

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
COMMERCIAL LIST**

THE HONOURABLE MR. JUSTICE)
HAINEY)
)

THURSDAY, THE 24th

DAY OF JANUARY, 2019



IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF GYMBOREE, INC.

**ORDER
(APPROVING AN INTERCOMPANY CHARGE, AN ADMINISTRATION CHARGE, A
D&O CHARGE, AN AGENCY AGREEMENT AND SALES GUIDELINES, AND
GRANTING ANCILLARY RELIEF)**

THIS MOTION made by Gymboree, Inc. (“**Gymboree Canada**”) pursuant to Sections 50.6, 64.1, 64.2 and 65.13 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the motion record of Gymboree Canada, the first report of KPMG Inc. in its capacity as proposal trustee (the “**Trustee**”), and the affidavit of service of Olga A. Lenova sworn January 22, 2019, filed, and on hearing submissions of counsel for Gymboree Canada, the Trustee, and counsel for other parties in attendance;

SERVICE AND DEFINED TERMS

1. **THIS COURT ORDERS** that the time for service and filing of each of the notice of motion and motion record of Gymboree Canada is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that any capitalized term used and not defined herein, shall have the meaning ascribed to such term in the Agency Agreement or the Sales Guidelines (each as defined below).

CASH MANAGEMENT SYSTEM AND INTERCOMPANY TRANSACTIONS

3. **THIS COURT ORDERS** that, subject to the Post-Filing Intercompany Arrangements and paragraphs 22 and 23 hereof, Gymboree Canada shall be entitled to continue to use the cash management system (the “**Cash Management System**”) described in the affidavit of Jon W. Kimmins sworn January 21, 2019 (the “**Kimmins Affidavit**”) or, with the consent of the Trustee, replace it in part or in whole with another substantially similar central cash management system, and that any present or future bank participating in the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by Gymboree Canada of funds transferred, paid, collected or otherwise dealt with in the Cash Management System.

4. **THIS COURT ORDERS** that the Post-Filing Intercompany Arrangements (as such term is defined and described in the Kimmins Affidavit) be and are hereby approved and that the obligations of Gymboree Canada to satisfy its share of the overhead costs and reimburse costs paid on its behalf on a post-filing basis in accordance with, and pursuant to, the Post-Filing Intercompany Arrangements, shall be secured by a charge and security (the “**Intercompany Charge**”) in favour of the Gymboree Affiliates (as such term is defined in the Kimmins Affidavit), in all assets, rights, undertakings and properties of Gymboree Canada, of every nature and kind whatsoever, and wherever situated, regardless of whose possession it may be in and including all proceeds thereof (the “**Property**”), which charge shall have the priority set out in paragraphs 34 and following of this Order.

5. **THIS COURT ORDERS** that until a real property or immovable lease is disclaimed or resiliated in accordance with the BIA, Gymboree Canada shall pay all amounts constituting rent or payable as rent under its real property or immovable leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease, but for greater certainty, excluding accelerated rent or penalties, fees and other charges arising out of the insolvency of Gymboree Canada or the making of this Order) or as otherwise may be negotiated between Gymboree Canada and the particular landlord from time to time, for the period commencing from and including the date of this Order, monthly payments on the first day of each month, or the immediately following business day if that day is

not a business day, in advance (but not in arrears), up to and including the effective date of the disclaimer or resiliation.

AGENCY AGREEMENT AND SALE

6. **THIS COURT ORDERS** that (i) the agency agreement (the “**Agency Agreement**”) entered into as of January 17, 2019 by and among Gymboree Group, Inc. (“**Gymboree US**”) and Gymboree Canada, each on behalf of the Merchant, and GA Retail, Inc., Tiger Capital Group, LLC, Gordon Brothers Retail Partners, LLC, and Hilco Merchant Resources, LLC (collectively, and including their respective Canadian affiliate assignees pursuant to the Agency Agreement, the “**Agent**”) with respect to, amongst other things, the liquidation sale of the Merchandise, Additional Agent Merchandise and Owned FF&E of Gymboree Canada (the “**Sale**”), (ii) the execution of the Agency Agreement by Gymboree Canada, (iii) the transactions contemplated thereunder, and (iv) the sales guidelines attached hereto as **Schedule “A”** (the “**Sales Guidelines**”), are hereby approved, authorized, and ratified with such minor amendments to the Agency Agreement as Gymboree US, Gymboree Canada and the Agent may agree to in writing.

7. **THIS COURT ORDERS** that, subject to the provisions of this Order and the Sales Guidelines, Gymboree Canada is hereby authorized to take any and all actions, including, without limitation, to execute and deliver such additional documents, as may be necessary or desirable to implement the Agency Agreement and the transactions contemplated thereunder.

8. **THIS COURT ORDERS** that, upon payment of the Initial Guaranty Payments and delivery of the Canadian Letter of Credit, the Agent is authorized to conduct the Sale at Gymboree Canada’s retail stores (collectively, the “**Stores**”) in accordance with this Order, the Agency Agreement and the Sales Guidelines, and to advertise and promote the Sale in accordance with the Sales Guidelines.

9. **THIS COURT ORDERS** that if there is a conflict between this Order, the Agency Agreement and the Sales Guidelines, the order of priority to resolve such conflict is as follows:

- (a) first, this Order;
- (b) second, the Sales Guidelines; and
- (c) third, the Agency Agreement.

10. **THIS COURT ORDERS** that the Agent is hereby authorized to market and sell the Merchandise, Additional Agent Merchandise and Owned FF&E of Gymboree Canada on a “final sale” and “as is” basis and in accordance with the Sales Guidelines, free and clear of (i) all security, hypothecs, liens, claims, encumbrances, security interests, mortgages, charges, trusts, deemed trusts, executions, levies, financial, monetary or other claims, whether or not such claims have attached or been registered, perfected or filed and whether secured, unsecured, quantified or unquantified, contingent or otherwise, whensoever and howsoever arising, and whether such claims arose or came into existence prior to or following the date of this Order (in each case, whether contractual, statutory, arising by operation of law, in equity or otherwise) (all of the foregoing, collectively, “**Claims**”), including, without limitation, the Administration Charge (as defined below), the D&O Charge (as defined below), the Intercompany Charge, the Agent’s Charge, and any other charges hereafter granted by the Court in these proceedings (collectively, the “**Court-Ordered Charges**”), and (ii) all Claims, charges, security interests or liens evidenced by registration pursuant to the *Personal Property Security Act* (Ontario) or any other personal or movable property registration system (all such Claims, charges (including the Court-Ordered Charges), security interests and liens collectively referred to herein as “**Encumbrances**”), which Encumbrances will attach instead to the Guaranteed Amount and any other amounts, in each case, received or to be received by, or on behalf of, Gymboree Canada under the Agency Agreement, in the same order and priority as they existed on the Sale Commencement Date.

11. **THIS COURT ORDERS** that subject to the terms of this Order, the Sales Guidelines and the Agency Agreement, the Agent shall have the right to enter and use the Stores and all related store services, facilities, furniture, trade fixtures and equipment, including the FF&E, located at the Stores, and other assets of Gymboree Canada as designated under the Agency Agreement, for the purpose of conducting the Sale, and for such purposes, the Agent shall be entitled to the benefit of the stay of proceedings in place in the present proceedings, as such stay of proceedings may be extended by further Order of the Court.

12. **THIS COURT ORDERS** that, until (i) the applicable premises vacate date for each Store (which shall not be later than April 30, 2019, the “**Applicable Sale Termination Date**”), notice of which shall be provided by Gymboree Canada to the applicable Landlord, or (ii) such earlier date as a lease is disclaimed in accordance with the BIA and such disclaimer becomes

effective, the Agent shall have access to the Stores in accordance with the applicable Leases and the Sales Guidelines on the basis that the Agent is an agent of Gymboree Canada and Gymboree Canada has granted the right of access to the applicable Store to the Agent. To the extent that the terms of the applicable Leases are in conflict with any term of this Order or the Sales Guidelines, the terms of this Order and the Sales Guidelines shall govern.

13. **THIS COURT ORDERS** that except as provided for in this Order, any further Order of the Court and the Sales Guidelines, nothing in this Order shall amend or vary, or be deemed to amend or vary the terms of the Leases. Nothing contained in this Order or the Sales Guidelines shall be construed to create or impose upon Gymboree Canada or the Agent any additional restrictions not contained in the applicable Lease.

14. **THIS COURT ORDERS** that until the Sale Termination Date, the Agent shall have the right to use, without interference by any intellectual property licensor, Gymboree Canada's trade names, trademarks and logos, as well as all licenses and rights granted to Gymboree Canada to use the trade names, trademarks, and logos of third parties, relating to and used in connection with the operation of the Stores solely for the purpose of advertising and conducting the Sale of the Merchandise, Additional Agent Merchandise and Owned FF&E in accordance with the terms of the Agency Agreement, the Sales Guidelines and this Order.

15. **THIS COURT ORDERS** that upon delivery of a Trustee's certificate to the Agent, on or after the Sale Termination Date, substantially in the form attached as **Schedule "B"** hereto, (the "**Trustee's Certificate**"), all of Gymboree Canada's right, title and interest in and to any Remaining Merchandise shall vest absolutely in the Agent, free and clear of and from any and all Encumbrances, and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to such Remaining Merchandise shall be expunged and discharged as against such Remaining Merchandise upon the delivery of the Trustee's Certificate to the Agent, and attach instead to the Guaranteed Amount and any other amounts, in each case, received or to be received by or on behalf of Gymboree Canada under the Agency Agreement, in the same order and priority as they existed on the Sale Commencement Date; provided, however, that nothing herein shall discharge the obligations of the Agent pursuant to the Agency Agreement, or the rights or claims of Gymboree Canada in respect thereof, including without limitation, the

obligations of the Agent to account for and remit the proceeds of sale of such Remaining Merchandise, subject to the terms of the Agency Agreement.

16. **THIS COURT ORDERS AND DIRECTS** the Trustee to file with the Court a copy of the Trustee's Certificate forthwith after delivery thereof to the Agent.

AGENT LIABILITY

17. **THIS COURT ORDERS** that the Agent shall act solely as an agent to Gymboree Canada and that it shall not be liable for any claims against Gymboree Canada other than as expressly provided in the Agency Agreement (including the Agent's indemnity obligations thereunder) or the Sales Guidelines and, for greater certainty:

- (a) the Agent shall not be deemed to be an owner, or in possession, care, control or management of the Stores, of the assets located therein or associated therewith or of Gymboree Canada's employees located at the Stores or any other property of Gymboree Canada;
- (b) the Agent shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payer within the meaning of any legislation governing employment or labour standards or pension benefits or health and safety or other statute, regulation or rule of law for any purpose whatsoever, and shall not incur any successor liabilities whatsoever; and
- (c) Gymboree Canada shall bear all responsibility for any liability whatsoever (including without limitation losses, costs, damages, fines or awards) relating to claims of customers, employees and any other persons arising from events in connection with the Sale and occurring at the Stores during the Sale Term, except to the extent such claims are the result of events or circumstances caused or contributed to by the gross negligence or wilful misconduct of the Agent, its employees, agents or independent contractors (other than Gymboree Canada's employees, agents or independent contractors).

18. **THIS COURT ORDERS** that to the extent any Landlord may have a claim against Gymboree Canada arising solely out of the conduct of the Agent in conducting the Sale for

which Gymboree Canada has claims against the Agent under the Agency Agreement, Gymboree Canada shall be deemed to have assigned such claims free and clear of all Encumbrances to the applicable Landlord (the “**Assigned Landlord Rights**”) provided that each such Landlord shall only be permitted to advance each such claims against the Agent if written notice, including the reasonable details of such claims, is provided by such Landlord to the Agent, Gymboree Canada and the Trustee during the period from the Sale Commencement Date to the date that is thirty (30) days following the Applicable Sale Termination Date, provided however that the Landlords shall be provided with access to the Stores to inspect the Stores within fifteen (15) days following the Applicable Sale Termination Date.

AGENT AN UNAFFECTED CREDITOR

19. **THIS COURT ORDERS** that the Agency Agreement shall not be repudiated, resiliated or disclaimed by Gymboree Canada, nor shall the claims of the Agent pursuant to the Agency Agreement and under the Agent’s Charge (as defined below) be compromised or arranged pursuant to a Proposal, or a plan pursuant to the *Companies’ Creditors Arrangement Act* (the “**CCAA**”), and, for greater certainty, that the Agent shall be treated as an unaffected creditor in these proceedings and under any Proposal, or plan pursuant to the CCAA.

20. **THIS COURT ORDERS** that Gymboree Canada is authorized and directed to remit, in accordance with the Agency Agreement, all amounts that become due to the Agent thereunder.

21. **THIS COURT ORDERS** that no Encumbrances shall attach to any amounts payable or to be credited or reimbursed to, or retained by, the Agent pursuant to the Agency Agreement and, at all times, the Agent will retain such amounts, free and clear of all Encumbrances, notwithstanding any enforcement or other process, all in accordance with the Agency Agreement.

DESIGNATED DEPOSIT ACCOUNTS

22. **THIS COURT ORDERS** that no Person shall take any action, including any collection or enforcement steps, with respect to amounts deposited into the Designated Deposit Accounts pursuant to the Agency Agreement, including any collection or enforcement steps in relation to

any Proceeds or FF&E Proceeds, that are payable to the Agent or in relation to which the Agent has a right of reimbursement or payment under the Agency Agreement.

23. **THIS COURT ORDERS** that amounts deposited in the Designated Deposit Accounts by or on behalf of the Agent or Gymboree Canada pursuant to the Agency Agreement, including Proceeds and FF&E Proceeds, shall be and be deemed to be held in trust for Gymboree Canada and the Agent, as the case may be, and, for clarity, no person shall have any claim, ownership interest or other entitlement in or against those amounts held in trust for the Agent, including, without limitation, by reason of any claims, disputes, rights of offset, set-off, or claims for contribution or indemnity that it may have against or relating to Gymboree Canada or any third party.

AGENT'S CHARGE

24. **THIS COURT ORDERS** that subject to the receipt of the Initial Guaranty Payments and delivery of the Canadian Letter of Credit, the Agent be and is hereby granted a charge (the "**Agent's Charge**") on the Agent Collateral (and, for greater certainty, the Agent's Charge shall not extend to other Property of Gymboree Canada) as security for all of the obligations of Gymboree Canada to the Agent under the Agency Agreement, including, without limitation, all amounts owing or payable to the Agent from time to time under or in connection with the Agency Agreement, which charge shall rank in priority to all Encumbrances.

25. **THIS COURT ORDERS** that the filing, registration, recording or perfection of the Agent's Charge shall not be required, and the Agent's Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered or perfected prior or subsequent to the Agent's Charge coming into existence, notwithstanding any failure to file, register or perfect any such Agent's Charge. Absent the Agent's written consent or further Order of this Court (on notice to the Agent), Gymboree Canada shall not grant or permit to exist any Encumbrances over any Agent Collateral that rank in priority to, or *pari passu* with the Agent's Charge.

26. **THIS COURT ORDERS** that the Agent's Charge shall constitute a mortgage, hypothec, security interest, assignment by way of security and charge over the Agent Collateral, and shall rank in priority to all other Encumbrances of, or in favour of, any Person.

27. **THIS COURT ORDERS** that notwithstanding:

- (a) the pendency of these proceedings, including any bankruptcy that may result from these proceedings or any proceedings that may be commenced under the CCAA;
- (b) any application for a bankruptcy order pursuant to the BIA or any bankruptcy order made pursuant to such an application;
- (c) the filing of any assignment for the general benefit of creditors made pursuant to the BIA;
- (d) the provisions of any federal or provincial statute; or
- (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of the Encumbrances contained in any existing loan documents, lease, sublease, offer to lease or other agreement to which Gymboree Canada is a party;

(i) the Agency Agreement and the transactions and actions provided for and contemplated therein, including without limitation, the payment of amounts due to the Agent, (ii) the Assigned Landlord Rights, (iii) the Agent's Charge, and (iv) any agreement that binds Gymboree Canada to clean up or repair any of the leased premises or any such obligation contained in this Order or the Sale Guidelines, shall be binding on Gymboree Canada and any trustee in bankruptcy that may be appointed in respect of Gymboree Canada (in the case of (iv) in such capacity and not in its personal capacity) and shall not be void or voidable by any person, including any creditor of Gymboree Canada, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable or reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

28. **THIS COURT ORDERS** that Gymboree Canada is authorized and permitted to transfer to the Agent personal information in Gymboree Canada's custody and control solely for the purposes of assisting with and conducting the Sale and only to the extent necessary for such

purposes and the Agent is hereby authorized to make use of such personal information, as if it were Gymboree Canada, subject to and in accordance with the Agency Agreement.

ADMINISTRATION CHARGE

29. **THIS COURT ORDERS** that the Trustee, Osler, Hoskin & Harcourt LLP as counsel to the Trustee, and Norton Rose Fulbright Canada LLP as counsel to Gymboree Canada, are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed the aggregate amount of \$750,000 as security for their professional fees and disbursements, at the standard rates and charges, incurred both before and after the date of this Order. The Administration Charge shall have the priority set out in paragraphs 34 and following of this Order.

30. **THIS COURT ORDERS** that the Trustee, counsel to the Trustee, and counsel to Gymboree Canada, shall be paid their reasonable fees and disbursements (including any pre-filing fees and disbursements), in each case at their standard rates and charges, by Gymboree Canada. Gymboree Canada is hereby authorized and directed to pay the accounts of the Trustee, counsel to the Trustee, and counsel to Gymboree Canada, on a weekly basis or on such other basis as such persons may agree.

DIRECTOR AND OFFICER INDEMNIFICATION AND CHARGE

31. **THIS COURT ORDERS** that Gymboree Canada shall indemnify all of its directors and officers in office as at the commencement of these proceedings or thereafter appointed (collectively, the "**Directors and Officers**") against obligations and liabilities that they may incur as directors or officers of Gymboree Canada after the commencement of these proceedings, except to the extent that the obligation or liability was incurred as a result of any such Director's or Officer's gross negligence or willful misconduct.

32. **THIS COURT ORDERS** that the Directors and Officers are hereby granted a charge (the "**D&O Charge**", and collectively with the Administration Charge and the Intercompany Charge, the "**NOI Charges**") on the Property, which charge shall not exceed the aggregate amount of \$1,130,000, as security for the indemnity provided in paragraph 31 of this Order. The D&O Charge shall have the priority set out in paragraphs 34 and following of this Order.

33. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary:

- (a) no insurer shall be entitled to be subrogated to or claim the benefit of the D&O Charge; and
- (b) the Directors and Officers shall only be entitled to the benefit of the D&O Charge to the extent that they do not have coverage under any applicable insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 31 of this Order.

PRIORITY OF NOI CHARGES

34. **THIS COURT ORDERS** that each of the NOI Charges shall constitute a charge on the Property and that, subject to paragraph 24 with respect to the Agent's Charge on the Agent Collateral, such Charges shall rank in priority to all other Encumbrances in favour of any person.

35. **THIS COURT ORDERS** that the priorities of the NOI Charges, as among them, on Property that is not the Agent's Collateral shall be as follows:

- (a) first, the Administration Charge;
- (b) second, the D&O Charge; and
- (c) third, the Intercompany Charge.

36. **THIS COURT ORDERS** that the priorities of the NOI Charges, and the Agent's Charge, on the Agent Collateral, as among them, shall be as follows:

- (a) first, the Agent's Charge;
- (b) second, the Administration Charge;
- (c) third, the D&O Charge; and
- (d) fourth, the Intercompany Charge.

37. **THIS COURT ORDERS** that the filing, registration or perfection of the NOI Charges shall not be required, and that the NOI Charges shall be valid and enforceable for all purposes,

including as against any right, title or interest filed, registered, recorded or perfected subsequent to the NOI Charges coming into existence.

38. **THIS COURT ORDERS** that, except for the Agent's Charge on the Agent Collateral, or as may be approved or ordered by this Court, Gymboree Canada shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, the NOI Charges, unless Gymboree Canada also obtains the prior written consent of the Trustee and the beneficiaries of the NOI Charges.

39. **THIS COURT ORDERS** that notwithstanding:

- (a) the pendency of these proceedings, including any bankruptcy that may result from these proceedings or any proceedings that may be commenced under the CCAA;
- (b) any application for a bankruptcy order pursuant to the BIA or any bankruptcy order made pursuant to such an application;
- (c) the filing of any assignment for the general benefit of creditors made pursuant to the BIA;
- (d) the provisions of any federal or provincial statute; or
- (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of the Encumbrances contained in any existing loan documents, lease, sublease, offer to lease or other agreement to which Gymboree Canada is a party;

the NOI Charges shall be binding on Gymboree Canada and any trustee in bankruptcy that may be appointed in respect of Gymboree Canada, and shall not be void or voidable by any person, including any creditor of Gymboree Canada, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable or reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

40. **THIS COURT ORDERS** that any of the NOI Charges created by this Order over leases of real property in Canada shall only be a charge in Gymboree Canada's interest in such real property leases.

GENERAL

41. **THIS COURT ORDERS** that no person shall commence, proceed with or enforce any proceedings against the Trustee or any of the Directors and Officers, employees, legal counsel or financial advisors of Gymboree Canada or of the Trustee in relation to the business of Gymboree Canada or the Property, without first obtaining leave of this Court, upon five (5) business days' written notice to Gymboree Canada's counsel, the Trustee and to all those referred to in this paragraph whom it is proposed be named in such proceedings.

42. **THIS COURT ORDERS** that this Order and its effects shall survive the filing by Gymboree Canada of a proposal pursuant to the terms of the BIA, the issuance of an initial order in regard of Gymboree Canada pursuant to the terms of the CCAA or the bankruptcy of Gymboree Canada, unless this Court orders otherwise.

43. **THIS COURT ORDERS** that, except as otherwise specified herein or in the BIA, Gymboree Canada and the Trustee are at liberty to serve any notice, proof of claim form, proxy, circular or other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to persons or other appropriate parties at their respective given addresses as last shown on the records of Gymboree Canada and that any such service shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three (3) business days after mailing if by ordinary mail.

44. **THIS COURT ORDERS** that Gymboree Canada and any party to these proceedings may serve any court materials in these proceedings on all represented parties electronically, by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that Gymboree Canada shall deliver "hard copies" of such materials upon request to any party as soon as practicable thereafter.

45. **THIS COURT ORDERS** that, except as otherwise specified herein or in the BIA, or ordered by this Court, no document, order or other material need be served on any person in respect of these proceedings, unless such person has served a response on Gymboree Canada's counsel and the Trustee and has filed such response with this Court, or appears on the service list prepared by Gymboree Canada, the Trustee or their counsel, save and except when an order is sought against a person not previously involved in these proceedings.

46. **THIS COURT ORDERS** that Gymboree Canada or the Trustee may, from time to time, apply to this Court for directions concerning the exercise of their respective powers, duties and rights hereunder or in respect of the proper execution of this Order on notice only to each other.

47. **THIS COURT ORDERS** that Gymboree Canada and the Trustee shall be entitled to seek leave to vary this Order upon such terms and such notice as this Court deems just.

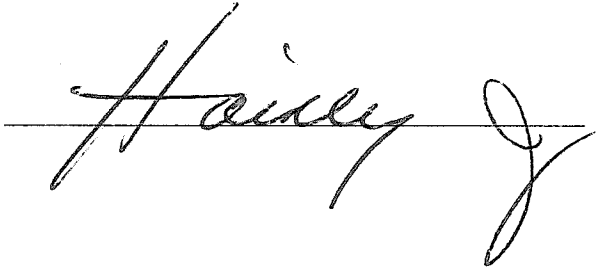
48. **THIS COURT ORDERS** that any interested Person may apply to this Court to vary or rescind this Order or seek other relief upon five (5) business days' notice to Gymboree Canada, the Trustee, and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

49. **THIS COURT ORDERS** that the Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.

50. **THIS COURT REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States of America, including the United States Bankruptcy Court for the Eastern District of Virginia, to give effect to this Order and to assist Gymboree Canada, the Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to Gymboree Canada, and the Trustee as an officer of this Court, as may be necessary or desirable to give effect to the Order, or to assist Gymboree Canada, the Trustee and their respective agents in carrying out this Order.

51. **THIS COURT ORDERS** that each of Gymboree Canada and the Trustee be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulator or

administrative body, wherever located, for the recognition of the Order and for assistance in carrying out the terms of this Order, and that the Trustee 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 of Canada.

A handwritten signature in cursive script, reading "Hayley J", is written over a horizontal line. The signature is positioned to the right of the center of the page.

SCHEDULE "A"
SALES GUIDELINES


The following procedures shall apply to the Sale to be conducted at the Stores of Gymboree, Inc. ("**Gymboree Canada**"). All terms not herein defined shall have the meaning set forth in the agency agreement (the "**Agency Agreement**") entered into as of January 17, 2019 by and among Gymboree Group, Inc. and Gymboree Canada, each on behalf of the Merchant, and GA Retail, Inc., Tiger Capital Group, LLC, Gordon Brothers Retail Partners, LLC, and Hilco Merchant Resources, LLC (collectively, and including their respective Canadian affiliate assignees pursuant to the Agency Agreement, the "**Agent**") with respect to, amongst other things, the liquidation sale of the Merchandise, Additional Agent Merchandise and Owned FF&E of Gymboree Canada (the "**Sale**").

1. Except as otherwise expressly set out herein, and subject to: (i) the Order of the Court made January 23, 2019 or any further Order of the Court; or (ii) any subsequent written agreement between Gymboree Canada and the applicable landlord(s) (individually, a "**Landlord**" and, collectively, the "**Landlords**") and approved by the Agent, or (iii) as otherwise set forth herein, the Sale shall be conducted in accordance with the terms of the applicable leases or other occupancy agreements to which the affected landlords are privy for each of the affected Stores (individually, a "**Lease**" and, collectively, the "**Leases**"). However, nothing contained herein shall be construed to create or impose upon Gymboree Canada or the Agent any additional restrictions not contained in the applicable Lease.
2. The Sale shall be conducted so that each of the Stores remain open during their normal hours of operation provided for in the respective Leases for the Stores until the Applicable Sale Termination Date of each Store. The Sale at the Stores shall end by no later than April 30, 2019. Rent payable under the respective Leases shall be paid as provided in the Order.
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws, unless otherwise ordered by the Court.
4. All display and hanging signs used by the Agent in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Notwithstanding anything to the contrary contained in the Leases, the Agent may advertise the Sale at the Stores as a "everything on sale", "everything must go", "store closing" or similar themed sale at the Stores (provided however that no signs shall advertise the Sale as a "bankruptcy", a "going out of business" or a "liquidation" sale, it being understood that the French equivalent of "clearance" is "liquidation" and is permitted to be used). Forthwith upon request, the Agent shall provide the proposed signage packages along with the proposed dimensions and number of signs by e-mail or facsimile to the applicable Landlords or to their counsel of record and the applicable Landlord shall notify the Agent of any requirement for such signage to otherwise comply with the terms of the Lease and/or the Sales Guidelines. Where the provisions of the Lease conflict with these Sales Guidelines, these Sales Guidelines shall govern. The Agent shall not use neon or day-glow signs or handwritten signage (save that handwritten

"you pay" or "topper" signs may be used). Furthermore, with respect to enclosed mall Store locations without a separate entrance from the exterior of the enclosed mall, no exterior signs or signs in common areas of a mall shall be used unless explicitly permitted by the applicable Lease. In addition, the Agent shall be permitted to utilize exterior banners or signs at stand alone or strip mall Stores or enclosed mall Stores with a separate entrance from the exterior of the enclosed mall, provided, however, that (i) no signage in any other common areas of a mall shall be used, and (ii) where such banners are not explicitly permitted by the applicable Lease and the Landlord requests in writing that the banners are not to be used, no banners shall be used absent further Order of the Court, which may be sought on an expedited basis on notice to the Service List. Any banners used shall be located or hung so as to make clear that the Sale is being conducted only at the affected Store and shall not be wider than the premises occupied by the affected Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the façade of the premises of a Store as a result of the hanging or removal of the exterior banner, such damage shall be professionally repaired at the expense of the Agent. If a Landlord is concerned with "store closing" signs being placed in the front window of a Store or with the number or size of the signs in the front window, the Agent and the Landlord will discuss the Landlord's concerns and work to resolve the dispute.

5. The Agent shall be permitted to utilize sign walkers and street signage; provided, however, such sign walkers and street signage shall not be located on the shopping centre or mall premises.
6. Conspicuous signs shall be posted in the cash register areas of each Store to the effect that all sales are "final".
7. The Agent shall not distribute handbills, leaflets or other written materials to customers outside of any of the Stores on any Landlord's property, unless explicitly permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Store is located. Otherwise, the Agent may solicit customers in the Stores themselves. The Agent shall not use any giant balloons, flashing lights or amplified sound to advertise the Sale or solicit customers, except as explicitly permitted under the applicable Lease, or agreed to by the Landlord, and no advertising trucks shall be used on a Landlord property or mall ring roads, except as explicitly permitted under the applicable Lease, or agreed to by the Landlord.
8. At the conclusion of the Sale in each Store, Gymboree Canada and the Agent shall arrange that the premises for each Store are in "broom-swept" and clean condition, and shall arrange that the Stores are in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any Landlord of a Store shall be removed or sold during the Sale. No permanent fixtures (other than FF&E which for clarity is owned by Gymboree Canada) may be removed without the Landlord's written consent unless otherwise provided by the applicable Lease. Any fixtures or personal property left in a Store after the Applicable Sale Termination Date in respect of which the applicable Lease has been disclaimed by Gymboree Canada shall be deemed abandoned, with the applicable Landlord having the right to dispose of the same as the Landlord chooses, without any liability whatsoever on the part of the Landlord. Nothing in this paragraph shall derogate from or expand upon the Agent's obligations under the Agency Agreement.

9. Subject to the terms of paragraph 8 above and the Agency Agreement, the Agent may sell FF&E owned by Gymboree Canada which is located in the Stores during the Sale. For greater certainty, FF&E does not include any portion of the Stores' HVAC, sprinkler, fire suppression or fire alarm systems. Gymboree Canada and the Agent may advertise the sale of FF&E consistent with these Sales Guidelines on the understanding that any Landlord may require that such signs be placed in discreet locations within the Stores acceptable to the Landlord, acting reasonably. Additionally, the purchasers of any FF&E sold during the Sale shall only be permitted to remove the FF&E either through the back shipping areas designated by the Landlord, or through other areas after regular store business hours, or through the front door of the Store during store business hours if the FF&E can fit in a shopping bag, with Landlord's supervision as required by the Landlord. The Agent shall repair any damage to the Stores resulting from the removal of any FF&E by the Agent or by third party purchasers of FF&E from the Agent.
10. The Agent shall not make any alterations to interior or exterior Store lighting, except as authorized pursuant to the applicable Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these Sale Guidelines, shall not constitute an alteration to a Store.
11. Gymboree Canada and the Agent intend to sell and remove FF&E from the Stores. The Agent shall make commercially reasonable efforts to arrange with each Landlord represented by counsel on the service list and with any other Landlord that so requests, a walk through with the Agent to identify the FF&E subject to the sale. The relevant Landlord shall be entitled to have a representative present in the Store to observe such removal. If the Landlord disputes the Agent's entitlement to sell or remove any FF&E under the provisions of the Lease, such FF&E shall remain on the premises and shall be dealt with as agreed between Gymboree Canada, the Agent and such Landlord, or by further Order of the Court upon application by Gymboree Canada on at least two (2) days' notice to such Landlord. If Gymboree Canada has disclaimed or resiliated the Lease governing such Store in accordance with the BIA, it shall not be required to pay rent under such Lease pending resolution of any such dispute (other than rent payable for the notice period provided for in the BIA), and the disclaimer or resiliation of the Lease shall be without prejudice to Gymboree Canada's or the Agent's claim to the FF&E in dispute.
12. If a notice of disclaimer or resiliation is delivered pursuant to the BIA to a Landlord while the Sale is ongoing and the Store in question has not yet been vacated, then:
 - (a) during the notice period prior to the effective time of the disclaimer or resiliation, the Landlord may show the affected leased premises to prospective tenants during normal business hours, on giving Gymboree Canada and the Agent 24 hours' prior written notice; and
 - (b) at the effective time of the disclaimer or resiliation, the relevant Landlord shall be entitled to take possession of any such Store without waiver of or prejudice to any claims or rights such Landlord may have against Gymboree Canada in respect of such Lease or Store, provided that nothing herein shall relieve such Landlord of its obligation to mitigate any damages claimed in connection therewith.

13. The Agent and its agents and representatives shall have the same access rights to the Stores as Gymboree Canada under the terms of the applicable Lease, and the Landlords shall have the rights of access to the Stores during the Sale provided for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings).
14. Gymboree Canada and the Agent shall not conduct any auctions of Merchandise or FF&E at any of the Stores.
15. The Agent shall be entitled, as agent for Gymboree Canada pursuant to and in accordance with the Agency Agreement to include in the Sale the Additional Agent Merchandise to the extent such is on-order goods. *From the Gymboree Group's existing vendors.* The Agent, Gymboree Canada and counsel to the Landlords of record shall, as soon as practicable, discuss the intended overall aggregate amount and per store amount and to the extent any disagreement arises, such parties can return to Court for directions. The approval of the right of the Agent, as agent for Gymboree Canada pursuant to and in accordance with the Agency Agreement to include in the Sale the Additional Agent Merchandise to the extent such is not on-order goods is subject to further Court order and all parties reserve their rights in respect of such issue including without limitation any right of the Agent against Gymboree Canada. 
16. The Agent shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact person for the Agent shall be Jane Dietrich at Cassels Brock & Blackwell LLP who may be reached by phone at 416-860-5223 or email at jdietrich@casselsbrock.com. If the parties are unable to resolve the dispute between themselves, the Landlord or Gymboree Canada shall have the right to schedule a "status hearing" before the Court on no less than two (2) days written notice to the other party or parties, during which time the Agent shall cease all activity in dispute other than activity expressly permitted herein, pending the determination of the matter by the Court; provided, however, subject to paragraph 4 of these Sales Guidelines, that if a banner has been hung in accordance with these Sales Guidelines and is thereafter the subject of a dispute, the Agent shall not be required to take any such banner down pending determination of the dispute.
17. Nothing herein or in the Agency Agreement is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or to grant to the Landlord any greater rights than already exist under the terms of any applicable Lease.
18. These Sales Guidelines may be amended by written agreement between Gymboree Canada, the Agent and any applicable Landlord (provided that such amended Sales Guidelines shall not affect or bind any other Landlord not privy thereto without further Order of the Court approving the amended Sales Guidelines).

SCHEDULE "B"
Trustee's Certificate

Court File No.: 31-2464088
Estate File No.: 31-2464088

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
COMMERCIAL LIST

IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF GYMBOREE, INC.

TRUSTEE'S CERTIFICATE

RECITALS

All undefined terms in this Trustee's Certificate have the meanings ascribed to them in the Agency Agreement entered into as of January 17, 2019 by and among Gymboree Group, Inc. (the "**Merchant**") and Gymboree, Inc. ("**Gymboree Canada**"), each on behalf of the Merchant, and GA Retail, Inc., Tiger Capital Group, LLC, Gordon Brothers Retail Partners, LLC, and Hilco Merchant Resources, LLC (collectively, and including their respective Canadian affiliate assignees pursuant to the Agency Agreement, the "**Agent**"), a copy of which is attached as **Exhibit "D"** to the Affidavit of Jon W. Kimmins sworn January 21, 2019.

Pursuant to an Order of the Court dated January 23, 2019, the Court ordered that all of Gymboree Canada's right, title and interest in and to any the Remaining Merchandise shall vest absolutely in the Agent, free and clear of and from any and all Encumbrances, upon the delivery by the Trustee to the Agent of a certificate certifying that (i) the Sale has ended, and (ii) the Guaranteed Amount, the Expenses, any Merchant Sharing Amount, the Additional Guaranteed Amount, and all other amounts due to the Merchant and Gymboree Canada under the Agency Agreement have been paid in full to the Merchant and Gymboree Canada.

KPMG INC., in its capacity as proposal trustee in the proposal proceedings of Gymboree Canada certifies that it has been informed by the Agent, the Merchant and Gymboree Canada that:

- 1. the Sale has ended;
- 2. the Guaranteed Amount, the Expenses, any Merchant Sharing Amount, the Additional Guaranteed Amount, and all other amounts due to the Merchant and Gymboree Canada under the Agency Agreement have been paid in full to the Merchant and Gymboree Canada.

DATED as of this _____ day of _____, 2019.

KPMG INC.,
in its capacity as proposal trustee of Gymboree, Inc., and not in its personal capacity

Per: _____
Name:
Title:

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF GYMBOREE, INC.

Court File No.: 31-2464088
Estate File No.: 31-2464088

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**ORDER
(APPROVING AN INTERCOMPANY CHARGE,
AN ADMINISTRATION CHARGE, A D&O
CHARGE, AN AGENCY AGREEMENT AND
SALES GUIDELINES, AND GRANTING
ANCILLARY RELIEF)**

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