointed as monitor (the "**Monitor**") in those proceedings.

B. Pursuant to an Order of the Court dated February ●, 2012, the Court approved a sale agreement dated as of February 3, 2012 (the "**Sale Agreement**") among 2313329 Ontario Inc. (the "**Purchaser**"), as buyer, and the Applicant (the "**Seller**"), in respect of the sale of the Applicant's assets and provided for the vesting in the Purchaser of the Seller's right, title and interest in and to the Assets which vesting is to be effective with respect to the Assets upon the delivery by the Monitor to the Purchaser of a certificate confirming receipt of confirmation from the Applicant (i) the Purchaser has paid the Purchase Price as set out in the Sale Agreement; (ii) that the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Sellers and/or the Purchaser, as applicable; and (iii) the Transaction has been completed to the satisfaction of the Sellers.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE MONITOR CERTIFIES the following:

1. the Applicant has advised the Monitor that the Purchaser has paid the Purchase Price payable on the Closing Date pursuant to the Sale Agreement;
2. the Applicant has advised the Monitor that the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Sellers and/or the Purchaser, as applicable; and
3. the Applicant has advised the Monitor that the Transaction has been completed to the satisfaction of the Sellers.

This Certificate was delivered by the Monitor at _____ [TIME] on _____ [DATE].

A. FARBER & PARTNERS INC. in its capacity as monitor in the Applicants' CCAA proceedings and not in its personal capacity

Per: _____
Name:
Title:

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 CLOTHING
FOR MODERN TIMES LTD. A COMPANY DULY INCORPORATED IN THE PROVINCE OF
ONTARIO WITH A HEAD OFFICE IN THE CITY OF TORONTO IN THE PROVINCE OF
ONTARIO

Court File No: CV-11-9535-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

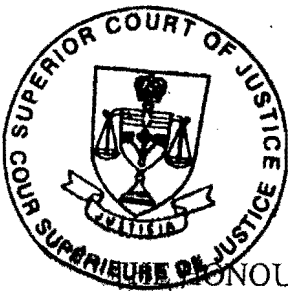
APPROVAL AND VESTING ORDER

Norton Rose Canada LLP
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84
Toronto, Ontario M5J 2Z4 CANADA

Mario Forte LSUC#: 27293F
Tel: +1 416.216.4870
Fax: +1 416.216.3930

Lawyers for the Monitor

TAB 'F'



Court File No. CV-11-9535-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

HONOURABLE MR.) TUESDAY, THE 27TH
)
JUSTICE BROWN) DAY OF MARCH, 2012

**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
CLOTHING FOR MODERN TIMES LTD.**

(the "Applicant")

ORDER

THIS MOTION, made by Clothing For Modern Times Ltd. ("CMT") for an Order: (i) abridging the time for service of CMT's Notice of Motion and Motion Record so that the motion is properly returnable on March 27, 2012; and (ii) extending the stay of proceedings to May 18, 2012, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of CMT, including the Affidavit of Chris Johnson sworn January 26, 2012, and on hearing the submissions of counsel for the Monitor and CMT,

- THIS COURT ORDERS** that the time for service and filing of the notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
- THIS COURT ORDERS** that the Stay Period set out in paragraph 15 of the Initial Order is hereby extended to May 18, 2012.

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

MAR 27 2012
NB

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 CLOTHING FOR MODERN TIMES LTD.

Court File No. CV-11-9535-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

ORDER
(Motion March 27, 2012)

CHAITONS LLP
Barristers and Solicitors
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

Harvey Chaiton (LSUC #21592F)
Tel: (416) 218-1129
Fax: (416) 218-1849
E-mail: harvey@chaitons.com

Maya Poliak (LSUC# 54100A)
Tel: (416) 218-1161
Fax: (416) 218-1844
E-mail: maya@chaitons.com

Lawyers for Clothing for Modern Times Ltd.

TAB 'G'

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

CLOTHING FOR MODERN TIMES
Plaintiff(s)
AND
Defendant(s)

Case Management Yes No by Judge: _____

Counsel	Telephone No.:	Facsimile No.:
<i>M. Polach, for CMT</i>		
<i>M. Forte, for Monitor</i>		

- Order Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: _____
- Time Table approved (as follows):

In my Feb 17/12 Reasons I directed that if the Proposed Sale Agreement did not close by March, the company and Monitor were to apply for further directions. Counsel for both advised that significant progress has been made towards closing the Sale, but a few issues remain which will take a few more days to work out. In these circumstances I vary para. 14 of my order of Feb 17/12 to extend the date to Thursday, March 22/12.

March 14/12
Date

[Signature]
Judge's Signature
D.M. BROWN J.

TAB 'H'

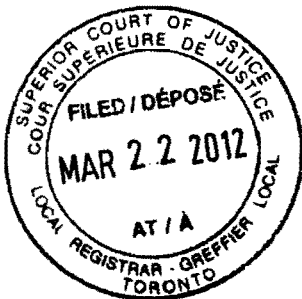
Court File No. CV-11-9535-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE**

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 CLOTHING FOR MODERN TIMES LTD. A COMPANY
DULY INCORPORATED IN THE PROVINCE OF ONTARIO
WITH A HEAD OFFICE IN THE CITY OF TORONTO
IN THE PROVINCE OF ONTARIO

MONITOR'S CERTIFICATE



Norton Rose Canada LLP
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84
Toronto, Ontario M5J 2Z4 CANADA

Mario Forte LSUC#: 27293F
Tel: +1 416.216.4870
Fax: +1 416.216.3930

Lawyers for the Monitor

MONITOR'S CERTIFICATE

RECITALS

- A. Pursuant to an Order of the Honourable Justice Brown of the Ontario Superior Court of Justice (the "**Court**") made December 16, 2011, Clothing for Modern Times Ltd. (the "**Applicant**") commenced proceedings pursuant to the *Companies' Creditors Arrangement Act* (Canada) and A. Farber & Partners Inc. was appointed as monitor (the "**Monitor**") in those proceedings.
- B. Pursuant to an Order of the Court dated February 17th, 2012, the Court approved a sale agreement dated as of February 3, 2012 (the "**Sale Agreement**") among 2313329 Ontario Inc. (the "**Purchaser**"), as buyer, and the Applicant (the "**Seller**"), in respect of the sale of the Applicant's assets and provided for the vesting in the Purchaser of the Seller's right, title and interest in and to the Assets which vesting is to be effective with respect to the Assets upon the delivery by the Monitor to the Purchaser of a certificate confirming receipt of confirmation from the Applicant (i) the Purchaser has paid the Purchase Price as set out in the Sale Agreement; (ii) that the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Sellers and/or the Purchaser, as applicable; and (iii) the Transaction has been completed to the satisfaction of the Sellers.
- C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE MONITOR CERTIFIES the following:

1. the Applicant has advised the Monitor that the Purchaser has paid the Purchase Price payable on the Closing Date pursuant to the Sale Agreement;
2. the Applicant has advised the Monitor that the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Sellers and/or the Purchaser, as applicable; and
3. the Applicant has advised the Monitor that the Transaction has been completed to the satisfaction of the Sellers.

This Certificate was delivered by the Monitor at 9:00 AM [TIME] on MARCH 22/12 [DATE].

A. FARBER & PARTNERS INC. in its capacity as monitor in the Applicants' CCAA proceedings and not in its personal capacity

Per: _____

Name: HYLTON LEVY

Title:

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 Clothing For Modern Times Ltd. a
company duly incorporated in the province of Ontario with a head office in the city of Toronto in
the province of Ontario

Court File No: CV-11-9535-00CL

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

Proceeding commenced at Toronto

**MONITOR'S CERTIFICATE
(delivered March 22, 2012)**

Norton Rose Canada LLP
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84
Toronto, Ontario M5J 2Z4 CANADA

Mario Forte LSUC#: 27293F
Tel: +1 416.216.4870
Fax: +1 416.216.3930

Lawyers for the Monitor

TAB 'I'



Office of the Superintendent
of Bankruptcy Canada

An Agency of
Industry Canada

Bureau du surintendant
des faillites Canada

Un organisme
d'Industrie Canada

District of: Ontario
Division No.: 09 - Toronto
Court No.: 31-1632663
Estate No.: 31-1632663

In the Matter of the Bankruptcy of:
CLOTHING FOR MODERN TIMES LTD.
Debtor

A. FARBER & PARTNERS INC.
Trustee

Ordinary Administration

Date and time of bankruptcy:	June 06, 2012, 10:52	Security:	\$0.00
Date of trustee appointment:	June 06, 2012		
Meeting of creditors:	June 19, 2012, 14:30 Days Hotel & Conference Centre 185 Yorkland Boulevard Toronto, Ontario Canada,		
Chair:	Trustee		

CERTIFICATE OF APPOINTMENT - Section 49 of the Act: Rule 85

I, the undersigned, official receiver in and for this bankruptcy district, do hereby certify that:

- the aforementioned debtor filed an assignment under section 49 of the *Bankruptcy and Insolvency Act*;
- the aforementioned trustee was duly appointed trustee of the estate of the debtor.

The said trustee is required:

- to provide to me, without delay, security in the aforementioned amount;
- to send to all creditors, within five days after the date of the trustee's appointment, a notice of the bankruptcy;
and
- when applicable, to call in the prescribed manner a first meeting of creditors, to be held at the aforementioned time and place or at any other time and place that may be later requested by the official receiver.

Date: June 06, 2012, 16:10

E-File/Dépôt Electronique

Official Receiver

25 St. Clair Avenue East, 6th floor, Toronto, Ontario, Canada, M4T1M2, (877)376-9902

Canada

TAB 'J'

A. Farber & Partners Inc.
In its capacity as CCAA Monitor of
Clothing for Modern Times Ltd.

Statement of Receipts and Disbursements
23-Aug-12

	<u>\$</u>
<u>Receipts</u>	
Funds received from Company	860,000.00
Funds received on closing Costa Blanca sale	354,938.00
Interest Received	2,340.38
Total Receipts	<u>1,217,278.38</u>
<u>Disbursements</u>	
Bank Charges	30.00
Transfer to Trustee estate -section 81.3 liability	10,509.40
Payment to Ernst & Young LLP - <i>(per Court ordered charge)</i>	56,485.88
Payment to Company consultant - <i>(per Court ordered charge)</i>	95,599.07
Payment of Legal fees - <i>(per Court ordered charge)</i>	52,143.23
Payment to Proposal Trustee and Monitor - <i>(per Court ordered charge)</i>	85,556.15
Other Expenses	327.60
Total Disbursements	<u>300,651.33</u>
Funds Available	<u><u>916,627.05</u></u>

TAB 'K'

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

**IN THE MATTER OF THE PROPOSAL OF
CLOTHING FOR MODERN TIMES LTD.
A COMPANY DULY INCORPORATED IN THE PROVINCE OF ONTARIO WITH A
HEAD OFFICE IN THE CITY OF TORONTO
IN THE PROVINCE OF ONTARIO**

FIRST REPORT OF THE PROPOSAL TRUSTEE

JULY 6, 2011

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Appendices

APPENDIX A – Certificate of Filing a Notice of Intention to Make a Proposal

APPENDIX B – Forbearance Agreement

APPENDIX C – Cash Flow

INTRODUCTION

1. On June 27, 2011, Clothing for Modern Times Ltd. (“CMT” or the “Company”) filed a Notice of Intention to Make a Proposal (“NOI”) under Section 50.4 of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended (the “BIA”). A. Farber & Partners Inc. (“Farber”) was appointed as Trustee in the Proposal of the Company (the “Proposal Trustee”). A copy of the Certificate of Filing a Notice of Intention to Make a Proposal is attached hereto as **Appendix “A”**.
2. CMT is an Ontario-incorporated company that has designed, produced and marketed trendy apparel styles for ‘fashion forward’ men and women since 1989 under the retail banners: Urban Behavior, Costa Blanca and Costa Blanca X. At the date of the NOI filing, CMT operated 116 leased store locations throughout Canada under the retail banners as follows:

<u>Retail Banners</u>	<u>No. of Stores</u>
Urban Behavior	44
Costa Blanca	65
Costa Blanca X	7
	<hr/>
	116
	<hr/>

3. CMT leases its head office premises, which are located at 300 Supertest Road, Toronto, Ontario.
4. At the time of filing the NOI, the Company employed approximately 1,682 employees, of which approximately 1,316 are hourly retail employees.

5. A corporate search conducted on CMT indicates that the Company has two active directors: Arif Noor and Chris Johnson. Mr. Noor is the majority (95%) shareholder of CMT.
6. CMT has experienced declining sales and reduced profit margins over the past 3 years attributed mainly to the poor economic climate for retail operations and the entry of direct competitors, such as H&M and Forever 21, to the Urban Behavior banner in the Canadian marketplace.
7. In contemplation of the impending restructuring proceedings and its participation therein, on June 24, 2011, the Company's primary secured lender, Roynat Asset Finance, a Division of Roynat Inc. ("**Roynat**") demanded repayment of its loans and issued a Notice of Intention to Enforce Security under Section 244 of the BIA. CMT consented to the immediate enforcement of Roynat's security.
8. In addition, Roynat, CMT and other related entities to CMT, as guarantors, entered into a forbearance agreement dated June 24, 2011 (the "**Forbearance Agreement**"), whereby Roynat agreed to forbear from taking certain actions under its security and agreed to maintain its credit facilities pursuant to the Roynat Loan (as defined below), subject to the terms and conditions contained in the Forbearance Agreement. A copy of the Forbearance Agreement is attached hereto as **Appendix "B"**.
9. The Proposal Trustee has reviewed the sworn affidavit of Chris Johnson dated July 5, 2011 (the "**Johnson Affidavit**"), in support of the Company's motion.

PURPOSE OF THIS REPORT

10. The purpose of this First Report of the Proposal Trustee ("**First Report**") is to address:

- a) the establishment of a post-filing financing arrangement with CMT's existing lender, Roynat.;
- b) the establishment of an administrative professionals' charge in favour of the Proposal Trustee, its legal counsel and the legal and financial advisors of CMT;
- c) the approval and the implementation of a liquidation offer solicitation process for the sale of inventory and fixtures of certain CMT stores and the disclaimer of various leases associated therewith;
- d) the establishment of a Key Employee Retention and Incentive plan; and
- e) CMT's desire to establish a bi-weekly rent payment schedule on the 1st and 15th of each month, effective August 1, 2011.

DISCLAIMER

11. Farber has relied upon the financial records and financial statements of CMT, as well as other information supplied by management, accountants, auditors and financial advisors to CMT. Our procedures and enquiries did not constitute any audit or review engagement. Farber assumes no responsibility or liability for loss or damage occasioned by any party as a result of the circulation, publication, re-production or use of this First Report. Any use which any party,

other than Court, makes of this First Report or any reliance on or a decision made based upon it is the responsibility of such party.

SECURED CREDITORS

12. Roynat established a term loan in favour of CMT pursuant to a Debenture dated March 11, 2005 in the maximum principal amount of \$7 million. On or around the same time, CMT granted Roynat a security interest in all of its properties, assets and undertakings.
13. On or about February 19, 2010, Roynat paid out the debt owed to the previous operating lender and obtained an assignment of the debt owing by CMT including the security documents and instruments granted in favour of the previous lender.
14. Roynat consolidated its loans with CMT by entering into a loan agreement dated February 19, 2010, as amended by an amendment to the loan agreement dated June 29, 2010, as further amended by a second amendment to loan agreement dated April 6, 2011 (collectively, the “**Roynat Loan**”) between CMT, Roynat and various other related CMT entities, as guarantors.
15. The Roynat Loan was secured by a general security agreement dated February 19, 2010.
16. Crown Capital Partners Inc. (“**Crown Capital**”) established a term loan in favour of CMT in the maximum principal amount of \$10 million pursuant to a

Debenture dated March 11, 2005. On or around the same time, CMT granted Crown Capital a security interest in all of its properties, assets and undertakings.

17. On June 29, 2007, Crown Capital assigned the Crown Debenture to CIC Asset Management Inc., a company related to Crown Capital (collectively, "**Crown**").
18. As at June 27, 2011, CMT was indebted to Roynat in the principal and interest amount of approximately \$10,801,826. Additionally, CMT is indebted to Crown in the amount of \$8,593,088.
19. The Proposal Trustee has received an independent legal opinion confirming the validity and perfection of the Roynat security in the Province of Ontario, which is more fully reported on below.
20. CMT Sourcing Group Ltd. ("**CMT Sourcing**"), a related company to CMT, manufactures and supplies a significant portion of the Company's inventory. In addition to the security granted above, on or about May 18, 2011, CMT granted a general security interest charging the assets, property and undertaking of the Company to CMT Sourcing in respect of a demand loan provided to the Company in the amount of approximately \$4.0 million. As at June 27, 2011, CMT is indebted to CMT Sourcing in the approximate amount of \$4.0 million under the demand loan and approximately \$6.0 million for unpaid inventory purchases.

21. In addition to the financing statements registered by the secured lenders noted above, in Ontario there are also registrations by Citicorp Vendor Finance, Ltd., Xerox Canada Ltd, CIT Financial Ltd., Dell Financial Services Canada Limited and Hav-a-Kar Leasing Ltd. In addition, various landlords as well as KempenFelt Capital Inc. have effected registration of Personal and Moveable Real Rights in the Province of Quebec. KempenFelt Capital Inc. has also effected registrations against equipment located in the Province of Ontario and British Columbia. More details regarding these registrations can be found in the Johnson Affidavit.
22. At the time of the writing of this report and while certain of these charges appear to relate to specific pieces of equipment or vehicles, the Proposal Trustee is endeavouring to obtain more information concerning these additional charges and will communicate that information in due course as it is received.

OTHER LIABILITIES

23. We are advised (but have not yet verified) that CMT is substantially up to date with remittances of employee source deductions, except for most recent stub periods. In addition, the Company has advised the proposal Trustee that it owes approximately \$1.3 million to the various provincial Crowns for unremitted HST and GST pertaining to the pre-filing period.
24. At the present time, the Company has estimated that its employees are owed approximately \$1.1 million in accrued vacation pay. We are not aware of any arrears of wages owing by CMT.

25. At the time of the filing of the NOI, the unsecured creditors of the Company were owed in excess of \$16.4 million. These creditors include trade suppliers, landlords and other creditors of the Company and includes approximately \$6.0 million owed to CMT Sourcing for unpaid inventory purchases.

PRELIMINARY SECURITY OPINION

26. Farber has engaged Norton Rose OR LLP (“**NRLLP**”) as counsel to conduct a review of the Security that was granted to Roynat, and to provide an opinion with respect to its validity and perfection under the laws of Ontario. NRLLP concludes that (subject to the assumptions and qualifications contained therein), the interests created by the security instruments in the collateral described therein have been perfected under the *Personal Property Security Act* (Ontario) (“**PPSA**”) (to the extent required) and rank in priority to the interest of a trustee in bankruptcy in the property, assets and undertaking of the Company which are described in the security instruments and are located in the Province of Ontario. The independent opinion is available for review upon request.
27. A review of the security interests held by the other principal secured creditors of the Company is pending.
28. The current debtor-in-possession financing arrangements contemplate a cash sweep to Roynat from the Company’s existing accounts. Though we are advised that insofar as receivables are concerned Roynat has good and valid security in the Province of Ontario, which is the relevant jurisdiction for determining the validity and perfection of security interests in the Company’s cash and

receivables, Roynat has also agreed that it will consent to an order obliging them to reimburse the Company should they receive any amounts for which they were not entitled to priority in the course of this proceeding.

FOREBEARANCE AGREEMENT AND OVER-ADVANCES

29. The Company, with the assistance of its financial advisors, RSM Richter Corporation (“**Richter**”) has prepared a weekly cash flow forecast and supporting schedules to the week ending September 24, 2011 (the “**Cash Flow**”).
30. The Proposal Trustee has reviewed the Company’s weekly cash flow forecast, notes and assumptions and has filed same with the Official Receiver on July 4, 2011. A copy of the Cash Flow is attached hereto as **Appendix “C”**.
31. The Company is currently operating under significant liquidity constraints with limited Roynat Loan availability; and is on COD terms with many of its suppliers. The Company has advised the Trustee that it intends to restructure its affairs around its profitable locations during a restructure process that is intended to last several months.
32. The Company will require additional financing in order to continue operating its business while it proceeds with its restructuring plan.
33. The Forbearance Agreement provides for Roynat to continue to make advances to the Company during the defined forbearance period. In addition, Roynat has agreed to provide over advances from the loan availability of the Company in

accordance with the Roynat Loan, to the maximum of the over advances as set out in the weekly Cash Flows plus 10% of such amount (the “**Over-Advances**”).

34. The Over-Advances as agreed in the Forbearance Agreement is conditional, *inter alia*, upon the following:

a) The Company shall deduct 5% from any inventory purchases payments made to its key supplier, CMT Sourcing, to be funded into a segregated account and pledged as cash collateral to Roynat until the earlier of full repayment of Roynat’s debt or subsequent to October 10, 2011 where the Company has maintained a minimum availability of \$1 million for 45 continuous days, and the Company maintains this minimum availability after the cash collateral has been released; and

b) The Company obtaining an Order of this Honourable Court approving:

i. the Forbearance Agreement and the continuing advances and Over-Advances contemplated in the Forbearance Agreement;

35. Crown and CMT Sourcing have provided their consent to the terms of the Over-Advances as set out in the Forbearance Agreement. At this time, we have not obtained opinions on the validity and perfection of the security held by Crown and CMT Sourcing. However, assuming such security is valid and enforceable against the assets of the Company generally, we would not expect there to be any value remaining for unsecured creditors if the assets of the Company were

to be liquidated. Accordingly, no creditor should be materially prejudiced as a result of the proposed Court-ordered charge in favour of Roynat securing the Over-Advances.

PROPOSAL TRUSTEE COMMENTS ON FORBEARANCE AGREEMENT AND OVER-ADVANCES

36. The Company will require additional funding to continue its operations and effect a restructuring of its business over the next while, though it is not anticipated that draws on such funding will be substantial in the initial stages of the process.
37. The Forbearance Agreement was heavily negotiated between Roynat on the one hand and CMT and Crown on the other hand.
38. The terms of the Forbearance Agreement appear reasonable given the tight time constraints and the tight liquidity requirements of the Company. The interest rate is the same as that currently provided for in the Roynat Loan, and the forbearance fee (\$200,000), while substantial, is appropriate given the nature of the Forbearance Agreement and the Over-Advances being contemplated.
39. Pursuant to the Cash Flow, the Over-Advances will be used in part to fund inventory purchases required for its upcoming “back to school” season, which are expected to be accretive in value to the stakeholders, including employees, as these Over-Advances allow the Company sufficient liquidity to effect a restructuring of its business going forward.

ADMINISTRATIVE PROFESSIONAL CHARGE

40. The Company respectfully seeks an order to protect the fees and disbursements of its administrative professionals, including the fees and disbursements of the Proposal Trustee and its legal counsel, the fees and disbursements of Richter, and Chaitons LLP, the Company's legal counsel (collectively, the **"Professionals"**).
41. Richter is assisting the Company in its capacity as financial advisor, and is also the Company's auditor. The Company and Richter have advised the Proposal Trustee that the order being sought would not extend to any pre-filing amounts owed to Richter in its capacity as auditor of the Company; however, it is intended to apply to outstanding professional fees incurred by the Professionals, including Richter, prior to the NOI filing as it relates to the advance preparation required to file the NOI.
42. Accordingly, the Company seeks a charge (the **"Administrative Charge"**) on the properties, assets and undertakings of the Company, for the outstanding fees and disbursements of the Professionals, ranking in priority of all secured and unsecured creditors, subject to the DIP Charge in respect of the Over-Advances.
43. Roynat and Crown have consented to the Administrative Charge, subject to this Honourable Court's approval. If the Court approves the DIP Charge and Administrative Charge, such charges and the security of Roynat and Crown will rank as follows:
 - a) The DIP Charge in respect of the Over-Advances;

- b) The Administrative Charge for payment obligations up to a maximum of \$400,000;
- c) Advances made by Roynat under the Roynat Loan;
- d) Administrative Charge for payment obligation in excess of the amount in (b) above;
- e) Funds owing to Crown under the Crown Debenture.

LIQUIDATION PROCESS

- 44. As set out in the Johnson Affidavit, the Company, with assistance from its advisors, has concluded that a restructuring around profitable stores while downsizing unprofitable locations will maximize value for all stakeholders, and will allow the Company to make a proposal to its creditors.
- 45. CMT has determined that it will commence an assessment of the retail banner locations, identify the unprofitable stores that it will earmark for closure and commence a liquidation of the inventory and fixtures in those locations.
- 46. The Company has initially determined that self-liquidating unprofitable stores would be more beneficial to all stakeholders of the Company. However, in order to determine whether a self-liquidation will yield maximum greater net recoveries, CMT has commenced a process to solicit offers from liquidators specializing in retail liquidations.
- 47. The Company is proceeding with a dual track approach (the “**Liquidation Process**”) which provides for the Company to proceed with a self-liquidation

process while at the same time allow for the following process to solicit liquidation offers:

- a) Richter sent a letter and confidentiality agreement (“CA”) to specialist liquidator firms;
 - b) A CA will also be provided to any unsolicited party that contact the Company, Richter or the Proposal Trustee;
 - c) Prospective bidders will be provided with an opportunity to commence due diligence once a CA has been duly executed. In addition, prospective bidders will also be provided access to information in an online data room, be allowed to conduct store visits and meet with the Company’s management;
 - d) An agency agreement will be prepared and prospective bidders will be requested to submit offers in the prepared form of agreement. The Company will provide a copy of the agency agreement to the Proposal Trustee for approval;
 - e) The Company will establish an offer deadline date of July 18, 2011 to allow sufficient time to consider continuation of its self-liquidation plan or engage a liquidator for this purpose.
48. The Company has advised the Proposal Trustee that Roynat, Crown and CMT Sourcing are supportive of its Liquidation Process. In addition, the Company and/or Richter have communicated to the liquidators that the Company is

implementing the Liquidation Process and that any transaction resulting from the Liquidation Process would require Court approval.

49. Richter have advised that four CA's have been executed and those prospective bidders have been provided access to the Company's online data room.
50. Section 65.13 of the BIA requires that a debtor in the midst of a proposal process seek the court's approval to the sale of assets outside of the ordinary course of business. While there may some debate over whether the winding down of stores in the manner contemplated constitutes a sale out of the ordinary course of the Company's business for these purposes, the Company has adopted the common sense approach to treat the sales as requiring the approval of this Honourable Court pursuant to section 65.13 of the BIA.
51. The Proposal Trustee has reviewed the Liquidation Process contemplated by the Company and is supportive of the process.
52. The Company has initially identified 21 stores across Canada that it intends to close on or before August 31, 2011. Further, the Company has determined that of these 21 stores, 5 stores will close on August 4, 2011. Accordingly, the Company, with the Proposal Trustee's consent, issued notices of disclaimer pursuant to subsection 65.2(1) of the BIA for these 5 stores on July 4, 2011.

KEY EMPLOYEE RETENTION PLAN

53. The Company generally employs three salaried employees for each retail store including a store manager, assistant manager and a senior employee that has a

key to the store (collectively, the “**Key Store Employees**”). The Company has determined that a retention and incentive plan (the “**KERP**”) for Key Store Employees is an important tool in maximizing value for all stakeholders through the Liquidation Process.

54. The Company’s KERP consists of the following:
- a) A one-time bonus payment to be made available to the Key Store Employees in the total amount of \$1,600 per store; and
 - b) An incentive plan based on the store’s overall revenue at the end of the liquidation compared to the prior year period. The incentive plan will only be triggered if the store improves its revenue by 150% compared with the prior period revenue amount and will vary depending on:
55. The Company has further noted that the maximum incentive plan payment for each store is \$6,400 and the maximum KERP payment for each store amounts to \$8,000.
56. The Company has not yet determined the number of store locations that it intends to close under the restructuring plan, however, the Proposal Trustee agrees that KERP payments are beneficial to an inventory liquidation as it provides an incentive for Key Store Employees to commence a robust liquidation sale while the discounts are not as substantial and maintain momentum as the liquidation sale progresses.

LANDLORDS

57. The Company has proposed to move to a bi-weekly rent payment schedule with its landlords. The Johnson Affidavit indicates that this measure is required to reduce the cash flow pressure on the Company during the first week of August when the first large Over Advance payment would be made. Managing cash flow is not an unreasonable objective for the Company in a restructuring of this nature.
58. The Proposal Trustee anticipates that the Company will dialogue with its affected landlords about this proposal along with the establishment of various parameters for the conduct of the liquidation sales as this process progresses. The Proposal Trustee would support and offer to facilitate this dialogue when requested and as necessary.

ACTIVITIES OF PROPOSAL TRUSTEE

59. Following its appointment as Proposal Trustee, Farber's activities included the following:
- a) entering into preliminary discussions with the Company's landlords and their legal counsel;
 - b) reviewed CMT's current financial position and nature of operations and assisted the Company in attending to prescribed mailings and filing of cash flow statements in accordance with the provisions of the BIA;

- c) answering queries from suppliers, landlords and employees regarding the operation of the NOI and the impact of this filing on the stakeholders and the business of CMT;
- d) monitoring and reviewing the continuing affairs of the Company in accordance with its obligations pursuant to the BIA;
- e) generally advising the company and its lenders on available options and matters related to the BIA process.

RECOMMENDATIONS

60. As a result of the above, the Proposal Trustee respectfully requests that this Honourable Court:

- a) Approve the post-filing financing arrangements with Roynat as more particularly set out in the Company's materials filed;
- b) Approve the establishment of the administrative professional's charge as contemplated;
- c) Approve the liquidation sales process as more particularly set out in the Johnson Affidavit and exhibits thereto; and
- d) Approve the establishment of the Key Employee Retention Plan as more particularly set out in the Johnson Affidavit and exhibits thereto.

All of which is respectfully submitted this 6th day of July 2011.

**A. FARBER & PARTNERS INC.
IN ITS CAPACITY AS TRUSTEE *IN RE*
THE PROPOSAL OF CLOTHING FOR MODERN TIMES LTD.**

A. Farber & Partners Inc.

File No. 31-1513595

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE PROPOSAL OF
CLOTHING FOR MODERN TIMES LTD.
A COMPANY DULY INCORPORATED IN THE PROVINCE OF ONTARIO WITH A
HEAD OFFICE IN THE CITY OF TORONTO
IN THE PROVINCE OF ONTARIO**

SECOND REPORT OF THE PROPOSAL TRUSTEE

JULY 20, 2011

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APPENDIX D – First Report of the Proposal Trustee dated July 6, 2011

APPENDIX E - Closing Stores

INTRODUCTION

1. On June 27, 2011, Clothing for Modern Times Ltd. (“**CMT**” or the “**Company**”) filed a Notice of Intention to Make a Proposal (“**NOI**”) under Section 50.4 of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended (the “**BIA**”). A. Farber & Partners Inc. (“**Farber**”) was appointed as Trustee in the Proposal of the Company (the “**Proposal Trustee**”). A copy of the Certificate of Filing a Notice of Intention to Make a Proposal is attached hereto as **Appendix “A”**.
2. CMT is an Ontario-incorporated company that has designed, produced and marketed trendy apparel styles for ‘fashion forward’ men and women since 1989 under the retail banners: Urban Behavior (“**UB**”), Costa Blanca (“**CB**”) and Costa Blanca X (“**CBX**”). At the date of the NOI filing, CMT operated 116 leased store locations throughout Canada.
3. CMT leases its head office premises, which are located at 300 Supertest Road, Toronto, Ontario.
4. At the time of filing the NOI, the Company employed 1,682 employees, of which approximately 1,316 are hourly retail employees.
5. A corporate search conducted on CMT indicates that the Company has two active directors: Arif Noor and Chris Johnson. Mr. Noor is the majority (95%) shareholder of CMT.
6. CMT has experienced declining sales and reduced profit margins over the past three years attributed mainly to the poor economic climate for retail operations and the

entry of direct competitors to the UB banner in the Canadian marketplace, such as H&M and Forever 21.

7. In contemplation of the impending restructuring proceedings and its participation therein, on June 24, 2011, the Company's primary secured lender, Roynat Asset Finance, a Division of Roynat Inc. ("**Roynat**") demanded repayment of its loans and issued a Notice of Intention to Enforce Security under Section 244 of the BIA. CMT consented to the immediate enforcement of Roynat's security.
8. In addition, Roynat, CMT and other related entities to CMT, as guarantors, entered into a forbearance agreement dated June 24, 2011 (the "**Forbearance Agreement**"), whereby Roynat agreed to forbear from taking certain actions under its security and agreed to maintain its credit facilities pursuant to the Roynat Loan (as defined below), subject to the terms and conditions contained in the Forbearance Agreement. A copy of the Forbearance Agreement is attached hereto as **Appendix "B"**.
9. Pursuant to an Order of the Honourable Madame Justice Hoy dated July 11, 2011 (the "**July 11 Order**"), the Court approved, *inter alia*, (i) the post-filing advances and Over-Advances to the Company by Roynat, (ii) a super-priority charge in favour of Roynat to secure payment of the money advances by Roynat post-filing, (iii) an Administration Charge to secure the reasonable fees and disbursements of CMT's legal and financial advisors, the Proposal Trustee and its legal counsel; (iii) a self liquidation plan by CMT of 21 stores identified for closure in the affidavit of Chris Johnson dated July 5, 2011 (the "**Liquidation Stores**"); and (iv) a key employee retention and incentive plan for certain key employees of CMT working in the

Liquidation Stores during the liquidation period. Copies of the July 11 Order and Justice Hoy's endorsement (the "**July 11 Endorsement**") are attached hereto as **Appendix "C"**.

PURPOSE OF THIS REPORT

10. The purpose of this Second Report of the Proposal Trustee ("**Second Report**") is to:

- a) generally inform the court of activities of the Proposal Trustee since the date of the first report dated July 6, 2011 ("**First Report**"). A copy of the First Report is attached as **Appendix "D"**;
- b) advise the Court and request approval for the Company to self-liquidate inventory and fixtures at seven additional poor performing stores (the "**Additional Stores**");
- c) support the Company's request to seek approval to extend the key employee retention plan approved in the July 11 Order to the Key Store Employees (as defined in the First Report) employed at the Additional Stores;
- d) advise the Court of the guidelines for the sale and removal of furniture, fixtures and equipment in the Liquidation Stores (as defined below) and the Additional Stores and recommend that the Honourable Court approve such guidelines;

- e) support the Company's request to seek approval of the process for the Company to market and sell the Urban Behavior and Costa Blanca X chains;
- f) seek approval of the establishment of a charge on all of the assets, undertakings and properties of CMT in favour of CMT's real property landlords to secure payment of base and additional rent under the real property leases; and
- g) recommend that the Company be granted an extension for 45 days of the deadline for the filing of its Proposal pursuant to the BIA.

DISCLAIMER

11. Farber has relied upon the financial records and financial statements of CMT, as well as other information supplied by management, accountants, auditors and financial advisors to CMT. Our procedures and enquiries did not constitute any audit or review engagement. Farber assumes no responsibility or liability for loss or damage occasioned by any party as a result of the circulation, publication, re-production or use of this Second Report. Any use which any party, other than Court, makes of this Second Report or any reliance on or a decision made based upon it is the responsibility of such party.

ACTIVITIES OF PROPOSAL TRUSTEE

12. Farber's activities since the filing of its First Report include the following:

- a) continuing discussions with the Company's landlords and their legal counsel;
- b) answering queries from suppliers, landlords and employees regarding the operation of the NOI and the impact of this filing on the stakeholders and the business of CMT;
- c) monitoring and reviewing the continuing affairs of the Company in accordance with its obligations pursuant to the BIA; and
- d) generally advising the Company on available options and matters related to the BIA process.

RESTRUCTURING AND PROPOSED SALES PROCESS

13. The Company initially determined that a restructuring around its profitable store locations was the best method to maximize value for all its stakeholders and would enable the Company to formulate a viable proposal to its creditors. Accordingly, the Company planned to proceed with a “dual track” approach of self liquidating the Liquidation Stores while at the same time proceeding with a process for soliciting liquidation offers.
14. As detailed in the affidavit of Chris Johnson dated July 19, 2011 (the “**Second Johnson Affidavit**”), the Company engaged in discussions with landlords of certain Liquidation Stores resulting in favourable concessions being offered by them to the Company. Accordingly, the Company has decided to remove store numbers 136 and 217 from the Liquidation Stores listing.

15. In addition, the Company has identified seven Additional Stores that it intends to self-liquidate as part of its restructuring, subject to approval of this Honourable Court.
16. On July 15, 2011, the Company sent notices of lease disclaimers to the landlords for the balance of the Liquidation Stores not yet disclaimed and the Additional Stores.
17. With the removal of two stores from the Liquidation Store list and the addition of seven Additional Stores, the Company has now identified 26 stores that it intends to self-liquidate as part of its restructuring (collectively, the “**Closing Stores**”). A copy of the Closing Stores listing is attached hereto as **Appendix “E”**.
18. The Proposal Trustee has further been advised by CMT that, in consultation with its advisors, it wishes to restructure its business around the CB business, but that in addition to considering liquidation proposals for the UB and CBX chains, it wishes to canvass the market to determine whether these chains could generate more value by being sold on a going-concern basis.
19. The Company believes that commencing a “dual track” sales process for going concern and liquidation offers would achieve maximum recovery for its stakeholders. Further, the Company will continue to self liquidate the Liquidation Stores as approved in the July 11 Order and the Additional Stores (subject to approval of this Honourable Court).
20. CMT, with the assistance of its financial advisor, RSM Richter Corporation (“**Richter**”), has developed a sales and marketing process for the UB and CBX chains (the “**Sales Process**”).

21. The Company has proposed the following terms for the Sales Process, including:

- a) Compiling a list of prospective financial and strategic purchasers and liquidators (with Richter's assistance) to participate in the Sales Process. The prospective purchasers list will be augmented by parties that have contacted or may contact the Proposal Trustee directly as well as any other bona fide parties that contact the Company and/or Richter in the future;
- b) On or around July 19, 2011, Richter will distribute to prospective purchasers a solicitation letter including a confidentiality agreement ("CA") that prospective purchasers are required to sign in order to gain access to confidential information. The solicitation letter will advise prospective purchasers that the Company intends to seek Court approval of the Sales Process on July 22, 2011, and accordingly, the Sales Process may be amended by the Court;
- c) CMT has prepared a confidential information memorandum ("CIM") to be made available to prospective purchasers that execute a CA;
- d) Prospective purchasers that have executed a CA will be provided with an opportunity to review information in CMT's online data room and will also be provided with an opportunity to visit store locations and meet with CMT's management;
- e) An asset purchase agreement (in the case of going-concern buyers) and an agency agreement (in the case of the liquidators) will be provided to those

prospective purchasers who execute a CA. Prospective buyers will be requested to submit offers in these formats (or substantially in these formats), as appropriate. The forms of agreements will be provided to prospective bidders following the motion for approval of the Sale Process on July 22, 2011;

- f) The proposed offer deadline is August 22, 2011 (the “**Offer Deadline Date**”). Richter has advised the Company that it believes this timeline is sufficient to allow prospective purchasers time to complete their due diligence and to submit an offer and is consistent with Richter’s experience selling distressed companies of this size.

22. The Company has advised that it is in the stakeholder’s best interests to allow prospective purchasers the opportunity to commence their due diligence a few days prior to June 22, 2011 so that they may have more time to complete their due diligence and submit an offer by the Offer Deadline Date.

23. Concurrently with the Sale Process, CMT intends to commence a marketing process for certain of CMT’s real property leases, which may be sold on a piecemeal basis in the event a going concern transaction for UB and/or CBX is not achieved.

24. The Proposal Trustee is advised that CMT is attempting to engage a commercial broker specializing in retail leases to assist CMT with marketing certain of its real property leases. Further, if the Company succeeds in retaining a commercial broker, the details of the terms of the engagement will be provided to the Court.

25. The Proposal Trustee has been advised by the Company that the terms of the Sales Process are supported by the Company's principal secured creditors, being Roynat, CIC Asset Management Inc. ("**Crown**") and CMT Sourcing Inc.
26. The Proposal Trustee believes that the proposed terms of the Sales Process are reasonable and appropriate in the circumstances.

FURNITURE, FIXTURES AND EQUIPMENT

27. The July 11 Order provides approval for the Company to liquidate its furniture, fixtures and equipment ("**FFE**"), however it did not provide a process for marketing the FFE or removal of the FFE from the various locations.
28. The Company is seeking approval from this Honourable Court of proposed guidelines for the liquidation of its FFE from the Closing Stores, as follows:
- a) CMT may sell any FFE owned by CMT during the liquidation and may advertise the sale of the FFE. The purchasers of any FFE shall only be permitted to remove the purchased FFE either through the back shipping areas designated by the landlord or through other areas after regular business hours of the store or the shopping centre.
 - b) CMT will provide the relevant landlords with notice of its intention to remove or sell any FFE from any store at least three days prior to the date of the intended removal or sale. The relevant landlord shall be entitled to have a representative present in the store to observe such removal and, if the relevant landlord disputes the entitlement to remove any such FFE

under the provisions of the lease, such FFE shall remain in the store and shall be dealt with as agreed between the landlord and CMT, or by further order of the Court on application by CMT on at least two days' notice to such landlord.

- c) If a lease has been disclaimed, CMT shall not be deemed to be in occupation or required to pay rent pending resolution of any FFE dispute and the disclaimer of any lease shall be without prejudice to CMT's claim to any FFE at issue in the dispute.
- d) CMT may abandon any FFE not sold in the liquidation at the store premises at the conclusion of the liquidation. Any FFE left in a store after a lease is disclaimed shall be deemed abandoned with the landlord having the right to dispose of the same as the landlord chooses.
- e) No permanent fixtures may be removed without the relevant landlord's written consent unless otherwise provided by the applicable lease. No property of the landlord in a store shall be removed or sold during the liquidation.

29. The Proposal Trustee has been advised by the Company's legal counsel that discussions have been held with the landlords' counsel representing approximately 100 out of 116 stores (the "**Landlords**") to obtain their approval of the above guidelines. The Company's counsel has advised that language for the removal of the FFE has been agreed by the Landlords. The Proposal Trustee has reviewed the above guidelines and supports the motion for removal of the FFE.

SECURITY OPINION UPDATE

30. As referred to in the First Report, Farber has engaged Norton Rose OR LLP (“NRLLP”) as counsel to conduct a review of the Security that was granted to Roynat, and to provide an opinion with respect to its validity and perfection.
31. As reported therein, NRLLP had provided a favourable opinion on Roynat’s security subject to the assumptions and qualifications contained therein for the Provinces of Ontario and Quebec. Following on from these initial investigations, NRLLP was required to opine through agent counsel on the remaining jurisdictions where the substantial portion of the Company’s assets are located. These Provinces are British Columbia, Alberta, Manitoba, New Brunswick and Nova Scotia. Such opinions conclude that subject to the assumptions and qualifications contained therein, the interests created by the security instruments in the collateral described therein have been perfected under the relevant personal property security regime (to the extent required) and rank in priority to the interest of a trustee in bankruptcy in the property, assets and undertaking of the Company which are described in the security instruments. These additional opinions are available for review upon request.
32. A review of the security interests held by the other principal secured creditors of the Company has been completed.
33. The Proposal Trustee has received favourable opinions from each jurisdiction where registrations have been effected including the Provinces of Ontario, Quebec, British Columbia, Manitoba, New Brunswick, Nova Scotia and Alberta pertaining to the

security held by CIC Asset Management Inc, a purported assignee of Crown Life Insurance Company.

34. A review of the security of CMT Sourcing Group Ltd is currently under way, though it would appear that all registrations necessary to perfect this security have been undertaken in those jurisdictions where the secured party has chosen to effect them.

LANDLORDS

35. The Proposal Trustee advised in its First Report that the Company wished to minimize its liquidity pressure by commencing to pay rent on a bi-weekly basis in advance. The Company's current rent payments to landlords are payable on a monthly basis (on the first day of each month) in advance.
36. The Proposal Trustee has recently been advised by the Company and the Landlords that an agreement (the "**Rent Payment Agreement**") has been reached in principle allowing CMT to pay its monthly rent obligations on the first and fifteenth of every month commencing on August 1, 2011.
37. The Rent Payment Agreement is subject to those affected landlords receiving a court-ordered charge (the "**Landlords Charge**") on the property, assets and undertakings of the Company securing payment of a maximum amount for each leased location of one half of the monthly post-filing base and additional rent (excluding damages and any other amounts recoverable as rent under the relevant lease), which charge shall rank behind the amounts set out in paragraph eight of the July 11 Order.

38. The Proposal Trustee has been advised by the Company that discussions are ongoing with the Landlords to resolve the language with respect to the Landlords Charge. The Proposal Trustee expects that the remaining issues with respect to the charge language will be resolved to the satisfaction of the parties.

NECESSITY OF AN EXTENSION

39. The initial 30-day stay period granted upon the filing of the NOI expires on Wednesday July 27, 2011.

40. Since the date of filing of the NOI, the Company has worked diligently attending to the myriad of time sensitive business issues relating to its restructuring efforts and the BIA process in an effort to work toward formulating a viable proposal.

41. As detailed in the Second Johnson Affidavit, the Company wishes to commence a Sales Process and, at the same time, continue liquidating the Closing Stores. The proposed Offer Deadline Date is set for August 22, 2011, on which date the Company will accept offers for the sale of the UB and CBX businesses on a going concern and/or liquidation basis.

42. It is anticipated that the Company, and its advisors, will assess competing offers made and thereafter will require some time to negotiate a final form of agreement with the successful bidder.

43. The Proposal Trustee is advised by the Company that it will require a 45 day extension to September 12, 2011 in order to allow the Company to complete the Sales Process, and depending on the outcome of the Sales Process, to formulate a viable

proposal to its creditors. The Company anticipates that the Sales Process will be completed by the end of September 2011 and the self liquidation will continue until mid September 2011.

44. In the event an extension is not granted and the Company is deemed bankrupt, the Company will not be able to complete its restructuring and formulate a proposal, to the detriment of all its stakeholders, including its approximately 1,682 employees.
45. The Proposal Trustee is satisfied that the Company has acted and is acting in good faith and with due diligence in the Proposal to date and if the extension sought is granted, this will allow the Company to commence and complete the Sales Process.
46. The Proposal Trustee is not aware of any creditor who would be materially prejudiced if the extension of the NOI period being requested by the Company to September 12, 2011 is granted.
47. The Company has been operating within its cash flow projections as filed by the Proposal Trustee in its First Report. It is anticipated that the relief being sought in connection with the bi-weekly rent payment terms should improve the availability of the Company under the post-filing financing arrangement with Roynat.
48. Accordingly, the Proposal Trustee recommends that a 45 day extension be granted to the Company for the reasons set out above.

RECOMMENDATIONS

49. As a result of the above, the Proposal Trustee respectfully requests that this Honourable Court:

- a) Approve the guidelines for the sale and removal of FFE in the Liquidation Stores and the Additional Stores;
- b) Approve the extension of the Key Employee Retention Plan to the Key Store Employees employed at the Additional Stores;
- c) Approve the process to self-liquidate inventory and FFE by the Company at the Additional Stores;
- d) Approve the Sales Process for the Company to market and sell the UB and CBX chains;
- e) Approve the establishment of a charge on all of the assets, undertakings and properties of CMT in favour of CMT's real property landlords to secure payment of base and additional rent under the real property leases; and
- f) Grant the Company a 45-day extension of time for the filing of its Proposal pursuant to the BIA until September 12, 2011.

All of which is respectfully submitted this 20th day of July 2011.

**A. FARBER & PARTNERS INC.
IN ITS CAPACITY AS TRUSTEE *IN RE*
THE PROPOSAL OF CLOTHING FOR MODERN TIMES LTD.**

A. Farber & Partners Inc.

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

**IN THE MATTER OF THE PROPOSAL OF
CLOTHING FOR MODERN TIMES LTD.
A COMPANY DULY INCORPORATED IN THE PROVINCE OF ONTARIO WITH A
HEAD OFFICE IN THE CITY OF TORONTO
IN THE PROVINCE OF ONTARIO**

THIRD REPORT OF THE PROPOSAL TRUSTEE

SEPTEMBER 9, 2011

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INTRODUCTION

1. On June 27, 2011, Clothing for Modern Times Ltd. (“**CMT**” or the “**Company**”) filed a Notice of Intention to Make a Proposal (“**NOI**”) under Section 50.4 of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended (the “**BIA**”). A. Farber & Partners Inc. (“**Farber**”) was appointed as Trustee in the Proposal of the Company (the “**Proposal Trustee**”). A copy of the Certificate of Filing a Notice of Intention to Make a Proposal is attached hereto as **Appendix “A”**.
2. CMT is an Ontario-incorporated company that has designed, produced and marketed trendy apparel styles under the retail banners: Urban Behavior (“**UB**”), Costa Blanca (“**CB**”) and Costa Blanca X (“**CBX**”). At the date of the NOI filing, CMT operated 116 leased store locations throughout Canada and has head office premises at 300 Supertest Road, Toronto.
3. At the time of filing the NOI, the Company employed 1,682 employees, of which approximately 1,316 are hourly retail employees.
4. CMT has experienced declining sales and reduced profit margins over the past three years attributed mainly to the poor economic climate for retail operations and the entry of direct competitors in the Canadian marketplace.
5. On June 24, 2011, the Company’s primary secured lender, Roynat Asset Finance, a Division of Roynat Inc. (“**Roynat**”) demanded repayment of its loans and issued a Notice of Intention to Enforce Security under Section 244 of the BIA. CMT consented to the immediate enforcement of Roynat’s security.

6. Roynat, CMT and other related entities to CMT, as guarantors, entered into a forbearance agreement dated June 24, 2011 (the “**Forbearance Agreement**”), whereby Roynat agreed to forbear from taking certain actions under its security and agreed to maintain its credit facilities pursuant to the Roynat Loan (as defined below), subject to the terms and conditions contained in the Forbearance Agreement.

7. Pursuant to an Order of the Honourable Madame Justice Hoy dated July 11, 2011 (the “**July 11 Order**”), the Court approved, *inter alia*, (i) the post-filing advances and Over-Advances to the Company by Roynat, (ii) a super-priority charge in favour of Roynat to secure payment of the money advances by Roynat post-filing, (iii) an Administration Charge to secure the reasonable fees and disbursements of CMT’s legal and financial advisors, the Proposal Trustee and its legal counsel; (iii) a self-liquidation plan by CMT of 21 stores identified for closure (the “**Liquidation Stores**”); and (iv) a key employee retention and incentive plan for certain key employees of CMT working in the Liquidation Stores during the liquidation period. Copies of the July 11 Order and Justice Hoy’s endorsement (the “**July 11 Endorsement**”) are attached hereto as **Appendix “B”**.

8. Pursuant to an Order of the Honourable Madam Justice Hoy dated July 22, 2011 (the “**July 22 Order**”), the Court approved, *inter alia*, (i) extending the self-liquidation plan by CMT to 7 additional stores identified for closure (the “**Additional Stores**”); (ii) a process for the removal of fixtures in the stores scheduled for closure; (iii) extending the key employee retention plan for key employees working in the Additional Stores; (iv) a process for the marketing and sale of the UB and CBX chains; (v) a charge in favour of certain of CMT’s real property landlords; and (vi) a

45-day extension for the Company to file a Proposal on or before September 12, 2011. Copy of the July 22 Order is attached hereto as **Appendix "C"**.

PURPOSE OF THIS REPORT

9. The purpose of this Third Report of the Proposal Trustee ("**Third Report**") is to recommend that the Company be granted a short extension to September 23, 2011 for the filing of its Proposal pursuant to the BIA.

DISCLAIMER

10. Farber has relied upon the financial records and financial statements of CMT, as well as other information supplied by management, accountants, auditors and financial advisors to CMT. Our procedures and enquiries did not constitute any audit or review engagement. Farber assumes no responsibility or liability for loss or damage occasioned by any party as a result of the circulation, publication, re-production or use of this Third Report. Any use which any party, other than Court, makes of this Third Report or any reliance on or a decision made based upon it is the responsibility of such party.

EXTENSION OF STAY OF PROCEEDINGS

11. The stay of proceedings expires on Monday September 12, 2011.
12. The Company has filed its materials with the Honourable Court including an affidavit by Chris Johnson sworn on September 9, 2011 providing the Company's reasons for seeking to extend the NOI stay of proceedings to September 23, 2011.
13. The Proposal Trustee is satisfied that the Company has acted and is acting in good faith and with due diligence in the Proposal to date and, if the short extension being

sought is granted, will allow the Company additional time to complete its negotiations of offers received during the Sales Process and return to Court to report on the results.

14. The Proposal Trustee is not aware of any creditor who would be materially prejudiced if the extension of the NOI stay period being requested by the Company to September 24, 2011 is granted.

RECOMMENDATIONS

15. Accordingly, the Proposal Trustee supports the Company's request that an eleven day extension until September 23, 2011 be granted to the Company, for the reasons set out above.

All of which is respectfully submitted this 9th day of September 2011.

**A. FARBER & PARTNERS INC.
IN ITS CAPACITY AS TRUSTEE *IN RE*
THE PROPOSAL OF CLOTHING FOR MODERN TIMES LTD.**

A. Farber & Partners Inc.

File No. 31-1513595

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

**IN THE MATTER OF THE PROPOSAL OF
CLOTHING FOR MODERN TIMES LTD.
A COMPANY DULY INCORPORATED IN THE PROVINCE OF ONTARIO WITH A
HEAD OFFICE IN THE CITY OF TORONTO
IN THE PROVINCE OF ONTARIO**

FOURTH REPORT OF THE PROPOSAL TRUSTEE

SEPTEMBER 21, 2011

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INTRODUCTION

1. On June 27, 2011, Clothing for Modern Times Ltd. (“**CMT**” or the “**Company**”) filed a Notice of Intention to Make a Proposal (“**NOI**”) under Section 50.4 of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended (the “**BIA**”). A. Farber & Partners Inc. (“**Farber**”) was appointed as Trustee in the Proposal of the Company (the “**Proposal Trustee**”). A copy of the Certificate of Filing a Notice of Intention to Make a Proposal is attached hereto as **Appendix “A”**.
2. CMT is an Ontario-incorporated company that designs, produces and markets trendy apparel styles under the retail businesses: Urban Behavior (“**UB**”), Costa Blanca (“**CB**”) and Costa Blanca X (“**CBX**”), with a head office premises located at 300 Supertest Road, Toronto.
3. At the time of filing the NOI, the Company employed 1,682 employees, of which approximately 1,316 are hourly retail employees.
4. CMT has experienced declining sales and reduced profit margins over the past three years attributed mainly to the poor economic climate for retail operations and the entry of direct competitors in the Canadian marketplace.
5. On June 24, 2011, the Company’s primary secured lender, Roynat Asset Finance, a Division of Roynat Inc. (“**Roynat**”) demanded repayment of its loans and issued a Notice of Intention to Enforce Security under Section 244 of the BIA. CMT consented to the immediate enforcement of Roynat’s security.

6. Roynat, CMT and other related entities to CMT, as guarantors, entered into a forbearance agreement dated June 24, 2011 (the “**Forbearance Agreement**”), whereby Roynat agreed to forbear from taking certain actions under its security and agreed to maintain its credit facilities pursuant to the Roynat Loan (as defined below), subject to the terms and conditions contained in the Forbearance Agreement.

7. Pursuant to Orders of the Honourable Madame Justice Hoy dated July 11 and 22, 2011 (the “**July Orders**”), the Court approved, *inter alia*, (i) the post-filing advances and Over-Advances to the Company by Roynat, (ii) a super-priority charge in favour of Roynat to secure payment of the money advances by Roynat post-filing, (iii) an Administration Charge to secure the reasonable fees and disbursements of CMT’s legal and financial advisors, the Proposal Trustee and its legal counsel; (iii) a self-liquidation plan by CMT of 26 stores identified for closure (the “**Liquidation Stores**”) and a key employee retention and incentive plan (“**KERP**”) for certain key employees employed in the Liquidation Stores, (iv) a process for the removal of fixtures, (v) a process for the marketing and sale of the UB and CBX businesses; (vi) a charge in favour of certain of CMT’s real property landlords, and (vii) two extensions of time for CMT to file a proposal to its creditors, the last extension expiring on September 12, 2011. Copies of the July Orders are attached hereto as **Appendix “A”**.

8. On September 12, 2011, CMT sought and obtained an eleven-day extension of time to September 23, 2011 to file a proposal in order to review the offers received and continue negotiations with a prospective purchaser.

PURPOSE OF THIS REPORT

9. The purpose of this Fourth Report of the Proposal Trustee (“**Fourth Report**”) is to:
- a) advise the Court and comment on the Company’s request for approval to self-liquidate inventory and fixtures at fifteen additional stores (the “**Additional Stores**”);
 - b) support the Company’s request to seek approval to extend the KERP to the Key Store Employees (as defined in the First Report) employed at the Additional Stores; and
 - c) recommend that the Company be granted a 45-day extension to November 7, 2011 for the filing of its Proposal pursuant to the BIA.

DISCLAIMER

10. Farber has relied upon the financial records and financial statements of CMT, as well as other information supplied by management, accountants, auditors and financial advisors to CMT. Our procedures and enquiries did not constitute any audit or review engagement. Farber assumes no responsibility or liability for loss or damage occasioned by any party as a result of the circulation, publication, re-production or use of this Fourth Report. Any use which any party, other than Court, makes of this Fourth Report or any reliance on or a decision made based upon it is the responsibility of such party.

RESTRUCTURING AND EXTENSION OF STAY OF PROCEEDINGS

11. The Company has filed its materials with the Honourable Court including an affidavit by Chris Johnson sworn on September 19, 2011 (the “**Johnson Affidavit**”) providing

the Company's reasons for, *inter alia*, seeking approval for self-liquidating the Additional Stores and applying the previously approved guidelines for the sale and removal of fixtures relating to the Additional Stores. In addition, the Johnson Affidavit provides the Company's reasons for requesting an extension of the NOI stay of proceedings to November 7, 2011.

12. The Proposal Trustee is advised that the Company continues to negotiate with a prospective purchaser for the sale of a portion of the UB business on a going concern basis and that once the business and legal terms have been finalized among the parties, the Company intends to bring a motion for Court approval of an asset purchase agreement.
13. As part of the restructuring plan detailed in the Johnson Affidavit, the Company has determined that it is in the best interests of the stakeholders to liquidate the Additional Stores and, accordingly, sent Notice of Lease Disclaimers for the Additional Stores on September 13, 2011 in accordance with section 65.2 of the BIA.
14. The Company intends to liquidate and remove the fixtures in the Additional Stores in accordance with the guidelines approved in the Order of the Honourable Court dated July 22, 2011.
15. The current extension of the stay of proceedings expires on Friday, September 23, 2011. In the event a further extension is not granted, the Company will be deemed bankrupt and this could negatively impact a sale of the UB business as a going concern and execution of the remainder of their restructuring plans to the detriment of all the stakeholders of the Company.

16. The Proposal Trustee is satisfied that the Company has acted and is acting in good faith and with due diligence in the proceeding to date and, if the extension being sought is granted, will allow the Company additional time to finalize negotiations with a prospective purchaser and complete a transaction for the sale of the UB business and will enhance the opportunity for the Company to make a Proposal to its creditors.
17. The Proposal Trustee is not aware of any creditor who would be materially prejudiced if the extension of the NOI stay period being requested by the Company to November 7, 2011 is granted.
18. The Company continues to manage its expenses and operate within its net cash flow projections originally filed with the Honourable Court.
19. The Proposal Trustee has been advised that the Company intends to file a revised Statement of Projected Cash Flow for the period ending November 19, 2011 (the “**Cash Flow**”) with the Honourable Court and to request that the Honourable Court seal the Cash Flow until a transaction has been completed with the prospective purchaser. Sealing is appropriate in this case since the price to be paid by the prospective purchaser would otherwise become known generally prior to a transaction being completed and thereby potentially prejudicing efforts to resell those assets should a transaction not be completed as anticipated.
20. The Forbearance Agreement provisions expire on September 24, 2011. As indicated in the Johnson Affidavit, the Company has commenced negotiations with Roynat to

extend the Forbearance Agreement and the Proposal Trustee knows of no reason why the Company would not reach an extension agreement with Roynat.

RECOMMENDATIONS

21. As a result of the above, the Proposal Trustee respectfully recommends that this Honourable Court:

- a) approve the process to self-liquidate inventory and FFE by the Company at the Additional Stores;
- b) approve the extension of the KERP to the Key Store Employees employed at the Additional Stores; and
- c) grant the Company a 45-day extension of time for the filing of its Proposal pursuant to the BIA until November 7, 2011.

All of which is respectfully submitted this 21st day of September 2011.

**A. FARBER & PARTNERS INC.
IN ITS CAPACITY AS TRUSTEE *IN RE*
THE PROPOSAL OF CLOTHING FOR MODERN TIMES LTD.**

A. Farber & Partners Inc.

File No. 31-1513595

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

**IN THE MATTER OF THE PROPOSAL OF
CLOTHING FOR MODERN TIMES LTD.
A COMPANY DULY INCORPORATED IN THE PROVINCE OF ONTARIO WITH A
HEAD OFFICE IN THE CITY OF TORONTO
IN THE PROVINCE OF ONTARIO**

FIFTH REPORT OF THE PROPOSAL TRUSTEE

NOVEMBER 2, 2011

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INTRODUCTION

1. On June 27, 2011, Clothing for Modern Times Ltd. (“**CMT**” or the “**Company**”) filed a Notice of Intention to Make a Proposal (“**NOI**”) under Section 50.4 of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended (the “**BIA**”). A. Farber & Partners Inc. (“**Farber**”) was appointed as Trustee in the Proposal of the Company (the “**Proposal Trustee**”). A copy of the Certificate of Filing a Notice of Intention to Make a Proposal is attached hereto as **Appendix “A”**.
2. CMT is an Ontario-incorporated company that designs, produces and markets trendy apparel styles under the retail businesses: Urban Behavior (“**UB**”), Costa Blanca (“**CB**”) and Costa Blanca X (“**CBX**”), with a head office premises located at 300 Supertest Road, Toronto.
3. At the time of filing the NOI, the Company employed 1,682 employees, of which approximately 1,316 are hourly retail employees.
4. CMT has experienced declining sales and reduced profit margins over the past three years attributed mainly to the poor economic climate for retail operations and the entry of direct competitors in the Canadian marketplace.
5. On June 24, 2011, the Company’s primary secured lender, Roynat Asset Finance, a Division of Roynat Inc. (“**Roynat**”) demanded repayment of its loans and issued a Notice of Intention to Enforce Security under Section 244 of the BIA. CMT consented to the immediate enforcement of Roynat’s security.

6. Roynat, CMT and other related entities to CMT, as guarantors, entered into a forbearance agreement dated June 24, 2011 (the “**Forbearance Agreement**”), whereby Roynat agreed to forbear from taking certain actions under its security and agreed to maintain its credit facilities pursuant to the Roynat Loan (as defined below), subject to the terms and conditions contained in the Forbearance Agreement. Roynat has extended the Forbearance Agreement on numerous occasions with the current extension terminating on November 5, 2011.

7. Pursuant to Orders of the Honourable Madame Justice Hoy dated July 11 and 22, 2011 (the “**July Orders**”), the Court approved, *inter alia*, (i) the post-filing advances and Over-Advances to the Company by Roynat, (ii) a super-priority charge in favour of Roynat to secure payment of the money advances by Roynat post-filing, (iii) an Administration Charge to secure the reasonable fees and disbursements of CMT’s legal and financial advisors, the Proposal Trustee and its legal counsel; (iv) a process for the removal of fixtures, (v) a process for the marketing and sale of the UB and CBX businesses; (vi) a charge in favour of certain of CMT’s real property landlords, and (vii) two extensions of time for CMT to file a proposal to its creditors, the last extension expiring on September 12, 2011. Copies of the July Orders are attached hereto as **Appendix “B”**.

8. On September 12, 2011, CMT sought and obtained an eleven-day extension of time to September 23, 2011 to file a proposal in order to review the offers received and continue negotiations with a prospective purchaser.

9. On September 23, 2011 (the “**September Order**”), CMT sought and was granted an extension of time to file a proposal for 45 days until November 7, 2011. In addition, pursuant to the July Orders and September Order, the Court approved a self-liquidation plan by CMT of a total of 41 stores (the “**Liquidation Stores**”) identified for closure and a key employee retention and incentive plan (“**KERP**”) for certain key employees employed in the Liquidation Stores. A copy of the September Order is attached hereto as **Appendix “C”**.

10. The Proposal Trustee has reviewed the sworn affidavit of Chris Johnson dated November 1, 2011 (the “**Johnson Affidavit**”), in support of the Company’s motion.

PURPOSE OF THIS REPORT

11. The purpose of this Fifth Report of the Proposal Trustee (“**Fifth Report**”) is to:
 - a) support the Company’s request to seek approval of the Asset Purchase Agreement (the “**Sale Agreement**”) between 7951388 Canada Inc. (“**795**”) and CMT for the going concern sale of the UB business and assets, including the leases of 12 UB locations;

 - b) support the Company’s request to vest title to the purchased assets described in the Sale Agreement in and to 795 free and clear of all claims and encumbrances;

 - c) support the Company’s request to seek approval of the Asset Purchase Agreement (the “**Midtown Agreement**”) between Boathouse West Inc. and CMT for the sale of the lease, leasehold interests and fixtures of the

UB store located at Midtown Plaza, in the City of Saskatoon, Saskatchewan (the “**Midtown Store**”)

- d) advise the Court and comment on the Company’s request for approval to self-liquidate inventory and fixtures at twenty-five additional stores (the “**Additional Stores**”);
- e) support the Company’s request to seek approval to extend the KERP to the Key Store Employees (as defined in the First Report) employed at the Additional Stores; and
- f) recommend that the Company be granted a 45-day extension to December 22, 2011 for the filing of its Proposal pursuant to the BIA.

DISCLAIMER

12. Farber has relied upon the financial records and financial statements of CMT, as well as other information supplied by management, accountants, auditors and financial advisors to CMT. Our procedures and enquiries did not constitute any audit or review engagement. Farber assumes no responsibility or liability for loss or damage occasioned by any party as a result of the circulation, publication, re-production or use of this Fifth Report. Any use which any party, other than Court, makes of this Fifth Report or any reliance on or a decision made based upon it is the responsibility of such party.

THE SALES PROCESS AND SALE AGREEMENT

13. Pursuant to the Johnson Affidavit, the Company, with the assistance of RSM Richter Inc. (“**Richter**”), has been extensively negotiating with the prospective purchaser, 795, an entity incorporated for the purpose of this transaction by YM Inc. (“**YM**”), for the sale of the UB business and assets.
14. The Proposal Trustee has been kept updated on the progress of the negotiations with YM and has offered its assistance where it has been requested by the Company.
15. The Company has completed its negotiations with YM and has entered into the Sale Agreement, subject to approval of this Honourable Court, for the going concern sale of the UB business and assets.
16. Details of the Sale Agreement are summarized in the Johnson Affidavit. The Company is requesting an order sealing the Sale Agreement until completion of the transaction, which is contemplated to be January 16, 2012 (the “**Closing Date**”), as it contains commercially sensitive information that would be prejudicial to the Company and its stakeholders, should it be disclosed at this time. The Proposal Trustee concurs with the Company’s request for an order sealing the Sale Agreement.
17. The Proposal Trustee has reviewed and agrees with the Company’s reasons for the Court to approve the Sales Process as detailed in paragraph 19 of the Johnson Affidavit.

SELF-LIQUIDATION OF ADDITIONAL STORES

18. The Company, as part of the restructuring plan, has determined that it is in the best interests of the stakeholders to liquidate underperforming stores. In furtherance of this plan, the Company has identified the Additional Stores that it intends to liquidate. The Company has advised the Proposal Trustee that it intends to send Notice of Lease Disclaimers for the Additional Stores in accordance with section 65.2 of the BIA.
19. The Additional Stores include a number of UB stores that do not form part of the Sale Agreement. The Company expects to complete its inventory liquidation at these stores by the Closing Date. A complete listing of the Additional Stores is detailed in the Johnson Affidavit.
20. The Company intends to liquidate and remove the fixtures in the Additional Stores in accordance with the guidelines approved in the Order of the Honourable Court dated July 22, 2011. In addition, the Company seeks approval to extend the KERP to the key employees of the Additional Stores.

MIDTOWN AGREEMENT

21. The Johnson Affidavit provides a summary of the Midtown Agreement, which is conditional on landlord's consent of an assignment of the lease and an order of this Honourable Court vesting title to the purchased assets free and clear of all claims and encumbrances.
22. While the Midtown Agreement is in the process of being finalized by the parties, the Company has advised the Proposal Trustee that this store location does not form part of the Sale Agreement with 795 and the purchase price offered far exceeds any value

that may be derived if the location was disclaimed in the same manner as the Additional Stores. The Proposal Trustee agrees with the Company's observations.

STAY OF PROCEEDINGS

23. The current extension of the stay of proceedings expires on Monday, November 7, 2011.

24. The Company has advised the Proposal Trustee that it expects that the proceeds from the UB business and liquidation of underperforming stores will be sufficient to pay out Roynat, and the second and third ranking secured creditors (as defined in the First Report of the Proposal Trustee) have advised CMT that they are prepared to support a basket proposal to unsecured creditors. The Proposal Trustee concurs with these observations.

25. The Company has substantially completed its restructuring. The Company's request for an extension to commence discussions with its largest unsecured creditors is an essential step in the process of formulating and finalizing a viable proposal. Determining the level of support for a proposal is for all practical purposes a responsible approach to this phase of the Company's restructuring efforts. Without an extension of the stay, however, the Company will be deemed bankrupt to the detriment of its stakeholders, including employees, unsecured creditors and landlords at the remaining CB locations.

26. The Proposal Trustee is satisfied that the Company has acted and is acting in good faith and with due diligence in the proceeding to date and, if the extension being

sought is granted, will allow the Company time to commence discussions with its largest unsecured creditors with a view to determining creditor support for a proposal.

27. The Proposal Trustee is not aware of any creditor who would be materially prejudiced if the extension of the NOI stay period being requested by the Company to December 22, 2011 is granted.

28. The Company has provided the Proposal Trustee with updated cash flow projections for the period ending January 21, 2012. The Company intends to file these cash flow projections with the Court (on a confidential basis to preserve the purchase price under the Sale Agreement) in support of its request for an extension of the time for filing a Proposal. The Proposal Trustee has reviewed the cash flow projections and is satisfied that the Company will continue to operate within the net cash flow projections during this period.

29. At the present time, Roynat is seeking approval from its credit committee to extend the Forbearance Agreement. The Proposal Trustee has not yet been advised of the proposed terms of the Forbearance Agreement but knows of no reason why an extension agreement could not be reached between the Company and Roynat.

RECOMMENDATIONS

30. As a result of the above, the Proposal Trustee respectfully recommends that this Honourable Court:

- a) approve the Sale Agreement between 795 and CMT for the going concern sale of the UB business and assets, including the leases for 12 UB locations;
- b) vest title to the purchased assets described in the Sale Agreement in and to 795 free and clear of all claims and encumbrances;
- c) approve the Midtown Agreement between Boathouse and CMT for the sale of the lease, leasehold interests and fixtures of the UB store located at Midtown Plaza, in the City of Saskatoon , Saskatchewan;
- d) approve the process to self-liquidate inventory and fixtures by the Company at the Additional Stores;
- e) approve the extension of the KERP to the Key Store Employees employed at the Additional Stores; and
- f) grant the Company a 45-day extension of time for the filing of its Proposal pursuant to the BIA until December 22, 2011.

All of which is respectfully submitted this 2nd day of November 2011.

**A. FARBER & PARTNERS INC.
IN ITS CAPACITY AS TRUSTEE *IN RE*
THE PROPOSAL OF CLOTHING FOR MODERN TIMES LTD.**

A. Farber & Partners Inc.

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

**IN THE MATTER OF THE PROPOSAL OF
CLOTHING FOR MODERN TIMES LTD.
A COMPANY DULY INCORPORATED IN THE PROVINCE OF ONTARIO WITH A
HEAD OFFICE IN THE CITY OF TORONTO
IN THE PROVINCE OF ONTARIO**

**SUPPLEMENTAL REPORT TO THE FIFTH REPORT OF THE
PROPOSAL TRUSTEE**

NOVEMBER 16, 2011

Appendices

APPENDIX A – A&L Schedule

1. This Supplemental Report to the Fifth Report of the Proposal Trustee (the “**Proposal Trustee**” or “**Farber**”) dated November 14, 2011 (the “**Supplemental Fifth Report**”) is prepared to provide an update on the status of the assets and liabilities of Clothing for Modern Times Ltd (“**CMT**” or the “**Company**”).
2. Farber has relied upon the financial records and financial statements of CMT, as well as other information supplied by management, accountants, auditors and financial advisors to CMT. Our procedures and enquiries did not constitute any audit or review engagement. Farber assumes no responsibility or liability for loss or damage occasioned by any party as a result of the circulation, publication, re-production or use of this Supplemental Fifth Report. Any use which any party, other than Court, makes of this Supplemental Fifth Report or any reliance on or a decision made based upon it is the responsibility of such party.
3. The Proposal Trustee has reviewed the Company’s draft balance sheet as at October 29, 2011, the monthly management accounts, including income statement, balance sheet and cash flow, for the period ended September 31, 2011 and the corporate structure of the Company.
4. The Proposal Trustee has further been provided the balance sheet at September 30, 2011 for CMT Wholesale Corp. (“**CMTWC**”), its indirect wholly-owned wholesale clothing subsidiary located in the United States of America. The Company has advised the Proposal Trustee that, other than CMTWC, all other direct and indirect subsidiaries of CMT are dormant, non-trading or bankrupt.

5. Based on the information provided, the Proposal Trustee has prepared a net realizable schedule (the “**A&L Schedule**”) which provides financial details of the Company as follows:

- a) the book value and of CMT’s assets at October 29, 2011 and the estimated realizable value of the assets of the Company;
- b) liabilities that may rank ahead of the secured creditor liability and estimated expenses that may be incurred to realize on the Company’s assets;
- c) the amount of secured debt including accrued interest at the date of the filing of the notice of intention to make a proposal, June 27, 2011 (the “**NOI**”); and
- d) unsecured creditor liabilities at the date of the filing of the NOI, including trade creditor claims, employee severance and termination liabilities and disclaimed landlord claims pursuant to section 65.2(4) of the *Bankruptcy and Insolvency Act* (“**BIA**”).

6. A copy of the A&L Schedule is attached hereto as **Appendix “A”**.

7. Based on the A&L Schedule, the Proposal Trustee notes the following pertinent information:

- a) Net Book Value (“NBV”) of the assets of the Company are \$38.6 million with the two main asset classes, namely Inventory and Capital Assets, accounting for approximately 78% of the NBV;
- b) the Proposal Trustee has estimated, based on certain assumptions, the Company’s assets will produce between \$13.9 million and \$16.7 million on an orderly liquidation scenario prior to employee priority expenses, orderly liquidation expenses and professional fees;
- c) Net recovery of assets after payment of employer related priority payments and orderly liquidation expense’s is estimated to produce between \$12.9 million and \$15.7 million;
- d) the secured creditor liability, including accrued interest, totals \$22.9 million. The three main secured creditors include Roynat Asset Finance Inc., a division of Roynat Inc. (“**Roynat**”), CIC Asset Management Inc. (“**CIC**”) and CMT Sourcing Group Ltd (“**CMT Sourcing**”);
- e) the total estimated unsecured creditor claims amount to approximately \$25.4 million. Included in the unsecured creditor claims are estimated claims of landlords for disclaimed or resiliated leases which have been calculated pursuant to section 65.2(4) of the BIA and amount to approximately \$11.4 million;

8. Based on the A&L Schedule, the Proposal Trustee estimates that Roynat, the first secured creditor, will be fully repaid from an orderly liquidation of assets and CIC and CMT Sourcing would suffer shortfalls to their secured debt positions.
9. In addition, the Proposal Trustee concludes that the unsecured creditors would not receive a distribution in the CMT estate if an orderly liquidation was conducted on the Company's assets.
10. The Proposal Trustee notes that, in addition to the secured debt owing to CMT Sourcing at the date of the NOI, the Company has a post-filing liability owing to CMT Sourcing in the amount of approximately \$2.5 million, which is subject to its security interest. The above further supports the conclusion that unsecured creditors will not receive a distribution in the CMT estate if an orderly liquidation was conducted.

All of which is respectfully submitted this 16th day of November 2011.

**A. FARBER & PARTNERS INC.
IN ITS CAPACITY AS TRUSTEE *IN RE*
THE PROPOSAL OF CLOTHING FOR MODERN TIMES LTD.**

A. Farber & Partners Inc.
