

CANADA

PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

SUPERIOR COURT  
(Commercial Division)

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IN THE MATTERS OF THE NOTICE OF  
INTENTION OF:

N<sup>o</sup>: 500-11- 051625-164

AMERICAN APPAREL CANADA RETAIL INC.

- and -

N<sup>o</sup>: 500-11- 051624-167

AMERICAN APPAREL CANADA WHOLESALE  
INC.

Debtors/Petitioners

- and -

KPMG INC.

Trustee/Interim Receiver

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**THIRD MOTION FOR AN EXTENSION OF TIME TO FILE A PROPOSAL  
(Section 50.4(9) of the *Bankruptcy and Insolvency Act* (the "BIA"))**

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TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT OR THE REGISTRAR, SITTING IN COMMERCIAL DIVISION IN AND FOR THE JUDICIAL DISTRICT OF MONTREAL, THE DEBTORS RESPECTFULLY SUBMIT THE FOLLOWING:

**1. INTRODUCTION**

1. American Apparel Canada Retail Inc. ("**AA Retail**") and American Apparel Canada Wholesale Inc. ("**AA Wholesale**"; collectively with AA Retail, the "**Debtors**") seek an order extending the deadline for the filing of a proposal, which will expire on March 9, 2017, until April 24, 2017 (the "**Extended Stay Period**"), for the reasons more fully explained below.
2. The initial deadline to file a proposal was set to expire on December 9, 2016 and was extended to January 23, 2017 by order of this Court granted on December 9, 2016, and subsequently extended to March 9, 2017 by order of this Court granted on January 23, 2017.

## 2. FACTUAL BACKGROUND

3. The Debtors are the wholly-owned Canadian affiliates of American Apparel LLC (“**AA Parent**”), and together carried out the retail and wholesale clothing business operated in Canada under the “American Apparel” brand.
4. On or about November 8, 2016, AA Parent, American Apparel, LLC, American Apparel (USA), LLC, American Apparel Retail Inc., American Apparel Dyeing & Finishing, Inc., KCL Knitting, LLC, and Fresh Air Freight, Inc. (collectively, the “**U.S. Affiliates**”) advised the Debtors that the U.S. Affiliates would cease providing all stock and inventory to the Petitioners and cease providing all support functions, effective immediately.
5. On November 9, 2016, the Debtors filed a Notice of Intention to File a Proposal pursuant to section 50.4 of the BIA (the “**Notice**”). KPMG Inc. is the notice of intention trustee (in such capacity, the “**Trustee**”).
6. However, due to the U.S. Affiliates ceasing to provide administrative support, the Debtors are unable to complete the proposal proceedings without assistance.
7. Accordingly, on November 11, 2016, the Debtors sought and obtained an order appointing KPMG Inc. as interim receiver pursuant to section 47.1 of the BIA (KPMG Inc. in such capacity, the “**Interim Receiver**”), which order is communicated for ease of reference as **Exhibit R-1**.
8. A detailed description of the Debtors’ pre-proposal operations, finances, creditors and reliance on the U.S. Affiliates is contained in the Debtors’ Motion to Appoint the Interim Receiver dated November 10, 2016, which appears in the Court record and is communicated for ease of reference as **Exhibit R-2**.

## 3. OPERATIONS SINCE FILING OF NOI

9. A general discussion of the Debtors’ pre-filing operations appears in the *Report of the Trustee pursuant to Section 50.4(7) of the BIA and the Report of the Interim Receiver pursuant to Section 47.1(2) of the BIA* dated December 8, 2016, which appears in the Court record and is communicated for ease of reference as **Exhibit R-3**. Additionally, for the purposes of the present Motion, the following facts regarding the Debtors’ operations since the filing of the NOI are relevant.

### 3.1 Statutory Compliance

10. As described in the Debtors’ First Motion for an Extension of Time to File a Proposal dated December 6, 2016 and Second Motion for an Extension of Time to File a Proposal dated January 18, 2017 (the “**Second Motion**”), the Debtors have filed the cash flow statements and reports required by the BIA and are otherwise in compliance with Section 50.4(2) of the BIA.

### 3.2 Liquidation of Inventory

11. Since its appointment, the Interim Receiver has conducted a coordinated liquidation of inventory across Canada, with the assistance of its agent Merchant Retail Solutions ULC (an affiliate of Hilco Merchant Resources LLC) and the Debtor's existing staff.
12. Materially all inventory has now been sold.
13. The orderly liquidation has yielded approximately \$9,361,481.82 million in gross receipts for the period from November 11, 2016 through February 1, 2017 in respect of AA Retail and \$356,247 in existing receivables as at March 4, 2017 in respect of AA Wholesale, as will be set out in greater detail in the Debtors' cash-flow statement and Trustee's Third Report, to be subsequently filed in the Court record by the Trustee (the "**Trustee's Third Report**").

### 3.3 Leases

14. As discussed in the Second Motion, eight of the Debtors' 28 locations in Calgary, Toronto, Kingston, Montreal and Laval were disclaimed pursuant to notices of disclaimer delivered on December 1, 2016, with effect as of December 31, 2016.
15. Disclaimers of an additional 16 retail leases were sent to landlords by the Interim Receiver on January 5, 2017, with effect as of February 4, 2017 and a disclaimer in respect of a seventeenth lease was sent on January 10, with effect as of February 9, 2017.
16. Disclaimers of the three remaining retail leases, with respect to stores located in Vancouver, Montreal and Toronto, were sent by the Interim Receiver to landlords on January 11, 2017, with effect on February 10, 2017.
17. All retail locations are now vacated pursuant to the notices of disclaimer sent by the Interim Receiver, and the sole remaining leased premises is the Debtors' head office location in Montreal (the "**Head Office**"). Notice of disclaimer of this location was delivered on February 17, 2017, with effect on March 28, 2017.
18. The Interim Receiver has confirmed that, to date, no landlord has objected to a notice of disclaimer.
19. As discussed in the Second Motion, counsel for Cadillac Fairview notified the Interim Receiver that it disputed the quantum of occupation rent that was paid by the Interim Receiver to Cadillac Fairview in respect of a total of four leases. I am advised by counsel to the Interim Receiver that this dispute has now been settled to the satisfaction of the Interim Receiver and Cadillac Fairview.

### 3.4 Employees

20. As described in the Second Motion, notices of termination were delivered to employees to coincide with the closure of retail locations and associated disclaimers of leases.
21. The Debtors' employees were integral to the orderly liquidation of inventory, and as much notice as possible, given the Debtors' liquidation strategy, was given. In the case of most stores, notices of termination were given with at least 30 days notice.
22. The Debtors currently employ 7 people, each located in Montreal. These employees are continuing to assist in the wind-down of the Debtors' operations, and it is anticipated that their employment will be terminated prior to the end of the Extended Stay Period.

### 3.5 Liquidity Through Extended Stay Period

23. The Interim Receiver has paid all applicable occupation rent in respect of all of the Debtors' retail locations and is current on rent for the Head Office. The Debtors currently have sufficient liquidity to fund the limited remaining costs through the Extended Stay Period, as set out in further detail in the Trustee's Third Report.
24. The Debtors' operating expenses are expected to be minimal during the Extended Stay Period, as lease and employee costs have been virtually eliminated.

## 4. U.S. AFFILIATE INSOLVENCY PROCEEDINGS

25. On November 14, 2016, the U.S. Affiliates filed for protection under Chapter 11 of Title 11 of the United States Code (the "**Chapter 11 Proceedings**"), and implemented a sales process for all of their assets. The Chapter 11 Proceedings sale process culminated in a sale of the U.S. Affiliates' business to Gildan Activewear SRL ("**Gildan**"), which transaction did not include any Canadian retail stores, assets or other operations of the Debtors. The sale to Gildan was approved by the US Court on January 12, 2017 and closed on February 8, 2017.
26. As discussed in the Second Motion, the Interim Receiver had been undertaking the Canadian liquidation while preserving the most valuable retail stores in case such stores formed part of a bid in the Chapter 11 Proceedings. However, based on the scope of assets purchased by Gildan, the Interim Receiver determined that it was appropriate to proceed with the complete liquidation of all Canadian operations.

27. The closing of the sale to Gildan and resolution of claims in the Chapter 11 Proceedings is of material relevance to the Debtors and their creditors. As described in the Second Motion, AA Retail is a creditor of the U.S. Affiliates. This claim has yet to be formally assessed in the Chapter 11 Proceedings, and it is unclear at this time whether there will be sufficient funds for a distribution to be made on account of it.

**5. EXTENSION OF TIME**

28. As described in detail in the Second Motion, the Debtors' have only two secured creditors, each in respect of specific equipment, and substantially all of the Debtors' unsecured trade indebtedness is owed to the U.S. Affiliates. This unsecured trade debt is expected to be exceeded by damage claims by landlords on account of disclaimed leases.
29. The Debtors are current on their payment of sales taxes, occupation rent and salaries, and have the liquidity to fund their minimal ongoing costs through the Extended Stay Period. Moreover, the Interim Receiver, a court appointed officer, has control over the Debtors' accounts.
30. The Debtors require an extension of the stay of proceedings under the BIA to assess claims against the Debtors, which in many cases have not yet been formally made, and pursue a recovery of the Debtors' claims against the U.S. Affiliates, if any.
31. It is anticipated that the majority of claims will be from landlords and employees. Given that all leases have been disclaimed and substantially all employment terminated, these claims can now be formally asserted and determined. It is not expected that these claims will increase during the Stay Extension Period, due to the cessation of operations.
32. It is accordingly submitted that there are no creditors that will be materially prejudiced by the requested stay extension.
33. The Debtors require the additional time requested to formulate a proposal that will be acceptable to a sufficient number of creditors and that fairly and reasonably accounts for landlord damages claims (which are subject to certain restrictions pursuant to section 65.2(4) of the BIA) and reciprocal intercompany claims.
34. The Interim Receiver expects that once the claims against the Debtors have been made and assessed, the Debtors, with the assistance of the Trustee and Interim Receiver, will be in a position to make a distributing proposal to creditors.

**6. CONCLUSIONS**

35. Neither the Debtors nor the Trustee are aware of any creditor that will be materially prejudiced should the extension be granted.
36. The Debtors have acted in good faith and with due diligence.
37. The Debtors will likely be able to make a viable proposal if the extension is granted.
38. The present motion is well founded in fact and in law.

**FOR THESE REASONS, MAY IT PLEASE THE COURT TO:**

**GRANT** the present *Third Motion for an Extension of Time to File a Proposal*;

**EXTEND** until April 24, 2017 the time granted to American Apparel Canada Retail Inc. and American Apparel Canada Wholesale Inc. to file their proposal with the Official Receiver.

**THE WHOLE**, with costs to follow.

Montréal, March 6, 2017



**BLAKE, CASSELS & GRAYDON LLP**

Attorneys for the Debtors/Petitioners

American Apparel Canada Retail Inc. and American  
Apparel Canada Wholesale Inc.

**AFFIDAVIT**

I, the undersigned, BENNETT NUSSBAUM, having a place of business at 1550 rue Metcalfe, Suite 1500, Montreal, QC, H3A 1X6, solemnly declare the following:

1. I am the sole officer of the Debtors herein;
2. All the facts alleged in the *Third Motion for an Extension of Time to File a Proposal* are true.


AND I HAVE SIGNED:

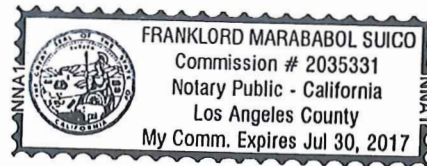
AA  
LM  
LEGAL



\_\_\_\_\_  
**BENNETT NUSSBAUM**

Solemnly affirmed before me at Los Angeles,  
this 6 th day of March, 2017

  
\_\_\_\_\_  
Notary Public



**NOTICE OF PRESENTATION**

**TO: Attached Service List**

**TAKE NOTICE** that the Debtors' *Third Motion for an Extension of Time to File a Proposal* will be presented for decision before the Superior Court, Commercial Division, sitting in and for the District of Montreal on **Wednesday, March 8, 2017 at 8:45 a.m.**, at 1 Notre-Dame Street East in Montreal, Quebec in room 16.10, or as soon thereafter as counsel may be heard.

**DO GOVERN YOURSELVES ACCORDINGLY.**

Montréal, March 6, 2017

A handwritten signature in blue ink, reading "Blake Cassels & Graydon LLP", is written over a horizontal line.

**BLAKE, CASSELS & GRAYDON LLP**

Attorneys for the Debtors/Petitioners

American Apparel Canada Retail Inc. and American  
Apparel Canada Wholesale Inc.



N°: 500-11-051625-164  
500-11-051624-167

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**SUPERIOR COURT**  
(Commercial Division)  
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-and-

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Trustee/Interim Receiver

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**THIRD MOTION FOR AN EXTENSION OF TIME  
TO FILE A PROPOSAL, AFFIDAVIT AND  
NOTICE OF PRESENTATION AND  
EXHIBITS R-1 TO R-3  
(Section 50.4(9) B.I.A.)**

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**ORIGINAL**

The logo for the law firm Blakes, featuring the word "Blakes" in a stylized, cursive script.

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