Court File No. CV-20-634980-00CL

***ONTARIO***
**SUPERIOR COURT OF JUSTICE**
**(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **SFP CANADA LTD.**

APPLICANT

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# MOTION RECORD OF THE APPLICANT

**(Motion for Approval of Allocation of KERP Costs and Stay Extension)**

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March 26, 2020

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**TO: THE SERVICE LIST**

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APPLICANT

**NOTICE OF MOTION**

**(Motion for Approval of Allocation of KERP Costs and Stay Extension)**

The Applicant, SFP Canada Ltd. ("**SFP Canada**"), will make a motion before the Honourable Justice Hainey of the Ontario Superior Court of Justice (Commercial List).

**PROPOSED METHOD OF HEARING**: The motion is to be heard in writing.

**THE MOTION IS FOR:**

1. An order substantially in the form included in Tab 3 of the Motion Record, among other things,

   (a) approving the allocation of an appropriate share of the costs of the KERP (defined below) to SFP Canada; and

   (b) extending the Stay Period as defined in paragraph 13 of the Amended and Restated Initial Order dated January 23, 2020 until and including June 30, 2020; and

2. Such further and other relief as this Honourable Court may deem just.

**THE GROUNDS FOR THE MOTION ARE**:

***Background***

1. On January 23, 2020, SFP Canada obtained protection from its creditors under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (the "**CCAA**") pursuant to an order (the "**Initial Order**") in order to implement a responsible, controlled, and orderly wind-down of its operations and maximize realizable value for stakeholders;

2. The Initial Order, among other things, (a) appointed Richter Advisory Group Inc. as monitor (the "**Monitor**"), (b) approved the appointment of Craig M. Boucher and Michael Nowlan as Co-Chief Restructuring Officers (the "**CROs**") of SFP Canada, (c) granted an Administration Charge in favour of counsel to the Applicant, the Monitor, counsel to the Monitor, and the CROs, and (d) granted a Directors' Charge in favour of the director and officers of the Applicant;

3. On January 24, 2020, this Court granted an order (the "**Sale Approval Order**"), among other things,

(a) approving the transactions contemplated under a consulting agreement between a contractual joint venture comprised of Gordon Brothers Retail Partners, LLC and Hilco Merchant Resources, LLC, Schurman Retail Group, LLC and SFP Canada dated as of January 17, 2020 (the "**Consulting Agreement**") and related sale guidelines (the "**Sale Guidelines**"), and

(b) authorizing SFP Canada, with the assistance of the Consultant, to conduct the sale of SFP Canada's inventory and its furniture, fixtures, and equipment in accordance with the Sale Approval Order, the Consulting Agreement, and the Sale Guidelines (the "**Sale**");

4. On January 31, 2020, this Court granted the Amended and Restated Initial Order that, among other things, extended the Stay Period until March 31, 2020;

***Allocation of KERP Costs***

5. The Schurman Group has implemented a key employee retention plan (the "**KERP**") in order to retain 28 personnel (the "**Key Employees**") that were selected with the assistance of professional advisors because they had the knowledge, experience and expertise that was essential to maintaining the Schurman Group's operational stability and the success of the Sale;

6. The Key Employees provided services for the Schurman Group as a whole, including SFP Canada, which services were critical for the success of the Sale in Canada;

7. The Schurman Group has allocated a portion of the cost of the KERP to SFP Canada, which allocation reflects the historical division of shared costs between SFP Canada and the rest of the Schurman Group;

8. SFP Canada is seeking an order approving the allocation of a portion of the costs of the KERP to SFP Canada but will not make any payment in respect of the KERP until further order of the Court;

***Stay Extension***

9. The Stay Period currently ends on March 31, 2020;

10. During the most recent Stay Period, SFP Canada, in close consultation with and with the assistance of the Monitor and the CROs, has completed the Sale and vacated all of its retail locations;

11. The Applicant has been acting and continues to act in good faith and with due diligence to advance the responsible, controlled and orderly wind-down of its business;

12. Extending the Stay Period will allow SFP Canada to focus on the remaining steps for the orderly wind-down of its business, including completing the final reconciliation under the Consulting Agreement, continuing to respond to information requests from the Monitor, and to engage in all necessary communications and consultations with its stakeholders;

13. It is just and convenient and in the interests of SFP Canada and its stakeholders that the Stay Period be extended to June 30, 2020;

14. SFP Canada has sufficient liquidity to complete the orderly wind-down through to June 30, 2020;

15. The extension of the Stay Period is supported by the Monitor;

***Other Grounds***

16. It is fair and reasonable to hear this motion in writing given the ongoing COVID-19 outbreak and the suspension of the Superior Court of Justice's regular operations;

17. The provisions of the CCAA, including s. 11.02, and the inherent and equitable jurisdiction of this Honourable Court;

18. Rules 1.04, 1.05, 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended, and section 106 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

19. The Notice to the Profession, the Public and the Media Regarding Civil and Family Proceedings dated March 15, 2020; and

20. Such further and other grounds as the lawyers may advise.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Motion:

1. The Affidavit of Craig M. Boucher sworn March 26, 2020;

2. The Third Report of the Monitor, to be filed; and

3. Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

March 26, 2020

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PROCEEDING COMMENCED AT TORONTO

**NOTICE OF MOTION**
**(Motion for Approval of Allocation of KERP Costs and Stay Extension)**


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# TAB 2

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APPLICANT

# AFFIDAVIT OF CRAIG M. BOUCHER

**(Sworn March 26, 2020)**

**(Motion for Approval of Allocation of KERP Costs and Stay Extension)**

I, Craig M. Boucher, of the City of Hollywood, in the State of Florida, MAKE OATH AND SAY:

1. I am a Senior Managing Director at Mackinac Partners ("**Mackinac**"), a turnaround, restructuring and advisory firm that was retained by Schurman Fine Papers ("**SFP U.S.**") and its subsidiaries (the "**Schurman Group**") in November 2019 to act as financial advisor in connection with the restructuring initiatives of the Schurman Group. Subsequently, on January 22, 2020, the Schurman Group retained Mackinac to provide my services and the services of Michael Nowlan (also a Senior Managing Director at Mackinac) as Co-Chief Restructuring Officers (the "**CROs**") for SFP U.S. and the Applicant, SFP Canada Ltd. ("**SFP Canada**").

2. In my roles as financial advisor and CRO, I have become and am familiar with the Applicant's business, day-to-day operations, and financial affairs. As such, I have personal knowledge of the matters deposed to herein. Where I have relied on other sources for information,

I have so stated and I believe them to be true. In preparing this affidavit, I have also consulted with the Schurman Group's senior management team, and the Schurman Group's financial and legal advisors.

3. I make this affidavit in support of the motion brought by SFP Canada for an order, among other things, approving the allocation of an appropriate share of the costs of the KERP (defined below) to SFP Canada and extending the stay of proceedings to June 30, 2020.

4. Capitalized terms used herein and not otherwise defined shall have the meaning given to them in my initial affidavit sworn January 23, 2020 in these proceedings (the "**Initial Affidavit**"), a copy of which is attached hereto without exhibits as as **Exhibit** "**A**", or my affidavit sworn January 29, 2020 for the comeback hearing (the "**Comeback Affidavit**"), a copy of which is attached hereto without exhibits as **Exhibit** "**B**".

## A. Background

5. On January 23, 2020, SFP Canada applied for and obtained protection from its creditors under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (the "**CCAA**") pursuant to an initial order of the Ontario Superior Court of Justice (Commercial List) (the "**Initial Order**") in order to implement a responsible, controlled, and orderly wind-down of its operations and maximize realizable value for stakeholders.

6. Among other things, the Initial Order (i) appointed Richter Advisory Group Inc. as the monitor in these CCAA proceedings (the "**Monitor**"), (ii) approved the appointment of the CROs, and (iii) granted a stay of proceedings until January 31, 2020, or such later date as the Court may order (the "**Stay Period**").

7. On January 24, 2020, the Court granted an order (the "**Sale Approval Order**") which, among other things, approved the Consulting Agreement between Schurman Retail Group, LLC, SFP Canada and a contractual joint venture comprised of Gordon Brothers Retail Partners, LLC and Hilco Merchant Resources, LLC (collectively, the "**Original Consultant**") dated January 17, 2020 (the "**Consulting Agreement**"), along with sale guidelines, for the orderly liquidation of the Schurman Group's inventory, furniture, fixtures, and equipment (the "**Sale**").

8. Also on January 24, 2020, the Original Consultant provided notice to the Schurman Group that it had assigned its rights, benefits and obligations under the Consulting Agreement relating to the Sale in Canada to Canadian affiliates, namely Gordon Brothers Canada ULC and Merchant Retail Solutions, ULC (collectively, the "**Canadian Consultant**" and, with the Original Consultant, the "**Consultant**") effective as of January 17, 2020.

9. On January 31, 2020, the Court granted an Amended and Restated Initial Order that, among other things, extended the Stay Period until March 31, 2020.

## B. Activities during Stay Period

10. During the most recent Stay Period, SFP Canada, in close consultation and with the assistance of the Monitor and the CROs, has continued working diligently to complete the Sale and to advance the wind-down of its business as part of these CCAA proceedings.

### (a) Store Closures and Liquidation Sale

11. When it filed for CCAA protection, SFP Canada was operating 76 retail stores across Canada. SFP Canada announced the closure of sixteen stores (the "**Early Closing Stores**") shortly before it filed for CCAA protection. Between January 30, 2020 and February 12, 2020, SFP

Canada issued notices of disclaimers for all retail store leases in Canada. All SFP Canada stores closed by the end of February 2020.

12. The Sale was completed by February 29, 2020. The results of the Sale were largely in line with the Schurman Group's expectations. The Consultant's expenses were within the budget included in the Consulting Agreement.

13. SFP Canada, with the assistance of the Monitor, worked cooperatively with its landlords to resolve issues relating to the Sale as they arose, including issues relating to signage, and to facilitate the return of its leased premises to the landlords. Certain landlords raised concerns during the Sale and in advance of their stores being turned over, which issues were addressed through discussions and correspondence between SFP Canada, the Consultant, the Monitor, and the applicable landlords and their respective counsel.

14. The Schurman Group and the Consultant are still working on the final reconciliation under the Consulting Agreement, which will likely be completed soon.

**(b) Employees**

15. As described in the Comeback Affidavit, on January 28 and 29, 2020, SFP Canada sent termination letters providing working notice of termination effective February 29, 2020 to all SFP Canada employees except employees at the Early Closing Stores who had already received notice. All SFP Canada employees have now been terminated.

**(c) Miscellaneous**

16. As explained in the Initial Affidavit, on January 17, 2020, SFP Canada transferred $3 million to SFP U.S. as (i) payment for certain costs and expenses that had been paid by SFP

U.S. on behalf of SFP Canada prior to these CCAA proceedings, and (ii) prepayment of costs and expenses that were to be paid by SFP U.S. during these CCAA proceedings for the benefit of SFP Canada. In particular, as explained in the Initial Affidavit, this included amounts for the following costs and expenses:

(a) reimbursement of SFP U.S. for SFP Canada's proportionate share of certain professional fees incurred in preparation of the Chapter 11 filings and the CCAA proceedings;

(b) reimbursement of SFP U.S. for SFP Canada's proportionate share of certain prepetition costs paid by SFP U.S., including Shared Services (as defined in the Initial Affidavit) for the month of December and January, distribution centre charges, customer service charges, merchandising charges, advertising charges, and the escrow established for the Consultant;

(c) prepayment of $700,000 worth of inventory sent by SFP U.S. to SFP Canada during the Sale;

(d) prepayment of the expected costs of Shared Services, distribution centre charges, and customer service charges; and

(e) replenishment of retainers of the Consultant and professionals in connection with the CCAA proceedings.

17. The Monitor was provided a schedule quantifying these costs and subsequently requested certain backup documentation. Mackinac provided the requested backup documentation as well as additional information requested by the Monitor and has had follow-up discussions with the

Monitor to answer questions and clarify certain aspects of the information provided to the Monitor. The Monitor has indicated that it may request additional information or clarifications.

**C. U.S. Debtors' Chapter 11 Proceedings**

18. On January 23, 2020, the same day that SFP Canada filed for CCAA protection, SFP U.S. and SFP Franchise Corporation (collectively, the "**U.S. Debtors**") commenced voluntary proceedings (the "**Chapter 11 Proceedings**") under Chapter 11 of the *Bankruptcy Code* in the Bankruptcy Court for the District of Delaware (the "**U.S. Court**") in order to pursue an orderly liquidation of their retail stores in the United States.

19. The significant developments in the Chapter 11 Proceedings during the most recent Stay Period include the following:

(a) On February 14, 2020, the U.S. Court granted final orders in respect of the U.S. Debtors' "first day" motions.

(b) On February 27, 2020, the U.S. Court approved the sale of certain U.S. retail leases and furniture, fixtures and equipment to Paper Source, Inc., which sale did not include any Canadian leases or assets.

(c) On March 13, 2020, the U.S. Court approved the sublease of the U.S. Debtors' headquarters and distribution centre to Fidelitone Order Fulfillment, LLC.

20. The U.S. Debtors have filed various motions that they expect will be heard by the U.S. Court during the extended Stay Period, including (i) a motion to set deadlines and procedures for filing proofs of claims that will be heard on March 30, 2020, and (ii) a motion seeking approval of the sale of certain intellectual property assets that will be heard on April 30, 2020.

**D. Allocation of KERP Costs**

21. On February 14, 2020, the U.S. Court made an order approving a key employee retention plan (the "**KERP**"). A copy of the U.S. Court's order is attached as **Exhibit** "**C**".

22. The purpose of the KERP was to retain 28 personnel (the "**Key Employees**") who had the knowledge, experience and expertise that was essential to maintaining the Schurman Group's operational stability and the success of the Sale. In particular, the Schurman Group, with the assistance of professional advisors, selected Key Employees from the following departments to participate in the KERP:

| Department | Number of Employees |
|---|---|
| Real Estate | 1 |
| Product Management | 1 |
| Inventory Management | 2 |
| In House Printing | 3 |
| Finance | 8 |
| Information Technology | 6 |
| Human Resources | 3 |
| Product Safety | 1 |
| Store Operations | 3 |

23. The Key Employees were selected because of their unique operational and historical knowledge of the Schurman Group's businesses, and the vital role they played in the daily operations of the business and the Sale. Without a KERP, the Schurman Group faced a heightened risk that Key Employees would leave the Schurman Group to find employment elsewhere. The Schurman Group concluded that these Key Employees would be difficult and expensive, if not impossible, to replace, especially since the Schurman Group expected to cease operations by the end of March 2020. Even if the Key Employees could have been replaced, training new hires

would have been costly and time consuming, and would have distracted the Schurman Group from operating its businesses and pursuing a value-maximizing Sale.

24. The Key Employees provided services for the Schurman Group as a whole, including SFP Canada, and these services were critical for the success of the Sale in Canada. Therefore, the Schurman Group intended to allocate a portion of the cost of the KERP to SFP Canada, which amount was included in the cash flow forecasts filed as part of the initial CCAA filing.

25. The total cost of the KERP is approximately U.S. $284,000, of which 30 percent (approximately U.S. $85,200) has been allocated to SFP Canada. This allocation reflects the historical division of shared costs between the U.S. Debtors and SFP Canada.

26. SFP Canada is currently seeking an order approving this allocation and is not seeking authorization to make the payments in this motion. The U.S. Debtors will make the final payments under the KERP payments by the end of March. SFP Canada will bring a subsequent motion for an order authorizing it to pay its portion of the KERP costs to the U.S. Debtors before making the payments.

## E. Stay Extension

27. SFP Canada is seeking to extend the Stay Period up to and including June 30, 2020. This will allow SFP Canada to focus on the remaining steps of its orderly wind-down, with the assistance and oversight of the Monitor and the CROs, for the benefit of all stakeholders.

28. The final reconciliation under the Consulting Agreement is expected to be completed during the extended Stay Period. SFP Canada also anticipates that during the extended Stay Period it will commence discussions with key stakeholders to identify appropriate next steps in these

CCAA proceedings and attempt to consensually agree on a path for bringing these proceedings to a conclusion.

29. SFP Canada has confirmed, in consultation with the Monitor, that it has sufficient cash to continue its wind-down through to June 30, 2020. I understand that the Monitor will be filing a report with the Court prior to the hearing of this motion, which report will include an update of the cash position of SFP Canada.

30. I believe that SFP Canada has acted, and continues to act, in good faith and with due diligence in pursuing a controlled and orderly wind-down as part of the CCAA proceedings. I believe that the proposed extended Stay Period is in the best interests of the company and its stakeholders generally. I also understand that the Monitor supports the request to extend the Stay Period.

SWORN BEFORE ME over video teleconference this 26th day of March, 2020. The affiant was located in the City of Hollywood, in the State of Florida while the Commissioner was located in the City Toronto, in the Province of Ontario. The affidavit was commissioned remotely as a result of COVID-19.

Waleed Malik

Commissioner for taking affidavits, etc.
Waleed Malik (LSO No. 67846O)

Craig M. Boucher

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**(Motion for Approval of Allocation of KERP Costs and Stay Extension)**

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Lawyers for the Applicant

# TAB A

This is Exhibit "A" referred to in the

Affidavit of Craig M. Boucher,

sworn before me over video teleconference

this 26th day of March, 2020

Waleed Malik

..............................................................

A Commissioner for Taking Affidavits

Waleed Malik (LSO No. 67846O)

Court File No.

*ONTARIO*

**SUPERIOR COURT OF JUSTICE**

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Applicant

# AFFIDAVIT OF CRAIG M. BOUCHER

I, Craig M. Boucher, of the City of Hollywood, in the State of Florida, MAKE OATH AND SAY:

1. This affidavit is made in support of an application by SFP Canada Ltd. ("**SFP Canada**" or the "**Applicant**") for an Initial Order and related relief under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (the "**CCAA**").

2. I am a Senior Managing Director at Mackinac Partners ("**Mackinac**"), a turnaround, restructuring and advisory firm. Among other things, Mackinac has advised companies, creditors and other stakeholders in distressed situations through an in-court or out-of-court process and acted as chief restructuring officer for companies who need experienced restructuring leadership.

3. Mackinac was retained by Schurman Fine Papers ("**SFP U.S.**") on November 12, 2019 to act as financial advisor (in such capacity, the "**Financial Advisor**") in connection with the

restructuring initiatives of SFP U.S. and its subsidiaries, including SFP Canada (collectively, the "**Schurman Group**") as further described herein. I was one of the Mackinac professionals leading this engagement. Subsequently, on January 22, 2020, the Schurman Group retained Mackinac to provide my services and the services of Michael Nowlan (also a Senior Managing Director at Mackinac) as Co-Chief Restructuring Officers (in such capacity, the "**CROs**") for SFP U.S. and SFP Canada.

4. In my roles as Financial Advisor and CRO, I have become and am familiar with the Applicant's businesses, day-to-day operations, and financial affairs. As such, I have personal knowledge of the matters deposed to herein. Where I have relied on other sources for information, I have so stated and I believe them to be true. In preparing this affidavit, I have also consulted with Ms. Dominique Schurman (SFP U.S.' and SFP Canada's CEO), the Schurman Group's senior management team, and the Schurman Group's financial and legal advisors.

5. All references to monetary amounts in this affidavit are in U.S. dollars unless noted otherwise.

6. This affidavit is organized into the following sections:

## A. Introduction

7. SFP Canada operates 76 retail stores across Canada under the *Papyrus*, *Carlton Cards / Cartes Carlton*, and *Paper Destiny* brand names selling stationary, greeting cards, paper products, and gift items. SFP Canada is wholly owned by SFP U.S., the leading, privately held specialty retailer of personal expression products in North America. The Schurman Group operates 254 retail stores across the United States and Canada with approximately 1,400 employees (405 of whom are employed by SFP Canada).

8. The Schurman Group's business is highly integrated with and dependent on its relationship with American Greetings Corporation ("**American Greetings**"), the world's second largest producer of greeting cards. Among other things, the Schurman Group and American Greetings were parties to (a) a Supply Agreement dated April 17, 2009 between SFP U.S. and American Greetings (as amended, the "**Supply Agreement**") under which American Greetings agreed to supply products to the Schurman Group; and (b) an Amended and Restated Trademark License Agreement made as of April 17, 2009 (as amended, the "**Trademark Agreement**") under which American Greetings and its affiliates agreed to provide a royalty-free license to SFP U.S., SFP Franchise Corporation ("**SFP Franchise**") and SFP Canada for the trademarks (including the *Papyrus* and *Carlton Cards / Cartes Carlton* marks) under which the Schurman Group's stores operate and that are featured on most of its products (the "**Trademarks**").

9. In the past few years, the Schurman Group has faced various operational and performance challenges resulting in growing liquidity pressures. In addition to the general downturn in the brick-and-mortar retail industry, the Schurman Group has suffered a loss of profitability due to some unique factors including costs incurred in refurbishing and/or closing old and

underperforming retail stores acquired from American Greetings in 2009, pricing decisions made by American Greetings in respect of the products it sold to the Schurman Group, and unfavorable shifts in the Canada/U.S. exchange rate.

10. As a result of these and other challenges, the Schurman Group fell behind on payments owing to American Greetings under the Supply Agreement. As of the date of the swearing of this Affidavit, the Schurman Group owes American Greetings approximately $48 million, of which, I have been advised by the Schurman Group, $9,141,437 represents direct purchases by SFP Canada. Initially, the Schurman Group and American Greetings (under its prior ownership) worked cooperatively to address the operational and financial issues facing the Schurman Group and find a mutually beneficial path forward. However, in early 2018, following a change of control in the ownership of American Greetings, American Greetings became increasingly adamant that the Schurman Group address the arrears owing to American Greetings.

11. Over the past twelve months, the Schurman Group has taken a number of steps to attempt to address its operational and liquidity issues, including negotiating with vendors to obtain credit or more favorable terms for the supply of services, engaging in discussions with certain of its landlords to obtain various forms of rent relief, and pursuing negotiations with parties in connection with the potential sale of equity in SFP U.S. In June 2019, the Schurman Group agreed to grant a continuing lien and security interest in the property of the Schurman Group to American Greetings, pursuant to a Security Agreement, in order to secure the payment of, and performance of, the Schurman Group's Obligations to American Greetings (as defined in the Security Agreement), which security was to rank subordinate in priority to the security previously granted to the Schurman Group's senior secured lender.

12. However, before the Schurman Group was able to consummate an equity transaction or otherwise identify a viable path forward, on December 5, 2019, American Greetings notified SFP U.S. that it was immediately terminating the Supply Agreement, the Trademark Agreement, and various other agreements between the parties (collectively, the "**American Greetings Agreements**"), purportedly on the basis that the Schurman Group was in default under those agreements. American Greetings ceased supplying products to the Schurman Group at the same time.

13. After receiving notice of the purported termination of the American Greetings Agreements, the Schurman Group entered negotiations with American Greetings in an effort to agree on new terms by which the Schurman Group could continue using the Trademarks and continue purchasing products from American Greetings. However, American Greetings ultimately rejected the proposals put forward by the Schurman Group and recently advised that it is not willing to engage in further negotiations.

14. As a result of American Greetings' purported termination of the American Greetings Agreements and unwillingness to engage in further discussion, SFP U.S. has concluded that it can no longer continue going concern operations. On January 22, 2020 SFP U.S.' and SFP Franchise's directors resolved to file voluntary petitions for relief under Chapter 11 of the *U.S. Bankruptcy Code* (the "**Chapter 11 Proceedings**") in order to, among other things, pursue an orderly liquidation of the retail stores in the United States.

15. Similarly, SFP Canada can no longer operate as a going concern. As a result of the purported termination of the American Greetings Agreements, SFP Canada no longer has access to the supply of products from American Greetings (which account for over 50% of gross sales).

In addition, SFP Canada is entirely dependent on SFP U.S. for operational, management, and administrative services and cannot survive as a going concern without continued support from SFP U.S. SFP Canada has accordingly determined that it is insolvent and must cease operations in Canada.

16. It is my understanding that a Chapter 11 filing by SFP U.S. will result in events of default under certain leases to which SFP Canada is a party. These defaults would potentially result in the ability of those landlords to terminate the leases and lock out SFP Canada.

17. SFP Canada intends to use the CCAA proceedings to implement a liquidation and wind-down of its operations in a responsible, controlled and orderly manner. An orderly wind-down requires the involvement of many stakeholders and Court supervision. SFP Canada urgently requires the flexibility of the CCAA, an immediate stay of proceedings, and breathing space from the unilateral exercise of creditor remedies, as it prepares to implement its orderly wind-down through liquidating its remaining inventory with the assistance of a third-party professional liquidator and vacating its leased retail stores.

18. The Schurman Group, in consultation with its Financial Advisor and Richter Advisory Group Inc., the proposed Monitor in the CCAA proceedings (the "**Proposed Monitor**"), has recently selected a joint venture comprised of two professional third-party liquidators, Gordon Brothers Retail Partners, LLC and Hilco Merchant Resources, LLC (collectively, the "**Consultant**"). The Schurman Group believes that the Consultant will assist in maximizing the potential proceeds from the sale of its remaining inventory and furniture, fixtures, and equipment in the United States and Canada. The Consultant and its Canadian affiliates have extensive

experience in the North American retail market and have worked with Canadian landlords on numerous other engagements to conduct orderly retail liquidations.

19. If an Initial CCAA Order is granted, the Applicant intends to promptly serve a motion seeking this Court's approval of an orderly realization process (the "**Realization Process**") for SFP Canada's inventory (the "**Merchandise**") and its furniture, fixtures, and equipment (collectively, the "**FF&E**"), and of the selection of the Consultant to assist with this process. The Consultant is currently in the process of visiting store locations in Canada and the United States to start preparations for the formal Realization Process.

20. I believe that the active participation of SFP Canada in this orderly wind-down process, coupled with continued support from SFP U.S., is essential to maximizing recoveries for the benefit of the stakeholders of the Applicant, including Canadian stakeholders. It is expected that SFP Canada will engage with:

(a) *SFP Canada's employees*, including the front-line team members, sales associates and store managers who have expertise in the operations of SFP Canada's stores, to implement the Realization Process as smoothly and efficiently as possible;

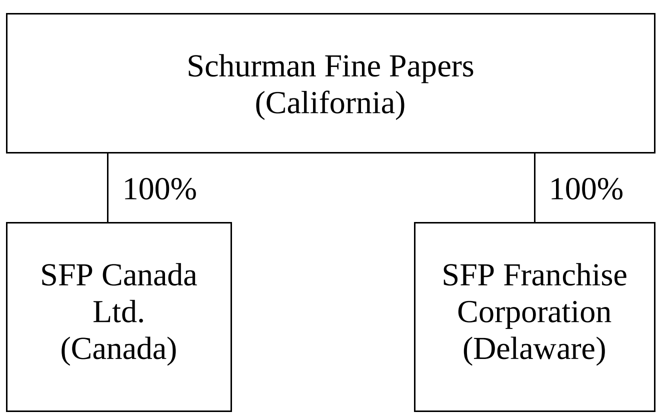
(b) *SFP Canada's landlords*, with whom SFP Canada will need to engage during the short window of time available for the realization of assets, with a view to arriving at an efficient Realization Process that benefits all stakeholders; and

(c) *SFP U.S.*, which provides substantially all back-office business and administrative support services. As set out above, without these services, SFP Canada could not operate and would be forced to immediately shut down, to the detriment of its stakeholders. Thus, without SFP U.S.'s agreement to continue providing critical services during the wind-down process, the Realization Process would be impeded and chaotic.

21. In summary, SFP Canada requires a stay of proceedings and related relief under the CCAA in order to continue operating throughout the contemplated orderly wind-down and Realization Process with the continued support of SFP U.S. The stay will provide the Applicant with the flexibility to implement a responsible and orderly cessation of operations, under the supervision of the proposed Monitor and the Court, with the ultimate goal of developing a distribution plan as an efficient means of distributing the proceeds of realization to stakeholders.

## B. Corporate Structure

22. SFP Canada is a New Brunswick corporation with its registered head office in Saint John, New Brunswick. As illustrated below, SFP Canada is a wholly owned subsidiary of SFP U.S., a California corporation that is controlled by the Schurman family:




23. SFP Canada's sole director is Ms. Schurman.

## C. Chief Place of Business

24. The chief place of business of the Applicant is Ontario. Although the Applicant's registered head office is in New Brunswick, 35 of its 76 currently operating retail stores are located in Ontario. The Applicant therefore has more retail stores and sales in Ontario than in any of the other provinces in which it operates. Further, a plurality of the Applicant's approximately 405 employees work in Ontario.

## D. The Business of the Applicant

### (a) Background and Relationship between Schurman Group and American Greetings

25. The Schurman Group was founded by Marcel and Margit Schurman in 1950 as an importer and wholesaler of fine greeting cards and stationery from Europe. Between 1950 and 2009, the Schurman Group was primarily engaged in the business of distributing and selling its products in Canada and the United States through third parties, in addition to operating certain retail stores to exclusively sell the company's products. In April 2009, the Schurman Group entered into a transaction with American Greetings and its affiliates (the "**American Greetings Group**") that fundamentally transformed the Schurman Group's business.

26. More specifically, under a Purchase and Sale Agreement dated April 17, 2009 (the "**Sale Agreement**"), the Schurman Group sold its wholesale business and the *Papyrus* brand and related trademarks to the American Greetings Group. As part of the Sale Agreement, the Schurman Group acquired the retail business operated by the American Greetings Group in Canada and the United States.

27. In conjunction with the Sale Agreement, the Schurman Group and the American Greetings Group entered into several ancillary agreements, including:

(a) The Supply Agreement under which American Greetings agreed to become the predominant supplier of products sold by the Schurman Group in its retail stores, initially for a term of 7 years (subsequently extended). A copy of the Supply Agreement (with amendments) is appended to this affidavit as Confidential Appendix A. The Applicant is advised by American Greetings that, in its view, the Supply Agreement has confidential and commercially sensitive financial terms, the disclosure of which would be prejudicial to American Greetings. The Supply Agreement includes a confidentiality provision that prohibits disclosing the terms of the Supply Agreement unless both parties consent in writing or disclosure is required by law, a court or government order, or stock exchange rule. Accordingly, as part of the proposed Initial Order, the Applicant are seeking a sealing order over Confidential Appendix A.

(b) The Trademark Agreement under which the American Greetings Group agreed to provide a royalty-free license for the Trademarks for an initial term of 10 years (subsequently extended). A copy of the Trademark Agreement (with amendments) is attached as **Exhibit A**.

(c) The Marketing Services Agreement (as amended, the "**Marketing Agreement**") under which the Schurman Group agreed to provide American Greetings with certain marketing services in exchange for a monthly service fee, with an initial term of 7 years (subsequently extended). A copy of the Marketing Agreement (with amendments) is attached as **Exhibit B**.

(d) The POS Data Services Agreement (as amended, the "**POS Agreement**") under which the Schurman Group agreed to collect and provide point-of-sale data to American Greetings in exchange for a monthly service fee, with an initial term of 7 years (subsequently extended). A copy of the POS Agreement (with amendments) is attached as **Exhibit C**.

28. As a result of these agreements, the Schurman Group became increasingly integrated with and highly dependent on American Greetings. In particular, the Schurman Group relied on American Greetings for the majority of goods it sold and for the Trademarks required to operate its retail business under the *Papyrus* and *Carlton Cards / Cartes Carlton* names.

**(b) SFP Canada's Retail Business**

29. SFP Canada operates retail stores and sells products featuring a variety of brands. *Papyrus*, a premium greeting card brand that draws inspiration from fashion, art and lifestyle trends, is the company's flagship brand. SFP Canada also operates stores and sells products under the *Carlton Cards / Cartes Carlton* brand and one store under the *Paper Destiny* brand, and sells products featuring the American Greetings and Recycled Paper Greetings brands.

30. SFP Canada's stores typically carry and sell the following categories of merchandise:

(a) <u>Greeting cards</u>, including everyday counter cards and seasonal counter cards.

(b) Gift packaging, including everyday and seasonal gift wrap and bags, bows, ribbons, accessories, Christmas boxes and Christmas ornaments.

(c) Specialty products, including everyday and seasonal party accessories, desk accessories, stationary, cellophane, stickers and boxed cards.

31. SFP U.S. operates an e-commerce platform based from their website https://www.papyrusonline.com/ which is accessible to Canadian consumers. SFP Canada does not operate an independent e-commerce website.

### (c) Leases and Retail Stores

#### (i) Store Formats and Locations

32. SFP Canada conducts business through retail locations in Ontario, Quebec, British Columbia, Alberta, Manitoba, Nova Scotia, Newfoundland and Labrador, and Saskatchewan. The following chart sets out SFP Canada's current store locations by geographical region:

| **Province** | **Number of SFP Canada Locations** |
|---|---|
| Ontario | 35 |
| Quebec | 6 |
| British Columbia | 11 |
| Alberta | 12 |
| Manitoba | 3 |
| Nova Scotia | 5 |
| Newfoundland and Labrador | 1 |
| Saskatchewan | 3 |
| ***Total*** | **76** |

33. SFP Canada has recently announced the closure of sixteen stores across Canada. A store located in St. Johns, Newfoundland, closed effective January 18, 2020, in large part as a result of the snowstorm that recently hit that province, and is not included in the table above. Seven other stores are scheduled to close on January 31, 2020 and a further eight stores are scheduled to close on February 29, 2020.

34. The average size of SFP Canada's stores is 1,887 square feet.

35. SFP Canada does not own any real property. All of the Applicant's retail operations are conducted in leased facilities.

**(ii) Landlords for Retail Premises**

36. SFP Canada leases stores across Canada from third-party landlords. SFP Canada is party to a number of leases with large landlords, whose subsidiaries own malls and shopping centres across Canada, including Oxford Properties Group, Ivanhoe Cambridge, Cadillac Fairview, and Morguard.

**(iii) Lease Provisions**

37. Typical of retail store leases in Canada, certain of SFP Canada's leases contain provisions that impact SFP Canada store operations, including:

(a) *Going-Out-of-Business sale restrictions* that relate to going out of business sales in one form or another, including prohibitions on "bankruptcy sales", "going out of business sales", "liquidation sales", and other similar terms; and

(b) *Operating covenants* that require SFP Canada to continuously occupy and operate its business in the leased premises.

38. SFP U.S. has provided an indemnity to certain landlords under some of SFP Canada's leases and certain of these leases provide that it is an event of default if the indemnifier (*i.e.*, SFP U.S.) takes the benefit of any insolvency statute. Therefore, SFP U.S. commencing the Chapter 11 proceedings will result in events of default under certain leases to which SFP Canada is a party, which defaults will potentially result in the ability of certain landlords to terminate these leases.

**(d) Merchandising and Sourcing**

39. Products sourced from American Greetings represent approximately 53% of SFP Canada's gross sales, all of which is purchased by SFP Canada directly. SFP Canada also sells products purchased from other third-party vendors, some of which is purchased by SFP U.S. Approximately 30% of all SFP Canada merchandise is purchased by SFP U.S. and then shipped to SFP Canada's retail stores directly from the SFP U.S. distribution centre. The remaining 70% is purchased directly by SFP Canada.

40. The costs of merchandise purchased by SFP U.S. on account of SFP Canada is recorded by SFP U.S. as an intercompany receivable. SFP Canada periodically transfers funds to SFP U.S. in order to pay for the costs of the merchandise purchased by SFP U.S.

**(e) Support Services Provided by SFP U.S.**

41. In addition to receiving merchandise directly from SFP U.S., SFP Canada is also dependent on SFP U.S. for a wide range of administrative and business support services. These services include strategic and marketing functions (e.g., development of overall marketing strategy,

performance of market research, design of marketing activities), merchandising, selection of external service providers, collection and analysis of customer feedback, logistics, and day to day operational needs such as executive, legal, accounting, finance, treasury, tax, insurance/risk management, real estate, human resources, information technology support services, and warehousing services (collectively, the "**Shared Services**").

42. SFP Canada also uses certain business systems of SFP U.S., including merchandizing strategies, store designs, store specifications, and operations manuals.

43. SFP U.S. provides these Shared Services from its head office in Goodlettsville, Tennessee or from remote and satellite offices in the United States. SFP Canada cannot operate or function without the provision of the Shared Services from SFP U.S. as it does not have any operational head office or head office management employees in Canada. If the Shared Services were not provided, SFP Canada would be required to immediately cease operations and shut down in an uncontrolled manner.

44. In exchange for providing certain (but not all) of the Shared Services, SFP U.S. charges SFP Canada approximately $180,000 per month. This amount does not include SFP Canada's proportionate share of the cost of the distribution centre, merchandising, advertising, and customer service. As described in further detail below, as part of the proposed CCAA filing, SFP Canada has prepaid SFP U.S. for the provision of Shared Services for the months of January to March 2020, as well as SFP Canada's proportionate share of the cost of the distribution centre and customer service.

**(f) Intellectual Property**

45. As noted above, the American Greetings Group owns the Trademarks that are necessary for the Schurman Group to carry on its business. Pursuant to the Trademark Agreement, the American Greetings Group granted SFP U.S., SFP Franchise, and SFP Canada a royalty-free license to use the Trademarks in the United States and Canada for an initial term of 10 years (subsequently amended to expire on September 30, 2020, absent the alleged termination event described above). SFP U.S. and SFP Canada had an exclusive license for operating retail stores (with certain exceptions) and an online store, and a non-exclusive license in all other respects.

**(g) Employees**

46. As of January 2020, SFP Canada employed approximately 82 full-time employees and 323 part-time employees. The geographic distribution of employees is as follows:

| **Province** | **Number of SFP Canada Employees** |
|---|---|
| Ontario | 193 |
| Quebec | 30 |
| British Columbia | 59 |
| Alberta | 60 |
| Manitoba | 13 |
| Nova Scotia | 24 |
| Newfoundland and Labrador | 10 |
| Saskatchewan | 16 |
| ***Total*** | 405 |

47. As noted above, SFP Canada has recently announced the closure of sixteen stores across Canada that are scheduled to close by February 29, 2020. All employees in these stores have been provided with working notice of termination based on their statutory entitlements.

48. At this time, it is expected that all other SFP Canada employees will be provided with working notice of termination on, or shortly after, the commencement of these CCAA proceedings. SFP Canada anticipates that it will continue to employ many of its employees through the wind-down and Realization Process.

49. On average, a typical SFP Canada store has five employees and is staffed by both full-time and part-time sales associates and store management. The vast majority of SFP Canada's employees are store level employees. Sales associates report to and work under the supervision of the store management. The store managers oversee and are responsible for operations in their store, and report to district managers and report to district, flagship or area managers.

50. All back-office support and overall corporate guidance functions for SFP Canada are provided by SFP U.S.

51. The vast majority of SFP Canada employees are paid on an hourly basis. Certain employees, such as the area and district managers, are salaried employees. There are no bonus or other incentive compensation plans.

52. Full-time employees are eligible for group health and dental benefits as well as life insurance through Great-West Life Assurance Company starting on the first day of the month after their employment begins. Temporary, part-time and seasonal employees are not eligible for these

benefits. SFP Canada also offers an employee assistance program to both full-time and part-time employees through Life Works at no cost to the employees.

53. SFP Canada has also established a group Registered Retirement Savings Plan ("**RRSP**") for hourly employees and a registered pension plan for salaried employees. Both plans are administered by Manulife. SFP Canada does not make any matching contributions to the RRSP.

54. SFP Canada's employees are all non-unionized and there are no applicable collective agreements.

55. SFP Canada's payroll is administered by SFP U.S., with the payroll, Canadian withholding taxes, and benefits being processed by PAYweb. SFP Canada's average biweekly payroll during fiscal 2019 was approximately $0.3 million.

### (h) Gift Cards

56. SFP Canada customers can purchase gift cards ("**Gift Cards**") in stores. As of the date of the swearing of this Affidavit, SFP Canada had a net liability for outstanding Gift Cards of approximately $1.15 million. It is proposed that outstanding Gift Cards will be honoured for another 30 days during the Realization Process.

### (i) Logistics Suppliers

57. SFP Canada does not have any distribution centres and relies on third-party logistics services providers that ship inventory from SFP U.S.'s distribution centre to SFP Canada' stores. Any merchandise that is shipped to SFP Canada's stores from the SFP U.S's warehouse in Tennessee is transported by United Parcel Service ("**UPS**"). UPS also provides customs clearing

services for the products it transports. Any merchandise that SFP Canada directly purchases from a third-party vendor is shipped using UPS and other transportation service providers to Impact Logistics (“**Impact**”), a third-party logistics services provider. Impact distributes the merchandise to SFP Canada’s stores. SFP Canada uses various third-party expeditors for customs services.

58. SFP Canada relies on timely and frequent delivery of critical inventory items in conducting its business. Any interruption in this supply, however brief, would disrupt SFP Canada’s operations to the detriment of the Realization Process.

59. SFP Canada’s retail stores are also supplied with essential utilities (*e.g.*, water, fuel and electricity), at SFP Canada’s expense, which, depending on the terms of the particular lease, may be paid to the landlord at first instance. The continuous provision of these utilities is essential to operations and the orderly wind-down.

**(j) Banking and Cash Management**

60. SFP Canada maintains a centralized cash management system which is administered by SFP U.S. from the head office to collect, transfer, and disburse funds generated by the operations of SFP Canada (the “**Cash Management System**”). SFP Canada is dependent upon SFP U.S. for all treasury, banking and related services that are provided by SFP U.S.

61. SFP Canada has store deposits accounts at each of Royal Bank of Canada (“**RBC**”), TD Canada Trust (“**TD**”), Canadian Imperial Bank of Commerce (“**CIBC**”), Bank of Montreal (“**BMO**”), and Bank of Nova Scotia (“**BNS**”). The cash generated at each SFP Canada store is deposited daily at an account at the closest of these banks. In addition, debit and credit card receipts are deposited in an account maintained at BNS.

62. The funds from the store deposit accounts are transferred into a restricted account (the "**Restricted Account**") maintained by SFP Canada with Wells Fargo Foothill Canada ULC ("**Wells Fargo Canada**"). Wells Fargo Canada in turn has an account with TD to facilitate transfers to and from the Restricted Account. Funds deposited into the BNS and BMO store deposit accounts are transferred to the Restricted Account automatically on a daily basis, whereas funds deposited into the RBC, TD and CIBC accounts are transferred to the Restricted Account manually once they hit a certain threshold (typically $20,000).

63. SFP Canada maintains three disbursement accounts with Wells Fargo Canada. Two of these accounts are used to pay payroll, rent, Canadian cheques, taxes and vendors. Wells Fargo maintains two accounts at RBC to facilitate transfers from the two active disbursement accounts. The third disbursement account is currently inactive.

64. Cash is not automatically transferred from SFP Canada to SFP U.S. as part of the Cash Management System. Historically, SFP Canada would allow funds to accumulate in the Restricted Account and then would periodically make payments from the Restricted Account to pay amounts owing by SFP Canada to SFP U.S.

65. On January 17, 2020, SFP Canada transferred $3 million to SFP U.S. as (i) payment for certain costs and expenses that have been paid by SFP U.S. on behalf of SFP Canada prior to these CCAA proceedings; and (ii) prepayment of costs and expenses that will be paid by SFP U.S. during these CCAA proceedings for the benefit of SFP Canada. More specifically, this includes:

(a) reimbursement of SFP U.S. for SFP Canada's proportionate share of certain professional fees incurred in preparation of the Chapter 11 filings and the CCAA proceedings;

(b) reimbursement of SFP U.S. for SFP Canada's proportionate share of certain prepetition costs paid by SFP U.S., including Shared Services for the month of December and January, distribution centre charges, customer service charges, merchandising charges, advertising charges, and the escrow established for the Consultant;

(c) prepayment of $700,000 worth of inventory that will be sent by SFP U.S. to SFP Canada during the Realization Process. In the reasonable business judgment of the CROs and the Consultant, this additional inventory will enhance sales during the Realization Process, which will be to the benefit of SFP Canada's estate;

(d) prepayment of the expected costs of the Shared Services, distribution centre charges, and customer service charges during the Realization Process; and

(e) replenishment of retainers of the Consultant and professionals in connection with the CCAA proceedings.

66. The proposed Initial Order provides that SFP Canada will not make any payments to or on account of any related party until further Order of the Court.

## E. The Financial Position of SFP Canada

67. SFP U.S. prepares unaudited financial reporting packages, including stand-alone balance sheets, for SFP Canada's operations. A copy of the balance sheet for SFP Canada as at November 30, 2019 is attached as **Exhibit D**. This balance sheet reflects the financial position of SFP Canada in U.S. dollars and has not been audited. Certain information contained in this unaudited balance sheet is summarized below.

**(a) Assets**

68. As at November 30, 2019, the assets of SFP Canada had a book value of approximately $9.6 million and consisted of the following:

| | |
|---|---|
| **Current Assets: $8,294,000** | |
| Cash | $1,930,000 |
| Total Receivables | $270,000 |
| Inventory, Net | $5,236,000 |
| Prepaid Assets | $858,000 |
| **Non-Current Assets: $1,296,000** | |
| Fixed Assets, Net | $972,000 |
| Other Assets | $323,000 |
| Intangibles | $0 |
| **Total Assets** | **$9,589,000** |

**(b) Liabilities**

69. As at November 30, 2019, the liabilities of SFP Canada had a book value of approximately $11.8 million and consisted of the following:

| | |
|---|---|
| **Current Liabilities: $11,274,000** | |
| Trade Payables[1] | $10,416,000 |
| Income Taxes Payable | $121,000 |
| Sales and Use Tax Payable | $152,000 |
| Accrued Liabilities | $585,000 |
| **Non-Current Liabilities: $482,000** | |
| Deferred Rent Long Term | $306,000 |
| Tennant Improvement Allowance Long Term | $176,000 |
| **Total Liabilities** | **$11,757,000** |

[1] The vast majority consists of amounts owing from SFP Canada to American Greetings.

**(c) Stockholder's Equity**

70. As at November 30, 2019, the stockholders' equity in respect of SFP Canada was ($2,168,000) consisting of Retained Earnings of $85,000, Accumulated Other Comprehensive Income of $458,000 and an intercompany loss of $2,711,000.

**(d) Earnings**

71. For the period from February to November 2019, SFP Canada's net loss was $2,375,000 and its EBITDA was negative $1,672,000.28.

**(e) Secured Debt of SFP U.S. and SFP Canada**

72. The Schurman Group has secured indebtedness as follows: (i) amounts owing under the Wells Fargo Credit Agreement (defined below); and (ii) security granted to the American Greetings Group.

**(i) Wells Fargo Credit Agreement**

73. SFP U.S., SFP Franchise (with SFP U.S., the "**US Borrowers**") and SFP Canada are parties to an Amended and Restated Loan Agreement with Wells Fargo Bank, National Association ("**Wells Fargo**") as Administrative Agent, Collateral Agent, and a Revolving Credit Lender and with Wells Fargo Canada as a Revolving Credit Lender and Canadian Lender (as amended, the "**Wells Fargo Credit Agreement**"). The Wells Fargo Credit Agreement was originally entered into as of April 17, 2009. A copy of the Amended and Restated Wells Fargo Credit Agreement and amendments are attached as **Exhibit E**.

74. Pursuant to the Wells Fargo Credit Agreement, the U.S. Borrowers may borrow funds in U.S. dollars (the "**U.S. Revolving Facility**") and SFP Canada may borrow funds under Canadian dollars (the "**Canadian Revolving Facility**") up to a collective potential maximum of $35 million on a revolving basis. As at January 20, 2020, the U.S. Borrowers had drawn down approximately $6.3 million under the U.S. Revolving Facility. SFP Canada has no current outstanding balance under the Canadian Revolving Facility.

75. The Wells Fargo Credit Agreement also provides that Wells Fargo will endeavor to cause the U.S. Issuing Bank to issue letters of credit denominated in U.S. dollars for the account of the U.S. Borrowers and SFP Canada, or to undertake to purchase participations or execute indemnities or reimbursement obligations with respect to letters of credit denominated in U.S. dollars subject to certain conditions. The U.S. Borrowers are applicants for one outstanding letter of credit for $50,000. There are no outstanding letters of credit for which SFP Canada is an applicant.

76. In addition, the Wells Fargo Credit Agreement provides that Wells Fargo will assist SFP Canada in establishing or opening letters of credit denominated in Canadian dollars or in causing a Canadian issuing bank to purchase participations or execute indemnities or Reimbursement Obligations by joining in the applications for and/or guaranteeing payment or performance of any Canadian letters of credit. There are currently no outstanding letters of credit guaranteed by Wells Fargo in Canada or for which Wells Fargo was a joint applicant.

77. Under the Wells Fargo Credit Agreement, each borrower has granted a security interest in their present and after acquired property to secure all the obligations under the Wells Fargo Credit Agreement. In addition, the assets of SFP Canada also secure any obligations under the Wells

Fargo Credit Agreement pursuant to a Canadian Pledge and Security Agreement dated April 17, 2009. A copy of the Canadian Pledge and Security Agreement is attached as **Exhibit F**.

78. The U.S. Borrowers are jointly and severally liable for all of the obligations under the Wells Fargo Credit Agreement. However, SFP Canada is not jointly and severally liable for the obligations owed by the U.S. Borrowers.

79. American Greetings has provided a limited guarantee dated as of April 17, 2009 (as amended, the "**American Greetings Guarantee**") guaranteeing the obligations owing by the Schurman Group under the Wells Fargo Credit Agreement up to $10 million. A copy of the American Greetings Guarantee (with amendments) is attached as **Exhibit G**.

80. The Schurman Group's defaults under the American Greetings Agreements and the purported termination of those agreements constitute events of default under the Wells Fargo Credit Agreement. As a result, Wells Fargo has the right to cease making any advances and to cease issuing any additional letters of credit to the Schurman Group, to demand immediate payment of all outstanding obligations under the Wells Fargo Credit Agreement, and to exercise the rights and remedies available to Wells Fargo, including foreclosure upon any collateral securing the outstanding obligations. While Wells Fargo has not chosen to exercise any of these rights or remedies at this time, it has expressly reserved all rights and remedies under the Wells Fargo Credit Agreement.

**(ii) American Greetings Security Agreement**

81. On June 25, 2019, SFP U.S., SFP Franchise, SFP Canada and American Greetings entered into a Security Agreement (the "**American Greetings Security Agreement**") pursuant to which

SFP U.S., SFP Franchise and SFP Canada granted to American Greetings a continuing lien and security interest over their present and after-acquired property to secure the payment of, and performance of, the Obligations (as defined therein) owing under the Supply Agreement, the Trademark License Agreement, the POS Data Services Agreement, the Marketing Services Agreement, the American Greetings Guarantee, and any other documents, purchase orders, or other agreements between the Schurman Group and American Greetings Group. A copy of the American Greetings Security Agreement is attached as **Exhibit H**.

82. Prior to the execution of the American Greetings Security Agreement, American Greetings provided goods and services under the American Greetings Agreements to the Schurman Group on credit on an unsecured basis. The parties entered into the American Greetings Security Agreements to, among other things, secure the receivable owing by the Schurman Group under those agreements.

83. I am advised by Mr. Erik Kortman, Controller at the Schurman Group, and believe that, as of the date of the swearing of this Affidavit, SFP U.S. owed $38,706,673 and SFP Canada owed $9,141,437 to American Greetings. In some cases, the amounts owing by SFP Canada to American Greetings are over 180 days old.

84. The relative priorities of Wells Fargo and American Greetings are governed by a Subordination and Intercreditor Agreement made as of June 25, 2019 which provides that Wells Fargo has first priority over the Collateral (as defined in the agreement). A copy of the Subordination and Intercreditor Agreement is attached as **Exhibit I**.

**F. Restructuring Efforts to Date**

85. In addition to the general downturn in the brick-and-mortar retail industry, the Schurman Group has suffered an erosion in its profitability due to unique operational and performance issues including (a) the capital costs incurred in refurbishing or closing a large number of old and underperforming retail stores acquired from American Greetings in 2009; (b) the renegotiation of the Marketing Agreement and POS Agreement which significantly reduced the fees payable to the Schurman Group under those agreements; (c) the decline in value of the Canadian dollar since the Schurman Group acquired the Canadian retail stores from American Greetings in 2009, which has compromised the profitability of the Schurman Group's Canadian operations; and (d) various pricing decisions made by American Greetings, including a significant price increase in their products and imposing a uniform price for products in both the United States and Canada that resulted in a decline in revenues earned in Canada.

86. The financial challenges faced by the Schurman Group caused it to fall behind on amounts owing to American Greetings for products sold and provided to the Schurman Group. I am advised by Ms. Schurman (SFP U.S.' and SFP Canada's CEO) and believe that over the past 24 months, the Schurman Group has taken a number of steps to address the operational and liquidity issues it was facing, including negotiating rent relief and rent holidays with certain landlords and negotiating with vendors to obtain credit on more favorable terms for the supply of services. In addition, the Schurman Group aggressively pursued negotiations with a party that had expressed interest in acquiring equity in the Schurman Group which, if consummated, would have provided additional liquidity to the Schurman Group. However, despite significant efforts, the Schurman Group was unable to find a viable option for addressing the financial pressures it faced before American Greetings sent the notice of termination.

87. In the days following the purported termination of the American Greetings Agreements, the Schurman Group, with the assistance of its financial and legal advisors, engaged in discussions with American Greetings in an attempt to address the concerns raised by American Greetings and cure the defaults under the American Greetings Agreements. At the request of American Greetings management, a term sheet was presented by the Schurman Group to American Greetings. However, the term sheet was rejected by the American Greetings board of directors. Ultimately, American Greetings indicated that it was not willing to engage in further negotiations within the parameters being proposed by the Schurman Group.

**G. The Urgent Need for Relief Under the CCAA**

88. SFP Canada cannot continue going concern operations without the continued supply of products under the Supply Agreement and use of the licenses granted under the Trademark Agreement. Moreover, given its operational dependence on SFP U.S., SFP Canada cannot continue operations without the full support of SFP U.S. Given the purported termination of the American Greetings Agreements, the resulting default under the Wells Fargo Credit Agreement and the pending wind down of SFP U.S., SFP Canada is insolvent and has no option other than to cease operations in Canada and to conduct an immediate controlled and orderly wind-down of operations for the benefit of its stakeholders.

89. The continued support, assistance and co-operation of SFP U.S. is required to conduct a responsible and orderly liquidation of SFP Canada’s operations. The continued provision of Shared Services by SFP U.S. is essential for SFP Canada to operate. I understand that SFP U.S. will only agree to continue supporting SFP Canada through the provision of Shared Services if (a) it is for

the limited purpose of an orderly wind-down with SFP Canada remaining in control of its assets and property; and (b) the wind-down is supervised by this Court in accordance with the CCAA.

90. As set out above, an insolvency filing by SFP U.S. will result in events of default under certain leases to which SFP Canada is a party. These defaults will potentially result in the ability of certain landlords to terminate these leases. As such, SFP Canada's urgent need for the protections offered by the CCAA has accelerated.

91. As such, the board of directors of SFP Canada has resolved to commence these CCAA proceedings. Without further financial and operational support from SFP U.S. and product from American Greetings, SFP Canada is unable to meet its liabilities as they become due and is therefore insolvent.

## H. Relief Sought

### (a) Stay of Proceedings

92. The Applicant urgently requires a stay of proceedings and other protections as provided by the CCAA so that it will have the breathing space to conduct a controlled and orderly wind-down of its operations.

93. Having regard to the circumstances, I believe that the granting of a stay is in the best interests of the Applicant and its stakeholders. The stay will provide the Applicant with the time required to develop and oversee an orderly wind-down process, which in turn will help to protect the interests of the Applicant's stakeholders, including employees, suppliers, landlords, and customers, all with the eventual goal of developing and implementing a distribution plan to efficiently distribute the proceeds of realization to creditors.

**(b) Proposed Monitor**

94. The Proposed Monitor has consented to act as the monitor of the Applicant under the CCAA. A copy of the Proposed Monitor's consent to act as monitor is attached as **Exhibit J**.

**(c) Chief Restructuring Officer**

95. As noted above, the Schurman Group has retained Mackinac to provide my and Mr. Nowlan's services as CROs. A copy of the final form of the engagement letter (the "**CRO Engagement Letter**") is attached as **Exhibit K**.

96. Mr. Nowlan and I have over 25- and 20-years' experience, respectively, in strategic, financial and turnaround and restructuring advisory work in a variety of industries, including the retail industry. In addition, we have both previously served as lead restructuring advisors and chief restructuring officers for companies undergoing Chapter 11 proceedings. Therefore, our appointment as CROs places the management of the proposed Realization Process in the hands of experienced professionals familiar with retail insolvencies and will enhance the likelihood that SFP Canada will maximize value under the Realization Process.

97. The proposed Initial Order provides for the approval of the CRO Engagement Letter and my and Mr. Nowlan's appointment as CROs. The CRO Engagement Letter sets out the applicable fees and disbursements.

98. I am advised by Mr. Marc Wasserman of Osler, Hoskin & Harcourt LLP, counsel for the Applicant, and believe that many of the CROs-related provisions in the proposed Order are similar to protections afforded to chief restructuring officers in other CCAA proceedings. These protections include that:

(a) the CROs shall not be deemed to be a director, *de facto* director or employee of the Applicant;

(b) Nothing in the proposed Initial Order shall be construed as resulting in either CRO being an employer, successor employer, a responsible person, operator or person with apparent authority within the meaning of any statute, regulation or rule of law, or equity for any purpose whatsoever;

(c) the CROs shall not have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any person from and after the date of the Initial Order except to the extent such losses, claims, damages or liabilities result from the gross negligence or willful misconduct on the part of the CROs; and

(d) no action or other proceeding shall be commenced directly, or by way of counterclaim, third-party claim or otherwise, against or in respect of either of the CROs and all rights and remedies of any Person against or in respect of each of the CROs are hereby stayed and suspended, except with the written consent of the applicable CRO or with leave of this Court on notice to the Applicant, the Monitor and the applicable CRO to be obtained through a motion served upon the Applicant, the Monitor and the applicable CRO at least seven days' before its return date.

99. I believe that the appointment of the CROs is in the best interests of SFP Canada and its stakeholders. I also understand that the Monitor supports the appointment of the CROs.

**(d) Administration Charge**

100. The proposed Initial Order provides that the Proposed Monitor, along with its counsel, the Applicant’s counsel and the CROs, will be granted a Court-ordered charge on the present and future assets, property and undertakings of SFP Canada (“**Property**”), as security for their respective fees and disbursements relating to services rendered in respect of SFP Canada up to a maximum of CAD $400,000 (the “**Administration Charge**”). The Administration Charge is proposed to have first priority over all other charges.

**(e) Directors’ and Officers’ Protection**

101. I am advised by Mr. Wasserman and believe that, in certain circumstances, directors can be held liable for certain obligations of a company owing to employees and government entities, which may include unpaid accrued wages and unpaid accrued vacation pay, together with unremitted sales, goods and services, and harmonized sales taxes.

102. It is my understanding that the Applicant’s director and its past and former officers who are or were employed are potential beneficiaries of director and officer liability insurance (the “**D&O Insurance**”) with a $5 million aggregate limit. These coverage limits are shared with directors and officers of SFP U.S. and SFP Franchise. In light of the insolvency of the Schurman Group, it is unclear whether this insurance policy provides sufficient coverage against the potential liability that the director and officers could incur in relation to these CCAA proceedings.

103. In light of the potential liabilities and the insufficiency of available insurance, the continued service and involvement of the director and officers in this proceeding is conditional upon the granting of an Order under the CCAA which grants a charge in favour of Applicant’s director and

officers in the amount of CAD $1 million on the Property of SFP Canada (the "**Directors' Charge**"). The Directors' Charge would be subordinate to the proposed Administration Charge. The Directors' Charge would act as security for the indemnification obligations for directors' potential liabilities, as set out above. The Directors' Charge is necessary so that SFP Canada may benefit from the director's and officers' experience with the business as they guide the realization and wind-down efforts. The charge would only be relied upon to the extent of the insufficiency of the existing insurance.

### (f) Cash Flow Forecast

104. The Applicant, with the assistance of the Proposed Monitor (if appointed, in such capacity, the "**Monitor**"), has prepared 13-week cash flow projections as required by the CCAA. A copy of the cash flow projections is attached as **Exhibit L**. The cash flow projections demonstrate that SFP Canada has sufficient liquidity to continue going concern operations during the proposed stay period should the stay of proceedings be granted and the Realization Process commence as forecast. It is not contemplated that SFP Canada will require debtor-in-possession financing during these CCAA proceedings or in the Chapter 11 proceeding.

105. The Applicant anticipates that the Monitor will provide oversight and assistance and will report to the Court in respect of SFP Canada's actual results relative to cash flow forecast during this proceeding. Existing accounting procedures will provide the Monitor with the ability to track the flow of funds and assist with any issues that may arise.

**(g) Payments During CCAA Proceedings**

106. During the course of these CCAA proceedings, SFP Canada intends to make payments for goods and services supplied to it post-filing in the ordinary course, as set out in the cash flow projections described above and as permitted by the draft Initial Order.

107. SFP Canada is proposing in the draft Initial Order that it be authorized, with the consent of the Monitor, but not required to make payments for goods or services actually supplied to SFP prior to the date of the Initial Order by third-party suppliers or service providers up to a maximum aggregate amount of $100,000 if, in the opinion of SFP Canada, the supplier or service provider is critical to the orderly wind-down of SFP Canada's business.

**(h) Liquidation Consultant and Realization Process**

108. As part of the overall wind-down process for the Canadian business, SFP Canada intends to file an urgent motion immediately after the granting of the Initial Order seeking an Order (the "**Proposed Sale Approval Order**") approving:

(a) the Consulting Agreement (the "**Consulting Agreement**") between the Consultant and the Schurman Group dated January 17, 2020 regarding the liquidation of the Merchandise and the FF&E; and

(b) proposed sale guidelines for the orderly liquidation of the Merchandise and FF&E (the "**Sale Guidelines**").

109. The proposed Realization Process will take place over a short period of time and is currently contemplated to run till the end of February. It must be commenced as soon as possible to maximize recoveries and limit costs for the following reasons:

(a) The current schedule will minimize costs by allowing the Schurman Group to exit its retail stores by the end of February.

(b) If the Proposed Sale Approval Order is granted immediately after the Initial Order, it will add an additional weekend on which sales can take place, which will likely result in greater recoveries.

(c) Valentine's Day, a significant holiday for the sale of the Schurman Group's products, will be occurring during the proposed Realization Process. The Consultant must begin advertising in connection with the Realization Process as soon as possible in order to maximize sales in the run up to that holiday.

110. In the circumstances, any delay in commencing the formal Realization Process may compromise the net recoveries generated from the sale of SFP Canada's Merchandise and FF&E.

111. The realization process set out in the Consulting Agreement and the Sale Guidelines was designed by SFP Canada and the Consultant in consultation with the Proposed Monitor and the Financial Advisor. I expect that this realization process will maximize the value realized from the sale of SFP Canada's Merchandise and FF&E for the benefit of stakeholders.

### (i) Solicitation and Selection of the Proposed Consultant

112. In anticipation of potential Chapter 11 and CCAA filings, on November 12, 2019, the Schurman Group retained the Financial Advisor to, among other things, assist in developing and implementing a bid solicitation process for liquidating the Merchandise and FF&E.

113. Before filing for creditor protection in the United States and Canada, the Schurman Group solicited bids from four leading liquidation firms and asked each of them to execute a non-disclosure agreement ("**NDA**"). All four liquidators signed NDAs and were given access to a virtual data room containing financial and other information concerning the Merchandise and FF&E and were given approximately 2 days to review the data in advance of the bid deadline.

114. The Consultant and one other liquidator submitted proposals. After reviewing the two proposals, and in consultation with the Financial Advisor, the Schurman Group selected the Consultant's proposal. The Schurman Group believes that the Consultant's proposal will provide for the best recovery for stakeholders as it provided an estimated recovery consistent with a recent appraisal while concluding the Realization Process in a shorter timeframe. In addition, the Consultant had carried out the recent appraisal and therefore is already familiar with the Schurman Group's stores and inventory.

115. The Consultant is a joint venture between two liquidators:

(a) Gordon Brothers Retail Partners, LLC, which has extensive experience in conducting retail liquidations. Gordon Brothers' recent experience in Canada includes Sears Canada, Ben Moss, Target Canada, MINISO Canada, and Forever 21.

(b) Hilco Merchant Resources, LLC, which also has extensive experience in conducting retail liquidations. Hilco's recent experience in Canada includes Target Canada, Sears Canada, American Apparel Canada, BCBG Canada, Express Fashion Apparel, Danier Leather, and Forever 21.

116. Gordon Brothers and Hilco have acted together as joint ventures on a number of past retail liquidations in both Canada and the United States.

**(ii) Consulting Agreement and Sale Guidelines**

117. On January 17, 2020, the Consultant and the Schurman Group entered into the Consulting Agreement, a copy of which is attached (without the budget appended to the Consulting Agreement) as **Exhibit M** to this affidavit.

118. The Consulting Agreement is expressly subject to, among other things, approval of this Court.

119. The Consulting Agreement provides that the Consultant will serve as the exclusive consultant for the purpose of conducting a sale of the Merchandise and FF&E at all of the Schurman Group's stores, including all SFP Canada stores (collectively, the "**Stores**").

120. Under the Consulting Agreement, the Consultant would earn a Merchandise Fee comprised of a percentage of the gross proceeds from all sales of Merchandise net of applicable HST/GST (the "**Gross Proceeds**"). The applicable percentage will be determined based upon one of the following thresholds of Gross Recovery Percentages (as defined in the Consulting Agreement):

| Gross Recovery Percentage | Merchandise Fee |
|---|---|
| Below 190% | 1.75% of Gross Proceeds |

| | |
|---|---|
| Above 190% | 2% of Gross Proceeds |

121. In addition, the Consultant would be entitled to a commission of 15% of the gross sales of the FF&E, net only of applicable sales taxes.

122. Some of the key terms of the Consulting Agreement include:

(a) The sale of the Merchandise (the "**Sale**") shall commence on or about January 16, 2020 (the "**Sale Commencement Date**") and conclude no later than February 29, 2020 (the "**Sale Termination Date**"). However, the Consultant and SFP Canada may, in consultation with the Monitor, agree to vary the Sale Commence Date or the Sale Termination Date with respect of any one or more of the Stores.

(b) At the conclusion of the Sale at each Store, the Consultant will leave such Store in broom clean condition, subject to the Consultant's right to abandon unsold FF&E.

(c) The Consultant shall, among other things, (i) provide qualified supervisors to oversee the conduct of the Sale; (ii) recommend appropriate discounts of Merchandise, staffing levels for the Stores, and appropriate bonus and incentive programs (if any) for employees; (iii) establish and monitor accounting functions for the Sale, including evaluation of the sale of goods located at the Stores by category, sales reporting and expense monitoring; (iv) maintain focused and constant communication with Store-level employees and managers to keep them abreast of strategy and timing and to properly effect Store-level communication by the Schurman Group's employees to customers and others about the Sale; and (v) recommend loss prevention strategies.

(d) The Schurman Group shall, among other things, (i) have control over the personnel in the Stores; (ii) shall handle the cash, debit and charge card payments for all Merchandise in accordance with its normal cash management procedures (as may be modified by the Court); and (iii) shall be solely responsible for the computing, collecting, holding, reporting, and paying all sales taxes associated with the sale of Merchandise during the Sale.

(e) From and after the issuance of any Approval Order (as defined in the Consulting Agreement), the Sale shall be conducted in accordance with the terms thereof.

(f) The Schurman Group shall be responsible for all expenses incident to the conduct of the Sale and the operation of the Stores during the Sale. To manage costs, however, the Schurman Group and the Consultant have established a budget (attached to the Consulting Agreement as Exhibit "B"). The Schurman Group will reimburse the Consultant's costs up to the aggregate amount of the budget and the Consultant's reasonable and documented legal fees and expenses incurred in connection with the Consulting Agreement. The parties may amend the budget by mutual consent in writing, with it being acknowledged that (i) the Schurman Group may require the consent of the Monitor to increase the amount of expenses reimbursable by SFP Canada, and (ii) that the Schurman Group will obtain such consent in advance of the occurrence of any such expense by Consultant.

(g) The Consultant will also sell the "**Offered FF&E**", which is all FF&E other than any FF&E that the Schurman Group identifies as not to be sold. The Schurman Group shall be responsible for all reasonable and documented costs and expenses incurred by the Consultant in connection with the sale of the Offered FF&E, which costs and expenses shall be incurred pursuant to a written budget or budgets to be established.

(h) The parties will meet on each Wednesday during the Sale to review any Sale matters reasonably requested by either party, and all amounts payable or reimbursable to Consultant for the prior week (or the partial week in the case of the first and last weeks) shall be reconciled, in consultation with the Monitor, and paid immediately thereafter. Within 20 days following the end of the Sale, the parties, in consultation with the Monitor, will complete a final reconciliation of all amounts contemplated by the Consulting Agreement.

(i) The Schurman Group shall be responsible for maintaining insurance with respect to the Merchandise in amounts and on such terms and conditions as are consistent with its ordinary course operations. In addition, both parties shall maintain comprehensive liability insurance covering injuries to persons and property in or in connection with the Stores, in such amounts as are reasonable and consistent with its ordinary practices, for bodily injury, personal injury and/or property damage. Each party shall be added as an additional insured on all such insurance of the other party, all such insurance shall provide that it shall be non-cancelable and non-changeable except after 30 days' prior written notice to the other party, and each party shall provide the other with certificates of all such insurance prior to the commencement of the Sale.

(j) All sales of Merchandise shall be "final" with no returns allowed.

(k) The Consulting Agreement provides that the Consultant shall sell Non-Merchandise Goods (defined as (i) goods that belong to sublessees, licensees, or concessionaires of the Schurman Group; (ii) damaged or defective merchandise that cannot be sold; or (iii) goods held by Schurman Group on memo, on consignment, or as bailee) during the Sale at the Stores, subject to the consent of the owners of the Non-Merchandise Goods. The Consultant shall earn a fee equal to the definitive Merchandise Fee percentage earned by Consultant on sales of Merchandise as set out above multiplied by the aggregate gross proceeds, net only of sales taxes, from the sale of Non- Merchandise Goods at the Stores (the "**Non-Merchandise Fee**").

(l) Subject to compliance with applicable law and the Approval Order, the Consultant shall have the right, at its sole cost and expense, to supplement the Merchandise in the Sale with additional goods procured that are of like kind, and no lesser quality to the Merchandise in the Sale (the "**Additional Consultant Goods**"). The Consultant will pay to the Schurman Group an amount equal to 7.5% of the gross proceeds (excluding sales taxes) from the sale of the Additional Consultant Goods (the **"Additional Consultant Goods Fee**").

123. The proposed Sale Approval Order also approves certain Sale Guidelines. A copy of the form of Sales Guidelines is attached as **Exhibit N** to this Affidavit. SFP Canada and the Consultant prepared the Sale Guidelines in consultation with the Financial Advisor and the Proposed Monitor. The Sale Guidelines provide, among other things:

(a) The Sale shall be conducted in accordance with the terms of the applicable lease, except as otherwise set out in any Court order, the Sale Guidelines, or in any subsequent written agreements between SFP Canada and the applicable landlord (as approved by the Consultant).

(b) The Sale shall be conducted so that each of the Stores remains open, before it is vacated, during its normal hours of operation provided for in the applicable lease.

(c) All display and hanging signs used by the Consultant in connection with the Sale shall be professionally produced and hung in a professional manner. No sign shall advertise the sale as a “bankruptcy”, “liquidation” or “going out of business” sale. However, notwithstanding anything in the applicable leases, the Consultant may advertise an “everything on sale”, “everything must go”, “store closing”, or similar themed sale.

(d) The purchasers of FF&E shall only be permitted to remove the FF&E either through the back shipping areas designated by the applicable landlord or through other areas after regular Store business hours or, if the FF&E can fit in a shopping bag, through the front door of the Store during Store business hours. FF&E may only be removed with the landlord’s supervision, if required by the landlord.

(e) The Consultant shall not conduct any auctions of Merchandise or FF&E at any of the Stores.

(f) Signs must be posted in the cash register areas of each Store informing customers that all sales are “final”.

(g) At the conclusion of the Sale in each Store, the Consultant and SFP Canada will arrange for the premises to be cleaned.

125. In accordance with the Consulting Agreement, an advance payment of costs and expenses was made by SFP U.S. to the Consultant in the amount of $500,000.

126. I believe that the Consulting Agreement and Sale Guidelines would benefit all of SFP Canada's stakeholders and that engaging the Consultant to assist with the sale of the Merchandise and FF&E will produce better results than attempting to liquidate without professional assistance. SFP Canada believes that it is crucial to begin the realization process immediately to implement the orderly wind down of the business and to maximize the value realized for all stakeholders.

## I. Conclusion

127. I am confident that granting the Initial Order sought by the Applicant is in the best interests of SFP Canada and its stakeholders, generally. Without the stay of proceedings, the Applicant faces an immediate and uncontrolled cessation of operations rather than a responsible, controlled, and orderly wind-down. I believe that a CCAA proceeding is the only viable method to effect a controlled and orderly wind-down process for the benefit of all stakeholders.

SWORN BEFORE ME at the City of Goodlettsville, in the State of Tennessee, on January 23, 2020

Adrianne Renae Pruitt

Notary Public in and for the State of Tennessee

ADRIANNE RENAE PRUITT
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
MY COMMISSION EXPIRES 7-9-2022

Craig M. Boucher

# TAB B

This is Exhibit “B” referred to in the

Affidavit of Craig M. Boucher,

sworn before me over video teleconference

this 26th day of March, 2020

Waleed Malik

..............................................

A Commissioner for Taking Affidavits

Waleed Malik (LSO No. 67846O)

Court File No. CV-20-634980-00CL

***ONTARIO***
**SUPERIOR COURT OF JUSTICE**
**(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **SFP CANADA LTD.**

APPLICANT

# AFFIDAVIT OF CRAIG M. BOUCHER

**(Sworn January 29, 2020)**

**(Motion for Amended & Restated Initial Order)**

I, Craig M. Boucher, of the City of Hollywood, in the State of Florida, MAKE OATH AND SAY:

1. I am a Senior Managing Director at Mackinac Partners ("**Mackinac**"), a turnaround, restructuring and advisory firm that was retained by Schurman Fine Papers ("**SFP U.S.**") and its subsidiaries (the "**Schurman Group**") in November 2019 to act as financial advisor in connection with the restructuring initiatives of the Schurman Group. Subsequently, on January 22, 2020, the Schurman Group retained Mackinac to provide my services and the services of Michael Nowlan (also a Senior Managing Director at Mackinac) as Co-Chief Restructuring Officers (the "**CROs**") for SFP U.S. and the Applicant, SFP Canada Ltd. ("**SFP Canada**").

2. In my roles as financial advisor and CRO, I have become and am familiar with the Applicant's businesses, day-to-day operations, and financial affairs. As such, I have personal knowledge of the matters deposed to herein. Where I have relied on other sources for information,

I have so stated and I believe them to be true. In preparing this affidavit, I have also consulted with the Schurman Group's senior management team, and the Schurman Group's financial and legal advisors.

3. I make this affidavit in support of the motion brought by SFP Canada for an Amended & Restated Initial Order, among other things, extending the stay of proceedings to March 31, 2020.

**A. Background**

4. On January 23, 2020, SFP Canada applied for and obtained protection from its creditors under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (the "**CCAA**") pursuant to an initial order of the Ontario Superior Court of Justice (Commercial List) (the "**Initial Order**") in order to implement a responsible, controlled, and orderly wind-down of its operations and maximize realizable value for stakeholders.

5. Among other things, the Initial Order: (a) appointed Richter Advisory Group Inc. as the monitor in these CCAA proceedings (the "**Monitor**"); (b) approved the appointment of the CROs; and (c) granted a stay of proceedings until January 31, 2020, or such later date as the Court may order (the "**Stay Period**").

**B. Activities since the Granting of the Initial Order**

6. Since the granting of the Initial Order, SFP Canada, in close consultation and with the assistance of the Monitor and the CROs, has been working diligently to stabilize its operations and to advance the wind-down of its business as part of these CCAA proceedings.

### (a) Stores

7. All 76 SFP Canada stores have remained open and operational since the granting of the Initial Order. SFP Canada announced the closure of sixteen stores (the "**Early Closing Stores**") across Canada shortly before it filed for CCAA protection. One Early Closing Store, located in St. Johns, Newfoundland, was closed effective January 18, 2020. Seven other stores are scheduled to close on January 31, 2020, and a further eight stores are scheduled to close on February 29, 2020.

8. SFP Canada is currently in discussions with the landlord of an Early Closing Store to extend SFP Canada's lease beyond January 31, 2020. The store in question has a significant amount of inventory on hand and SFP Canada, in consultation with the Monitor and the Consultant (defined below), believes that extending the liquidation sale at that store past January 31 would help maximize stakeholder recoveries.

### (b) Employees

9. On January 28 and 29, 2020, SFP Canada sent termination letters (the "**Termination Letters**") to 351 employees, *i.e.*, all of SFP Canada's employees with the exception of employees at the Early Closing Stores who had already received working notice of termination. The Termination Letters sent to active employees provided working notice of termination effective February 29, 2020. Employees currently on leave were provided advance notice of termination effective February 29, 2020 as well and invited to advise SFP Canada if they wanted to return to work before their termination date. The vast majority of the Termination Letters were sent via email on January 28, 2020 and the reminder were sent via mail on January 29, 2020.

10. On January 29, 2020, SFP Canada delivered notices of group termination to (i) the Quebec Ministère du Travail, de l 'Emploi et de la Solidarité Sociale and the Quebec Commission des

normes, de l'équité, de la santé et de la sécurité du travail pursuant to articles 84.0.4, 84.0.5, 84.06 and 84.0.7 of the *Act Respecting Labour Standards* and article 35.0.1 of the *Regulations respecting labour standards*; (ii) the Nova Scotia Minister of Labour and Advanced Education pursuant to sections 72 and 75 of the *Labour Standards Code*; (iii) the British Columbia Minister of Labour pursuant to section 64 of the *Employment Standards Act*; and (iv) the Saskatchewan Minister of Labour Relations and Workplace Safety pursuant to section 2-62 of the *Saskatchewan Employment Act*.

11. SFP Canada also prepared a frequently asked questions document for its employees (the "**Employee FAQs**") which was sent to all SFP Canada stores on January 27, 2020.

### (c) Inventory Liquidation

12. This Court granted an order on January 24, 2020 (the "**Sale Approval Order**") which, among other things, approved the Consulting Agreement between Schurman Retail Group, LLC, SFP Canada and a contractual joint venture comprised of Gordon Brothers Retail Partners, LLC and Hilco Merchant Resources, LLC (collectively, the "**Original Consultant**") dated January 17, 2020 (the "**Consulting Agreement**"), along with sale guidelines ("**Sale Guidelines**"), for the orderly liquidation of the Schurman Group's inventory, furniture, fixtures, and equipment (the "**Sale**").

13. Also on January 24, 2020, the Original Consultant provided notice to the Schurman Group that it had assigned its rights, benefits and obligations under the Consulting Agreement relating to the Sale in Canada to Canadian affiliates, namely Gordon Brothers Canada ULC and Merchant Retail Solutions, ULC (collectively, the "**Canadian Consultant**" and, with the Original Consultant, the "**Consultant**") effective as of January 17, 2020. As a result, the Canadian

Consultant will be performing all the services to be performed by the Original Consultant in connection with the Sale in Canada.

14. To date, the Sale has generated strong results in both the United States and Canada. The Schurman Group currently expects that the Sale will be concluded by February 29, 2020.

15. As noted in my affidavit sworn January 23, 2020 in support of SFP Canada's application for the Initial Order, SFP Canada has prepaid SFP U.S. for U.S. $700,000 worth of inventory to be sent by SFP U.S. to SFP Canada during the Sale. As of the date of the swearing of this affidavit, certain of that inventory is currently in the process of being shipped from SFP U.S.'s distribution centre to SFP Canada stores.

**(d) Landlords**

16. Immediately after filing its application for the Initial Order, SFP Canada's counsel reached out to several counsel known to represent certain landlords who have leases with SFP Canada to discuss the CCAA proceedings and to seek their input regarding the proposed realization process and the proposed Sale Approval Order and Sale Guidelines. SFP Canada provided said counsel with a copy of the Initial Order, the proposed Sale Approval Order, and the proposed Sale Guidelines.

17. Comments from said landlords' counsel were received and, after consultation with the Monitor and the Consultant's counsel, language acceptable to said landlords was incorporated into the final form of the Sale Approval Order and Sale Guidelines prior to the January 24, 2020 hearing. In particular, SFP Canada and the Consultant agreed to include a provision in the Sale Approval Order and the Sale Guidelines providing that SFP Canada and the Consultant's ability to sell Additional Consultant Goods (as defined in the Consulting Agreement) would be subject to

further order of the Court at the comeback hearing on or before January 31, 2020 or the agreement of the applicable landlord. As a result, the motion for the Sale Approval Order was unopposed and the order was granted.

18. SFP Canada will be paying rent for the stub period from the date of the Initial Order until the end of January, which payment will be made during the week ending January 31, 2020.

19. SFP Canada has kept the Monitor apprised of discussions with its landlords. SFP Canada, with the assistance of the Monitor, intends to continue engaging with its landlords throughout these CCAA proceedings.

## C. U.S. Debtors' Chapter 11 Proceedings

20. On January 23, 2020, the same day that SFP Canada filed for CCAA protection, SFP U.S. and SFP Franchise Corporation (collectively, the "**U.S. Debtors**") commenced voluntary proceedings (the "**Chapter 11 Proceedings**") under Chapter 11 of the *Bankruptcy Code* in the Bankruptcy Court for the District of Delaware (the "**U.S. Court**") in order to pursue an orderly liquidation of the retail stores in the United States.

21. The Chapter 11 Debtors' first day motions in the Chapter 11 Proceedings were heard on January 24, 2020 and the U.S. Court granted several interim orders. The U.S. Court also scheduled a hearing on February 14, 2020 to hear the U.S. Debtors' second day motions.

## D. Stay Extension

22. SFP Canada is seeking to extend the Stay Period up to and including March 31, 2020. This will allow SFP Canada to focus on the orderly wind-down, with the assistance and oversight of the Monitor and the CROs, for the benefit of all stakeholders.

23. The Sale and final reconciliation under the Consulting Agreement is expected to be completed during the extended Stay Period. SFP Canada also anticipates that it will, in consultation with the Monitor, disclaim or resiliate various vendor and other contracts during that time as part of its responsible, controlled and orderly wind-down.

24. SFP Canada has confirmed, in consultation with the Monitor, that it has sufficient cash to complete the Sale and continue its wind-down through to March 31, 2020. I understand that the Monitor will be filing a report with the Court prior to the hearing of this motion which report will include an update of the cash position of SFP Canada.

25. I believe that SFP Canada has acted, and continues to act, in good faith and with due diligence in pursuing a controlled and orderly wind-down as part of the CCAA proceedings. I believe that the proposed extended Stay Period is in the best interests of the company and its stakeholders generally. I am also informed by the Monitor that it supports the request to extend the Stay Period.

ADRIANNE RENAE PRUITT
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
MY COMMISSION EXPIRES 7-9-2022

SWORN BEFORE ME at the City of Goodlettsville, in the State of Tennessee, on January 29, 2020

Notary Public in and for the State of Tennessee

Craig M. Boucher

**IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C. C-36, as amended** Court File No:
**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SFP CANADA LTD.**

Applicant

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

Proceeding commenced at TORONTO

**AFFIDAVIT OF CRAIG M. BOUCHER**

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Lawyers for the Applicant

# TAB C

This is Exhibit “C” referred to in the

Affidavit of Craig M. Boucher,

sworn before me over video teleconference

this 26th day of March, 2020

Waleed Malik

.............................................................

A Commissioner for Taking Affidavits

Waleed Malik (LSO No. 67846O)

**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF DELAWARE**

| | |
|---|---|
| In re: | Chapter 11 |
| SFP FRANCHISE CORPORATION, *et al.*,[1] | Case No. 20-10134 (JTD) |
| Debtors. | (Jointly Administered) |
| | **Ref Nos. 101 & 102** |

**ORDER AUTHORIZING IMPLEMENTATION OF KEY EMPLOYEE**
**RETENTION PLAN AND KEY EMPLOYEE INCENTIVE PLAN**

Upon the *Motion of the Debtors for Entry of an Order Authorizing Implementation of Key Employee Retention Plan* (the "Motion")[2] and upon the First Day Declaration; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012; and the Court having found that this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Court may enter an order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and this Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that sufficient notice of the Motion has been given; and it appearing that there is good and sufficient cause for the relief set forth in this Order and that the relief set forth in this Order is in the best interests of the Debtors' estates; and the Court having determined that, based on the evidence submitted at the hearing on the Motion, none of the Key Employees are "insiders" of the Debtors, as that term is defined in section 101(31) of the Bankruptcy Code; it is hereby

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: SFP Franchise Corporation (6248); and Schurman Fine Papers (1409). The location of the Debtors' principal place of business is 300 Oak Bluff Lane, Goodlettsville, Tennessee 37072.

[2] Capitalized terms not defined herein shall have the same meaning as ascribed to them in the Motion.

1. ORDERED that the Motion is GRANTED as set forth herein; and it is further

2. ORDERED that the KERP is approved in its entirety and the Debtors are authorized to implement the KERP in their discretion; and it is further

3. ORDERED that the Debtors are hereby authorized, but not directed, to make payments to the Key Employees listed on Exhibit 1 to the Motion, in amounts not to exceed those set forth on Exhibit 1 for each Key Employee, pursuant to the KERP, as applicable and the authorization to make such payments shall not create any obligation on the part of the Debtors to make payments under the KERP unless the participants meet the necessary conditions thereunder; and it is further

4. ORDERED that all amounts earned and payable under the KERP shall have administrative expense priority under Bankruptcy Code sections 503(b) and 507(a)(2); and it is further

5. ORDERED that the terms and conditions of this Order shall be immediately effective and enforceable upon entry; and it is further

6. ORDERED that the Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion; and it is further

7. ORDERED that the Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

**Dated: February 14th, 2020**
**Wilmington, Delaware**

**JOHN T. DORSEY**
**UNITED STATES BANKRUPTCY JUDGE**

# TAB 3

Court File No. CV-20-634980-00CL

**ONTARIO**
**SUPERIOR COURT OF JUSTICE**
**COMMERCIAL LIST**

| | | |
|---|---|---|
| THE HONOURABLE MR. | ) | _____________, THE _____ |
| | ) | |
| JUSTICE HAINEY | ) | DAY OF MARCH, 2020 |

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **SFP CANADA LTD.**

APPLICANT

**ORDER**
**(Approval of Allocation of KERP Costs and Stay Extension)**

**THIS MOTION**, made by the Applicant pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, for an order approving the allocation of an appropriate share of the costs of the KERP (defined below) to the Applicant and extending the Stay Period (defined below), was read this day.

**ON READING** the Notice of Motion of the Applicant, the Affidavit of Craig M. Boucher sworn March 26, 2020 (the "**Boucher Affidavit**") and the Third Report of the Monitor, and on being advised that the Service List was served with the Applicant's Motion Record as appears from the Affidavit of Service of ● affirmed March ●, 2020.

**AND ON BEING ADVISED** that the Applicant informed the Service List that it was requesting that this motion be heard in writing, and on being further advised that no party on the Service List has advised the Applicant that it objects to this motion being heard in writing or the relief sought by the Applicant:

**SERVICE**

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

**MOTION TO BE HEARD IN WRITING**

2. **THIS COURT ORDERS** that this motion shall be heard in writing without any requirement for a live attendance.

**ALLOCATION OF KERP COSTS**

3. **THIS COURT APPROVES** the allocation of 30 percent of the costs of the key employee retention plan (the "**KERP**") described in the Boucher Affidavit to the Applicant. For the avoidance of doubt, the Applicant shall not pay any amount on account of the KERP to SFP Franchise Corporation or Schurman Fine Papers until further order of this Court.

**EXTENSION OF THE STAY PERIOD**

4. **THIS COURT ORDERS** that the Stay Period as defined in paragraph 13 of the Amended and Restated Initial Order dated January 23, 2020 is hereby extended until and including June 30, 2020.

**GENERAL**

5. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

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

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **SFP CANADA LTD.**

Court File No: CV-20-634980-00CL

***ONTARIO***
**SUPERIOR COURT OF JUSTICE**
**(Commercial List)**

Proceeding Commenced at Toronto

**ORDER**
**(Approval of Allocation of KERP Costs and Stay Extension)**

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Lawyers for the Applicant

IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended

Court File No: CV-20-634980-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **SFP CANADA LTD.**

APPLICANT

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

Proceeding commenced at Toronto

**MOTION RECORD OF THE APPLICANT**
**(Motion for Approval of Allocation of KERP Costs and Stay Extension)**

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