

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

BETWEEN:

HSBC BANK CANADA

Applicant

- and -

**SUPEREX CANADA LIMITED/SUPEREX CANADA LIMITEE
AND PRONTO INNOVATIONS**

Respondents

MOTION RECORD
(Returnable May 16, 2016)

Date: May 10, 2016

GOWLING WLG (CANADA) LLP

Barristers and Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto, Ontario M5X 1G5

Alex MacFarlane (LSUC #28133Q)

Tel: (416) 369-4631
Fax: (416) 862-7661
Email: alex.macfarlane@gowlingwlg.com

Solicitors for KPMG Inc. in its capacity as the
Court-appointed Receiver and Manager of
Superex Canada Limited/Superex Canada
Limitee and Pronto Innovations

***TO: ATTACHED SERVICE LIST**

SERVICE LIST

BY EMAIL TO:

TO: **TORKIN MANES LLP**
151 Yonge Street, Suite 1500
Toronto, ON M5C 2W7

Attention: Barry Cohen
Tel: 416-777-5434
Email: bcohen@torkinmanes.com

Solicitors for Superex Canada Limited/Superex Canada Limitee
and Pronto Innovations

AND TO: **DENTONS CANADA LLP**
77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, ON M5K 0A1

Attention: Robert J. Kennedy
Tel: 416-367-6756
Email: Robert.kennedy@dentons.com

Attention: Dennis R. Wiebe
Tel: 416-367-4475
Email: dennis.wiebe@dentons.com

Solicitors for HSBC Bank Canada

AND TO: **SUPEREX HOLDINGS INC.**
601 Gordon Baker Road
Willowdale, ON M2H 3B8

Attention: Geoffrey Gisser
Email: ggisser@superex.com

AND TO: **HYMAN GISSER FAMILY TRUST**
601 Gordon Baker Road
Willowdale, ON M2H 3B8

Attention: Hyman Gisser
Email : hygisser@gmail.com

AND TO: **793051 ONTARIO LIMITED**
480 Fairway Road
Woodstock, ON N4T 0E7

Attention: Cees Spoorenberg
Email: ceesspoor@gmail.com

AND TO: **798492 ONTARIO LIMITED**
58 Timberline Trail
Aurora, ON L4G 8A5

Attention: Gary W. Hause
Email: garywhause@hotmail.com

AND TO: **CBSC CAPITAL INC.**
100-1235 North Service Road West
Oakville, ON L6M 2W2

- and -

3450 Superior Court, Unit 1
Oakville, ON L6L 0C4

Attention: Faseeh Ahmad
Email: fahmad@leasedirect.com

AND TO: **MERCEDES-BENZ FINANCIAL SERVICES
CANADA CORPORATION**
2680 Matheson Blvd. East, Ste 500
Mississauga, ON L4W 0A5

Email: mbf@daimler.com

AND TO: **NISSAN CANADA FINANCE, A DIVISION OF
NISSAN CANADA INC.**
5290 Orbitor Drive
Mississauga, ON L4W 4Z5

Attention: Jessica DaSilva
Email: jessica.dasilva@nissancanada.com

AND TO: **HONDA CANADA FINANCE INC.**
180 Honda Blvd.
Markham, ON L6C 0H9

Attention: Mirza Usman
Email: Usman_Mirza@ch.honda.com

AND TO: **MINISTRY OF FINANCE**
LEGAL SERVICES BRANCH
Michael Starr Building
33 King Street West, 6th Floor
P.O. Box 627, Station A
Oshawa, ON L1H 8H5

Kevin O'Hara
Tel: (905) 433-6934
Email: kevin.ohara@ontario.ca

AND TO: **SUPRA CANADA TECHNOLOGIES LTD.**
5855 Kennedy Road
Mississauga, ON L4Z 2G3

Attention: Sanjeev Spolia
Email: sspolia@supraits.com

Tel: 905-286-3970

AND TO: **DEPARTMENT OF JUSTICE**
The Exchange Tower
130 King Street West, Suite 3400
Toronto, ON M5X 1K6

Attention: Diane Winters
Email: diane.winters@justice.gc.ca

BY COURIER TO:

TO: **ALLY CREDIT CANADA LIMITED**
P.O. Box 5000, Station D
Etobicoke, ON M9A 5E3

AND TO: **BANK OF NOVA SCOTIA-DLAC**
Scotia Plaza
44 King Street West
Toronto, ON M5H 1H1

AND TO: **HEWLETT-PACKARD FINANCIAL SERVICES CANADA COMPANY**
5150 Spectrum Way
Mississauga, ON L4W 5G1

AND TO: **CANADA REVENUE AGENCY**
Toronto North Tax Services Office
5001 Yonge Street
North York, ON M2N 6R9

Attn: Mr. Mark Stephenson

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Tab 1

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

HSBC BANK CANADA

Applicant

– and –

SUPEREX CANADA LIMITED/SUPEREX CANADA LIMITEE

AND PRONTO INNOVATIONS

Respondent

NOTICE OF MOTION
(Distribution and Discharge)
(Returnable May 16, 2016)

KPMG Inc. ("KPMG") in its capacity as the Court-appointed receiver and manager (the "Receiver") of the undertaking, property and assets (collectively, the "Business") of Superex Canada Limited/Superex Canada Limitee ("Superex") and Pronto Innovations ("Pronto" together with Superex the "Debtors") will make a motion to a judge presiding over the Ontario Superior Court of Justice (Commercial List) on Monday, May 16, 2016, at 10:00 a.m., or as soon after that time as the motion may be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An Order substantially in the form attached hereto as **Schedule "A"**:
 - (a) Approving the activities of the Receiver as set out in the third report of the Receiver dated May 10, 2016 (the "**Third Report**");
 - (b) Approving the final statements of receipts and disbursements of the Receiver for the period from December 3, 2015 to April 30, 2016 in respect of each of Superex and Pronto;
 - (c) authorizing and directing the Receiver to distribute the accounts receivable of Pronto *in specie* to Superex as payment on account of the Pronto indebtedness owed to Superex pursuant to the Superex security;
 - (d) approving the professional fees and disbursements of the Receiver to April 30, 2016, its counsel, Gowling WLG (formerly Gowling, Lafleur, Henderson LLP) ("**Gowling WLG**") to April 30, 2016, and a holdback for the Future Fees (as defined in the Third Report);
 - (e) discharging and releasing KPMG as Receiver of the Debtors upon the Receiver filing with the Court a discharge certificate (the "**Discharge Certificate**"), confirming that the Receiver has attended to the Outstanding Matters (as defined below); and
 - (f) for such further relief as may be required in the circumstances and that the Court deems as just and equitable.

THE GROUNDS FOR THE MOTION ARE:

Debtors

2. All references herein to monetary amounts are expressed in Canadian currency.

3. Superex is a privately held business that specialized in automotive comfort, safety products and unique, functional hard goods. The shares of Superex are wholly owned by Superex Holdings Inc. (“**Holdings**”).
4. Pronto is a partnership formed in 1987 and is owned 60% by Superex, 35% by 798492 Ontario Limited and 5% by 793051 Ontario Limited. Pronto focused on the Canadian and U.S. gift and travel markets, both Debtors sold to large department stores and independent retailers.

Insolvency and Receivership Proceedings

5. On December 3, 2015, KPMG was appointed as Receiver over the Debtors pursuant to an order (the “**Receivership Order**”) made by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.1985, C. B-3 (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.
6. On January 25, 2016, the Court granted an Approval, Vesting and Distribution Order (the “**Approval / Vesting / Distribution Order**”) wherein it, approved (a) the First Report of the Receiver to the Court dated January 18, 2016 (the “**First Report**”), (b) the distributions outlined therein; and, (c) the Proposed Transactions (as defined in the First Report) and vesting the assets purchased in each Proposed Transaction in the applicable purchaser.

Secured Creditors

7. The Debtors operations were financed *via* various credit facilities that were extended by HSBC Bank Canada (“**HSBC**”) including demand operating loans, a foreign exchange

swap facility, a credit card facility and an interest rate swap facility. HSBC held a first registered, valid and enforceable security interest over the assets of the Debtors.

8. Superex was additionally indebted to Holdings in the amount of \$4.1 million (the “**Holdings Indebtedness**”). Holdings holds valid and enforceable security over all of the assets of Superex.
9. Pursuant to the Approval / Vesting / Distribution Order, HSBC has been repaid all indebtedness owed by both Pronto and Superex in full. As part of the repayment to HSBC, Superex funded a shortfall of \$215,000 in respect of Pronto’s indebtedness owing to HSBC (the “**Pronto Shortfall**”) and took an assignment of HSBC’s security over the assets of Pronto. To date pursuant to the Pronto Shortfall, Superex is the only known creditor with a secured interest in the assets of Pronto.
10. On March 17, 2016, the Court granted a Distribution Order (the “**March Distribution Order**”) wherein it, approved *inter alia*: (a) an interim distribution in the amount of \$1.9 million from the Superex estate to Holdings, (b) subject to certain conditions, a future distribution of the balance of the net funds in the Receiver’s Superex Trust account to Holdings, and (c) a distribution of assets from the Pronto estate up to a maximum amount of \$215,000 plus interest to Superex.

Proposed Pronto Distribution

11. As at April 30, 2016, there was approximately \$233,000 in the Receiver’s Pronto accounts.

12. Based on the anticipated disbursements relating to professional fees, outstanding operating costs and administrative expenses, the Receiver anticipates there will not be sufficient funds to repay the Pronto Shortfall in full.
13. The Receiver proposes to make an *in specie* distribution to Superex, as the only secured creditor with an economic interest in the assets of Superex including any outstanding accounts receivable from Pronto which are not collected prior to the date of the Order sought on this motion (the “**Pronto Shortfall Distribution**”). As Holdings is the only secured creditor of Superex with any economic interest, this distribution is effectively a distribution to Holdings.

Receiver’s Fees and Disbursements

14. The Receiver and Gowling WLG require approval from the Court for their respective fees and disbursements inclusive of Harmonized Sales Tax (“**HST**”) (collectively, the “**Fees**”), more specifically: (i.) \$78,461.55 in respect of the Receiver’s Fees for the Superex estate from February 28, 2016 to April 30, 2016, (ii.) \$39,713.85 in respect of the Receiver’s Fees for the Pronto Estate from February 28, 2016 to April 30, 2016, and (iii.) \$21,798.94 in respect of Gowling WLG’s Fees from March 1, 2016 through to April 30, 2016.
15. The Receiver and its Counsel will incur additional future fees (the “**Future Fees**”) with respect to, among other things, completing the Third Report, the distribution and discharge motion and completing the estate administration including the Outstanding Matters identified below. The Receiver proposes to pay the Future Fees with the approval of Holdings, the only secured creditor with a direct interest in the assets of Superex and Pronto.

Remaining Matters and Discharge

16. The following administrative matters have not yet been completed in the receivership

proceedings (collectively, the “**Remaining Matters**”):

- (a) filing of the Receiver’s final HST returns and collecting the resulting refunds or making the final payment(s) in respect of HST;
 - (b) collecting outstanding Pronto accounts receivable and making the Pronto Shortfall Distribution;
 - (c) paying the miscellaneous unpaid expenses in connection with these proceedings;
 - (d) maintaining the Receiver’s accounting records, including preparation of bank reconciliations, until the Receiver’s bank account is closed;
 - (e) paying the remaining funds in the Receiver’s Superex accounts to Holdings; and
 - (f) issuing the Receiver’s final report and statement of receipts and disbursements pursuant to section 246 (3) of the BIA.
17. The Remaining Matters are strictly administrative in nature and should not delay the Receiver in seeking a discharge from its appointment as Receiver.
18. Once the Remaining Matters have been completed and the Receiver has filed the Discharge Certificate the Receiver will have completed all of its statutory duties as well as those duties as set out in the Receivership Order.
19. Rules 1.04, 2.03, and 37.07(2),(3) of the *Rules of Civil Procedure*.
20. Sections 243(1),(6), 246(3) of the *BIA*.
21. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:

1. The Third Report of the Receiver dated May 10, 2016;
2. Such further and other material as counsel may advise and this Honourable Court may permit.

Date: May 10, 2016

GOWLING WLG

Barristers and Solicitors

1 First Canadian Place

100 King Street West, Suite 1600

Toronto, Ontario M5X 1G5

Alex MacFarlane (LSUC No.: 28133Q)

Thomas Gertner (LSUC No.: 67756S)

Tel: (416) 862-3509

Fax: (416) 862-7661

Lawyers for the Receiver

SCHEDULE "A"

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

THE HONOURABLE MR.) MONDAY, THE 16th
)
JUSTICE) DAY OF MAY, 2016
)

B E T W E E N:

HSBC BANK CANADA

Applicant

- and -

**SUPEREX CANADA LIMITED/SUPEREX CANADA LIMITEE
AND PRONTO INNOVATIONS**

Respondent

DISTRIBUTION AND DISCHARGE ORDER

THIS MOTION, made by KPMG Inc. ("**KPMG**") in its capacity as receiver and manager (the "**Receiver**") of the undertaking, property and assets of Superex Canada Limited/Superex Canada Limitee ("**Superex**") and Pronto Innovations ("**Pronto**" together with Superex the "**Debtors**") for an order:

1. approving the activities of the Receiver as set out in the third report of the Receiver dated May 10, 2016 (the "**Third Report**");

2. approving the final statements of receipts and disbursements of the Receiver for the period from December 3, 2015 to April 30, 2016 in respect of each of Superex and Pronto (the “**Receiver’s Final R & D**”);

3. authorizing and directing the Receiver to distribute the accounts receivable of Pronto *in specie* to Superex as payment on account of its secured claim up to the amount of the indebtedness owed to Superex pursuant to its security;

4. approving the professional fees and disbursements of the Receiver to April 30, 2016, its counsel, Gowling WLG (formerly Gowling, Lafleur, Henderson LLP) (“**Gowling WLG**”) to April 30, 2016, and a holdback for the Future Fees (as defined in the Third Report) for the period from May 1, 2016 to the date of the filing by the Receiver of a discharge certificate (the “**Discharge Certificate**”) substantially in the form appended as **Schedule “A”** hereto, confirming that the Receiver has attended to the Outstanding Matters (as defined in the Third Report);

5. discharging and releasing KPMG as Receiver of the Debtors upon the Receiver filing with the Court the Discharge Certificate; and

6. Such further relief as may be required in the circumstances and which this Court deems as just and equitable,

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Third Report, the affidavits of the Receiver and Christine Mason as to their respective fees and disbursements (collectively the “**Fee Affidavits**”), and on hearing the submissions of counsel for the Receiver and no one else appearing although served as evidenced by the Affidavit of Frances Dunne sworn May 10, 2016, filed;

1. THIS COURT ORDERS that the activities of the Receiver, as set out in the Third Report, are hereby approved.

2. THIS COURT ORDERS that the Receiver’s Final R & D is hereby approved.

3. THIS COURT ORDERS AND DIRECTS the Receiver to distribute the accounts receivable of Pronto *in specie* to Superex as payment on account of the Pronto indebtedness owing to Superex pursuant to the Superex security.

4. THIS COURT ORDERS that the fees and disbursements of the Receiver and Gowling WLG, as set out in the Third Report and the Fee Affidavits, are hereby approved.

5. THIS COURT ORDERS that upon payment of the amounts as required under paragraph 4 hereof, the completion of the Outstanding Matters (as defined in the Third Report), and upon the Receiver having filed the Discharge Certificate, in accordance with this paragraph 5, KPMG shall immediately be discharged as Receiver of the Debtors and their Business, provided however that notwithstanding its discharge herein the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and shall continue to have the benefit of the provisions of all Orders made in these proceeding, including all approvals, protections and stays of proceedings in favour of KPMG in its capacity as Receiver, including without limitation the Receiver's Charge (as defined in the Receivership Order).

6. THIS COURT ORDERS AND DECLARES that upon the filing of the Discharge Certificate in accordance with paragraph 6, hereof, KPMG shall be released and discharged from any and all liability that KPMG now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of KPMG while acting in its capacity as Receiver herein, save and except for any gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing, upon the filing of the Discharge Certificate, KPMG shall be forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the receivership proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's part.

Schedule "A"

Court File No. CV-15-11199-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

HSBC BANK CANADA

Applicant

– and –

SUPEREX CANADA LIMITED/SUPEREX CANADA LIMITEE
AND PRONTO INNOVATIONS

Respondent

RECEIVER'S DISCHARGE CERTIFICATE

RECITALS

(A) Pursuant to an Order of the Honourable Justice Conway of the Ontario Superior Court of Justice [Commercial List] (the "Court") dated December 3, 2015 (the "Receivership Order"), KPMG Inc. ("KPMG") was appointed as receiver and manager (the "Receiver"), without security, of the property, assets and undertaking of Superex Canada Limited/Superex Canada Limitee ("Superex") and Pronto Innovations ("Pronto" and together with Superex the "Debtors").

(B) Pursuant to an Order of the Court dated May 16, 2016 (the “**Discharge Order**”), KPMG was discharged as the Receiver of the Debtors, to be effective upon the filing by the Receiver with the Court of a certificate confirming that all matters to be attended to in connection with the receivership of the Debtors have been completed to the satisfaction of the Receiver, provided, however, that notwithstanding its discharge: (a) KPMG will remain the Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership; and (b) KPMG and the Receiver will continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of KPMG, in its capacity as the Receiver, including, without limitation, the Receiver’s Charge (as defined in the Receivership Order).

(C) Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Distribution and Discharge Order.

THE RECEIVER CERTIFIES the following:

1. all matters to be attended to in connection with the receivership of the Debtors have been completed to the satisfaction of the Receiver; and
2. this Certificate was filed by the Receiver with the Court on the _____th day of _____, _____.

KPMG INC., solely in its capacity as the Court-appointed receiver and manager of Superex Canada Limited/Superex Canada Limitee and Pronto Innovations

Per: _____
Name:
Title:

ONTARIO

SUPERIOR COURT OF JUSTICE
(BANKRUPTCY AND INSOLVENCY)

(PROCEEDING COMMENCED AT TORONTO, ONTARIO)

RECEIVER'S DISCHARGE CERTIFICATE

GOWLING WLG

Barristers and Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto, ON M5X 1G5

Alex MacFarlane (LSUC No.: 28133Q)

Thomas Gertner (LSUC No.: 67756S)

Tel: (416) 862-3509

Fax: (416) 862-7661

Lawyers for KPMG Inc. in its capacity as the Court-appointed
receiver and manager of Superex Canada Limited/Superex Canada
Limitee and Pronto Innovations

HSBC BANK CANADA – Applicant

- and -

SUPEREX CANADA LIMITED Et Al., – Respondent

ONTARIO

SUPERIOR COURT OF JUSTICE
(BANKRUPTCY AND INSOLVENCY)

(PROCEEDING COMMENCED AT TORONTO, ONTARIO)

DISTRIBUTION AND DISCHARGE ORDER

GOWLING WLG

Barristers and Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto, ON M5X 1G5

Alex MacFarlane (LSUC No.: 28133Q)

Thomas Gertner (LSUC No.: 67756S)

Tel: (416) 862-3509

Fax: (416) 862-7661

Lawyers for KPMG Inc. in its capacity as the Court-appointed
receiver and manager of Superex Canada Limited/Superex Canada
Limitee and Pronto Innovations

HSBC BANK CANADA – Applicant

- and -

SUPEREX CANADA LIMITED Et Al., – Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
(BANKRUPTCY AND INSOLVENCY)**

(PROCEEDING COMMENCED AT TORONTO, ONTARIO)

NOTICE OF MOTION

**(Recognition of Sale Approval and Vesting Order)
(Returnable May 16, 2016)**

GOWLING WLG

Barristers and Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto, ON M5X 1G5

**Alex MacFarlane (LSUC No.: 28133Q)
Thomas Gertner (LSUC No.: 67756S)**

Tel: (416) 862-3509
Fax: (416) 862-7661

Lawyers for KPMG Inc. in its capacity as the Court-appointed
receiver and manager of Superex Canada Limited/Superex Canada
Limitee and Pronto Innovations

Tab 2

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

BETWEEN:

HSBC BANK CANADA

Applicant

- and -

SUPEREX CANADA LIMITED / SUPEREX CANADA LIMITÉE AND
PRONTO INNOVATIONS

Respondents

**IN THE MATTER OF AN APPLICATION UNDER
SUBSECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT
AND SECTION 101 OF THE COURTS OF JUSTICE ACT**

**THIRD AND FINAL REPORT TO THE COURT
SUBMITTED BY KPMG INC.,
IN ITS CAPACITY AS RECEIVER AND MANAGER OF
SUPEREX CANADA LIMITED / SUPEREX CANADA LIMITÉE AND
PRONTO INNOVATIONS**

MAY 10, 2016

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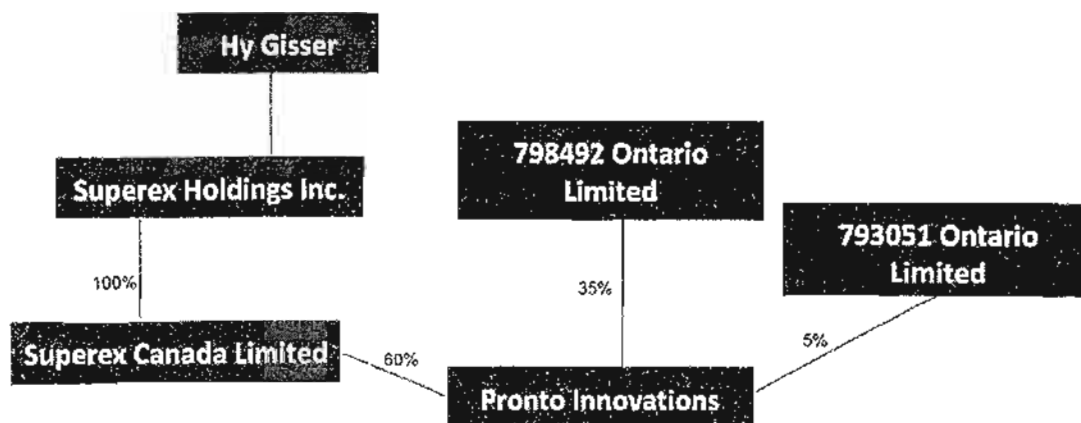
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- Appendix G - Affidavit of Christine Mason, Gowling WLG
- Appendix H - Superex Statement of Receipts & Disbursements for the period December 3, 2015 to April 30, 2016
- Appendix I - Pronto Statement of Receipts and Disbursements for the period December 3, 2015 to April 30, 2016

1.1 Introduction

- 1.1.1 Superex Canada Limited / Superex Canada Limitée (“**Superex**”) is a privately held business that was founded in 1952 by Mr. Hyman Gisser (“**Mr. Gisser**”) and was incorporated in 1971. Superex is 100% owned by Superex Holdings Inc. (“**Holdings**”), a company 100% owned by Mr. Gisser. On June 30, 1994 Superex amalgamated with GMS Products Limited and continued as Superex. Mr. Gisser is the sole director and officer of Superex (the “**Director**”).
- 1.1.2 Pronto Innovations (“**Pronto**”), a partnership, was formed in 1987 and is 60% owned by Superex, 35% owned by 798492 Ontario Limited and 5% owned by 793051 Ontario Limited with the directors of the latter two being former management of Pronto and Superex, respectively. The chart below provides an illustration of the corporate chart.



- 1.1.3 Superex distributed automotive comfort, safety products and unique, functional hard goods. Pronto distributed gift and travel products in to the Canadian and U.S. markets, both selling to large department stores and independent retailers. Products were sourced primarily from China while sales were predominantly in North America.
- 1.1.4 Superex and Pronto (collectively the “**Debtors**”) operated from leased facilities located at 601 Gordon Baker Road, Markham, Ontario (the “**Leased Premises**”), which is owned by the Hyman Gisser Family Trust, a related entity. Superex also stored and shipped inventory directly from third party logistics warehouses in Richmond, British Columbia, Long Beach, California and Buffalo, New York (collectively the “**Rented Facilities**”).
- 1.1.5 The Debtors operations were financed via various credit facilities that were extended by HSBC Bank Canada (“**HSBC**” or the “**Bank**”) pursuant to a facility letter dated August 5, 2014 which was amended and restated by a facility dated May 26, 2015 and includes demand operating loans, a foreign exchange swap facility, a credit card facility and an interest rate swap facility (collectively the “**Loan Facilities**”). As of December 3, 2015, when KPMG Inc. was appointed as Receiver (as defined and described below) approximately \$1.9 million and \$500,000 (i.e. prior to the Bank exercising its set-off rights) was owing by Superex and Pronto, respectively, under the Loan Facilities to the Bank.

1.1.6 Holdings has a registered second ranking priority charge as against the assets of Superex relating to shareholder loans, which totaled approximately \$4.1 million as at December 3, 2015. The Receiver's counsel has provided an opinion that, subject to the conditions, assumptions, and restrictions therein, Holdings' secured claim is valid and enforceable.

1.1.7 As illustrated in the chart below, the Debtors experienced a significant decline in sales and operating results in the fiscal year ended December 31, 2014 ("FY 2014") and the 9 months ended September 30, 2015 ("YTD 2015") compared to fiscal 2013 ("FY 2013"). The decline in sales and profitability was associated with customers ceasing to purchase certain key products, intense pressures on pricing and markdowns to address the slowdown in sales, both of which adversely affected margins. Additionally the Company began to experience liquidity constraints as suppliers sought cash on delivery terms.

Income Statement Summary (000's)	FY 2013	FY 2014	YTD 2015 (9 months)
Sales	\$35,300	\$30,800	\$17,400
Net Profit / (Loss)	\$174	\$(1,200)	\$(1,100)

1.1.8 As a result of the Debtors' deteriorating operating results and the resulting impact on their financial position, together with breaches under the Debtors' Loan Facilities with HSBC, the Debtors and the Bank entered into a forbearance agreement dated August 28, 2015 (the "Forbearance Agreement"), which among other things, provided the Debtors with the opportunity to refinance their business and repay their outstanding indebtedness to the Bank. The Debtors were not able to comply with the terms of the Forbearance Agreement and accordingly, on October 23, 2015, the Bank issued demand letters together with Notices of Intention to Enforce Security pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act* (Canada), (the "BIA").

1.1.9 The Debtors subsequently requested a further extension of the forbearance period under the Forbearance Agreement to November 26, 2015 in order to provide the Debtors with additional time to refinance or complete a sale transaction to repay their obligations to the Bank. Despite their best efforts, the Debtors were not able to consummate a financing arrangement or a sale transaction and, accordingly, the Debtors were unable to repay the indebtedness due under the Loan Facilities.

1.1.10 As a result, pursuant to an application brought by HSBC, with the consent of the Debtors, on December 3, 2015 (the "Appointment Date") the Ontario Superior Court of Justice (Commercial List), (the "Court"), granted an order (the "Appointment Order") appointing KPMG Inc. as receiver and manager (the "Receiver") without security, of all of the assets, undertakings and property of Superex and Pronto pursuant to subsection 243(1) of the BIA and section 101 of the *Courts of Justice Act*. A copy of the Appointment Order is attached as Appendix A. The Appointment Order empowered and authorized, but did not obligate the Receiver to do, among other things, the following:

- take possession and control of the property of the Debtors and any and all proceeds and receipts arising out of their property;
- to manage, operate and carry on the business or to cease the operations;

- to receive and collect all monies and accounts now owed or hereafter owing to the Debtors;
- to market any or all of the property of the Debtors on such terms and conditions of sale as the Receiver deems appropriate;
- to sell, convey, transfer, lease or assign the property of the Debtors; and,
- to report to, meet and discuss with affected Persons (as defined in the Appointment Order), as the Receiver deems appropriate, all matters relating to the property of the Debtors and the receivership.

1.1.11 As described in the Receiver's first report dated January 18, 2016, (the "**First Report**"), a copy of which is attached hereto as **Appendix B**, without appendices, the Receiver completed a sale process for the Debtors' assets and requested approval from the Court for the Receiver to complete the SMG Sale, the Bag Designs Sale, the Holdings Sale, and the Renaud-Bray Sale (all as defined in the First Report) and sought an order vesting the assets as described therein in each Proposed Transaction in SMG, Bag Designs, Holdings and Renaud-Bray, respectively.

1.1.12 On January 25, 2016, the Court granted a further order approving, among other things, the First Report, the Proposed Transactions, the vesting of the Assets and a distribution to the HSBC, subject to the Receiver issuing Receiver's Certificate evidencing the completion of each transaction (the "**Approval Vesting and HSBC Distribution Order**") a copy of which is attached hereto as **Appendix "C"**.

1.1.13 As outlined in the Receiver's Second report dated March 10, 2016 (the "**Second Report**"), a copy of which is attached hereto as **Appendix D**, without appendices, the Receiver sought an order approving the Superex Distributions and the Pronto Distribution, both as defined therein, to Holdings and to Superex, respectively. On March 17, 2016 the Court granted an order approving, among other things, the Superex Distributions (the "**Holdings Distribution Order**") a copy of which is attached hereto as **Appendix E**.

1.2 Purpose of Receiver's Third Report

1.2.1 The purpose of the Receiver's third and final report to the Court (the "**Third Report**") is to report on the Receiver's activities since the Second Report and obtain the approval by the Court of the following:

- Activities of the Receiver to-date as outlined in the Third Report;
- Fees and disbursements of the Receiver and its counsel, Gowling WLG (Canada) LLP ("**Counsel**") including the estimate of future fees to be incurred in completing the Outstanding Matters defined in Section 3 of this Third Report;
- Pronto Distribution as outlined in Section 5.3 of the Third Report;
- Receiver's statement of receipts and disbursements for each of Superex and Pronto for the period December 3, 2015 to April 30, 2016; and
- Discharge and release of the Receiver, such discharge and release to be effective upon the Receiver filing with the Court a Discharge Certificate (as defined in Section 6) evidencing that the Receiver has completed the Outstanding Matters.

1.3 Scope and Terms of Reference

- 1.3.1** The Third Report has been prepared for the Court and the Debtors' stakeholders to provide general information relating to the Debtors and to assist the Court in making a determination of whether to approve the relief sought. Accordingly, readers are cautioned that the Receiver's Third Report may not be appropriate for any other purpose. The Receiver does not assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of the Third Report contrary to the provisions of this paragraph.
- 1.3.2** In preparing this Third Report, the Receiver has relied upon the Debtors' records and available unaudited financial information. While the Receiver has reviewed certain of the Debtors' records, such work does not constitute an audit or verification of such information for accuracy, completeness, or compliance with Generally Accepted Accounting Principles or International Financial Reporting Standards. Accordingly, the Receiver expresses no opinion or other form of assurance with respect to such information except as expressly stated herein.
- 1.3.3** In the course of its mandate, the Receiver has assumed the integrity and truthfulness of the information and explanations presented to it by management. To date, nothing has come to the Receiver's attention that would cause it to question the reasonableness of these assumptions. The Receiver has requested that management bring to its attention any significant matters which were not addressed in the course of the Receiver's specific inquiries. This Third Report is based on the information (financial or otherwise) made available to the Receiver by the Debtors.
- 1.3.4** Capitalized terms not defined in this Third Report are as defined in the Appointment Order, the First Report and/or the Second Report. All references to monetary amounts are in Canadian currency, unless otherwise noted.
- 1.3.5** A copy of this Third Report, and all motion records and orders issued in these proceedings are available on the Receiver's website at www.kpmg.com/ca/superexperto and will remain available on the website for a period of six months after the Receiver's discharge.

2.1 Accounts Receivable

- 2.1.1 The Superex and Pronto accounts receivable ("AR") as at December 3, 2015, totaled approximately \$3.0 million and \$328,000, respectively, owing from a limited number of large customers and numerous small customers as outlined in the chart below:

AR Summary as at Appointment Date	Superex		Pronto	
	#	\$(000's)	#	\$(000's)
Top Customers	18	\$2,300	7	\$134
Remaining Accounts	≈ 400	\$700	≈ 200	194
Total AR		\$3,000		\$328

- 2.1.2 The Receiver's collections to April 30, 2016 total approximately \$2.85 million and \$205,000 from Superex and Pronto customers, respectively. It should be noted that the Receiver's collections of Superex USD denominated receivables as at April 30, 2016 had a positive foreign exchange variance of approximately \$120,000 to the figures reported as at December 3, 2015.
- 2.1.3 After consideration of rights of set-off and agreed, valid deductions and discounts, the net outstanding balance of Superex and Pronto accounts receivable as at April 30, 2016 are approximately \$19,000 and \$21,000, respectively (the "Outstanding AR"). The Superex Outstanding AR were assigned to Holdings pursuant to the Holdings Distribution Order. For convenience, Superex customers continue to pay their accounts to the Receiver and pursuant to the Holdings Distribution Order, the Receiver will forward the collections to Holdings.
- 2.1.4 The Receiver is continuing to pursue collection of the Pronto Outstanding AR, however collection is uncertain given the passage of time since the Appointment Date, the age of the AR, and the limited amount of the AR does not warrant the commencement of legal proceedings to pursue collection.
- 2.1.5 Despite the Pronto Outstanding AR, as outlined in Section 5, the Receiver expects that there will not be sufficient net funds from the estate of Pronto to repay the Pronto Shortfall to Superex in full. Accordingly, the Receiver requests that the Court approve an *in specie* distribution of any Pronto Outstanding AR to Superex in accordance with the prior assignment of Pronto's security in favour of HSBC to Superex (the "Assignment").

2.2 Employees

- 2.2.1 As at the Appointment Date, Superex and Pronto employed 49 and 6 employees, respectively. Superex had a full complement of administrative, finance and warehouse staff, while the Pronto employees were limited primarily to administrative, sales and customer service functions. Pronto relied on Superex employees for its day-to-day accounting functions and for the processing and shipping of customer orders.

2.2.2 Pursuant to paragraph 14 of the Appointment Order, the Superex and Pronto employees remained the employees of the Debtors until terminated by the Receiver on behalf of the Debtors. Throughout the receivership proceedings, the Receiver terminated employees based on operating and administration requirements. On March 18, 2016, the Receiver terminated the remaining 14 Superex employees.

2.3 Facilities

2.3.1 As previously reported, the Receiver completed the sale of all of the Debtors' inventory and was continuing with the inventory removal and clean-up of the Leased Premises and Rented Facilities. The Receiver vacated the Leased Premises on March 18, 2016 and has vacated the Rented Facilities in Buffalo, California and British Columbia.

2.4 Computer Lease

2.4.1 As previously reported, Superex entered into a lease/rental arrangement for certain computer desktops and laptops (the "**Leased Computers**") with Supra Canada Technologies Ltd. ("**Supra**"). As at the Appointment Date, the remaining balance of 24 rental payments totalled approximately \$37,000 (excluding HST). The Receiver asked Counsel to review the Supra arrangement with Superex. Counsel advised that Supra has not registered a security interest in the Leased Computers pursuant to the provisions of the *Personal Property Security Act* (Ontario).

2.4.2 As a result, the Receiver is of the view that Supra's interest in the Leased Computers is subject to the security of Holdings. Accordingly, the Receiver notified Supra that the Receiver proposed to release the Leased Computers to Holdings as part of a distribution to Holdings pursuant to Holdings security interest in the assets of Superex (the "**Leased Computer Distribution**").

2.4.3 Subsequently, Supra provided the Receiver copies of a Master Lease and Finance Agreement and a Bill of Sale both between Supra and Hewlett-Packard Financial Services Canada Company ("**HP**"). Supra also provided a PPSA registration showing that HP registered security on the Leased Computers against Supra; however, there was no record of any registrations against Superex. Supra is of the view that as a result of HP's registration it is entitled to the return of the Leased Computers and the monthly lease payments since December 3, 2015. Since neither Supra, nor HP registered a security interest against Superex, the Receiver remains of the view that Supra's interest in the Leased Computers, if any, is subject to the security of Holdings. The Receiver remains of the opinion that the Leased Computers were rightfully distributed to Holdings pursuant to the Holdings Distribution Order. The Receiver has served both Supra and HP with these motion materials.

2.5 Books and Records

2.5.1 Upon its appointment, the Receiver arranged to preserve and protect the Debtors' books and records, including electronic data (the "**Records**") located at the Leased Premises.

2.5.2 Upon its discharge as Receiver, KPMG will release the Superex and Pronto Records to Mr. Gisser, in his capacity as the Director of Superex which is the majority shareholder of Pronto.

2.6 Government Accounts

2.6.1 As noted in the Second Report, based on Canada Revenue Agency ("**CRA**") examinations of the Debtors' payroll source deduction and HST accounts, CRA has advised that there are no outstanding pre-receivership balances outstanding.

- 2.6.2 With respect to the various payroll associated government accounts, since all Superex and Pronto employees have been terminated, the Receiver has requested the closure of the Debtors' source deduction, EHT and WSIB accounts.
- 2.6.3 The Receiver has filed all the necessary post receivership HST and QST filings to March 31, 2016 and will continue to file all required sales tax returns until discharge.
- 2.6.4 The Receiver has served CRA with these motion materials for the Receiver's discharge.

3.0

RECEIVER'S AND ITS COUNSEL'S ACCOUNTS

- 3.1 Pursuant to paragraph 23 of the Appointment Order, any expenditure or liability which shall properly be made or incurred by the Receiver, including the fees and disbursements of the Receiver and the fees and disbursements of Counsel, constitute the "Receiver's Charge".
- 3.2 The fees and disbursements of the Receiver for the period February 28, 2016 to April 30, 2016 are detailed in the affidavit of Jordan Sleeth dated April 3, 2016, a copy of which is attached as **Appendix F**.
- 3.3 The Receiver's fees with regards to the Superex receivership estate from February 28, 2016 through to April 30, 2016 encompass 146.8 hours at an average hourly rate of approximately \$382.70 for a total of \$56,180 prior to applicable taxes. The Receiver is seeking the approval of the Court of its total fees related to Superex inclusive of applicable taxes in the amount of \$63,483.40.
- 3.4 The Receiver's fees with regards to the Pronto receivership estate from February 28, 2016 to April 30, 2016 encompass 66.45 hours at an average hourly rate of approximately \$380.66 for a total of \$25,295, prior to applicable taxes. The Receiver is seeking the approval of the Court of its total fees and disbursements related to Pronto inclusive of applicable taxes in the amount of \$28,583.35.
- 3.5 The fees and disbursements of Counsel are detailed in the affidavit of Christine Mason, a copy of which is attached as **Appendix G**. The Receiver's Counsel's fees for the period March 2, 2016 through to April 29, 2016 encompass 28.1 hours at an average hourly rate of approximately \$624.20 for a total of \$17,540, prior to applicable taxes. Disbursements totaled \$1,890.58. The Receiver is seeking the approval of the Court of its Counsel's total fees and disbursements inclusive of taxes in the amount of \$21,798.94. The Receiver is of the opinion that the Receiver's Counsel's fees and disbursements are fair and reasonable in the circumstances.
- 3.6 The Receiver and its Counsel will incur additional combined future fees estimated to be approximately \$50,000 and \$30,000 for the Superex and Pronto estates, respectively (the "**Future Fees**") with respect to, among other things, completing this Third Report, the associated distribution and discharge motion and completing the estate administration including the Outstanding Matters identified herein.

4.0

STATEMENT OF RECEIPTS & DISBURSEMENTS

4.1 Statement of Receipts and Disbursements

4.1.1 The chart below provides a summary of the Receiver's Superex and Pronto statement of receipts and disbursements ("R&D") for the period December 3, 2015 to April 30, 2016:

('000)	Superex	Pronto
Receipts	\$ 4,245	\$ 802
Disbursements (Operating, Administrative and Professional)	(1,262)	(319)
Sub-total	2,983	483
Distributions	(2,758)	(250)
Net funds on hand	\$ 225	\$ 233

4.1.2 The Superex and Pronto R&D's reflect an allocation of costs between the estates as the Superex receivership estate funded various property, office and administrative costs associated with rent, taxes, and utilities, shared staffing and legal fees. Property costs were allocated among the Debtors' on a square footage basis and office and administrative costs were allocated based on a pro-rata share of the net book value of assets as at the Appointment Date.

4.2 Superex R&D

4.2.1 The Receiver's R&D in respect of the receivership proceedings of Superex for the period December 3, 2015 to April 30, 2016 is attached hereto as **Appendix H**.

4.2.2 As illustrated therein, receipts total approximately \$4.25 million and are primarily related to collection of AR, the Receiver's inventory sales and proceeds from the sale transactions approved by the Court.

4.2.3 The Receiver's disbursements for operating, administrative and professional fees total approximately \$1.26 million, primarily related to wages, freight, other operating expenses and professional and legal fees.

4.2.4 The Receiver has distributed to HSBC approximately \$644,000 in respect of the Superex debt, \$215,000 on account of the balance of the Pronto Shortfall (for which Superex obtained the Assignment) and \$1.9 million to Holdings. Accordingly, as at April 30, 2016 the Receiver has net funds in its Superex accounts of approximately \$225,000.

4.3 Pronto R&D

4.3.1 The Receiver's R&D in respect of the receivership proceedings of Pronto for the period December 3, 2015 to April 30, 2016 is attached hereto as **Appendix I**.

4.3.2 Receipts total approximately \$802,000 and are primarily related to cash on hand, collection of AR, Receiver's inventory sales and the Renaud-Bray Sale. The Receiver's disbursements for operating expenses, administration and professional fees total approximately \$319,000, primarily related to wages, an allocation of property and head office costs and professional fees.

4.3.3 The Receiver distributed approximately \$250,000 to HSBC on account of Pronto's indebtedness. Accordingly, as at April 15, 2016 the Receiver has net funds in its Pronto accounts of approximately \$233,000.

Appendix “A”

Court File No.: CV-15-11199-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE _____)
JUSTICE CDJWAT)

THURSDAY, THE 3rd DAY
OF DECEMBER, 2015

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED

BETWEEN:



HSBC BANK CANADA

Applicant

- and -

SUPEREX CANADA LIMITED/SUPEREX CANADA LIMITEE and
PRONTO INNOVATIONS

Respondents

ORDER
(appointing Receiver)

THIS APPLICATION made by HSBC Bank Canada (the "Bank") for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing KPMG Inc. ("KPMG") as receiver and manager (the "Receiver") without security, of all of the assets, undertakings and properties of Superex Canada Limited/Superex Canada Limitee and Pronto Innovations (collectively, the "Debtors") acquired for, or used in relation to a business carried on by the Debtors including all proceeds thereof, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Stephen Wayland sworn November 27, 2015 and the Exhibits thereto, and on hearing the submissions of counsel for the Bank, no one else appearing although duly served with the Notice of Application and Application Record as appears from the affidavit of service of Joanna Léwandowska sworn November 27, 2015, and on reading the consent of KPMG to act as the Receiver,

SERVICE

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

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, KPMG is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (the "Property").

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and

on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;

(p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;

(q) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have;

~~(r) to consent on behalf of any, or all of the Debtors, to a bankruptcy order upon the filing of a bankruptcy application against one or more of the Debtors; and~~

(R) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtors, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting

records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

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

7. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court

upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

9. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. **THIS COURT ORDERS** that all rights and remedies against the Debtors, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

11. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

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

RECEIVER TO HOLD FUNDS

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

EMPLOYEES

14. **THIS COURT ORDERS** that all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in

respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

15. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in

pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

17. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

18. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

24. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

25. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service->

protocol/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: www.kpmg.com/ca/superexponto

26. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

27. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

28. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.

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

30. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

31. **THIS COURT ORDERS** that the Bank shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Bank's security or, if not so provided by the Bank's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors estate with such priority and at such time as this Court may determine.

32. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

ENTERED AT MONTREAL TORONTO
ON / BOOK NO.
LE / DANS LE REGISTRE NO.



DEC 03 2015



SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that KPMG Inc., the receiver and manager (the "Receiver") of the assets, undertakings and properties Superex Canada Limited/Superex Canada Limitee and Pronto Innovations acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ___ day of _____, 2015 (the "Order") made in an application having Court file number -CL-_____, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded monthly not in advance on the last day of each month after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

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

DATED the ____ day of _____, 2015.

KPMG INC., solely in its capacity as Receiver
of the Property, and not in its personal capacity

Per: _____

Name:

Title:

APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED
CV-15-11199-00CL
-and- SUPEREX CANADA LIMITED/SUPEREX CANADA LIMITEE
and PRONTO INNOVATIONS
Respondents

Applicant

ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]

PROCEEDING COMMENCED AT
TORONTO

ORDER (APPOINTING RECEIVER)

DENTONS CANADA LLP
77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, Ontario
M5K 0A1

Dennis Wiebe (LSUC: 25189V)

Tel: (416) 863-4475

Fax: (416) 863-4592

Email: dennis.wiebe@dentons.com

Robert J. Kennedy (LSUC: 474070)

Tel: (416) 367-6756

Fax: (416) 863-4592

Email: robert.kennedy@dentons.com

Solicitors for HSBC Bank Canada

Appendix “B”

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

BETWEEN:

HSBC BANK CANADA

Applicant

- and -

SUPEREX CANADA LIMITED / SUPEREX CANADA LIMITÉE AND
PRONTO INNOVATIONS

Respondents

**IN THE MATTER OF AN APPLICATION UNDER
SUBSECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT
AND SECTION 101 OF THE COURTS OF JUSTICE ACT**

**FIRST REPORT TO THE COURT
SUBMITTED BY KPMG INC.,
IN ITS CAPACITY AS RECEIVER AND MANAGER OF
SUPEREX CANADA LIMITED / SUPEREX CANADA LIMITÉE AND
PRONTO INNOVATIONS**

JANUARY 18, 2016

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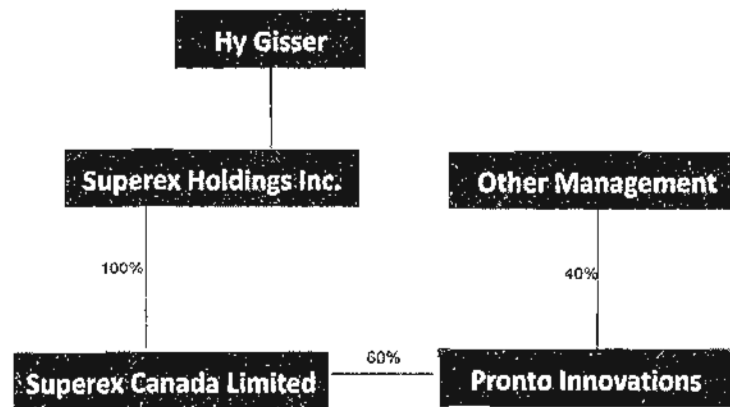
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- Appendix G - Affidavit of Christine Mason, Gowlings LLP
- Appendix H - Superex Statement of Receipts & Disbursements for the period December 3, 2015 to December 31, 2015
- Appendix I - Pronto Statement of Receipts and Disbursements for the period December 3, 2015 to December 31, 2015

1.0 INTRODUCTION AND PURPOSE

1.1 Introduction

- 1.1.1 Superex Canada Limited / Superex Canada Limitée (“**Superex**”) is a privately held business that was founded in 1952 by Mr. Hyman Gisser (“**Mr. Gisser**”) and was incorporated in 1971. Superex is 100% owned by Superex Holdings Inc. (“**Holdings**”), a company 100% owned by Mr. Gisser. On June 30, 1994 Superex amalgamated with GMS Products Limited and continued as Superex. Mr. Gisser is the sole director and officer of Superex (the “**Director**”).
- 1.1.2 Pronto Innovations (“**Pronto**”), a partnership, was formed in 1987 and is 60% owned by Superex, 35% owned by 798492 Ontario Limited and 5% owned by 793051 Ontario Limited with the directors of the latter two being current or former management of Pronto and Superex, respectively. The chart below provides an illustration of the corporate chart.



- 1.1.3 Superex is a distributor specializing in automotive comfort, safety products and unique, functional hard goods. Pronto is a distributor focusing on the Canadian and U.S. gift and travel markets, both selling to large department stores and independent retailers. Products are sourced primarily from China and sales are predominantly in North America.
- 1.1.4 Superex and Pronto (collectively the “**Debtors**”) operate from leased facilities located at 601 Gordon Baker Road, Markham, Ontario (the “**Leased Premises**”), which is owned by the Hyman Gisser Family Trust, a related entity. Superex also stores and ships inventory from third party logistics warehouses in Richmond, British Columbia, Long Beach, California and Buffalo, New York (collectively the “**Rented Facilities**”).
- 1.1.5 The Debtors operations were financed via various credit facilities that were extended by HSBC Bank Canada (“**HSBC**” or the “**Bank**”) pursuant to a facility letter dated August 5, 2014 which was amended and restated by a facility dated May 26, 2015 and includes demand operating loans, a foreign exchange swap facility, a credit card facility and an interest rate swap facility (collectively the “**Loan Facilities**”).
- 1.1.6 Holdings has a registered second ranking priority charge as against the assets of Superex relating to shareholder loans totaling approximately \$4.1 million. The Receiver has asked its counsel to prepare a security opinion with respect to the Holdings security for the Receiver’s review.

1.1.7 As illustrated in the chart below, the Debtors have experienced a significant decline in sales and operating results in the fiscal year ended December 31, 2014 (“FY 2014”) and the 9 months ended September 30, 2015 (“YTD 2015”) compared to fiscal 2013 (“FY 2013”). The decline in sales and profitability was associated with customers ceasing to purchase certain key products, intense pressures on pricing and markdowns to deal with the slowdown in sales, both of which adversely affected margins. Additionally the Company began to experience liquidity constraints as suppliers sought cash on delivery terms.

Income Statement Summary (000's)	FY 2013	FY 2014	YTD 2015 (9 months)
Sales	\$35,300	\$30,800	\$17,400
Net Profit / (Loss)	\$174	\$(1,200)	\$(1,100)

1.1.8 As a result of the Debtors deteriorating operating results and the resulting impact on their financial position, together with breaches under the Debtors’ Loan Facilities with HSBC, the Debtors and the Bank entered into a forbearance agreement dated August 28, 2015 (the “**Forebearance Agreement**”), to among other things, provide the Debtors the opportunity to refinance their business and payout their outstanding indebtedness to the Bank. The Debtor was not able to meet the terms of the Forebearance Agreement and accordingly, on October 23, 2015, the Bank issued demand letters together with its Notice of Intention to Enforce Security pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act* (Canada), (the “**BIA**”).

1.1.9 The Debtors subsequently requested a further extension of the forbearance period under the Forebearance Agreement to November 26, 2015 to allow additional time to refinance or complete a sale transaction to repay their obligations to the Bank. Despite their best efforts, the Debtors were not able to consummate a financing arrangement or a sale transaction that was acceptable to the Director and accordingly, were not in a position to repay the indebtedness due under the Loan Facilities.

1.1.10 As a result, pursuant to an application brought by HSBC, with the consent of the Debtors, on December 3, 2015 (the “**Appointment Date**”) the Honourable Madam Justice Conway of the Ontario Superior Court of Justice (Commercial List), (the “**Court**”), issued an order (the “**Appointment Order**”) appointing KPMG Inc. as receiver and manager (the “**Receiver**”) without security, of all of the assets, undertakings and property of Superex and Pronto pursuant to subsection 243(1) of the BIA and section 101 of the *Courts of Justice Act*. A copy of the Appointment Order is attached as **Appendix A**. The Appointment Order empowered and authorized, but did not obligate the Receiver to do, among other things, the following:

- take possession and control of the property of the Debtors and any and all proceeds and receipts arising out of their property;
- to manage, operate and carry on the business or to cease the operations;
- to receive and collect all monies and accounts now owed or hereafter owing to the Debtors;
- to market any or all of the property of the Debtors on such terms and conditions of sale as the Receiver deems appropriate;
- to sell, convey, transfer, lease or assign the property of the Debtors; and,

- to report to, meet and discuss with affected Persons (as defined in the Appointment Order), as the Receiver deems appropriate, all matters relating to the property of the Debtors and the receivership.

1.2 Purpose of Receiver's First Report

1.2.1 This constitutes the Receiver's first report to the Court (the "**First Report**") in this matter and it is filed to:

- Report on the Receiver's activities since the granting of the Appointment Order and seek the Court's approval of the activities to date as outlined herein and as set out in the Receiver's Confidential Supplement to the First Report (the "**Confidential Supplement**");
- Request that the Court seal the Confidential Supplement pending a further order of this Court or the completion of the proposed sales of the assets of the Debtors, as discussed further in this First Report and the Confidential Supplement;
- Request that the Court approve the following proposed sale transactions and orders vesting the assets in the purchasers:
 1. A sale of specific Superex Lot 1 inventory to MNK-Strategic Merchandise Group ("**SMG**"), (the "**SMG Sale**") as further detailed herein and in the Confidential Supplement;
 2. A sale of the Lot 2 Promotions inventory to Bag Designs Inc. T/A Just In Case ("**Bag Designs**"), (the "**Bag Designs Sale**") as further detailed herein and in the Confidential Supplement;
 3. A sale of the Superex Lot 1 Residual Inventory, Lot 3, Lot 4 and Lot 5 to Holdings (the "**Holdings Sale**") as further detailed herein and in the Confidential Supplement; and,
 4. A sale of Lot 6 and Lot 7 to Librairie Renaud-Bray Inc. ("**Renaud-Bray**"), (the "**Renaud-Bray Sale**") as further detailed herein and in the Confidential Supplement;
- Request that the Court approve the following:
 1. Proposed Distributions as described herein;
 2. The fees and expenses of the Receiver and its counsel for the period ended December 31, 2015; and,
 3. Receiver's statement of receipts and disbursements for each of Superex and Pronto for the period December 3, 2015 to December 31, 2015.

1.3 Scope and Terms of Reference

1.3.1 The First Report has been prepared for the use of this Court and the Debtors' stakeholders as general information relating to the Debtors and to assist the Court in making a determination of whether to approve the relief sought. Accordingly, readers are cautioned that the Receiver's First Report may not be appropriate for any other purpose. The Receiver does not assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of the First Report contrary to the provisions of this paragraph.

- 1.3.2 In preparing this First Report, the Receiver has relied upon the Debtors' records and available unaudited financial information. While the Receiver has reviewed certain of the Debtors' records, such work does not constitute an audit or verification of such information for accuracy, completeness, or compliance with Generally Accepted Accounting Principles or International Financial Reporting Standards. Accordingly, the Receiver expresses no opinion or other form of assurance with respect to such information except as expressly stated herein.
- 1.3.3 In the course of its mandate, the Receiver has assumed the integrity and truthfulness of the information and explanations presented to it by management. To date, nothing has come to the Receiver's attention that would cause it to question the reasonableness of these assumptions. The Receiver has requested that management bring to its attention any significant matters which were not addressed in the course of the Receiver's specific inquiries. This First Report is based on the information (financial or otherwise) made available to the Receiver by the Debtors.
- 1.3.4 Capitalized terms not defined in this First Report are as defined in the Appointment Order. All references to monetary amounts are in Canadian currency.
- 1.3.5 Copies of this First Report, and all motion records and orders issued in these proceedings are available on the Receiver's website at www.kpmg.com/ca/superexpronto, and will remain available on the website for a period of six (6) months after the Receiver's discharge.