

**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 BEN MOSS JEWELLERS WESTERN CANADA LTD.

APPLICANT

MOTION RECORD OF THE APPLICANT
(Sale Approval and Stay Extension, Returnable July 29, 2016)

July 25, 2016

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Tab 1

Court File No. CV-16-11397-00CL

**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 BEN MOSS JEWELLERS WESTERN
CANADA LTD.

APPLICANT

**NOTICE OF MOTION
(Sale Approval and Stay Extension,
Returnable July 29, 2016)**

The Applicant, Ben Moss Jewellers Western Canada Ltd. ("**Ben Moss**"), will make a motion before the Honourable Justice Newbould of the Ontario Superior Court of Justice (Commercial List) on July 29, 2016 at 10:00AM, or as soon after that time as the motion can be heard, at 330 University Ave, Toronto, Ontario.

THE MOTION IS FOR:

1. An Order substantially in the form attached hereto as Schedule "A":
 - (a) abridging the time for and validating service of this Notice of Motion and supporting materials such that the motion is properly returnable on July 29, 2016 and dispensing with further service thereof;
 - (b) approving the Agency Agreement entered into between Ben Moss and a contractual joint venture composed of Gordon Brothers Canada ULC and Merchant Retail Solutions ULC (the "**Liquidator**") on July 22, 2016 (the "**Liquidation Agreement**"), for the liquidation of certain of Ben Moss's

inventory, furniture, fixtures and equipment and authorizing and directing Ben Moss to take any and all actions as may be necessary or desirable to implement the Liquidation Agreement and each of the transactions contemplated therein (the “**Transaction**”);

- (c) authorizing the Liquidator to conduct the sale in accordance with applicable Orders, the Liquidation Agreement and the sale guidelines attached to the Liquidation Agreement as Schedule “G” (the “**Liquidation Guidelines**”);
- (d) approving the Liquidation Guidelines;
- (e) granting the creation of a Court-ordered charge in favour of the Liquidator on all of the Charged Property, as defined in the draft Order, which shall rank in priority to all encumbrances over the Charged Property up to the maximum set out in the draft Order and subject to the conditions described therein (the “**Liquidator’s Charge**”);
- (f) approving certain distributions of proceeds from the Liquidation Agreement in accordance with the conditions set out in the draft Order;
- (g) approving certain modifications to the Cash Management System in accordance with the Liquidation Agreement;
- (h) extending the Stay Period, as defined in paragraph 14 of the Amended and Restated Initial Order (as defined below), until and including December 30, 2016;
- (i) approving the activities and conduct of the CRO (as defined below); and

- (j) approving the activities and conduct of the Monitor (as defined below) and the fees and disbursements of the Monitor and its counsel.
2. Such further and other relief as counsel may advise and as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

A. Background

3. On May 18, 2016, this Honourable Court granted protection to Ben Moss under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended (the "**CCAA**") pursuant to an initial order of the Ontario Superior Court of Justice (Commercial List) (the "**Initial Order**").
4. In the Initial Order, the Court, among other things,
 - (a) granted a stay of proceedings in favour of Ben Moss until and including June 15, 2016, or such later date as the Court may order (the "**Stay Period**");
 - (b) authorized Ben Moss to obtain and borrow up to CAD\$8 million under a revolving credit facility from one of its senior secured lenders, Salus CLO 2012-1 Ltd. (and with the consent of its other senior secured lender Salus Capital Partners, LLC. ("**Salus Capital**")), subject to the condition that borrowing could not exceed \$3.5 million before the comeback hearing (the "**DIP Facility**");
 - (c) appointed FAAN Advisors Group Inc. as Chief Restructuring Officer of Ben Moss (the "**CRO**");

- (d) approved a comprehensive refinancing, investment and/or sale solicitation process (the “**RISP**”); and
 - (e) appointed Alvarez & Marsal Canada Inc. as the monitor in respect of the Applicant (the “**Monitor**”);
5. At the comeback hearing on May 26, 2016, Ben Moss sought and obtained approval of an amended and restated initial order (the “**Amended and Restated Initial Order**”);
6. In the Amended and Restated Initial Order, the Court, among other things,
- (a) established the treatment of Consignment Goods (as defined in the Amended and Restated Initial Order);
 - (b) clarified the rights of real property landlords as against J.S.N. Jewellery Inc. during the Stay Period and as against Gordon Brothers Canada ULC (the “**Agent**”); and
 - (c) required that the Agent conduct sales at Ben Moss’s stores in accordance with sale guidelines to be agreed to between Ben Moss, the Agent, Salus Capital and certain landlords (the “**Sale Guidelines**”), which sale guidelines were to be consistent with standard court-approved sale guidelines and which Ben Moss would seek approval of at its next motion before the Court;
7. On June 15, 2016, the Court granted an Order (the “**Stay Extension and Approval of Sale Guidelines Order**”), among other things:
- (a) extending the Stay Period to July 15, 2016;

- (b) approving the Sale Guidelines; and
 - (c) approving an amendment to the DIP Facility whereby the Repayment Waterfall (as defined in the Affidavit of Naveed Z. Manzoor, sworn June 12, 2016) was revised such that Ben Moss's cash from business operations would, from and after the date of the Order, only be applied to obligations under the DIP Facility, without any application to the Permitted Overadvance;
8. On July 7, 2016, this Court granted an Order, among other things:
- (a) extending the stay period to August 30, 2016; and
 - (b) replacing phase two of the RISP with the Revised Phase 2 Process (the "**Process**") (the "**July 7 Order**");
9. On July 14, 2016, Salus Capital sought and was granted an Order, among other things, amending and expediting the Process, such that final bids were due on July 15, 2016 with the auction scheduled for July 19, 2016 (the "**July 14 Order**");

B. The Implementation of the RISP and the Auction

10. Capitalized terms in the following sections that are not otherwise defined have the meaning ascribed to them in the Affidavit of Naveed Z. Manzoor, sworn July 25, 2016;
11. Pursuant to the RISP, the Monitor and Ben Moss received a number of LOIs and, in consultation with Salus Capital, evaluated them to determine whether there was a reasonable prospect of obtaining a Qualified Bid;

12. On June 22, 2016, Salus Capital exercised its right, pursuant to the RISP, to terminate the RISP with respect to transactions involving affiliates of Ben Moss, given that no Qualified LOIs were received for a JSN Group Refinancing Proposal or a Reinvestment Proposal;

13. Additionally, the Monitor, in consultation with the CRO and Salus Capital, concluded that there was value in soliciting interest in a transaction involving the liquidation of the inventory, furniture, equipment and fixtures located in and/or forming part of the property of Ben Moss, excluding property currently being liquidated at the Initial Liquidation Stores (“**Liquidation Proposals**”) in order to establish a floor price that could be used to compare against Qualified LOIs in respect of BM Sale Proposals;

14. The Monitor, exercising its reasonable business judgment and following consultation with Salus Capital, recommended to the CRO that the RISP be continued into Phase 2, subject to the amendments provided for in the Process, which was approved in the July 7 Order;

15. In accordance with Phase 2 of the RISP and the expedited deadline established by the July 14 Order, a total of four Final Bids, including two Liquidation Proposals and two BM Sale Proposals for only a portion of the Applicant’s assets, were submitted to the Monitor;

16. Upon reviewing the submitted Final Bids, the Monitor, in consultation with the CRO and Salus Capital, concluded that it would proceed with an auction to determine the Successful Bid;

17. Pursuant to the RISP, as amended by the July 7 Order and the July 14 Order, the Monitor sent a letter to Qualified Bidders outlining detailed bidding procedures on July 14, 2016;

18. The Monitor met with the auction participants on July 18, 2016 and discussed, among other things, the auction process;

19. The auction proceeded on July 19, 2016;
20. At the end of the auction process, the Monitor, following consultation with the CRO and Salus Capital, recommended that the Liquidation Proposal submitted by the Liquidator, whose joint venture members have extensive experience in conducting retail liquidations and have led inventory dispositions for Canadian retailers such as Target, be selected as the Successful Bid, subject to finalization of definitive documentation;

C. The Proposed Liquidation Agreement

21. Following the auction, Ben Moss and the Liquidator negotiated and executed the Liquidation Agreement, pursuant to which the Liquidator will serve as the exclusive liquidator for the purpose of disposing of the Merchandise and FF&E by conducting store closings or similar themed sales;
22. The Merchandise includes, among other things, certain goods that JSN Inc. had consigned to Ben Moss and certain other inventory (collectively, the “**JSN Goods**”);
23. To facilitate the inclusion of the JSN Goods in the Merchandise, JSN Inc. and Ben Moss are in the process of finalizing an asset purchase agreement (the “**JSN APA**”), pursuant to which JSN Inc. will sell the JSN Goods to Ben Moss;
24. Approval of the Liquidation Agreement is appropriate as the process leading to the selection of the Successful Bid was in accordance with the Court-approved RISP, as amended by the July 7 Order and the July 14 Order;
25. The Transaction would provide sufficient proceeds to: (i) pay outstanding amounts under the Court-ordered charges; (ii) pay any amounts that would have been required under paragraphs

6(5)(a) and (6)(a) of the CCAA; (iii) pay post-filing obligations; and (iv) pay any liabilities or obligations arising from the completion of the Transaction;

26. The terms of the Liquidation Agreement, and the process and transactions contemplated thereunder, are fair and reasonable;

27. The anticipated consideration to be received pursuant to the Liquidation Agreement is the greatest of what was offered by any of the participants in the auction process;

28. The approval of the Liquidation Agreement is supported by the Monitor and Salus Capital;

D. The Liquidator's Charge

29. The Liquidator's Charge is a condition precedent to the Liquidation Agreement;

30. The Liquidator's Charge is supported by the Monitor and Salus Capital;

E. The Proposed Distribution

31. The draft Order contemplates that immediately following receipt of the Initial Guaranty Payment (an amount equal to 80% of the estimated Guaranteed Amount with respect to the Merchandise), the Applicant shall be authorized and directed, without further Order of the Court, to distribute:

- (a) an amount equal to the purchase price under the JSN APA (the "**Purchase Price**") from the Initial Guaranty Payment to J.S.N. Inc., which distribution shall be free and clear of all encumbrances; and

(b) the balance of the Initial Guaranty Payment, less \$2.5 million (the “**Operating Reserve**”), to Salus Capital, in the maximum amount of Salus Capital’s secured claim, which distribution shall be free and clear of all encumbrances and shall be applied against the indebtedness, liabilities and obligations owing by the Applicant, first under the DIP Facility, and second under the Amended and Restated Credit Agreement dated July 18, 2013, as amended;

32. Ben Moss must be permitted to pay the Purchase Price in order to procure the JSN Goods and satisfy the corresponding obligations under the Liquidation Agreement;

33. There is no foreseeable scenario where the indebtedness of Ben Moss to Salus Capital, whether as borrower or guarantor, can be repaid from the proceeds of the estates of Ben Moss and the other Obligors under any permutation or combination of going concern and/or liquidation sales;

34. Given that the Operating Reserve will be used to pay the Applicant’s post-filing expenses until the Sale Termination Date, no claim against Ben Moss of any party (other than Salus Capital) will be impacted by the proposed distribution;

F. Stay Extension

35. The Initial Order granted a stay of proceedings until and including June 15, 2016, or such later date as this Court may order;

36. The Stay Period was subsequently extended until and including August 30, 2016;

37. Since the granting of the Initial Order, Ben Moss, in close consultation and with the assistance of the Monitor, has acted and continues to act in good faith and with due diligence to complete a restructuring under the CCAA;

38. Pursuant to the Amended and Restated Initial Order, Ben Moss has worked closely with the Monitor and Salus Capital to carry out the RISP, which has successfully resulted in the selection of the Successful Bid;

39. An extension of the Stay Period until December 30, 2016 is appropriate in the circumstances as it will allow the parties to focus on the closing of the transaction and provide stability to Ben Moss's business during the liquidation sale;

40. It is forecast that Ben Moss will have access to sufficient liquidity to fund operations throughout the requested extension of the Stay Period;

41. The extension of the Stay Period is supported by the Monitor and Salus Capital;

G. General

42. The provisions of the CCAA, and in particular section 36 thereof;

43. The inherent and equitable jurisdiction of this Honourable Court;

44. Rules 1.04, 1.05, 2.03, 3.02, 16, 37 and 39 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; and

45. 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:

46. The Affidavit of Naveed Z. Manzoor, sworn July 25, 2016, and the exhibits attached thereto;
47. The Affidavit of Naveed Z. Manzoor, sworn June 30, 2016;
48. The Affidavit of Naveed Z. Manzoor, sworn June 12, 2016;
49. The Affidavit of Naveed Z. Manzoor, sworn May 16, 2016;
50. The Third Report of the Monitor, to be filed;
51. The Second Report of the Monitor, dated July 5, 2016;
52. The First Report of the Monitor, dated June 13, 2016;
53. The Pre-Filing Report of the Proposed Monitor, dated May 17, 2016;
54. The Amended and Restated Initial Order, dated May 18, 2016, as amended May 26, 2016;
55. The Stay Extension and Approval of Sale Guidelines Order, dated June 15, 2016;
56. The Modification of RISP and Stay Extension Order, dated July 7, 2016;
57. The Variation of RISP Order, dated July 14, 2016; and
58. Such further and other material as counsel may advise and this Honourable Court may permit.

July 25, 2016

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Tab A

Court File No. CV-16-11397-00CL

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

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| THE HONOURABLE |) | FRIDAY, THE 29TH |
| |) | |
| MR. JUSTICE NEWBOULD |) | DAY OF JULY, 2016 |
| |) | |

**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 BEN MOSS JEWELLERS WESTERN CANADA LTD. (the
"Applicant")**

APPROVAL ORDER — AGENCY AGREEMENT

THIS MOTION made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the "**CCAA**") for an order, inter alia: (i) approving the transactions contemplated under the Agency Agreement entered into between the Applicant and a contractual joint venture composed of Gordon Brothers Canada ULC and Merchant Retail Solutions ULC (the "**Agent**") on July ●, 2016 (the "**Agency Agreement**") and certain related relief; (ii) granting the Agent's Charge and Security Interest (as defined below); (iii) approving the activities of the CRO; (iv) approving the activities of Alvarez & Marsal Canada Inc., in its capacity as Monitor (the "**Monitor**"), and the fees and disbursements of the Monitor and its counsel; (v) approving certain modifications to the Cash Management System; (vi) approving certain distributions from the Initial Guaranty Payment; and (vii) granting a stay extension to December 30, 2016, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicant, the Affidavit of Naveed Manzoor sworn on July ●, 2016 including the exhibits thereto, the Affidavit of Adam Zalev sworn on July ●, 2016 including the exhibits thereto (the "**Zalev Affidavit**"), the Affidavit of Natasha

MacParland sworn on July ●, 2016 including the exhibits thereto (the “**MacParland Affidavit**”), and the Third Report of the Monitor (the “**Third Report**”), filed, and on hearing the submissions of respective counsel for the Applicant, the Monitor, the Agent, Salus Capital Partners LLC (“**Salus**”) and such other counsel as were present, and on being advised that the Service List was served with the Motion Record herein:

SERVICE AND DEFINITIONS

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.
2. **THIS COURT ORDERS** that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Amended and Restated Initial Order dated as of May 18, 2016 (the “Amended and Restated Initial Order”) or the Agency Agreement, as applicable.

APPROVAL OF THE AGENCY AGREEMENT

3. **THIS COURT ORDERS** that the Agency Agreement, including the Sales Guidelines attached hereto as Schedule “A” (the “**Sales Guidelines**”), and the transactions contemplated thereunder are hereby approved, authorized and ratified and that the execution of the Agency Agreement by the Applicant is hereby approved, authorized, and ratified with such minor amendments as the Applicant (with the consent of the Monitor) and the Agent may agree to in writing. Subject to the provisions of this Order, the Applicant is hereby authorized and directed to take any and all actions, including, without limitation, executing and delivering such additional documents, as may be necessary or desirable to implement the Agency Agreement and each of the transactions contemplated therein.

THE SALE

4. **THIS COURT ORDERS** that subject to receipt of the Initial Guaranty Payment by the Applicant in accordance with the Agency Agreement, the Agent is authorized to conduct the Sale in accordance with this Order, the Agency Agreement and the Sales Guidelines and to advertise and promote the Sale within the Locations in accordance with the Sales Guidelines. If there is a conflict between this Order, the Agency Agreement and the Sales Guidelines, the order of priority of documents to resolve

such conflicts is as follows: (1) the Order; (2) the Sales Guidelines; and (3) the Agency Agreement.

5. **THIS COURT ORDERS** that subject to paragraph 12 of the Amended and Restated Initial Order, the Agent, in its capacity as agent of the Applicant, is authorized to market and sell the Merchandise, the FF&E, Additional Agent Merchandise and any Remaining Merchandise free and clear of all liens, claims, encumbrances, security interests, mortgages, charges, trusts, deemed trusts, executions, levies, financial, monetary or other claims, whether or not such claims have attached or been perfected, registered or filed and whether secured, unsecured, quantified or unquantified, contingent or otherwise, whensoever and howsoever arising, and whether such claims arose or came into existence prior to the date of this Order or came into existence following the date of this Order, (in each case, whether contractual, statutory, arising by operation of law, in equity or otherwise) (all of the foregoing, collectively "**Claims**"), including, without limitation the Administration Charge, the Directors' Charge, and the DIP Charge, and any other charges hereafter granted by this Court in these proceedings (collectively, the "**CCAA Charges**"), and all Claims, charges, security interests or liens evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal or movable property registration system (all of such Claims, charges (including the CCAA Charges), security interests and liens collectively referred to herein as "**Encumbrances**"), which Encumbrances will attach instead to the Guaranteed Amount and any other amounts due and payable by the Agent to the Applicant under the Agency Agreement, in the same order and priority as they existed on the Sale Commencement Date.
6. **THIS COURT ORDERS** that subject to the terms of this Order, the Amended and Restated Initial Order, the Sales Guidelines and the Agency Agreement, the Agent shall have the right to enter and use the Locations and all related services and all facilities and all furniture, trade fixtures and equipment, including the FF&E, located at the Locations, and other assets of the Applicant as designated under the Agency Agreement, for the purpose of conducting the Sale and for such purposes, the Agent shall be entitled to the benefit of the Applicant's stay of proceedings provided under the Amended and Restated Initial Order, the Modification of RISP and Stay Extension

Order and the Stay Extension and Approval of Sale Guidelines Order, as such stay of proceedings may be extended by further Order of the Court.

7. **THIS COURT ORDERS** that until the applicable Vacate Date for each Location, the Agent shall have access to the Locations in accordance with the applicable leases and the Sales Guidelines on the basis that the Agent is an agent of the Applicant and the Applicant has granted the right of access to the applicable Location to the Agent. To the extent that the terms of the applicable leases are in conflict with any term of this Order or the Sales Guidelines, the terms of this Order and the Sales Guidelines shall govern.
8. **THIS COURT ORDERS** that nothing in this Order shall amend or vary, or be deemed to amend or vary the terms of the leases for the Applicant's leased Locations. Nothing contained in this Order or the Sales Guidelines shall be construed to create or impose upon the Applicant or the Agent any additional restrictions not contained in the applicable lease or other occupancy agreement.
9. **THIS COURT ORDERS** that except as provided for in paragraph 4 hereof in respect of the advertising and promotion of the Sale within the Locations, subject to, and in accordance with this Order, the Agency Agreement and the Sales Guidelines, the Agent, as agent for the Applicant, is authorized to advertise and promote the Sale, without further consent of any Person other than the Applicant and the Monitor as provided under the Agency Agreement or a Landlord as provided under the Sales Guidelines.
10. **THIS COURT ORDERS** that the Agent shall have the right to use, without interference by any intellectual property licensor, the Applicant's trademarks and logos, as well as all licenses and rights granted to the Applicant to use the trade names, trademarks, and logos of third parties, relating to and used in connection with the operation of the Stores solely for the purpose of advertising and conducting the Sale of the Merchandise, Additional Agent Merchandise and any Remaining Merchandise in accordance with the terms of the Agency Agreement, the Sales Guidelines, and this Order.
11. **THIS COURT ORDERS** that upon delivery of a Monitor's certificate to the Agent substantially in the form attached as Schedule "B" hereto, (the "**Monitor's Certificate**") and subject to payment in full by the Agent to the Applicant of the

Guaranteed Amount, the Expenses, the Company's Sharing Recovery Amount, the Additional Agent Merchandise Fee, the Net FF&E Proceeds and all other amounts payable to the Applicant under the Agency Agreement, all of the Applicant's right, title and interest in and to any Remaining Merchandise, shall vest absolutely in the Agent, free and clear of and from any and all Claims, including without limiting the generality of the foregoing, the Encumbrances, and such Encumbrances will attach instead to the Guaranteed Amount, and all other amounts due and payable to the Applicant under the Agency Agreement, in the same order and priority as they existed on the Sale Commencement Date. Nothing in this paragraph 11 shall discharge the obligations of the Agent pursuant to the Agency Agreement, or the rights or claims of Applicant in respect thereof including, without limitation, the obligations of the Agent to account for and remit the proceeds of sale of the Remaining Merchandise to the Designated Deposit Accounts.

12. **THIS COURT ORDERS AND DIRECTS** the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof.

AGENT LIABILITY

13. **THIS COURT ORDERS** that the Agent shall act solely as an agent to the Applicant and that it shall not be liable for any claims against the Applicant other than as expressly provided in the Agency Agreement (including the Agent's indemnity obligations thereunder) or the Sales Guidelines. More specifically:
 - (a) the Agent shall not be deemed to be an owner or in possession, care, control or management of the Locations, of the assets located therein or associated therewith or of the Applicant's employees (including the Retained Employees) located at the Locations or any other property of the Applicant;
 - (b) the Agent shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payor within the meaning of any legislation governing employment or labour standards or pension benefits or health and safety or other statute, regulation or rule of law or equity for any purpose whatsoever, and shall not incur any successorship liabilities whatsoever; and

- (c) the Applicant shall bear all responsibility for any liability whatsoever (including without limitation losses, costs, damages, fines or awards) relating to claims of customers, employees and any other persons arising from events occurring at the Locations during and after the Sale Term in connection with the Sale, except in accordance with the Agency Agreement.
14. **THIS COURT ORDERS** that the Company shall bear all responsibility for liability claims of customers, employees and any other persons arising from events occurring at the Locations during and after the Sale Term, except to the extent that any such claim arises from the acts or omissions of the Agent or its supervisors, agents, independent contractors or employees. To the extent the Landlords (as defined in the Sale Guidelines) (or any of them) have claims against the Company arising solely out of the conduct of the Agent in conducting the Sale for which the Company has claims against the Agent under the Agency Agreement, the Company hereby assigns free and clear such claims to the applicable Landlord; provided that each such Landlord shall only be permitted to advance each such claim against the Agent if written notice, including the reasonable details of such claim, is provided by such Landlord to the Agent and the Company during the period from the Sale Commencement Date to the date that is 30 days following the Sale Termination Date (the “**Assigned Landlord Rights**”).

AGENT AN UNAFFECTED CREDITOR

15. **THIS COURT ORDERS** that the Agency Agreement shall not be repudiated, resiliated or disclaimed by the Applicant nor shall the claims of the Agent pursuant to the Agency Agreement and under the Agent’s Charge and Security Interest (as defined in this Order) be compromised or arranged pursuant to any plan of arrangement or compromise among Applicant and its creditors (a “**Plan**”). The Agent shall be treated as an unaffected creditor in these proceedings and under any Plan.
16. **THIS COURT ORDERS** that Applicant is hereby authorized and directed to remit, in accordance with the Agency Agreement, all amounts that become due to the Agent thereunder.
17. **THIS COURT ORDERS** that, except for Encumbrances on the Subordinated Amount as set forth in paragraph 20, no Encumbrances shall attach to any amounts payable or to be credited or reimbursed to, or retained by, the Agent pursuant to the Agency

Agreement, including, without limitation, any amounts to be reimbursed by the Applicant to the Agent pursuant to the Agency Agreement, and the Applicant will pay such amounts to the Agent in accordance with the Agency Agreement, and, except for Encumbrances on the Subordinated Amount as set forth in paragraph 20, at all times the Agent will retain such amounts, free and clear of all Encumbrances, notwithstanding any enforcement or other process or Claims, all in accordance with the Agency Agreement.

DESIGNATED DEPOSIT ACCOUNTS AND COMPANY'S DESIGNATED ACCOUNT

18. **THIS COURT ORDERS** that no Person shall take any action, including any collection or enforcement steps, with respect to amounts deposited in the Designated Deposit Accounts and the Company's Designated Account, including, Proceeds, the Additional Agent Merchandise Proceeds and FF&E Proceeds deposited into the Designated Deposit Accounts or the Company's Designated Account, as applicable, pursuant to the Agency Agreement.
19. **THIS COURT ORDERS** that Proceeds, the Additional Agent Merchandise Proceeds and FF&E Proceeds deposited in the Designated Deposit Accounts or the Company's Designated Account, as applicable, by or on behalf of the Agent or the Applicant pursuant to the Agency Agreement shall be and be deemed to be held in trust for the Applicant and the Agent, as the case may be, and, for clarity, no Person shall have any claim, ownership interest or other entitlement in or against such Proceeds, the Additional Agent Merchandise Proceeds and FF&E Proceeds, including, without limitation, by reason of any claims, disputes, rights of offset, set-off, or claims for contribution or indemnity that it may have against or relating to the Applicant.

AGENT'S CHARGE AND SECURITY INTEREST

20. **THIS COURT ORDERS** that subject to the receipt by the Applicant of the Initial Guaranty Payment, the Agent be and is hereby granted a charge (the "**Agent's Charge and Security Interest**") on all of the Merchandise, Additional Agent Merchandise, Proceeds, Additional Agent Merchandise Proceeds and the FF&E Proceeds (to the extent of the FF&E Commission) (collectively, the "**Charged Property**") as security for all of the obligations of the Applicant to the Agent under the Agency Agreement, including, without limitation, all amounts owing or payable to the Agent from time to time under or in connection with the Agency Agreement (the

“**Company’s Obligations**”), which charge shall rank in priority to all Encumbrances over the Charged Property to the maximum amount of the Company’s Obligations; provided, however, that until payment in full to the Company of the Unpaid Company’s Entitlement, the Agent’s Charge and Security Interest shall be junior and subordinate in all respects to all Encumbrances, but solely to the extent of any Unpaid Company’s Entitlement (the “**Subordinated Amount**”).

PRIORITY OF CHARGES

21. **THIS COURT ORDERS** that the priorities of the Agent’s Charge and Security Interest, the Administration Charge, the Directors’ Charge, and the DIP Charge, over the property so charged by them, as among them, shall be as follows:

First — The Agent’s Charge and Security Interest (but only in respect of the Charged Property; provided, however, that the Subordinated Amount, shall be subordinated in accordance with paragraph 20;

Second — The Administration Charge (to the maximum amount of \$600,000)

Third — The DIP Charge;

Fourth — The Directors’ Charge (to the maximum of \$1.5 million).

22. **THIS COURT ORDERS** that the filing, registration, recording or perfection of the Agent’s Charge and Security Interest shall not be required; and upon receipt of the Initial Guaranty Payment, the Agent’s Charge and Security Interest shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered or perfected prior or subsequent to the Agent’s Charge and Security Interest coming into existence, notwithstanding any failure to file, register or perfect any such Agent’s Charge and Security Interest. Absent the Agent’s written consent or further Order of this Court (on notice to the Agent), the Applicant shall not grant or suffer to exist any Encumbrances over the Charged Property that rank in priority to, or *pari passu* with the Agent’s Charge and Security Interest.

23. **THIS COURT ORDERS** that the Agent's Charge and Security Interest shall constitute a mortgage, hypothec, security interest, assignment by way of security and charge over the Charged Property and, other than in relation to the Subordinated Amount, shall rank in priority to all other Encumbrances of or in favour of any Person.
24. **THIS COURT ORDERS** that notwithstanding (a) the pendency of these proceedings; (b) any application for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* ("**BIA**") in respect of the Applicant or any bankruptcy order made pursuant to any such applications; (c) any assignment in bankruptcy made in respect of the Applicant; (d) the provisions of any federal or provincial statute; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other document or agreement (collectively "**Agreement**") which binds the Applicant:

- (i) the Agency Agreement and the transactions and actions provided for and contemplated therein, including without limitation, the payment of amounts due to the Agent thereunder and any transfer of Remaining Merchandise,
- (ii) the Agent's Charge and Security Interest, and
- (iii) Assigned Landlord Rights,

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

BULK SALES ACT AND OTHER LEGISLATION

25. **THIS COURT ORDERS AND DECLARES** that the transactions contemplated under the Agency Agreement and the transfer of any Remaining Merchandise shall be

exempt from the application of the *Bulk Sales Act* (Ontario) and any other equivalent federal or provincial legislation.

APPROVAL OF THE CRO'S ACTIVITIES

26. THIS COURT ORDERS that the activities and conduct of the CRO from and including July 7, 2016 and prior to the date hereof in relation to the Applicant and these CCAA proceedings are hereby ratified and approved; provided, however, that only the CRO, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

APPROVAL OF THE MONITOR'S ACTIVITIES

27. THIS COURT ORDERS that the activities and conduct of the Monitor from and including July 7, 2016 and prior to the date hereof in relation to the Applicant and these CCAA proceedings are hereby ratified and approved; provided, however, that only the Monitor, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

DISTRIBUTIONS

28. THIS COURT ORDERS that, immediately following receipt of the Initial Guaranty Payment, the Applicant shall, without further Order of the Court, distribute: (i) \$● from the Initial Guaranty Payment to J.S.N. Inc., which distribution shall be free and clear of all Encumbrances and shall be made as payment of the purchase price under the Asset Purchase Agreement dated July ●, 2016 between the Applicant and J.S.N. Inc.; and (ii) the balance of the Initial Guaranty Payment, less \$2.5 million, to Salus, in the maximum amount of Salus's secured claim, which distribution in this subparagraph (ii) shall be free and clear of all Encumbrances and shall be applied against the indebtedness, liabilities and obligations owing by the Applicant under the DIP Facility and the Amended and Restated Credit Agreement dated July 18, 2013, as amended.

APPROVAL OF FEES AND DISBURSEMENTS

29. THIS COURT ORDERS that the fees and disbursements of the Monitor in the amount of ● (for the period from ●, 2016 to ●, 2016, inclusive, and including Harmonized

Sales Tax), all as set out in the Zalev Affidavit and the Third Report, are hereby approved.

30. THIS COURT ORDERS that the fees and disbursements of Davies, Ward, Phillips & Vineberg LLP, in its capacity as counsel to the Monitor (“**Davies**”), in the amount of ● (for the period from ●, 2016 to ●, 2016, inclusive, and including Harmonized Sales Tax), all as set out in the MacParland Affidavit and the Third Report, are hereby approved.

CASH MANAGEMENT SYSTEM

31. **THIS COURT ORDERS** that the Cash Management System shall be modified in accordance with the Agency Agreement (as modified, the “**Modified CMS**”) and that any present or future bank or other Person providing any part of the Modified CMS, including, without limitation, Canadian Imperial Bank of Commerce, Bank of Montreal, the Royal Bank of Canada, the Toronto-Dominion Bank and the Bank of Nova Scotia, shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Modified CMS, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Modified CMS, shall be entitled to provide the Modified CMS without any liability in respect thereof to any Person other than the Applicant and Salus, pursuant to the terms of the documentation applicable to the Modified CMS, and shall be, in its capacity as provider of the Modified CMS, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Modified CMS.

STAY EXTENSION

32. **THIS COURT ORDERS** that the Stay Period is hereby extended until and including December 30, 2016.

GENERAL

33. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.
34. **THIS COURT HEREBY REQUESTS** the aid and recognition of any Court, tribunal, regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, to give effects to this Order and to assist the Applicant, 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 Applicant 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 Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

SCHEDULE A
SALE GUIDELINES

The following procedures shall apply to the Sale to be conducted at the Ben Moss Jewellers Western Canada Ltd. (the "Company") Locations. All terms not herein defined shall have the meaning set forth in the Agency Agreement by and between a contractual joint venture composed of Gordon Brothers Canada ULC and Company Retail Solutions ULC (the "Agent") and the Company dated July 22, 2016 (the "Agency Agreement").

1. Except as otherwise expressly set out herein, and subject to: (i) the Amended and Restated Initial Order dated as of May 18, 2016 (the "Initial Order"), the Order approving these Sales Guidelines and any further Order of the Court; or (ii) any subsequent written agreement between the Company and the applicable landlord(s) (individually, a "Landlord" and, collectively, the "Landlords") and approved by the Agent, the Sale shall be conducted in accordance with the terms of the applicable leases/or other occupancy agreements to which the affected landlords are privy for each of the affected Locations (individually, a "Lease" and, collectively, the "Leases"). However, nothing contained herein shall be construed to create or impose upon the Company or the Agent any additional restrictions not contained in the applicable Lease or other occupancy agreement.

2. The Sale shall be conducted so that each of the Locations remain open during their normal hours of operation provided for in the respective Leases for the Locations until the respective vacate date of each Location. The Sale at the Stores shall end by no later than December 30, 2016. Rent payable under the respective Leases shall be paid as provided in the Initial Order.

3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws and regulations, unless otherwise ordered by the Court.

4. All display and hanging signs used by the Agent in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. The Agent may advertise the Sale at the Locations as an "everything on sale", "everything must go", "going out of business", "store closing" or similar theme sale at the Locations (provided however that no signs shall advertise the Sale as a "bankruptcy", or a "liquidation" sale it being understood that the French equivalent of "clearance" is "liquidation" and is permitted to be used). Forthwith upon request from a Landlord, the Landlord's counsel, the Company or Alvarez & Marsal Canada Inc. (in its capacity as Court-appointed Monitor of the Company) the Agent shall provide the proposed signage packages along with the proposed dimensions and number of signs (as approved by the Company pursuant to the Agency Agreement) by e-mail or facsimile to the applicable Landlords or to their counsel of record. The Agent shall not use neon or day-glow or handwritten signage (unless otherwise contained in the sign package, including "you pay" or "topper" signs). Nothing contained herein shall be construed to create or impose upon the Company or the Agent any additional restrictions not contained in the applicable Leases. In addition, the Agent shall be

permitted to utilize exterior banners/signs at stand alone or strip mall Stores or enclosed mall Stores with a separate entrance from the exterior of the enclosed mall; provided, however, that where such banners are not permitted by the applicable Lease or the Landlord requests in writing that the banner are not to be used, no banner shall be used absent further Order of the Court, which may be sought on an expedited basis on notice to the Landlord. Any banners used shall be located or hung so as to make clear that the Sale is being conducted only at the affected Store and shall not be wider than the premises occupied by the affected Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the facade of the premises of a Store as a result of the hanging or removal of the exterior banner, such damage shall be professionally repaired at the expense of the Agent. If a Landlord is concerned with "store closing" signs being placed in the front window of a Store or with the number or size of the signs in the front window, the Agent and the Landlord will discuss the Landlord's concerns and work to resolve the dispute.

5. The Agent shall be permitted to utilize sign walkers and street signage; provided, however, such sign walkers and street signage shall not be located on the shopping centre or mall premises.

6. Conspicuous signs shall be posted in the cash register areas of each Location to the effect that all sales are "final".

7. The Agent shall not distribute handbills, leaflets or other written materials to customers outside of any of the Locations on any Landlord's property, unless permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Store is located. Otherwise, the Agent may solicit customers in the Stores themselves. The Agent shall not use any giant balloons, flashing lights or amplified sound to advertise the Sale or solicit customers, except as permitted under the applicable Lease or agreed to by the Landlord.

8. At the conclusion of the Sale in each Location, the Agent and the Company shall arrange that the premises for each Location are in "broom-swept" and clean condition, and shall arrange that the Locations are in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any Landlord of a Location shall be removed or sold during the Sale. No permanent fixtures (for clarity, other than FF&E, as defined below) may be removed without the Landlord's written consent unless otherwise provided by the applicable Lease. Subject to the foregoing, the Agent shall vacate the Locations in accordance with the terms and conditions of the Agency Agreement. Any fixtures or personal property left in a Location after it has been vacated by the Agent and in respect of which the applicable Lease has been disclaimed by the Company shall be deemed abandoned, with the applicable Landlord having the right to dispose of the same as the Landlord chooses, without any liability whatsoever on the part of the Landlord.

9. Subject to the terms of paragraph 8 above, the Agent may sell furniture, fixtures and equipment ("FF&E") owned by the Company and located in the Locations during the Sale. The Company and the Agent may advertise the sale of FF&E consistent with these guidelines on the understanding that any Landlord may require

that such signs be placed in discreet locations with the Stores acceptable to the Landlord, acting reasonably. Additionally, the purchasers of any FF&E sold during the Sale shall only be permitted to remove the FF&E either through the back shipping areas designated by the Landlord or through other areas after regular store business hours or through the front door of the Store during Store business hours if the FF&E can fit in a shopping bag with Landlord's supervision as required by the Landlord. The Agent shall repair any damage to the Locations resulting from the removal of any FF&E by Agent or by third party purchasers of FF&E from Agent.

10. The Agent shall not make any alterations to interior or exterior Location lighting, except as authorized pursuant to the applicable Lease. No property of any Landlord of a Location shall be removed or sold during the Sale. No permanent fixtures (other than FF&E for clarity) may be removed without the Landlord's written consent unless otherwise provided by the applicable Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these guidelines, shall not constitute an alteration to a Location.

11. The Agent hereby provides notice to the Landlords of the Agent's intention to sell and remove FF&E from the Locations. The Agent will arrange with each Landlord represented by counsel on the service list and with any other Landlord that so requests, a walk through with the Agent to identify the FF&E subject to the sale. The relevant Landlord shall be entitled to have a representative present in the Location to observe such removal. If the Landlord disputes the Agent's entitlement to sell or remove any FF&E under the provisions of the Lease, such FF&E shall remain on the premises and shall be dealt with as agreed between the Company, the Agent and such Landlord, or by further Order of this Court upon application by the Company on at least two (2) days' notice to such Landlord. If the Company has disclaimed or resiliated the Lease governing such Location in accordance with the *Companies' Creditors Arrangement Act* (the "CCAA"), it shall not be required to pay rent under such Lease pending resolution of any such dispute (other than rent payable for the notice period provided for in the CCAA), and the disclaimer or resiliation of the Lease shall be without prejudice to the Company's or Agent's claim to the fixtures in dispute.

12. If a notice of disclaimer or resiliation is delivered pursuant to the CCAA to a Landlord while the Sale is ongoing and the Location in question has not yet been vacated, then: (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Company and the Agent 24 hours' prior written notice; and (b) at the effective time of the disclaimer or resiliation, the relevant Landlord shall be entitled to take possession of any such Location without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such Lease or Location, provided that nothing herein shall relieve such Landlord of its obligation to mitigate any damages claimed in connection therewith.

13. The Agent and its agents and representatives shall have the same access rights to the Locations as the Company under the terms of the applicable Lease, and the Landlords shall have the rights of access to the Locations during the Sale provided

for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings).

14. The Company and the Agent shall not conduct any auctions of Merchandise or FF&E at any of the Locations.

15. The Agent shall be entitled, as agent for the Company pursuant to and in accordance with the Agency Agreement, to include in the Sale additional inventory, including inventory from J.S.N. Jewellery Inc. ("JSN") and other goods from similar vendors not currently supplying goods to the Company (for greater certainty, excluding JSN) ("Additional Merchandise"), to the extent permitted under the Agency Agreement; provided that: (i) the Additional Merchandise sold as part of the Sale will not exceed \$10 million at cost in the aggregate (the "Additional Merchandise Cap"); (ii) the Additional Merchandise will be distributed among the Stores such that no Store will receive more than 20% of the Additional Merchandise; and (iii) the Additional Merchandise is of like kind and category and no lesser quality to the Merchandise, and consistent with any restriction on usage of the Stores set out in the applicable Leases.

16. The Agent shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact person for Agent shall be Jane Dietrich who may be reached by phone at 416-860-5223 or email at jdietrich@casselsbrock.com. If the parties are unable to resolve the dispute between themselves, the Landlord or Company shall have the right to schedule a "status hearing" before the Court on no less than two (2) days written notice to the other party or parties, during which time the Agent shall cease all activity in dispute other than activity expressly permitted herein, pending the determination of the matter by the Court; provided, however, that if a banner has been hung in accordance with these Sale Guidelines and is thereafter the subject of a dispute, the Agent shall not be required to take any such banner down pending determination of the dispute.

17. Nothing herein is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or shall, or shall be deemed to, or grant to the Landlord any greater rights than already exist under the terms of any applicable Lease.

18. These Sale Guidelines may be amended by written agreement between the Company, the Agent and any applicable Landlord (provided that such amended Sale Guidelines shall not affect or bind any other Landlord not privy thereto without further Order of the Court approving the amended Sale Guidelines).

SCHEDULE B

Court File No. CV-16-11397-00CL

**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 BEN MOSS JEWELLERS WESTERN CANADA LTD. (the
"Applicant")**

MONITOR'S CERTIFICATE

RECITALS

Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Agency Agreement entered into between Ben Moss Jewellers Western Canada Ltd. (the "**Applicant**") and a contractual joint venture composed of Gordon Brothers Canada ULC and Merchant Retail Solutions ULC (the "**Agent**") on _____, a copy of which is attached as Exhibit _____ to the Affidavit of Naveed Manzoor dated _____.

Pursuant to an Order of the Court dated _____, the Court ordered that all of the Remaining Merchandise shall vest absolutely in the Agent, free and clear of and from any and all claims and encumbrances, upon the delivery by the Monitor to the Agent of a certificate certifying that (i) the Sale has ended, and (ii) the Guaranteed Amount, the Expenses, any Company Sharing Recovery Amount, the Additional Agent Merchandise Fee, the Net FF&E Proceeds and all other amounts due and payable to the Applicant under the Agency Agreement have been paid in full to the Applicant.

ALVAREZ & MARSAL CANADA INC., in its capacity as Court-appointed Monitor in the *Companies' Creditors Arrangement Act* proceedings of the Applicant certifies that it has been informed by the Agent and the Applicant that:

- (i) the Sale has ended; and
- (ii) the Guaranteed Amount, the Expenses, any Company Sharing Recovery Amount, the Additional Agent Merchandise Fee, the Net FF&E Proceeds and

all other amounts due and payable to the Applicant under the Agency Agreement have been paid in full to the Applicant.

DATED as of this _____ day of _____, 2016.

ALVAREZ & MARSAL CANADA INC.,
solely in its capacity as Court-appointed
Monitor of BEN MOSS JEWELLERS
WESTERN CANADA LTD. and not in its
personal or corporate capacity

By: _____
Name:
Title:

**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 BEN MOSS JEWELLERS WESTERN CANADA LTD.
(the "Applicant")**

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

PROCEEDINGS COMMENCED AT TORONTO

**ORDER
(APPROVAL OF AGENCY AGREEMENT)
(RETURNABLE JULY 9, 2016)**

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**IN THE MATTER OF 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 BEN MOSS JEWELLERS WESTERN
CANADA LTD.**

APPLICANT

Court File No. CV16-11397-00CL

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

PROCEEDING COMMENCED AT
TORONTO

**NOTICE OF MOTION
(Sale Approval,
Returnable July 29, 2016)**

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Matter No: 1172245

Tab 2

Court File No. CV-16-11397-00CL

**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 BEN MOSS JEWELLERS WESTERN
CANADA LTD.

APPLICANT

**AFFIDAVIT OF NAVEED Z. MANZOOR
(Sworn July 25, 2016)**

I, Naveed Z. Manzoor, of the Town of Oakville, in the Province of Ontario, the managing director of FAAN Advisors Group Inc. ("FAAN"), MAKE OATH AND SAY:

1. Pursuant to the Initial Order (defined below), among other things, FAAN was appointed as the Chief Restructuring Officer (the "CRO") of the Applicant, Ben Moss Jewellers Western Canada Ltd. ("Ben Moss" or the "Applicant"). As the managing director of FAAN, 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.

2. I swear this Affidavit in support of the motion brought by Ben Moss seeking an Order, among other things: (i) approving the agency agreement (the "Liquidation Agreement") dated July 22, 2016, between a contractual joint venture composed of Gordon Brothers Canada ULC ("GBC") and Merchant Retail Solutions ULC (such joint venture being the "Liquidator") and Ben Moss for the liquidation of certain inventory, furniture fixtures and equipment of Ben Moss and authorizing and directing Ben Moss to enter into and complete the transactions contemplated by the

Liquidation Agreement (the “Transaction”); (ii) authorizing the Liquidator to conduct the sale in accordance with applicable Orders, the Liquidation Agreement and the Liquidation Guidelines (as defined and described below); (iii) approving the Liquidation Guidelines; (iv) granting the Liquidator’s Charge (as defined below); (v) approving certain distributions from the Initial Guaranty Payment (as defined and described below); (vi) approving certain modifications to the Cash Management System; (vii) granting a stay extension to December 30, 2016; (viii) approving the activities of the CRO; (ix) approving the activities of the Monitor; and (x) approving the fees and disbursements of the Monitor and its counsel.

3. I swore an affidavit on May 16, 2016 (the “First Manzoor Affidavit”) in support of Ben Moss’s initial application. A copy of the First Manzoor Affidavit, without exhibits, is attached as Exhibit “A”. I swore an affidavit on June 12, 2016 (the “Second Manzoor Affidavit”) in support of Ben Moss’s motion for a stay extension and certain other relief. A copy of the Second Manzoor Affidavit, without exhibits, is attached as Exhibit “B”. I swore an affidavit on June 30, 2016 (the “Third Manzoor Affidavit”) in support of Ben Moss’s motion for a stay extension and certain other relief. A copy of the Third Manzoor Affidavit, without exhibits, is attached as Exhibit “C”. Capitalized terms contained herein that are not otherwise defined have the meaning ascribed to them in the First, Second and Third Manzoor Affidavits.

A. Background

4. On May 18, 2016 (the “Filing Date”), Ben Moss was granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”), pursuant to an initial order of the Ontario Superior Court of Justice (Commercial List) (the “Initial Order”). In the Initial Order, the Court, among other things:

- (a) granted a stay of proceedings in favour of the Applicant until and including June 15, 2016, or such later date as the Court may order (the “Stay Period”);
- (b) authorized Ben Moss to obtain and borrow up to CAD\$8 million under the DIP Facility from Salus CLO, subject to the condition that borrowings could not exceed \$3.5 million before the comeback hearing;
- (c) approved a comprehensive refinancing, investment and/or sale solicitation process (the “RISP”), a copy of which is attached to this Affidavit as Exhibit “D”; and
- (d) appointed Alvarez & Marsal Canada Inc. (“A&M”) as the monitor in respect of the Applicant (the “Monitor”).

5. Ben Moss sought approval of and was granted an amended and restated Initial Order (the “Amended and Restated Initial Order”) at the comeback hearing held on May 26, 2016. As described in the Second Manzoor Affidavit, the Amended and Restated Initial Order:

- (a) established the treatment of Consignment Goods (as defined in the Amended and Restated Initial Order);
- (b) clarified the rights of real property landlords as against J.S.N. Jewellery Inc. (“JSN Inc.”) during the Stay Period and as against GBC; and
- (c) required that GBC conduct sales at the Applicant’s stores in accordance with sale guidelines to be agreed to between Ben Moss, GBC, Salus Capital and certain landlords (the “GBC Sale Guidelines”), which sale guidelines were to be consistent with standard Court-approved sale guidelines and which the Applicant would seek approval of at its next motion before the Court.

6. On June 15, 2016, this Court granted an Order, among other things:
 - (a) extending the Stay Period to July 15, 2016;
 - (b) approving the GBC Sale Guidelines; and
 - (c) approving an amendment to the DIP Agreement whereby the Repayment Waterfall was revised such that Ben Moss's cash from business operations would, from and after the date of the Order, only be applied to obligations under the DIP Facility, without any application to the Permitted Overadvance (the "DIP Amendment").

7. On July 7, 2016, this Court granted an Order (the "July 7 Order"), among other things:
 - (a) extending the stay period to August 30, 2016; and,
 - (b) replacing phase two of the RISP with the Revised Phase 2 Process, a copy of which is attached as Exhibit "E" (the "Process").

8. On July 14, 2016, Salus Capital sought and was granted an Order, among other things, amending and expediting the RISP, such that final bids were due on July 15, 2016 with the auction scheduled for July 19, 2016. The events leading up to Salus Capital's motion for this Order are described in further detail below.

B. Update Regarding Ben Moss

9. Ben Moss and the Monitor have continued to engage with Ben Moss's various stakeholder groups and have been implementing the Court-approved RISP, as amended, all in an effort to maximize value for the Applicant's stakeholders. An update regarding the RISP is provided below, starting at paragraph 26.

10. The Applicant's updated cash flow forecast indicates that it will have access to sufficient liquidity to fund operations during the requested extension of the Stay Period. I understand that a copy of the updated cash flow forecast will be attached to the Third Report of the Monitor.

(a) Landlords

11. As set out in the First, Second and Third Manzoor Affidavits, Ben Moss planned to close certain unprofitable retail locations and had already commenced inventory reduction sales before the commencement of the proceedings.

12. Since I swore the Third Manzoor Affidavit, Ben Moss delivered Notices to Disclaim or Resiliate an Agreement (the "Disclaimers") with respect to twelve of Ben Moss's unprofitable retail locations (the "Disclaimed Locations") on June 30, 2016 (ten locations) and July 19, 2016 (two locations). The Disclaimers will be effective as of July 30, 2016 and August 18, 2016, respectively. Copies of these Disclaimers are attached as Exhibit "F".

13. As of the time of the swearing this affidavit, Ben Moss has not received any formal responses to the Disclaimers from any of the landlords of the Disclaimed Locations.

(b) Employees

14. The closure of underperforming stores has resulted in notices of termination being given to employees at such locations.

15. As described in further detail below, the Liquidation Agreement provides that Ben Moss will attempt to provide the Liquidator with access to such employees as the Liquidator may designate from time to time in order to undertake the Transaction; however, such employees will remain as employees of Ben Moss.

(c) Suppliers

16. As described in the Second Manzoor Affidavit, all of Ben Moss's most significant suppliers have continued to supply goods to Ben Moss, albeit on shorter payment terms than were previously in place in certain cases. Additionally, as provided in the Amended and Restated Initial Order, Ben Moss has continued to pay suppliers for goods and services supplied during the CCAA proceedings.

17. The CRO has been working with the Monitor to consider issues in respect of consignment vendors and to make appropriate arrangements with those vendors. Pursuant to the Amended and Restated Initial Order, the Monitor has been continuing to determine which of the Applicant's suppliers have supplied goods on a valid consignment basis. This determination is nearly complete. As described in further detail below, the Liquidation Agreement provides for the ongoing sale of goods consigned to Ben Moss. The Liquidation Agreement provides that the Liquidator shall retain 20% of the proceeds of such sale as a commission fee and that Ben Moss shall retain the remaining 80% of the proceeds. To the extent that a vendor has valid consignment arrangements with Ben Moss and their consigned goods are sold, the appropriate payments in respect of their consigned goods will be remitted to them by Ben Moss.

18. As a result of the Transaction, Ben Moss will be discontinuing its regular purchasing activities. However, as described in further detail below, the Liquidation Agreement provides that the Liquidator can procure and sell Additional Agent Merchandise as part of the Transaction.

(d) Liquidation Sales

19. As described in the First Manzoor Affidavit, and pursuant to the terms of the DIP Facility, on April 28, 2016, Ben Moss engaged a third party liquidation consultant, GBC, to assist Ben Moss

with the liquidation of inventory at Ben Moss stores identified for potential closure (the “Initial Liquidation Stores”).

20. As described in the Second Manzoor Affidavit, Ben Moss has been working closely with GBC and the Monitor with respect to maximizing value from the inventory at the Initial Liquidation Stores. Inventory clearance sales have been ongoing at the Initial Liquidation Stores since May 5, 2016.

21. As described in the Second Manzoor Affidavit, sales levels at the Initial Liquidation Stores were initially below expectations, however sales have improved amidst increased store traffic, enhanced marketing efforts and phased discounting. Sales at the Initial Liquidation Stores have continued to improve since the date of the Second Manzoor Affidavit and revenue performance in connection with the Initial Liquidation Stores has met both the Applicant’s and GBC’s expectations.

22. Pursuant to the GBC Sale Guidelines, these inventory clearance sales shall end by no later than July 31, 2016. Disclaimers have been issued in connection with each of the Initial Liquidation Stores.

(e) DIP Facility

23. Pursuant to the Initial Order, Ben Moss was authorized to obtain and borrow up to CAD\$8 million under the DIP Facility from Salus CLO, subject to the condition that borrowing could not exceed \$3.5 million before the comeback hearing.

24. Pursuant to the DIP Amendment, Ben Moss’s cash receipts are used to repay its obligations under the DIP Facility.

25. Advances under the DIP Facility are made in accordance with the Budget (as defined in the DIP Agreement). As of July 22, 2016, Ben Moss has made 24 borrowing requests. As of July 22, 2016, CAD\$48.1 million remains outstanding under the Salus Revolving Credit Facility and CAD\$5.7 million remains outstanding under the DIP Facility. As required by the DIP Facility, Ben Moss has delivered a borrowing base certificate to Salus Capital on a weekly basis.

C. RISP Update

26. As mentioned above, the Court approved the RISP in the Initial Order. The RISP provided that Ben Moss would pursue the following restructuring alternatives under the supervision of the Monitor:

- (a) a refinancing of all or part of the Credit Facilities of the JSN Group (a “JSN Group Refinancing Proposal”);
- (b) an equity investment in JSN Inc. and/or Ben Moss (a “Reinvestment Proposal”);
and/or
- (c) a sale of all or a portion of the business and property of Ben Moss (a “BM Sale Proposal”, and together with a JSN Group Refinancing Proposal, and a Reinvestment Proposal, the “Potential Transactions”).

27. Pursuant to the RISP, Qualified Bidders that wished to pursue a Potential Transaction were required to submit non-binding letters of intent (“LOIs”) to the Monitor by 5:00PM EDT on June 17, 2016 (the “Phase 1 Bid Deadline”). The Monitor and Ben Moss received a number of LOIs and evaluated them in consultation with Salus Capital to determine whether there was a reasonable prospect of obtaining a Qualified Bid.

28. Pursuant to the RISP, if the Monitor, in consultation with the CRO and Salus Capital, determines that no Qualified LOIs were received and there was no reasonable prospect of a Qualified LOI resulting in a Qualified Bid and the RISP moving to Phase 2, Salus Capital may terminate the RISP. On June 22, 2016, Salus Capital provided written notice to the Monitor and the CRO (the “Salus Notice”) that it exercised its right, pursuant to the RISP, to terminate the RISP with respect to transactions involving affiliates of the Applicant, given that no Qualified LOIs were received for a JSN Group Refinancing Proposal or a Reinvestment Proposal. This change is reflected in the Process, which was approved by the July 7 Order.

29. The Monitor, following consultation with Salus Capital, recommended to the CRO that certain LOIs received with respect to BM Sale Proposals be accepted as Qualified LOIs.

30. Additionally, following a review of the LOIs received, the Monitor, in consultation with the CRO and Salus Capital, concluded that there was value in soliciting Liquidation Proposals (defined below) in order to establish a floor price that could be used to compare against Qualified LOIs in respect of BM Sale Proposals. As a result, commencing on or about June 23, 2016, the Monitor, in consultation with the CRO and Salus Capital, contacted certain prospective parties to solicit interest in a transaction involving the liquidation of the inventory, furniture, equipment and fixtures located in and/or forming part of the property of Ben Moss, excluding property currently being liquidated at the Initial Liquidation Stores (“Liquidation Proposals”). Concurrently, the Monitor also invited such parties to execute non-disclosure agreements and commence due diligence regarding potential Liquidation Proposals.

31. On or about June 23, 2016, the Monitor notified the parties that submitted the Qualified LOIs that: (a) their LOIs were Qualified LOIs and they could therefore proceed to Phase 2; and

(b) the Applicant would be seeking modifications to Phase 2 to, among other things, permit the submission and consideration of Liquidation Proposals for the reasons described above.

32. In light of the foregoing, the Monitor, following consultation with Salus Capital, recommended to the CRO that the RISP be continued into Phase 2, subject to the amendments contained in the Process. Pursuant to the July 7 Order, the Process replaced the terms of Phase 2 that were originally included in the RISP.

33. Subsequent to the granting of the July 7 Order, Salus Capital advised that it became aware of certain defaults under Ben Moss's credit facilities that had occurred, including, among other things, an over-advance total that was in excess of Ben Moss's approved budget and a material violation of the 10% negative variance from forecast limit on certain line items in the budget.

34. Based on the foregoing, and certain other concerns raised, Salus Capital determined that it was not willing to extend credit under the DIP Facility unless the RISP was accelerated and the intended date of the auction was moved from August 4, 2016 to July 19, 2016. Salus Capital advised Ben Moss and the Monitor of this determination on July 11, 2016 and, accordingly, on the evening of July 11, 2016, the Monitor notified all participants in Phase 2 of the RISP that Salus Capital would be seeking an Order granting this relief.

35. On July 13, 2016, Salus Capital served a motion record in support of its motion for an Order, among other things, amending and expediting the RISP such that final bids were to be due on July 15, 2016 with the auction scheduled for July 19, 2016. Salus Capital sought and obtained an Order granting this relief on July 14, 2016 (the "July 14 Order").

36. During the motion for the July 14 Order, the Monitor expressed serious concerns regarding, among other things, the expedited timing of the RISP, the impact it may have on Qualified Bidders'

ability to submit Final Bids, and the detrimental impact that the changes to the RISP may have on both the likelihood of receiving going concern bids and the value of any such bids received. Also during the motion for the July 14 Order, Ben Moss indicated its support for the relief being sought on the basis that proceeding on an expedited basis was preferable to the other alternatives it had been left with.

37. Pursuant to the July 14 Order, bidders were required to submit final bids (“Final Bids”) on July 15, 2016 (the “Phase 2 Bid Deadline”). Ultimately, a total of four Final Bids were submitted to the Monitor and Salus Capital by the Phase 2 Bid Deadline. The Monitor, in consultation with the CRO and Salus Capital, reviewed and evaluated the Final Bids in accordance with the RISP.

38. Each of the Final Bids received constituted a Qualified Bid. Two of these Qualified Bids were Liquidation Proposals, in each case submitted by a contractual joint venture of two liquidators. The other two Qualified Bids received were BM Sale Proposals; however, each of these were only for a portion of the Applicant’s assets, rather than the Applicant’s entire business. On July 15, 2016, the Monitor advised each of the parties which had submitted Final Bids that such Final Bids were Qualified Bids.

39. Following the Phase 2 Bid Deadline, the Monitor, in consultation with the CRO and Salus Capital, concluded that it would proceed with the auction (the “Auction Process”), pursuant to the RISP, to determine the Successful Bid.

D. The Auction Process

40. Pursuant to the RISP, on July 14, 2016, the Monitor sent a process letter (the “Process Letter”) to the Qualified Bidders. A copy of the Process Letter is attached as Exhibit “G”. The

Process Letter included, among other things, detailed bidding procedures, including bid assessment criteria and the manner by which the Auction Process would be conducted.

41. Subsequent to advising Auction Process participants that they were Qualified Bidders, the Monitor and Ben Moss, in consultation with Salus Capital, determined which of the Qualified Bids would be used as the opening bid (the “Initial Opening Bid”) in the Auction Process. The determination criteria included, among other things, the estimated value of the bid and the terms of the draft agreement submitted in connection with the bid.

42. The Monitor also offered to meet with each of the Auction Process participants on July 18, 2016. These meetings occurred and, during such meetings, the Monitor discussed, among other things, the Auction Process and the Comparison Model with the various participants.

43. Prior to the commencement of the Auction Process, Ben Moss, the Monitor and Salus Capital engaged in both conference calls and meetings with the Qualified Bidder that such parties had determined had submitted the most compelling Qualified Bid in order to settle certain outstanding terms of the Initial Opening Bid with that party (the “Initial Opening Bidder”).

44. However, notwithstanding these discussions, on July 19, 2016 (i.e. the day of the Auction Process), as a result of changes to the inventory pools – specifically the fact that as a result of expediting the date of the Auction Process (and, in turn, the anticipated closing date of the Transaction) additional inventory may have been available in the event that it was not sold as part of the liquidation at the Initial Liquidation Stores – the Initial Opening Bidder advised the Monitor that it was not able to confirm whether or not it would be prepared to move forward with the headline price it had provided for in its Qualified Bid. In light of this, and given the extensive amount of time that the Monitor, Ben Moss and Salus Capital had spent attempting to settle the outstanding terms of the Initial Opening Bid, the near settled form of agency agreement, which did

not include a headline purchase price, was circulated by the Monitor to other Auction Process participants.

45. After further extensive discussions with the Qualified Bidders that were participating in the Auction Process, an alternative bid was selected as the opening bid (the “Opening Bid”) and the Auction Process commenced. After the announcement of the Opening Bid, a Qualified Bidder requested an adjournment. During this adjournment:

- (a) the Initial Opening Bidder decided to leave the Auction Process; and
- (b) Salus Capital, exercising its permitted discretion under the RISP, determined that the Opening Bid was not acceptable and therefore rejected it.

46. Following the adjournment, the Liquidator submitted a Liquidation Proposal which the Monitor, following review and consultation with the CRO and Salus Capital, recommended be selected as the “Successful Bid”, subject to the finalization and review of definitive documentation that is mutually acceptable to all parties involved. The Monitor, the CRO, Ben Moss and Salus Capital were all in agreement that this Successful Bid satisfied applicable RISP requirements and was the most favourable bid for the reasons set forth in greater detail below. Accordingly, the Auction Process was closed.

47. Following the conclusion of the Auction Process, the Monitor, the CRO, Ben Moss, Salus Capital and the Liquidator worked to settle the definitive documentation. The Liquidation Agreement, which is subject to Court approval, was finalized and executed on July 22, 2016.

E. The Proposed Liquidation Agreement

48. Following the completion of the Auction Process and subsequent negotiations of definitive documentation, the Liquidator and Ben Moss entered into the Liquidation Agreement, which is attached as Exhibit “H” hereto. The Liquidation Agreement contemplates a chain-wide liquidation. Capitalized terms in this section that are not otherwise defined have the meaning given to them in the Liquidation Agreement.

49. The members of the contractual joint venture that comprise the Liquidator have extensive experience in conducting retail liquidations, having substantial prior experience handling retail liquidations in Canada and elsewhere. These parties have led inventory dispositions for a wide variety of Canadian retailers, including Target Canada Co., 3499481 Canada Inc. (PJ’s Pets) and 2473304 Ontario Inc (Jones NYC). Furthermore, GBC, which is one of the members of the contractual joint venture that comprise the Liquidator, assisted Ben Moss with the liquidation of inventory at the Initial Liquidation Stores.

50. Pursuant to the Liquidation Agreement, the Liquidator will serve as Ben Moss’s exclusive liquidator for the purpose of disposing of Merchandise and FF&E. The Liquidator will dispose of the Merchandise by conducting a store closing or similar themed sale (the “Liquidation”). The Merchandise includes, among other things, certain goods that JSN Inc. had consigned to Ben Moss (the “JSN Consigned Goods”) and certain other inventory (collectively, the “JSN Goods”). To facilitate the inclusion of the JSN Goods in the Merchandise, JSN Inc. and Ben Moss are in the process of finalizing an asset purchase agreement (the “JSN APA”), pursuant to which JSN Inc. will sell the JSN Goods to Ben Moss. The JSN APA is described in greater detail below.

51. As a guaranty of the Liquidator’s performance under the Liquidation Agreement, the Liquidator has guaranteed that Ben Moss shall receive a net minimum amount (the “Guaranteed

Amount”) equal to 71.5% of the aggregate Cost Value of the Merchandise, as determined by: (i) the Final Inventory Report; (ii) the aggregate Cost Value of the Merchandise using Gross Rings; and (iii) any other adjustments to Cost Value as expressly contemplated by the Liquidation Agreement. The Liquidation Agreement provides that the Liquidator shall pay Ben Moss an amount equal to 80% of the estimated Guaranteed Amount with respect to the Merchandise (the “Initial Guaranty Payment”) on the first day following entry of the Order being sought on this motion. The balance of the Guaranteed Amount, if any, shall be paid by the Liquidator to Ben Moss on the second business day following the issuance by the Inventory Taking Service of a report of the aggregate Cost Value of the Merchandise included in the Sale, after review, reconciliation and mutual written verification by the Liquidator and the Applicant, which must be satisfactory to the Monitor.

52. The other key terms of the Liquidation Agreement include, *inter alia*:

- (a) If the Court issues the proposed Order approving the Liquidation Agreement, the Sale will commence one calendar day after the making of such Order, or such other date as the parties may mutually agree to in writing, but in no event later than July 30, 2016.
- (b) The Liquidation Agreement is conditional upon Ben Moss having obtained an Order of this Court by no later than July 29, 2016, substantially in the form attached to the Liquidation Agreement.
- (c) The Sale Term will end on the Sale Termination Date, which is defined as the date on which the Sale terminates, and such date shall be no later than December 30, 2016 with respect to the Stores and up to eight weeks from the Sale Commencement Date with respect to Ben Moss’s head office, distribution center, storage facility

and warehouses (subject to further extension as may be mutually agreed upon by the parties, in consultation with the Monitor and Salus Capital, in writing).

- (d) The Liquidator has the right to supplement the Merchandise in the Sale with Additional Agent Merchandise procured by the Liquidator which is of like kind and no lesser quality to the Merchandise in the Stores, provided that Additional Agent Merchandise sold as part of the Sale shall not exceed \$10 million at cost in the aggregate and shall be distributed among the Stores such that no Store will receive more than 20% of such Additional Agent Merchandise. These thresholds are consistent with the thresholds provided for in the GBC Sale Guidelines, which were approved by this Court and were negotiated with applicable landlords.
- (e) The Liquidator will pay Ben Moss 5% of Additional Agent Merchandise Proceeds for such goods (the “Additional Agent Merchandise Fee”) and the Liquidator shall retain all remaining amounts from such sales, provided that the Additional Merchandise Fee shall not be less than \$350,000. The Liquidator and Ben Moss agree that such Additional Agent Merchandise is to be provided on, and shall be construed as being provided on, a true consignment basis from the Liquidator to Ben Moss in all respects.
- (f) All goods (including goods held by Ben Moss on a consignment basis and other Excluded Goods) that do not constitute Merchandise (other than Additional Agent Merchandise) shall constitute Agent Sale Commission Goods, which shall be offered for sale by the Liquidator subject to the terms of the Liquidation Agreement. The Liquidator shall retain 20% (as a commission fee) and Ben Moss shall retain 80% of the proceeds for such Agent Sale Commission Goods. Unsold Agent Sale

Commission Goods at the end of the Sale shall be returned to Ben Moss. At any time during the Sale Term, the Liquidator, Ben Moss, the Monitor and Salus Capital may mutually agree that goods (including goods defined as Excluded Goods under the Liquidation Agreement) that do not constitute Merchandise (other than Additional Agent Merchandise) shall not constitute Agent Sale Commission Goods and shall be reclassified as Merchandise.

- (g) To the extent that there is Remaining Merchandise at the Sale Termination Date, such Remaining Merchandise shall be deemed transferred to the Liquidator free and clear of all Encumbrances and the Liquidator shall use commercially reasonable efforts to dispose of all such Remaining Merchandise by bulk sale, wholesale or otherwise. The proceeds received by the Liquidator from such disposition shall constitute Proceeds under the Liquidation Agreement. To the extent that any of the remaining Merchandise includes any Merchandise with logos, brand names or other intellectual property of Ben Moss or any of its affiliates or of any third party, the Liquidator and Ben Moss shall agree on the disposition terms of such Remaining Merchandise.
- (h) On or prior to the Sale Commencement Date, Ben Moss must notify all customers having an interest in any inventory located at the Stores that is held on layaway or for special order (“Layaway and Special Order Merchandise”) that payment in full in respect of such Layaway and Special Order Merchandise must be made by no later than four (4) weeks following the Sale Commencement Date, failing which, any rights in respect of such Layaway and Special Order Merchandise shall be deemed to have been forfeited and that Layaway and Special Order Merchandise

shall then be deemed to be unclaimed (the “Unclaimed Layaway and Special Order Merchandise”); provided however, that the Liquidator shall not be obligated to refund any deposits previously paid by the customer and received by Ben Moss on account of such Unclaimed Layaway and Special Order Merchandise.

- (i) All sale proceeds collected as and from the Sale Commencement Date in connection with any claimed Layaway and Special Order Merchandise shall be for the exclusive account of Ben Moss.
- (j) All sales of Merchandise, Additional Agent Merchandise and FF&E will be “final sales” and “as is” and all advertisements and sales receipts will reflect the same.
- (k) Subject to the provisions of the proposed Order approving the Liquidation Agreement, Ben Moss will provide such employees as the Liquidator may designate from time to time in connection with the conduct of the Sale. The Liquidator may, in its discretion, stop using any such employee at any time during the Sale. The employees at all times remain the employees of Ben Moss.
- (l) The Liquidator shall be unconditionally responsible for Expenses incurred in conducting the Sale during the Sale Term, which Expenses shall be paid by the Liquidator in accordance with and subject to the terms of the Liquidation Agreement. Certain costs of Ben Moss are specifically excluded from Expenses under the Liquidation Agreement. These non-reimbursable expenses (the “Non-Reimbursable Expenses”), which include certain overhead expenses related primarily to the Applicant’s head office and distribution centre, as well as professional fees, will be paid either directly by Ben Moss or paid by the Liquidator and subsequently reimbursed by Ben Moss.

- (m) Ben Moss and the Monitor will have the right to monitor the Sale and activities attendant thereto and be present in all Locations at all times.
- (n) The Liquidator will have the exclusive right to direct Ben Moss to designate a transferee of each of Ben Moss's Leases and Intellectual Property rights (collectively, the "Designated Assets") from the Sale Commencement Date until:
 - (i) in the case of Leases, the date on which the Liquidator provides Ben Moss with its notice to surrender each Location pursuant to the Liquidation Agreement; and
 - (ii) in the case of Intellectual Property, December 30, 2016 (in each instance, the "Designation Rights Period"). The proceeds from such a transaction would be retained by the Liquidator.
- (o) Prior to the expiration of the Designation Rights Period, the Liquidator shall have the right, upon seven days' written notice to Ben Moss, to elect to not designate a transferee of any Designated Assets. Following the effective date of such notice, the Liquidator would have no further obligation with respect to such Designated Assets and Ben Moss would be solely responsible for such Designated Assets (and would retain all proceeds from their disposition). Prior to the expiration of the Designation Rights Period, the Liquidator may also notify Ben Moss of its election to have Ben Moss seek Court approval to designate a transferee of the Designated Assets. Ben Moss would then use commercially reasonable efforts to obtain a Court Order approving the transfer of such Designated Assets. Transfer Costs associated with the foregoing would be borne by the transferee or the Liquidator, while Cure Amounts would be paid by transferees. Ben Moss would pay Designated Asset disclaimer costs and Designated Asset expenses incurred until the earlier of (i) the

closing of a transaction for each such Designated Asset, and (ii) the end of the Designation Rights Period.

- (p) The Liquidator will have the exclusive right to dispose of FF&E in accordance with the Liquidation Agreement. In consideration of its services selling the FF&E, the Liquidator will receive a commission on the sale of FF&E during the Sale equal to 20% of the FF&E Proceeds. In addition, Ben Moss will reimburse the Liquidator for the Liquidator's reasonable out of pocket expenses attributed to the disposition of FF&E which are not duplicative of the Expenses set out in the Liquidation Agreement and are in accordance with a budget. All gross proceeds of FF&E will be deposited by the Liquidator on a daily basis in an account to be designated by Ben Moss.

53. I believe that the Liquidation will benefit all of Ben Moss's stakeholders. It is my understanding that the Liquidator has good relationships with many of the landlords from prior transactions, and is experienced in dealing with the types of landlord concerns that may arise in the type of process contemplated in the Liquidation Agreement.

54. Ben Moss believes that it is crucial to begin a liquidation process immediately in order to maximize the amounts available to its respective stakeholders. Furthermore, I am advised that the economics of the Successful Bid are predicated on the Sale commencing by no later than the weekend of July 30, 2016.

55. I am also advised by the Monitor and believe that the Monitor supports the proposed Liquidation, including the proposed timeline and other terms.

56. The Sale is to be subject to the sale guidelines attached to the Liquidation Agreement as Schedule “G” (the “Liquidation Guidelines”). The Liquidation Guidelines provide that, among other things, the Liquidation shall be conducted in accordance with the terms of the applicable leases or other occupancy agreements for each of the Locations. Pursuant to the Liquidation Agreement, Ben Moss is seeking Court approval of the Liquidation Guidelines, which are substantially similar to the Court-approved GBC Sale Guidelines that were negotiated with applicable landlords.

57. The Liquidator has agreed to provide a letter of credit to secure its obligations under the Liquidation Agreement, including its obligation to pay the Guaranteed Amount and the Expenses (as such terms are defined in the Liquidation Agreement). The face amount of the letter of credit will be reduced by payments received by Ben Moss on account of the Guaranteed Amount, provided that the face amount of the letter of credit will not be reduced to less than the parties’ estimate of 3 weeks’ worth of Expenses.

58. I also understand that the Liquidator has had ongoing discussions with one of the Qualified Bidders that submitted a BM Sale Proposal in the RISP regarding the transfer of certain Designated Assets (i.e. the Leases and Intellectual Property).

F. The Proposed Liquidation Agreement Should be Approved

59. The following factors, among others, support the approval of the Transaction contemplated by the Liquidation Agreement:

- (a) the process leading to the proposed Transaction was in accordance with the Court-approved RISP, as amended by the July 7 Order and the July 14 Order;

- (b) the Monitor actively participated in and supervised the RISP. The Monitor recommends the approval of the Transaction and will be filing a report setting out its opinion of the benefits of the Transaction compared to a sale or disposition under a bankruptcy;
- (c) Salus Capital participated in the development of the RISP and is supportive of the proposed Transaction;
- (d) the Transaction would provide sufficient proceeds to: (i) pay outstanding amounts under the Court-ordered charges; (ii) pay any amounts that would have been required under paragraphs 6(5)(a) and (6)(a) of the CCAA; (iii) pay post-filing obligations; and (iv) pay any liabilities or obligations arising from the completion of the Transaction, including the Non-Reimbursable Expenses; and
- (e) The anticipated consideration to be received pursuant to the Liquidation Agreement is the greatest of what was offered by any of the participants in the Auction Process.

60. For all of the reasons set out above, I believe that the Transaction represents the best possible transaction in the circumstances for the benefit of Ben Moss and its stakeholders. The Liquidator has provided evidence that it will have sufficient funds to complete the Transaction and satisfy all of the obligations of the Liquidator under the Liquidation Agreement.

G. Liquidator's Charge

61. The Liquidation Agreement contemplates the creation of a first ranking Court-ordered charge (the "Liquidator's Charge") in favour of the Liquidator on all of the Merchandise, the Additional Agent Merchandise, the Proceeds, the Additional Agent Merchandise Proceeds and the FF&E Proceeds (to the extent of the FF&E Commission), provided that until payment in full to

Ben Moss of all amounts owing to Ben Moss under the Liquidation Agreement, the Liquidator's Charge shall be junior to all Encumbrances (but solely to the extent of such unpaid amounts). Pursuant to the Liquidation Agreement, Ben Moss is seeking Court approval of the Liquidator's Charge.

H. The Proposed Distribution

62. The draft Order contemplates that, immediately following receipt of the Initial Guaranty Payment, the Applicant shall, without further Order of the Court, distribute: (i) an amount equal to the purchase price under the JSN APA (the "Purchase Price") from the Initial Guaranty Payment to J.S.N. Inc., which distribution shall be free and clear of all encumbrances; and (ii) the balance of the Initial Guaranty Payment, less \$2.5 million (the "Operating Reserve"), to Salus Capital, in the maximum amount of Salus Capital's secured claim, which distribution described in this subparagraph (ii) shall be free and clear of all encumbrances and shall be applied against the indebtedness, liabilities and obligations owing by the Applicant, first under the DIP Facility, and second under the Amended and Restated Credit Agreement dated July 18, 2013, as amended (the "Credit Facilities").

(i) Distribution to JSN Inc.

63. Pursuant to the JSN APA, Ben Moss will purchase the JSN Goods, which are included as Merchandise that the Liquidator will sell pursuant to the Liquidation Agreement. The Purchase Price represents: (i) the aggregate purchase price payable for such JSN Consigned Goods under consignment arrangements between JSN Inc. and Ben Moss; and (ii) prices consistent with the transfers of the subject inventory made between JSN Inc. and Ben Moss in the ordinary course, which will not be less than 100% of the cost value of such inventory. Ben Moss must be permitted

to pay the purchase price contemplated by the JSN APA in order to procure the JSN Goods and satisfy the corresponding obligations under the Liquidation Agreement.

(ii) Distribution to Salus Capital

64. As at July 22, 2016, there is approximately CAD\$53.8 million, plus any accrued interest and fees from July 1, 2016 outstanding under the DIP Facility and the Credit Facilities.

65. Pursuant to the DIP Lender's Charge granted by the Initial Order in respect of the interim financing provided by Salus CLO under the DIP Facility, Salus Capital has priority over all other creditors other than holders of a properly perfected purchase money security interest, and the other Court-ordered charges in the Initial Order.

66. In addition, all of the obligations of Ben Moss under the Salus Credit Agreement are secured by all of Ben Moss's assets. The Monitor sought and obtained an opinion from its counsel which confirmed the validity and enforceability of the security in connection with the Salus Credit Agreement.

67. As described in the Affidavit of Kyle Shonak sworn July 13, 2016 (attached hereto without exhibits as Exhibit "T"), I am advised that there is no foreseeable scenario where the indebtedness of Ben Moss to Salus Capital, whether as borrower or guarantor, can be repaid from the proceeds of the estates of Ben Moss and the other Obligors under any permutation or combination of going concern and/or liquidation sales. Accordingly, and given that the Operating Reserve will be used to pay the Applicant's post-filing expenses until the Sale Termination Date (including the Non-Reimbursable Expenses), no other party's claims against Ben Moss are impacted by the proposed distribution.

I. Modifications to the Cash Management System

68. Pursuant to the Initial Order, Ben Moss was authorized to continue using its existing Cash Management System during the CCAA Proceedings. Under the Cash Management System, funds deposited into certain blocked accounts are automatically transferred to Salus Capital each day. Pursuant to the Liquidation Agreement, the Designated Deposit Accounts and the Company's Designated Accounts (as such terms are defined in the Liquidation Agreement) shall be deemed to be held in trust for the Applicant and the Liquidator, as the case may be. Additionally, the Liquidation Agreement requires that Ben Moss and the Liquidator establish a reconciliation process pursuant to which certain proceeds are paid over from Ben Moss to the Liquidator daily. Accordingly, Ben Moss is seeking that the Cash Management System be modified in accordance with the Liquidation Agreement.

J. CRO's Activities

69. Since its appointment, the CRO has been involved in numerous aspects of the Applicant's business and CCAA proceedings. Some of the more significant activities that the CRO has undertaken since the Filing Date are described in the Third Manzoor Affidavit. Since the date of the Third Manzoor Affidavit, the more significant activities that the CRO has undertaken include, but are not limited to, the following:

- (a) Holding employee meetings and conference calls;
- (b) Attending regularly at the Applicant's head office in Winnipeg;
- (c) Meeting and corresponding regularly with the Applicant's landlords and their representatives;

- (d) Issuing the Disclaimers;
- (e) Meeting and corresponding regularly with GBC regarding the planning and execution of the inventory reduction sales;
- (f) Meeting and corresponding with Ben Moss's suppliers regarding, among other things, their pre-filing accounts, continued supply, purported consignment agreements/arrangements and post-filing payments/purchases;
- (g) Reviewing and approving the Applicant's disbursements for post-filing purchases;
- (h) Corresponding and meeting regularly with Salus Capital and its advisors;
- (i) Corresponding and meeting regularly with the Monitor;
- (j) Reviewing and approving the Applicant's weekly reporting and daily funding requests submitted to Salus Capital and the Monitor;
- (k) Working with the Monitor to carry out the RISP;
- (l) Reviewing the Final Bid's submitted in the context of the RISP and corresponding with the Monitor in respect of same;
- (m) Answering queries from Ben Moss's creditors;
- (n) Dealing with Ben Moss's insurer and taking steps to renew certain of the Ben Moss's policies;
- (o) Preparing for court hearings and reviewing related materials;
- (p) Participating in the negotiation of the JSN APA;

- (q) Participating in the Auction Process pursuant to and in accordance with the RISP;
and
- (r) Participating in the negotiation of the Liquidation Agreement.

K. Stay Extension is Appropriate

70. As noted above, the Court granted a stay of proceedings in favour of Ben Moss, its directors and officers, the CRO and the Monitor during the Stay Period. The Court also granted a limited stay of proceedings in favour of JSN Inc. for the duration of the Stay Period. On July 7, 2016, the Court extended the Stay Period until and including August 30, 2016, or such later date as the Court may order.

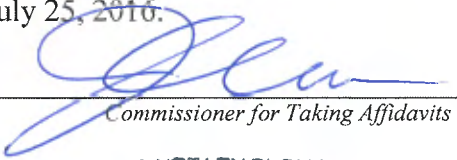
71. Ben Moss seeks an extension of the Stay Period up to and including December 30, 2016. The extension is necessary and appropriate in the circumstances to allow for the continued operations of Ben Moss's business and for Ben Moss to complete the Transaction, subject to the approval of the this Court. Extending the Stay Period will allow the parties to focus on the closing of the Transaction and conducting the Sale during the Sale Term. Furthermore, this extension will be cost-effective in that the parties would only return to Court before the expiry of the extended Stay Period if circumstances arise that require Court direction.

72. I believe that Ben Moss has acted and is continuing to act in good faith and with due diligence in these CCAA proceedings since the granting of the Initial Order.

73. As set out in the Applicant's updated cash flows, with the DIP Facility (as amended by the DIP Amendment) and the Operating Reserve, Ben Moss will have access to sufficient liquidity to fund operations during the requested extension of the Stay Period.

74. The Monitor and Salus Capital have each expressed their support for the relief being sought on this motion.

SWORN BEFORE ME at the City of ^{Winnipeg}Toronto,
in the Province of ~~Ontario~~ on ^{Manitoba}
July 25, 2016.



Commissioner for Taking Affidavits

A NOTARY PUBLIC
IN AND FOR THE
PROVINCE OF MANITOBA



NAVEED Z. MANZOOR

THIS IS **EXHIBIT "A"** REFERRED TO IN THE
AFFIDAVIT OF NAVEED Z. MANZOOR, SWORN BEFORE ME
THIS 25th DAY OF JULY, 2016.



A Commissioner for taking Affidavits, etc.

A NOTARY PUBLIC
IN AND FOR THE
PROVINCE OF MANITOBA

Court File No.

**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 BEN MOSS JEWELLERS WESTERN
CANADA LTD.

APPLICANT

**AFFIDAVIT OF NAVEED Z. MANZOOR
(Sworn May 16, 2016)**

I, Naveed Z. Manzoor, of the Town of Oakville, in the Province of Ontario, the Chief Restructuring Officer (“CRO”) of the Applicant, Ben Moss Jewellers Western Canada Ltd. (“Ben Moss” or the “Applicant”), MAKE OATH AND SAY:

1. This Affidavit is made in support of an application by Ben Moss for an Initial Order and related relief under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”), including the following:

- (a) appointing Alvarez & Marsal Canada Inc. as Monitor pursuant to s. 11.7 of the CCAA to monitor Ben Moss’s business and financial affairs (the “Proposed Monitor”);
- (b) appointing FAAN Advisors Group Inc. as CRO;
- (c) staying all proceedings taken or that might be taken in respect of Ben Moss, its directors and officers, the CRO, and/or the Proposed Monitor;

- (d) staying all proceedings taken or that might be taken in respect of Ben Moss's parent company, J.S.N. Jewellery Inc. ("JSN Inc."), to the extent that these proceedings arise as a result of cross-default provisions related to agreements between Ben Moss and third parties, provided that such stay applies only with respect to amounts owing that are currently not in arrears and that are contemplated in the cash flows as being paid in the ordinary course;
- (e) authorizing Ben Moss to file with this Court a plan of compromise or arrangement between Ben Moss and, *inter alia*, one or more of its classes of secured and/or unsecured creditors pursuant to the provisions of the CCAA;
- (f) authorizing Ben Moss to obtain, and borrow pursuant to, a debtor-in-possession ("DIP") credit facility in order to finance its working capital requirements and other general corporate purposes as well as its post-filing expenses and costs;
- (g) granting the following charges over the property of the Applicant, listed in order of priorities:
 - (i) a charge (1) in favour of counsel to Ben Moss, the Proposed Monitor, counsel to the Proposed Monitor and the CRO, and (2) in favour of counsel to Joseph Shilon with respect to amounts incurred before the date of the Initial Order;
 - (ii) a charge in favour of the DIP Lender (as defined below); and
 - (iii) a charge in favour of the directors and officers of Ben Moss;
- (h) ordering that the CRO shall not have any liability with respect to any losses, claims, damages, or liabilities, of any nature or kind, except to the extent that such result from the gross negligence or wilful misconduct on the part of the CRO;

- (i) authorizing Ben Moss to make pre-filing payments to certain “critical” suppliers; and
- (j) approving a refinancing, investment and/or sale solicitation process.

2. I am the managing director of FAAN Advisors Group Inc. (“FAAN”). FAAN was retained by Ben Moss on April 18, 2016 to act as Interim CFO of Ben Moss. On May 13, 2016, FAAN was retained by Ben Moss and certain related companies to act as CRO for the duration of these proceedings. Pursuant to the terms of FAAN’s engagement letters, I led the Ben Moss Interim CFO engagement and am now leading the CRO engagement in respect of Ben Moss and certain related companies. A copy of the redacted Ben Moss CRO Engagement Letter is attached to this affidavit at Exhibit “A”. Although my engagement as Interim CFO lasted only a few weeks, my responsibilities as Interim CFO included, among other things, assessing Ben Moss’s business, identifying cost reduction and operations improvement opportunities, and exploring restructuring alternatives. In addition to the forgoing, my mandate as CRO includes the authority to direct the operations, management, restructuring and refinancing of Ben Moss, including any refinancing, investment and/or sale solicitation process. The senior management of Ben Moss now report directly to me. 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 other members of Ben Moss’s senior management team, senior management of certain of Ben Moss’s affiliated companies, and reviewed certain information provided by Ben Moss’s financial and legal advisors.

3. This Affidavit is divided into the following sections:

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A. Introduction

4. Ben Moss is a jewellery retailing business with 66 stores across Canada. It is headquartered in Winnipeg, Manitoba and is incorporated under the laws of Manitoba. Ben Moss employs approximately 549 hourly and salaried employees in Canada. Other stakeholder groups (discussed in greater detail below) include unrelated suppliers, customers, landlords, certain affiliated companies that supply goods to Ben Moss, and the Applicant's senior secured lenders, Salus Capital Partners, LLC ("Salus Capital") and Salus CLO 2012-1 Ltd. ("Salus CLO", and collectively with Salus Capital the "Senior Secured Lenders").

5. The Applicant is part of the JSN group of affiliated companies (collectively, the "JSN Group" or the "Companies"), which is principally comprised of two separate operating businesses: the Ben Moss jewellery retail business and the JSN jewellery wholesale business. In 2013, the JSN Group acquired Ben Moss to provide the wholesale business with an additional sales outlet. At the time of the acquisition, the JSN Group's management recognized an opportunity to vertically integrate manufacturing, wholesale and retail activities across the Companies. In order to finance the acquisition, the Companies utilized equity from the founder of the JSN Group and debt financing provided by Salus Capital.

6. Since the acquisition, there has been a significant decrease in Ben Moss's net sales and profitability, as a result of, *inter alia*, softness in western Canada due to declining energy prices and the appreciation of the U.S. dollar relative to the Canadian dollar, which has caused difficulties with inventory levels, merchandising and product mix at Ben Moss's stores. Furthermore, certain poorly performing stores, the expense of certain economically unviable leases and fixed overhead costs that are out of line with the level of total sales have consumed much needed capital. As a result of the foregoing, Ben Moss has impaired cash flow and is

experiencing a severe liquidity crisis. As described in detail below, these challenges have necessitated a restructuring under the CCAA. Without the relief sought in this application, Ben Moss will not be able to continue as a going concern. Notwithstanding the foregoing, I am advised by the President of the JSN Group's parent company that the wholesale business, which has a diversified group of top-tier customers in addition to Ben Moss, would be adversely affected by a filing and accordingly, without Salus Capital's objection, is not included as part of the proposed restructuring.

7. As described in greater detail below, Ben Moss and certain other members of the JSN Group are financed through a revolving credit facility (the "Revolving Credit Facility") and three term loan credit facilities (collectively with the Revolving Credit Facility, the "Credit Facilities") under a Credit Agreement dated as of July 18, 2013, as amended pursuant to the First Amending Agreement dated September 25, 2014 and as will be amended by an Accommodation Agreement substantially in the form described below (the "Accommodation Agreement"), between, the Applicant and certain other members of the JSN Group, as co-borrowers, Salus Capital, as administrative agent, collateral agent and lender and Salus CLO as lender (the "Salus Credit Agreement"). As at May 16, 2016, there was approximately CAD\$68.1 million outstanding under the Credit Facilities.

8. As a result of the financial challenges currently facing Ben Moss, an overadvance of USD\$855,048 (the "Overadvance") was requested under the Revolving Credit Facility on March 30, 2016. Salus Capital, in its capacity as administrative agent under the Salus Credit Agreement, granted the Overadvance on April 4, 2016. The Overadvance was used to make certain rent payments that had been due on April 1, 2016, along with payments relating to other general operating and working capital amounts. Since the Overadvance, the Senior Secured Lenders have

continued to fund the Borrowers (as defined below) notwithstanding the overadvance position under the Credit Facilities. In total there have been 21 additional permitted funding requests totalling approximately \$12 million in aggregate.

9. Since receiving the Overadvance, Ben Moss has continued to face financial difficulty and the Credit Facilities have remained in an overadvance position under the Salus Credit Agreement. As a result of the Overadvance, the total amount drawn down on the Revolving Credit Facility exceeds the maximum amount available by approximately \$7.5 million. Neither Ben Moss, the other Borrowers, nor the Guarantors (defined below) are able to repay the excess amount and this constitutes an Event of Default (as defined in the Salus Credit Agreement). In addition, Ben Moss and the other Borrowers breached the Collateral Coverage Ratio covenant (as defined in the Salus Credit Agreement), which also constitutes an Event of Default.

10. Salus Capital consequently issued to each of the Borrowers and Guarantors (i) demands for repayment (the “Demands”) and (ii) Notices of Intention to Enforce Security (collectively, the “BIA Notices”) pursuant subsection 244(1) of the *Bankruptcy and Insolvency Act*, all dated May 16, 2016. The Demands terminated the Borrowers’ rights to access any further credit under the Salus Credit Agreement and all amounts outstanding under the Credit Facilities have become due and payable.

11. Pursuant to the Accommodation Agreement, Salus Capital agreed to forbear from exercising its rights and remedies under the Salus Credit Agreement until the earlier of (a) July 29, 2016; and (b) the occurrence of certain forbearance termination events, or such later date that the Proposed Monitor, Salus Capital, the Borrowers and the Guarantors so agree; on certain conditions. These conditions include, *inter alia*, compliance with a restructuring plan that involves Ben Moss filing for CCAA protection. Per the JSN Group’s request, Salus Capital does

not require that the other Companies file for CCAA protection at this time, given the concern that such a filing would potentially jeopardize sensitive aspects of the JSN Group's global operations. Consequently, without a stay of proceedings and the Senior Secured Lenders' support for Ben Moss's restructuring, the Senior Secured Lenders would be in a position to enforce their security over the assets and property of Ben Moss.

12. As described in further detail below and subject to certain conditions, including the granting of the proposed Initial Order, the Accommodation Agreement provides that Salus Capital will provide the Applicant and the other Borrowers with continued access to the existing Credit Facilities (on the terms and conditions and subject to the limitations as specified in the Salus Credit Agreement, as amended by the Accommodation Agreement), and Salus CLO will provide the Applicant with an interim financing facility (the "DIP Facility") of up to \$8 million. The renewed access to the Credit Facilities, along with the proposed DIP Facility, are intended to provide the Applicant and the other Borrowers with adequate liquidity to satisfy their working capital requirements and for the Applicant to seek to complete a restructuring as part of this CCAA proceeding. The Applicant is unable to continue going concern operations to preserve enterprise value without access to the Credit Facilities and the DIP Facility.

13. Ben Moss is also seeking approval for a comprehensive refinancing, investment and/or sale solicitation process (the "RISP"), to be conducted with the assistance, and under the supervision, of the Proposed Monitor. The RISP has been reviewed and approved by Salus Capital and the Proposed Monitor and is described in greater detail below.

14. Ben Moss is facing immediate and serious challenges to its continued operations, including the threat of a demand for repayment from the Senior Secured Lenders, decreased sales levels, increasing costs due to the appreciation of the U.S. dollar relative to the Canadian dollar,

a number of severely underperforming stores and a misaligned fixed overhead cost structure. The Applicant is unable to sustain adequate liquidity to fulfill current business objectives and maintain going concern operations without commencing a CCAA process. The Applicant is unable to meet its liabilities as they become due and is therefore insolvent.

15. Over the course of the past several months, Ben Moss and the Companies engaged in significant efforts to pursue a restructuring outside of a formal insolvency proceeding. These efforts include the commencement of a process to seek a lender to refinance the Credit Facilities, hiring legal and financial restructuring advisors, continuing to optimize store operations and implement procurement strategies to maximize efficiencies, changing merchandising strategy, evaluating underperforming stores, developing strategies to improve profitability and conducting an overhead structure review to identify potential synergies and cost savings.

16. Based on my knowledge of the Applicant's business and my discussions with Ben Moss's senior management and the advisors to the Companies, it is my belief that the Applicant can be a viable business with significant future potential. In order to continue going concern operations and to access the only credit available to it in the circumstances, Ben Moss requires a stay of proceedings and related relief under the CCAA. A stay will enable Ben Moss to evaluate restructuring options concurrently with a potential sale of all or a portion of its business, with the ultimate goal of developing a plan of arrangement or compromise to restructure the business in a manner designed to maximize value to the greatest extent possible for its stakeholders.

17. I am advised by the President of the JSN Group's parent company and I believe that including the JSN Group's wholesale business in this CCAA Application would have a significant detrimental impact on the viability of its overseas supply chain and consequently the viability of the JSN Group as a whole. Ben Moss is currently reliant on the JSN Group for a

significant portion of its inventory and accordingly, such a detrimental impact on the JSN Group would have a corresponding impact on Ben Moss. Moreover, the JSN Group's wholesale business earnings before interest, taxes, depreciation and amortization ("EBITDA") margins¹ are significant, even taking into account the performance of Ben Moss. Per the JSN Group's request, Salus Capital is not requiring that the other Companies which operate the wholesale business file for CCAA protection at this time. Including the wholesale business as part of these proceedings would be detrimental to the interests of Ben Moss's stakeholders.

B. Corporate Structure

(a) Description of the Applicant

18. Ben Moss is a Manitoba corporation that is a wholly-owned indirect subsidiary of JSN Inc. and operates the only retail component of the Companies' business. Ben Moss's President (a former owner of Ben Moss who remained in his position as President after Ben Moss's acquisition) recently resigned as a corporate officer; however, he is still retained by Ben Moss in a strategic advisory capacity. Certain senior management also remain in place, including the Senior Vice President of Operations, the Vice President of Merchandising and the Director of Finance, all of whom are working closely with me in my capacity as CRO.

19. More detailed descriptions of the affiliated Companies who are parties to the Salus Credit Agreement and/or the Accommodation Agreement are found in the following paragraphs:

(a) **JSN Inc.** is a privately-held corporation owned by Joseph Shilon. It operates the Companies' wholesale business in Canada and has 100% direct or indirect

¹ The EBITDA margin is a measurement of a company's operating profitability as a percentage of its total revenue.

ownership of Ben Moss, 2373138 Ontario Inc. and JSN Jewellery UK Limited. JSN Inc. has a manufacturing and distribution facility in Toronto, Ontario. The manufacturing facility performs high margin, in-house repair and special order programs while maintaining complete control over quality. The distribution facility provides order fulfillment to the Companies' customers, including Ben Moss.

- (b) **2373138 Ontario Inc.** is a holding company and is inactive.
- (c) **JSN Jewellery UK Limited (“JSN UK”)** is part of the Companies' wholesale business. It sells products manufactured by the Companies to retailers in the United Kingdom. JSN UK has no retail operations.
- (d) **Always & Forever Family Collection Incorporated (“AFFC”)** is a wholesale business that specializes in jewelry that incorporates the birthstones of the customers' family.
- (e) **GMJ Corporation (“JSN US”)** is part of the Companies' wholesale business. It sells products manufactured by the Companies to retailers in the United States. It has no retail operations and does not have any employees, but rather engages independent contractors to facilitate the sale of JSN product in the U.S.
- (f) **P.M.R. Inc. (“PMR”)** is in the business of precious metals and stone reclamation. PMR operates and maintains specialized, leased equipment in Ben Moss stores to conduct metallurgical analysis on used jewellery, which may then be exchanged for cash or Ben Moss store credit. PMR then reclaims the raw

materials or refurbishes the jewellery in order to sell the refurbished jewellery or raw materials primarily to other members of the JSN Group.

20. Other members of the JSN Group, all of which are owned directly or indirectly by Joseph Shilon, include:

- (a) **Utopia Jewellery Co.**, a Thailand company that operates the JSN Group's jewellery manufacturing facilities in Thailand;
- (b) **Utopia Diamond Inc.**, a Thailand company that cuts and polishes raw diamonds for use in jewellery manufactured by Utopia Jewellery Co., the operations of which have currently been suspended; and
- (c) **Global Diamond (G.D.) Ltd.**, an Israeli company which acts as a diamond broker for the JSN Group in Israel.

(b) Chief Place of Business

21. Ben Moss's chief place of business is Ontario. There are 27 Ben Moss stores located in Ontario, which is the largest number of Ben Moss stores in any province where Ben Moss operates. Currently, Ben Moss has approximately 208 employees in Ontario, which is more people than Ben Moss employs in any other province or territory. The Ontario operations of Ben Moss accounted for approximately \$29 million in revenue for the 2015 fiscal year, representing roughly 34% of Ben Moss's total revenue, which is more revenue than any other province. Additionally, the largest number of stores that are expected to be closed as part of the restructuring are located in Ontario. As more particularly described below, the Ben Moss centralized cash management system is administered by JSN Inc., the head office of which is located in Toronto.

22. Previously, key decisions for the Ben Moss business were made out of its head office in Winnipeg, Manitoba. However, certain decision-making responsibility has been assumed recently by Ben Moss's parent company, JSN Inc., which is located in Toronto. Furthermore, I am now acting as Ben Moss's CRO and I am domiciled in the Town of Oakville. Ontario has become the "nerve centre" of the Applicant's operations.

C. The Business of the Applicant

(a) The Jewellery Retail Industry

23. The jewellery and watch market includes products made from gold, silver and other precious metals such as platinum, diamonds and other precious stones (e.g. sapphires, emeralds and rubies), pearls and semiprecious stones. Global revenues from jewellery and watches totaled \$290 billion in 2014. The jewellery and watch industry is expected to experience continued growth of 7% annually over the next five years, driven by growth in per capita income and gold prices.

24. The Canadian retail jewellery industry is dominated by smaller operations, with the vast majority of establishments employing less than 100 people. Industry operators compete less on price and more on factors such as brand strength and salience, product quality and designs. Successful brands often hire knowledgeable staff and renowned designers, and enter into licensing deals with celebrities to showcase products. Since 'fast fashion' has become standard, operators also compete on relatively lower cost items designed and marketed to address prevalent fashion trends of the time.

(b) Ben Moss Retail Business

25. Ben Moss has strategically positioned itself to serve the middle through upper price point jewellery markets. It also has the unique ability to offer custom and special order designs. Ben Moss began sourcing more product from the JSN Group, including products manufactured by Utopia Jewellery Co., after it was acquired in 2013. Its partnership with the JSN Group's wholesale business provides an unmatched ability to respond to emerging trends by quickly delivering the latest product to stores.

26. Ben Moss offers a wide selection of product ranging from entry-level priced diamond designs to fully-certified, top-quality diamond jewellery available in 10-kt. to 14-kt. gold. Other products which are not supplied by the JSN Group include watches and gold and silver jewellery from various companies including Citizen Watch Company, Bulova Watch Company, Movado Watches, Malo, First Jewellery, and Shiny Jewellery.

27. Certain of Ben Moss's products are also available for sale via its online store at www.benmoss.com. Only 0.8% of Ben Moss's sales are completed through the online store.

(c) Leases and Retail Stores

28. Ben Moss leases a significant amount of office space for its corporate headquarters in Winnipeg, Manitoba.

29. Ben Moss also leases stores across Canada from third party landlords. The typical format for a Ben Moss store is a strategically located storefront in a mall. Many of Ben Moss's store leases are with large retail landlords who lease several locations to Ben Moss. A typical Ben Moss store is approximately 1,100 square feet.

30. The following chart sets out Ben Moss's current store locations by geographical region as of May 2016:

| Location | Number of Ben Moss Locations |
|-------------------------|-------------------------------------|
| <i>Ontario</i> | 27 |
| <i>Alberta</i> | 17 |
| <i>British Columbia</i> | 9 |
| <i>Manitoba</i> | 5 |
| <i>Saskatchewan</i> | 5 |
| <i>Nova Scotia</i> | 2 |
| <i>New Brunswick</i> | 1 |
| Total | 66 |

31. As part of Ben Moss's restructuring under these proceedings, it plans to close certain retail locations that are unprofitable or that make marginal contributions to the overall profitability of Ben Moss. Inventory reduction sales have already begun in certain locations. It is likely that a process for store closures will commence in the following provinces within the initial stay period:

| Location | Number of Store Closings |
|-------------------------|---------------------------------|
| <i>Ontario</i> | 7 |
| <i>British Columbia</i> | 1 |
| <i>Saskatchewan</i> | 1 |
| <i>Nova Scotia</i> | 1 |
| <i>New Brunswick</i> | 1 |
| Total | 11 |

The likely closure of these stores and the planned disclaimer of the underlying leases during the initial stay period will improve the health of the 55 stores that remain open. In addition, it is a condition of the Accommodation Agreement that Ben Moss either undertake these and/or other store closures or otherwise take steps to significantly enhance their profitability.

32. There are also several retail locations that have been identified by Ben Moss as viable, but for the poor economic terms of the associated leases. A stay of proceedings will provide the Applicant with an opportunity to pursue consensual amendments to these leases.

33. Ben Moss, in consultation with the Proposed Monitor, is evaluating all of Ben Moss's operating expenses. Ben Moss anticipates that as part its restructuring efforts, cost-cutting initiatives will take place shortly after the commencement of these proceedings and during the initial stay period in connection with the planned closure of certain retail locations.

(d) Employees

34. Ben Moss employs approximately 164 full time and 385 hourly employees in Canada. A typical Ben Moss store is staffed by 8-10 employees, with additional coverage during holidays and peak selling periods. The staff includes both full and part-time sales associates and a store manager. Store managers are compensated through base salary and company-paid benefits, while sales associates are paid hourly wages. In addition, some of these individuals are eligible to receive profitability bonuses. Ben Moss has also established a group RRSP for employees, which RRSP is not company-funded. There are no registered pension plans for Ben Moss management or other employees. Ben Moss's employees are non-unionized.

(e) Gift Cards, Store Credit and Layaway Program

35. Ben Moss customers can purchase gift cards (“Gift Cards”) in-store or online, to be redeemed for merchandise. The Gift Cards are managed through a master service agreement with a third party. As of May 13, 2016, Ben Moss had \$167,202 of outstanding Gift Cards.

36. Customers can also obtain in-store credit (“Store Credit”) when they return merchandise, to be redeemed for other merchandise in any Ben Moss store. As of May 13, 2016, Ben Moss had \$110,820 of outstanding Store Credit.

37. Ben Moss also offers a layaway program (the “Layaway Program”) in its retail locations to allow customers to pay for products over the course of a few months. The Layaway Program requires an initial deposit of at least 20% of the total purchase price, including taxes, and allows payment to be spread out over a maximum of six consecutive months.

38. When a product is purchased as part of the Layaway Program, the product stays in the store until the purchase price is paid in full. The customer is provided with a receipt that includes the item description, layaway number and balance owing. Every time the customer pays more money against the layaway, the receipt is updated to reflect the current balance owing. If a customer cancels a layaway, his or her payments are refunded (less any special order/non-refundable fees). As of May 2016, approximately \$2.4 million of merchandise has been purchased as part of the Layaway Program, of which approximately \$1.1 million has thus far been received from various customers as deposits. Pursuant to the current Cash Management System (defined below), customer payments made under the Layaway Program are comingled with Ben Moss’s other cash receipts and deposit accounts which are then transferred to Salus Capital’s concentration accounts on a regular basis.

39. Ben Moss's Gift Cards, Store Credit program, and Layaway Program increase sales and improve the customer experience. As such, Ben Moss seeks in the Initial Order that it be authorized, with the consent of the Proposed Monitor, to continue providing and to honour Gift Cards and Store Credit during these proceedings. At this time, Ben Moss will not be accepting any new deposits with respect to the Layaway Program, either from existing Layaway Program customers or with respect to new purchases, with the exception of existing Layaway Program customers who decide to pay the remaining balance in full and who will then receive the fully paid-for merchandise.

(f) Critical Suppliers

40. Ben Moss works with a number of third party service providers who are essential to its business. Ben Moss is seeking authorization to make certain payments, including payments owing in arrears, to certain third parties that provide services that are critical to Ben Moss's ongoing operations during the restructuring.

(g) Banking and Cash Management Systems

41. Ben Moss maintains a centralized cash management system (the "Cash Management System"), which is administered from JSN Inc.'s head office. The Applicant's bank accounts are maintained and controlled by JSN Inc.'s senior management, which is based in Toronto, utilizing cash management systems established at the Royal Bank of Canada ("RBC") and certain other banks.

42. The majority of Ben Moss store sales are transacted through credit and debit cards with the related settlement receipts being deposited daily by the card processor into a blocked deposit account with RBC. Cash sales are deposited daily by each store into a "deposit only" account for

that store at the closest financial institution, including Scotiabank, CIBC, TD and RBC. Upon deposit, funds are then electronically transferred to and consolidated in an RBC blocked account at the end of each day. The funds in both of these RBC blocked accounts are automatically transferred to Salus Capital each day. Store cash deposits made to BMO accounts are automatically swept to a BMO blocked account (collectively with the RBC blocked accounts, the “Blocked Accounts”) once per week and the funds in the BMO Blocked Account are then transferred to Salus Capital automatically once per week. Other bank accounts include payroll as well as a USD and CAD operating account.

43. As discussed further below, the Revolving Credit Facility under the Salus Credit Agreement is structured as a typical asset-based loan. Advances are made based on the amount of available credit, which varies based on the value of the Borrowers’ collateral, specifically, their inventory and accounts receivable balances. Cash receipts represent a loss/replacement of the collateral which supports the indebtedness. Thus, the money deposited by Ben Moss into the Blocked Accounts from the sale of its inventory represents both a reduction in the collateral securing the Senior Secured Lenders’ outstanding loans and a corresponding reduction in the amount borrowed under the Revolving Credit Facility.

44. Since the sale of inventory constantly erodes the collateral which supports the indebtedness, asset-based lenders generally have dominion over a borrower’s cash receipts. Indeed, since the inception of the Salus Credit Agreement, Salus Capital has had cash dominion over all receipts of the Borrowers in part pursuant to a number of blocked account agreements between Salus Capital, Ben Moss and a number of banks (collectively, the “Blocked Account Agreements”), copies of which Blocked Account Agreements are attached at Exhibit “B” to this Affidavit. In accordance with the terms of the Blocked Account Agreements, all of the Ben Moss

receipts deposited to the Blocked Accounts are automatically swept to Salus Capital's collection accounts. Similarly, the other Borrowers' receipts are deposited into accounts and swept to Salus Capital's collection accounts and applied against the amounts owing under the Credit Facilities.

45. On a regular basis, Salus Capital re-advances funds to JSN Inc. in accordance with the borrowing base and the other terms of the Salus Credit Agreement. JSN Inc.'s regularly prepared borrowing base is used to determine the amount of financing availability (as supported by collateral) the Companies can draw upon in accordance with the Salus Credit Agreement. Each such borrowing base is certified by an officer of the JSN Group. In this fashion, Salus Capital's cash dominion and the Companies' borrowing base serve a collateral monitoring function that is essential to the asset-based nature of the Revolving Credit Facility and is typical and customary in all asset based lending arrangements.

46. Ben Moss provides cash flow forecasts to JSN Inc. to substantiate any requests for funding and JSN Inc. then transfers funds, upon receipt from Salus Capital, as needed and/or available to Ben Moss's USD and CAD operating accounts. Ben Moss uses its operating accounts to make payments to its vendors and landlords, through the use of cheques, pre-authorized payments, wires and credit card payments.

47. Pursuant to the Salus Credit Agreement, the JSN Group prepares a single borrowing base. Accordingly, the JSN Group's total availability is determined by its consolidated collateral (inventory at both JSN Inc. and Ben Moss as well as accounts receivable from all of its operations). On that basis, management at JSN Inc. must determine how to allocate funds received from Salus Capital among the Borrowers. To the extent that the borrowing base is insufficient to satisfy all such requirements, management must determine how best to make such an allocation or, as was the case in early April 2016 and persisting to the date hereof, request that

Salus Capital provide additional funding by way of an overadvance, which constitutes an Event of Default.

48. The Applicant intends to continue using the existing Cash Management System (including the borrowing base regime whereby a unified borrowing base for all of the Companies is regularly submitted to Salus Capital) during the CCAA Proceedings and is seeking the approval of the Court to do so. The continued use of the Cash Management System is a condition of the Accommodation Agreement and the DIP Facility. The Proposed Monitor is of the view that the continued use of the existing Cash Management System is required and appropriate in order for Ben Moss to successfully complete the CCAA Proceedings.

D. Financial Position of Ben Moss

49. A copy of Ben Moss's unaudited financial statements dated March 28, 2015 is attached as Exhibit "C".² A copy of Ben Moss's internal draft unaudited financial statements dated March 26, 2016 is attached as Exhibit "D". I am informed by Ellen Baranyi, the Director of Finance of Ben Moss, and I believe that although the March 26, 2016 draft financial statements are not finalized, any adjustments made would not be material.

50. The Companies' Credit Facilities are not included as part of Ben Moss's financial statements but are instead included in the combined audited financial statements of the Companies.

51. Certain information contained in Ben Moss's March 26, 2016 draft financial statements is summarized below. All amounts in this Affidavit are in Canadian Dollars.

² Ben Moss's financial statements are in the normal course incorporated into the consolidated audited financial statements of JSN Inc., JSN US, JSN UK, Ben Moss, 2373138 Ontario Inc. and Utopia Jewellery Co.

(a) Assets

52. As at March 26, 2016, Ben Moss had combined total assets of \$72,249,130.

(i) Current Assets

53. Ben Moss's current assets (as at March 26, 2016) represented \$48,574,758 of its total assets and consisted of:

- (a) Cash – (\$550,449)
- (b) Accounts receivable – \$6,348,473
- (c) Inventories – \$41,991,146
- (d) Prepaid expenses and other assets – \$620,040
- (e) Restricted cash – \$165,548

54. The majority of Ben Moss's current assets are made up of inventories and accounts receivable. The vast majority of the accounts receivable is due from PMR.

(ii) Non-Current Assets

55. Ben Moss's non-current assets (as at March 26, 2016) represented \$23,674,372 of its total assets and consisted of:

- (a) Capital assets – \$11,144,237
- (b) Intangible assets – \$11,534,587
- (c) Goodwill – \$2,995,548

56. The majority of the Ben Moss's non-current assets are made up of capital assets and intangible assets.

(b) Liabilities

57. As at March 26, 2016, Ben Moss's total liabilities were approximately \$62,168,925. These liabilities consisted of current liabilities of approximately \$37,481,970, and non-current liabilities of approximately \$24,686,955. The Credit Facilities are not included as part of Ben Moss's financial statements, and therefore are not included in the tally of its liabilities. The Credit Facilities are instead included in the combined audited financial statements of the JSN Group.

(i) Current Liabilities

58. Current liabilities as at March 26, 2016 included:

- (a) Accounts payable and accrued liabilities – \$12,073,326
- (b) Government remittances payable – \$360,486
- (c) Current portion of deferred lease inducements – \$10,745
- (d) Current portion of deferred service plan revenue – \$810,757
- (e) Current portion of obligations under capital leases – \$714,334
- (f) Current portion of long-term debt – \$43,009
- (g) Due to ultimate parent company – \$23,469,313

(ii) Non-Current Liabilities

59. Non-current liabilities as at March 26, 2016 included:

- (a) Deferred lease inducements – \$83,538
- (b) Deferred service plan revenue – \$365,086
- (c) Unfavourable off-market leases – \$60,573
- (d) Obligations under capital leases – \$233,196
- (e) Due to parent company – \$23,944,562

(c) Revenue

60. Ben Moss's consolidated net sales decreased by \$6.7 million (7.8%) between its 2015 fiscal year and its 2016 fiscal year. The decline was caused by, *inter alia*:

- (a) Softness in western Canada due to declining energy prices;
- (b) Poor inventory mix; and
- (c) An inability to stock non-core products in advance of the key holiday retail season as a result of the appreciation of the U.S. dollar relative to the Canadian dollar.

61. Earnings before interest, taxes, depreciation and amortization for Ben Moss decreased from \$4.0 million in its 2014 fiscal year to \$2.0 million in its 2015 fiscal year and further decreased to (\$0.4) million in its 2016 fiscal year.

62. Ben Moss has also incurred net losses totalling approximately \$4.2 million in its 2016 fiscal year.

(d) Secured Debt and Credit Facility

63. As noted above, Ben Moss and certain other Companies entered into the Salus Credit Agreement, a copy of which is attached as Exhibit “E”. The parties to the Salus Credit Agreement are: (i) JSN Inc., as lead borrower; (ii) JSN UK, JSN US and Ben Moss, as co-borrowers (collectively with JSN Inc., the “Borrowers”); (iii) 2373138 Ontario Inc., FJI³ and Joseph Shilon as guarantors (the “Guarantors”); (iv) Salus Capital, as administrative agent, collateral agent and lender; and (v) Salus CLO as lender.

64. The Salus Credit Agreement provides for the Credit Facilities and was entered into partly in order to finance the acquisition of Ben Moss. The Salus Credit Agreement funds the operations of Ben Moss as well as other operations of the JSN Group, including the operations of Utopia Jewellery Co., Utopia Diamond Inc. and Global Diamond (G.D.) Ltd.

65. The obligations of the Borrowers under the Salus Credit Agreement are secured by first-priority liens on substantially all of the Borrowers’ assets pursuant to a general security agreement dated July 18, 2013 (the “General Security Agreement”), a joinder to the General Security Agreement dated July 18, 2013 (the “Joinder”), a U.S. general security agreement executed by JSN US (the “U.S. General Security Agreement”), a UK guarantee and debenture executed by JSN UK (the “UK Debenture”) and certain other security documents (collectively, the “Security Documents”). Copies of the General Security Agreement, the Joinder, the U.S. General Security Agreement and the UK Debenture are attached as Exhibits “F”, “G”, “H”, and “I” to this Affidavit, respectively.

³ Forever Jewellery Inc. (“FJI”) is a separate jewellery wholesaling business. It is not affiliated with the JSN Group but it purchases product from the JSN Group and the companies cooperate for advertising and sales purposes.

66. Each of the Guarantors guaranteed the performance of the Borrowers' obligations under the Salus Credit Agreement. 2373138 Ontario Inc.'s obligations as a Guarantor are secured by a first-priority lien on substantially all of its assets pursuant to the General Security Agreement. FJI's obligations as a Guarantor are secured by a first-priority lien on substantially all of its assets pursuant to the General Security Agreement; however, the recourse of the Senior Secured Lenders against FJI was limited to an amount equal to the sum of amounts due from FJI to the Borrowers and other Guarantors from time to time. Joseph Shilon's guarantee is not secured and the recourse of the Senior Secured Lenders under this guarantee was limited to \$3,000,000.

67. The Credit Facilities mature on July 18, 2016. They are comprised of the \$50 million committed Revolving Credit Facility, a \$7 million term loan credit facility (the "Term A Facility"), a \$13 million term loan credit facility (the "Term B Facility") and a U.S.\$3.5 million term loan credit facility (the "Term C Facility").

68. The applicable interest rate and the amounts outstanding under each of the respective Credit Facilities is as outlined below:

| | Current Facility | Amount Outstanding | Interest Rate on advances | Default Interest Rate on advances |
|----------------------------------|-------------------------|---------------------------|--|--|
| Revolving Credit Facility | \$50 million | \$53.9 million | Canadian Prime Rate ⁴ plus 3.5% | Canadian Prime Rate plus 6.5% |
| Term A Facility | \$7 million | \$4.8 million | Canadian Prime Rate plus 7.75% | Canadian Prime Rate plus 10.75% |
| Term B Facility | \$13 million | \$4.9 million | Canadian Prime Rate plus 9.75% | Canadian Prime Rate plus 12.75% |
| Term C Facility | U.S.\$3.5 million | U.S.\$3.5 million | U.S. Base Rate ⁵ plus 9.75% | U.S. Base Rate plus 12.75% |

⁴ Royal Bank of Canada prime rate for Canadian dollar commercial loans in Canada (the "Canadian Prime Rate").

⁵ Royal Bank of Canada base rate for U.S. dollar commercial loans in Canada ("U.S. Base Rate").

69. In the event that the amount drawn under the Revolving Credit Facility is greater than the Maximum Revolving Loan Amount (as defined in the Salus Credit Agreement), the amount of such discrepancy must be immediately paid by the Borrowers to the Senior Secured Lenders. Salus Capital may exercise its discretion to establish reserves that it determines are appropriate to, *inter alia*: (i) reflect the impediments of the Senior Secured Lenders' ability to realize upon the security granted pursuant to the Security Documents (the "Security"); or (ii) reflect claims and liabilities that will need to be satisfied in connection with the realization of the Security.

(e) Other Creditors

70. Ben Moss has six secured creditors in addition to the Senior Secured Lenders: 4770693 Manitoba Limited, 4770715 Manitoba Limited and 4770685 Manitoba Limited (the "Numbered Companies"), National Leasing Group Inc. ("National Leasing"), HSBC Bank Canada ("HSBC"), and Xerox Canada Ltd. ("Xerox", and collectively the "Other Secured Creditors").

71. As part of the 2013 Ben Moss sale transaction, the Numbered Companies paid out a lease agreement with Wells Fargo, since Wells Fargo was not willing to assign the lease agreement as part of the sale. In return, Ben Moss provided the Numbered Companies with a promissory note and a purchase money security agreement. The Numbered Companies are still owed approximately \$29,000 by Ben Moss as of May 2016.

72. National Leasing financed the acquisition of certain equipment for use in the Ben Moss stores pursuant to a Master Lease Agreement dated July 7, 2010 (the "2010 Master Lease Agreement"). The 2010 Master Lease Agreement was subsequently assigned to HSBC. The 2010 Master Lease Agreement provides, *inter alia*, that in the event that Ben Moss files for protection

under the CCAA, all rent and any other payments to the end of the lease term (as of May 2016, approximately \$675,000) become due and payable on HSBC's demand. Additionally, JSN Inc. has agreed to indemnify HSBC in the event that Ben Moss is unable to make its rent payments to HSBC.

73. National Leasing also financed the acquisition of certain equipment for use in the Ben Moss stores pursuant to a Master Lease Agreement dated September 12, 2011.

74. Xerox financed the acquisition of certain equipment for use in the Ben Moss head office.

75. As at the date of filing, no amounts are outstanding under the agreements with the Other Secured Creditors. Additionally, the cash flows (discussed below) provide for the continued payment of the amounts owing under all of these agreements going forward. As such, it is anticipated that the Other Secured Creditors will remain unaffected by Ben Moss's filing for protection under the CCAA.

E. Accommodation Agreement

76. Ben Moss has continued to face financial difficulty since receiving the Overadvance. As a result of the Overadvance, the total amount drawn down on the revolver exceeds the Maximum Revolving Loan Amount provided for in the Salus Credit Agreement by approximately \$7.5 million.⁶ Neither Ben Moss, the other Borrowers, nor the Guarantors are able to repay the excess amount, which constitutes an Event of Default.⁷ As a result, Salus Capital issued the BIA

⁶ The Maximum Revolving Loan Amount is effectively the lesser of \$50 million and the borrowing base.

⁷ As noted above, Ben Moss and the other Borrowers breached the Collateral Coverage Ratio covenant, which constitutes an Event of Default. As a result of the Events of Default, the default interest rates outlined in the chart above are now in effect.

Notices and the Demands for repayment pursuant to which the Companies' rights to access any further credit under the Salus Credit Agreement were terminated.

77. Pursuant to the Accommodation Agreement Salus Capital agreed to forbear from exercising its rights and remedies under the Salus Credit Agreement, to take no further action or proceedings in further of the Demands or the BIA Notices, and to continue to provide the Credit Facilities until the earlier of (a) July 29, 2016; and (b) the occurrence of certain forbearance termination events, or such later date that the Proposed Monitor, Salus Capital, the Borrowers and the Guarantors so agree; on certain conditions. These conditions include, *inter alia*:

- (a) Execution of the DIP Facility;
- (b) Compliance in all material respects, as determined by Salus Capital in the exercise of its reasonable business judgment, with a restructuring plan that involves Ben Moss filing for CCAA protection;
- (c) Compliance with the Cash Flows (as defined in the Accommodation Agreement);
- (d) Ben Moss obtaining an order from the Court commencing CCAA proceedings, in form and substance satisfactory to Salus Capital, providing for, among other things:
 - (i) A stay of proceedings;
 - (ii) The approval of the DIP Facility;
 - (iii) A charge in favour of Salus Capital as agent under the DIP Facility to secure obligations under the DIP Facility;
 - (iv) Approving and providing for the continuation of Ben Moss's current cash management system; and
 - (v) Approving the RISP; and

- (e) The appointment of FAAN as chief restructuring officer of Ben Moss, JSN Inc., JSN UK, JSN US, 2373138 Ontario Inc., AFFC and PMR.

78. Pursuant to the Accommodation Agreement, in consideration for Salus Capital's commitment to forbear and to provide the DIP Facility, *inter alia*:

- (a) AFFC and PMR have provided (or will provide) an unlimited, secured guarantee of all obligations to the agent under the Credit Facilities and to the DIP Lender;
- (b) JSN UK has agreed to provide such additional guarantee and/or debenture documents as required by the Senior Secured Lenders;
- (c) Joseph Shilon amended his personal guarantee of the Credit Facilities to also guarantee all obligations to the DIP Lender and increased the value of the guaranteed amount thereunder to \$11,000,000;
- (d) JSN Inc. agreed that, unless otherwise agreed to by Salus Capital, should no qualifying LOI be received by the Phase 1 LOI Deadline (defined below), JSN Inc. and/or the Applicant will, within two days, seek an Order of the Court adding JSN Inc. and certain other members of the JSN Group as applicants in Ben Moss's CCAA proceedings; and
- (e) JSN Inc., JSN UK, JSN US, 2373138 Ontario Inc., AFFC and PMR provided secured guarantees of the Applicant's obligations under the DIP Facility.

79. For the reasons previously described, per the JSN Group's request, Salus Capital did not require that the other Companies file for CCAA protection at this time.

80. Without a stay of proceedings and the Senior Secured Lenders support for Ben Moss's restructuring, the Senior Secured Lenders would be in a position to enforce their security over the assets and property of Ben Moss. Therefore, Ben Moss is insolvent and has commenced this CCAA proceeding.

F. Urgent Need for Relief

81. Ben Moss is facing multiple challenges to its continued operations, including immediate liquidity challenges due to Salus Capital's decision to make the Demands for repayment and accelerate Ben Moss's debt.

82. Additionally, the appreciation of the U.S. dollar relative to the Canadian dollar has resulted in Ben Moss paying more Canadian dollars in 2016 for less product, causing significant liquidity constraints. This has resulted in a suboptimal product mix and a lack of ability to replenish the best-selling, non-core products (watches, gold, etc.), causing significant sales declines and serious underperformance by certain retail locations.

83. Without access to the incremental borrowings that had previously been available under the Credit Facilities from September to November, Ben Moss's liquidity and availability was constrained and it was unable to properly stock its non-core product lines for the important holiday selling season. Ben Moss's non-core product offerings performed very poorly with sales declining by \$3.1 million (14%) over prior year due to the lack of available inventory (down over 18% from prior year). Despite accounting for only 25% of total sales, the non-core product categories at Ben Moss accounted for over 50% of the sales decline over the prior year.

84. While there seems to be an increase in Ben Moss's inventory balances over the past year, this is largely due to the appreciation of the U.S. dollar relative to the Canadian dollar. The core

input costs (gold and diamonds) are sourced in U.S. dollars, and while the input costs in U.S. dollars have not changed substantially, when translated into Canadian dollars the cost appreciation is substantial. Therefore while the Ben Moss balance sheet reflects an increase in the value of inventory, the actual number of units on hand has decreased significantly: the average number of non-core product units declined by 20,000 units (23.5%) and the average number of non-core units per store have declined by 26.9%.

85. Without the stay of proceedings contemplated herein, which would provide Ben Moss with the opportunity to restructure its operations, Ben Moss will not be able to address the challenges described above that have put the business in peril. It is my view that these CCAA proceedings will give Ben Moss the ‘breathing room’ it requires to make the necessary changes to its cost structure and either (i) obtain new capital; or (ii) pursue a sale transaction pursuant to the RISP which would allow the business an opportunity to continue.

G. Restructuring Efforts to Date

86. JSN Inc. has been exploring the possibility of refinancing the Credit Facilities as well as restructuring the Ben Moss retail business. To that end, JSN Inc. engaged Osler, Hoskin & Harcourt LLP as its legal advisor and Alvarez & Marsal Canada ULC as its financial advisor in March 2016 to assist it in its strategic alternatives review process.

(a) Efforts to Refinance Credit Facilities

87. In August 2015, Alvarez & Marsal Canada Securities ULC (“A&M Corporate Finance”) was engaged by JSN Inc. to initiate a process to effectuate a refinancing of the Credit Facilities. A&M Corporate Finance commenced active solicitation of potential lenders in January 2016 and contacted numerous parties, including financial institutions based in both Canada and the U.S.

88. Many of the lenders that were contacted have been provided with information on the business and have requested the execution of non-disclosure agreements (“NDAs”). As of March 7, 2016, 37 parties had executed NDAs and received a Confidential Information Memorandum in connection with a refinancing of the Credit Facilities. A&M Corporate Finance provided parties who executed NDAs with additional information related to Ben Moss, including historical financial information, financial forecasts and recent inventory appraisals and a letter requesting proposals on February 26, 2016. To date, this process has not resulted in an acceptable refinancing proposal.

89. In March 2016, JSN Inc. engaged Alvarez & Marsal Canada ULC to assist with JSN Inc.’s strategic review process. The engagements of A&M Corporate Finance and Alvarez & Marsal Canada ULC will be terminated upon the appointment of the Proposed Monitor.

(b) Efforts to Improve Profitability of Ben Moss Stores

90. Since the acquisition of Ben Moss, significant efforts have been made to derive operational synergies and performance enhancements for the business. Management continues to implement a plan to transform Ben Moss into a more nimble, responsive and profitable company. Some steps that have been or continue to be taken include:

- (a) Selecting key external vendors to become category managers of non-core product lines (watches, gold jewellery, etc.) to ensure efficient inventory spending and maximize inventory turns;
- (b) Maximizing sell-through with an updated and refreshed merchandising strategy and ensuring an optimal product mix tailored to specific stores based on local demographics and trends;

- (c) Examining store operations to identify opportunities for savings, including efficient staffing policies and direct-to-store shipping capabilities;
- (d) Investing in Ben Moss's ecommerce business to help drive traffic to its retail locations;
- (e) Conducting a store-by-store profitability analysis to identify possible store closures;
- (f) Reviewing overhead structure to identify synergies and cost savings; and
- (g) Soliciting interest and selecting a liquidator to commence inventory reduction in selected underperforming stores.

H. Relief Sought

91. The Applicant has made efforts to pursue a restructuring outside of a formal insolvency proceeding. However, Ben Moss is not able to honour its debt obligations to the Senior Secured Lenders and its liquidity position continues to significantly deteriorate. Ben Moss cannot pursue a restructuring or maintain going concern operations without the protection of CCAA proceedings. The Applicant is unable to meet its liabilities as they become due and is therefore insolvent.

(a) Stay of Proceedings

92. In order to prevent a fast erosion of enterprise value and to permit Ben Moss to continue to operate as a going concern, the Applicant requires a stay of proceedings. Ben Moss is concerned about its inability to make payments owing under the Salus Credit Agreement, as well as the potential termination of contracts by key suppliers and the inability to force suppliers to

provide future product. It would be detrimental to Ben Moss's ability to restructure if proceedings were commenced or continued or rights and remedies were executed against Ben Moss.

93. The Applicant requests that the benefit of the stay of proceedings be extended to JSN Inc. in relation to any claims brought against JSN Inc. as a result of cross-default provisions in respect of amounts owing by Ben Moss to third parties (for instance, claims pursuant to the indemnity granted by JSN Inc. with respect to the 2010 Master Lease Agreement). The stay would be limited to amounts owing that are currently not in arrears and that are contemplated in the cash flows as being paid in the ordinary course. As at the date of filing, no amounts are outstanding under Ben Moss's agreements with the Other Secured Creditors. Additionally, the cash flows (discussed below) provide for the continued payment of the amounts owing under Ben Moss's agreements with the Other Secured Creditors going forward. It is anticipated that the Other Secured Creditors will not be negatively impacted by the extension of the stay of proceedings to JSN Inc.

94. The operations of Ben Moss and JSN Inc. are intertwined and the extension of the stay is necessary to maintain stability and value in the CCAA process. Any proceedings commenced against JSN Inc. would necessarily require the participation of key personnel of the Applicant – for example, to provide evidentiary support for the claim through witnesses or documents. The need to provide such support could be a very significant distraction for the Applicant's key personnel during the restructuring and would materially detract from the paramount goal of achieving the timely restructuring of the business.

95. The stay will provide management with the breathing space it needs to develop and oversee an orderly restructuring of the business with minimal disruptions to current business

operations, as well as to consider any operational restructuring initiatives. This, in turn, will help to protect the interests of the Applicant's stakeholders, including employees, suppliers, landlords, customers and lenders. Having regard to the circumstances, and in an effort to preserve the value of the Applicant's business, the granting of a stay of proceedings is in the best interests of the Applicant and its stakeholders.

96. If granted CCAA protection, Ben Moss plans to aggressively pursue a restructuring of its business. Among other things, Ben Moss plans to:

- (a) close those retail locations that are unprofitable or that make marginal contributions to the overall profitability of Ben Moss (the "Closed Locations");
- (b) renegotiate the terms of certain economically unviable leases;
- (c) liquidate inventory currently held at the Closed Locations and disclaim the leases in connection with the Closed Locations to obtain much needed cash flow;
- (d) evaluate opportunities to reduce other operating costs;
- (e) implement changes to optimize inventory management; and
- (f) continue seeking an investor to refinance the Credit Facilities.

(b) Debtor In Possession Financing and DIP Charge

97. As a result of its current liquidity challenges, Ben Moss requires interim financing over and above the current Overadvance and authorized credit limits on an urgent basis to continue as a going concern. As demonstrated in the cash flow forecast (discussed below), Ben Moss is in

need of funding for working capital, general corporate purposes, and for post-filing expenses and costs in order to successfully restructure its business during this CCAA proceeding.

98. As discussed above, subject to certain terms and conditions, Salus Capital has agreed to allow Ben Moss to continue to access the existing Credit Facilities pursuant to and in accordance with the Accommodation Agreement. Salus CLO has agreed, subject to certain terms and conditions, to act as DIP lender (the “DIP Lender”) and to provide interim financing through the availability of drawdowns under the Super Priority DIP Credit Agreement (again, the “DIP Facility”) of \$8 million to Ben Moss. A copy of the draft DIP Facility, which is expected to be executed in substantially the same form, is attached hereto as Exhibit “J”.

99. Access to the DIP Facility is subject to compliance with the Accommodation Agreement, as well as a budget, restructuring plan and RISP. Ben Moss would only be permitted to access the DIP Facility in the event that the existing Credit Facilities are fully drawn down, which is currently the situation as there is no availability under the existing Credit Facilities. As discussed above, execution of the DIP Facility is a condition of entering into the Accommodation Agreement. The DIP Facility is guaranteed by JSN Inc., JSN UK, JSN US, 2373138 Ontario Inc., FJI, AFFC, PMR and Joseph Shilon.

100. The DIP Facility expressly provides that Ben Moss may not draw down any advances under the DIP Facility to be used to repay any indebtedness outstanding prior to the date of the commencement of this proceeding, except in accordance with the Initial Order.

101. In accordance with the requirements of the DIP Facility, and consistent with the current Cash Management System in effect, Ben Moss’s cash, credit, and debit receipts from business operations are required to be deposited into the Blocked Accounts, swept to Salus Capital’s collection accounts and applied by Salus Capital in order to reduce first, the obligations

classified as a “Permitted Overadvance” under the Credit Facilities, second, the obligations under the DIP Facility and third, the outstanding obligations under the Credit Facilities.

102. The maintenance of the pre-existing Cash Management System, as modified by the DIP Facility, means that the Senior Secured Lenders’ secured collateral from before the filing date which is sold subsequent to the filing date will continue to be used to reduce pre-petition amounts owing to the Senior Secured Lenders, in accordance with the ‘waterfall’ described in the paragraph above. The proposed DIP Facility preserves the current structure of the existing asset based loan with the Senior Secured Lenders where advances under the Revolving Credit Facility are determined based on the value of the Borrowers’ collateral. The maintenance of the existing Cash Management System is a condition precedent to the availability of the DIP Facility.

103. Ben Moss is seeking approval of the proposed DIP Facility to accommodate its anticipated liquidity requirements during this CCAA proceeding. The proposed DIP Facility will provide additional assurances to Ben Moss’s employees, critical suppliers, creditors and other stakeholders that Ben Moss will be able to continue going concern operations while pursuing the implementation of a restructuring.

104. It is a condition precedent to the availability of the DIP Facility that the Initial Order be in form and substance satisfactory to the DIP Lender, including in respect of the granting of the DIP Lender’s Charge (as defined below).

105. The DIP Facility is proposed to be secured by a Court-ordered security interest, lien and charge (the “DIP Lender’s Charge”) on all of the present and future assets, property and undertaking of Ben Moss, including any cash on hand at the day of the filing (the “Property”) that will secure all post-filing advances. The DIP Lender’s Charge is to have priority over all

other security interests, charges, and liens other than the Administration Charge (as defined below) up to an amount of \$ 600,000 and any properly perfected purchase money security interest under the *Personal Property Security Act* (Ontario) or such other applicable provincial legislation. The DIP Lender's Charge will not secure any obligation that exists before the Initial Order.

106. Ben Moss has agreed to pay the DIP Lender:

- (a) a DIP Arrangement Fee of \$80,000;
- (b) a Collateral Monitoring Fee of \$5,000 per month;
- (c) a Commitment Fee of 0.675% per annum of the unused portion of the DIP Facility;
- (d) interest of 20% per annum of the outstanding revolving loans under the DIP Facility; and
- (e) other fees and interest payable in certain circumstances.

107. Because the proposed DIP Facility is being provided by Salus CLO with Salus Capital as agent and with Salus Capital's consent, and these entities are Ben Moss's senior secured creditors, Ben Moss is of the view that there will be no material prejudice to any of its existing creditors. Additionally, no amounts are past due under Ben Moss's agreements with the Other Secured Creditors and the cash flows anticipate continuing to pay them in the ordinary course.

108. Further, I am advised that Salus Capital will oppose any other DIP financing arrangement which seeks to prime the Senior Secured Lenders and would immediately demand that the other Borrowers (which operate the JSN Group's wholesale business) seek protection under the CCAA

to the detriment of the JSN Group as a whole, including Ben Moss. Accordingly, the DIP Facility provided by Salus CLO is the only realistic means for Ben Moss to keep operating while it attempts to restructure its business and continue as a going concern.

109. The DIP Facility is critical to the successful restructuring of Ben Moss, as it will provide Ben Moss with the necessary liquidity to operate as a going concern during these proceedings and, absent an injection of cash at this time, Ben Moss will be forced to shut down its operations, with a significant loss of employment and disruption to those who rely on its services.

110. I have been advised by the Proposed Monitor that while the pricing structure, including the fees and interest costs, as described above, are high, there are certain comparable precedents for arrangements in similar such proceedings. In addition, the Proposed Monitor has advised me, and I believe it to be true, that in the circumstances, it would be either impractical or impossible to obtain an alternate DIP lender. Accordingly, it is my view that the DIP Facility from the DIP Lender is the only viable source of funding currently available to Ben Moss on an expedited basis.

(c) Payments During the CCAA Proceedings

111. During the course of this proceeding, Ben Moss intends to make payments for goods and services supplied post-filing in the ordinary course, as set out in the cash flow projections described below and as permitted by the draft Initial Order.

112. Ben Moss is also proposing in the draft Initial Order that it be authorized to make certain payments to certain third parties, including payments owing in arrears, where the CRO determines, with the consent of the Proposed Monitor, that those third parties provide services

that are critical to the Applicant's ability to operate during, and implement its restructuring under, these proceedings.

(d) RISP

113. Subject to approval by this Court, Ben Moss has agreed to pursue the following restructuring alternatives under the supervision of the Proposed Monitor, as described in the RISP:

- (a) a refinancing of all or part the Credit Facilities of the JSN Group (a "JSN Group Refinancing Proposal");
- (b) an equity investment in JSN Inc. and/or Ben Moss (a "Reinvestment Proposal");
and/or
- (c) a sale of all or a portion of the business and property of Ben Moss (a "BM Sale Proposal", and together with a JSN Group Refinancing Proposal, and a Reinvestment Proposal, the "Potential Transactions")

114. I believe that the RISP will help Ben Moss identify the best opportunities for optimizing returns for its stakeholders and creditors. A copy of the RISP is attached as Schedule "A" to the draft Initial Order.

115. Ben Moss and the JSN Group have agreed that the RISP will be conducted in two phases. In the first phase ("Phase 1"), for a period of 30 days following the date of the Initial Order, the Proposed Monitor will solicit non-binding indications of interest in the form of non-binding letters of intent ("LOIs"). During Phase 1, the Proposed Monitor will provide qualified interested parties that have executed a non-disclosure agreement ("Qualified Bidders") with a confidential

information memorandum and access to an electronic data room of preliminary due diligence information.

116. Qualified Bidders that wish to pursue a refinancing, sale or investment proposal must deliver an LOI to the Proposed Monitor by 5:00 PM (Eastern Daylight Time) 30 days following the date of the Initial Order (unless that date is not a business day, in which case the next business day) (the “Phase 1 LOI Deadline”). The requirements of a qualifying LOI are set out in the RISP. At the end of Phase 1, the Proposed Monitor, in consultation with the CRO and Salus Capital, will assess the qualifying LOIs received, if any, and determine whether there is a reasonable prospect of obtaining an offer or combination of offers that may amount to a Qualified Bid (as defined in the RISP).

117. The following factors will be considered in the assessment of the qualifying LOIs, *inter alia*: (i) the form and amount of consideration being offered, including any purchase price adjustments and/or any non-cash considerations; (ii) the demonstrated financial capability of the Qualified Bidder(s) to consummate the proposed transaction; (iii) the conditions to closing of the proposed transaction; and (iv) the estimated time required to complete the proposed transaction and whether, in the Proposed Monitor’s reasonable business judgment, it is likely to close on or before July 29, 2016.

118. If one or more qualifying LOIs are received, the Proposed Monitor, exercising its reasonable business judgment and if appropriate to do so, following consultation with Salus Capital, will recommend to the CRO that the RISP continue into phase 2 (“Phase 2”) until a date to be determined by Salus Capital and the Proposed Monitor. If there are no qualifying LOIs, the Proposed Monitor may, subject to Salus Capital’s approval, continue the RISP into Phase 2 if

there is a reasonable prospect that one or more Potential Transaction proposals may become Qualified Bids.

119. If it is determined that no qualifying LOI has been received and there is no reasonable prospect of one resulting in a Qualified Bid, (i) the Proposed Monitor, any member of the JSN Group or Salus Capital may apply to the Court for further advice and directions including with respect to the termination of the RISP, (ii) Salus Capital may terminate the RISP; and/or (iii) Salus Capital may apply to the Court for approval of a bid. Additionally, the Accommodation Agreement provides that, unless otherwise agreement to by Salus Capital, if no qualifying LOI has been received by the Phase 1 LOI Deadline, JSN Inc. and/or the Applicant shall, within two days, seek an Order of the Court adding JSN Inc. and certain other members of the JSN Group as applicants in Ben Moss's CCAA Proceedings.

120. If the RISP continues to Phase 2, Qualified Bidders, along with their legal, financial advisors and/or lenders, would be granted further access to due diligence materials and information relating to the business and financial affairs of Ben Moss, on-site presentations by the JSN Group's senior management and the Proposed Monitor, facility tours and access to further information contained in a more robust data room. Selected due diligence materials may be withheld from certain Phase 2 Qualified Bidders if the Proposed Monitor determines such information to represent proprietary or sensitive competitive information.

121. Qualified Bidders that wish to pursue a Potential Transaction must submit a final, binding proposal (the "Final Bid") to the Proposed Monitor by the Phase 2 Bid Deadline (as defined in the RISP). In order to be considered a Qualified Bid, a Final Bid must meet the criteria set out in the RISP. Among other things, a Final Bid must include an irrevocable offer letter, written evidence of a firm, irrevocable commitment for financing, and a duly executed purchase

agreement, refinancing agreement, or investment agreement. A Qualified Bid cannot be conditional on due diligence or financing.

122. In evaluating Qualified Bids, the Proposed Monitor, in consultation with the CRO and Salus Capital, will consider, *inter alia*: (i) the ‘headline’ purchase price and estimated net proceeds or the amount of equity and debt investment; (ii) the firm, irrevocable commitment for financing the transaction; (iii) the counterparties to the transaction; (iv) the proposed treatment of employees; (v) other factors affecting the speed, certainty and value of the transaction (including any regulatory approvals required to close the transaction); (vi) planned treatment of stakeholders; (vii) the likelihood and timing of consummating the transaction; and (viii) the likelihood of the transaction resulting in the full repayment of the aggregate amount owing to the Senior Secured Lenders under the Salus Credit Agreement and the DIP Facility (in the case of a JSN Group Refinancing Proposal or a Reinvestment Proposal).

123. If one or more Qualified Bids is received, the Proposed Monitor, exercising its reasonable business judgment, and with approval from Salus Capital, may recommend to the CRO that the most favourable Qualified Bid or combination of Qualified Bids be selected (the “Successful Bid”). The applicable member(s) of the JSN Group shall have no obligation to enter into a Successful Bid, and reserves the right, after consultation with the Proposed Monitor and Salus Capital, to reject any or all Qualified Bids.

124. If it is determined that no Qualified Bid has been received at the end of Phase 2, (a) any of the Proposed Monitor, any member of the JSN Group or Salus Capital may apply to the Court for further advice and directions including with respect to termination of the RISP; (b) Salus Capital may terminate the RISP; and/or (c) Salus Capital may apply to the Court for approval of a bid.

125. Ben Moss will apply to the Court for an order approving the Successful Bid(s) and authorizing Ben Moss to enter into any and all necessary agreements with respect to such bid. All Qualified Bids other than the Successful Bid will be deemed rejected on the date of approval of the Successful Bid.

126. The RISP timelines are appropriate in light of the extensive solicitation process that was undertaken by A&M Corporate Finance in 2015 to identify potential investors/purchasers and educate them about Ben Moss's business. The Proposed Monitor is of the view that the timeframes set out in the RISP are reasonable in the circumstances. I believe it is important to start the RISP promptly to maximize opportunities to identify appropriate interested parties while preserving the enterprise value of the business.

127. A sale of or investment in the Applicant, or alternatively a refinancing of the Credit Facilities, will benefit all stakeholders and will not prejudice any creditors. Unless a refinancing of the Credit Facilities is achieved or an investment in or sale of the business is undertaken at this time, the long-term viability of Ben Moss will be in jeopardy. Proceeding with the RISP will maximize the possibility of saving as many jobs as possible and constitutes the best and most valuable proposal for Ben Moss's business.

(e) Liquidation Consultant

128. The Applicant has selected Gordon Brothers Canada ULC ("GBC") to act as its consultant in connection with the liquidation of the Ben Moss stores that have been (or ultimately will be) identified for closure in order to maximize the value of its inventory, furniture, fixtures and equipment (collectively, the "Merchandise & FF&E") for the benefit of Ben Moss' stakeholders. A copy of the GBC Consulting and Agency Agreement (the "GBC Agency Agreement") omitting certain schedules is attached to this affidavit as Exhibit "K".

Capitalized terms in this section that are not otherwise defined have the meaning given to them in the GBC Agency Agreement.

129. The GBC Agency Agreement provides for a process (the “Liquidation Process”) to liquidate the Merchandise & FF&E contemplated therein. The Liquidation Process was designed by GBC and Ben Moss, in consultation with the Proposed Monitor. It is my understanding that the Proposed Monitor supports the proposed Liquidation Process.

130. The sale to liquidate the Merchandise & FF&E (the “Liquidation Sale”) commenced on May 5, 2016. Some of the key terms of the GBC Agency Agreement include:

- (a) The Liquidation Sale will terminate on July 31, 2016 or such other date as provided for in the GBC Agency Agreement or mutually agreed to by GBC and Ben Moss;
- (b) GBC may, with Ben Moss’s approval, supplement the original goods in the 11 closing stores with additional inventory of similar quality on a consignment basis;
- (c) Ben Moss shall pay GBC various fees, including Sales Fees, FF&E Fees, and Sourcing Fees;
- (d) No later than 30 days following the end of the Sale Term, the parties shall complete a final reconciliation of all amounts contemplated under the GBC Agency Agreement; and
- (e) With respect to the removal of Remaining Merchandise and Remaining FF&E, GBC and Ben Moss shall come to an agreed upon FF&E Scope of Work for each Store in order for GBC to remove any Remaining Merchandise and Remaining

FF&E and vacate each closing Store, all in accordance with the terms of the GBC Agency Agreement.

131. Ben Moss is seeking the following relief with respect to GBC, as required by the GBC Agency Agreement:

- (a) Authorization to market and sell the Merchandise and FF&E free of Encumbrances;
- (b) Authorization to use the closing Store locations for the purpose of conducting the Sale;
- (c) The extension of the benefit of Ben Moss's stay of proceeding to GBC for the purposes of conducting the Sale;
- (d) An order that GBC shall not be liable for any claims against the Applicant except as provided for in the GBC Agency Agreement;
- (e) An order that the GBC Agency Agreement will not be repudiated, resiliated or disclaimed by Ben Moss, nor will the claims of GBC pursuant to the GBC Agency Agreement be compromised pursuant to any plan of arrangement;
- (f) A declaration that the transactions contemplated under the GBC Agency Agreement be exempt from application of any applicable *Bulk Sales Act* or other equivalent legislation; and
- (g) Authorization for Ben Moss to disclose to GBC all human resources and payroll information pertaining to Ben Moss's past and current employees and for GBC to

use that information in the same manner as Ben Moss while maintaining the privacy of that information.

132. Ben Moss believes that engaging a professional liquidator such as GBC to undertake a sale of the Merchandise & FF&E will produce better sale results than an attempt by Ben Moss to sell the Merchandise & FF&E without such professional assistance. The Applicant believes that it is crucial to continue the Liquidation Sale process in order to maximize the amounts available to their stakeholders.

(f) Monitor

133. Alvarez & Marsal Canada Inc. has consented to act as the Monitor of the Applicant under the CCAA. A copy of Alvarez & Marsal Canada Inc.'s consent to act as Monitor is attached as Exhibit "L".

(g) Administration Charge

134. In connection with its appointment, it is proposed that the Proposed Monitor, along with its counsel, counsel to the Applicant, counsel to Joseph Shilon with respect to amounts incurred to the date of the Initial Order, and FAAN⁸ will be granted a Court-ordered charge on the Property as security for their respective fees and disbursements relating to services rendered in respect of the Applicant up to a maximum amount of \$600,000 (the "Administration Charge"). The Administration Charge is proposed to have first priority over all other charges.

⁸ Pursuant to its engagement letters with Ben Moss, FAAN will be paid certain work fees for its engagement as Ben Moss's Interim CFO and CRO as well as a success fee to be negotiated.

(h) Directors' and Officers' Protection

135. A successful restructuring of the Applicant will only be possible with the continued participation of the Applicant's board of directors (the "Directors"), officers (the "Officers"), management and employees. These personnel are essential to the viability of the Applicant's continuing business.

136. I am advised by Marc Wasserman of Osler, Hoskin & Harcourt LLP, counsel for the Applicant, and believe that, in certain circumstances, directors can be held liable for certain obligations of a company owing to employees as well as sales taxes. The Applicant estimates, with the assistance of the Proposed Monitor, that these obligations may include unpaid accrued wages and associated taxes which could amount to as much as approximately \$1.0 million and unpaid accrued vacation pay which could amount to as much as \$0.5 million for a total potential director liability of approximately \$1.5 million. Additionally, as of May 16, 2016, Ben Moss has approximately \$420,000 of accrued, unpaid sales taxes.

137. The amount of insurance under the Director and Officer primary and excess insurance policies is approximately \$10 million. The policy expires July 18, 2016 and there is uncertainty as to whether the policy can be renewed. The Directors and Officers have indicated that, in light of the uncertainty surrounding available Directors' and Officers' insurance, their continued service and involvement in this restructuring is conditional upon the granting of an Order under the CCAA which grants a charge in favour of the Directors and Officers of the Applicant in the amount of \$1.5 million on the Property of the Applicant (the "Directors' Charge"). The Directors' Charge would stand in priority to all other security interests, charges, and liens other than the Administration Charge up to an amount of \$600,000 and the DIP Lender's Charge up to an amount of \$8 million. The Directors' Charge would act as security for indemnification

obligations for the Directors' and Officers' liabilities that may be incurred after the commencement of proceedings under the CCAA, as set out above.

138. The Directors' Charge is necessary so that the Applicant may benefit from its Directors' and Officers' experience with the business and the retail jewellery industry, and so that the Directors and Officers can guide the Applicant's restructuring efforts.

(i) Cash Flow Forecast

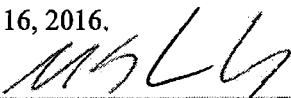
139. Ben Moss, with the assistance of the Proposed Monitor, has prepared 13-week cash flow projections as required by the CCAA. A copy of the cash flow projections is attached as Exhibit "M". The cash flow projections demonstrate that Ben Moss can continue going concern operations during the proposed stay period should the stay of proceedings be granted and the proposed DIP Facility be approved.

140. The Applicant anticipates that the Proposed Monitor will provide oversight and assistance and will report to the Court in respect of Ben Moss's actual results relative to cash flow forecast during this proceeding. Existing accounting procedures will provide the Proposed Monitor with the ability to track the flow of funds.


141. I am confident that granting the Initial Order sought by the Applicant is in the best interests of the Applicant and all interested parties. Without the stay of proceedings and the DIP Facility, the Applicant faces a cessation of going concern operations, the liquidation of its assets and the loss of its employees' jobs. The Applicant requires an immediate and realistic dialogue with its key stakeholders under the protection of the CCAA with the goal of maximizing the ongoing value of the business and continuing employment for its employees. The granting of the requested stay of proceedings will maintain the "status quo" and permit an orderly restructuring

and analysis of the Applicant's affairs, with minimal short-term disruptions to the Applicant's business.

SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario on
May 16, 2016.

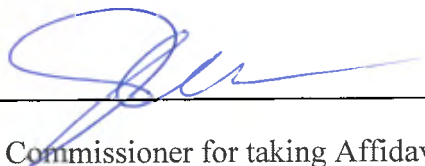


Commissioner for Taking Affidavits
Mark Sheekey

} 

NAVEED Z. MANZOOR

THIS IS **EXHIBIT "B"** REFERRED TO IN THE
AFFIDAVIT OF NAVEED Z. MANZOOR, SWORN BEFORE ME
THIS 25th DAY OF JULY, 2016.



A Commissioner for taking Affidavits, etc.

A NOTARY PUBLIC
IN AND FOR THE
PROVINCE OF MANITOBA

Court File No. CV-16-11397-00CL

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 BEN MOSS JEWELLERS WESTERN
CANADA LTD.

APPLICANT

AFFIDAVIT OF NAVEED Z. MANZOOR
(Sworn June 12, 2016)

**(Stay Extension and Approval of
Sale Guidelines)**

I, Naveed Z. Manzoor, of the Town of Oakville, in the Province of Ontario, MAKE OATH
AND SAY:

1. I am the managing director of FAAN Advisors Group Inc. ("FAAN"). Pursuant to the Initial Order (defined below), among other things, FAAN was appointed as CRO of Ben Moss Jewellers Western Canada Ltd. ("Ben Moss" or the "Applicant"). 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. I swear this Affidavit in support of the motion brought by Ben Moss seeking an Order, among other things: (i) extending the Stay Period (as defined below) to July 15, 2016; (ii) approving the sale guidelines (the "Sale Guidelines") that have been agreed to between the Applicant, Gordon Brothers Canada ULC (the "Agent"), Salus

Capital Partners, LLC (“Salus Capital”) and certain landlords; (iii) approving the DIP Amendment (as defined below); and (iv) approving the activities and conduct of the Monitor.

2. This Affidavit is divided into the following sections:

| | |
|---|----|
| A. Background | 2 |
| B. Update Regarding Ben Moss | 4 |
| C. Communication with Stakeholders | 5 |
| (a) Employees | 6 |
| (b) Suppliers..... | 7 |
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| G. Liquidation Assistance..... | 13 |
| H. Refinancing and/or Investment Solicitation Process | 14 |
| I. Stay Extension Is Appropriate | 15 |

A. Background

3. On May 18, 2016 (the “Filing Date”), Ben Moss was granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”), pursuant to an initial order of the Ontario Superior Court of Justice (Commercial List) (the “Initial Order”). In the Initial Order, the Court, among other things:

- (a) granted a stay of proceedings in favour of the Applicant until and including June 15, 2016, or such later date as the Court may order (the “Stay Period”);

- (b) authorized Ben Moss to obtain and borrow up to CAD\$8 million under the DIP Facility from Salus CLO, subject to the condition that borrowing could not exceed \$3.5 million before the comeback hearing; and
- (c) appointed Alvarez & Marsal Canada Inc. (“A&M”) as the monitor in respect of the Applicant (the “Monitor”).

4. Ben Moss sought approval of and was granted an amended and restated Initial Order (the “Amended and Restated Initial Order”) at the comeback hearing held on May 26, 2016. As further described below, the Amended and Restated Initial Order:

- (a) established the treatment of proceeds from Consignment Goods (as defined in the Amended and Restated Initial Order);
- (b) clarified the rights of real property landlords as against J.S.N. Jewellery Inc. (“JSN Inc.”) during the Stay Period and as against the Agent; and
- (c) required that the Agent conduct sales at the Applicant’s stores in accordance with sale guidelines to be agreed to between Ben Moss, the Agent, Salus Capital and certain landlords, which sale guidelines were to be consistent with standard Court-approved sale guidelines and which the Applicant would seek approval of at its next motion before the Court.

5. A blackline of the Amended and Restated Initial Order compared against the Initial Order is attached hereto as Exhibit “A”.

6. I swore an affidavit on May 16, 2016 (the “First Manzoor Affidavit”) in support of Ben Moss’s initial application. A copy of the First Manzoor Affidavit, without exhibits, is attached as

Exhibit “B”. Capitalized terms contained herein that are not otherwise defined have the meaning ascribed to them in the First Manzoor Affidavit.

B. Update Regarding Ben Moss

7. Since the granting of the Initial Order, Ben Moss has been operating its business as a going concern in close consultation with the Monitor.

8. As part of the continued operations of its business, Ben Moss has, among other things, developed and executed an extensive communications plan in order to inform its stakeholders about the CCAA proceedings. Furthermore, Ben Moss has engaged with its various stakeholder groups and commenced the Court-approved RISP, all in an effort to continue going concern operations and maximize value for its stakeholders.

9. Since the granting of the Initial Order, the Applicant has continued to comply with the existing Cash Management System (described further in the First Manzoor Affidavit) in connection with Salus Capital’s provision of financing under the DIP Facility in order to fund the Applicant’s operations. As I understand will be more particularly described in the First Report of the Monitor (the “First Report”), to be filed with the Court, the Applicant’s draws under the DIP Facility are lower than forecast, largely due to the timing of supplier payments. In accordance with the DIP Facility and the Accommodation Agreement, the Applicant’s cash receipts are currently being swept to reduce the Permitted Overadvance under the Credit Facilities.

10. The Applicant’s updated cash flow forecast indicates that, subject to the DIP Amendment, it will have access to sufficient liquidity to fund operations during the requested extension of the Stay Period. However, as I understand will be more particularly described in the First Report, I am advised that during the forecast period it is projected that the aggregate exposure under the Credit

Facilities and the DIP Facility will initially rise and then eventually decrease to a net increase of approximately \$1 million at the end of the forecast period. I understand that a copy of the updated cash flow forecast will be attached to the First Report.

11. On June 1, 2016, a Ben Moss store located in the Halifax Shopping Centre sustained significant damage due to a fire. This store was one of the eleven (11) locations that had been identified for potential closure (the “Closing Stores”) and where the Agent was liquidating inventory. In addition, a Ben Moss store located in Fort McMurray, Alberta has been closed due to the fires in Fort McMurray. The inventory in the Halifax store was moved back to head office. The Fort McMurray store is expected to reopen before the end of June. Ben Moss has notified and is dealing with its insurer and is in the process of making claims with respect to both of these store closures.

C. Communication with Stakeholders

12. Ben Moss has implemented a comprehensive communications plan for its employees, customers, creditors and suppliers. Following the granting of the Initial Order, Ben Moss sent employees an email providing information about the CCAA proceedings and held a town hall meeting to discuss same. Since the Filing Date, Ben Moss has responded and continues to respond to numerous inquiries from its various stakeholders. In addition, a general hotline and general email address were established by the Monitor to deal with inquiries from all stakeholders related to the CCAA proceedings.

13. In accordance with the Initial Order, on May 18, 2016, the Monitor made the Initial Order publicly available in the manner prescribed under the CCAA. On May 20, 2016, the Monitor sent a notice to all of Ben Moss’s known creditors (excluding Salus Capital) to whom Ben Moss owed more than CAD\$1,000, as well as Ben Moss’s landlords or property managers. On May 22, 2016,

the Monitor made a list of the names, addresses and amounts owing to applicable creditors (excluding individuals) publically available on its website. On May 24, 2016, the Monitor sent a notice to Salus Capital. On May 26, 2016, the Monitor made the Amended and Restated Initial Order publicly available in the manner prescribed under the CCAA.

14. Ben Moss issued a press release advising of the CCAA Proceedings and the RISP on the Filing Date, a copy of which is attached as Exhibit “C” hereto. In accordance with the Initial Order, I understand the Monitor published in the Winnipeg Free Press and the Globe and Mail (National Edition) notices containing the information prescribed under the CCAA on May 24, 2016, and May 26, 2016, respectively, copies of which are attached as Exhibit “D” hereto.

(a) Employees

15. Ben Moss has been working diligently to engage in communications with its employees across Canada. Following the granting of the Initial Order, Ben Moss held a town hall meeting for its head office employees in Winnipeg. During this meeting, employees were advised that, among other things, the Applicant had obtained CCAA protection, FAAN had been appointed as CRO, A&M had been appointed as Monitor, the Agent had been retained to assist in the liquidation of Closing Stores, the RISP had been approved and the inventory at certain underperforming retail locations would be liquidated. This information was also communicated to Ben Moss’s regional managers and store managers by way of conference calls following the granting of the Initial Order. Since the Filing Date, the Applicant’s employees have continued to work in the ordinary course.

16. The Applicant anticipates that it will begin the process of closing certain underperforming stores this month. The decision to close these stores will result in notices of termination being given to employees at such locations and disclaimer notices being delivered in respect of

applicable real property leases. If viable, Ben Moss will offer certain terminated employees jobs in other locations.

(b) Suppliers

17. After the Initial Order was granted, Ben Moss's CRO and senior management team initiated calls with Ben Moss's significant suppliers to advise them that Ben Moss would continue going concern operations during its CCAA proceedings and to negotiate payment terms for goods and services during such proceedings. The Monitor participated in certain of these calls. I also understand that the Monitor has had extensive one-on-one communications with numerous suppliers that contacted the Monitor directly.

18. In addition, the CRO and certain members of Ben Moss's senior management team attended a major annual jewellery trade show in Las Vegas, Nevada between June 3, 2016 and June 5, 2016, which provided the Applicant with an opportunity to meet with key suppliers and other stakeholders in person to discuss Ben Moss's restructuring and go-forward arrangements.

19. All of Ben Moss's most significant suppliers have continued to supply goods to Ben Moss, albeit on shorter payment terms than were previously in place in certain cases.

20. Certain consignment suppliers reached out to Ben Moss following the filing for CCAA protection. As a result, Ben Moss sought, and was granted, the Amended and Restated Initial Order, which, among other things: (i) clarified that Consignment Goods were not included in the definition of Property contained in the Amended and Restated Initial Order; and (ii) required that proceeds from the sale of any Consignment Goods, as determined by the Monitor in its sole discretion, that were sold both before and after the date of the Initial Order are to be returned by the Applicant to the supplier of such Consignment Goods on terms to be agreed upon between the

Applicant and such supplier. At this time, the Monitor is reviewing arrangements with various suppliers to ascertain the nature of the supply terms and whether they constitute valid consignment arrangements, as well as what steps can be taken with respect to the proceeds from any such valid consignments that were collected. Upon completion of this analysis, Ben Moss, in consultation with the Monitor, will work with identified consignment suppliers to document key terms related to the supply of, and payment for, Consignment Goods.

21. Additionally, as provided in the Amended and Restated Initial Order, Ben Moss has continued to pay suppliers for goods and services supplied during the CCAA proceedings.

(c) Landlords

(i) Negotiations related to liquidation procedures and leases

22. Following the granting of the Initial Order, counsel to the Applicant was approached by counsel to a group of landlords to discuss certain concerns with respect to the Initial Order and the CCAA Proceedings and the Closing Stores. As a result of these discussions, Ben Moss sought, and was granted, the Amended and Restated Initial Order, which, among other things: (i) required that the Applicant, the Agent, Salus Capital and certain landlords would agree to sale guidelines consistent with standard Court-approved sale guidelines; (ii) required that the Applicant seek Court approval of such sale guidelines; and (iii) clarified the landlords' rights as against JSN Inc. during the Stay Period and as against the Agent.

23. The parties have agreed to the Sale Guidelines, a copy of which is attached to this affidavit as Exhibit "E". The Sale Guidelines are fair, reasonable and consistent with standard Court-approved sale guidelines. The Sale Guidelines provide, among other things, that:

- (a) subject to certain exceptions, the sale to liquidate certain merchandise, inventory, furniture, fixtures, and equipment (the “Sale”, as further described in the First Manzoor Affidavit) pursuant to the Agency Agreement shall be conducted in accordance with the terms of the applicable leases or other occupancy agreements for each of the applicable stores (the “Stores”, and each a “Store”);
- (b) the Sale at the Stores shall end by no later than July 31, 2016; and
- (c) the Agent shall be entitled, as agent for Ben Moss, to include in the Sale additional inventory, including inventory from JSN Inc. and other goods from similar vendors not currently supplying goods to Ben Moss (“Additional Merchandise”), to the extent permitted under the Agency Agreement; provided that: (i) the Additional Merchandise will not exceed \$2 million at cost in the aggregate (the “Additional Merchandise Cap”); (ii) the Additional Merchandise will be distributed among the Stores such that no Store will receive more than 20% of the Additional Merchandise; and (iii) the Additional Merchandise is of like kind and category and no lessor quality to the merchandise and inventory sold at the Stores, and consistent with any restriction on usage of the Stores set out in the applicable leases; provided however that, in the event that there are more than 11 Stores, the Additional Merchandise Cap shall be increased in an amount equal to \$181,818 multiplied by the number of such additional Stores.

24. In addition to the above, Ben Moss, with the assistance of the Monitor, has been in discussions with several of its landlords regarding the terms of its leases. Ben Moss is seeking modifications to those real estate leases which it has determined are not consistent with market rates and/or are unviable. Ben Moss has scheduled several in-person meetings with certain of its

landlords during the week commencing June 13, 2016 to negotiate revised lease terms that improve the economic viability of applicable locations.

(ii) Disclaimers

25. As noted above, Ben Moss anticipates that it will take steps to close certain underperforming stores and disclaim the associated leases this month. In consultation with the Monitor, Ben Moss is in the process of reviewing all of its leases and identifying any leases to be disclaimed. Once this process is complete, Ben Moss will deliver disclaimer notices to applicable landlords.

D. Layaway Program

26. As described in the First Manzoor Affidavit, prior to the Filing Date, Ben Moss offered a layaway program (the "Layaway Program") in its retail locations to allow customers to pay for products over the course of no more than six (6) months. As of the Filing Date, Ben Moss stopped accepting new deposits with respect to the Layaway Program, both from existing Layaway Program customers and with respect to new purchases, with the exception of existing Layaway Program customers who decide to pay the remaining balance in full and who will then receive the fully paid-for merchandise.

27. After consultations with the Monitor, Ben Moss has decided not to resume the Layaway Program; however, customers who have previously made a deposit under the Layaway Program may still pay the full remaining balance owed and receive the applicable merchandise.

E. DIP Facility**(a) Update**

28. Pursuant to the Initial Order, Ben Moss was authorized to obtain and borrow up to CAD\$8 million under the DIP Facility from Salus CLO, subject to the condition that borrowing could not exceed \$3.5 million before the comeback hearing. Approximately \$2.1 million had been borrowed under the DIP Facility as of the date of the comeback hearing. The comeback hearing was unopposed and Ben Moss's entitlement to the remainder of the principal amount under the DIP Facility after May 26, 2016 was not disputed.

29. As of June 7, 2016, Ben Moss has made ten (10) borrowing requests. As of June 7, 2016, CAD\$51.3 million remains outstanding under the Salus Revolving Credit Facility and CAD\$4.6 million under the DIP Facility. As required by the DIP Facility, Ben Moss has delivered a borrowing base certificate to Salus Capital on a weekly basis.

(b) Amendment

30. In accordance with the Accommodation Agreement (as defined and described further in the First Manzoor Affidavit) and the DIP Facility, and consistent with the Cash Management System, Ben Moss's cash from business operations is required to be deposited into the Blocked Accounts and swept by Salus Capital in order to reduce obligations in the following order (the "Repayment Waterfall"): (i) first, obligations classified as a "Permitted Overadvance" under the Credit Facilities; (ii) second, obligations under the DIP Facility; and (iii) third, outstanding obligations under the Credit Facilities. Since the Filing Date, cash from Ben Moss's operations have continued to be deposited to the Blocked Accounts have been applied against the Permitted

Overadvance. As of June 7, 2016, the Permitted Overadvance has decreased to approximately CAD\$5.8 million.

31. The Permitted Overadvance has been used to fund operations of both Ben Moss and other Borrowers under the Salus Revolving Credit Facility, including JSN Inc. Since the Filing Date, Salus Capital has continued to provide JSN Inc. with overadvances under the Salus Revolving Credit Facility and JSN Inc. continues to supply Ben Moss.

32. At the time of swearing of this affidavit, Salus Capital and Ben Moss are working on an amendment to the DIP Agreement, which will then be presented to all parties to the DIP Agreement, to amend the Repayment Waterfall to provide that Ben Moss's cash from business operations will now only be applied to obligations under the DIP Facility, without any application to the Permitted Overadvance. This amendment to the DIP Facility (the "DIP Amendment") will ensure adequate liquidity for Ben Moss under the DIP Facility for the requested Stay Period extension and will be reflected in Ben Moss's cash flows. As a result of this modification to the Repayment Waterfall, the Permitted Overadvance will remain relatively static at approximately CAD\$5.8 million, except to the extent that the other Borrowers' cash receipts are swept and applied to pay down the Permitted Overadvance. Ben Moss will be seeking Court-approval of the DIP Amendment, which will be provided to the Court before the return date of this motion by way of a supplementary affidavit upon execution.

33. The modification is being sought, among other things, (i) to simplify the completion of diligence for participants in the RISP; and (ii) to address the volatility in the JSN Inc. and Ben Moss cash flows. As I understand will be more particularly described in the First Report, without the DIP Amendment, the Ben Moss DIP Facility would exceed the authorized amount of \$8 million.

34. Salus Capital currently continues to fund the other Borrowers subject to and in accordance with the terms and conditions of the Accommodation Agreement.

F. Borrowers' Variance Report

35. Salus Capital has notified Ben Moss and the other Borrowers under the Credit Facilities that the Borrowers' variance report for the two-week period ended May 27, 2016 shows a negative variance materially in excess of 10% in, among other items, cash receipts and cash flows. I understand that further information regarding the variances is contained in the Monitor's Report. Pursuant to the Accommodation Agreement, the Borrowers are required to not permit such a variance. Salus Capital has reserved its rights in connection with this variance. Pursuant to paragraph 59(b) of the Amended and Restated Initial Order, Salus Capital must obtain Court approval before exercising any rights against Ben Moss in connection with the variance. Salus Capital has advised that it supports the stay extension and approval of the Sale Guidelines and that it has agreed to the DIP Amendment being sought by Ben Moss on this motion.

G. Liquidation Assistance

36. As described in the First Manzoor Affidavit, and pursuant to the terms of the DIP Facility, on April 28, 2016, Ben Moss engaged a third party liquidation consultant, the Agent, to assist Ben Moss with the liquidation of inventory at Ben Moss stores identified for potential closure.

37. Ben Moss has been working closely with the Agent and the Monitor with respect to maximizing value from the inventory at the liquidating stores. Inventory clearance sales have been ongoing at these stores since May 5, 2016.

38. While sales levels at the liquidating stores were initially below expectation, sales have improved over the last two weeks amidst increased store traffic, changes to signage and phased

discounting. Sales at the liquidating stores have contributed to Ben Moss's improved year-to-date sales as compared to year-to-date sales as of the Filing Date. The non-liquidating stores' average sales per day have also increased since the commencement of the inventory clearance sales.

H. Refinancing and/or Investment Solicitation Process

39. Pursuant to the terms of the RISP, Phase 1 of the RISP commenced on the Filing Date. Since then, Ben Moss has been working with the Monitor to implement the terms of the RISP.

40. I understand that numerous parties were contacted after the Filing Date to determine if they were interested in participating in the RISP. Such parties were provided with an initial offering summary that notified recipients of the RISP and invited them to express an interest in accordance with the RISP's terms.

41. Parties that expressed an interest in participating in the RISP were provided with a form of non-disclosure agreement ("NDA"). In order to qualify as a "Potential Bidder" under the RISP, parties must, among other things, execute an NDA.

42. Ben Moss, in consultation with the Monitor, has negotiated and signed a number of NDAs to date. Parties who have executed an NDA have been provided with either a confidential refinancing information memorandum or a confidential sale information memorandum, depending on which potential transaction each party was interested in. Additionally, the Monitor, with the assistance of Ben Moss, has been dealing with information requests from parties that have executed an NDA.

43. Qualified Bidders that wish to pursue a refinancing, sale or investment proposal must submit non-binding letters of intent ("LOIs") to the Monitor by 5:00PM EST on June 17, 2016 (the "Phase 1 Bid Deadline"). The RISP provides that the Monitor, in consultation with Salus

Capital, will assess any LOIs received by the Phase 1 Bid Deadline. Ongoing updates will be provided with respect to the RISP in subsequent affidavits.

I. Stay Extension Is Appropriate

44. In the Initial Order, the Court granted a stay of proceedings in favour of Ben Moss, its directors and officers, the CRO and the Monitor during the Stay Period. The Court also granted a limited stay of proceedings in favour of JSN Inc. for the duration of the Stay Period.

45. Ben Moss has continued to operate the business in the normal course with the benefit of the stay of proceedings and the DIP Facility, which has provided stability to the business and helped to alleviate the liquidity crisis that Ben Moss faced.

46. Ben Moss seeks an extension of the Stay Period up to and including July 15, 2016. The extension is necessary and appropriate in the circumstances to allow for the continued operations of Ben Moss's business, the continuation of the RISP in accordance with its terms, and the continuation of discussions with Ben Moss's stakeholders.

47. I believe that Ben Moss has acted and is continuing to act in good faith and with due diligence in these CCAA proceedings since the granting of the Initial Order. As described above, Ben Moss has been working diligently with the Monitor to carry out the RISP and has been in discussions with its stakeholders, including landlords, employees, suppliers and creditors.

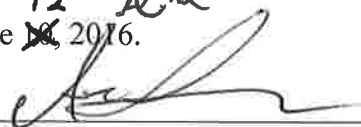
48. As set out in the Applicant's updated cash flows, with the DIP Facility (as amended by the DIP Amendment), Ben Moss will have access to sufficient liquidity to fund operations during the requested extension of the Stay Period.

49. The Monitor and Salus Capital have each expressed their support for the extension of the Stay Period to July 15, 2016.

SWORN BEFORE ME at the City of Toronto,

in the Province of Ontario on

June ¹² ~~16~~, 2016.



Commissioner for Taking Affidavits

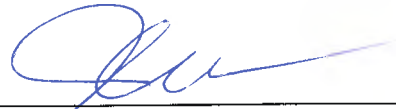
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NAVEED Z. MANZOOR

Adriano Lapore,
a Commissioner, etc., Province of
Ontario, while a Student-at-Law.
Expires April 5, 2019.

THIS IS **EXHIBIT "C"** REFERRED TO IN THE
AFFIDAVIT OF NAVEED Z. MANZOOR, SWORN BEFORE ME
THIS 25th DAY OF JULY, 2016.



A Commissioner for taking Affidavits, etc.

A NOTARY PUBLIC
IN AND FOR THE
PROVINCE OF MANITOBA

Court File No. CV-16-11397-00CL

**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 BEN MOSS JEWELLERS WESTERN
CANADA LTD.

APPLICANT

**AFFIDAVIT OF NAVEED Z. MANZOOR
(Sworn June 30, 2016)**

I, Naveed Z. Manzoor, of the Town of Oakville, in the Province of Ontario, the managing director of FAAN Advisors Group Inc. ("FAAN"), MAKE OATH AND SAY:

1. Pursuant to the Initial Order (defined below), among other things, FAAN was appointed as the Chief Restructuring Officer (the "CRO") of the Applicant, Ben Moss Jewellers Western Canada Ltd. ("Ben Moss" or the "Applicant"). As the managing director of FAAN, 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. I swear this Affidavit in support of the motion brought by Ben Moss seeking an Order, among other things: (i) replacing the second phase of the RISP ("Phase 2") with the Revised Phase 2 Process (the "Process", a copy of which is attached as Schedule "A" to the draft Order on this motion); (ii) granting a stay extension to August 31, 2016; (iii) approving the activities of the CRO; and (iv) approving the activities of the Monitor.
2. I swore an affidavit on May 16, 2016 (the "First Manzoor Affidavit") in support of Ben Moss's initial application. A copy of the First Manzoor Affidavit, without exhibits, is attached as

Exhibit “A”. I swore an affidavit on June 12, 2016 (the “Second Manzoor Affidavit”) in support of Ben Moss’s motion for a stay extension and certain other relief. A copy of the Second Manzoor Affidavit, without exhibits, is attached as Exhibit “B”. Capitalized terms contained herein that are not otherwise defined have the meaning ascribed to them in the First and Second Manzoor Affidavits.

A. Background

3. On May 18, 2016 (the “Filing Date”), Ben Moss was granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”), pursuant to an initial order of the Ontario Superior Court of Justice (Commercial List) (the “Initial Order”). In the Initial Order, the Court, among other things:

- (a) granted a stay of proceedings in favour of the Applicant until and including June 15, 2016, or such later date as the Court may order (the “Stay Period”);
- (b) authorized Ben Moss to obtain and borrow up to CAD\$8 million under the DIP Facility from Salus CLO, subject to the condition that borrowings could not exceed \$3.5 million before the comeback hearing;
- (c) approved a comprehensive refinancing, investment and/or sale solicitation process (the “RISP”), a copy of which is attached to this Affidavit as Exhibit “C”; and
- (d) appointed Alvarez & Marsal Canada Inc. (“A&M”) as the monitor in respect of the Applicant (the “Monitor”).

4. Ben Moss sought approval of and was granted an amended and restated Initial Order (the “Amended and Restated Initial Order”) at the comeback hearing held on May 26, 2016. As described in the Second Manzoor Affidavit, the Amended and Restated Initial Order:

- (a) established the treatment of Consignment Goods (as defined in the Amended and Restated Initial Order);
- (b) clarified the rights of real property landlords as against J.S.N. Jewellery Inc. (“JSN Inc.”) during the Stay Period and as against Gordon Brothers Canada ULC (the “Agent”); and
- (c) required that the Agent conduct sales at the Applicant’s stores in accordance with sale guidelines to be agreed to between Ben Moss, the Agent, Salus Capital and certain landlords (the “Sale Guidelines”), which sale guidelines were to be consistent with standard Court-approved sale guidelines and which the Applicant would seek approval of at its next motion before the Court.

5. On June 15, 2016, this Court granted an Order, among other things:

- (a) extending the Stay Period to July 15, 2016;
- (b) approving the Sale Guidelines; and
- (c) approving an amendment to the DIP Agreement whereby the Repayment Waterfall was revised such that Ben Moss’s cash from business operations would, from and after the date of the Order, only be applied to obligations under the DIP Facility, without any application to the Permitted Overadvance (the “DIP Amendment”).

B. Update Regarding Ben Moss

6. Since I swore the Second Manzoor Affidavit, Ben Moss has continued operating its business as a going concern in close consultation with the Monitor.

7. Ben Moss and the Monitor have continued to engage with Ben Moss's various stakeholder groups and has been implementing the Court-approved RISP (as discussed further below), all in an effort to continue going concern operations and maximize value for its stakeholders. Ben Moss has also implemented the DIP Amendment since it was approved by the Court, such that Ben Moss's cash receipts are now only applied to its obligations under the DIP Facility, not to the Permitted Overadvance.

8. The Applicant's updated cash flow forecast indicates that it will have access to sufficient liquidity to fund operations during the requested extension of the Stay Period. I understand that a copy of the updated cash flow forecast will be attached to the Second Report of the Monitor.

(a) Landlords

9. As set out in the First and Second Manzoor Affidavits, Ben Moss planned to close certain unprofitable retail locations and had already commenced inventory reduction sales before the commencement of the proceedings.

10. Since I swore the Second Manzoor Affidavit, Ben Moss and the Monitor have had meetings with the majority of the Applicant's landlords. Certain landlords have offered lease concessions in respect of both the Liquidation Stores (defined below) and the continuing stores. However, other landlords have advised that they would like the RISP process to mature further before responding to Ben Moss's request for assistance. If appropriate, Ben Moss will continue discussions with these landlords in an effort to enhance the Applicant's real estate portfolio.

11. On June 16, 2016, Ben Moss provided a Notice to Disclaim or Resiliate an Agreement to Midtown Plaza Inc. (the “Midtown Disclaimer”) with respect to one of Ben Moss’s unprofitable retail locations (“Midtown”). A copy of the Midtown Disclaimer is attached to this affidavit as Exhibit “D”. As of the date of the swearing of this affidavit, the Applicant has not received any response to the Midtown Disclaimer. It is anticipated that the closure of Midtown and the disclaimer of the underlying lease will improve the health of the stores that remain open.

12. In consultation with the Monitor, Ben Moss has been reviewing its leases and identifying certain ones to be disclaimed, including those associated with certain of the Liquidation Stores. Ben Moss will be delivering approximately ten disclaimer notices to applicable landlords in the very near future.

(b) Employees

13. As described above, the Applicant will be disclaiming certain leases in the very near future. The upcoming closure of underperforming stores will result in notices of termination being given to employees at such locations. If viable, Ben Moss will offer certain terminated employees jobs in other locations.

(c) Suppliers

14. As described in the Second Manzoor Affidavit, all of Ben Moss’s most significant suppliers have continued to supply goods to Ben Moss, albeit on shorter payment terms than were previously in place in certain cases. Additionally, as provided in the Amended and Restated Initial Order, Ben Moss has continued to pay suppliers for goods and services supplied during the CCAA proceedings.

15. The CRO has been working with the Monitor to consider issues in respect of consignment vendors and to make appropriate arrangements with those vendors. Pursuant to the Amended and Restated Initial Order, the Monitor is in the process of determining which of the Applicant's suppliers have supplied goods on a valid consignment basis.

16. The Applicant has continued to receive product, as required, from JSN Inc. while at the same time developing relationships with the broader vendor base to enhance and improve the inventory mix in its retail locations.

(d) Liquidation Sales

17. As described in the First Manzoor Affidavit, and pursuant to the terms of the DIP Facility, on April 28, 2016, Ben Moss engaged a third party liquidation consultant, the Agent, to assist Ben Moss with the liquidation of inventory at Ben Moss stores identified for potential closure (the "Liquidation Stores").

18. As described in the Second Manzoor Affidavit, Ben Moss has been working closely with the Agent and the Monitor with respect to maximizing value from the inventory at the Liquidation Stores. Inventory clearance sales have been ongoing at the Liquidation Stores since May 5, 2016.

19. As described in the Second Manzoor Affidavit, sales levels at the Liquidation Stores were initially below expectations, however sales have improved amidst increased store traffic, enhanced marketing efforts and phased discounting. Sales at the Liquidating Stores have continued to improve since the date of the Second Manzoor Affidavit. Over the last few weeks, revenue performance in connection with the Liquidation Stores has met both the Applicant's and the Agent's expectations.

(e) DIP Facility

20. Pursuant to the Initial Order, Ben Moss was authorized to obtain and borrow up to CAD\$8 million under the DIP Facility from Salus CLO, subject to the condition that borrowing could not exceed \$3.5 million before the comeback hearing.

21. As described above, Ben Moss has implemented the DIP Amendment since its approval by the Court and, accordingly, Ben Moss's cash receipts are now applied to its obligations under the DIP Facility, not to the Permitted Overadvance.

22. Advances under the DIP Facility are made in accordance with the Budget (as defined in the DIP Agreement). As of June 29, 2016, Ben Moss has made seventeen (17) borrowing requests. As of June 29, 2016, CAD\$50.4 million remains outstanding under the Salus Revolving Credit Facility and CAD\$5.5 million under the DIP Facility. As required by the DIP Facility, Ben Moss has delivered a borrowing base certificate to Salus Capital on a weekly basis.

(f) Variance Report

23. As noted in the Second Manzoor Affidavit, Salus Capital notified Ben Moss and the other Borrowers under the Credit Facilities that the Borrowers' variance report for the two-week period ended May 27, 2016 showed a negative variance materially in excess of 10% in, among other items, cash receipts and net cash flows. Salus Capital has reserved its rights in connection with this variance. Ben Moss, the Monitor and Salus Capital have continued to monitor the variance, which has improved since the date of the Second Manzoor Affidavit.

C. RISP Update

24. As mentioned above, the Court approved the RISP in the Initial Order. The RISP provided that Ben Moss would pursue the following restructuring alternatives under the supervision of the Monitor:

- (a) a refinancing of all or part of the Credit Facilities of the JSN Group (a “JSN Group Refinancing Proposal”);
- (b) an equity investment in JSN Inc. and/or Ben Moss (a “Reinvestment Proposal”);
and/or
- (c) a sale of all or a portion of the business and property of Ben Moss (a “BM Sale Proposal”, and together with a JSN Group Refinancing Proposal, and a Reinvestment Proposal, the “Potential Transactions”).

25. Pursuant to the RISP, Qualified Bidders that wished to pursue a Potential Transaction were required to submit non-binding letters of intent (“LOIs”) to the Monitor by 5:00PM EDT on June 17, 2016 (the “Phase 1 Bid Deadline”). The Monitor and Ben Moss received a number of LOIs and evaluated them in consultation with Salus Capital to determine whether there was a reasonable prospect of obtaining a Qualified Bid.

26. Pursuant to the RISP, if the Monitor, in consultation with the CRO and Salus Capital, determines that no Qualified LOI has been received and there is no reasonable prospect of a Qualified LOI resulting in a Qualified Bid and the RISP moving to Phase 2, Salus Capital may terminate the RISP. On June 22, 2016, Salus Capital provided written notice to the Monitor and the CRO (the “Salus Notice”) that it exercised its right, pursuant to the RISP, to terminate the RISP with respect to transactions involving affiliates of the Applicant, given that no Qualified LOIs were

received for a JSN Group Refinancing Proposal or a Reinvestment Proposal. The proposed Process reflects this change to the RISP.

27. The Monitor, exercising its reasonable business judgment and following consultation with Salus Capital, recommended to the CRO that certain LOIs received with respect to BM Sale Proposals be accepted as Qualified LOIs.

28. Additionally, following a review of the LOIs received, the Monitor, in consultation with the CRO and Salus Capital, concluded that there was value in soliciting Agent Proposals (defined below) in order to establish a floor price that could be used to compare against Qualified LOIs in respect of BM Sale Proposals. As a result, commencing on or about June 23, 2016, the Monitor, in consultation with the CRO and Salus Capital, contacted certain prospective parties to solicit interest in a transaction involving the liquidation of the inventory, furniture, equipment and fixtures located in and/or forming part of the property of Ben Moss, excluding property currently being liquidated at the Liquidation Stores (“Agent Proposals”). Concurrently, the Monitor also invited such parties to execute non-disclosure agreements and commence due diligence regarding potential Agent Proposals.

29. On or about June 23, 2016, the Monitor notified the parties that submitted the Qualified LOIs that: (a) their LOIs were Qualified LOIs and they could therefore proceed to Phase 2; and (b) the Applicant would be seeking modifications to Phase 2 to, among other things, permit the submission and consideration of Agent Proposals for the reasons described above.

D. RISP Revisions: Replacement of Phase 2

30. In light of the foregoing, the Monitor, exercising its reasonable business judgment and following consultation with Salus Capital, recommended to the CRO that the RISP should be

continued into Phase 2, subject to the following amendments, each of which is provided for in the Process.

31. **Removal of Refinancing and Reinvestment Proposals:** Given the Salus Notice and the fact that none of the Qualified LOIs received by the Phase 1 LOI Deadline were JSN Group Refinancing Proposals or Reinvestment Proposals, these Potential Transactions ought to be removed from the RISP, as is provided for in the Process.

32. **Bid Submission and Evaluation Procedures:** The Process establishes requirements for the submission and evaluation of Agent Proposals and BM Sale Proposals, which the Monitor, in consultation with the CRO and Salus Capital, believes will optimize returns for Ben Moss's creditors and stakeholders.

33. **Submission of Draft Bids and Final Bids:** The Process includes a waivable requirement that Qualified Bidders provide draft proposals ("Draft Bids") to the Monitor by July 15, 2016, or such other date determined by the Monitor, Ben Moss and Salus Capital. Following this, the CRO and the Monitor shall review the Draft Bids and may provide Qualified Bidders with comments thereon in advance of the deadline for submitting final bids ("Final Bids"), being July 22, 2016 or such other date determined by the Monitor, Ben Moss and the Salus Capital. Draft Bids and Final Bids must be based on a form of purchase agreement or form agency agreement, as applicable, each of which is to be developed by Ben Moss, in consultation with the Monitor.

34. **Evaluation of Qualified Bids:** The Process includes a non-exhaustive list of criteria that will be used by the Monitor, in consultation with the CRO and Salus Capital, in evaluating Final Bids.

35. If one or more Qualified Bids is received, the Monitor, exercising its reasonable business judgment, in consultation with the CRO and with approval of Salus Capital, will either:

- (a) recommend to the Applicant that the most favourable Qualified Bid be selected and that the Monitor, the Applicant and their advisors negotiate and settle the terms of definitive closing documents (if accepted by the Applicant, this shall be deemed to be the Successful Bid);¹ or
- (b) proceed with an auction with respect to Qualified Bids received (the “Auction Process”).

36. **Auction:** The Monitor and the CRO, in consultation with Salus Capital, have concluded that the RISP would be improved by providing for the ability to conduct the Auction Process to ultimately determine the Successful Bid.

37. In the event that the Auction Process is undertaken, the Monitor will send a process letter (the “Process Letter”) to all Auction participants by no later than July 29, 2016, which shall include, *inter alia*:

- (a) detailed bidding procedures, including bid assessment criteria and the manner by which the Auction Process will be conducted; and
- (b) an overview of the financial comparison model that is to be developed by the Monitor, in consultation with the CRO and Salus Capital, which will be used to compare Final Bids and subsequent bids submitted during the Auction Process for

¹ Ben Moss has no obligation to enter into a Successful Bid, and reserves the right, after consultation with the Monitor and Salus Capital to reject any or all Qualified Bids.

the purpose of determining the Successful Bid (the “Comparison Model”), along with underlying assumptions.

38. In the event that the Auction Process is undertaken, the Monitor will use the Comparison Model and such other factors (including, for greater certainty, non-financial criteria) that the Monitor, in consultation with the CRO and Salus Capital, considers appropriate to determine the Successful Bid. However, the Monitor, exercising its reasonable business judgment and with approval of Salus Capital, may at any time recommend to the CRO that any particular Qualified Bid be selected (or that more than one of the Qualified Bids be selected and aggregated) and that the Monitor, the CRO and their advisors negotiate and settle the terms of definitive closing documents.

39. Pursuant to the Process, in the event that the Auction Process proceeds, it is proposed to be scheduled for August 4, 2016, or such later date as may be agreed to by the Applicant and the Monitor, in consultation with Salus Capital.

40. I believe that the proposed Process will help Ben Moss identify the best possible opportunities for optimizing returns for the benefit of all of its stakeholders and creditors. The timelines set out in the Process were developed by the Applicant in close consultation with the Monitor and Salus Capital, and are reasonable and appropriate. The Monitor and Salus Capital are supportive of the Process.

41. The Process does not provide for any amendments to the RISP, other than the replacement of Phase 2. Accordingly, the RISP still requires that Ben Moss apply to the Court for an order approving the Successful Bid (if any) and authorizing Ben Moss to enter into any and all necessary agreements with respect to such bid. All Qualified Bids other than the Successful Bid will be deemed rejected on the date of approval of the Successful Bid. Furthermore, if it is determined that

no Qualified Bid has been received by the Bid Deadline, (a) any of the Monitor, Ben Moss or Salus Capital may apply to the Court for further advice and directions including with respect to termination of the Process; (b) Salus Capital may terminate the Process; and/or (c) Salus Capital may apply to the Court for approval of a bid.

42. Ongoing updates will be provided with respect to the RISP, as modified by the proposed Process, in subsequent affidavits.

E. CRO's Activities

43. Since its appointment, the CRO has been involved in numerous aspects of the Applicant's business and CCAA proceedings. Some of the more significant activities that the CRO has undertaken since the Filing Date include, but are not limited to, the following:

- (a) Holding employee meetings and conference calls;
- (b) Attending regularly at the Applicant's head office in Winnipeg;
- (c) Obtaining access to and reviewing the security protocols in respect of the inventory located at the Applicant's head office;
- (d) changing the access codes to the Applicant's head office and issuing access to authorized Ben Moss personnel;
- (e) Corresponding regularly with Ben Moss's alarm system monitoring service provider;
- (f) Meeting and corresponding regularly with the Applicant's landlords and their representatives;

- (g) Issuing the Midtown Disclaimer;
- (h) Meeting and corresponding regularly with the Agent regarding the planning and execution of the inventory reduction sales;
- (i) Meeting and corresponding with Ben Moss's suppliers regarding, among other things, their pre-filing accounts, continued supply, purported consignment agreements/arrangements and post-filing payments/purchases;
- (j) Reviewing and approving the Applicant's disbursements for post-filing purchases;
- (k) Corresponding and meeting regularly with Salus Capital and its advisors;
- (l) Corresponding and meeting regularly with the Monitor;
- (m) Reviewing and approving the Applicant's weekly reporting and daily funding requests submitted to Salus Capital and the Monitor;
- (n) Working with the Monitor to carry out the RISP;
- (o) Executing non-disclosure agreements in the context of the RISP;
- (p) Reviewing the LOI's submitted in the context of the RISP and corresponding with the Monitor in respect of same;
- (q) Dealing with the Ben Moss's insurer regarding two stores impacted by fires (the store located in Fort McMurray and the HSC Store) and filing claims in respect of the related losses;
- (r) Answering queries from Ben Moss's creditors;

- (s) Meeting with Ben Moss's employee health benefits provider;
- (t) Dealing with Ben Moss's insurer and taking steps to renew certain of the Ben Moss's policies; and
- (u) Preparing for court hearings and reviewing related materials.

F. Stay Extension Is Appropriate

44. As noted above, the Court granted a stay of proceedings in favour of Ben Moss, its directors and officers, the CRO and the Monitor during the Stay Period. The Court also granted a limited stay of proceedings in favour of JSN Inc. for the duration of the Stay Period. On June 15, 2016, the Court extended the Stay Period until and including July 15, 2016, or such later date as the Court may order.

45. Ben Moss has continued to operate its business in the normal course with the benefit of the stay of proceedings and the DIP Facility (as amended by the DIP Amendment), which has provided stability to the business and helped to alleviate the liquidity crisis that Ben Moss faced.

46. Ben Moss seeks an extension of the Stay Period up to and including August 31, 2016. The extension is necessary and appropriate in the circumstances to allow for the continued operations of Ben Moss's business, the continuation of the RISP (as revised by the Process) in accordance with its terms, and the continuation of discussions with Ben Moss's stakeholders.

47. I believe that Ben Moss has acted and is continuing to act in good faith and with due diligence in these CCAA proceedings since the granting of the Initial Order. As described in the Second Manzoor Affidavit and above, Ben Moss has been working diligently with the Monitor to

carry out the RISP and has been in discussions with its stakeholders, including landlords, employees, suppliers and creditors.

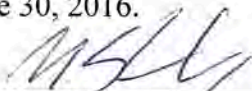
48. As set out in the Applicant's updated cash flows, with the DIP Facility (as amended by the DIP Amendment), Ben Moss will have access to sufficient liquidity to fund operations during the requested extension of the Stay Period.

49. The Monitor and Salus Capital have each expressed their support for the relief being sought on this motion.

SWORN BEFORE ME at the City of Toronto,

in the Province of Ontario on

June 30, 2016.



Commissioner for Taking Affidavits

Mark Sheeley



NAVEED Z. MANZOOR

THIS IS **EXHIBIT "D"** REFERRED TO IN THE
AFFIDAVIT OF NAVEED Z. MANZOOR, SWORN BEFORE ME
THIS 25th DAY OF JULY, 2016.



A Commissioner for taking Affidavits, etc.

A NOTARY PUBLIC
IN AND FOR THE
PROVINCE OF MANITOBA

REFINANCING AND/OR INVESTMENT SOLICITATION PROCESS:

REVISED PHASE II

Introduction

On May 18, 2016, **BEN MOSS JEWELLERS WESTERN CANADA LTD.** (“**BM**” or the “**Applicant**”) obtained an initial order (the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act* (“**CCAA**”) from the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). Pursuant to the Initial Order, the Court approved a Refinancing and/or Investment Solicitation Process (the “**RISP**”).

The purpose of the RISP was to seek proposals for:

- i. a refinancing of all or part of the Credit Facilities of the JSN Group under the Credit Agreement (a “**JSN Group Refinancing Proposal**”);
- ii. an equity investment in BM and/or JSN (a “**Reinvestment Proposal**”); and/or
- iii. a sale of all or a portion of the business of BM (the “**Business**”) and the property, assets and undertakings relating to BM (the “**Property**”) (a “**BM Sale Proposal**”)

from Qualified Bidders and to subsequently implement one or a combination of the foregoing transactions.

Phase 1 of the RISP (“**Phase 1**”) has ended.

Pursuant to the RISP, if the Monitor, in consultation with the CRO and the Lender, determines that no Qualified LOI has been received and there is no reasonable prospect of a Qualified LOI resulting in a Qualified Bid and the RISP moving into Phase 2, the Lender may terminate the RISP. On June 22, 2016, the Lender provided written notice to the Monitor and the CRO that it exercised its right, pursuant to the RISP, to terminate the RISP with respect to transactions involving the Affiliates, given that no Qualified LOIs were received for a JSN Group Refinancing Proposal or a Reinvestment Proposal.

In addition, based on the non-binding letters of intent received on or prior to the Phase 1 LOI Deadline (as defined in the RISP), the Applicant, in consultation with the Monitor and the Lender, determined that further modifications to the RISP to provide for a process for the submission and evaluation of both BM Sale Proposals and Agent Proposals (as defined below) would optimize returns for its creditors and stakeholders. Specifically, in addition to allowing any Qualified Bidders that submitted Qualified LOIs for BM Sale Proposals in Phase 1 to continue into Phase 2 of the RISP (as revised by the terms herein), the Monitor, in consultation with the Applicant and the Lender, has recommended the solicitation of Agent Proposals in accordance with the terms herein.

On July 7, 2016, the Court issued an Order, *inter alia*, requiring that Phase 2 of the RISP (the “**Previous Phase 2**”) be replaced with the terms herein (the “**Process**”).

This Process describes, among other things, the process by which interested parties and/or prospective bidders may continue to evaluate and participate in the Transaction Opportunities, including: (a) the manner in which bidders and bids become Qualified Bidders and Qualified Bids, respectively, in respect of the Transaction Opportunities; (b) the process for the evaluation of bids received; (c) the rules for the conduct of auction(s), if applicable; (d) the process for the ultimate selection of a Successful Bidder; and (e) the process for obtaining such approvals (including the approval of the Court) as may be necessary or appropriate in respect of a Successful Bid.

Capitalized terms used in this Process and not otherwise defined have the meanings given to them in paragraph 1 below.

Defined Terms

1. The following capitalized terms have the following meanings when used in this Process:

“**Affiliates**” has the meaning set out in the DIP Credit Agreement.

“**Agent Proposal**” means an agent proposal for the liquidation of the inventory, furniture, equipment and fixtures located in and/or forming part of the Property, excluding Property that is being liquidated by Gordon Brothers Canada ULC pursuant to the Consulting & Agency Agreement dated April 28, 2016 between Gordon Brothers Canada ULC and BM.

“**Business Day**” means a day (other than Saturday or Sunday) on which banks are generally open for business in Toronto, Ontario.

“**Comparison Model**” means a financial comparison model that is to be developed by the Monitor, in consultation with the CRO and the Lender, which will be used to compare Final Bids and subsequent bids submitted during the Auction, if applicable, for the purpose of determining the Successful Bid.

“**Credit Agreement**” means the Credit Agreement among, *inter alia*, J.S.N. Jewellery Inc. and BM as borrowers and the Lender dated July 18, 2013.

“**Credit Facilities**” means the revolving credit facilities and three term loan credit facilities under the Credit Agreement.

“**CRO**” means FAAN Advisors Group Inc., in its capacity as Chief Restructuring Officer of BM.

“**DIP Credit Agreement**” means the Super Priority DIP Credit Agreement dated May 16, 2016 for a debtor in possession financing facility among BM, as borrower, certain of its Affiliates, as guarantors, and the Lender, in the CCAA proceedings.

“**Form of Agency Agreement**” means the form of agency agreement to be developed by BM in consultation with the Monitor and provided to Qualified Bidders in respect of an Agent Proposal.

“**Form of Purchase Agreement**” means the form of purchase and sale agreement to be developed by BM in consultation with the Monitor and provided to Qualified Bidders in respect of a BM Sale Proposal.

“**JSN**” means J.S.N. Jewellery Inc.

“**JSN Group**” means, collectively, JSN, JSN Jewellery UK Limited, 2373138 Ontario Inc., Always and Forever Family Collection Incorporated, GMJ Corporation, Forever Jewellery Inc., P.M.R. Inc. and BM.

“**Lender Claims**” means the aggregate amount owing to the Lender arising from or related to the Credit Agreement and the DIP Credit Agreement as determined by the Lender in its reasonable credit discretion, which shall include, without limitation, all accrued and unpaid principal, interest, default interest and all fees, costs, charges and expenses all as may be due and payable under the Credit Agreement and the DIP Credit Agreement and/or the other related ancillary documents.

“**Lender**” means Salus Capital Partners, LLC as administrative agent and collateral agent for the lenders under the Credit Agreement and the DIP Credit Agreement.

“**Monitor**” means Alvarez & Marsal Canada Inc.

“**NDA**” means a non-disclosure agreement in form and substance satisfactory to the Monitor and the CRO, which will inure to the benefit of that party or parties who ultimately complete and close a Successful Bid.

“**Outside Date**” means September 6, 2016 or such later date as may be agreed to by the Applicant and the Monitor, in consultation with the Lender.

“**Qualified Bid**” means an offer, in the form of an Agent Proposal and/or a BM Sale Proposal that the Monitor determines meets the requirements of this Process and is approved by the Lender.

“**Successful Bid**” means the Qualified Bid which is determined to be the highest or otherwise best Qualified Bid pursuant to and in accordance with the terms of this Process.

“**Successful Bidder**” means the Qualified Bidder who submitted the Successful Bid.

“**Transaction Opportunity**” means an Agent Proposal or BM Sale Proposal.

RISP – REVISED PHASE 2

2. The Monitor will supervise, in all respects, the Process and any Transaction Opportunity. BM is required to assist and support the efforts of the Monitor as provided for herein. In the event that there is disagreement or clarification required as to the interpretation or application of this Process or the responsibilities of the Monitor hereunder, the Court will have jurisdiction to hear such matters and provide advice and directions, upon application of the Monitor, BM or the Lender. For the avoidance of doubt, with respect to the

Monitor's role in regards to the Process, the terms of the Initial Order concerning the Monitor's rights, duties and protections in this CCAA proceeding shall govern.

Solicitation of Interest for Agent Proposals

3. The Monitor (with the assistance of BM, the Lender and their respective advisors), prepared a list of parties that may have an interest in submitting an Agent Proposal (the "**Known Potential Agent Bidders**"). Commencing on or about June 23, 2016, the Monitor notified Known Potential Agent Bidders of: (i) the anticipated revisions to the RISP which the Applicant would be seeking Court approval of; and (ii) the potential opportunity to pursue an Agent Proposal. At that time, the Monitor also invited Known Potential Agent Bidders to commence due diligence regarding potential Agent Proposals.

Participation Requirements

4. Qualified Bidders that submitted a Qualified LOI for a BM Sale Proposal shall continue to be Qualified Bidders and are eligible to participate in the Process.
5. In order for an additional party to participate in this Process for the purpose of submitting an Agent Proposal, such party (a "**Potential Agent Bidder**") must deliver to the Monitor (or have delivered to the Monitor) at the address specified in **Schedule "A"** hereto (including by email):
 - (a) a letter setting forth the identity of the Potential Agent Bidder, the contact information for such Potential Agent Bidder and full disclosure of the principals of the Potential Agent Bidder; and
 - (b) an executed NDA which shall include, among other things, a "standstill" provision and provisions whereby the Potential Agent Bidder agrees to accept and be bound by the provisions contained herein.
6. A Potential Agent Bidder that has executed an NDA, and has delivered the documents and information described above, and that the Monitor in its reasonable business judgment, in consultation with the CRO and the Lender, determines is likely, based on the availability of financing, experience and other considerations, to be able to consummate an Agent Proposal on or before the Outside Date will be deemed a "**Qualified Bidder**", and will be promptly notified of such determination by the Monitor. In no event shall the Lender constitute a Qualified Bidder. The Monitor, in exercising its reasonable business judgment, may request such information and materials from any Potential Agent Bidder for the purpose of determining whether such Potential Agent Bidder is a Qualified Bidder, including information about such Potential Agent Bidder's financial wherewithal.
7. At any time during the Process, the Monitor may, in its reasonable business judgment, and with the consent of the Lender, recommend to the CRO that a Qualified Bidder be eliminated from the Process. If the CRO accepts the Monitor's recommendation, such bidder will be eliminated from the Process and will no longer be a Qualified Bidder for the purposes of this Process. If the CRO does not accept the Monitor's recommendation, the Monitor may seek advice and directions of the Court.

8. A bid may, if appropriate, be achieved or implemented through a plan of compromise or arrangement pursuant to the CCAA or any corporate or other applicable legislation.

Due Diligence

9. The Monitor will provide each Qualified Bidder with access to an electronic data room (the “**Data Room**”) and access to such due diligence materials and information relating to the Property and the Business as the Monitor, in its reasonable business judgment, determines is appropriate, including information or materials reasonably requested by Qualified Bidders, on-site presentation(s) by senior management of BM and the Monitor and facility tours. The Monitor, BM and the Lender make no representation or warranty as to the information (i) contained in any confidential information memoranda or the Data Room, (ii) provided through the due diligence process (iii) communicated orally by senior management of BM, the Monitor, the CRO or the Lender, or (iv) otherwise made available, except to the extent expressly contemplated in any definitive agreement with a Successful Bidder executed and delivered by BM.
10. Selected due diligence materials may be withheld from certain Qualified Bidders if the Monitor determines such information to represent proprietary or sensitive competitive information.
11. In the event that the Monitor elects to provide any particular Qualified Bidder with written information that is not otherwise available to other Qualified Bidders, the Monitor may in its reasonable discretion also provide such written information to any or all other Qualified Bidders.

Final Bids from Qualified Bidders

12. A Qualified Bidder that is not eliminated from the Process and that wishes to pursue a Transaction Opportunity must deliver a draft proposal (the “**Draft Bid**”):
 - (a) in the case of a BM Sale Proposal, a proposed purchase agreement based on the Form of Purchase Agreement and accompanied by a blackline to the Form of Purchase Agreement showing amendments and modifications made thereto, together with all exhibits and schedules thereto, and such ancillary agreements as may be required by the bidder with all exhibits and schedules thereto; or
 - (b) in the case of an Agent Proposal, a proposed agency agreement based on the Form of Agency Agreement and accompanied by a blackline to the Form of Agency Agreement showing amendments and modifications made thereto, together with all exhibits and schedules thereto, and such ancillary agreements as may be required by the bidder with all exhibits and schedules thereto;

to the Monitor at the address specified in **Schedule “A”** hereto (including by email) so as to be received by it not later than 5:00 pm (Eastern Daylight Time) on July 15, 2016 or such other date determined by the Monitor, BM and the Lender (the “**Draft Bid Deadline**”). Upon receipt, the Monitor shall forthwith deliver all submitted Draft Bids to

the Lender and the CRO. The CRO and the Monitor shall review the Draft Bids and may provide Qualified Bidders with comments thereon in advance of the Bid Deadline.

13. Regardless of whether or not the Monitor provided comments on a Qualified Bidder's Draft Bid, each Qualified Bidder that is not eliminated from the Process and that wishes to pursue a Transaction Opportunity must deliver a final binding proposal (the "**Final Bid**"):
- (a) in the case of a BM Sale Proposal, a duly authorized and executed purchase agreement based on the Form of Purchase Agreement and accompanied by a blackline to the Form of Purchase Agreement showing amendments and modifications made thereto, together with all exhibits and schedules thereto, and such ancillary agreements as may be required by the bidder with all exhibits and schedules thereto; or
 - (b) in the case of an Agent Proposal, a duly authorized and executed agency agreement based on the Form of Agency Agreement and accompanied by a blackline to the Form of Agency Agreement showing amendments and modifications made thereto, together with all exhibits and schedules thereto, and such ancillary agreements as may be required by the bidder with all exhibits and schedules thereto;

to the Monitor at the address specified in **Schedule "A"** hereto (including by email) so as to be received by it not later than 5:00 pm (Eastern Daylight Time) on July 22, 2016 or such other date determined by the Monitor, BM and the Lender (the "**Bid Deadline**"). Upon receipt, the Monitor shall forthwith deliver all submitted Final Bids to the Lender and the CRO.

14. A Final Bid will be considered a Qualified Bid only if (a) it is submitted by a Qualified Bidder; and (b) the Final Bid complies with, among other things, the following requirements (subject to paragraph 14):
- (a) it was preceded by a Draft Bid that was sent by the applicable Qualified Bidder prior to the Draft Bid Deadline;
 - (b) it includes a letter stating that the bidder's offer is irrevocable until the approval by the Court of a Successful Bid, provided that if such bidder is selected as the Successful Bidder, its offer will remain irrevocable until the closing of the transaction with such Successful Bidder;
 - (c) it includes written evidence of a firm, irrevocable commitment for financing, or other evidence of ability to consummate the proposed transaction, that will allow the Monitor, in consultation with the CRO and with the Lender's approval, to make a reasonable determination as to the Qualified Bidder's financial and other capabilities to consummate the transaction contemplated by its Final Bid;
 - (d) it is not conditional upon, among other things:
 - (i) the outcome of unperformed due diligence by the Qualified Bidder; or

- (ii) obtaining financing;
- (e) it fully discloses the identity of each entity that will be sponsoring or participating in the bid, and the complete terms of such participation;
- (f) it outlines any anticipated regulatory and other approvals required to close the transaction and the anticipated time frame and any anticipated impediments for obtaining such approvals;
- (g) it provides a timeline to closing with critical milestones, including an anticipated closing date that is no later than the Outside Date;
- (h) it includes evidence, in form and substance reasonably satisfactory to the Monitor and the CRO, of authorization and approval from the bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the transaction contemplated by the bid;
- (i) it is accompanied by a refundable deposit (the "**Deposit**") in the form of a wire transfer (to a bank account specified by the Monitor), or such other form acceptable to the Monitor, payable to the order of the Monitor, in trust, in an amount equal to not less than 10% of the purchase price for a BM Sale Proposal or 10% of the guaranteed payment value for an Agent Proposal;
in each case to be held and dealt with in accordance with the terms of this Process;
- (j) it contains other information reasonably requested by the Monitor, the CRO and/or the Lender;
- (k) it is received by the Bid Deadline;
- (l) in respect of a BM Sale Proposal, it:
 - (i) details the Property to be included and any Property to be divested or disclaimed prior to closing and including, for greater certainty, the contracts and leases the bidder wishes to assume and reject with particularity, contains full details of the bidder's proposal for the treatment of related cure costs (and provides adequate assurance of future performance thereunder) and it identifies with particularity any executory contract or unexpired lease the assumption and assignment of which is a condition to closing;
 - (ii) details any liabilities to be assumed by the Qualified Bidder;
 - (iii) details the treatment of working capital;
 - (iv) states the number of employees of the Applicant who will be offered employment by the bidder and sets out the terms and conditions of employment for those employees that accept such offers; and

- (v) details the leases to be assumed by the Qualified Bidder;
 - (m) it includes a representation that the Qualified Bidder will use commercially reasonable efforts to close the Final Bid, if selected as the Successful Bid, by no later than the Outside Date;
 - (n) in the case of a BM Sale Proposal, it includes an acknowledgement and representation that the bidder: (a) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the assets to be acquired and liabilities to be assumed in making its bid; and (b) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the assets to be acquired or liabilities to be assumed or the completeness of any information provided in connection therewith, except as expressly stated in the purchase and sale agreement; and
 - (o) in the case of an Agent Proposal, it includes an acknowledgement and representation that the bidder: (a) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the assets to be liquidated in making its bid; and (b) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the assets to be liquidated or any information provided in connection therewith, except as expressly stated in the agency agreement.
15. The Monitor, in consultation with the CRO and with the approval of the Lender, may waive compliance with any one or more of the requirements specified herein and deem such Final Bids to be Qualified Bids.

Evaluation of Qualified Bids

16. The Monitor, in consultation with the CRO and the Lender, will review each Qualified Bid as set forth herein. For the purpose of such consultations and evaluations, the Monitor may request clarification of the terms of any Final Bid.
17. Evaluation criteria with respect to a BM Sale Proposal may include, but are not limited to items such as: (a) the 'headline' purchase price and estimated net proceeds (including assumed liabilities and other obligations to be performed by the bidder); (b) the proposed treatment of working capital; (c) the firm, irrevocable commitment for financing the transaction; (d) the claims likely to be created by such bid in relation to other bids; (e) the counterparties to the transaction; (f) the terms of the proposed transaction documents; (g) other factors affecting the speed, certainty and value of the transaction (including any regulatory approvals required to close the transaction); (h) planned treatment of stakeholders; (i) the assets included or excluded from the bid; (j) proposed treatment of the employees; (k) any transition services required from the Applicant post-closing and any related restructuring costs; (l) the likelihood and timing of consummating the transaction;

and (m) the likelihood of the transaction resulting in the full repayment of the Lender Claims.

18. Evaluation criteria with respect to an Agent Proposal may include, but are not limited to items such as: (a) the guaranteed payment value, estimated net proceeds and any costs, set-offs, adjustments, deductions or similar factors that may impact estimated net proceeds; (b) the firm, irrevocable commitment for financing the transaction; (c) the claims likely to be created by such bid in relation to other bids; (d) the counterparties to the transaction; (e) the terms of the proposed transaction documents; (f) other factors affecting the speed, certainty and value of the transaction (including any regulatory approvals required to close the transaction); (g) the assets included or excluded from the bid; (j) the likelihood and timing of consummating the transaction; and (m) the likelihood of the transaction resulting in the full repayment of the Lender Claims.
19. BM shall have no obligation to enter into a Successful Bid, and reserves the right, after consultation with the Monitor and the Lender to reject any or all Qualified Bids.
20. If the Monitor, after consultation with the CRO and the Lender, determines that no Qualified Bid in respect of either a BM Sale Proposal or Agent Proposal has been received by the Bid Deadline, (a) any of the Lender, the Monitor or BM may apply to the Court for further advice and directions, including with respect to the termination of the Process; (b) the Lender may terminate the Process; and/or (c) the Lender may apply to the Court for approval of a bid.
21. If one or more Qualified Bids is received in respect of either or both of a BM Sale Proposal or an Agent Proposal, the Monitor, exercising its reasonable business judgment, in consultation with the CRO and with approval of the Lender, will either:
 - (a) recommend to the Applicant that the most favourable Qualified Bid be selected and that the Monitor, the Applicant and their advisors negotiate and settle the terms of definitive closing documents (if accepted by the Applicant, this shall be deemed to be the Successful Bid); or
 - (b) proceed with an auction process to determine the Successful Bid (the “**Auction**”).

Process Letter

22. In the event that the Auction will be held, the Monitor will send a process letter (the “**Process Letter**”) to all Auction participants by no later than July 29, 2016, which shall include, *inter alia*: (a) detailed bidding procedures, including bid assessment criteria; and (b) an overview of the Comparison Model, including underlying assumptions.
23. To the extent determined appropriate by the Monitor, the Process Letter shall offer each Qualified Bidder an opportunity to meet with the Monitor prior to the Auction date to review the Auction procedures and the Comparison Model.

Selection of Successful Bid in the Event of the Auction

24. In the event that the Auction is held, the Monitor shall use the Comparison Model and such other factors (including, for greater certainty, non-financial criteria) that the Monitor, in consultation with the CRO and the Lender, considers appropriate to determine the Successful Bid, provided however that at any time the Monitor, exercising its reasonable business judgment and with approval of the Lender, may recommend to the CRO that any particular Qualified Bid be selected (or that more than one of the Qualified Bids be selected and aggregated) and that the Monitor, the CRO and their advisors negotiate and settle the terms of definitive closing documents.

Approval Motion for Successful Bid

25. The Applicant will apply to the Court (the “**Approval Motion**”) for an order approving the Successful Bid and authorizing BM to enter into any and all necessary agreements with respect to the Successful Bid and to undertake such other actions as may be necessary or appropriate to give effect to the Successful Bid.
26. The Approval Motion will be held on a date to be scheduled by the Court upon application by the Applicant. The Approval Motion may be adjourned or rescheduled by the Applicant or the Monitor, on consent of the Lender, without further notice by an announcement of the adjourned date at the Approval Motion, provided that in no circumstance shall the Approval Motion be adjourned or rescheduled beyond the Outside Date.
27. All Qualified Bids (other than the Successful Bid) will be deemed rejected on the date of approval of the Successful Bid by the Court.

OTHER TERMS

No Derogation

28. Nothing in this Process shall affect the Lender’s rights to exercise contractual or legal remedies, or to enter into, and seek Court approval for, any transaction with or relating to BM or the Property, subject to the applicable stay provisions of the Initial Order.

Deposits

29. All Deposits will be retained by the Monitor and invested in an interest bearing trust account. If there is a Successful Bid, the Deposit (plus accrued interest) paid by the Successful Bidder whose bid is approved at the Approval Motion will be applied to the purchase price to be paid by the Successful Bidder upon closing of the approved transaction and will be non-refundable. The Deposits (plus applicable interest) of Qualified Bidders not selected as the Successful Bidder will be returned to such bidders within 5 Business Days of the date upon which the Successful Bid is approved by the Court. If there is no Successful Bid subject to the following paragraph, all Deposits (plus applicable interest) will be returned to the bidders within 5 Business Days of the date upon which the Process is terminated in accordance with these procedures.

30. If a Successful Bidder breaches its obligations under the terms of the Process, its Deposit plus interest shall be forfeited as liquidated damages and not as a penalty.

Approvals

31. For the avoidance of doubt, the approvals required pursuant to the terms hereof are in addition to, and not in substitution for, any other approvals required by the CCAA or any other statute or as otherwise required at law in order to implement a Successful Bid.

No Amendment

32. The Monitor shall have the right to modify this Process, exercising its reasonable business judgment and in consultation with the CRO and the Lender. There will be no amendments to this Process without the consent of the Monitor and the Lender (following consultation with the CRO) or, in the absence of consent, the approval of the Court.
33. For greater certainty, all terms of the RISP, other than the Previous Phase 2, which is replaced in its entirety by this Process, shall remain in full force and effect.
34. This Process does not, and will not be interpreted to, create any contractual or other legal relationship between BM and any Qualified Bidder, other than as specifically set forth in a definitive agreement that may be signed with BM. At any time during the Process, the Monitor may, following consultation with the CRO, upon reasonable prior notice to the Lender, apply to the Court for advice and directions with respect to the discharge of its power and duties hereunder.

SCHEDULE "A"
ADDRESS FOR DELIVERIES AND NOTICES

Alvarez & Marsal Canada Inc.

Royal Bank Plaza, South Tower

200 Bay Street, Suite 2900

Toronto, ON, Canada M5J 2J1

Attention: Adam Zalev and Jamie Belcher

Email: azalev@alvarezandmarsal.com / jbelcher@alvarezandmarsal.com

THIS IS **EXHIBIT "E"** REFERRED TO IN THE
AFFIDAVIT OF NAVEED Z. MANZOOR, SWORN BEFORE ME
THIS 25th DAY OF JULY, 2016.



A Commissioner for taking Affidavits, etc.

A NOTARY PUBLIC
IN AND FOR THE
PROVINCE OF MANITOBA

Court File No. CV-16-11397-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) THURSDAY, THE 7TH
MR. JUSTICE HAINEY)
DAY OF JULY, 2016



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 BEN MOSS JEWELLERS WESTERN
CANADA LTD.

Applicant

MODIFICATION OF RISP AND STAY EXTENSION ORDER

THIS MOTION, made by Ben Moss Jewellers Western Canada Ltd. (the "**Applicant**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Order, *inter alia*: (i) extending the Stay Period (as defined in paragraph 14 of the Amended and Restated Initial Order dated May 18, 2016) until and including August 31, 2016; (ii) replacing phase two ("**Phase 2**") of the Refinancing and/or Investment Solicitation Process (the "**RISP**", which was approved pursuant to the Amended and Restated Initial Order) with the Revised Phase 2 Process attached hereto as Schedule "A" (the "**Process**"); (iii) approving the activities and conduct of FAAN Advisors Group Inc. ("**FAAN**"), in its capacity as Chief Restructuring Officer of the Applicant (the "**CRO**"); and (iv) approving the activities and conduct of Alvarez & Marsal Canada Inc., in its capacity as monitor in respect of the Applicant (the "**Monitor**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Naveed Manzoor sworn June 30, 2016 and the Second Report of the Monitor dated July 5, 2016, and on hearing the submissions of counsel for the

Applicant, Salus Capital Partners, LLC, the Monitor and such other counsel as were present and on being advised that the Service List was served with the Motion Record herein,

SERVICE AND DEFINITIONS

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

EXTENSION OF THE STAY PERIOD

2. THIS COURT ORDERS that the Stay Period is hereby extended until and including August 31, 2016.

APPROVAL OF THE PROCESS AND REPLACEMENT OF PHASE 2

3. THIS COURT ORDERS that Phase 2 is hereby replaced by the Process and all references to the RISP in the Amended and Restated Initial Order shall be deemed to be references to the RISP as modified by the replacement of Phase 2 with the Process.

APPROVAL OF THE CRO'S ACTIVITIES

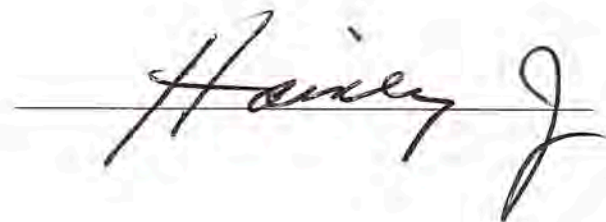
4. THIS COURT ORDERS that the activities and conduct of the CRO prior to the date hereof in relation to the Applicant and these CCAA proceedings are hereby ratified and approved; provided, however, that only the CRO, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

APPROVAL OF THE MONITOR'S ACTIVITIES

5. THIS COURT ORDERS that the activities and conduct of the Monitor prior to the date hereof in relation to the Applicant and these CCAA proceedings are hereby ratified and approved; provided, however, that only the Monitor, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.


GENERAL

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, to give effect to this Order and to assist the Applicant, 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 Applicant 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 Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

A handwritten signature in cursive script, appearing to read "Hainey J.", is written over a horizontal line.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

JUL 07 2016

PER / PAR: 

SCHEDULE “A”**REFINANCING AND/OR INVESTMENT SOLICITATION PROCESS:****REVISED PHASE II****Introduction**

On May 18, 2016, **BEN MOSS JEWELLERS WESTERN CANADA LTD.** (“**BM**” or the “**Applicant**”) obtained an initial order (the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act* (“**CCAA**”) from the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). Pursuant to the Initial Order, the Court approved a Refinancing and/or Investment Solicitation Process (the “**RISP**”).

The purpose of the RISP was to seek proposals for:

- i. a refinancing of all or part of the Credit Facilities of the JSN Group under the Credit Agreement (a “**JSN Group Refinancing Proposal**”);
- ii. an equity investment in BM and/or JSN (a “**Reinvestment Proposal**”); and/or
- iii. a sale of all or a portion of the business of BM (the “**Business**”) and the property, assets and undertakings relating to BM (the “**Property**”) (a “**BM Sale Proposal**”)

from Qualified Bidders and to subsequently implement one or a combination of the foregoing transactions.

Phase 1 of the RISP (“**Phase 1**”) has ended.

Pursuant to the RISP, if the Monitor, in consultation with the CRO and the Lender, determines that no Qualified LOI has been received and there is no reasonable prospect of a Qualified LOI resulting in a Qualified Bid and the RISP moving into Phase 2, the Lender may terminate the RISP. On June 22, 2016, the Lender provided written notice to the Monitor and the CRO that it exercised its right, pursuant to the RISP, to terminate the RISP with respect to transactions involving the Affiliates, given that no Qualified LOIs were received for a JSN Group Refinancing Proposal or a Reinvestment Proposal.

In addition, based on the non-binding letters of intent received on or prior to the Phase 1 LOI Deadline (as defined in the RISP), the Applicant, in consultation with the Monitor and the Lender, determined that further modifications to the RISP to provide for a process for the submission and evaluation of both BM Sale Proposals and Agent Proposals (as defined below) would optimize returns for its creditors and stakeholders. Specifically, in addition to allowing any Qualified Bidders that submitted Qualified LOIs for BM Sale Proposals in Phase 1 to continue into Phase 2 of the RISP (as revised by the terms herein), the Monitor, in consultation with the Applicant and the Lender, has recommended the solicitation of Agent Proposals in accordance with the terms herein.

On July 7, 2016, the Court issued an Order, *inter alia*, requiring that Phase 2 of the RISP (the “**Previous Phase 2**”) be replaced with the terms herein (the “**Process**”).

This Process describes, among other things, the process by which interested parties and/or prospective bidders may continue to evaluate and participate in the Transaction Opportunities, including: (a) the manner in which bidders and bids become Qualified Bidders and Qualified Bids, respectively, in respect of the Transaction Opportunities; (b) the process for the evaluation of bids received; (c) the rules for the conduct of auction(s), if applicable; (d) the process for the ultimate selection of a Successful Bidder; and (e) the process for obtaining such approvals (including the approval of the Court) as may be necessary or appropriate in respect of a Successful Bid.

Capitalized terms used in this Process and not otherwise defined have the meanings given to them in paragraph 1 below.

Defined Terms

1. The following capitalized terms have the following meanings when used in this Process:

“**Affiliates**” has the meaning set out in the DIP Credit Agreement.

“**Agent Proposal**” means an agent proposal for the liquidation of the inventory, furniture, equipment and fixtures located in and/or forming part of the Property, excluding Property that is being liquidated by Gordon Brothers Canada ULC pursuant to the Consulting & Agency Agreement dated April 28, 2016 between Gordon Brothers Canada ULC and BM.

“**Business Day**” means a day (other than Saturday or Sunday) on which banks are generally open for business in Toronto, Ontario.

“**Comparison Model**” means a financial comparison model that is to be developed by the Monitor, in consultation with the CRO and the Lender, which will be used to compare Final Bids and subsequent bids submitted during the Auction, if applicable, for the purpose of determining the Successful Bid.

“**Credit Agreement**” means the Credit Agreement among, *inter alia*, J.S.N. Jewellery Inc. and BM as borrowers and the Lender dated July 18, 2013.

“**Credit Facilities**” means the revolving credit facilities and three term loan credit facilities under the Credit Agreement.

“**CRO**” means FAAN Advisors Group Inc., in its capacity as Chief Restructuring Officer of BM.

“**DIP Credit Agreement**” means the Super Priority DIP Credit Agreement dated May 16, 2016 for a debtor in possession financing facility among BM, as borrower, certain of its Affiliates, as guarantors, and the Lender, in the CCAA proceedings.

“Form of Agency Agreement” means the form of agency agreement to be developed by BM in consultation with the Monitor and provided to Qualified Bidders in respect of an Agent Proposal.

“Form of Purchase Agreement” means the form of purchase and sale agreement to be developed by BM in consultation with the Monitor and provided to Qualified Bidders in respect of a BM Sale Proposal.

“JSN” means J.S.N. Jewellery Inc.

“JSN Group” means, collectively, JSN, JSN Jewellery UK Limited, 2373138 Ontario Inc., Always and Forever Family Collection Incorporated, GMJ Corporation, Forever Jewellery Inc., P.M.R. Inc. and BM.

“Lender Claims” means the aggregate amount owing to the Lender arising from or related to the Credit Agreement and the DIP Credit Agreement as determined by the Lender in its reasonable credit discretion, which shall include, without limitation, all accrued and unpaid principal, interest, default interest and all fees, costs, charges and expenses all as may be due and payable under the Credit Agreement and the DIP Credit Agreement and/or the other related ancillary documents.

“Lender” means Salus Capital Partners, LLC as administrative agent and collateral agent for the lenders under the Credit Agreement and the DIP Credit Agreement.

“Monitor” means Alvarez & Marsal Canada Inc.

“NDA” means a non-disclosure agreement in form and substance satisfactory to the Monitor and the CRO, which will inure to the benefit of that party or parties who ultimately complete and close a Successful Bid.

“Outside Date” means September 6, 2016 or such later date as may be agreed to by the Applicant and the Monitor, in consultation with the Lender.

“Qualified Bid” means an offer, in the form of an Agent Proposal and/or a BM Sale Proposal that the Monitor determines meets the requirements of this Process and is approved by the Lender.

“Successful Bid” means the Qualified Bid which is determined to be the highest or otherwise best Qualified Bid pursuant to and in accordance with the terms of this Process.

“Successful Bidder” means the Qualified Bidder who submitted the Successful Bid.

“Transaction Opportunity” means an Agent Proposal or BM Sale Proposal.

RISP – REVISED PHASE 2

2. The Monitor will supervise, in all respects, the Process and any Transaction Opportunity. BM is required to assist and support the efforts of the Monitor as provided for herein. In

the event that there is disagreement or clarification required as to the interpretation or application of this Process or the responsibilities of the Monitor hereunder, the Court will have jurisdiction to hear such matters and provide advice and directions, upon application of the Monitor, BM or the Lender. For the avoidance of doubt, with respect to the Monitor's role in regards to the Process, the terms of the Initial Order concerning the Monitor's rights, duties and protections in this CCAA proceeding shall govern.

Solicitation of Interest for Agent Proposals

3. The Monitor (with the assistance of BM, the Lender and their respective advisors), prepared a list of parties that may have an interest in submitting an Agent Proposal (the "**Known Potential Agent Bidders**"). Commencing on or about June 23, 2016, the Monitor notified Known Potential Agent Bidders of: (i) the anticipated revisions to the RISP which the Applicant would be seeking Court approval of; and (ii) the potential opportunity to pursue an Agent Proposal. At that time, the Monitor also invited Known Potential Agent Bidders to commence due diligence regarding potential Agent Proposals.

Participation Requirements

4. Qualified Bidders that submitted a Qualified LOI for a BM Sale Proposal shall continue to be Qualified Bidders and are eligible to participate in the Process.
5. In order for an additional party to participate in this Process for the purpose of submitting an Agent Proposal, such party (a "**Potential Agent Bidder**") must deliver to the Monitor (or have delivered to the Monitor) at the address specified in **Schedule "A"** hereto (including by email):
 - (a) a letter setting forth the identity of the Potential Agent Bidder, the contact information for such Potential Agent Bidder and full disclosure of the principals of the Potential Agent Bidder; and
 - (b) an executed NDA which shall include, among other things, a "standstill" provision and provisions whereby the Potential Agent Bidder agrees to accept and be bound by the provisions contained herein.
6. A Potential Agent Bidder that has executed an NDA, and has delivered the documents and information described above, and that the Monitor in its reasonable business judgement, in consultation with the CRO and the Lender, determines is likely, based on the availability of financing, experience and other considerations, to be able to consummate an Agent Proposal on or before the Outside Date will be deemed a "**Qualified Bidder**", and will be promptly notified of such determination by the Monitor. In no event shall the Lender constitute a Qualified Bidder. The Monitor, in exercising its reasonable business judgment, may request such information and materials from any Potential Agent Bidder for the purpose of determining whether such Potential Agent Bidder is a Qualified Bidder, including information about such Potential Agent Bidder's financial wherewithal.

7. At any time during the Process, the Monitor may, in its reasonable business judgment, and with the consent of the Lender, recommend to the CRO that a Qualified Bidder be eliminated from the Process. If the CRO accepts the Monitor's recommendation, such bidder will be eliminated from the Process and will no longer be a Qualified Bidder for the purposes of this Process. If the CRO does not accept the Monitor's recommendation, the Monitor may seek advice and directions of the Court.
8. A bid may, if appropriate, be achieved or implemented through a plan of compromise or arrangement pursuant to the CCAA or any corporate or other applicable legislation.

Due Diligence

9. The Monitor will provide each Qualified Bidder with access to an electronic data room (the "**Data Room**") and access to such due diligence materials and information relating to the Property and the Business as the Monitor, in its reasonable business judgment, determines is appropriate, including information or materials reasonably requested by Qualified Bidders, on-site presentation(s) by senior management of BM and the Monitor and facility tours. The Monitor, BM and the Lender make no representation or warranty as to the information (i) contained in any confidential information memoranda or the Data Room, (ii) provided through the due diligence process (iii) communicated orally by senior management of BM, the Monitor, the CRO or the Lender, or (iv) otherwise made available, except to the extent expressly contemplated in any definitive agreement with a Successful Bidder executed and delivered by BM.
10. Selected due diligence materials may be withheld from certain Qualified Bidders if the Monitor determines such information to represent proprietary or sensitive competitive information.
11. In the event that the Monitor elects to provide any particular Qualified Bidder with written information that is not otherwise available to other Qualified Bidders, the Monitor may in its reasonable discretion also provide such written information to any or all other Qualified Bidders.

Final Bids from Qualified Bidders

12. A Qualified Bidder that is not eliminated from the Process and that wishes to pursue a Transaction Opportunity must deliver a draft proposal (the "**Draft Bid**"):
 - (a) in the case of a BM Sale Proposal, a proposed purchase agreement based on the Form of Purchase Agreement and accompanied by a blackline to the Form of Purchase Agreement showing amendments and modifications made thereto, together with all exhibits and schedules thereto, and such ancillary agreements as may be required by the bidder with all exhibits and schedules thereto; or
 - (b) in the case of an Agent Proposal, a proposed agency agreement based on the Form of Agency Agreement and accompanied by a blackline to the Form of Agency Agreement showing amendments and modifications made thereto,

together with all exhibits and schedules thereto, and such ancillary agreements as may be required by the bidder with all exhibits and schedules thereto;

to the Monitor at the address specified in **Schedule "A"** hereto (including by email) so as to be received by it not later than 5:00 pm (Eastern Daylight Time) on July 15, 2016 or such other date determined by the Monitor, BM and the Lender (the "**Draft Bid Deadline**"). Upon receipt, the Monitor shall forthwith deliver all submitted Draft Bids to the Lender and the CRO. The CRO and the Monitor shall review the Draft Bids and may provide Qualified Bidders with comments thereon in advance of the Bid Deadline.

13. Regardless of whether or not the Monitor provided comments on a Qualified Bidder's Draft Bid, each Qualified Bidder that is not eliminated from the Process and that wishes to pursue a Transaction Opportunity must deliver a final binding proposal (the "**Final Bid**"):
- (a) in the case of a BM Sale Proposal, a duly authorized and executed purchase agreement based on the Form of Purchase Agreement and accompanied by a blackline to the Form of Purchase Agreement showing amendments and modifications made thereto, together with all exhibits and schedules thereto, and such ancillary agreements as may be required by the bidder with all exhibits and schedules thereto; or
 - (b) in the case of an Agent Proposal, a duly authorized and executed agency agreement based on the Form of Agency Agreement and accompanied by a blackline to the Form of Agency Agreement showing amendments and modifications made thereto, together with all exhibits and schedules thereto, and such ancillary agreements as may be required by the bidder with all exhibits and schedules thereto;

to the Monitor at the address specified in **Schedule "A"** hereto (including by email) so as to be received by it not later than 5:00 pm (Eastern Daylight Time) on July 22, 2016 or such other date determined by the Monitor, BM and the Lender (the "**Bid Deadline**"). Upon receipt, the Monitor shall forthwith deliver all submitted Final Bids to the Lender and the CRO.

14. A Final Bid will be considered a Qualified Bid only if (a) it is submitted by a Qualified Bidder; and (b) the Final Bid complies with, among other things, the following requirements (subject to paragraph 14):
- (a) it was preceded by a Draft Bid that was sent by the applicable Qualified Bidder prior to the Draft Bid Deadline;
 - (b) it includes a letter stating that the bidder's offer is irrevocable until the approval by the Court of a Successful Bid, provided that if such bidder is selected as the Successful Bidder, its offer will remain irrevocable until the closing of the transaction with such Successful Bidder;

- (c) it includes written evidence of a firm, irrevocable commitment for financing, or other evidence of ability to consummate the proposed transaction, that will allow the Monitor, in consultation with the CRO and with the Lender's approval, to make a reasonable determination as to the Qualified Bidder's financial and other capabilities to consummate the transaction contemplated by its Final Bid;
- (d) it is not conditional upon, among other things:
 - (i) the outcome of unperformed due diligence by the Qualified Bidder; or
 - (ii) obtaining financing;
- (e) it fully discloses the identity of each entity that will be sponsoring or participating in the bid, and the complete terms of such participation;
- (f) it outlines any anticipated regulatory and other approvals required to close the transaction and the anticipated time frame and any anticipated impediments for obtaining such approvals;
- (g) it provides a timeline to closing with critical milestones, including an anticipated closing date that is no later than the Outside Date;
- (h) it includes evidence, in form and substance reasonably satisfactory to the Monitor and the CRO, of authorization and approval from the bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the transaction contemplated by the bid;
- (i) it is accompanied by a refundable deposit (the "**Deposit**") in the form of a wire transfer (to a bank account specified by the Monitor), or such other form acceptable to the Monitor, payable to the order of the Monitor, in trust, in an amount equal to not less than 10% of the purchase price for a BM Sale Proposal or 10% of the guaranteed payment value for an Agent Proposal;

in each case to be held and dealt with in accordance with the terms of this Process;
- (j) it contains other information reasonably requested by the Monitor, the CRO and/or the Lender;
- (k) it is received by the Bid Deadline;
- (l) in respect of a BM Sale Proposal, it:
 - (i) details the Property to be included and any Property to be divested or disclaimed prior to closing and including, for greater certainty, the contracts and leases the bidder wishes to assume and reject with particularity, contains full details of the bidder's proposal for the treatment

- of related cure costs (and provides adequate assurance of future performance thereunder) and it identifies with particularity any executory contract or unexpired lease the assumption and assignment of which is a condition to closing;
- (ii) details any liabilities to be assumed by the Qualified Bidder;
 - (iii) details the treatment of working capital;
 - (iv) states the number of employees of the Applicant who will be offered employment by the bidder and sets out the terms and conditions of employment for those employees that accept such offers; and
 - (v) details the leases to be assumed by the Qualified Bidder;
- (m) it includes a representation that the Qualified Bidder will use commercially reasonable efforts to close the Final Bid, if selected as the Successful Bid, by no later than the Outside Date;
- (n) in the case of a BM Sale Proposal, it includes an acknowledgement and representation that the bidder: (a) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the assets to be acquired and liabilities to be assumed in making its bid; and (b) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the assets to be acquired or liabilities to be assumed or the completeness of any information provided in connection therewith, except as expressly stated in the purchase and sale agreement; and
- (o) in the case of an Agent Proposal, it includes an acknowledgement and representation that the bidder: (a) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the assets to be liquidated in making its bid; and (b) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the assets to be liquidated or any information provided in connection therewith, except as expressly stated in the agency agreement.
15. The Monitor, in consultation with the CRO and with the approval of the Lender, may waive compliance with any one or more of the requirements specified herein and deem such Final Bids to be Qualified Bids.

Evaluation of Qualified Bids

16. The Monitor, in consultation with the CRO and the Lender, will review each Qualified Bid as set forth herein. For the purpose of such consultations and evaluations, the Monitor may request clarification of the terms of any Final Bid.

17. Evaluation criteria with respect to a BM Sale Proposal may include, but are not limited to items such as: (a) the ‘headline’ purchase price and estimated net proceeds (including assumed liabilities and other obligations to be performed by the bidder); (b) the proposed treatment of working capital; (c) the firm, irrevocable commitment for financing the transaction; (d) the claims likely to be created by such bid in relation to other bids; (e) the counterparties to the transaction; (f) the terms of the proposed transaction documents; (g) other factors affecting the speed, certainty and value of the transaction (including any regulatory approvals required to close the transaction); (h) planned treatment of stakeholders; (i) the assets included or excluded from the bid; (j) proposed treatment of the employees; (k) any transition services required from the Applicant post-closing and any related restructuring costs; (l) the likelihood and timing of consummating the transaction; and (m) the likelihood of the transaction resulting in the full repayment of the Lender Claims.
18. Evaluation criteria with respect to an Agent Proposal may include, but are not limited to items such as: (a) the guaranteed payment value, estimated net proceeds and any costs, set-offs, adjustments, deductions or similar factors that may impact estimated net proceeds; (b) the firm, irrevocable commitment for financing the transaction; (c) the claims likely to be created by such bid in relation to other bids; (d) the counterparties to the transaction; (e) the terms of the proposed transaction documents; (f) other factors affecting the speed, certainty and value of the transaction (including any regulatory approvals required to close the transaction); (g) the assets included or excluded from the bid; (j) the likelihood and timing of consummating the transaction; and (m) the likelihood of the transaction resulting in the full repayment of the Lender Claims.
19. BM shall have no obligation to enter into a Successful Bid, and reserves the right, after consultation with the Monitor and the Lender to reject any or all Qualified Bids.
20. If the Monitor, after consultation with the CRO and the Lender, determines that no Qualified Bid in respect of either a BM Sale Proposal or Agent Proposal has been received by the Bid Deadline, (a) any of the Lender, the Monitor or BM may apply to the Court for further advice and directions, including with respect to the termination of the Process; (b) the Lender may terminate the Process; and/or (c) the Lender may apply to the Court for approval of a bid.
21. If one or more Qualified Bids is received in respect of either or both of a BM Sale Proposal or an Agent Proposal, the Monitor, exercising its reasonable business judgment, in consultation with the CRO and with approval of the Lender, will either:
 - (a) recommend to the Applicant that the most favourable Qualified Bid be selected and that the Monitor, the Applicant and their advisors negotiate and settle the terms of definitive closing documents (if accepted by the Applicant, this shall be deemed to be the Successful Bid); or
 - (b) proceed with an auction process to determine the Successful Bid (the “**Auction**”).

Process Letter

22. In the event that the Auction will be held, the Monitor will send a process letter (the “**Process Letter**”) to all Auction participants by no later than July 29, 2016, which shall include, *inter alia*: (a) detailed bidding procedures, including bid assessment criteria; and (b) an overview of the Comparison Model, including underlying assumptions.
23. To the extent determined appropriate by the Monitor, the Process Letter shall offer each Qualified Bidder an opportunity to meet with the Monitor prior to the Auction date to review the Auction procedures and the Comparison Model.

Selection of Successful Bid in the Event of the Auction

24. In the event that the Auction is held, the Monitor shall use the Comparison Model and such other factors (including, for greater certainty, non-financial criteria) that the Monitor, in consultation with the CRO and the Lender, considers appropriate to determine the Successful Bid, provided however that at any time the Monitor, exercising its reasonable business judgment and with approval of the Lender, may recommend to the CRO that any particular Qualified Bid be selected (or that more than one of the Qualified Bids be selected and aggregated) and that the Monitor, the CRO and their advisors negotiate and settle the terms of definitive closing documents.

Approval Motion for Successful Bid

25. The Applicant will apply to the Court (the “**Approval Motion**”) for an order approving the Successful Bid and authorizing BM to enter into any and all necessary agreements with respect to the Successful Bid and to undertake such other actions as may be necessary or appropriate to give effect to the Successful Bid.
26. The Approval Motion will be held on a date to be scheduled by the Court upon application by the Applicant. The Approval Motion may be adjourned or rescheduled by the Applicant or the Monitor, on consent of the Lender, without further notice by an announcement of the adjourned date at the Approval Motion, provided that in no circumstance shall the Approval Motion be adjourned or rescheduled beyond the Outside Date.
27. All Qualified Bids (other than the Successful Bid) will be deemed rejected on the date of approval of the Successful Bid by the Court.

OTHER TERMS

No Derogation

28. Nothing in this Process shall affect the Lender’s rights to exercise contractual or legal remedies, or to enter into, and seek Court approval for, any transaction with or relating to BM or the Property, subject to the applicable stay provisions of the Initial Order.

Deposits

29. All Deposits will be retained by the Monitor and invested in an interest bearing trust account. If there is a Successful Bid, the Deposit (plus accrued interest) paid by the Successful Bidder whose bid is approved at the Approval Motion will be applied to the purchase price to be paid by the Successful Bidder upon closing of the approved transaction and will be non-refundable. The Deposits (plus applicable interest) of Qualified Bidders not selected as the Successful Bidder will be returned to such bidders within 5 Business Days of the date upon which the Successful Bid is approved by the Court. If there is no Successful Bid subject to the following paragraph, all Deposits (plus applicable interest) will be returned to the bidders within 5 Business Days of the date upon which the Process is terminated in accordance with these procedures.
30. If a Successful Bidder breaches its obligations under the terms of the Process, its Deposit plus interest shall be forfeited as liquidated damages and not as a penalty.

Approvals

31. For the avoidance of doubt, the approvals required pursuant to the terms hereof are in addition to, and not in substitution for, any other approvals required by the CCAA or any other statute or as otherwise required at law in order to implement a Successful Bid.

No Amendment

32. The Monitor shall have the right to modify this Process, exercising its reasonable business judgment and in consultation with the CRO and the Lender. There will be no amendments to this Process without the consent of the Monitor and the Lender (following consultation with the CRO) or, in the absence of consent, the approval of the Court.
33. For greater certainty, all terms of the RISP, other than the Previous Phase 2, which is replaced in its entirety by this Process, shall remain in full force and effect.
34. This Process does not, and will not be interpreted to, create any contractual or other legal relationship between BM and any Qualified Bidder, other than as specifically set forth in a definitive agreement that may be signed with BM. At any time during the Process, the Monitor may, following consultation with the CRO, upon reasonable prior notice to the Lender, apply to the Court for advice and directions with respect to the discharge of its power and duties hereunder.

SCHEDULE "A"
ADDRESS FOR DELIVERIES AND NOTICES

Alvarez & Marsal Canada Inc.

Royal Bank Plaza, South Tower

200 Bay Street, Suite 2900

Toronto, ON, Canada M5J 2J1

Attention: Adam Zalev and Jamie Belcher

Email: azalev@alvarezandmarsal.com / jbelcher@alvarezandmarsal.com

**IN THE MATTER OF 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 BEN MOSS JEWELLERS WESTERN CANADA LTD.**

APPLICANT

Court File No. CV-16-11397-00CL

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

PROCEEDING COMMENCED AT
TORONTO

**MODIFICATION OF RISP AND STAY
EXTENSION ORDER**

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