



Court File No. CV-25-00734339-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. )  
JUSTICE CAVANAGH )  
FRIDAY, THE 17<sup>TH</sup>  
DAY OF JANUARY, 2025

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 COMARK HOLDINGS INC.,  
BOOTLEGGERS CLOTHING INC., CLEO FASHIONS INC.  
AND RICKI'S FASHIONS INC. (collectively, the "**Applicants**")

**AMENDED AND RESTATED INITIAL ORDER  
(amending the Initial Order dated January 7, 2025)**

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

**ON READING** the Notice of Motion of the Applicants, the affidavit of Shamsh Kassam sworn January 6, 2025, and the Exhibits thereto (the "**Initial Kassam Affidavit**"), the affidavit of Shamsh Kassam sworn January 16, 2025, and the Exhibits thereto (the "**Second Kassam Affidavit**"), the consent of Alvarez & Marsal Canada Inc. ("**A&M**") to act as monitor (in such capacity, the "**Monitor**"), the Pre-Filing Report dated January 6, 2025, of A&M in its capacity as proposed Monitor, the First Report of the Monitor dated January 16, 2025, 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 to the Applicants, the Monitor, Canadian Imperial Bank of Commerce, in its capacity as Senior Lender, Interim Lender and DIP Lender (as defined below), and such other counsel present,

## **SERVICE**

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

## **DEFINITIONS**

2. **THIS COURT ORDERS** that unless otherwise indicated or defined herein, capitalized terms have the meanings given to them in the Initial Kassam Affidavit and the Second Kassam Affidavit, as applicable.

## **APPLICATION**

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

## **PLAN OF ARRANGEMENT**

4. **THIS COURT ORDERS** that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “**Plan**”).

## **POSSESSION OF PROPERTY AND OPERATIONS**

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

6. **THIS COURT ORDERS** that the Applicants shall be entitled to continue to use the central cash management system currently in place as described in the Initial Kassam Affidavit or, with the prior consent of the Monitor and the DIP Lender, replace it with another substantially similar central cash management system (the “**Cash Management System**”) and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under any Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

7. **THIS COURT ORDERS** that, subject to and in accordance with the DIP Term Sheet (defined below), the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to, on or after January 7, 2025 (the “**Filing Date**”):

- (a) all outstanding and future wages, salaries, employee benefits (including, without limitation, employee medical, dental and similar benefit plans or arrangements), vacation pay and expenses, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements, and all other payroll and benefits processing expenses;
- (b) all outstanding and future amounts invoiced to any of the Applicants from any independent contractors retained by any of the Applicants, in each case incurred in the ordinary course of business and consistent with existing payment arrangements;
- (c) to and including January 16, 2025, or such other later date as the Applicants determine in consultation with the DIP Lender, all outstanding or future amounts owing in respect of existing customer pre-payments, deposits, return policies, refunds, discounts or other amounts on account of similar customer programs or obligations,

- including loyalty programs, and further the Applicants shall be entitled, but not required, to honour existing exchange policies until such date;
- (d) to and including January 16, 2025, all outstanding or future amounts related to honouring gift cards;
  - (e) to the extent included in the Cash Flow Forecast or DIP Budget and approved by the Monitor and the DIP Lender, amounts owing for (I) any Parian Services or IT Services (each as defined in the Initial Kassam Affidavit) supplied to the Applicants prior to the Filing Date, or (II) goods or services ordered by or supplied to the Applicants prior to the Filing Date by any:
    - (i) providers of credit, debit and gift card processing related services;
    - (ii) logistics, warehouse or supply chain providers, including transportation providers, clearing houses, customs brokers, freight forwarders and security and armoured truck carriers, and including amounts payable in respect of customs and duties for goods;
    - (iii) providers of information, internet, telecommunications, and other technology, including e-commerce providers and related services; and
    - (iv) other suppliers or service providers if, in the opinion of the Applicants following consultation with the Monitor, such payment is necessary to maintain the uninterrupted operations of the Business, including, for clarity, pursuant to any Merchandise Transfer Agreement;
  - (f) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges; and
  - (g) any other amounts to the extent included in the Cash Flow Forecast or DIP Budget and approved by the Monitor and DIP Lender.

8. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, and consistent with the Cash Flow Forecast or DIP Budget, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by them in carrying on the Business in the ordinary course after the Filing Date, and in carrying out the provisions of this Order and any other Order of this Court, 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, maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicants following the Filing Date.

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

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from the Applicants' employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes, and all other amounts related to such deductions or employee wages payable for periods following the Filing Date pursuant to the *Income Tax Act*, Canada Pension Plan, *Employment Insurance Act*, and similar provincial statutes;
- (b) all goods and services taxes, harmonized sales taxes or other applicable sales taxes (collectively, "**Sales Taxes**") due and required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the Filing Date;
- (c) all Sales Taxes accrued or collected prior to the Filing Date but not remitted until on or after the Filing Date, provided that, unless otherwise agreed by the Applicants and the DIP Lender (i) all Obligations have been Repaid in Full under the Pre-Filing Credit Agreement (including, without limitation, all obligations under the Revolving Credit, Term Credit and the BCAP Facility, all accrued and unpaid interest relating to such facilities and the Lender Expenses) (in each case as defined in the DIP Term Sheet), and (ii) all DIP Financing Obligations under the DIP Facility have been Repaid in Full (in each case as defined in the DIP Term Sheet);

- (d) 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, workers' compensation or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

10. **THIS COURT ORDERS** that, until a real property lease (each, a “**Lease**”) to which any Applicant is a party is disclaimed in accordance with the CCAA, or otherwise consensually terminated, the applicable Applicant that is party to such Lease shall pay, without duplication, all amounts constituting rent or payable as rent under such Lease (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the applicable landlord (each, a “**Landlord**”) under such Lease, but for greater certainty, excluding amounts owing in respect of the period prior to the Filing Date (including percentage rent), accelerated rent or penalties, fees or other charges arising as a result of any default that is stayed by this Order, the insolvency of the Applicants, the commencement of these CCAA proceedings, or the making of this Order) or as otherwise may be negotiated between such Applicant and the Landlord from time to time (“**Rent**”), (a) incurred and relating solely to the period commencing from and including the Filing Date until and including January 17, 2025, as a single payment made on the Filing Date, (b) incurred and relating solely to the period commencing from and including January 18, 2025, until and including January 31, 2025, as a single payment made on January 17, 2025, or within two (2) business days thereafter, and (c) thereafter, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears), in each case save and except for any component of Rent which is percentage rent which, commencing from and including the Filing Date, shall be calculated every two weeks and paid one week thereafter regarding revenues incurred during the period from and including the Filing Date.

11. **THIS COURT ORDERS** that, except as specifically permitted herein or to the extent included in the Cash Flow Forecast, the DIP Budget or otherwise permitted under the DIP Term Sheet, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by any one of the Applicants to any of their creditors as of this date); (b) to grant no security interests, trusts,

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

## **RESTRUCTURING**

12. **THIS COURT ORDERS** that the Applicants shall, subject to such requirements as are imposed by the CCAA, such covenants as may be contained in the Definitive Documents (as hereinafter defined), or as otherwise ordered by this Court, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their business or operations (provided that, with respect to any leased premises, the Applicants may only permanently, but not temporarily, cease, downsize or shut down such business or operations), and to dispose of redundant or non-material assets not exceeding \$150,000 in any one transaction or \$500,000 in the aggregate;
- (b) vacate, abandon or quit the whole but not part of any leased premises and/or disclaim any real property lease, including any Lease, and any ancillary agreements relating to any leased premises;
- (c) without limiting paragraph 12(b), above, disclaim, with the prior consent of the Monitor, and after consultation with the DIP Lender, any of their arrangements or agreements of any nature whatsoever and with whomsoever, whether oral or written, as the Applicants deem appropriate, in accordance with section 32 of the CCAA;
- (d) terminate the employment of such of their employees or temporarily lay off such of their employees as they deem appropriate;
- (e) in consultation with, and with the oversight of the Monitor and in consultation with the DIP Lender, (i) engage in discussions with and solicit proposals and agreements from, third parties in respect of the liquidation of the inventory, furniture, equipment and fixtures and other property located in and/or forming part of the Property, and return to Court for the approval of any such agreement (the “**Realization Selection Process**”), and (ii) with the assistance of any real estate advisor or other Assistants as may be desirable, pursue all avenues and offers for the sale, transfer or assignment of

the Leases to third parties, in whole or in part and return to Court for approval of any such sale, transfer or assignment; and

- (f) pursue all offers for or avenues of refinancing, restructuring, sale or reorganizing the Business or Property, in whole or part, including pursuant to any solicitation process letter establishing bid procedures (including minimum proposal requirements, key milestones, and successful bid selection criteria) as may be determined by the Applicants and Monitor in consultation with the DIP Lender, for circulation to potentially interested parties identified by the Applicants and the Monitor; provided, however, that completion of any such refinancing, restructuring, sale or reorganization transaction will be subject to (i) prior approval of this Court (except as permitted by paragraph 12(a) above in respect of redundant or non-material assets or the Realization Process Approval Order granted by this Court on January 17, 2025) and (ii) prior approval of the DIP Lender.

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

13. **THIS COURT ORDERS** that the Applicants shall provide each of the relevant Landlords with notice of the Applicants’ intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant Landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if such Landlord disputes the Applicants’ entitlement to remove any such fixture under the provisions of the applicable Lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such Landlord and the Applicants, or by further Order of this Court upon application by the Applicants on at least two (2) days notice to such Landlord and any such secured creditors. If the Applicants disclaim the Lease governing such leased premises in accordance with Section 32 of the CCAA, the Applicants 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 of such Lease shall be without prejudice to the Applicants’ claim to the fixtures in dispute.

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

the Landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant Landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such Landlord may have against the Applicants in respect of such Lease or leased premises, provided that nothing herein shall relieve such Landlord of its obligation to mitigate any damages claimed in connection therewith.

### **NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY**

15. **THIS COURT ORDERS** that until and including May 15, 2025, or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Applicants or the Monitor, or their respective employees, directors, advisors, officers, and representatives acting in such capacities, or affecting the Business or the Property, except with the prior written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants, or except as permitted by subsection 11.03(2) of the CCAA, their employees, directors, advisors, officers, or representatives acting in such capacities, or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

16. **THIS COURT ORDERS** that, to the extent any prescription, time or limitation period relating to any Proceeding against or in respect of any Applicant that is stayed pursuant to this Order may expire, the term of such prescription, time or limitation period shall hereby be deemed to be extended by a period equal to the Stay Period.

### **NO EXERCISE OF RIGHTS OR REMEDIES**

17. **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 the Applicants or the Monitor, or their respective employees, directors, advisors, officers, and representatives acting in such capacities, or affecting the Business or the Property, are hereby stayed and suspended except with the prior written consent of the Applicants and the Monitor, or

leave of this Court, provided that nothing in this Order shall (a) empower the Applicants to carry on any business which they are not lawfully entitled to carry on; (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (c) prevent the filing of any registration to preserve or perfect a security interest; or (d) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH RIGHTS**

18. **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, lease, sublease, licence or permit in favour of or held by the Applicants, except with the prior written consent of the Applicants and the Monitor, or leave of this Court.

#### **CONTINUATION OF SERVICES**

19. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements or arrangements with any of the Applicants or statutory or regulatory mandates for the supply or license of goods, intellectual property, and/or services, including without limitation all computer software, communication and other data services, centralized banking services, cash management services, payment processing services, payroll and benefit services, insurance, freight services, transportation services, importing services, customs clearing, warehouse and logistics services, security services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, suspending, interfering with or terminating the supply or license of such goods, intellectual property, or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case, that the normal prices or charges for all such goods or services received after the Filing Date are paid by the Applicants in accordance with normal payment practices of the applicable Applicant or such other practices as may be agreed upon by the supplier or service provider and the applicable Applicant and the Monitor, or as may be ordered by this Court.

#### **NO PRE-FILING VS POST-FILING SET-OFF**

20. **THIS COURT ORDERS** that, no Person shall be entitled to set off any amounts that: (a) are or may become due to any Applicant in respect of obligations arising prior to the Filing Date with any amounts that are or may become due from such Applicant in respect of obligations arising on or after the Filing Date; or (b) are or may become due from any Applicant in respect of obligations arising prior to the Filing Date with any amounts that are or may become due to such Applicant in respect of obligations arising on or after the Filing Date, in each case without the consent of the Applicants and the Monitor, or leave of this Court.

#### **NON-DEROGATION OF RIGHTS**

21. **THIS COURT ORDERS** that, notwithstanding anything else in this Order other than paragraph 10 of this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the Filing Date, nor shall any Person be under any obligation on or after the Filing Date to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

#### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

22. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the Filing Date and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a Plan in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

#### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

23. **THIS COURT ORDERS** that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any

officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

24. **THIS COURT ORDERS** that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$7,400,000, as security for the indemnity provided in paragraph 23 of this Order. The Directors' Charge shall have the priority set out in paragraphs 47 and 49 hereof.

#### **APPOINTMENT OF MONITOR**

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

26. **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 and review the Applicants' receipts and disbursements;
- (b) assist with the Restructuring and the operations of the Applicants;
- (c) assist the Applicants in their dissemination to the DIP Lender and its counsel and financial advisor of financial and other information as agreed to between the Applicants and the DIP Lender, which may be used in these proceedings, including reporting on a basis to be agreed with the DIP Lender;
- (d) liaise with Assistants, to the extent required, with respect to all matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

- (e) 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;
- (f) advise the Applicants in their preparation of the Applicants' cash flow statements and other required reporting, including under the DIP Term Sheet;
- (g) advise the Applicants in their development of any Plan and any amendments to any such Plan and, to the extent required by the Applicants, assist with the holding and administering of creditors' or shareholders' meetings for voting on any Plan;
- (h) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, wherever located and to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;
- (i) liaise and consult with any Assistants and any liquidator selected through the Realization Selection Process, to the extent required by the Applicants, with any matters relating to the Property, the Business and such other matters as may be relevant to the proceedings herein;
- (j) be at liberty to engage independent legal counsel or such other persons, or utilize the services of employees of its affiliates, as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (k) perform its obligations under any Merchandise Transfer Agreements; and
- (l) perform such other duties as are required by this Order or by this Court from time to time.

27. **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.

28. **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, 1999*, 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.

29. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicants with information provided by the Applicants 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 the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

30. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, neither the Monitor nor any of its employees or representatives shall incur any liability or obligation as a result of the Monitor’s appointment or the carrying out by it of the provisions of this Order (including in carrying out its duties under any Merchandise Transfer Agreement), 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.

31. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants, counsel to the Interim Lender and the DIP Lender and financial advisor thereto, shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to, on or subsequent to the Filing Date, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor and counsel to the Applicants, counsel to the Interim Lender and the DIP Lender and financial advisor thereto, in each case, on a weekly basis or on such terms as such parties may agree and, in addition, the Applicants are hereby authorized to pay to the Monitor, counsel to the Monitor and counsel to the Applicants, retainers, *nunc pro tunc*, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

32. **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.

#### **MERCHANDISE TRANSFER AGREEMENTS**

33. **THIS COURT ORDERS** that the form of Merchandise Transfer Agreement attached as Exhibit “E” to the Second Kassam Affidavit (the “**Template MTA**”) is approved, and the Applicants and Monitor are hereby authorized and empowered to execute Merchandise Transfer Agreements substantially in the form of the Template MTA with the Overseas Vendors and to perform their respective obligations thereunder, and any Merchandise Transfer Agreements executed by the Monitor and Applicants prior to the making of this Order are hereby authorized and approved *nunc pro tunc*.

#### **ADMINISTRATION CHARGE**

34. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants, shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount

of \$1,000,000 as security for their professional fees and disbursements incurred at their standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 47 and 49 hereof.

## **INTERIM FINANCING**

35. **THIS COURT ORDERS** that on or after the Filing Date and until January 17, 2025, Comark Holdings Inc. is hereby authorized and empowered to continue to borrow from the Canadian Imperial Bank of Commerce (in such capacity, the “**Interim Lender**”) under the existing credit facilities (the “**Existing Credit Facilities**”) pursuant to the Amended and Restated Credit Agreement dated as of September 9, 2024 (as amended, the “**Existing Credit Agreement**”) between, among others, Comark Holdings Inc. and the Interim Lender (in its capacity as lender and agent under the Existing Credit Agreement, the “**Senior Lender**”), in order to finance the Applicants’ working capital requirements and other general corporate purposes, capital expenditures, and costs of these proceedings during the Stay Period (each, an “**Interim Borrowing**” and collectively, the “**Interim Borrowings**”), provided that: (i) such Interim Borrowings are made in accordance with the Cash Flow Forecast or otherwise agreed by the Applicants and the Interim Lender, in each case subject to prior approval pursuant to a draw request in form and substance satisfactory to the Interim Lender, accompanied by such supporting documentation as the Interim Lender may request; (ii) such Interim Borrowings are secured by the Interim Lender’s Charge (as defined below) with the priority set out in paragraphs 47 and 49 hereof; (iii) such Interim Borrowings under the Existing Credit Facility shall accrue interest at the default rates set out in the Existing Credit Agreement; (iv) (a) Bootlegger Clothing Inc., cleo fashions Inc., and Ricki’s Fashions Inc. shall be deemed to guarantee and secure the Interim Borrowings, together with all interest accrued thereon and costs and expenses incurred in connection therewith (collectively, the “**Interim Borrowing Obligations**”), in the same manner as the other Obligations (as defined in the Existing Credit Agreement) that they have guaranteed and secured in connection with the Existing Credit Agreement and under the loan and security documents provided by them in connection therewith, (b) the Pledged Collateral (as defined in the Limited Recourse Guarantee by 9383921 Canada Inc. in favour of Senior Lender dated August 7, 2020) shall secure the Interim Borrowings, and (c) Bootlegger Clothing Inc., cleo fashions Inc., Ricki’s Fashions Inc. and 9383921 Canada Inc. shall be deemed to ratify and

acknowledge the guarantees and security they have provided in connection with the Existing Credit Agreement and the loan and security documents provided by them in connection therewith, in the case of each of the foregoing (a) to (c), without the need for any further guarantee, security or documentation from Bootlegger Clothing Inc., cleo fashions Inc., Ricki's Fashions Inc. or 9383921 Canada Inc.

36. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver such amendments to the Existing Credit Agreement or other documents, if any, as may be reasonably required by the Interim Lender to facilitate any Interim Borrowings, provided that failure to execute any such documentation does not invalidate any Interim Borrowings or the validity or priority of the Interim Lender's Charge.

37. **THIS COURT ORDERS** that the Interim Borrowings shall mature on January 17, 2025, and the Interim Borrowings shall be payable in full by the Applicants on such date.

38. **THIS COURT ORDERS** that (i) the Interim Lender shall be entitled to the benefit of and is hereby granted a charge (the "**Interim Lender's Charge**") on the Property of each of the Applicants as security for the Interim Borrowings, which Interim Lender's Charge shall, for greater certainty, not secure any obligation that exists before the Filing Date, (ii) the Interim Lender's Charge shall have the priority set out in paragraphs 47 and 49 hereof, (iii) the Interim Lender's Charge shall be terminated, released and discharged upon the Interim Borrowing Obligations being Repaid in Full from the proceeds of the First Advance (each as defined in the DIP Term Sheet), without any other act or formality; and (iv) until the Interim Borrowings Obligations are Repaid in Full, all consents required of the DIP Lender in this Order and all rights afforded to the DIP Lender under paragraph 26(c), 45, and 46 of this Order shall also apply to the Interim Lender *mutatis mutandis*.

39. **THIS COURT ORDERS** in the event the Applicants fail to make the payment to the Interim Lender required by paragraph 37 herein, then upon three (3) business days' notice to the Applicants and the Monitor, the Interim Lender may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the Existing Credit Agreement and the Interim Lender's Charge, including without limitation, to cease making advances to the Applicants and, subject to further Order of the Court, set off and/or consolidate any amounts owing by the Interim Lender to any of the Applicants against the obligations of the

Applicants to the Interim Lender under the Existing Credit Agreement, this Order or the Interim Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants or the Property and for the appointment of a trustee in bankruptcy of the Applicants.

40. **THIS COURT ORDERS** that the Interim Lender shall be treated as unaffected in any Plan filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") with respect to any Interim Borrowings.

#### **DIP FINANCING**

41. **THIS COURT ORDERS** that Comark Holdings Inc. is hereby authorized and empowered to obtain and borrow under a credit facility from the Canadian Imperial Bank of Commerce (in such capacity, the "**DIP Lender**") in order to finance the Applicants' working capital requirements and other general corporate purposes and costs of these proceedings (each, a "**DIP Borrowing**" and collectively, the "**DIP Borrowings**").

42. **THIS COURT ORDERS** that such credit facility shall be on the terms and subject to the conditions set forth in the term sheet between the Applicants and the DIP Lender dated as of January 15, 2025 (the "**DIP Term Sheet**"), filed.

43. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the DIP Term Sheet or as may be required by the DIP Lender, and the Applicants are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Term Sheet and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

44. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property of each of the Applicants as security for the DIP Borrowings, which DIP Lender's Charge shall not secure an obligation

that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs 47 and 49 hereof.

45. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge, the DIP Term Sheet or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the DIP Term Sheet or the Definitive Documents, the DIP Lender may cease making advances to Comark Holdings Inc. pursuant to the DIP Term Sheet and, upon approval of the Court, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the DIP Term Sheet, Definitive Documents and the DIP Lender's Charge, including without limitation, to set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of the Applicants to the DIP Lender under the DIP Term Sheet, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants or the Property and for the appointment of a trustee in bankruptcy of the Applicants; and
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

46. **THIS COURT ORDERS** that the DIP Lender shall be treated as unaffected in any Plan filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the BIA with respect to any advances made under the DIP Term Sheet or the Definitive Documents.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

47. **THIS COURT ORDERS** that the priorities of the security interests granted by the Administration Charge, Interim Lender's Charge, the DIP Lender's Charge, and the Directors'

Charge (collectively, the “**Charges**”), and the Applicants to Senior Lender, as among them, shall be as follows:

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

(b) Second – the DIP Lender’s Charge;

(c) Third – the Interim Lender’s Charge, until such Interim Lender’s Charge is terminated pursuant to paragraph 38, and the other security granted by the Applicants to the Senior Lender with respect to the Existing Credit Facilities (excluding the Interim Borrowings) in accordance with the Existing Credit Agreement, on a *pari passu* basis; and

(c) Fourth – Directors’ Charge (to the maximum amount of \$7,400,000).

48. **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.

49. **THIS COURT ORDERS** that each of the Charges 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.

50. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges unless the Applicants also obtain the prior written consent of the Monitor, the DIP Lender, and the other beneficiaries of the Charges (collectively, the “**Chargees**”), or further Order of this Court.

51. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of 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 or receivership order(s) issued pursuant to the BIA or otherwise, or any bankruptcy or receivership order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (i) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Interim Borrowings or any amendment or document pursuant to paragraph 36 hereof, the DIP Term Sheet, or the Definitive Documents shall create or be deemed to constitute a breach by the Applicants of any Agreement to which any of them is a party,
- (ii) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the execution of the DIP Term Sheet, the DIP Financing Obligations, the Interim Borrowings, creation of the Charges, the Interim Borrowings or the execution, delivery or performance of any amendment or document pursuant to paragraph 36 hereof, the DIP Term Sheet, or the Definitive Documents; and
- (iii) the payments made by the Applicants pursuant to this Order, including with respect to the Interim Borrowings, the DIP Term Sheet, or the Definitive Documents, and the granting of the Charges do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

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

## **SERVICE AND NOTICE**

53. **THIS COURT ORDERS** that the Monitor shall (a) without delay, publish in the Globe & Mail a notice containing the information prescribed under the CCAA; and (b) within five days after the Filing Date, (i) make this Order publicly available in the manner prescribed under the CCAA, (ii) send, or cause to be sent, in the prescribed manner (including by electronic message

to the e-mail addresses as last shown in the Applicants' books and records), a notice to all known creditors having a claim against the Applicants of more than \$1,000, and (iii) prepare a list showing the names and addresses of such 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, provided that the Monitor shall not make the claims, names and addresses of individuals who are creditors publicly available, unless otherwise ordered by the Court.

54. **THIS COURT ORDERS** that any employee of any of the Applicants who is sent a notice of termination of employment or any other communication by the Applicants on or after the Filing Date shall be deemed to have received such communication by no later than 8:00 a.m. prevailing Eastern Time on the fourth day following the date any such communication is sent, if such communication is sent by ordinary mail, expedited parcel or registered mail to the individual's address as reflected in the Applicants' books and records; provided, however, that any communication that is sent to an employee of the Applicants by electronic message to the individual's corporate email address and/or the individual's personal address as last shown in the Applicants' books and records shall, (a) if sent by electronic message at or prior to 5:00 p.m. prevailing Eastern Time on a business day, be deemed to have been received by such employee on the date on which such electronic message was sent, or (b) if sent by electronic message after 5:00 p.m. prevailing Eastern Time on a business day or on a day that is not a business day, be deemed to have been received by such employee on the next business day following the date on which such electronic message was sent, notwithstanding that the mailing of any notices of termination of employment or other employee communication was sent pursuant to any other means.

55. **THIS COURT ORDERS** that the E-Service Guide of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court

further orders that a Case Website shall be established in accordance with the Protocol with the following URL: '[www.alvarezandmarsal.com/ComarkRetail](http://www.alvarezandmarsal.com/ComarkRetail)'.

56. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol or the CCAA and the regulations thereunder is not practicable, the Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile transmission or electronic message to the Applicants' creditors or other interested parties at their respective addresses (including e-mail addresses) as last shown in the books and records of the Applicants and that any such service or distribution shall be deemed to be received on the earlier of (a) the date of forwarding thereof, if sent by electronic message at or prior to 5:00 p.m. prevailing Eastern Time (or on the next business day following the date of forwarding thereof if sent on a non-business day); (b) the next business day following the date of forwarding thereof, if sent by courier, personal delivery, facsimile transmission or electronic message sent after 5:00 p.m. prevailing Eastern Time; or (c) on the third business day following the date of forwarding thereof, if sent by ordinary mail.

57. **THIS COURT ORDERS** that the Applicants and the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding copies thereof by electronic message to the Applicants' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations* (SOR/2013-221).

## **GENERAL**

58. **THIS COURT ORDERS** that any interested party that wishes to amend or vary this Order shall be entitled to appear or bring a motion before this Court, and any such interested party shall give not less than five business days' notice to the Service List and any other party or parties likely to be affected by the Order sought; provided, however, that the Chargees shall be entitled to rely on this Order as granted and on the Charges and priorities set forth in paragraphs 47 and 49 hereof with respect to any fees, expenses and disbursements incurred, as applicable, until the date this Order may be amended, varied or stayed.

59. **THIS COURT ORDERS** that, notwithstanding paragraph 58 of this Order, the Applicants or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their respective powers and duties hereunder.

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

61. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

62. **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, 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.

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



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AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF COMARK HOLDINGS INC., BOOTLEGGERS CLOTHING INC., CLEO FASHIONS INC. AND RICKI'S FASHIONS INC.

Applicants

*Ontario*  
**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**AMENDED AND RESTATED INITIAL ORDER**

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