

**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 PROPOSED PLAN OF
COMPROMISE OR ARRANGEMENT OF
BEN MOSS JEWELLERS WESTERN CANADA LTD.**

**FOURTH REPORT OF THE MONITOR,
ALVAREZ & MARSAL CANADA INC.**

DECEMBER 8, 2016

TABLE OF CONTENTS

1.0	INTRODUCTION	1
2.0	PURPOSE OF THIS REPORT.....	2
3.0	TERMS OF REFERENCE.....	4
4.0	OPERATIONS SINCE THE DATE OF THE THIRD REPORT AND RELATED RELIEF REQUESTED BY THE APPLICANT	6
5.0	DIP FACILITY REPAYMENT AND DISTRIBUTIONS.....	12
6.0	CASH FLOW RESULTS RELATIVE TO FORECAST	13
7.0	CASH FLOW FORECAST	16
8.0	SHILON LITIGATION.....	19
9.0	STAY EXTENSION.....	19
10.0	AUTHORIZING AN ASSIGNMENT INTO BANKRUPTCY	20
11.0	APPROVAL OF CRO ACTIVITIES	20
12.0	MONITOR'S ACTIVITIES	20
13.0	MONITOR'S CONCLUSIONS AND RECOMMENDATIONS	23

APPENDICES

APPENDIX A	THIRD REPORT OF THE MONITOR DATED JULY 27, 2016 (WITHOUT APPENDICES)	
APPENDIX B	LISTING OF ASSIGNED LEASES	
APPENDIX C	CASH FLOW FORECAST, NOTES AND ASSUMPTIONS	

1.0 INTRODUCTION

1.1 On May 18, 2016 (the "**Filing Date**"), Ben Moss Jewellers Western Canada Ltd. ("**Ben Moss**" or the "**Applicant**") applied for and was granted protection by the Ontario Superior Court of Justice (Commercial List) (the "**Court**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). Pursuant to an order of the Court dated May 18, 2016 (as amended and restated on May 26, 2016, the "**Initial Order**"), among other things: (a) Alvarez & Marsal Canada Inc. ("**A&M**" or the "**Monitor**") was appointed Monitor of the Applicant in the CCAA proceedings (the "**CCAA Proceedings**"); (b) FAAN Advisors Group Inc. ("**FAAN**" or the "**CRO**") was appointed Chief Restructuring Officer of the Applicant; (c) the Refinancing and/or Investment Solicitation Process ("**RISP**") attached as Schedule "A" to the Initial Order was approved; and (d) an \$8 million debtor-in-possession facility (the "**DIP Facility**") from Salus CLO 2012-1 Ltd. (the "**DIP Lender**"), which is managed by Salus Capital Partners, LLC ("**Salus Capital**"), as administrative and collateral agent, was approved.

1.2 On June 15, 2016, this Court issued an order, among other things: (a) extending the stay of proceedings to July 15, 2016 (the "**Stay Period**"); (b) approving the sale guidelines regarding the conduct of Gordon Brothers Canada ULC in respect of the sale to liquidate the inventory, furniture, fixtures and equipment in certain of the Applicant's stores which were anticipated to close (the "**Clearance Locations**"); and (c) approving an amendment to the DIP Facility.

1.3 On July 7, 2016, this Court issued an order, among other things: (a) extending the Stay Period until August 31, 2016; and (b) replacing the second phase of the RISP with the revised Phase II process attached thereto as Schedule "A" to, among other things, permit the Applicant to solicit transactions involving the liquidation of the inventory, furniture, fixtures and

equipment forming the property of Ben Moss, subject to certain exceptions, as well as to permit the Monitor to hold an auction (the "**Auction**") if necessary.

1.4 On July 14, 2016, this Court issued an Order, among other things, amending and expediting the RISP such that final bids were due on July 15, 2016 and the Auction, if desirable, was scheduled for July 19, 2016.

1.5 On July 29, 2016, this Court issued an Order (the "**July 29, 2016 Order**"), among other things: (a) approving the agency agreement (the "**Liquidation Agreement**") dated July 22, 2016 between the Applicant and a contractual joint venture comprised of Gordon Brothers Canada ULC and Merchant Retail Solutions ULC (such joint venture being the "**Liquidator**") for the liquidation of certain inventory, furniture, fixtures and equipment of Ben Moss (the "**Sale**"), including the Sale Guidelines (appended as Schedule A to the July 29, 2016 Order) (the "**Liquidation Guidelines**"); (b) granting the Liquidator's Charge (as defined in the July 29, 2016 Order); (c) approving certain distributions from the Initial Guaranty Payment (as defined in the Fourth Manzoor Affidavit) to Salus Capital and J.S.N. Inc. ("**JSN**"); and (d) extending the Stay Period to December 30, 2016. The Liquidation Agreement was discussed in the Third Report of the Monitor dated July 27, 2016 (the "**Third Report**"), which is attached without appendices as **Appendix "A"** hereto.

1.6 The Monitor's prior reports, other Court-filed documents, notices and all orders granted in the CCAA proceedings are available on the Monitor's website at www.alvarezandmarsal.com/benmoss (the "**Monitor's Website**").

2.0 PURPOSE OF THIS REPORT

2.1 The purpose of this Fourth Report of the Monitor (the "**Fourth Report**") is to provide this Court with:

- (1) information regarding the following:
 - (a) the Applicant's operations since the date of the Third Report and related relief requested by the Applicant:
 - (i) declaring that the assignment of the Assigned Leases (as defined below) by the Applicant to certain assignees shall vest all of the Applicant's right, title and interest in the Assigned Leases in and to the respective assignees;
 - (ii) authorizing the sale of certain of the Applicant's intellectual property rights and assets (the "IP") to 3300393 Nova Scotia Limited ("**Charm**") pursuant to an agreement (the "**Charm Agreement**") substantially in the form attached as Exhibit "A" to the Affidavit of Naveed Z. Manzoor, sworn on December 5, 2016 (the "**Fifth Manzoor Affidavit**"), and vesting all right, title and interest of the Applicant in the IP free and clear of all charges, security interests or claims;
 - (iii) authorizing the Applicant and the CRO to execute such documents as are required to change the Applicant's legal name to 6752633 Manitoba Ltd.;
 - (iv) approving the proposed amendment to the transaction limits in paragraph 11(a) of the Initial Order to allow the Applicant to sell any remaining assets (the "**Remaining Assets**") following the completion of the Sale (as defined below);
 - (v) approving and authorizing the Amendment to the Liquidation Agreement (as defined below) and amending the Liquidation Guidelines;

- (vi) the repayment of the DIP Facility and certain distributions to Salus Capital and JSN, and authorizing, but not directing, the Applicant, with the consent of the Monitor, to effect further distributions;
 - (vii) the receipts and disbursements of Ben Moss for the 17-week period ending November 25, 2016;
 - (viii) the Applicant's cash flow forecast for the 14-week period ending February 28, 2017;
 - (ix) authorizing, but not directing, the CRO, acting alone, to assign the Applicant into bankruptcy under the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**");
 - (x) extending the Stay Period to February 28, 2017;
 - (xi) approving the activities and conduct of the CRO; and
 - (xii) approving the activities of the Monitor since the date of the Third Report;
- (b) certain litigation brought by Joseph Shilon, the sole ultimate shareholder of Ben Moss, against Salus Capital, FAAN and A&M; and
- (2) the Monitor's conclusions and recommendations in connection with the foregoing.

3.0 TERMS OF REFERENCE

3.1 In preparing this Fourth Report, the Monitor has been provided with, and has relied upon, unaudited financial information, books and records and financial information prepared by certain management of Ben Moss and/or management of certain of Ben Moss's

affiliated companies ("**Management**") and discussions with Management (collectively, the "**Information**").

3.2 With respect to any of Ben Moss's cash flow forecasts and projections:

- (a) the Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards ("**CASs**") pursuant to the *Chartered Professional Accountants Canada Handbook* (the "**CPA Handbook**") and accordingly, the Monitor expresses no opinion or other form of assurance contemplated under CASs in respect of the Information; and
- (b) some of the Information referred to in this Fourth Report consists of forecasts and projections. An examination or review of the financial forecasts and projections, as outlined in the CPA Handbook, has not been performed.

3.3 Future-oriented financial information referred to in this Fourth Report was prepared based on Management's estimates and assumptions. Readers are cautioned that, since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections. Even if the assumptions materialize, the variations could be significant.

3.4 Unless otherwise stated, all monetary amounts contained in this Fourth Report are expressed in Canadian dollars.

3.5 This Fourth Report should be read in conjunction with the Fifth Manzoor Affidavit. Capitalized terms used in this Fourth Report that are not otherwise defined herein have the meaning given to them in the Fifth Manzoor Affidavit or the prior reports of the Monitor.

4.0 OPERATIONS SINCE THE DATE OF THE THIRD REPORT AND RELATED RELIEF REQUESTED BY THE APPLICANT

4.1 Since the date of the Third Report (July 27, 2016), Ben Moss and the Monitor have continued to engage with Ben Moss's stakeholder groups and have worked with the Liquidator to implement the Liquidation Agreement as described below.

Landlords

4.2 As at the date of the Third Report, Ben Moss, with the consent of the Monitor, had delivered Notices to Disclaim or Resiliate an Agreement (each, a "**Disclaimer**") to various landlords in respect of: (a) one unprofitable kiosk; and (b) 12 unprofitable stores (11 of which were Clearance Locations). The effective dates of the Disclaimers were July 30, 2016, with the exception of two Clearance Locations where the Disclaimers had effective dates of August 18, 2016. All of these 12 stores have been vacated and possession of the stores has been returned to the landlords.

4.3 In addition, with the consent of the Monitor, Disclaimers were delivered with respect to two stores which Ben Moss planned to open before the commencement of the CCAA Proceedings but which were not opened as at the Filing Date. These Disclaimers had effective dates of September 1, 2016 (Tsawwassen Mills Shopping Centre, British Columbia) and September 3, 2016 (Londonderry Mall, Edmonton). Copies of the Disclaimers for these two locations are attached as Exhibit "F" to the Fifth Manzoor Affidavit.

4.4 On November 30, 2016, Ben Moss, with the consent of the Monitor, delivered Disclaimers to landlords in respect of 23 stores with effective dates of December 30, 2016. A further six Disclaimers were delivered on December 1, 2016 with effective dates of December 31, 2016 and one additional Disclaimer was delivered on December 2, 2016 with an effective date of January 1, 2017. Copies of the Disclaimers for these 30 stores are attached as Exhibit "G" to the Fifth Manzoor Affidavit.

4.5 As at the date of this Fourth Report, the Applicant has delivered 42 Disclaimers in respect of stores that were open as at the Filing Date. The Applicant has not received any formal responses to the Disclaimers from any landlords.

4.6 As discussed in the Third Report, the Liquidator has the exclusive right under the Liquidation Agreement to direct Ben Moss to designate a transferee of each of Ben Moss's real property leases. The proceeds from these transactions will be retained by the Liquidator as provided for under the Liquidation Agreement.

4.7 The Liquidator has negotiated the transfer of 22 store leases (the "**Assigned Leases**") to various parties with the consent of the respective landlords, pending completion of the assignment agreements between Ben Moss, the transferees and the landlords. A list of the assigned stores, landlords and transferees is attached as **Appendix "B"** hereto.

4.8 The transferees have agreed to pay any Cure Costs (as defined in the Liquidation Agreement). All assignments are to be effective by no later than December 30, 2016. The Monitor supports the relief requested by the Applicant for the assignment of the Assigned Leases as the assignments will provide an opportunity for the continued employment of approximately 250 of Ben Moss's employees.

Employees

4.9 Notices of termination have been delivered to Ben Moss employees at closed stores and two stores expected to be vacated on or about December 15, 2016; notices are expected to be given to all remaining store employees imminently. Notices of termination have been delivered to all Ben Moss head office employees, except for eight employees who will provide assistance to complete accounting and other matters, including the Final Reconciliation (as defined below) and the sale of the Remaining Assets.

4.10 As noted above, Ben Moss currently anticipates that approximately 250 of its employees will have an opportunity for continued employment with the respective transferees of the Assigned Leases.

Intellectual Property

4.11 The Liquidator has the exclusive right under the Liquidation Agreement to designate an assignee of the IP and direct Ben Moss to effect such an assignment. The Liquidator has negotiated the sale of the IP to Charm and the proceeds related to the sale will be retained by the Liquidator in accordance with the Liquidation Agreement. Ben Moss and Charm have negotiated the terms of the Charm Agreement, which will be substantially in the form of the agreement attached as Appendix "A" to the Fifth Manzoor Affidavit. As the sale includes Ben Moss's trademarks and "Ben Moss Jewellers" tradename, the Applicant is seeking this Court's authorization to execute and file the necessary documents to effect the change in its name to 6752633 Manitoba Ltd. The Monitor supports the relief requested by the Applicant.

Suppliers

4.12 As indicated in the Third Report, as a result of the Liquidation Agreement, Ben Moss ceased to make normal course purchases from its suppliers. The Liquidation Agreement permits the Liquidator to augment the sale with additional merchandise (the "**Additional Agent Merchandise**"). The Additional Agent Merchandise has been obtained by the Liquidator either from its own sources or the Applicant's existing suppliers. Any post-filing purchases made by Ben Moss, to the extent not already paid for, will be paid in due course by Ben Moss.

4.13 As described in the Third Report, the Monitor has continued to work with its legal counsel, Davies Ward Philips & Vineberg LLP ("**Davies**"), and the Applicant to review supply arrangements between the Applicant and certain of the Applicant's suppliers to determine whether such arrangements are true consignment arrangements. After evaluating each arrangement against a number of different factors, the Monitor has made determinations as to which arrangements, on balance, constitute true consignment arrangements and has reviewed its findings with the Applicant and counsel to Salus Capital. The Monitor is assisting the Applicant in ongoing discussions with its suppliers regarding the implications of its findings.

Liquidation Sale

4.14 The Sale commenced on or about July 29, 2016. Ben Moss's employees provided assistance to the Liquidator to transfer all Merchandise (as defined in the Liquidation Agreement) held at Ben Moss's head office to the stores. Ben Moss also assisted the Liquidator in acquiring and distributing Additional Agent Merchandise for the Sale.

4.15 The Liquidator has been providing regular updates on the Sale to the CRO, the Monitor and to Salus Capital. The sale of Merchandise, Additional Agent Merchandise and

Agent Sale Commission Goods (as defined in the Liquidation Agreement) have performed well to date. Settlements (i.e. information regarding, among other things, sale proceeds and costs) are prepared weekly by the Liquidator and reviewed by the CRO, the Applicant and the Monitor as provided for in the Liquidation Agreement. While sales have been strong thus far, the ultimate success of the Sale will be heavily dependent on sales results during the weeks and days leading up to and immediately following the holiday shopping season.

4.16 Sales of Additional Agent Merchandise were approximately \$5.2 million (at cost) as of November 26, 2016. The current cap provided for in the Liquidation Agreement and the Liquidation Guidelines for the sale of Additional Agent Merchandise is \$10 million (at cost). The Applicant and the Liquidator have negotiated an amendment to the Liquidation Agreement (the "**Amendment to the Liquidation Agreement**") which, among other things, provides for an increase of up to \$3 million in Additional Agent Merchandise sales (at cost) in an effort to maximize realizations for stakeholders. The Applicant is seeking approval of the Amendment to the Liquidation Agreement as well as an increase of \$3 million in the Additional Merchandise Cap as defined in paragraph 15 of the Liquidation Guidelines. The Monitor understands that counsel to certain key landlords have indicated that they do not oppose the relief being sought. The Monitor supports the relief sought by the Applicant.

4.17 Sales are expected to continue at substantially all stores through the holiday season with store closures expected to occur by no later than December 30, 2016, in accordance with the Liquidation Agreement. The Monitor understands that the Liquidator has conducted the Sale in accordance with the Liquidation Agreement and the Liquidation Guidelines and no major issues have been reported by the landlords.

4.18 Following the Sale Termination Date (as defined in the Liquidation Agreement), the Liquidator, the Applicant and Salus Capital, in consultation with the Monitor, will jointly prepare a final reconciliation of remaining amounts owing to each of Ben Moss and the Liquidator (the "**Final Reconciliation**"), as provided for in the Liquidation Agreement. The Monitor will provide a further update on the outcome of the Sale at a later date once the full results of the Sale are known and the Final Reconciliation has been completed.

4.19 Ben Moss intends to continue to allow the Liquidator to operate out of its head office for up to an additional month, up to no later than the end of January 2017, to ensure uninterrupted access to accounting and information technology systems for the purposes of completing the Final Reconciliation and facilitating the disposition of the Remaining Assets, as discussed below.

Remaining Assets

4.20 The Remaining Assets that remain unsold as at the Sale Termination Date and that are included as Merchandise under the Liquidation Agreement are to be transferred to the Liquidator in accordance with the terms of the Liquidation Agreement. Assets owned by Ben Moss that do not constitute Merchandise under the Liquidation Agreement include Agent Sale Commission Goods, loose stones, other miscellaneous jewellery and any remaining furniture, fixtures and equipment. As indicated in the Fifth Manzoor Affidavit, the Remaining Assets are to be transferred or held at Ben Moss's head office pending their sale.

4.21 Paragraph 11(a) of the Initial Order provides that Ben Moss can dispose of redundant or non-material assets not exceeding \$200,000 in any one transaction or \$500,000 in the aggregate. The Applicant and the Liquidator have advised the Monitor that there is a possibility that the value of the Remaining Assets may exceed these limits. Accordingly, the

Applicant is requesting approval of an increase in the transaction limit in any one transaction to \$1 million or \$1.5 million in the aggregate, in order to efficiently dispose of the Remaining Assets. The Monitor supports the relief requested by the Applicant.

5.0 DIP FACILITY REPAYMENT AND DISTRIBUTIONS

5.1 During the first week of August 2016, Ben Moss received an Initial Guaranty Payment (as defined in the Liquidation Agreement) from the Liquidator in the amount of approximately \$19.4 million.

5.2 Shortly after the receipt of the Initial Guaranty Payment and in accordance with the July 29, 2016 Order, the Applicant and the Monitor made a series of distributions to Salus Capital totalling \$13.1 million which resulted in the full repayment of the amount outstanding under the DIP Facility of approximately \$6.3 million. In addition, Ben Moss made a payment to JSN of approximately \$2.9 million in accordance with the July 29, 2016 Order on account of inventory purchased under the JSN APA.

5.3 The Monitor held \$1 million of the Initial Guaranty Payment in trust pending resolution of a notice received by Ben Moss from Canada Revenue Agency regarding potential sales tax liabilities. The sales tax issue was subsequently resolved and, on November 22, 2016, the \$1 million held in trust by the Monitor was distributed to Salus Capital.

5.4 The remaining funds totalling approximately \$4.4 million subsequently received from the Liquidator in respect of the Guaranty Amount (as defined in the Liquidation Agreement) were retained by Ben Moss in order to continue to fund its operating and other expenses related to the CCAA Proceedings.

5.5 As outlined in the Fifth Manzoor Affidavit, Ben Moss is seeking authorization to make further distributions to Salus Capital, at such times and in such amounts as the Applicant and the Monitor may determine in their sole discretion, acting reasonably, in the maximum amount of Salus Capital's secured claim.

5.6 As discussed in the Monitor's Third Report, the Monitor previously obtained a security opinion which confirmed the validity and enforceability of the security in connection with the Credit Agreement. The Monitor also advised that there will be no funds available for distribution to the Applicant's other creditors, including unsecured creditors, given that the consummation of the Liquidation Agreement would result in a substantial shortfall to Salus Capital. Accordingly, the Monitor supports the Applicant's request for further distributions to Salus Capital, as no other party's claims against Ben Moss will be impacted.

6.0 CASH FLOW RESULTS RELATIVE TO FORECAST

6.1 Cash receipts and disbursements for the 17-week period ended November 25, 2016 (the "**Reporting Period**") as compared to the cash flow forecast provided in the Third Report (the "**December Cash Flow Forecast**") are summarized in the table below:

Ben Moss Jewellers Western Canada Ltd.
Schedule of Actual Receipts and Disbursements Compared to the Cash Flow Forecast (note 1)
For the 17-Week Period Ended November 25, 2016
(\$000's CAD)

	<u>Forecast</u>	<u>Actual</u>	<u>Variance</u>
Cash Receipts			
Augment Sales	75	580	505
Non-Merchandise Sales	-	1,356	1,356
Guaranteed Amount	<u>24,242</u>	<u>23,911</u>	<u>(331)</u>
Total Cash Receipts	<u>24,317</u>	<u>25,847</u>	<u>1,530</u>
Cash Disbursements			
Payroll & related payments	867	1,049	(182)
Occupancy costs	129	170	(41)
Trade vendor payments (third party)	75	77	(2)
Sales and business taxes	330	413	(83)
Capital leases and Credit Card Fees	217	163	54
Non-trade payments	205	371	(166)
Professional fees	586	579	7
Refunds, Repairs, Other	-	68	(68)
Central Services	<u>(210)</u>	<u>(259)</u>	<u>49</u>
Total Cash Disbursements	<u>2,199</u>	<u>2,631</u>	<u>(432)</u>
Total Net Operating Cash Flow	<u>22,118</u>	<u>23,216</u>	<u>1,098</u>
Cash Balance			
Net operating cash flow	22,118	23,216	1,098
Holdbacks	-	(505)	(505)
Pre-liquidation sale expenses net opening cash (note 2)	-	(513)	(513)
Payments to Salus/ JSN (note 3)	<u>(21,667)</u>	<u>(16,948)</u>	<u>4,719</u>
Ending Cash Balance	<u>451</u>	<u>5,250</u>	<u>4,799</u>
Note 1 Readers are cautioned to read the Terms of Reference as set out in this report dated December 8, 2016 for information regarding the preparation of the Cash Flow Forecast.			
Note 2 Payments for expenses incurred prior to the commencement of the Sale and includes sales tax, professional fees, and payroll. These have been netted against the opening cash balance at the commencement of the Sale.			
Note 3 Includes payments to JSN and distributions to Salus Capital in accordance with the July 29, 2016 Order.			

6.2 During the Reporting Period, Ben Moss experienced a positive Net Operating Cash Flow variance of approximately \$1.1 million relative to the December Cash Flow Forecast.

The positive variance is a result of proceeds received by Ben Moss from the sale of Agent Sale Commission Goods and Ben Moss's share of proceeds on the sale of Additional Agent Merchandise (i.e. Augment). The December Cash Flow Forecast did not include an estimate of the proceeds from Agent Sale Commission Goods due to the inherent variability in timing and quantum of these amounts, and included only the Minimum Additional Agent Merchandise Fee Amount (as defined in the Liquidation Agreement).

6.3 The positive variance in receipts during the Reporting Period was partially offset by disbursements after the commencement of the Sale that were approximately \$432,000 greater than the December Cash Flow Forecast. The largest variances relate to higher payroll costs due to the timing and quantum of vacation pay disbursed during the Reporting Period, as well as payments to non-trade suppliers for information technology services and security costs being higher than forecast.

6.4 Ben Moss's cash position has also been impacted by:

- (a) holdbacks retained by the company's credit card processor totalling approximately \$505,000 as at November 25, 2016. It is expected that these holdbacks will be returned to Ben Moss after completion of the Sale; and
- (b) costs related to the period prior to the commencement of the Sale relating to payroll, professional fees and sales taxes, which were partially offset by cash on hand as at the date of the commencement of the Sale. The net amount of these costs totalling approximately \$513,000 were not included in the December Cash Flow Forecast which only forecast cash flows after the commencement of the Sale.

6.5 As indicated above, the December Cash Flow Forecast included distributions to Salus Capital from Guaranty Payment amounts received under the Liquidation Agreement. Salus Capital (directly and indirectly through JSN) received approximately \$16.9 million from the Initial Guaranty Payment amount. Ben Moss received an additional \$4.4 million, representing the remaining payment of the Guaranteed Amount from the Liquidator following the completion of the inventory reconciliation, which has been retained by Ben Moss.

6.6 As at November 25, 2016, Ben Moss had an ending cash balance of approximately \$5.2 million. This balance does not include various deposits and pre-payments from the Liquidator that are currently being held by the Applicant to be applied against final payroll and occupancy costs. As the Sale and weekly settlements continue, additional adjustments, which pursuant to the Liquidation Agreement may be retroactive, may occur which could lead to variability in cash balances. Cash balances also remain subject to any adjustments arising from the Final Reconciliation to be conducted once the Sale has been terminated.

6.7 During the Sale, the Applicant, with assistance from the Monitor, has been providing Salus Capital with regular reporting of weekly cash disbursements and cash flow variance analyses, as well as other information regarding inventory balances and the Sale in response to questions and requests from Salus Capital.

7.0 CASH FLOW FORECAST

7.1 The Applicant has prepared an updated and extended cash flow forecast (the "**Cash Flow Forecast**") for the period ending February 28, 2017 (the "**Cash Flow Period**"). The Cash Flow Forecast is attached as **Appendix "C"** hereto.

7.2 The Cash Flow Forecast is presented on a weekly basis during the Cash Flow Period and represents Management's estimates of the projected cash flow during the Cash Flow Period. The Cash Flow Forecast has been prepared using the probable and hypothetical assumptions set out in the notes to the Cash Flow Forecast (the "**Cash Flow Assumptions**").

7.3 The Monitor has reviewed the Cash Flow Forecast to the standard required of a Court-appointed Monitor by section 23(1)(b) of the CCAA. Section 23(1)(b) requires a Monitor to review the debtor's cash flow statement as to its reasonableness and to file a report with the Court on the Monitor's findings. Pursuant to this standard, the Monitor's review of the Cash Flow Forecast consisted of inquiries, analytical procedures and discussions related to information supplied to it by certain key members of management and employees of Ben Moss. The Monitor reviewed information provided by Management for the Cash Flow Assumptions. Since the Cash Flow Assumptions need not be supported, the Monitor's procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Cash Flow Forecast.

7.4 A summary of the Cash Flow Forecast is set out in the table below:

Ben Moss Jewellers Western Canada Ltd.	
Unaudited Summary of Forecast Cash Flow (Note 1)	
For the 14-week period ended February 28, 2017	
(\$000's)	
	<u>Amount (\$)</u>
Forecast Cash Inflow	
Augment Fee	260
Forecast Total Receipts	<u>260</u>
Forecast Cash Outflow	
Payroll & related payments	1,188
Professional fees	371
Trade Vendor Payments	235
Occupancy, taxes, capital leases, SG&A and other	348
Total Forecast Outflow	<u>2,142</u>
Total Net Cash Flow	<u>(1,882)</u>
Note 1 Readers are cautioned to read the Terms of Reference as set out previously in this report for information regarding the preparation of the Cash Flow Forecast.	

7.5 The Cash Flow Forecast is based on information made available by Management and is based on the assumptions described in **Appendix "C"** hereto.

7.6 The cash flows presented in the Cash Flow Forecast include estimates of the fees related to Additional Agent Merchandise and non-Reimbursable Expenses (as discussed below). In accordance with the Liquidation Agreement, proceeds from the sale of Merchandise subsequent to the commencement date of the Sale and Expenses (as defined in the Liquidation Agreement) are for the account of the Liquidator, subject to regular reconciliation. Cash inflows, if any, in respect of additional proceeds accruing to Ben Moss from the sale of Agent Sale Commission Goods are not reflected in the Cash Flow Forecast.

7.7 Non-Reimbursable Expenses include estimates for net costs to be incurred at Ben Moss's head office that are for the account of Ben Moss under the terms of the Liquidation Agreement and include such items as payroll, occupancy and other general and operating expenses as well as professional fees during the Cash Flow Period.

7.8 The Cash Flow Forecast has been prepared solely for the purpose described above and readers are cautioned that it may not be appropriate for other purposes.

8.0 SHILON LITIGATION

8.1 On September 1, 2016, Joseph Shilon commenced an action against Salus Capital, FAAN and A&M by way of counterclaim (the "**Counterclaim**") in an action by Salus Capital to enforce a guarantee provided by Mr. Shilon in the amount of \$11 million in connection with the provision of the DIP Facility. In the Counterclaim, Mr. Shilon alleges that Salus Capital, FAAN and A&M are jointly and severally liable for oppression, breach of fiduciary duty, breach of duty of care and negligence.

8.2 Salus Capital, FAAN and A&M are of the view that the Counterclaim is without merit and intend to vigorously defend themselves.

8.3 On November 28, 2016, Salus Capital brought a motion to strike Mr. Shilon's Statement of Defence without leave to amend and to strike the Counterclaim as against Salus Capital. As of the date of this Fourth Report, the decision on this motion is under reserve.

9.0 STAY EXTENSION

9.1 The Monitor is of the view that the proposed extension to the Stay Period to February 28, 2017 is necessary and appropriate in the circumstances to allow for the completion

of the Sale and the Final Reconciliation, and the disposition of the Remaining Assets, subject to the approval of this Court.

9.2 The Monitor is of the view that the Applicant has acted and is continuing to act in good faith and with due diligence.

9.3 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.

10.0 AUTHORIZING AN ASSIGNMENT INTO BANKRUPTCY

10.1 The Monitor understands that Ben Moss is considering various options for winding-up its affairs once the store leases have been assigned or disclaimed and the Remaining Assets have been sold, including a potential assignment of Ben Moss into bankruptcy under the BIA. The Applicant is seeking authorization, but not the requirement, to permit the CRO to assign Ben Moss into bankruptcy should it be considered the best option once the Transaction, Disclaimers, Assigned Leases, transfer of IT to Charm and the disposition of Remaining Assets have been completed. The Monitor supports the relief requested by the Applicant.

11.0 APPROVAL OF CRO ACTIVITIES

11.1 The Applicant is seeking the approval of the activities of the CRO. The Monitor is of the view that the CRO's activities to date, which are described in the Fifth Manzoor Affidavit, have assisted the Applicant and this Court in implementing the Transaction. Accordingly, the Monitor is of the view that the CRO's activities should be approved.

12.0 MONITOR'S ACTIVITIES

12.1 The activities of the Monitor since the date of the Third Report include, among other things, the following:

- (a) preparing for and attending the Court hearing on July 29, 2016 regarding, among other things, the stay extension, the approval of the Liquidation Agreement and the transactions contemplated thereunder and certain distributions to JSN and Salus Capital;
- (b) assisting the Applicant with respect to the distributions to JSN and Salus Capital;
- (c) monitoring and assisting the Applicant and the CRO with respect to the Applicant's obligations under the Liquidation Agreement;
- (d) assisting Ben Moss in communications with certain suppliers regarding the payment status of pre-filing and post-filing accounts, review of purported consignment arrangements in conjunction with the CRO and assisting the Liquidator in discussions with certain suppliers regarding securing Additional Agent Merchandise;
- (e) discussions with certain landlords, the Applicant and their respective counsel in respect of the CCAA Proceedings, monitoring the Liquidator's progress in pursuing assignments of certain leases, assisting with Disclaimers and discussing the proposed increase to the cap on Additional Agent Merchandise;
- (f) responding to inquiries from stakeholders, including employees, customers and suppliers, and addressing questions or concerns of parties who contacted the Monitor on the toll-free number or general email account established by the Monitor for these CCAA Proceedings;

- (g) monitoring receipts, disbursements, purchase commitments and arrangements in respect of payment terms with certain suppliers and creditors of the Applicant, including tracking outstanding balances and commitments;
- (h) assisting Ben Moss and the Liquidator in the weekly settlement and reconciliation of sales and expenses and monitoring the corresponding remittances to the Liquidator;
- (i) assisting the Applicant in its reconciliation of the results of the inventory count conducted by the Liquidator to determine the value of Merchandise as at the Sale commencement date, and review of results with Salus Capital;
- (j) providing assistance to the Applicant in responding to inquiries and requests from Salus Capital, including reporting of weekly projected disbursements, regular cash-flow variance reporting, reporting of inventory balances, updated cash flow forecasts and liquidity position;
- (k) assisting the Applicant in the preparation of the cash flow forecast;
- (l) responding to the Shilon litigation;
- (m) posting materials filed with the Court to the Monitor's Website;
- (n) working with the Applicant, the Applicant's legal counsel, the CRO and Davies in connection with this motion; and
- (o) preparing this Fourth Report in consultation with Davies.

13.0 MONITOR'S CONCLUSIONS AND RECOMMENDATIONS

13.1 For the reasons set out in this Fourth Report, the Monitor is of the view that the relief requested by the Applicant is reasonable and respectfully recommends that this Court grant the relief requested by the Applicant.

All of which is respectfully submitted to this Court this 8th day of December, 2016.

**Alvarez & Marsal Canada Inc., in its capacity
as Monitor of Ben Moss Jewellers Western Canada Ltd.**



Per: Alan J. Hutchens
Senior Vice-President

APPENDIX "A"

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 PROPOSED PLAN OF
COMPROMISE OR ARRANGEMENT OF
BEN MOSS JEWELLERS WESTERN CANADA LTD.**

**THIRD REPORT OF THE MONITOR,
ALVAREZ & MARSAL CANADA INC.**

JULY 27, 2016

TABLE OF CONTENTS

1.0	INTRODUCTION.....	1
2.0	PURPOSE OF THIS REPORT.....	2
3.0	TERMS OF REFERENCE.....	4
4.0	MONITOR'S ACTIVITIES.....	6
5.0	OPERATIONS AND RESTRUCTURING UPDATE.....	8
6.0	CASH FLOW RESULTS RELATIVE TO FORECAST.....	10
7.0	CASH FLOW FORECAST.....	12
8.0	UPDATE ON THE CHANGES TO THE RISP SINCE THE DATE OF THE SECOND REPORT.....	14
9.0	RESULTS OF THE RISP AND THE AUCTION.....	20
10.0	THE PROPOSED TRANSACTION AND THE AGENCY AGREEMENT.....	23
11.0	LIQUIDATOR'S CHARGE.....	28
12.0	PROPOSED DISTRIBUTIONS TO SALUS CAPITAL AND JSN INC.....	29
13.0	PROPOSED CHANGES TO CASH MANAGEMENT SYSTEM.....	30
14.0	FEES AND ACTIVITIES.....	31
15.0	STAY EXTENSION.....	33
16.0	MONITOR'S CONCLUSIONS AND RECOMMENDATIONS.....	33

APPENDICES

APPENDIX A	SECOND REPORT OF THE MONITOR DATED JULY 5, 2016 (WITHOUT APPENDICES)
APPENDIX B	CASH FLOW FORECAST, NOTES AND ASSUMPTIONS
APPENDIX C	AFFIDAVIT OF ALAN J. HUTCHENS SWORN JULY 26, 2016
APPENDIX D	AFFIDAVIT OF NATASHA MACPARLAND SWORN JULY 26, 2016

1.0 INTRODUCTION

1.1 On May 18, 2016 (the "**Filing Date**"), Ben Moss Jewellers Western Canada Ltd. ("**Ben Moss**" or the "**Applicant**") applied for and was granted protection by the Ontario Superior Court of Justice (Commercial List) (the "**Court**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). Pursuant to an order of the Court dated May 18, 2016 (the "**Initial Order**"), among other things: (a) Alvarez & Marsal Canada Inc. ("**A&M**" or the "**Monitor**") was appointed Monitor of the Applicant in the CCAA proceedings (the "**CCAA Proceedings**"); (b) FAAN Advisors Group Inc. ("**FAAN**" or the "**CRO**") was appointed Chief Restructuring Officer of the Applicant and the Refinancing and/or Investment Solicitation Process ("**RISP**") attached as Schedule "A" to the Initial Order was approved; and (c) an \$8 million debtor-in-possession facility (the "**DIP Facility**") from Salus CLO 2012-1 Ltd. (the "**DIP Lender**"), which is managed by Salus Capital Partners, LLC ("**Salus Capital**") as the agent, was approved.

1.2 On May 26, 2016, this Court issued an amended and restated Initial Order (the "**Amended and Restated Initial Order**"), which made certain changes to the Initial Order that were described in the First Report of the Monitor (the "**First Report**") dated June 13, 2016.

1.3 On June 15, 2016, this Court issued an order, among other things: (a) extending the stay of proceedings in this matter to July 15, 2016 (the "**Stay Period**"); (b) approving the sale guidelines regarding the conduct of Gordon Brothers Canada ULC ("**Gordon Brothers**") in respect of the sale to liquidate (the "**Clearance Location Liquidation Sale**") the inventory, furniture, fixtures and equipment in certain of the Applicant's stores which are anticipated to close; and (c) approving an amendment to the Applicant's DIP Facility.

1.4 On July 7, 2016, this Court issued an order (the "**Modification of RISP and Stay Extension Order**"), among other things: (a) extending the Stay Period until August 31, 2016; and (b) replacing the second phase ("**Phase II**") of the RISP with the revised Phase II process (the "**Revised Phase II Process**") attached thereto as Schedule "A" to, among other things, permit the Applicant to solicit transactions involving the liquidation of the inventory, furniture, fixtures and equipment forming the property of Ben Moss, subject to certain exceptions, as well as to permit the Monitor to hold an auction (the "**Auction**") if necessary. The changes to the RISP resulting from the replacement of Phase II with the Revised Phase II Process were described in the Second Report of the Monitor (the "**Second Report**") dated July 5, 2016. The Second Report (without Appendices) is attached as **Appendix "A"** to this report.

1.5 As described in further detail below, on July 14, 2016, this Court issued an Order, among other things, amending and expediting the RISP, such that final bids were due on July 15, 2016 and the Auction, if desirable, was scheduled for July 19, 2016.

1.6 This report is the third report of the Monitor (the "**Third Report**") in connection with these CCAA Proceedings. In addition to the Third Report, the Monitor has provided to this Court the First Report and the Second Report. A&M has also provided to this Court the Pre-Filing Report of the Proposed Monitor (the "**Pre-Filing Report**") dated May 17, 2016 (together with the First Report and the Second Report, the "**Prior Reports**"). The Prior Reports, the Initial Order, the Amended and Restated Initial Order, and other Court-filed documents and notices in connection with the CCAA Proceedings are available on the Monitor's website at www.alvarezandmarsal.com/benmoss (the "**Monitor's Website**").

2.0 PURPOSE OF THIS REPORT

2.1 The purpose of this Third Report is to:

- (a) provide an update regarding the Monitor's activities since the date of the Second Report;
- (b) provide an update regarding the Applicant's operations and restructuring efforts;
- (c) provide information on the receipts and disbursements of Ben Moss for the three-week period ended July 15, 2016, as compared to the cash-flow forecast included in the Second Report;
- (d) provide the Applicant's cash-flow forecast for the period ending December 30, 2016, which cash-flow forecast shall replace the cash-flow forecast that was provided in the Monitor's Second Report;
- (e) provide information regarding the changes to the RISP since the date of the Second Report;
- (f) summarize the results of the Auction and the RISP;
- (g) summarize the proposed transaction (the "**Transaction**") between the Applicant and a contractual joint venture composed of Gordon Brothers and Merchant Retail Solutions ULC (jointly, the "**Agent**"), whereby, among other things, the Agent will liquidate the merchandise (subject to certain exceptions) and certain other assets of the Applicant, pursuant to an agency agreement dated July 22, 2016 (the "**Agency Agreement**"); and
- (h) recommend that the Court issue an order, among other things:
 - (i) approving the Agency Agreement and the Transaction;

- (ii) authorizing the Agent to conduct the sale in accordance with applicable Orders, the Agency Agreement and the Liquidation Guidelines (as defined below);
- (iii) approving the Liquidation Guidelines;
- (iv) granting the Liquidator's Charge (as defined below);
- (v) approving certain distributions from the proceeds from the Initial Guaranty Payment (as defined below);
- (vi) approving certain modifications to the Cash Management System (as defined below);
- (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 accounts of the Monitor and its counsel, Davies Ward Phillips & Vineberg LLP ("**Davies**").

3.0 TERMS OF REFERENCE

3.1 In preparing this Third Report, the Monitor has been provided with, and has relied upon, unaudited financial information, books and records and financial information prepared by certain senior management of Ben Moss and/or senior management of certain of Ben Moss's affiliated companies ("**Senior Management**") and discussions with Senior Management (collectively, the "**Information**").

3.2 With respect to any of Ben Moss's cash flow forecasts and projections:

- (a) the Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards ("CASs") pursuant to the *Chartered Professional Accountants Canada Handbook* (the "**CPA Handbook**") and accordingly, the Monitor expresses no opinion or other form of assurance contemplated under CASs in respect of the Information; and
- (b) some of the information referred to in this Third Report consists of forecasts and projections. An examination or review of the financial forecasts and projections, as outlined in the CPA Handbook, has not been performed.

3.3 Future oriented financial information referred to in this Third Report was prepared based on Senior Management's estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections. Even if the assumptions materialize, the variations could be significant.

3.4 Unless otherwise stated, all monetary amounts contained in this Third Report are expressed in Canadian dollars.

3.5 This Third Report should be read in conjunction with the Affidavit of Naveed Z. Manzoor, sworn July 25, 2016 (the "**Fourth Manzoor Affidavit**"). Capitalized terms used in

this Third Report that are not otherwise defined herein have the meaning given to them in the Fourth Manzoor Affidavit or the Prior Reports.

4.0 MONITOR'S ACTIVITIES

4.1 The activities and conduct of the Monitor since the date of the Second Report include, among other things, the following:

- (a) assisting Ben Moss in stabilizing its supply chain, including extensive communications with suppliers with a view to minimizing supply disruption and continuing the movement of goods to the distribution centre and stores;
- (b) discussions with certain landlords, the Applicant and counsel in respect of the CCAA Proceedings, lease concessions and additional disclaimers for retail locations;
- (c) responding to inquiries from stakeholders, including addressing questions or concerns of parties who contacted the Monitor on the toll-free number or general email account established by the Monitor for these CCAA Proceedings;
- (d) monitoring receipts, disbursements, purchase commitments and arrangements in respect of payment terms and deposits with certain suppliers and creditors of the Applicant, including tracking outstanding balances and commitments;
- (e) preparing for and attending the Court hearing on July 7, 2016 regarding the stay extension and the replacement of Phase II of the RISP with the Revised Phase II Process;

- (f) reviewing Salus Capital's motion materials regarding the motion returnable on July 14, 2016 to further amend the RISP and numerous discussions with Salus Capital, Salus Capital's legal counsel, the Applicant, the Applicant's legal counsel and the CRO regarding same;
- (g) preparing for and attending the Court hearing on July 14, 2016 regarding Salus Capital's motion in connection with the RISP;
- (h) supervising and assisting the Applicant to implement the RISP in accordance with its terms, including providing assistance to Senior Management regarding its presentations to Qualified Bidders (as defined in the RISP), supervising and participating in the Auction, reviewing final bids, assisting the Applicant with respect to its negotiations of the Agency Agreement and related materials and numerous discussions with interested parties regarding the RISP, due diligence, financial modeling and related matters;
- (i) posting materials filed with the Court to the Monitor's Website;
- (j) providing assistance to the Applicant in its reporting to the DIP Lender, as required under the DIP Facility, and reviewing the Applicant's weekly draw requests and cash-flow variances;
- (k) assisting the Applicant in the preparation of the cash flow forecast;
- (l) providing assistance to the CRO, Salus Capital and Salus Capital's advisors in connection with matters pertaining to Ben Moss's affiliates;

- (m) working with the Applicant, the Applicant's legal counsel, the CRO and Davies in connection with this motion; and
- (n) preparing this Third Report in consultation with Davies.

5.0 OPERATIONS AND RESTRUCTURING UPDATE

5.1 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 described in greater detail below).

The Clearance Location Liquidation Sale and Lease Disclaimers

5.2 As previously reported, Gordon Brothers was engaged as the Applicant's agent to liquidate the merchandise, furniture, fixtures and equipment in 11 of Ben Moss's stores that, at the time of commencement of these proceedings, were identified for potential closure (the "**Clearance Locations**").

5.3 As described in the Second Report, while the Clearance Location Liquidation Sale initially performed below expectations, sales gradually improved due to changes to advertising and mark-down structures, improved merchandise mix and increased store traffic.

5.4 Since the date of the Second Report, sales at the Clearance Locations have continued to improve and revenue performance in connection with the Clearance Locations has met both the Applicant's and Gordon Brothers' expectations. The Clearance Location Liquidation Sale will end by no later than July 31, 2016.

5.5 As at the date of the Second Report, Ben Moss, with the consent of the Monitor, had delivered Notices to Disclaim or Resiliate an Agreement (the "**Disclaimers**") with respect to

one unprofitable kiosk and to landlords in respect of ten unprofitable stores (nine of which were Clearance Locations). These Disclaimers will be effective as of July 30, 2016.

5.6 Since the date of the Second Report, Ben Moss, with the consent of the Monitor, delivered Disclaimers to landlords in respect of the following two Clearance Locations on July 19, 2016: Conestoga Mall in Cambridge, Ontario and St. Laurent Centre in Ottawa, Ontario. These Disclaimers will be effective as of August 18, 2016.

5.7 As at the date of this Third Report, the Applicant has not received any formal responses to the Disclaimers from any landlords of the disclaimed locations. Leases in respect of all Clearance Locations have now been disclaimed.

Employees

5.8 Notices of termination have been given to employees at the disclaimed stores.

5.9 Going forward, the Agency Agreement provides that Ben Moss will attempt to provide the Agent with such employees as the Agent may designate from time to time in connection with the Transaction. Such employees will remain as employees of Ben Moss.

Suppliers

5.10 As described in the Second Report, in general, the Applicant's major suppliers have continued to accept orders and supply goods to Ben Moss throughout the CCAA Proceedings, and the Applicant has continued to pay suppliers for goods and services supplied during the CCAA Proceedings.

5.11 Since the date of the Second Report, the Monitor has continued to work with Davies and the Applicant to review supply arrangements between the Applicant and certain of

the Applicant's suppliers to determine whether such arrangements are true consignment arrangements, thereby entitling the suppliers to reclaim the goods supplied. This determination is nearly complete. The Monitor has also continued to work with Davies and the Applicant to formally document the business terms relating to the supply and payment of valid consignment arrangements. The Agency Agreement provides for the ongoing sale of goods consigned to Ben Moss. To the extent that the Monitor determines that there are valid consignment arrangements with certain suppliers of the Applicant, then the Applicant shall make payment to those suppliers in accordance with their respective consignment arrangements.

5.12 As a result of the Transaction, the Applicant will not continue to make normal course purchases from its suppliers. As described in further detail below, the Agency Agreement permits the Agent to augment the Sale (as defined below) with additional merchandise, described in the Agency Agreement as the "Additional Agent Merchandise". The Additional Agent Merchandise, shall be, among other things, obtained by the Agent either from its own sources or the Applicant's existing suppliers. Any post-filing purchases made by the Applicant, to the extent not already paid for, shall be paid for in due course by the Applicant.

6.0 CASH FLOW RESULTS RELATIVE TO FORECAST

Cash Flow Results

6.1 Cash receipts and disbursements for the three-week period ended July 15, 2016 (the "**Reporting Period**") as compared to the cash flow forecast provided in the Second Report (the "**July Cash Flow Forecast**") are summarized in the table below:

Ben Moss Jewellers Western Canada Ltd.			
Schedule of Actual Receipts and Disbursements Compared to the Cash Flow Forecast (note 1)			
For the Three-Week Period Ended July 15, 2016			
(\$000's CAD)			
	<u>Forecast</u>	<u>Actual</u>	<u>Variance</u>
Cash Receipts			
Sales Receipts	4,255	4,375	120
Total Cash Receipts	<u>4,255</u>	<u>4,375</u>	<u>120</u>
Cash Disbursements			
Inventory purchases	873	363	510
Occupancy, taxes, capital leases, SG&A and other	2,125	1,624	501
Payroll & related payments	836	835	2
Professional fees	375	882	(507)
Interest and fees (note 2)	108	468	(360)
Total Cash Disbursements	<u>4,317</u>	<u>4,171</u>	<u>146</u>
Total Net Cash Flow	<u>(62)</u>	<u>204</u>	<u>266</u>
<u>CONTINUITY OF FINANCING</u>			
DIP FACILITY			
Opening DIP Balance	5,753	5,753	-
Draw / (repayment), net	62	(137)	199
ENDING DIP BALANCE	<u>5,815</u>	<u>5,616</u>	<u>199</u>
Note 1 Readers are cautioned to read the Terms of Reference as set out in the Second Report of the Monitor dated July 5, 2016 for information regarding the preparation of the Cash Flow Forecast.			
Note 2 Interest and fees are non-cash and are paid in kind and applied directly to the balance of the pre-filing revolving credit facility and the DIP facility.			

6.2 During the Reporting Period, Ben Moss's total cash receipts were approximately \$120,000 higher than projected in the July Cash Flow Forecast. Senior Management attributes this variance to an improvement in the performance of the Clearance Location Liquidation Sale.

6.3 Ben Moss's total disbursements during the Reporting Period were approximately \$146,000 lower than projected in the July Cash Flow Forecast. Inventory purchases were lower than planned due to a lack of shipments from JSN Inc. and lower purchases from third-party

suppliers. Non-trade payments relating to certain operating expenses were lower than budget primarily as a result of the timing of payment of occupancy expenses. The positive variances were partially offset by professional fee payments, which were higher than budget and higher interest and fees under the DIP Facility due to the timing of DIP Lender expenses being applied against the DIP Facility.

6.4 Overall, during the Reporting Period, Ben Moss experienced a positive cash flow variance of approximately \$266,000 relative to the July Cash Flow Forecast due to positive variances in both cash receipts and disbursements. As at July 15, 2016, Ben Moss had an ending cash balance of approximately \$300,000.

7.0 CASH FLOW FORECAST

7.1 The Applicant has prepared an updated and extended cash flow forecast (the "**Cash Flow Forecast**") for the period ending December 30, 2016 (the "**Cash Flow Period**"). The Cash Flow Forecast is attached as **Appendix "B"** to this Third Report.

7.2 The Cash Flow Forecast is presented on a weekly basis during the Cash Flow Period and represents Senior Management's estimates of the projected cash flow during the Cash Flow Period. The Cash Flow Forecast has been prepared using the probable and hypothetical assumptions set out in the notes to the Cash Flow Forecast (the "**Cash Flow Assumptions**").

7.3 The Monitor has reviewed the Cash Flow Forecast to the standard required of a Court-appointed Monitor by section 23(1)(b) of the CCAA. Section 23(1)(b) requires a Monitor to review the debtor's cash flow statement as to its reasonableness and to file a report with the Court on the Monitor's findings. Pursuant to this standard, the Monitor's review of the Cash Flow Forecast consisted of inquiries, analytical procedures and discussions related to information supplied to it by certain key members of management and employees of Ben Moss. The Monitor

reviewed information provided by Senior Management for the Cash Flow Assumptions. Since the Cash Flow Assumptions need not be supported, the Monitor's procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Cash Flow Forecast.

7.4 A summary of the Cash Flow Forecast is set out in the table below:

Ben Moss Jewellers Western Canada Ltd.	
Unaudited Summary of Forecast Cash Flow (Note 1)	
For the 22-week period ended December 30	
(\$000's)	
	Amount (\$)
Forecast Cash Inflow	
Guaranteed Amount	24,517
Forecast Total Receipts	<u>24,517</u>
Forecast Cash Outflow	
Sales Distribution	20,091
Inventory purchases	1,845
Payroll & related payments	1,092
Professional fees	765
Occupancy, taxes, capital leases, SG&A and other	724
Total Forecast Outflow	<u>24,517</u>
Total Net Cash Flow	<u><u>-</u></u>
Note 1	Readers are cautioned to read the Terms of Reference as set out previously in this report for information regarding the preparation of the Cash Flow Forecast

7.5 The Cash Flow Forecast is based on information made available by Senior Management and is based on numerous assumptions outlined in Appendix "B". Due to the inherent uncertainty of the Sale and the expected duration of the Sale, the actual cash flows will vary from the forecast and may vary significantly.

7.6 To address this potential variance, the Monitor intends to file updated cash flow forecasts with the Court and serve such cash flow forecasts on the service list in these CCAA Proceedings on a periodic basis.

7.7 The cash flows presented in the Cash Flow Forecast include in respect of the Agency Agreement: (i) an estimate of the Guaranteed Amount to be paid; and (ii) a forecast of Non-Reimbursable Expenses (each as defined below). In accordance with the Agency Agreement, proceeds from sales of Merchandise (as defined below) subsequent to the commencement date and Expenses (as defined in the Agency Agreement) are for the account of the Agent, subject to regular reconciliation. Any additional/incremental potential cash inflows in respect of product that is not included in Merchandise are not reflected in the Cash Flow Forecast.

7.8 The Cash Flow Forecast projects a total distribution to Salus Capital of approximately \$20.1 million over the Cash Flow Period.

7.9 Non-Reimbursable Expenses include projections for net costs incurred at Ben Moss's head office that are for the account of Ben Moss under the terms of the Agency Agreement and include such items as payroll, occupancy and other general and operating expenses, as well as projected professional fees over the duration of the Cash Flow Period.

7.10 The Cash Flow Forecast has been prepared solely for the purpose described above and readers are cautioned that it may not be appropriate for other purposes.

8.0 UPDATE ON THE CHANGES TO THE RISIP SINCE THE DATE OF THE SECOND REPORT

Description of the RISIP

8.1 An overview of the RISP and the Monitor's activities in respect of the first phase of the RISP ("**Phase I**") were provided in the Prior Reports.

8.2 When it was initially approved by the Initial Order, the purpose of the RISP was to seek proposals from Qualified Bidders for one or a combination of the following transactions:

- (a) a refinancing of all or part of the credit facility (the "**Credit Facilities**") provided by Salus Capital to Ben Moss and J.S.N Jewellery Inc., J.S.N. Jewellery UK Limited ("**JSN UK**") and GMJ Corporation ("**GMJ**") (a "**JSN Group Refinancing Proposal**");
- (b) an equity investment in Ben Moss and or JSN Inc. (a "**Reinvestment Proposal**");
and/or
- (c) a sale of all or a portion of the business of Ben Moss and the property, assets and undertakings relating to Ben Moss (a "**BM Sale Proposal**").

8.3 As described in the Second Report, no offers were received during Phase I for a JSN Group Refinancing Proposal or a Reinvestment Proposal that constituted Qualified LOIs (as defined in the RISP). As a result, Salus Capital terminated the RISP with respect to transactions involving JSN Inc., JSN UK, 2372128 Ontario Inc., GMJ, Always and Forever Family Collection Incorporated, Forever Jewellery Inc. and PMR Inc. (collectively, the "**JSN Group**").

8.4 The Monitor received offers for BM Sale Proposals that it determined to be Qualified LOIs. However, based on the offers received, and the termination of the RISP in respect of the JSN Group, the Monitor, in consultation with the Applicant and Salus Capital, determined that modifications to the RISP could potentially enhance realizations for stakeholders by creating a more competitive bidding environment in respect of Ben Moss by allowing the

Applicant to solicit transactions involving the liquidation of the inventory, furniture, fixtures and equipment located in the Applicant's stores (other than certain stores where Gordon Brothers was previously engaged to conduct a liquidation, as described in the Prior Reports) (the "**Agent Proposals**").

8.5 On July 7, 2016, the Applicant sought and obtained the Modification of RISP and Stay Extension Order from the Court to modify the RISP by replacing Phase II of the RISP with the Revised Phase II Process, which is attached as Schedule "A" to the Modification of RISP and Stay Extension Order. A detailed description of Phase II as replaced by the Revised Phase II Process is provided in the Second Report. The Revised Phase II Process, among other things:

- (a) established the requirements for the submission of Agent Proposals;
- (b) authorized parties who submitted Qualified LOIs for BM Sale Proposals (each, a "**Qualified Sale Bidder**") to participate in Phase II, as replaced by the Revised Phase II Process;
- (c) required Qualified Sale Bidders and qualified parties that wished to submit an Agent Proposal (each, a "**Qualified Agent Bidder**") to submit a draft proposal (a "**Draft Bid**") by no later than 5:00 p.m. on July 15, 2016, or such other date determined by the Monitor, Ben Moss and Salus Capital;
- (d) required Qualified Sale Bidders and Qualified Agent Bidders to submit final binding proposals ("**Final Bids**") by no later than 5:00 p.m. on July 22, 2016, or such other date determined by the Monitor, Ben Moss and Salus Capital;

- (e) authorized the Monitor, if one or more Qualified Bids (as determined by and defined by the RISP) were received in respect of either a BM Sale Proposal or an Agent Proposal, to recommend the most favourable Qualified Bid be selected;
- (f) authorized the Monitor, the Applicant and their advisors to negotiate the terms of a definitive transaction, or to proceed with the Auction to determine the successful bid; and
- (g) provided that, if the Auction were to be held, it would be scheduled to proceed on August 4, 2016, or such other date determined by the Monitor, Ben Moss and Salus Capital.

Events Subsequent to the Approval of the Revised Phase II Process; Further Revisions to the RISP

8.6 Following this Court's approval of the Revised Phase II Process and the issuance of the Modification of RISP and Stay Extension Order, the Applicant, in consultation with the Monitor, prepared a form of agreement of purchase and sale and a form of agency agreement in respect of a BM Sale Proposal and Agent Proposal, respectively (the "**Form Agreements**"). On July 7 and 8, 2016, the Monitor advised Qualified Bidders that, among other things, the Court had issued the Modification of RISP and Stay Extension Order and notified Qualified Bidders of the revised timelines thereunder. The Monitor also sent to RISP participants the Form Agreements, which were also posted to an electronic data room made available to Qualified Sale Bidders and Qualified Agent Bidders.

8.7 On July 11, 2016, Salus Capital expressed concerns that the funding it had extended to the JSN Group under the Credit Facilities since the Filing Date had exceeded its

projections and stated that it was not comfortable with the potential recoveries from the Qualified Sale Bids. In light of the foregoing, Salus Capital communicated to the Monitor that it was not prepared to support the RISP on the existing timelines and wished to make further changes to the RISP to expedite the timelines.

8.8 In particular, Salus Capital proposed the following changes, among others:

- (a) parties would no longer have the opportunity to submit a Draft Bid and would only submit a Final Bid;
- (b) the bid deadline for Final Bids would be accelerated from July 22, 2016 to July 15, 2016 (the deadline for the receipt of Draft Bids under the Revised Phase II Process); and
- (c) the Auction would be held on or about July 19, 2016.

8.9 On the evening of July 11, 2016, the Monitor advised Qualified Sale Bidders and the parties who were potentially interested in submitting an Agent Proposal that Salus Capital had formally requested that Ben Moss further expedite the RISP and the closing of any resulting transaction. The Monitor also advised that Salus Capital may bring a motion to vary the Modification of RISP and Stay Extension Order, and that Salus Capital had requested that the Monitor advise that Salus has requested that bidders be advised that, if they continue to conduct diligence and submit their bids in respect of Ben Moss, they should do so on the basis that finalized bids be submitted to the Monitor and Salus Capital by Friday, July 15, 2016.

8.10 On the morning of July 12, 2016, one of the Qualified Sale Bidders advised the Monitor that it would not be proceeding to submit a Final Bid as they would no longer have sufficient time to complete its due diligence and accordingly, cancelled the management

presentation with Senior Management that was scheduled for the afternoon of July 12, 2016 in Winnipeg, Manitoba.

8.11 On July 13, 2016, counsel to one of the Qualified Sale Bidders advised the Monitor of their client's position that the proposed further amendments to the RISP were inappropriate in the circumstances and that, among other things, in the event that the timeline in respect of the RISP was further revised, the probability of their client submitting a bid would be decreased. Nevertheless, this Qualified Sale Bidder continued its due diligence and ultimately submitted a Final Bid, albeit on significantly different terms than its non-binding letter of intent submitted in Phase I.

8.12 In its extensive discussions with Salus Capital and the Applicant, the Monitor advised both Salus Capital and the Applicant of the communications that it received from certain of the Qualified Bidders in respect of the proposed further modifications to the RISP, as well as its own concerns in respect of the further proposed modifications as described below.

8.13 On July 14, 2016, Salus Capital brought a motion for an order varying the Modification of RISP and Stay Extension Order on the basis that, among other things, since the issuance of the Modification of RISP and Stay Extension Order, a number of events of default under the Credit Facilities had occurred. Salus Capital also stated that it expected collateral deterioration to worsen as a result of, among other reasons, the JSN Group's inability to continue to fulfill Ben Moss orders. As a result, it was Salus Capital's view that its position would worsen if the RISP continued on the timeline provided for pursuant to the Modification of RISP and Stay Extension Order.

8.14 At the motion, the Monitor expressed serious concerns regarding the proposed variation to the Modification of RISP and Stay Extension Order on the basis that, among other

things, the Revised Phase II Process had been developed with the input, consultation and consent of Salus Capital, and had been approved by the Court one week earlier. The Monitor also noted that, in its opinion, the proposed variation may impact the likelihood of a going concern sale of the Ben Moss business as well as the ultimate valuations to be obtained from all participants in the RISP. In this regard, the Monitor advised the Court of the concerns that had been expressed from certain participants in the RISP as well as its own concerns.

8.15 Ben Moss reluctantly supported the motion on the basis that Salus Capital had advised that it was not prepared to advance further funds to Ben Moss on the then current timelines and had given Ben Moss little other choice. Accordingly, proceeding on an expedited basis was preferable to the other alternatives available to Ben Moss and Salus Capital.

8.16 At the conclusion of the motion, the Court issued the order sought by Salus Capital (the "**Variation of RISP Order**") which further revised the Revised Phase II Process by, among other things, requiring Final Bids to be submitted by July 15, 2016 (the "**Phase II Bid Deadline**") and, in the event that the Auction would be held, requiring the Monitor to send a process letter to all Auction participants no later than July 18, 2016.

9.0 RESULTS OF THE RISP AND THE AUCTION

9.1 Pursuant to the Variation of RISP Order, Final Bids were submitted on July 15, 2016. In total, four bids were received which were deemed to be Qualified Bids (as defined in the RISP, as amended).

9.2 Of the four Qualified Bids received, two Qualified Bids were Agent Proposals (*i.e.*, "chain-wide" liquidations) and two Qualified Bids were BM Sale Proposals (*i.e.*, going concern transactions), neither of which was for all of the Applicant's locations. Following the Phase II Bid Deadline, the Monitor, in consultation with the CRO and Salus Capital, concluded

that it would proceed with an Auction to determine the successful bid. Based on the estimated value of the Qualified Bids and the terms of the proposals, the Monitor, in consultation with the CRO and Salus Capital, selected one of the Agent Proposals submitted as the desired opening bid for the Auction (the "**Anticipated Opening Bid**").

9.3 Pursuant to the Variation of RISP Order, on July 14, 2016, the Monitor sent a process letter (a copy of which is attached as Exhibit "G" to the Fourth Manzoor Affidavit) to the Qualified Bidders which provided, among other things, detailed bidding procedures, including bid assessment criteria and the manner by which the Auction would be conducted.

9.4 On the weekend of July 16 and 17, 2016 and on July 18, 2016, the Monitor, the Applicant and Salus Capital engaged in both conference calls and meetings with the bidder that submitted the Anticipated Opening Bid (the "**Anticipated Opening Bidder**") to settle certain outstanding terms of the Anticipated Opening Bid.

9.5 On July 18, 2016, the Monitor met with Auction participants and discussed with them, among other things, the Auction.

9.6 On July 19, 2016, the date of the Auction, the Monitor, the Applicant and Salus Capital met with the Anticipated Opening Bidder to attempt to finalize the terms of the Anticipated Opening Bid prior to the commencement of the Auction. While substantially all of the terms of the Anticipated Opening Bid had already been settled, the Anticipated Opening Bidder indicated that it was not prepared to confirm the net minimum amount payable by the Anticipated Opening Bidder to the Applicant under its Agent Proposal (i.e., its "headline price"). After extensive negotiations, the Anticipated Opening Bidder indicated that it was not prepared to submit a bid in the Auction.

9.7 Concurrent with these discussions, the Agent and Calder Capital Limited ("Calder"), a party related to Charm Diamond Centres, came to terms on a bid (the "**Hybrid Bid**") pursuant to which Calder would acquire certain of the Applicant's leases and inventory pursuant to an asset purchase agreement and the Agent would liquidate the balance of the Applicant's assets pursuant to an agency agreement.

9.8 At approximately 6:30 p.m., the Auction commenced. One of the four Qualified Bidders that had submitted a Qualified Bid did not attend the Auction.

9.9 The Hybrid Bid was declared the opening bid at the Auction. Shortly thereafter, the Auction was adjourned, at the request of one of the Qualified Bidders, to permit parties to consider the Hybrid Bid.

9.10 During the adjournment, Salus Capital, in its sole discretion, determined that the Hybrid Bid was unacceptable based on its analysis of the anticipated net recovery to Salus Capital. The Hybrid Bid was therefore rejected.

9.11 The Agent subsequently submitted a revised bid substantially in the form of the Agent Proposal previously submitted by it. The Agent also indicated that, as part of its bid, it intended to provide a right of first refusal over all designation rights, including real estate leases and intellectual property, to Calder. As such, the Monitor understands that Calder may ultimately seek: (a) assignments in respect of certain real estate leases in order to operate jewellery retail stores at those locations, either in its own name or in Ben Moss's name; and (b) an assignment over all or a portion of the intellectual property of the Applicant, subsequent to the completion of the liquidation sale provided for in the Agency Agreement.

9.12 Following a review of the revised bid submitted by the Agent, the Monitor, in consultation with the CRO and Salus Capital, recommended that the bid be selected as the successful bid in the Auction, subject to review and documentation by the parties. The Monitor, the CRO, the Applicant and Salus Capital agreed that the bid satisfied applicable RISP requirements and was the most favourable bid and the Agent's bid was selected as the successful bid, subject to the finalization and review of definitive documentation mutually acceptable to all parties. The Auction was then closed. No bids other than as described in this Third Report were submitted during the Auction.

10.0 THE PROPOSED TRANSACTION AND THE AGENCY AGREEMENT

10.1 Following the completion of the Auction and subsequent negotiations, the Agent and Ben Moss finalized and executed the Agency Agreement on July 22, 2016, which is attached as Exhibit "H" to the Fourth Manzoor Affidavit. Capitalized terms in this section that are not otherwise defined have the meanings given to them in the Agency Agreement.

10.2 Pursuant to the Agency Agreement, the Agent will serve as the exclusive agent of the Applicant for the purpose of selling: (a) all finished goods inventory, saleable in the ordinary course of business owned by the Applicant and located in the Applicant's stores which are currently operating (the "**Merchandise**"); (b) the Additional Agent Merchandise, which is supplemental merchandise procured by the Agent, if any, which is of like kind, and no lesser quality to the Merchandise; and (c) subject to certain exceptions, all furnishings, removable trade fixtures, equipment and improvements to real immovable property owned by the Applicant and located in the Applicant's stores which are currently operating ("**FF&E**"). The Agent will dispose of the Merchandise, the Additional Agent Merchandise, if any, and FF&E by conducting a store closing or similar themed sale (the "**Sale**").

10.3 The Merchandise includes, among other things, certain goods that JSN Inc. had consigned to Ben Moss and certain other inventory (collectively, the "**JSN Goods**"). 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 in order to facilitate the inclusion of the JSN Goods in the Merchandise.

10.4 The salient terms of the Agency Agreement are described in the Fourth Manzoor Affidavit and include, among other things:

- (a) the Agent has guaranteed that the Applicant shall receive a net minimum amount (the "**Guaranteed Amount**") equal to 71.5% of the aggregate Cost Value of the Merchandise as determined under to the Agency Agreement. The Agent must pay to the Applicant an amount equal to 80% of the estimated **Guaranteed Amount** with respect to Merchandise other than In-Transit Merchandise (as defined in the Agency Agreement) (the "**Initial Guaranty Payment**") on the first day following entry of the Approval Order (as defined below). The balance of the **Guaranteed Amount**, if any (the "**Second Guaranty Payment**"), shall be paid by the Agent to Ben Moss at a later date pursuant to the terms of the Agency Agreement;
- (b) the Agency Agreement is conditional upon the Applicant having obtained an Order of this Court by no later than July 29, 2016, substantially in the form of the Order attached to the Agency Agreement, pursuant to which, among other things, the Agency Agreement is approved (the "**Approval Order**");
- (c) the Sale will commence one calendar day after the issuance of the Approval Order and will terminate no later than December 30, 2016 with respect to the retail stores and up to eight weeks from the date on which the Sale is commenced with

respect to the Applicant's distribution centre, storage facility and warehouses identified on Schedule "H" to the Agency Agreement. Such commencement and termination dates are subject to further extension as may be mutually agreed upon by the parties, provided that the Sale shall commence no later than July 30, 2016 and shall terminate no later than December 30, 2016. Due to the seasonality inherent in the jewellery industry, a sale term that extends through December is integral to the Agent's bid as November and December have historically accounted for over one-third of Ben Moss' total annual sales;

- (d) the Agent will receive a commission on the sale of FF&E during the Sale equal to 20% of the proceeds of sale of the FF&E, net of sales taxes;
- (e) the Agent is permitted to sell goods consigned to Ben Moss. The Agent shall retain 20% of the proceeds of such sale and Ben Moss shall retain the remaining 80% of the proceeds. To the extent that a supplier has a valid consignment arrangement with Ben Moss and its consigned goods are sold, Ben Moss is responsible for remitting the payments due to the supplier pursuant to the consignment arrangement;
- (f) on or prior to the date on which the Sale commences, Ben Moss must notify all customers having an interest in any inventory that is held on layaway or for special order that payment in full must be made by no later than four weeks following the Sale commencement date, failing which any rights in respect of the merchandise will be deemed to have been forfeited and the merchandise will be deemed to be unclaimed;

- (g) the Agent will be responsible for all expenses incurred in conducting the Sale during the term of the Sale, other than certain excluded expenses (the "**Non-Reimbursable Expenses**"), including certain overhead expenses related primarily to the Applicant's head office and distribution centre and professional fees. The Non-Reimbursable Expenses will ultimately be paid by Ben Moss;
- (h) all sales of Merchandise, Additional Agent Merchandise and FF&E will be "final sales" and "as is";
- (i) the Agent has the right to direct the Applicant to designate a transferee of each of the Applicant's real property leases and intellectual property rights, as described above (collectively, the "**Designated Assets**") during the periods provided for in the Agency Agreement (in each instance, the "**Designation Rights Period**"). The proceeds from such a transaction would be retained by the Agent. Prior to the expiration of the Designation Rights Period, the Agent shall have the right, upon seven days' written notice to the Applicant, to elect to not designate a transferee of any Designated Assets. Following the effective date of such notice, the Agent 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);¹
- (j) the Sale will be subject to the sale guidelines attached to the Agency Agreement as Schedule "G" (the "**Liquidation Guidelines**"). The Liquidation Guidelines

¹ With respect to leases relating to personal property such as leases for equipment, it is anticipated that such leases will continue in effect during the term of the Sale until such leases are disclaimed prior to the end of the term of the Sale.

provide that, among other things, the Sale will be conducted in accordance with the terms of the applicable leases or other agreements for each of the locations subject to the Sale. Pursuant to the Agency Agreement, Ben Moss is seeking Court approval of the Liquidation Guidelines, which are substantially similar to the sale guidelines that were negotiated with applicable landlords and approved by the Court in connection with the Liquidation Sale; and

- (k) the Agent has agreed to provide a letter of credit to secure its obligations under the Agency Agreement.

10.5 The Monitor is of the view that the Transaction and Agency Agreement are fair and reasonable in the circumstances and represent the best available transaction for the benefit of Ben Moss and its stakeholders, given the RISP.

10.6 Having actively participated in the RISP leading to the Transaction, the Monitor is of the view that the process was conducted in accordance with the RISP, as amended.

10.7 The Monitor understands that the successful bid in the Auction was predicated on the Sale commencing no later than the weekend of July 30, 2016. The Applicant has also advised that it is necessary to begin the Sale immediately in order to maximize the amounts available to its respective stakeholders.

10.8 The Monitor is of the view that the Transaction would be more beneficial to the Applicant's stakeholders than a sale of the Applicant's assets under a bankruptcy as, given the anticipated total proceeds to be received in respect of the Transaction, there is no likelihood of there being any recovery to any stakeholder other than Salus Capital. Accordingly, among other things, the Transaction will permit for continued employment for some period of time to

employees as well as the possibility of long-term employment for employees in locations where the leases are ultimately assigned to Calder or another party as well as the opportunity to preserve certain real estate leases to the benefit of landlords.

10.9 As described in the Fourth Manzoor Affidavit, the members of the contractual joint venture that comprise the Agent have extensive experience in conducting retail liquidations, having led inventory dispositions for, among others, Target Canada Co., 3499481 Canada Inc. (PJ's Pets) and 2473304 Ontario Inc. (Jones NYC). In addition, the Agent has provided evidence of its ability to consummate the Transaction and agreed to provide a letter of credit to secure its obligations under the Agency Agreement.

10.10 The anticipated consideration to be received pursuant to the Agency Agreement is the greatest of what was offered by any of the participants in the Auction. If consummated, the Transaction will provide sufficient proceeds to pay: (a) outstanding amounts under the Court-ordered charges; (b) any amounts that would have been required under paragraphs 6(4)(a) and (5)(a) of the CCAA; (c) post-filing obligations; and (d) any liabilities or obligations arising from the consummation of the Transaction, including the Non-Reimbursable Expenses.

10.11 Salus Capital has advised that it is supportive of the Transaction.

10.12 Accordingly, the Monitor is of the view that the Agency Agreement and the Transaction should be approved.

11.0 LIQUIDATOR'S CHARGE

11.1 The Agency Agreement contemplates the creation of a Court-ordered charge (the "**Liquidator's Charge**") in favour of the Agent 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) (each as defined in the Agency Agreement). The Liquidator's Charge is a first-ranking charge, except that it is subordinate to all Encumbrances (as defined in the Agency Agreement) until payment in full to Ben Moss of all amounts owing to Ben Moss under the Agency Agreement, but only to the extent of such unpaid amounts.

11.2 The Monitor is of the view that the Liquidator's Charge is fair and reasonable in the circumstances. The Liquidator's Charge is also typical and customary for transactions of this nature and, in its absence, it is unlikely that the Agent would undertake the Transaction. Accordingly, the Monitor is of the view that the Liquidator's Charge should be approved.

12.0 PROPOSED DISTRIBUTIONS TO SALUS CAPITAL AND JSN INC.

12.1 The draft Approval Order contemplates that, immediately following the Applicant's receipt of the Initial Guaranty Payment (which is to occur one day after the issuance of the Approval Order), the Applicant will distribute: (a) an amount equal to the purchase price under the JSN APA (the "**JSN Distribution**"); and (b) the balance of the Initial Guaranty Payment, less \$2.5 million (the "**Operating Reserve**"), to Salus Capital (the "**Salus Capital Distribution**" and together with the JSN Distribution, the "**Proposed Distributions**") in the maximum amount of Salus Capital's secured claim, to be applied against the Applicant's indebtedness, first under the DIP Facility, and second under the Amended and Restated Credit Agreement dated July 18, 2013, as amended (the "**Credit Agreement**").

12.2 Pursuant to the DIP Lender's Charge (as defined in the Amended and Restated Initial Order), 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 Amended and Restated Initial Order.

12.3 The Monitor previously obtained a security opinion which confirmed the validity and enforceability of the security in connection with the Credit Agreement. The Applicant's obligations under the Credit Agreement are secured by all of its assets.

12.4 As at July 22, 2016, there is approximately Cdn.\$53.8 million plus any accrued interest and fees from July 1, 2016 outstanding under the DIP Facility and Credit Facilities. If consummated, the Agency Agreement will result in a substantial shortfall to Salus Capital. Accordingly, there will be no funds available for distribution to the Applicant's other creditors, including unsecured creditors, and no claims process will be held in these CCAA Proceedings.

12.5 The amount of the Operating Reserve is expected to be sufficient to cover any amounts that may be payable under the Court-ordered charges provided for in the Amended and Restated Initial Order and the Applicant's post-filing expenses until the termination of the Sale, including the Non-Reimbursable Expenses (the "**Charges and Expenses**"). Should the Operating Reserve be insufficient to cover the Charges and Expenses, the Monitor may, to the extent the Monitor deems it necessary to do so, reserve further funds from any distribution to be made from the Second Guaranty Payment. As a result, no other party's claims against Ben Moss will be impacted by the Proposed Distributions.

12.6 Accordingly, the Monitor is of the view that the Proposed Distributions should be approved.

13.0 PROPOSED CHANGES TO CASH MANAGEMENT SYSTEM

13.1 Under the Applicant's current cash management system (the "**Cash Management System**"), there is an automatic daily sweep of the funds deposited into certain blocked accounts and a corresponding daily transfer of such funds to Salus Capital.

13.2 The Agency Agreement contemplates that the Designated Deposit Accounts and the Company's Designated Accounts (as such terms are defined in the Agency Agreement) shall be deemed to be held in trust for the Applicant and the Agent, as the case may be. The Agency Agreement also requires Ben Moss and the Agent to establish a reconciliation process pursuant to which certain proceeds are paid over from Ben Moss to the Agent daily. Accordingly, the Applicant is seeking, and the Monitor recommends, that the Cash Management System be modified in accordance with the Agency Agreement.

14.0 FEES AND ACTIVITIES

14.1 Paragraph 53 of the Amended and Restated Initial Order directs and empowers the Monitor and Davies to pass their accounts from time to time. As of the date of this Third Report, neither the Monitor nor Davies has passed any accounts.

14.2 Pursuant to paragraphs 52 and 54 of the Amended and Restated Initial Order, the CRO, the Monitor, Davies, counsel to the Applicant and counsel to Joseph Shilon were granted a charge (the "**Administration Charge**") on the Property (as defined in the Amended and Restated Initial Order) as security for their respective professional fees and disbursements incurred during the CCAA Proceedings are authorized to be paid on a periodic basis, subject to any final assessment or taxation by the Court.

14.3 The Monitor and Davies have maintained detailed records of their professional time and costs since the Filing Date.

14.4 The Applicant is seeking the approval of the fees and disbursements of the Monitor from the Filing Date to July 16, 2016 (the "**Monitor Fee Approval Period**") and those of Davies for the period from May 16, 2016 to July 21, 2016 (the "**Davies Fee Approval Period**") in connection with the performance of their duties in the CCAA Proceedings.

14.5 The total fees of the Monitor during the Monitor Fee Approval Period amount to \$942,902.50, together with expenses and disbursements in the amount of \$26,038.66, each excluding HST (collectively, the "**Monitor's Fees and Disbursements**"). The time spent by the Monitor's personnel during the Monitor Fee Approval Period is more particularly described in the affidavit of Alan J. Hutchens (the "**Hutchens Affidavit**"), sworn in support hereof and attached as **Appendix "C"** to this Third Report. The Hutchens Affidavit includes a summary of the personnel, hours, and hourly rates charged by the Monitor in respect of the Monitor Fee Approval Period.

14.6 The total fees for services provided by Davies during the Davies Fee Approval Period amount to \$446,292.00, together with expenses and disbursements in the amount of \$4,432.03, each excluding HST (the "**Davies Fees and Disbursements**"). The time spent by Davies' personnel during the Davies Fee Approval Period is more particularly described in the affidavit of Natasha MacParland of Davies (the "**MacParland Affidavit**"), sworn in support hereof and attached as **Appendix "D"** to this Third Report. The MacParland Affidavit includes a summary of the personnel, hours, and hourly rates charged by the Davies in respect of the Davies Fee Approval Period.

14.7 The Monitor respectfully submits that the Monitor's Fees and Disbursements and the Davies Fees and Disbursements are reasonable in the circumstances and have been validly incurred in accordance with the provisions of the Amended and Restated Initial Order. As outlined above, the CCAA Proceedings have included a number of complex issues and motions, including assisting with operations and funding requests, amendments to the DIP Facility, multiple amendments to the RISP and demands for financial information from the guarantors under the DIP Facility, and the Monitor's activities to date have assisted this Court and the

Applicant in implementing its restructuring. Accordingly, the Monitor is of the view that the Monitor's Fees and Disbursements and the Davies Fees and Disbursements should be approved.

14.8 The Applicant is also seeking the approval of activities of the CRO. The Monitor is of the view that the CRO's activities to date, which are described at paragraph 69 of the Fourth Manzoor Affidavit, have assisted this Court and the Applicant in implementing its restructuring. Accordingly, the Monitor is of the view that the CRO's activities should be approved.

15.0 STAY EXTENSION

15.1 The Monitor is of the view that the proposed extension to the Stay Period is necessary and appropriate in the circumstances to allow for the continued operations of the Applicant's business and for the Applicant to complete the Transaction, subject to the approval of this Court.

15.2 Furthermore, such an extension to the Stay Period will avoid unnecessary costs associated with returning to the Court to simply seek an extension to the Stay Period.

15.3 The Monitor is of the view that the Applicant has acted and is continuing to act in good faith and with due diligence.

15.4 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.

16.0 MONITOR'S CONCLUSIONS AND RECOMMENDATIONS

16.1 The Monitor respectfully recommends that the Court issue the Approval Order, among other things:

- (a) approving the Agency Agreement and the Transaction;

- (b) authorizing the Agent to conduct the sale in accordance with applicable Orders, the Agency Agreement and the Liquidation Guidelines;
- (c) approving the Liquidation Guidelines;
- (d) granting the Liquidator's Charge;
- (e) approving the Proposed Distributions;
- (f) approving the modifications to the Cash Management System described herein;
- (g) granting a stay extension to December 30, 2016;
- (h) approving the activities of the CRO;
- (i) approving the activities of the Monitor; and
- (j) approving the accounts of the Monitor and Davies.

All of which is respectfully submitted to this Court this 27th day of July, 2016.

**Alvarez & Marsal Canada Inc., in its capacity
as Monitor of Ben Moss Jewellers Western Canada Ltd.**



Per: Alan J. Hutchens
Senior Vice-President

APPENDIX "B"

APPENDIX B - Assigned Leases

Store	Landlord	Transferee
POLO PARK	Cadillac Fairview	3300393 Nova Scotia Limited
KILDONAN PLACE	Primaris	3300393 Nova Scotia Limited
PRAIRIE MALL	Morguard	3300393 Nova Scotia Limited
MEDICINE HAT	Primaris	3300393 Nova Scotia Limited
BOWER PLACE	Bentall Retail Services	3300393 Nova Scotia Limited
KINGSWAY MALL	Oxford Properties	3300393 Nova Scotia Limited
WEST EDMONTON	West Edmonton Mall	Ann-Louise Jewellers (Alberta) Ltd.
CHINOOK CENTRE	Cadillac Fairview	3300393 Nova Scotia Limited
SOUTHCENTRE	Oxford Properties	3300393 Nova Scotia Limited
CROSSIRON MILLS	Ivanhoe Cambridge	3300393 Nova Scotia Limited
ORCHARD PARK	Primaris	3300393 Nova Scotia Limited
SEVENOAKS	Morguard	3300393 Nova Scotia Limited
COQUITLAM	Morguard	3300393 Nova Scotia Limited
WILLOWBROOK	Bentall Retail Services	3300393 Nova Scotia Limited
SOUTHLAND MALL	SmartREIT	Charm Jewelry (Alberta) Limited
MIDTOWN PLAZA	20 Vic Mgmt	3300393 Nova Scotia Limited
CARLINGWOOD	20 Vic Mgmt	Griffin Jewellery Designs Ltd.
QUINTE MALL	20 Vic Mgmt	Griffin Jewellery Designs Ltd.
MASONVILLE PLACE	Cadillac Fairview	Charm Jewelry (Ontario) Limited
PEN CENTRE	20 Vic Mgmt	Griffin Jewellery Designs Ltd.
DEVONSHIRE MALL	20 Vic Mgmt	Griffin Jewellery Designs Ltd.
LAMBTON MALL	20 Vic Mgmt	Charm Jewelry (Ontario) Limited

APPENDIX "C"

APPENDIX C

Cash Flow Forecast for the 14-Week Period Ending February 28, 2017

Ben Moss Jewellers Western Canada Ltd.
 Weekly Schedule of Disbursements Forecast
 For the 14- week period ended February 28, 2017
 (Unaudited, in \$000s CAD)

Week Ended >>>>	Note	2-Dec-16	9-Dec-16	16-Dec-16	23-Dec-16	30-Dec-16	6-Jan-17	13-Jan-17	20-Jan-17	27-Jan-17	3-Feb-17	10-Feb-17	17-Feb-17	24-Feb-17	28-Feb-17	Total 14 - weeks
Augment Fee	1	50	50	50	50	50	10	-	-	-	-	-	-	-	-	260
TOTAL RECEIPTS		50	50	50	50	50	10	-	-	-	-	-	-	-	-	260
DISBURSEMENTS																
Payroll & related payments	2	90	79	57	(15)	63	58	253	278	180	145	-	-	-	-	1,188
Occupancy costs	3	258	(176)	264	(123)	(140)	1	68	20	-	-	-	-	-	-	170
Trade vendor payments (third party)	4	-	-	15	50	30	140	-	-	-	-	-	-	-	-	235
Property and business taxes	5	8	1	-	1	-	3	-	-	-	-	-	-	-	-	12
Capital leases and bank fees	6	55	(11)	-	8	(8)	(50)	-	-	-	-	-	-	-	-	(6)
Non-trade payments	7	67	19	4	4	8	34	18	20	40	5	5	5	5	3	237
Professional fees	8	18	31	48	48	23	23	58	58	14	11	11	11	11	6	371
Central Services Reimbursements	9	(10)	(10)	(10)	(10)	(10)	(5)	(5)	(5)	-	-	-	-	-	-	(65)
TOTAL DISBURSEMENTS		484	(67)	378	(37)	(35)	204	392	372	234	161	16	16	16	9	2,142
NET OPERATING CASH FLOW		(434)	117	(328)	87	85	(194)	(392)	(372)	(234)	(161)	(16)	(16)	(16)	(9)	(1,882)
ENDING CASH BALANCE		4,816	4,932	4,604	4,692	4,777	4,583	4,191	3,819	3,585	3,424	3,409	3,393	3,377	3,368	3,368

To be read in conjunction with the attached Notes and Summary of Assumptions

Ben Moss Jewellers Western Canada Ltd.
Weekly Cash Flow Forecast
Notes and Summary of Assumptions

In the Matter of the CCAA Proceedings of Ben Moss Jewellers Western Canada Ltd. (“Ben Moss”)

Disclaimer

In preparing this cash flow forecast (the “Cash Flow Forecast”), Ben Moss has relied upon unaudited financial information and has not attempted to further verify the accuracy or completeness of such information. Since the Cash Flow Forecast is based on assumptions about future events and conditions that are not ascertainable, the actual results achieved during the Cash Flow Forecast period will vary, even if the assumptions materialize, and such variations may be material. There is no representation, warranty or other assurance that any of the estimates, forecasts or projections will be realized.

The cash flows presented in the Cash Flow Forecast include in respect of the Liquidation Agreement: (i) an estimate of the Augment Fee to be paid; and (ii) a forecast of disbursements net of reimbursements from the Liquidator. In accordance with the Liquidation Agreement, proceeds from sales of Merchandise subsequent to the sale commencement date and Expenses under the Liquidation Agreement are for the account of the Liquidator, subject to regular reconciliation and the Final Reconciliation. Any additional/incremental potential cash inflows in respect of product that is not included in Merchandise are not reflected in the Cash Flow Forecast. The Cash Flow Forecast includes only operational costs of Ben Moss not reimbursed by the Liquidator, and does not include any potential distributions that the Applicant and the Monitor may deem payable to Salus Capital.

The Cash Flow Forecast is presented in thousands of Canadian dollars. Receipts and disbursements denominated in U.S. currency have been converted into Canadian dollars at the prevailing exchange rate throughout the period.

Note 1 Augment Fee

According to the Liquidation Agreement a 5% fee on all augment inventory sales will be provided to Ben Moss, subject to a minimum fee of \$350,000. The actual augment fee may differ materially and is largely impacted by overall store sales and inventory sales mix.

Note 2 Payroll & Related Payments

Payroll and related payments include salaries, wages, commissions, vacation pay, remittances and employee benefits for salaried and hourly employees and other employee related expenses at Head Office. Payroll related to the sale, including store employees, is a reimbursable expense under the Liquidation Agreement and is typically reimbursed the week following the payment date. Employees are paid bi-weekly. Payroll amounts are subject to variation based upon the Liquidator’s ultimate use of Ben Moss Head Office employees and facilities. Payroll & related payments also include payments in respect of the Ben Moss CRO and its legal counsel. All payroll and related payments are up to date and have been paid as they became due.

Note 3 Occupancy Costs

The Cash Flow Forecast assumes that rent and occupancy expenses are paid semi-monthly. Rent includes payments for the stores and Head Office. Pursuant to the Liquidation Agreement, a weekly per-diem is paid to Ben Moss for reimbursement of store occupancy

costs including, rent, utilities (hydro, gas, internet), CAM, and realty taxes etc. The Cash Flow Forecast assumes that all stores will be closed by December 30, 2016.

Note 4 Trade Vendor Payments (third party)

These payments represent amounts that are expected to be paid relating to vendors for product previously ordered and received by Ben Moss including payments for consignment inventory. No new inventory purchases are assumed during the Cash Flow Period.

Note 5 Property and Business Taxes

Property and Business taxes include provincial and municipal licenses required for operating in certain jurisdictions.

Note 6 Capital Leases and Bank Fees

Capital lease disbursements relate to leasehold improvements in various stores as well as software and POS systems and lease payments are made on a monthly basis. Credit card fees are fully reimbursed pursuant to the Liquidation Agreement the week following the actual disbursement.

Note 7 Non-trade Payments

Non-trade payments relate to various Head Office operating expenses including administrative costs, brokerage fees, security, POS systems, storage and other operating costs.

Note 8 Professional Fees

These disbursements include Ben Moss's legal counsel, the Monitor and its legal counsel.

Note 9 Central Services Reimbursements

Pursuant to the Liquidation Agreement, the Liquidator is required to reimburse Ben Moss \$10,000 weekly up to December 30, 2016 for Central Services utilized by the Liquidator. It is expected that the Liquidator will also pay Ben Moss \$5,000 weekly for continued use of Central Services for the month of January 2017 in accordance with the Amendment to the Liquidation Agreement.

**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.**

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

(PROCEEDING COMMENCED AT TORONTO)**

**FOURTH REPORT
OF THE MONITOR**

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