

**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 **NORDSTROM CANADA RETAIL,
INC., NORDSTROM CANADA HOLDINGS, LLC and
NORDSTROM CANADA HOLDINGS II, LLC**

APPLICANTS

**FACTUM OF THE APPLICANTS
(CLAIMS PROCEDURE ORDER)**

May 25, 2023

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PART I - NATURE OF THE MOTION

1. On March 2, 2023, Nordstrom Canada Retail, Inc., Nordstrom Canada Holdings, LLC, and Nordstrom Canada Holdings II, LLC (the “**Applicants**”) obtained relief under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985 c. C-36 (the “**CCAA**”) pursuant to an Initial Order (the “**Initial Order**”). The stay of proceedings in the Initial Order was extended to Nordstrom Canada Leasing LP (together with the Applicants, the “**Nordstrom Canada Entities**”). Alvarez & Marsal Canada Inc. was appointed as monitor (the “**Monitor**”). On March 10, 2023, the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted an Amended and Restated Initial Order.
2. On March 20, 2023, the Court granted the Sale Approval Order approving the implementation of Sale Guidelines for the orderly liquidation of certain Merchandise and FF&E at each of the Nordstrom full-line and Nordstrom Rack stores. The Sale Approval Order also authorized the engagement of the Consultant to assist with the conduct of the Liquidation Sale. The Sale Approval Order extended the Stay Period (including the Parent Stay) to June 30, 2023.
3. The Applicants now seek an order (the “**Claims Procedure Order**”) which provides for the following relief (among other things): (i) approving a claims process (the “**Claims Process**”); (ii) establishing the Claims Bar Date and the Restructuring Period Claims Bar Date; and (iii) extending the Stay Period and Parent Stay to September 29, 2023. The Claims Process was developed in consultation with the Monitor and Employee Representative Counsel and represents a fair, efficient, and reasonable process for calling for the filing and determination of Claims.
4. This relief is within the Court’s jurisdiction and discretion to grant under the CCAA and is consistent with the objectives of the CCAA. The Nordstrom Canada Entities have been proceeding in good faith and with due diligence in pursuit of the efficient wind-down of their operations for

the benefit of all stakeholders. The Nordstrom Canada Entities have consulted with the Monitor and with stakeholders, including Landlords, Concession Vendors, and Employee Representative Counsel, in furtherance of a fair and orderly liquidation process. The Claims Process will provide the Nordstrom Canada Entities with important information necessary to pursue an orderly wind-down and allow the resolution of Claims in a timely fashion with the ultimate goal of proposing a plan of arrangement to creditors of the Nordstrom Canada Entities. The Applicants submit that the Claims Procedure Order and related relief, including the extension of the Stay Period and Parent Stay, should be granted.

PART II - SUMMARY OF FACTS

5. The facts underlying this motion are more fully set out in the Affidavit of Misti Heckel.¹ Facts relevant to the requested relief are highlighted in the relevant sections below.

A. Steps Taken in Advance of Claims Process

6. The Nordstrom Canada Entities, with the assistance of the Monitor, have engaged in significant preparation for the launch of the Claims Process.² The Nordstrom Canada Entities are seeking approval of the Claims Process at this time, even though the current Stay Period does not end until June 30, 2023, in order to move forward as quickly and efficiently as possible with the ultimate goal of developing a plan of arrangement for the benefit of all their stakeholders.³

¹ Affidavit of Misti Heckel, sworn May 19, 2023 [Claims Process Affidavit]. Unless otherwise specified, capitalized terms in this factum have the same meaning as in the Claims Process Affidavit.

² Claims Process Affidavit at para. 61.

³ Claims Process Affidavit at para. 61.

(a) Known Creditors

7. On March 7, 2023, the Monitor sent a notice to all of the Nordstrom Canada Entities' known creditors who had claims over \$1,000. The Monitor also posted on the Monitor's Website a list of those creditors and the estimated amount owing to each listed creditor.⁴

8. In advance of the Claims Process, the Nordstrom Canada Entities, in consultation with the Monitor, have requested that vendors provide updated statements of account including all outstanding amounts, which will allow the Nordstrom Canada Entities to address vendor Claims more efficiently.⁵ The Nordstrom Canada Entities have responded to inquiries from vendors who were either omitted from the list of creditors on the Monitor's website or referred to therein by a different corporate name, and listed vendors who dispute the listed amount owing.⁶ The Nordstrom Canada Entities, in consultation with the Monitor, continue to engage with vendors to reconcile amounts owed to them for the Pre-Filing Period.⁷

(b) Landlords

9. Promptly after obtaining the Initial Order, counsel for the Nordstrom Canada Entities sent a letter to each Landlord setting out, among other things, a summary of rent obligations remaining under their respective Lease or Leases to assist the Landlords in determining the potential amounts owing as rent with respect to each Nordstrom Canada store.⁸ The Nordstrom Canada Entities continue to engage in discussions with the Landlords regarding a reconciliation of those amounts.

⁴ Claims Process Affidavit at para. 54.

⁵ Claims Process Affidavit at para. 56.

⁶ Claims Process Affidavit at para. 56.

⁷ Claims Process Affidavit at para. 56.

⁸ Claims Process Affidavit at para. 22.

(c) **Concession Vendors**

10. Counsel to the Nordstrom Canada Entities sent letters to the Concession Vendors stating that the Nordstrom Canada Entities, in consultation with the Monitor, had reconciled the amounts owed to Concession Vendors for the sale of Concession Vendor-owned merchandise in the post-filing period, net of fees owing to Nordstrom Canada in respect of such sales, including amounts collected in respect of sales taxes (the “**Post-Filing Amounts**”).⁹ The Nordstrom Canada Entities, with the approval of the Monitor, provided for payment of the Post-Filing Amounts to Concession Vendors. The Nordstrom Canada Entities also determined the amounts owed to the Concession Vendors in respect of sales taxes collected during the pre-filing period (the “**Pre-Filing Sales Tax Amounts**”).¹⁰ The Pre-Filing Sales Tax Amounts were either paid to the Concession Vendors directly or had been remitted by the Nordstrom Canada Entities to the taxing authority on their behalf in the ordinary course, based on the applicable contracts.¹¹

11. Thereafter, counsel to the Nordstrom Canada Entities advised the Concession Vendors by letter that the Nordstrom Canada Entities, in consultation with the Monitor, had determined the net amount owing to each Concession Vendor with respect to sales of Concession Vendor-owned merchandise during the Pre-Filing Period (the “**Pre-Filing Amounts**”). The Concession Vendors will be permitted to file a Claim with respect to the Pre-Filing Amounts in accordance with the Claims Process.¹²

⁹ Claims Process Affidavit at para. 34.

¹⁰ Claims Process Affidavit at para. 34.

¹¹ Claims Process Affidavit at para. 34.

¹² Claims Process Affidavit at para. 35.

12. Certain Concession Vendors take the position that they should be paid the Pre-Filing Amounts in priority to general unsecured creditors. Any such claims will be addressed in the proposed Claims Process, described below.¹³

(d) Contract Terminations and Disclaimers

13. To reduce costs to the estate as much as possible, the Nordstrom Canada Entities, in consultation with the Monitor, embarked on a process of terminating contracts that were no longer necessary for the orderly wind-down of the Nordstrom Canada Entities' business.¹⁴ With the approval of the Monitor, the Nordstrom Canada Entities also sent notices of their intent to disclaim certain contractual and other arrangements that the Nordstrom Canada Entities had with third parties at the Filing Date.¹⁵

14. The Nordstrom Canada Entities have not terminated agreements or provided notice of the intention to disclaim agreements that will still be required for the responsible and orderly wind-down after the completion of the Liquidation Sale.¹⁶ The Nordstrom Canada Entities intend to disclaim or terminate, in accordance with their terms, the remaining agreements at an appropriate time, to be determined in consultation with the Monitor.¹⁷

B. Terms of the Claims Process

15. The Nordstrom Canada Entities have developed, in consultation with the Monitor and Employee Representative Counsel, a proposed Claims Process for filing and determining Claims against the Nordstrom Canada Entities and Claims against the current and former Directors and

¹³ Claims Process Affidavit at para. 36.

¹⁴ Claims Process Affidavit at para. 57.

¹⁵ Claims Process Affidavit at para. 58.

¹⁶ Claims Process Affidavit at para. 59.

¹⁷ Claims Process Affidavit at para. 59.

Officers of the Nordstrom Canada Entities (“**D&O Claims**”).¹⁸ Details of the Claims Process are set out in the Claims Procedure Order and in the Claims Process Affidavit.

16. Certain aspects of the Claims Process are summarized below:

- (a) The Nordstrom Canada Entities are soliciting four categories of Claims: (i) Pre-Filing Claims related to any indebtedness, liability or obligation that existed on the Filing Date; (ii) Restructuring Period Claims arising after the Filing Date out of the restructuring, disclaimer, termination or breach by a Nordstrom Canada Entity of a contract, lease or other agreement; (iii) Pre-Filing D&O Claims against Directors and Officers of the Nordstrom Canada Entities (the “**D&Os**”) based on facts that existed before the Filing Date; and (iv) Restructuring Period D&O Claims against any of the D&Os arising after the Filing Date.¹⁹
- (b) The Claims Process does not apply to Excluded Claims – *i.e.*, Claims that may be asserted by (i) a beneficiary of a Court-ordered Charge in these proceedings; (ii) the Consultant; and (iii) any of the Nordstrom Canada Entities against any of the D&Os. If any Claim within the aforementioned categories arises through subrogation, it is similarly excluded.²⁰
- (c) The proposed Claims Process has two streams: the general Claims Process which involves filing a Proof of Claim or D&O Proof of Claim by the applicable Bar Date; and the Negative Notice Claims Process, which includes a streamlined process to

¹⁸ Claims Process Affidavit at para. 60.

¹⁹ Claims Process Affidavit at para. 63.

²⁰ Claims Process Affidavit at para. 64.

deal with Claims of Employees. These processes are described in greater detail below.

- (d) The Claims Bar Date for any Person asserting a Pre-Filing Claim, a Pre-Filing D&O Claim, or disputing a Negative Notice Claim (including Known Employee Claimants or Employee Letter Recipients) is on or before 5:00PM on August 4, 2023.²¹
- (e) The Restructuring Period Claims Bar Date for any Person asserting a Restructuring Period Claim or a Restructuring Period D&O Claim is the later of: (i) 30 days after the date on which the Monitor sends a Negative Notice Claims Package or General Claims Package, as appropriate, with respect to a Restructuring Period Claim or Restructuring Period D&O Claim; and (ii) the Claims Bar Date.²²
- (f) In respect of any Proof of Claim or D&O Proof of Claim submitted by a Claimant, the proposed Claims Procedure Order provides that the Nordstrom Canada Entities, in consultation with the Monitor, the applicable D&Os named in respect of such D&O Claim and/or their counsel, will either accept, revise, or reject each Claim set out in each Proof of Claim or D&O Proof of Claim for voting and/or distribution purposes.²³
- (g) The proposed Claims Procedure Order contemplates the appointment of two Claims Officers – the Honourable Mr. Dennis O'Connor and Mr. Kevin McElcheran – to adjudicate any unresolved claims.²⁴ The Nordstrom Canada Entities, in

²¹ Claims Process Affidavit at para. 79.

²² Claims Process Affidavit at para. 80.

²³ Claims Process Affidavit at para. 84.

²⁴ Claims Process Affidavit at para. 88.

consultation with the Monitor, retain the discretion to determine whether a disputed Claim should be adjudicated by the Court or by a Claims Officer.²⁵

- (h) If referred to a Claims Officer, the proposed Claims Procedure Order provides that the Claims Officer shall: (i) determine the amount (if any) and Characterization of the disputed Claim in accordance with the Claims Procedure Order; (ii) determine whether any Claim or part thereof constitutes an Excluded Claim; (iii) provide written reasons for its determination; and (iv) determine all procedural matters which may arise in respect of the Claims Officer's determination of the disputed Claim, including any participation rights for any stakeholder and the manner in which any evidence may be adduced.²⁶ The applicable Nordstrom Canada Entity, the Monitor, the Claimant, and the relevant D&Os (in respect of any D&O Claim) may appeal any determination by the Claims Officer to the Court within 10 days of such party receiving notice of the Claims Officer's determination.

C. Treatment of Intercompany Claims

17. Pursuant to the proposed Claims Procedure Order, the Monitor is required to review all Claims that may be asserted against any Nordstrom Canada Entity by or on behalf of any other Nordstrom Canada Entity or other members of the Nordstrom Group (collectively, the “**Intercompany Claims**”).²⁷ The Monitor shall prepare a report detailing its review of the Intercompany Claims identified by the Monitor and assessing the amount and Characterization of such Claims (the “**Monitor's Intercompany Claims Report**”).²⁸

²⁵ Claims Process Affidavit at para. 89.

²⁶ Claims Process Affidavit at para. 89.

²⁷ Claims Process Affidavit at para. 90.

²⁸ Claims Process Affidavit at para. 90.

18. The Monitor's Intercompany Claims Report shall be served and filed on or before the Claims Bar Date and contain a recommendation on next steps, if any, to be taken with respect to the Intercompany Claims.²⁹ Each Intercompany Claim identified by the Monitor in the Monitor's Intercompany Claims Report shall be deemed to have been properly submitted through a Proof of Claim by the relevant Nordstrom Group entity as if such Claim was a Pre-Filing Claim or Restructuring Period Claim, as applicable.³⁰

PART III - ISSUES AND THE LAW

19. The principal issues on this motion are whether:

- (a) this Court should approve the proposed Claims Procedure; and
- (b) this Court should approve the requested Stay Extension, including the Parent Stay.

A. The Claims Process Should Be Approved

(a) Authority to Approve a Claims Process

20. Section 11 of the CCAA gives the Court the power to make any order it considers appropriate in the circumstances, which includes the ability to approve a process for filing and determining claims against a debtor company. Furthermore, the Court's power under section 12 of the CCAA to "fix deadlines for the purposes of voting and for the purposes of distributions under a compromise or arrangement" has been held to be sufficient authority for a CCAA Court to grant claims process orders and claims bar orders.³¹

²⁹ Claims Process Affidavit at para. 91.

³⁰ Claims Process Affidavit at para. 90.

³¹ *Re Toys "R" Us (Canada) Ltd.*, [2018 ONSC 609](#) [Commercial List] at para. 8 [*"Toys "R" Us"*]; *Re Timminco Ltd.*, [2014 ONSC 3393](#) at para. 40 [*"Timminco"*].

21. The general practice in CCAA proceedings is for debtors to apply to the Court for approval of a process to solicit claims against the debtor company and to establish a deadline for filing claims. This Court routinely approves claims processes in CCAA restructurings.³²

22. A claims process is “an essential component of any plan”.³³ A claims process order, and, in particular, a claims bar date, assists the debtor in determining the universe of claims against it and provides greater certainty for the debtor and its stakeholders in making informed choices about restructuring options.³⁴

23. Claims procedure orders should be both flexible and expeditious, in order to achieve the broad remedial objectives of the CCAA and ensure that stakeholders are treated as advantageously and fairly as the circumstances permit in a restructuring process.³⁵ The order should be drafted carefully to ensure that it is fair and reasonable to all stakeholders, including those who will be directly affected by the acceptance of other claims.³⁶ This Court has the authority to approve a bespoke claims process where “the situation calls for it”.³⁷

24. The proposed Claims Process satisfies all of these requirements and should be approved. The Claims Process was developed following extensive consultation with the Monitor and Employee Representative Counsel and is supported by both.

25. The bespoke nature of the proposed Claims Process responds to the nature of certain of the Claimants and stakeholder groups in the Nordstrom Canada Entities’ business, in particular the Employees. At the same time, it satisfies the purpose of claims processes, which is “to streamline

³² *Toys “R” Us* at para. 8; see also *Re U.S. Steel Canada Inc.*, [2017 ONSC 1967](#) [*U.S. Steel*] at paras. 5-6.

³³ *Re Laurentian University of Sudbury*, [2021 ONSC 3885](#) at para. 31 [*“Laurentian”*].

³⁴ *Timminco* at para. 43.

³⁵ *Re ScoZinc Ltd.*, [2009 NSSC 136](#) at para. 23; *Laurentian* at para. 30.

³⁶ *Laurentian* at para. 32.

³⁷ *Laurentian* at para. 41.

the resolution of claims against an insolvent debtor in the most time sensitive and cost efficient manner.”³⁸

26. The Claims Process has been designed to make the process as easy as possible for potential Claimants, including Employees, to have their Claims recognized and resolved. The combination of the Negative Notice Claims Process and the general Claims Process, described further below, along with flexible adjudication mechanisms, ensures that the universe of Claims is comprehensively solicited and that the nature, quantum, and validity of Claims are determined as fairly and expeditiously as possible.

27. The Claims Bar Date and the Restructuring Period Claims Bar Date were selected by the Nordstrom Canada Entities in consultation with the Monitor. The Nordstrom Canada Entities believe that the Claims Bar Date and the Restructuring Period Claims Bar Date are reasonable and provide sufficient time for potential Claimants to evaluate and submit applicable Proofs of Claim or Notices of Dispute of Negative Notice Claim. The Monitor concurs and Employee Representative Counsel supports the Bar Dates with respect to Claims of Employees.³⁹

28. The Claims Procedure Order appoints two Claims Officers and provides that the Nordstrom Canada Entities, a Claimant and the Monitor may agree to any other person acceptable to all such parties acting as a Claims Officer.⁴⁰ The appointment of the Claims Officers will further efficiency and certainty within these CCAA proceedings, in line with the objectives of the CCAA.

³⁸ *Re Canwest Global Communications Corp.*, [2011 ONSC 2215](#) [Commercial List] at para. 40.

³⁹ Claims Process Affidavit at para. 81.

⁴⁰ Claims Process Affidavit at paras. 88-89; Claims Procedure Order, clauses 44-49.

(b) Negative Notice Claims Process

(i) How the Process Works

29. A significant feature of the Applicants' proposed Claims Procedure Order is the incorporation of a negative notice claims process and the ability of the Nordstrom Canada Entities, in consultation with the Monitor, to send a Statement of Negative Notice Claim to a Claimant instead of requiring them to file a Proof of Claim.

30. The "negative notice" procedure involves the Nordstrom Canada Entities providing a Statement of Negative Notice Claim to each Negative Notice Claimant that is shown on the Nordstrom Canada Entities' records as having a Claim against one or more of the Nordstrom Canada Entities. The Statement of Negative Notice Claim will identify the amount of the Claim as shown on the particular debtor's books, and will deem that amount to be the Claim of the creditor, unless the creditor formally disputes it in accordance with the prescribed process and timeline.

31. Negative Notice Claimants are provided ample opportunity to dispute their Negative Notice Claims, should they wish to do so. If a Negative Notice Claimant wishes to dispute the amount or Characterization of its Negative Notice Claim, it may file a Notice of Dispute of Negative Notice Claim to the Monitor no later than the applicable Bar Date.⁴¹ If the Nordstrom Canada Entities, in consultation with the Monitor, disagree with a Notice of Dispute of Negative Notice Claim, they may refer the dispute to a Claims Officer or the Court for adjudication.⁴²

⁴¹ Claims Process Affidavit at para. 78.

⁴² Claims Process Affidavit at para. 86; Claims Procedure Order, clauses 47-48.

32. Negative Notice Claims include: the Claims of Employees (including Known Employee Claimants and Employee Letter Recipients, each described more fully below); Pre-Filing Claims and/or Restructuring Period Claims, as applicable, that are set out in a Statement of Negative Notice Claim; and Claims of any other Person to whom the Nordstrom Canada Entities, in consultation with the Monitor, determine to send a Negative Notice Claims Package based on the books and records of the Nordstrom Canada Entities.⁴³

(ii) Employee Claims

33. With respect to Claims of Employees, the Nordstrom Canada Entities, in consultation with Employee Representative Counsel, have developed a streamlined and simplified process to assist Employees in resolving their Claims.⁴⁴ The vast majority of Employees are projected to have no Claim in the Claims Process as their severance and termination entitlements are being topped up through the Employee Trust.⁴⁵ Employees who do not have a Known Employee Claim and who are not otherwise sent a Statement of Negative Notice Claim will receive the Employee Letter. The Employee Letter will inform Employee Letter Recipients that the Nordstrom Canada Entities have determined that no further payments are or will be owing to the Employee Letter Recipient by any of the Nordstrom Canada Entities.⁴⁶

34. If the Employee Letter Recipient disagrees with the Nordstrom Canada Entities' assessment, a dispute notice must be filed in accordance with the Claims Process. The Employee

⁴³ Claims Process Affidavit at para. 77.

⁴⁴ Claims Process Affidavit at para. 70.

⁴⁵ Claims Process Affidavit at para. 72.

⁴⁶ Claims Process Affidavit at para. 72.

Letter will include a link to the Monitor's Website (which will include a link to the Notice of Dispute of Negative Notice Claim form and the General Claims Package).⁴⁷

35. A small percentage of Employees have Claims that are known to the Nordstrom Canada Entities and the Monitor. These include (a) Claims by Employees in Ontario who have resigned or who may resign during their statutory notice period and whose severance pay under the *Employment Standards Act, 2000* (Ontario) is therefore not payable by the Employee Trust, and (b) Claims by certain Employees in Ontario to common law reasonable notice of termination or payment in lieu thereof given the specific terms of their contracts of employment.⁴⁸

36. Claims by Employees for severance pay under the *Employment Standards Act, 2000* (Ontario) will be calculated in accordance with the statutory formula. To determine the Claims for Employees with known common law "reasonable" notice claims (such Claims, the "**Known Employee Claims**"), the proposed Claims Procedure Order contemplates the usage of a methodology (the "**Known Employee Claims Methodology**"). The Known Employee Claims Methodology is based on the well-established "Bardal factors" used by the courts for determining common law reasonable notice periods.⁴⁹ The Known Employee Claims Methodology provides a reasonable and consistent method for evaluating Known Employee Claims in a manner that is fair and efficient and in accordance with legal principles. The Known Employee Claims Methodology was jointly developed by Employee Representative Counsel and the Nordstrom Canada Entities in consultation with the Monitor.⁵⁰

⁴⁷ Claims Process Affidavit at para. 73.

⁴⁸ Claims Process Affidavit at para. 74.

⁴⁹ Claims Process Affidavit at para. 75.

⁵⁰ Claims Process Affidavit at para. 75.

37. With respect to Known Employee Claims, the proposed Claims Procedure Order provides that, among other things, the Known Employee Claims Methodology shall be final and binding on all Employees represented by Employee Representative Counsel and Employees not represented by Employee Representative Counsel who do not submit a Notice of Dispute of Negative Notice Claim by the applicable Bar Date.⁵¹

(c) Jurisdiction to Approve Negative Notice Process

38. This Court has recognized that negative notice claims processes are particularly appropriate where, as here, a large insolvent company has full knowledge and details of amounts owing to certain creditors.

39. A negative notice claims process can eliminate the need for filing proofs of claim and ensure that known claims do not slip through the cracks because particular claimants failed to file claims on a timely basis. Similar negative notice claims processes have been approved, most recently in the CCAA proceedings of Just Energy Group.⁵²

40. Negative notice claims processes are particularly useful for addressing the claims of employees.⁵³ For instance, in *MEC*, the court observed that the choice of a negative notice claims process was “as streamlined a process as possible for the former employees” and “designed to specifically address their unique interests.”⁵⁴

⁵¹ Claims Process Affidavit at para. 76.

⁵² *Just Energy Group Inc.*, (September 15, 2021), Ont. S.C.J. [Commercial List], Court File No. CV-21-00658423-00CL ([Claims Procedure Order](#)).

⁵³ *Re Mountain Equipment Co-Operative*, [2020 BCSC 2037](#) [*MEC*]. See also *U.S. Steel* at para. 6.

⁵⁴ *MEC* at paras. 12, 38, and 60.

(d) General Claims Process

41. The proposed Claims Process also incorporates steps to ensure any Persons holding Claims that are not captured by the Negative Notice Claims Process receive timely notification and opportunity to file Proofs of Claim.

42. Thus, the proposed Claims Process requires the Monitor to send a General Claims Package to: Persons not captured by the Negative Notice Claims Process but who are known to have a potential Claim; Persons who are on the Service List (except Persons that are likely to assert only Excluded Claims, in the reasonable opinion of the Nordstrom Canada Entities and the Monitor); Persons who have requested a Proof of Claim in respect of any potential Claim that is not captured in a Statement of Negative Notice Claim or Employee Letter; and any Person known to the Nordstrom Canada Entities or the Monitor as having a potential Claim based on the books and records of the Nordstrom Canada Entities that is not captured in any Statement of Negative Notice Claim or Employee Letter.⁵⁵ The proposed Claims Procedure Order also requires the Monitor to advertise the Notice to Claimants in a national newspaper and make resources available on the Monitor's Website for Persons to file Claims.⁵⁶

43. The proposed Claims Process is intended to determine the nature, quantum, and validity of Claims against the Nordstrom Canada Entities and their D&Os in order to facilitate an orderly and efficient wind-down.⁵⁷ The Claims Procedure Order is fair, reasonable and within this Court's jurisdiction to grant. The Applicants submit that the Claims Process should therefore be approved and the Claims Procedure Order granted.

⁵⁵ Claims Process Affidavit at para. 66.

⁵⁶ Claims Process Affidavit at para. 67; Claims Procedure Order, clauses 17-18.

⁵⁷ Claims Process Affidavit at para. 65.

B. The Stay Extension should be Granted

44. The Stay Period expires on June 30, 2023. The Applicants are seeking to extend the Stay Period, including the Parent Stay, up to and including September 29, 2023.⁵⁸

45. Pursuant to section 11.02 of the CCAA, the Court may grant an extension of a stay of proceedings where: (a) circumstances exist that make the order appropriate; and (b) the debtor company satisfies the Court that it has acted, and is acting, in good faith and with due diligence. There is no statutory time limit on how long a stay of proceedings can be extended.

46. Since the granting of the Initial Order, the Nordstrom Canada Entities, in close consultation and with the assistance of the Monitor, have worked in good faith and with due diligence to stabilize and wind down their business and operations as part of these CCAA proceedings in a responsible and orderly manner.⁵⁹ Details regarding the steps that have been taken by the Nordstrom Canada Entities in furtherance of the orderly wind-down of their affairs are set out in the Claims Process Affidavit. These include the following:

- (a) The Nordstrom Canada Entities have worked closely with the Monitor to develop and implement an extensive proactive communication and consultation plan with stakeholders, including employees, Landlords, suppliers, and vendors.⁶⁰
- (b) The Nordstrom Canada Entities have been engaged in completing the Liquidation Sale in as efficient and responsible a manner as possible.⁶¹ All six Nordstrom full-line stores have remained operational since the granting of the Initial Order as part

⁵⁸ Claims Process Affidavit at paras. 94-95.

⁵⁹ Claims Process Affidavit at para. 14.

⁶⁰ Claims Process Affidavit at para. 14.

⁶¹ Claims Process Affidavit at para. 31.

of the Liquidation Sale, which is projected to continue until mid-June.⁶² The seven Nordstrom Rack stores remained operational until the cessation of the Liquidation Sale at those stores on or about May 14, 2023.⁶³ The FF&E removal period for the Nordstrom Rack stores will likely continue until May 28, 2023.⁶⁴

- (c) The Nordstrom Canada Entities and the Monitor have been in frequent contact with the Consultant to discuss the conduct of the Liquidation Sale, including: the cadence of discounting, the length of the Liquidation Sale, advertising spend, the sale of FF&E, and staffing issues. Issues raised by Landlords, vendors and other stakeholders have been brought to the attention of the Consultant and resolved as soon as possible.⁶⁵
- (d) Discussions between the Nordstrom Canada Entities, the Monitor, and the Landlords regarding the operations of the Liquidation Sale have remained ongoing as the Liquidation Sale has progressed.⁶⁶ Prior to the granting of the Sale Approval Order, Landlord walk-throughs were conducted at Nordstrom full-line stores. Several of the Nordstrom Rack Landlords also requested walk-throughs and attended their respective stores, accompanied by the Monitor.⁶⁷ The Nordstrom Canada Entities will arrange walk-throughs with the Landlords of the Nordstrom full-line stores to address remaining FF&E after the completion of the Liquidation

⁶² Claims Process Affidavit at para. 14.

⁶³ Claims Process Affidavit at para. 14.

⁶⁴ Claims Process Affidavit at para. 27.

⁶⁵ Claims Process Affidavit at para. 28.

⁶⁶ Claims Process Affidavit at para. 24.

⁶⁷ Claims Process Affidavit at para. 24.

Sale, and arrange additional walk-throughs with each Landlord for all Nordstrom Canada stores prior to vacating the premises.⁶⁸

- (e) The Nordstrom Canada Entities, with the assistance of the Monitor, intend to continue to engage and consult with the Landlords throughout these CCAA proceedings with a view to reaching a consensual resolution of Landlord claims.⁶⁹
- (f) As authorized under the Initial Order, the Nordstrom Canada Entities have engaged a real estate advisor, Jones Lang LaSalle Real Estate Services, Inc. (“JLL”), to pursue all avenues for the sale, transfer, or assignment of the Leases to third parties.⁷⁰ Details regarding the progress in relation to this process are set out in the Claims Process Affidavit. It is anticipated that the Applicants will return to this Court for approval of any lease transactions that are achieved through this process. In relation to certain Nordstrom Rack store locations for which no expressions of interest have been obtained, the Nordstrom Canada Entities disclaimed those Leases with the approval of the Monitor.⁷¹
- (g) The Nordstrom Canada Entities, directly and through their counsel, together with the Monitor, have engaged in regular communication with Employee Representative Counsel regarding employee matters, including to provide regular updates and to ensure that employee questions and concerns are being considered and addressed.⁷²

⁶⁸ Claims Process Affidavit at para. 25.

⁶⁹ Claims Process Affidavit at para. 25.

⁷⁰ Claims Process Affidavit at paras. 38-39.

⁷¹ Claims Process Affidavit at paras. 52-53.

⁷² Claims Process Affidavit at para. 15.

- (h) On March 21, 2023, all employees of Nordstrom Canada, with the exception of two senior managerial employees, were provided notice of termination.⁷³ A certain number of employees from each Nordstrom Rack and Nordstrom full-line store may choose to stay on following their effective date of termination and assist during the decommissioning of stores following the Liquidation Sale.⁷⁴
- (i) Nordstrom Canada has worked closely with the Monitor, as the Administrator of the Employee Trust, to calculate and process top-up payments funded by the Employee Trust. As of May 18, 2023, Nordstrom Canada has been reimbursed \$2.7 million from the Employee Trust for top-up payments made to Nordstrom Canada employees.⁷⁵

47. Extending the Stay Period will allow these processes to unfold so the Nordstrom Canada Entities, with the assistance of the Monitor, can focus on an orderly wind-down of their operations and implement the Claims Process as the next step towards the development of a plan of arrangement.⁷⁶ An extension of the Stay, including the Parent Stay, is also necessary to allow the Nordstrom Canada Entities the breathing space to complete the Claims Process while continuing to engage with vendors and Landlords who may be affected by the Parent Stay.⁷⁷

48. It is currently anticipated that the Liquidation Sale will be completed in mid-June. The Nordstrom Canada Entities have confirmed, in consultation with the Monitor, that they have sufficient cash resources to continue their wind-down through to September 29, 2023.⁷⁸

⁷³ Claims Process Affidavit at para. 17.

⁷⁴ Claims Process Affidavit at para. 17.

⁷⁵ Claims Process Affidavit at para. 21.

⁷⁶ Claims Process Affidavit at para. 94.

⁷⁷ Claims Process Affidavit at para. 94.

⁷⁸ Claims Process Affidavit at paras. 94-95.

49. The Nordstrom Canada Entities have acted, and continue to act, in good faith and with due diligence in pursuing a controlled and orderly wind-down.⁷⁹ The proposed extension of the Stay Period is supported by the Monitor and is in the best interests of the Nordstrom Canada Entities and their stakeholders.⁸⁰

PART IV - NATURE OF THE ORDER SOUGHT

50. For the foregoing reasons, the Applicants submit that this Court should grant the Claims Procedure Order and related relief.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 25th day of May, 2023:



OSLER, HOSKIN & HARCOURT, LLP
per Marleigh Dick
P.O. Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8
Lawyers for the Applicants

TO: THE ATTACHED SERVICE LIST

⁷⁹ Claims Process Affidavit at para. 96.

⁸⁰ Claims Process Affidavit at para. 96.

SCHEDULE “A”: LIST OF AUTHORITIES

Cases

1. *Just Energy Group Inc.*, (September 15, 2021), Ont. S.C.J. [Commercial List], Court File No. CV-21-00658423-00CL ([Claims Procedure Order](#))
2. *Re Canwest Global Communications Corp.*, [2011 ONSC 2215](#) [Commercial List]
3. *Re Laurentian University of Sudbury*, [2021 ONSC 3885](#)
4. *Re Mountain Equipment Co-Operative*, [2020 BCSC 2037](#)
5. *Re ScoZinc Ltd.*, [2009 NSSC 136](#)
6. *Re Timminco Ltd.*, [2014 ONSC 3393](#)
7. *Re Toys “R” Us (Canada) Ltd.*, [2018 ONSC 609](#) [Commercial List]
8. *Re U.S. Steel Canada Inc.*, [2017 ONSC 1967](#)

SCHEDULE “B”
TEXT OF STATUTES, REGULATIONS & BY-LAWS

COMPANIES’ CREDITORS ARRANGEMENT ACT

R.S.C., 1985, c. C-36, as amended

General power of court

11 Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

Stays, etc. — initial application

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

- (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act;
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Stays, etc. — other than initial application

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Fixing deadlines

12 The court may fix deadlines for the purposes of voting and for the purposes of distributions under a compromise or arrangement.

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF NORDSTROM
CANADA RETAIL, INC., NORDSTROM CANADA HOLDINGS, LLC and NORDSTROM CANADA
HOLDINGS II, LLC

ONTARIO
SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

PROCEEDING COMMENCED AT TORONTO

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