



NO. S-171026  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN BANKRUPTCY AND INSOLVENCY**

BETWEEN:

DEANS KNIGHT CAPITAL MANAGEMENT LTD.

PETITIONER

AND:

SHOEME TECHNOLOGIES LIMITED

RESPONDENT

**NOTICE OF APPLICATION**

**Name of applicant: Deans Knight Capital Management Ltd.**

TO: *Ex Parte*

TAKE NOTICE that an application will be made by the applicant to the presiding judge or master at the courthouse at 800 Smithe Street, Vancouver, BC on February 15, 2017 at 9:45 a.m. for the order set out in Part 1 below.

**Part 1: ORDERS SOUGHT**

1. The style of cause in this proceeding be amended to add the following respondent:

SHOES.COM TECHNOLOGIES INC.

2. An amended Petition in the form attached hereto as **Schedule "A"** (the "**Amended Petition**") be filed and served, which contains the following form of style of cause:

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PETITIONER

AND:

SHOEME TECHNOLOGIES LIMITED  
SHOES.COM TECHNOLOGIES INC.

RESPONDENTS

3. Shoes.com Technologies Inc. (the "**Parent**") be deemed a party to these proceedings with immediate effect;
4. The Petitioner be permitted to seek appointment of a receiver of all the assets, undertakings and properties of the Parent immediately without the need for prior service on the Parent of a copy of the filed Amended Petition and a copy of this Court's Order adding the Parent as a respondent;
5. An order, substantially in the form attached and appended as **Schedule "B"**, among other things:
  - (a) permitting the hearing of this petition to proceed without notice;
  - (b) appointing Alvarez & Marsal Canada Inc. ("**A&M**") as receiver of all of the assets, undertakings and properties of the Respondent, Shoes.com Technologies Inc.;
  - (c) approving interim financing of an amount up to \$100,000; and
  - (d) ordering costs; and
6. Such further and other relief as to this Honourable Court may see fit.

**Part 2: FACTUAL BASIS**

**Background**

1. The original Petition in this matter was filed on February 2, 2017.

2. The petitioner, Deans Knight Capital Management Ltd. ("**Deans Knight**"), is a corporation governed by the *Canada Business Corporations Act*, with a principal office at 1500-999 West Hasting Street, Vancouver, British Columbia, V6C 2W2.
3. The Parent is a corporation governed by the *British Columbia Business Corporations Act*, with a registered and records office at 1750-1055 West Georgia Street, Vancouver, British Columbia, V6E 3P3.
4. ShoeMe Technologies Limited (the "**Debtor**") is a corporation governed by the *Canada Business Corporations Act* with a principal office at 4th Floor, 1500 West Georgia Street, Vancouver, British Columbia, V6G 2Z6.
5. The Debtor is a wholly owned subsidiary of the Parent and carried on business as an online shoe retailer.
6. The Parent owns the intellectual property, including the domain name "shoes.com", used by the Debtor and the Parents' other subsidiaries in their business.
7. The Debtor also operated physical retail locations in Vancouver, British Columbia and Toronto, Ontario, as well as owning inventories which are held at a third party logistics facility in Brampton, Ontario.
8. In addition to the Petitioner, the following parties are entities with registered interests in respect of the property of the Parent:
  - (a) Brown Shoe Investment Company Inc. and Caleres Investment Company Inc. (either or both referred to herein as "**Brown Shoe**");
  - (b) Wells Fargo Bank, National Association ("**Wells Fargo**"); and
  - (c) Bank of Montreal.

#### **Debentures and GSA**

9. On or about December 12, 2014, the Parent, the Guarantors and Deans Knight, acting as portfolio manager on behalf of certain investors (the "**Investors**"), entered into a transaction pursuant to the Parent issued to Deans Knight secured convertible Debentures in the aggregate principal amount of CAD\$10 million.
10. The Debentures were issued pursuant to a Debenture Purchase Agreement between the Parent and Deans Knight as portfolio manager on behalf of the Investors.

11. Pursuant to the terms of the Debentures, the Parent's present and future debts, liabilities and obligations to the Investors under or in connection with each Debenture were unconditionally guaranteed by:
  - (a) the Debtor;
  - (b) A12345 Holdings Inc. (now known as Shoes.com Holdings (USA) Inc., and referred to herein as "**US Holdco**");
  - (c) Gerler and Son Inc. (now known as Onlineshoes.com Inc., and referred to herein as "**Gerler**"); and
  - (d) Shoes.com, Inc. ("**Shoes.com**", collectively with Gerler and US Holdco, the "**US Guarantors**", and collectively with Gerler, US Holdco and the Debtor, the "**Guarantors**").
12. Pursuant to a collateral agency agreement dated December 12, 2014, among the Parent, Deans Knight, and the Investors, Deans Knight was appointed as collateral agent for and on behalf of the Investors (in such capacity, the "**Collateral Agent**").
13. To secure the obligations of the Parent and the Guarantors under the Debentures, the Parent and the Guarantors executed certain security agreements (collectively, the "**Security**"), including the GSAs executed by the Parent and the Debtor granting to the Collateral Agent a security interest in all of their present and after acquired personal property, assets and undertaking, including all proceeds thereof and therefrom.
14. Notices of the Security Interests were registered in the British Columbia Personal Property Registry on December 12, 2014, under base registration numbers 340316I and 340310I.
15. Under the terms of the Debentures, as of February 2, 2017, the Parent was indebted to the Collateral Agent, guaranteed by the Debtor, in the amount of \$10,098,630.14, plus interest and costs of enforcement, which interest continues to accrue (the "**Indebtedness**").
16. The Indebtedness has not been repaid.
17. The Parent and the Guarantors, including the Debtor, are also indebted to Brown Shoe.

18. As a result of a subordination, postponement and standstill agreement dated on December 12, 2014, among the Collateral Agent, Brown Shoe, the Parent, and the Guarantors (the "**Brown Shoe Intercreditor Agreement**"), Deans Knight has a first-ranking charge over all of the Debtor's present and after-acquired property, senior in priority to Brown Shoe.
19. As a result of the Brown Shoe Intercreditor Agreement, Deans Knight's Security Interest in the Parent's present and after-acquired property is also senior in priority to Brown Shoe.
20. The Parent and the US Guarantors are also indebted to Wells Fargo National Association ("**Wells Fargo**") in the amount of approximately US\$3.8 million.
21. As a result of a subordination, postponement and standstill agreement dated on March 15, 2015, among Wells Fargo, the Collateral Agent, the Parent and the US Guarantors (the "**Wells Fargo Intercreditor Agreement**"), the Collateral Agent is restricted in its ability to enforce as against the Parent absent the consent of Wells Fargo without breaching such agreement.
22. The security interests granted to Brown Shoe and to Wells Fargo by the Parent is restricted to certain intellectual property and specific other items and does not include the cash of the Parent except to the extent such cash consists of proceeds of the specific collateral of Brown Shoe and Wells Fargo.

#### **Default**

23. On January 27, 2017, the Parent informed Deans Knight, and issued a press release announcing, that it would be shutting down operations as at that date, taking the Debtor's e-commerce properties offline and closing its two brick-and-mortar stores.
24. A failure to maintain its business operations constitutes an event of default under the debentures issued under the Debenture Purchase Agreement.
25. Given this breach, on February 1, 2017, the Collateral Agent accelerated and demanded repayment of the Indebtedness, and delivered notice of its intent to enforce security in accordance with s. 244 of *Bankruptcy and Insolvency Act*.
26. On February 1, 2017, the Debtor consented to the Collateral Agent's enforcement of its security and waived the ten-day notice period required pursuant to s. 244 of the *Bankruptcy and Insolvency Act*.

27. On February 3, 2017, this Court appointed A&M as receiver over the assets and undertakings of the Debtor.

### **Urgency**

28. On February 3, 2017, Wells Fargo appointed a receiver over the assets of Gerler and Shoes.com.
29. On February 8, 2017, Wells Fargo has issued a Notice of Intention to Enforce Security to the Parent.
30. The Parent and its affiliates have ceased operations and are not generating any additional cash or receivables.
31. The Parent has limited cash and is incurring expenses, including employment expenses.
32. The directors of the Parent are expected to resign soon.
33. Given the value of inventory and other assets of the Debtor and the Parent and the shutdown of their operations, the Collateral Agent and the Investors are likely to suffer a shortfall.
34. Any delay in implementing a marketing process with respect to the intellectual property of the Parent has detrimental effects on the value realizable by the Parent's secured creditors.
35. A&M has consented to act as receiver in this matter (in such capacity, the **"Receiver"**).
36. Borrowings may be required by the Receiver to effect an orderly liquidation of the Parent's assets.
37. Deans Knight, on behalf of certain of its clients, is willing to provide funding of up to \$100,000 only on a super-priority basis secured by a Court-ordered charge.
38. The Parent has consented to the appointment of the Receiver.
39. Wells Fargo is also supportive of appointment of the Receiver subject to the terms of the form of order attached hereto as Schedule "B".
40. Given that creditors junior in interest to the Collateral Agent are not expected to receive a distribution from the receivership of the Parent and the Debtor, a Court-

ordered charge to secure the borrowings of the Receiver will not be detrimental to any creditors.

41. It is necessary for the Receiver to have the power to assign the Parent into bankruptcy to fully administer the Parent's estate.

### **Part 3: LEGAL BASIS**

#### **Adding the Parent as Respondent**

1. Rule 6-1(1)(a) of the *Supreme Court Civil Rules*.
2. Rule 6-2(7) of the *Supreme Court Civil Rules* provides that the Court, on application, may order that a person be added or substituted as a party if:
  - (a) that person ought to have been joined as a party, or
  - (b) that person's participation in the proceeding is necessary to ensure that all matters in the proceeding may be effectually adjudicated on.
3. The court's discretion to add or substitute parties is a matter of discretion to be exercised generously to allow effective determination of the issues, without delay, inconvenience or separate hearings.

*Delta Sunshine Taxi (1972) Ltd. v. Vancouver (City)*, 2014 BCSC 2100, at para 12

*Ipsos S.A. v. Reid* (2005), 16 C.P.C. (6<sup>th</sup>) 262, at para 107

4. There is no prejudice to the Respondents in the granting of the order sought or to the Respondents other secured creditors.
5. Accordingly, it would be appropriate for the Court to grant an order amending the style of cause in the within proceedings.

#### **Appointment of a Receiver**

6. The court may extend or shorten any period of time provided for in the *Supreme Court Civil Rules* to further their object.

*Supreme Court Civil Rules*, B.C. Reg. 168/2009, R. 22-4(2).

7. It is appropriate to shorten the period of time given to the respondents to respond given the urgency raised by

- (a) the appointment of a receiver in Washington State over two of the Parent's subsidiaries;
  - (b) the delivery by Wells Fargo of a Notice of Intention to Enforce Security to the Parent;
  - (c) the risk of the Parent's collateral depreciating before an orderly liquidation can be achieved.
8. The Parent and Wells Fargo have consented to the appointment of a receiver.
9. Given the consent of the Parent, the court may appoint a receiver to (a) take possession of all or substantially all of the insolvent person's property that was acquired for or used in relation to a business carried on by the insolvent person; (b) exercise any control the court considers advisable over than property and the insolvent person's business, or (c) take any other action the court considers advisable.

*Bankruptcy and Insolvency Act*, s. 243(1).

10. A court may appoint a trustee as receiver of all or any part of the debtor's property where it is "just and convenient" to do so.

*Bankruptcy and Insolvency Act*, s. 47(1)

Supreme Court Civil Rules, R. 10-2(1)

*Law and Equity Act*, R.S.B.C. 1996, c. 253, s. 39

11. In determining whether it is just and convenient to appoint a receiver, a court must have regard to all of the circumstances of the case, particularly the nature of the property and the rights and interests of all parties in relation to the property. Generally, a court will appoint a receiver when it is necessary to enforce rights between parties or preserve assets, particularly where there is a serious apprehension about the safety of assets.

*Textron Financial Canada Limited v. Chetwynd Motels Ltd.*, 2010 BCSC 477 at paras 55, 75-77, & 81

*Callidus Capital Corp v Carcap Inc* (2012), 84 C.B.R. (5th) 300 at para 53 (Ont S.C.J. [Commercial List]).



12. In the circumstances, it is just and convenient to appoint a receiver to preserve the Parent's assets to provide the Collateral Agent, as a secured creditor, the opportunity to enforce its rights and available remedies under the Debenture Purchase Agreement and Parent GSA as well as Part 5 of the *Personal Property Security Act*, R.S.B.C. 1996, c. 359.
13. It is further necessary to appoint a receiver to ensure an efficient liquidation of the Parent's assets and maximize recovery to the creditors.
14. When appointing a receiver the court must fix any remuneration to be paid to the receiver. If a receiver is appointed the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper.

Supreme Court Civil Rules, R. 10-2(3)

15. Section 243(1) of the *Bankruptcy and Insolvency Act*, provides that, on application by a secured creditor, a court may appoint a receiver to take "any ... action that the court considers advisable" if the court "considers it to be just or convenient to do so".
16. It is just and convenient to authorize the Receiver to borrow up to \$100,000 on a super-priority basis because the Debtor's secured creditors other than the Petitioner are unaffected by such funding.
17. Courts can authorize receivers to assign a company into bankruptcy

*Royal Bank v. Sun Squeeze Juices Inc.* (1994), 24 C.B.R. (3d) 302 at para 6

*First Treasury Financial Inc. v. Congo Petroleums Inc.* (1991), 3 CBR (3d) 232 at para 43

*Re Taylor Ventures Ltd.* (1999), 9 CBR (4th) 136 at para 3

18. The Petitioner submits that it is just and convenient to authorize the Receiver to assign the Parent into bankruptcy to bring an orderly closure to matters and to administer the claims against the Parent's estate.
19. The assignment of the Parent into bankruptcy may also have the effect of reordering priorities in respect of certain claims.
20. It is not an improper purpose to assign a company into bankruptcy to effect a reordering of priorities.

*Bank of Montreal v. Scott Road Enterprises Ltd.* (1989), 73 CBR (NS) 273 (BCCA)  
at para 20

*Re R Home Supply Centre Ltd.*, 2014 BCSC 2430 at para 30, aff'd by *Home Hardware Stores Limited v. R Home Supply Centre Ltd.*, 2015 BCCA 500 at para 37

21. Accordingly, the Petitioner submits that it is appropriate for the Court to grant the order sought.

**Part 4: MATERIAL TO BE RELIED ON**

1. Affidavit #1 of Miriam Domínguez, made February 2, 2017;
2. Affidavit #1 of Dillon Cameron, made February 2, 2017;
3. Receivership Order entered February 3, 2017;
4. Affidavit #2 of Miriam Domínguez, made February 14, 2017;
5. Affidavit #2 of Dillon Cameron, made February 14, 2017; and
6. Such further and other evidence as counsel may advise and this Honourable Court may admit.

The applicant(s) estimate(s) that the application will take 20 minutes.

- ☐ This matter is within the jurisdiction of a master.
- ☒ This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this application is brought under Rule 9-7, within 8 business days of service of this Notice of Application,

- (a) file an Application Response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
  - (i) a copy of the filed Application Response;
  - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
  - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: \_\_\_\_/FEB/2016

  
\_\_\_\_\_  
Signature of lawyer for filing party  
**Deans Knight Capital Management Ltd.**

To be completed by the court only:

Order made

- ☐ in the terms requested in paragraphs \_\_\_\_\_ of Part 1 of this Notice of Application
- ☐ with the following variations and additional terms:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date:

\_\_\_\_\_  
Signature of ☐ Judge ☐ Master

\_\_\_\_\_  
**APPENDIX**

**THIS APPLICATION INVOLVES THE FOLLOWING:**

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matter concerning oral discovery
- ☒ amend pleadings
- ☒ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts

**Schedule "A"**

Amended pursuant to the Order of \_\_\_\_\_, pronounced on  
February 2017, and pursuant to Supreme Court Civil Rule 6-2 and 6-1.  
Original filed on February 2, 2017

NO. S-171026  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN BANKRUPTCY AND INSOLVENCY**

BETWEEN:

DEANS KNIGHT CAPITAL MANAGEMENT LTD.

PETITIONER

AND:

SHOEME TECHNOLOGIES LIMITED  
SHOES.COM TECHNOLOGIES INC.

RESPONDENTS

**AMENDED PETITION TO THE COURT**

ON NOTICE TO: The Respondents, **SHOEME TECHNOLOGIES LIMITED**  
and **SHOES.COM TECHNOLOGIES INC.**  
4th Floor–1500 West Georgia Street  
Vancouver, BC V6G 2Z6

AND TO: Counsel for the Respondents  
**MICHAEL, EVRENSEL & PAWAR LLP**  
Royal Ctr., 1055 Georgia St. W.,  
Suite 1750, Stn Royal Ctr.  
Vancouver, British Columbia V6E 3P3  
**Attention: Andrew Hennigar**

AND TO: **BROWN SHOE INVESTMENT COMPANY INC.**  
8300 Maryland Avenue  
St. Louis MO 63105

**CALERES INVESTMENT COMPANY, INC.**  
8300 Maryland Avenue  
St. Louis MO 63105

Counsel for Caleres Investment Company, Inc.  
**GOWLING WLG (CANADA) LLP**  
Suite 2600, 160 Elgin Street  
Ottawa, ON K1P 1C3  
**Attention: Lorne Segal**

**RCAP LEASING INC.**  
5575 North Service Rd, Ste 300  
Burlington, ON L7L 6M1

**NATIONAL LEASING GROUP INC.**  
1525 Buffalo Place  
Winnipeg, MB R3T 1L9

**ROYNAT INC.**  
Suite 1500, 4710 Kingsway St.  
Burnaby, BC V5H 4M2

**BLUE CHIP LEASING CORPORATION**  
156 Duncan Mill Rd, Unit 16  
Toronto, ON M3B 3N2

**HER MAJESTY THE QUEEN IN THE RIGHT OF THE  
PROVINCE OF BRITISH COLUMBIA**  
1802 Douglas Street  
Victoria, BC V8T 4K6

**ALVAREZ & MARSAL CANADA INC.**  
400 Burrard Street  
Suite 1680, Commerce Place  
Vancouver, BC V6C 3A6

Counsel for Alvarez & Marsal Canada Inc.  
**BORDEN LADNER GERVAIS LLP**  
1200 Waterfront Centre  
200 Burrard Street  
Vancouver, BC V7X 1T2  
**Attention: Magnus C. Verbrugge**

**This proceeding is brought by the petitioner for the relief set out in Part 1 below.**

If you intend to respond to this petition, you or your lawyer must

- (a) file a Response to Petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioner
  - (i) 2 copies of the filed Response to Petition, and

- (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing

**Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.**

**Time for Response to Petition**

A Response to Petition must be filed and served on the petitioner,

- (a) if you were served with the Petition anywhere in Canada, within 21 days after that service,
- (b) if you were served with the Petition anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the Petition anywhere else, within 49 days after that service, or
- (d) if the time for response has been set by order of the court, within that time.

(1)	The address of the registry is:  800 Smithe Street Vancouver, BC V6Z 2E1
(2)	The ADDRESS FOR SERVICE of the petitioner is:  20 <sup>th</sup> Floor, 250 Howe Street Vancouver, BC V6C 3R8  Fax number address for service (if any) of the petitioner:  604-683-5214  E-mail address for service (if any) of the petitioner:  john.sandrelli@dentons.com tevia.jeffries@dentons.com
(3)	The name and office address of the petitioner's lawyer is:  Dentons Canada LLP 20 <sup>th</sup> Floor, 250 Howe Street Vancouver, BC V6C 3R8

## CLAIM OF THE PETITIONER

### Part 1: ORDERS SOUGHT

1. An order, substantially in the form attached and appended as Schedule "A", among other things:
  - (a) permitting the hearing of this petition to proceed without notice or, alternatively, shortening the period for notice pursuant to Rule 22-4;
  - (b) appointing Alvarez & Marsal Canada Inc. ("**A&M**") as receiver of all of the assets, undertakings and properties of the Respondent, ShoeMe Technologies Limited (the "**Debtor**"), acquired for or used in relation to a business carried on by the Debtor;
  - (c) approving interim financing of an amount up to \$500,000; and
  - (d) ordering costs;
2. An order among other things:
  - (a) permitting the hearing of this petition to proceed without notice or, alternatively, shortening the period for notice pursuant to Rule 22-4;
  - (b) appointing A&M as receiver of all of the assets, undertakings and properties of the Respondent, Shoes.com Technologies Inc. (the "**Parent**"), acquired for or used in relation to a business carried on by the Parent;
  - (c) approving interim financing of an amount up to \$500,000; and
  - (d) ordering costs;
3. A declaration that:
  - (a) the debentures among the Petitioner, the Parent ~~1006903 B.C. Ltd.~~ (the "**Parent**"), the Debtor and certain other guarantors dated December 12, 2014 (the "**Debentures**");
  - (b) the general security agreement between the petitioner and the Parent dated December 12, 2014 (the "**Parent GSA**"); and



- (c) the general security agreement between the petitioner and the Debtor dated December 12, 2014 (the "GSA and together with the Parent GSA, the 'GSAs'"),

are in default, and of the amount of money due and owing under the Loan Agreement.

4. A declaration that the Petitioner has a valid and enforceable security interest in all present and after acquired inventory property of the Respondents.
5. Such further and other relief as to this Honourable Court may see fit.

## Part 2: FACTUAL BASIS

### The Parties

1. The petitioner, Deans Knight Capital Management Ltd. ("**Deans Knight**"), is a corporation governed by the *Canada Business Corporations Act*, with a principal office at 1500-999 West Hasting Street, Vancouver, British Columbia, V6C 2W2.
2. The Parent is a corporation governed by the *British Columbia Business Corporations Act*, with a registered and records office at 1750-1055 West Georgia Street, Vancouver, British Columbia, V6E 3P3.
3. The Debtor is a corporation governed by the *Canada Business Corporations Act* with a principal office at 4th Floor, 1500 West Georgia Street, Vancouver, British Columbia, V6G 2Z6.
4. The Debtor is a wholly owned subsidiary of the Parent and carried on business as an online shoe retailer.
5. The Parent owns the intellectual property, including the domain name "shoes.com", used by the Debtor and the Parent's other subsidiaries in their business.
6. The Debtor also operated physical retail locations in Vancouver, British Columbia and Toronto, Ontario, as well as owning inventories which are held at a third party logistics facility in Brampton, Ontario.
7. In addition to the Petitioner, the following parties are entities with registered interests in respect of the property of the Parent:

- (a) Brown Shoe Investment Company Inc. and Caleres Investment Company Inc. (either or both referred to herein as "**Brown Shoe**");
  - (b) Wells Fargo Bank, National Association ("**Wells Fargo**"); and
  - (c) Bank of Montreal.
8. The In addition to the Petitioner, the following parties are entities with registered interests in respect of the property of the Debtor:
- (a) ~~Brown Shoe Investment Company Inc. and Caleres Investment Company Inc. (either or both referred to herein as "**Brown Shoe**")~~;
  - (b) the Crown in right of the Province of British Columbia in respect of provincial sales taxes; and
  - (c) certain computer equipment lessors or vendors, namely RCAP Leasing Inc., National Leasing Group, Roynat Inc. and Blue Chip Leasing Corporation (collectively, the "**Equipment Lessors**").

#### **Debentures and GSA**

9. On or about December 12, 2014, the Parent, the Guarantors and Deans Knight, acting as portfolio manager on behalf of certain investors (the "**Investors**"), entered into a transaction pursuant to the Parent issued to Deans Knight secured convertible Debentures in the aggregate principal amount of CAD\$10 million.
10. The Debentures were issued pursuant to a Debenture Purchase Agreement between the Parent and Deans Knight as portfolio manager on behalf of the Investors.
11. Pursuant to the terms of the Debentures, the Parent's present and future debts, liabilities and obligations to the Investors under or in connection with each Debenture were unconditionally guaranteed by:
- (a) the Debtor;
  - (b) A12345 Holdings Inc. (now known as Shoes.com Holdings (USA) Inc., and referred to herein as "**US Holdco**")
  - (c) Gerler and Son Inc. (now known as Onlineshoes.com Inc., and referred to herein as "**Gerler**")

- (d) Shoes.com, Inc. ("**Shoes.com**", collectively with Gerler and US Holdco, the "**US Guarantors**", and collectively with Gerler, US Holdco and the Debtor, the "**Guarantors**").
12. Pursuant to a collateral agency agreement dated December 12, 2014, among the Parent, Deans Knight, and the Investors, Deans Knight was appointed as collateral agent for and on behalf of the Investors (in such capacity, the "**Collateral Agent**").
13. To secure the obligations of the Parent and the Guarantors under the Debentures, the Parent and the Guarantors executed certain security agreements (collectively, the "**Security**"), including the GSAs ~~a general security agreement~~ executed by the Parent and the Debtor granting to the Collateral Agent a security interest in all of their ~~its~~ present and after acquired personal property, assets and undertaking, including all proceeds thereof and therefrom.
14. Notices of the Security Interests ~~was~~ were registered in the British Columbia Personal Property Registry on December 12, 2014, under base registration numbers 340316I and 340310I.
15. Under the terms of the Debentures, as of February 2, 2017, the Parent was indebted to the Collateral Agent, guaranteed by the Debtor, in the amount of \$10,098,630.14, plus interest and costs of enforcement, which interest continues to accrue (the "**Indebtedness**").
16. The Indebtedness has not been repaid.
17. The Parent and the Guarantors, including the Debtor, are also indebted to Brown Shoe.
18. As a result of a subordination, postponement and standstill agreement dated on December 12, 2014, among the Collateral Agent, Brown Shoe, the Parent, and the Guarantors (the "**Brown Shoe Intercreditor Agreement**"), Deans Knight has a first-ranking charge over all of the Debtor's present and after-acquired property, senior in priority to Brown Shoe.
19. As a result of the Brown Shoe Intercreditor Agreement, Deans Knight's Security Interest in the Parent's present and after-acquired property is also senior in priority to Brown Shoe.



20. The Parent and the US Guarantors are also indebted to Wells Fargo National Association ("**Wells Fargo**") in the amount of approximately US\$3.8 million.
21. The Debtor is not indebted to Wells Fargo and has not guaranteed its affiliates obligations to Wells Fargo.
22. As a result of a subordination, postponement and standstill agreement dated on March 15, 2015, among Wells Fargo, the Collateral Agent, the Parent and the US Guarantors (the "**Wells Fargo Intercreditor Agreement**"), the Collateral Agent is restricted in its ability to enforce as against the Parent absent the consent of Wells Fargo without breaching such agreement.

### **Default**

23. On January 27, 2017, the Parent informed Deans Knight, and issued a press release announcing, that it would be shutting down operations as at that date, taking the Debtor's e-commerce properties offline and closing its two brick-and-mortar stores.
24. A failure to maintain its business operations constitutes an event of default under the debentures issued under the Debenture Purchase Agreement.
25. Given this breach, on February 1, 2017, the Collateral Agent accelerated and demanded repayment of the Indebtedness, and delivered notice of its intent to enforce security in accordance with s. 244 of *Bankruptcy and Insolvency Act*.
26. On February 1, 2017, the Debtor consented to the Collateral Agent's enforcement of its security and waived the ten-day notice period required pursuant to s. 244 of the *Bankruptcy and Insolvency Act*.

### **Urgency**

27. Wells Fargo has issued notices of default to Gerler and Shoes.com, and intends to commence receivership proceedings in respect of Gerler and Shoes.com (the "**Senior Creditor Default Notice**").
28. The Debtor and its affiliates have ceased operations and are not generating any additional cash or receivables.
29. The Parent and the Debtor has limited cash and is incurring expenses, including employment expenses.

30. The directors of the Debtor have all resigned, and the directors of the Parent are expected to resign soon.
31. Given the value of inventory and other assets of the Debtor and the Parent and the shutdown of their operations, the Collateral Agent and the Investors are likely to suffer a shortfall.
32. The Equipment Lessors are unaffected by the Receiver's Charge and the Receiver's Borrowing Charge (as defined in the form of order sought). If the Equipment Lessors are true lessors, the leased property is not property of the estate. If the Equipment Lessors have valid and enforceable purchase money security interests, they have been carved out of the requested charges. If the Equipment Lessors do not have valid and enforceable purchase money security interests, they are junior in priority to the Collateral Agent and are unlikely to recover whether the Receiver borrows funds or not.
33. A&M has consented to act as receiver in this matter (in such capacity, the "Receiver").
34. Financial information on the Debtor provided to me by the Debtor and A&M shows that, depending on the timing of asset sale(s), borrowings are likely required by the Receiver to effect an orderly liquidation of the Debtor's assets.
35. Deans Knight, on behalf of certain of its clients, is willing to provide funding of up to \$500,000 only on a super-priority basis secured by a Court-ordered charge.
36. The Debtor has consented to A&M acting as Receiver.
37. Given that creditors junior in interest to the Collateral Agent are not expected to receive a distribution from the receivership of the Parent and the Debtor, a Court-ordered charge to secure the borrowings of the Receiver will not be detrimental to any creditors.
38. It is necessary for the Receiver to have the power to assign the Parent and the Debtor into bankruptcy to fully administer the Debtor's estate, including certain priority payables owed by the Debtor.

### **Part 3: LEGAL BASIS**

1. The court may extend or shorten any period of time provided for in the *Supreme Court Civil Rules* to further their object.

*Supreme Court Civil Rules*, B.C. Reg. 168/2009, R. 22-4(2).

2. It is appropriate to shorten the period of time given to the respondents to respond given the urgency raised by
  - (a) the delivery of the Senior Credit Default Notice
  - (b) the risk of the Debtor's collateral depreciating before an orderly liquidation can be achieved.
3. A secured creditor who intends to enforce a security on all or substantially all of the property of an insolvent person that is acquired for, or is used in relation to, a business carried on by the insolvent person must send a notice of intention to the insolvent person in the prescribed form (the "NOI").

*Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, s. 244(1) [*BIA*]

4. Deans Knight has sent an NOI and has received consent from the Debtor to exercise its enforcement rights.
5. **The Parent has consented to the appointment of the Receiver.**
6. Given the consent of **the Parent and** the Debtor, the court may appoint a receiver to (a) take possession of all or substantially all of the insolvent person's property that was acquired for or used in relation to a business carried on by the insolvent person; (b) exercise any control the court considers advisable over than property and the insolvent person's business, or (c) take any other action the court considers advisable.

*Bankruptcy and Insolvency Act*, s. 243(1).

7. A court may appoint a trustee as receiver of all or any part of the debtor's property that is subject to the security to which a notice under s. 244(1) of the *Bankruptcy and Insolvency Act* relates where it is "just and convenient".

*Bankruptcy and Insolvency Act*, s. 47(1)

*Supreme Court Civil Rules*, R. 10-2(1)

*Law and Equity Act*, R.S.B.C. 1996, c. 253, s. 39



8. In determining whether it is just and convenient to appoint a receiver, a court must have regard to all of the circumstances of the case, particularly the nature of the property and the rights and interests of all parties in relation to the property. Generally, a court will appoint a receiver when it is necessary to enforce rights between parties or preserve assets, particularly where there is a serious apprehension about the safety of assets.

*Canadian Tire Corp. v. Healy*, 2011 CarswellOnt 7430 at para 18 (S.C.J. [Commercial List])

*Callidus Capital Corp v Carcap Inc* (2012), 84 C.B.R. (5th) 300 at para 53 (Ont S.C.J. [Commercial List]).

9. In the circumstances, it is just and convenient to appoint a receiver to preserve the Parent's and the Debtor's assets to provide the Collateral Agent, as the first-ranking secured creditor, the opportunity to enforce its rights and available remedies under the Debenture Purchase Agreement and GSA as well as Part 5 of the *Personal Property Security Act*, R.S.B.C. 1996, c. 359.
10. It is further necessary to appoint a receiver to ensure an efficient liquidation of the Parent's and the Debtor's assets ~~inventor~~ and maximize recovery to the creditors.
11. When appointing a receiver the court must fix any remuneration to be paid to the receiver. If a receiver is appointed the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper.

*Supreme Court Civil Rules*, R. 10-2(3)

12. Section 243(1) of the *BIA*, provides that, on application by a secured creditor, a court may appoint a receiver to take "any ... action that the court considers advisable" if the court "considers it to be just or convenient to do so".
13. It is just and convenient to authorize the Receiver to borrow up to \$500,000 on a super-priority basis because the Debtor's secured creditors other than the Petitioner are unaffected by such funding.
14. Courts can authorize receivers to assign a company into bankruptcy

*Royal Bank v. Sun Squeeze Juices Inc.* (1994), 24 C.B.R. (3d) 302 at para 6

*First Treasury Financial Inc. v. Ganga Petroleums Inc.* (1991), 3 CBR (3d) 232 at para 43

*Re Taylor Ventures Ltd.* (1999), 9 CBR (4th) 136 at para 3

15. The Petitioner submits that it is just and convenient to authorize the Receiver to assign the Parent and the Debtor into bankruptcy to bring an orderly closure to matters and to administer the claims against the Parent's and the Debtor's estates.
16. The assignment of the Debtor into bankruptcy will also have the effect of reordering priorities in respect of sales tax amounts owed by the Debtor to the provincial and federal Crown.
17. It is not an improper purpose to assign a company into bankruptcy to effect a reordering of priorities.

*Bank of Montreal v. Scott Road Enterprises Ltd.* (1989), 73 CBR (NS) 273 (BCCA) at para 20

*Re R Home Supply Centre Ltd.*, 2014 BCSC 2430 at para 30, aff'd by *Home Hardware Stores Limited v. R Home Supply Centre Ltd.*, 2015 BCCA 500 at para 37

18. Accordingly, the Petitioner submits that it is appropriate for the Court to grant the order sought.

#### **Part 4: MATERIALS TO BE RELIED ON**

1. Affidavit #1 of Dillon Cameron, made 02 / February / 2017
2. Affidavit #1 of Miriam Dominguez, made 02 / February / 2017
3. **Affidavit #2 of Dillon Cameron, made 14 / February / 2017**
4. **Affidavit #2 of Miriam Dominguez, made 14 / February / 2017**
5. Such other material as counsel may advise and this Honourable Court may admit.



The petitioner estimates that the hearing of the Petition will take 20 minutes.

Date: 02/ February / 2017

\_\_\_\_\_  
Signature of Tevia Jeffries  
Lawyer for petitioner

Date: 15/ February / 2017

\_\_\_\_\_  
Signature of  
Lawyer for petitioner

***To be completed by the court only:***

Order made

- ☐ in the terms requested in paragraphs \_\_\_\_\_ of  
Part 1 of this Petition
- ☐ with the following variations and additional terms:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date:

\_\_\_\_\_  
Signature of ☐ Judge ☐ Master

SCHEDULE "A"

No. 2017-000000  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE RECEIVERSHIP OF  
SHOEME TECHNOLOGIES LIMITED.

DEANS KNIGHT CAPITAL MANAGEMENT LTD.

PETITIONER

- and -

SHOEME TECHNOLOGIES LIMITED

RESPONDENT

ORDER MADE AFTER APPLICATION  
(Receivership Order)

BEFORE THE HONOURABLE ) 2017 DAY, THE 20 DAY  
 )  
JUSTICE ) OF FEBRUARY, 2017.  
 )

ON THE APPLICATION of Petitioner for an Order pursuant to Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and Section 39 of the *Law and Equity Act*, R.S.B.C. 1996 c. 253, as amended (the "LEA") appointing **ALVAREZ & MARSAL CANADA INC.** as Receiver (in such capacity, the "Receiver") without security, of all of the assets, undertakings and properties of **SHOEME TECHNOLOGIES LIMITED** (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, coming on for hearing this day at the Courthouse, 800 Smithe Street, Vancouver, British Columbia.

AND ON READING the Petition dated February 2, 2017, the Affidavit #1 of Dillon Cameron sworn February 2, 2017, the Affidavit #1 of Miriam Dominguez sworn February 2, 2017, and the consent of Alvarez & Marsal Canada Inc. to act as the Receiver; AND ON HEARING Tevia Jeffries, counsel for Deans Knight Capital Management Ltd., and other counsel as listed on Schedule "A" hereto, and no one appearing for the Debtor, although duly served.

THIS COURT ORDERS AND DECLARES that:

#### NOTICE

1. The time for service of the Petition and Notice of Hearing herein, dated February 2, 2017, be and is hereby abridged such that the Petition is properly returnable today and service hereof upon any interested party other than those parties set forth on the Petition is hereby dispensed with.

#### APPOINTMENT

2. Pursuant to Section 243(1) of the BIA and Section 39 of the LEA, **ALVAREZ & MARSAL CANADA INC.** is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor, including all proceeds thereof (the "Property").

#### RECEIVER'S POWERS

3. The Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
  - (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
  - (b) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
  - (c) to manage, operate and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the other business, or cease to perform any contracts of the Debtor;
  - (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including, without limitation, those conferred by this Order;
  - (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;

- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (l) to assign the Debtor into bankruptcy with the Official Receiver naming Alvarez & Marsal Canada Inc. or some other Licensed Insolvency Trustee as Trustee;
- (m) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:
  - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,

and in each such case notice under Section 59(10) of the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 (the "BC PPSA") shall not be required;

- (n) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

- (o) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (p) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (q) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if considered necessary or appropriate by the Receiver, in the name of the Debtor;
- (r) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limitation, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (s) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (t) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. Each of (i) the Debtor, (ii) all of the Debtor's current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.
5. All Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the

"Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by an independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including, without limitation, providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

7. No proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

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

8. No Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court; provided, however, that nothing in this Order shall prevent any Person from commencing a Proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such Proceeding is not commenced before the expiration of the stay provided by this paragraph and provided that no further step shall be taken in respect of Proceeding except for service of the initiating documentation on the Debtor and the Receiver.

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

9. All rights and remedies (including, without limitation, set-off rights) against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this Order shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) affect the rights of any regulatory body as set forth in section 69.6(2) of the BIA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien. The stay and suspension shall not apply in respect of any "eligible financial contract" as defined in the BIA.

#### **NO INTERFERENCE WITH THE RECEIVER**

10. No Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

#### **CONTINUATION OF SERVICES**

11. All Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services of any kind to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

#### **RECEIVER TO HOLD FUNDS**

12. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever including, without limitation, the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post-Receivership Accounts**") and the monies standing to the credit of such Post-Receivership Accounts from time to

time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

#### EMPLOYEES

13. Subject to the right of employees to terminate their employment notwithstanding paragraph 10, all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities of the Debtor, including any successor employer liabilities as provided for in Section 14.06(1.2) of the BIA, other than amounts the Receiver may specifically agree in writing to pay and amounts in respect of obligations imposed specifically on receivers by applicable legislation. The Receiver shall be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts relating to any employees that the Receiver may hire in accordance with the terms and conditions of such employment by the Receiver.
14. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 or Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, the Receiver may disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

#### LIMITATION ON ENVIRONMENTAL LIABILITIES

15. Nothing in this Order shall require the Receiver 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 relating to 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, S.C. 1999, c. 33, the *Fisheries Act*, R.S.C. 1985, c. F-14, the *Environmental Management Act*, R.S.B.C. 1996, c. 118 and the *Fish Protection Act*, S.B.C. 1997, c. 21 and regulations thereunder (collectively "Environmental Legislation"), provided however that nothing herein shall exempt the



Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver'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 the Receiver is actually in possession.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

16. The Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except:
- (a) any gross negligence or wilful misconduct on its part; or
  - (b) amounts in respect of obligations imposed specifically on receivers by applicable legislation.

Nothing in this Order shall derogate from the protections afforded the Receiver by Section 14.06 of the BIA or by any other applicable legislation.

#### **RECEIVER'S ACCOUNTS**

17. The reasonable fees and disbursements of the Receiver and its legal counsel, in each case at their standard rates and charges, shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to:
- (a) Sections 14.06(7), 81.4(4), and 81.6(2) of the BIA; and
  - (b) any valid and enforceable "purchase money security interest", as defined in the BC PPSA, registered as of the date hereof in the British Columbia Personal Property Registry.
18. The Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Supreme Court of British Columbia and may be heard on a summary basis.
19. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

## FUNDING OF THE RECEIVERSHIP

20. The Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as the Receiver deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to:
- (a) the Receiver's Charge;
  - (b) the charges as set out in Sections 14.06(7), 81.4(4), and 81.6(2) of the BIA; and
  - (c) any valid and enforceable "purchase money security interest", as defined in the BC PPSA, registered as of the date hereof in the British Columbia Personal Property Registry.
21. Neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.
22. The Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.
23. The monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

## ALLOCATION

24. That any interested party may apply to this Court on notice to any other party likely to be affected, for an order allocating the Receiver's Charge and Receiver's Borrowings Charge amongst the various assets comprising the Property.

## GENERAL

25. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

26. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.
27. This Court requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All such courts, tribunals and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
28. The Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal or regulatory or administrative body, wherever located, for recognition of this Order and for assistance in carrying out the terms of this Order and the Receiver 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.
29. The Petitioner shall have its costs of this motion, up to and including entry and service of this Order, as provided for by the terms of the Petitioner's security or, if not so provided by the Petitioner's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.
30. Any interested party may apply to this Court to vary or amend this Order on not less than seven (7) clear business days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

31. Endorsement of this Order by counsel appearing on this application other than the Petitioner is hereby dispensed.

THE FOLLOWING PARTIES APPROVE OF THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

APPROVED BY:

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*Tevia Jeffries*  
lawyer for the Petitioner

---

*Andrew Hennigar*  
lawyer for the Respondent

BY THE COURT

---

DISTRICT REGISTRAR

**SCHEDULE "A"**

**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT

\$ \_\_\_\_\_

1. THIS IS TO CERTIFY that **ALVAREZ & MARSAL CANADA INC.**, the Receiver (the "Receiver") of all of the assets, undertakings and properties of **SHOEME TECHNOLOGIES LIMITED** acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Supreme Court of British Columbia and/or the Supreme Court of British Columbia (In Bankruptcy and Insolvency) (the "Court") dated the \_\_\_\_\_ day of February, 2017 (the "Order") made in SCBC Action No. \_\_\_\_\_ has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$500,000 which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily] [monthly] not in advance on the \_\_\_\_\_ day of each month after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank \_\_\_\_\_ from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of the Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at \_\_\_\_\_, British Columbia.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum under this Certificate in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_\_ day of \_\_\_\_\_ 2017.

Alvarez & Marsal Canada Inc., solely in its  
capacity as Receiver of the Property, and not  
in its personal capacity

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Per: Alvarez & Marsal Canada Inc.  
Name: Todd Martin  
Title: Senior Vice President

SCHEDULE "B"

No. S-171026  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE RECEIVERSHIP OF  
SHOEME TECHNOLOGIES LIMITED.  
SHOES.COM TECHNOLOGIES INC.

DEANS KNIGHT CAPITAL MANAGEMENT LTD.

PETITIONER

- and -

SHOEME TECHNOLOGIES LIMITED  
SHOES.COM TECHNOLOGIES INC.

RESPONDENTS

ORDER MADE AFTER APPLICATION  
(Receivership Order)

BEFORE THE HONOURABLE ) \_\_\_\_\_ DAY, THE \_\_\_\_ DAY  
 )  
\_\_\_\_\_ JUSTICE \_\_\_\_\_ ) OF FEBRUARY, 2017.  
 )

ON THE APPLICATION of Petitioner, without notice, for an Order pursuant to Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and Section 39 of the *Law and Equity Act*, R.S.B.C. 1996 c. 253, as amended (the "LEA") appointing **ALVAREZ & MARSAL CANADA INC.** as Receiver (in such capacity, the "Receiver") without security, of all of the assets, undertakings and properties of **SHOES.COM TECHNOLOGIES INC.** (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, coming on for hearing this day at the Courthouse, 800 Smithe Street, Vancouver, British Columbia.

AND ON READING the Notice of Application dated February 14, 2017, the Affidavit #1 of Dillon Cameron sworn February 2, 2017, the Affidavit #1 of Miriam Dominguez sworn February 2, 2017, the Affidavit #2 of Dillon Cameron sworn February 14, 2017, the Affidavit #2 of Miriam Dominguez sworn February 14, 2017, and the consent of Alvarez & Marsal Canada Inc. to act as the Receiver; AND ON HEARING John Sandrelli, counsel for Deans Knight Capital Management

Ltd., and other counsel listed on Schedule "A" hereto, and on the Court's being satisfied that it is appropriate to make this Order without notice.

THIS COURT ORDERS AND DECLARES that:

#### **APPOINTMENT**

1. Pursuant to Section 243(1) of the BIA and Section 39 of the LEA, **ALVAREZ & MARSAL CANADA INC.** is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor, including all proceeds thereof (the "Property").

#### **RECEIVER'S POWERS**

2. The Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
  - (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
  - (b) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
  - (c) to manage, operate and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the other business, or cease to perform any contracts of the Debtor;
  - (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including, without limitation, those conferred by this Order;
  - (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
  - (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;



- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (l) to assign the Debtor into bankruptcy with the Official Receiver naming Alvarez & Marsal Canada Inc. or some other Licensed Insolvency Trustee as Trustee;
- (m) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:
  - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,

and in each such case notice under Section 59(10) of the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 (the "**BC PPSA**") shall not be required;

- (n) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (o) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

- (p) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (q) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if considered necessary or appropriate by the Receiver, in the name of the Debtor;
- (r) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limitation, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (s) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (t) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

3. Each of (i) the Debtor, (ii) all of the Debtor's current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.
4. All Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 4 or in paragraph 5 of this Order shall require the delivery of Records, or the granting of access

to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

5. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by an independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including, without limitation, providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

6. No proceeding or enforcement process in any court or tribunal (each, a **"Proceeding"**), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

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

7. No Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court; provided, however, that nothing in this Order shall prevent any Person from commencing a Proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such Proceeding is not commenced before the expiration of the stay provided by this paragraph and provided that no further step shall be taken in respect of Proceeding except for service of the initiating documentation on the Debtor and the Receiver.

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

8. All rights and remedies (including, without limitation, set-off rights) against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this Order shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) affect the rights of any

regulatory body as set forth in section 69.6(2) of the BIA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien. The stay and suspension shall not apply in respect of any "eligible financial contract" as defined in the BIA.

#### **NO INTERFERENCE WITH THE RECEIVER**

9. No Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

#### **CONTINUATION OF SERVICES**

10. All Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services of any kind to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

#### **RECEIVER TO HOLD FUNDS**

11. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever including, without limitation, the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post-Receivership Accounts**") and the monies standing to the credit of such Post-Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

#### **EMPLOYEES**

12. Subject to the right of employees to terminate their employment notwithstanding paragraph 10, all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment

of such employees. The Receiver shall not be liable for any employee-related liabilities of the Debtor, including any successor employer liabilities as provided for in Section 14.06(1.2) of the BIA, other than amounts the Receiver may specifically agree in writing to pay and amounts in respect of obligations imposed specifically on receivers by applicable legislation. The Receiver shall be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts relating to any employees that the Receiver may hire in accordance with the terms and conditions of such employment by the Receiver.

13. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 or Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, the Receiver may disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

14. Nothing in this Order shall require the Receiver 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 relating to 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, S.C. 1999, c. 33, the *Fisheries Act*, R.S.C. 1985, c. F-14, the *Environmental Management Act*, R.S.B.C. 1996, c. 118 and the *Fish Protection Act*, S.B.C. 1997, c. 21 and regulations thereunder (collectively "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver'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 the Receiver is actually in possession.

## LIMITATION ON THE RECEIVER'S LIABILITY

15. The Receiver shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except:
- (a) any gross negligence or wilful misconduct on its part; or
  - (b) amounts in respect of obligations imposed specifically on receivers by applicable legislation.

Nothing in this Order shall derogate from the protections afforded the Receiver by Section 14.06 of the BIA or by any other applicable legislation.

## RECEIVER'S ACCOUNTS

16. The reasonable fees and disbursements of the Receiver and its legal counsel, in each case at their standard rates and charges, shall be entitled to and are hereby granted a charge (the **"Receiver's Charge"**) on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to:
- (a) Sections 14.06(7), 81.4(4), and 81.6(2) of the BIA; and
  - (b) the security interest of Wells Fargo Bank, National Association (**"Wells Fargo"**) in the Debtor's trademarks, patents and "shoes.com" domain name, together with all proceeds thereof (the **"Wells Fargo Collateral"**).
17. The Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Supreme Court of British Columbia and may be heard on a summary basis.
18. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

## FUNDING OF THE RECEIVERSHIP

19. The Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$100,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as the Receiver deems advisable for such period or periods of

time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the **"Receiver's Borrowings Charge"**) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to:

- (a) the Receiver's Charge;
- (b) the charges as set out in Sections 14.06(7), 81.4(4), and 81.6(2) of the BIA; and
- (c) the security interest of Wells Fargo in the Wells Fargo Collateral.

- 20. Neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.
- 21. The Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "B" hereto (the **"Receiver's Certificates"**) for any amount borrowed by it pursuant to this Order.
- 22. The monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

#### **ALLOCATION**

- 23. That any interested party may apply to this Court on notice to any other party likely to be affected, for an order allocating the Receiver's Charge and Receiver's Borrowings Charge amongst the various assets comprising the Property.

#### **GENERAL**

- 24. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
- 25. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.
- 26. This Court requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All such courts, tribunals and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an

officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

27. The Receiver is hereby authorized and directed to cooperate, in its discretion and in accordance with its powers and duties hereunder, with Inverness Group in its capacity as the general receiver (the “**US Receiver**”) with respect to each of Onlineshoes.com Inc. and Shoes.com, Inc. (the “**US Debtors**”), appointed pursuant to a Stipulated Order of the Superior Court of Washington for King County in *Wells Fargo Bank, National Association v. Onlineshoes.com Inc., et al.*, King County Superior Court Cause No. 17-2-02462- SEA (the “**US Receivership**”), filed February 2, 2017.
28. Notwithstanding any other provision of this Order, the US Receiver shall have full and unfettered rights to use the Shoes.com domain name, the Shoes.com brand, and any and all other assets of the Debtor shared with, licensed to, or used by the US Debtors in the ordinary course prior to the commencement of the US Receivership (all such assets, collectively, the “**Licensed IP Assets**”) for the purpose of realizing on the shoe inventory of the US Debtors in the context of the administration of the US Receivership, and nothing in this Order shall preclude or adversely affect the US Receiver’s right to market and sell the assets of the US Debtors in the context of the US Receivership; and the Receiver is hereby directed not to interfere with the US Receiver’s rights as reflected in this paragraph.
29. The Receiver shall not close any sale of the Licensed IP Assets (or that portion of the assets of the Debtor which comprise the Wells Fargo Collateral), until earlier of:
  - (a) the repayment in full of all amounts owing to Wells Fargo in the US Receivership, or
  - (b) the written consent to such sale is provided by Wells Fargo.
30. The Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal or regulatory or administrative body, wherever located, for recognition of this Order and for assistance in carrying out the terms of this Order and the Receiver 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.
31. Wells Fargo’s security interest in the Wells Fargo Collateral is hereby deemed to rank in priority to the security interest of the Petitioner in the Wells Fargo Collateral.
32. The Petitioner shall have its costs of this motion, up to and including entry and service of this Order, as provided for by the terms of the Petitioner’s security or, if not so provided by the Petitioner’s security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor’s estate with such priority and at such time as this Court may determine.



33. Any interested party may apply to this Court to vary or amend this Order on not less than seven (7) clear business days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.
34. Endorsement of this Order by counsel appearing on this application other than the Petitioner is hereby dispensed.

THE FOLLOWING PARTIES APPROVE OF THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

APPROVED BY:

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*John Sandrelli*  
lawyer for the Petitioner

BY THE COURT

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DISTRICT REGISTRAR

**Schedule "A"**

<b>Counsel</b>	<b>Party</b>

## SCHEDULE "B"

### RECEIVER CERTIFICATE

CERTIFICATE NO. \_\_\_\_\_

AMOUNT

\$ \_\_\_\_\_

1. THIS IS TO CERTIFY that **ALVAREZ & MARSAL CANADA INC.**, the **Receiver** (the "**Receiver**") of all of the assets, undertakings and properties of SHOES.COM TECHNOLOGIES INC. acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Supreme Court of British Columbia and/or the Supreme Court of British Columbia (In Bankruptcy and Insolvency) (the "**Court**") dated the \_\_\_\_\_ day of February, 2017 (the "**Order**") made in SCBC Action No. S-171026 has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$500,000 which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily] [monthly] not in advance on the \_\_\_\_\_ day of each month after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank \_\_\_\_\_ from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of the Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at \_\_\_\_\_, British Columbia.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum under this Certificate in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_\_ day of \_\_\_\_\_ 2017.

Alvarez & Marsal Canada Inc., solely in its capacity as Receiver of the Property, and not in its personal capacity

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Per: Alvarez & Marsal Canada Inc.  
Name: Todd Martin  
Title: Senior Vice President