

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF BEN MOSS JEWELLERS WESTERN CANADA LTD.

APPLICANT

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**MOTION RECORD OF THE APPLICANT**  
(Stay Extension, Discharge and CCAA Termination Order)

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February 15, 2017

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# TAB 1

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF BEN MOSS JEWELLERS WESTERN  
CANADA LTD.

APPLICANT

**NOTICE OF MOTION  
(Stay Extension, Discharge, and CCAA Termination Order)**

The Applicant, Ben Moss Jewellers Western Canada Ltd. ("**Ben Moss**"), will make a motion before the Ontario Superior Court of Justice (Commercial List) on February 27, 2017 at 9:30AM, or as soon after that time as the motion can be heard, at 330 University Ave, Toronto, Ontario.

**THE MOTION IS FOR:**

1. An Order substantially in the form attached hereto as Schedule "A":
  - (a) abridging the time for and validating service of this Notice of Motion and supporting materials such that the motion is properly returnable on February 27, 2017 and dispensing with further service thereof;
  - (b) granting a stay extension to April 30, 2017;
  - (c) approving the activities, conduct, and reports to Court of Alvarez & Marsal Canada Inc. ("**A&M**") as the Court-appointed Monitor of Ben Moss (in such capacity, the "**Monitor**");

- (d) approving the fees and disbursements of the Monitor and the Monitor's legal counsel, Davies, Ward, Phillips and Vineberg LLP ("**Davies**"), further described in the fifth report of the Monitor (the "**Fifth Report**") to be filed with this Court prior to this hearing and the affidavits attached thereto;
- (e) approving the fees and disbursements of the Monitor and the Monitor's counsel, that have been or will be incurred in the performance of the remaining duties of the Monitor up to a maximum aggregate amount further described in the Monitor's Fifth Report;
- (f) approving the activities and conduct of FAAN Advisors Group Inc. ("**FAAN**") as Court-appointed Chief Restructuring Officer ("**CRO**");
- (g) terminating these CCAA proceedings upon the filing of a certificate by the Monitor (the "**Monitor's Certificate**");
- (h) reducing the amount of the Administration Charge and the Directors' Charge (as such terms are defined in the initial order of this Court in these CCAA proceedings dated May 18, 2016 (the "**Initial Order**"));
- (i) terminating the Administration Charge and the Directors' Charge upon filing of the Monitor's Certificate;
- (j) terminating the DIP Charge (as defined in the Initial Order) and the Agent's Charge and Security Interest (as defined in paragraph 20 of the Approval Order - Agency Agreement dated July 29, 2016);

- (k) discharging and releasing Alvarez & Marsal Canada Inc. as the Court-appointed Monitor of Ben Moss as at the time of filing of the Monitor's Certificate; and
  - (l) discharging FAAN as CRO of the Applicant as at the time of filing of the Monitor's Certificate.
2. Such further and other relief as counsel may advise and as this Honourable Court deems just.

**THE GROUNDS FOR THE MOTION ARE:**

**A. Background**

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

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



- (b) approving the Sale Guidelines; and
  - (c) approving an amendment to the DIP Facility whereby the Repayment Waterfall (as defined in the Affidavit of Naveed Z. Manzoor, sworn June 12, 2016) was revised such that Ben Moss's cash from business operations would, from and after the date of the Order, only be applied to obligations under the DIP Facility, without any application to the Permitted Overadvance;
8. On July 7, 2016, this Court granted an Order (the "**July 7 Order**"), among other things:
- (a) extending the stay period to August 30, 2016; and
  - (b) replacing phase two of the RISP with the Revised Phase 2 Process (the "**Process**");
9. On July 14, 2016, Salus Capital sought and was granted an Order, among other things, amending and expediting the Process, such that final bids were due on July 15, 2016 with the auction scheduled for July 19, 2016 (the "**July 14 Order**");
10. On July 29, 2016, this Court granted an Order the "**July 29 Order**"), among other things:
- (a) extending the Stay Period to December 30, 2016;
  - (b) approving the agency agreement (the "**Liquidation Agreement**") dated July 22, 2016, between a contractual joint venture composed of GBC and Merchant Retail Solutions ULC (such joint venture being the "**Liquidator**") and Ben Moss for the liquidation of certain inventory, furniture fixtures and equipment of Ben Moss (the "**Sale**") and authorizing and directing Ben Moss to enter into and complete the transactions contemplated by the Liquidation Agreement, including the right

to designate certain leases and intellectual property for assignment and sale (the “**Transaction**”);

- (c) authorizing the Liquidator to conduct the Sale in accordance with applicable Orders, the Liquidation Agreement and the Liquidation Guidelines;
- (d) approving the Liquidation Guidelines;
- (e) granting the Liquidator’s Charge (as defined in the Fourth Manzoor Affidavit);
- (f) approving certain distributions from the Initial Guaranty Payment (as defined in the Fourth Manzoor Affidavit);
- (g) approving certain modifications to the Cash Management System; and
- (h) approving the activities of the Monitor, and the fees and disbursements of the Monitor and its counsel;

11. On December 12, 2016, this Court granted an Order (the “**December 12 Order**”), among other things:

- (a) extending the Stay Period until February 28, 2017;
- (b) approving the assignment of certain leases by the Applicant to certain assignees and vesting the Applicant’s right, title and interest in those leases in the respective assignees;
- (c) authorizing the sale of certain intellectual property to 3300393 Nova Scotia Limited (“**Charm**”);

- (d) authorizing the CRO to execute such documents as are required to change the name of the Applicant;
- (e) modifying the thresholds on asset sales prescribed in paragraph 11(a) of the Initial Order to allow Ben Moss to sell its remaining assets;
- (f) approving the activities and conduct of the CRO;
- (g) approving the activities and conduct of the Monitor;
- (h) authorizing, but not directing, the CRO, acting alone, to assign the Applicant into bankruptcy proceedings under the *Bankruptcy and Insolvency Act* (the “BIA”);
- (i) authorizing, but not directing, the Applicant with the consent of the Monitor, to effect further distributions;
- (j) authorizing certain amendments to the Liquidation Agreement; and
- (k) amending the Liquidation Guidelines attached as Schedule A to the July 29 Order.

**B. Termination of these CCAA Proceedings and the CCAA Charges**

12. Following the Applicant’s filing of its final HST return, collection of the associated refund from the Canada Revenue Agency, and other administrative tasks, as well as the final distribution to Salus Capital, the administration of these CCAA proceedings will be concluded;

13. It is appropriate and efficient for these CCAA proceedings to be terminated upon the filing of the Monitor’s Certificate;

14. It is appropriate that the DIP Charge (as defined in the Initial Order) and the Agent's Charge and Security Interest (as defined in paragraph 20 of the Approval Order - Agency Agreement dated July 29, 2016) be terminated upon the granting of the Order sought in this Motion;

15. It is also appropriate that the Administration Charge and the Directors' Charge (as such terms are defined in the Initial Order) (together with the DIP Charge and the Agent's Charge and Security Interest, the "**Charges**") be reduced to \$100,000 each and be terminated and released upon the filing of the Monitor's Certificate;

**C. Discharge of A&M as Monitor**

16. Upon filing of the Monitor's Certificate, the Monitor will not have any further responsibilities in its role as court-appointed Monitor in these CCAA Proceedings;

17. A&M, as Monitor, has duly and properly discharged and performed its duties and obligations in these CCAA proceedings in compliance and in accordance with the CCAA and all Orders of this Court made in these CCAA proceedings;

**D. Discharge of FAAN as CRO**

18. Upon filing of the Monitor's Certificate, the CRO will not have any further responsibilities in its role as CRO of the Applicant in these CCAA Proceedings;

19. The CRO has duly and properly discharged and performed its duties and obligations in these CCAA proceedings in compliance and in accordance with the CCAA and all Orders of this Court made in these CCAA proceedings;

**E. Stay Extension**

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

21. The Stay Period was subsequently extended by the December 12 Order until and including February 28, 2017;

22. A further extension of the Stay Period until and including April 30, 2017 is necessary and appropriate in the circumstances to allow the Applicant to complete, among other things, the final Sale reconciliation, the return of certain credit card holdback amounts that arose during the Sale, the distribution of the Applicant's remaining assets to Salus Capital, and the resolution of certain tax matters;

23. A Stay extension will be cost-effective in that the Applicant will not be required to return to Court for a separate termination hearing;

24. Since the granting of the Stay in the Initial Order, the Applicant has continued to act in good faith and with due diligence in these CCAA proceedings;

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

**F. General**

26. The provisions of the CCAA, and in particular sections 11 and 36 thereof;

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

28. Rules 1.04, 1.05, 2.03, 3.02, 16, 37 and 39 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended and section 106 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended; and

29. Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

30. The Affidavit of Naveed Z. Manzoor, sworn February 15, 2017, and the exhibits attached thereto (the “**Sixth Manzoor Affidavit**”);

31. The Fifth Report; and

32. Such further and other material as counsel may advise and this Honourable Court may permit.

February 15, 2017

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# TAB A



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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) MONDAY, THE 27TH  
JUSTICE ● )  
DAY OF FEBRUARY, 2017

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF BEN MOSS JEWELLERS WESTERN  
CANADA LTD.

Applicant

**ORDER  
(Stay Extension, Discharge, and CCAA Termination Order)**

THIS MOTION, made by Ben Moss Jewellers Western Canada Ltd. (the “**Applicant**”), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) for an Order, *inter alia*: (i) granting a stay extension to April 30, 2017; (ii) approving the activities, conduct, and reports to Court of Alvarez & Marsal Canada Inc. (“**A&M**”) as the Court-appointed Monitor of Ben Moss (in such capacity, the “**Monitor**”); (iii) approving the fees and disbursements of the Monitor and the Monitor’s legal counsel, Davies, Ward, Phillips and Vineberg LLP (“**Davies**”), as described in the fifth report of the Monitor dated February ●, 2017 (the “**Fifth Report**”) and the affidavits attached thereto; (iv) approving the fees and disbursements of the Monitor and the Monitor’s counsel, that have been or will be incurred in the performance of the remaining duties of the Monitor up to a maximum of \$● in the aggregate (plus applicable HST), as described in the Fifth Report; (v) approving the activities and conduct of FAAN Advisors Group Inc. (“**FAAN**”) as Court-appointed Chief Restructuring Officer (“**CRO**”); (vi) terminating these CCAA proceedings upon the filing of a certificate by the Monitor (the “**Monitor’s Certificate**”); (vii) reducing the amount of the Administration Charge

and the Directors' Charge (as such terms are defined in the Initial Order of this Court in these CCAA proceedings dated May 18, 2016, as amended (the "**Initial Order**")); (viii) terminating the Administration Charge and the Directors' Charge upon filing of the Monitor's Certificate; (ix) terminating the DIP Charge (as defined in the Initial Order) and the Agent's Charge and Security Interest (as defined in paragraph 20 of the Approval Order - Agency Agreement dated July 29, 2016); (x) discharging and releasing A&M as the Court-appointed Monitor of Ben Moss as at the time of filing of the Monitor's Certificate; and (xi) discharging FAAN as Court-appointed CRO of Ben Moss as at the time of filing of the Monitor's Certificate, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Naveed Manzoor sworn on February ●, 2017 (the "**Sixth Manzoor Affidavit**") and the Fifth Report, and on hearing the submissions of counsel for the Applicant and the Monitor and such other counsel as were present and on being advised that the Service List was served with the Motion Record herein,

#### **SERVICE AND DEFINITIONS**

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Initial Order.

#### **EXTENSION OF THE STAY PERIOD**

3. THIS COURT ORDERS that the Stay Period is hereby extended until and including April 30, 2017.

#### **MONITOR'S REPORTS, ACTIVITIES AND FEES**

4. THIS COURT ORDERS that the pre-filing report of the Monitor dated May 27, 2016, the first report of the Monitor dated June 13, 2016, the second report of the Monitor dated July 5, 2016, the third report of the Monitor dated July 27, 2016, the fourth report of the Monitor dated December 8, 2016, and the fifth report of the Monitor dated February ●, 2017 are each hereby

approved and the activities and conduct of the Monitor prior to the date hereof in relation to the Applicant and these CCAA proceedings are hereby ratified and approved.

5. THIS COURT ORDERS that (a) the fees and disbursements of the Monitor in the amount of \$●, as set out in the Affidavit of ● sworn February ●, 2017 (the “**A&M Affidavit**”), and (b) the fees and disbursements of Davies, counsel to the Monitor in the amount of \$●, as set out in the Affidavit of ● sworn February ●, 2017 (the “**Davies Affidavit**”), respectively, incurred in connection with this proceeding, are hereby authorized and approved.

6. THIS COURT ORDERS AND DECLARES that the fees and disbursements of the Monitor and Davies, respectively that are not set out in the A&M Affidavit or the Davies Affidavit but have been or will be incurred in the performance of the duties of the Monitor are hereby authorized and approved up to a maximum of \$● in the aggregate (plus applicable HST), and in that regard the Monitor shall provide to the Applicant an account or accounts for the fees and disbursements of the Monitor and Davies so incurred (the “**Actual Fees and Expenses**”) and, for the avoidance of doubt, only the Actual Fees and Expenses shall be paid to the Monitor and Davies.

#### **CRO’S ACTIVITIES, ACTIVITIES AND FEES**

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

#### **TERMINATION OF CCAA PROCEEDINGS**

8. THIS COURT ORDERS that upon the filing of a certificate by the Monitor substantially in the form attached hereto as Schedule “A” (the “**Monitor’s Certificate**”) certifying that, to the knowledge of the Monitor, all matters to be attended to in connection with these CCAA proceedings have been completed, these CCAA proceedings shall be terminated without any other act or formality (the “**CCAA Termination Time**”), save and except as required under the provisions of this Order.

9. THIS COURT ORDERS that the DIP Charge and the Agent's Charge and Security Interest shall be and are hereby terminated, released and discharged as of the date hereof.

10. THIS COURT ORDERS that the amount of the Administration Charge granted in paragraph 54 of the Initial Order shall be reduced from \$600,000 to \$100,000 as of the date hereof.

11. THIS COURT ORDERS that the Administration Charge shall be terminated, released and discharged at the CCAA Termination Time.

12. THIS COURT ORDERS that the amount of the Directors' Charge granted in paragraph 29 of the Initial Order shall be reduced from \$1,500,000 to \$100,000 as of the date hereof.

13. THIS COURT ORDERS that the Directors' Charge shall be terminated, released and discharged at the CCAA Termination Time.

#### **DISCHARGE OF THE MONITOR**

14. THIS COURT ORDERS that effective at the CCAA Termination Time, A&M shall be and is hereby discharged from its duties as the Monitor and shall have no further duties or responsibilities as Monitor from and after the CCAA Termination Time and further that prior to its discharge the Monitor shall have the authority to carry out any matters in its role as Monitor that are incidental to the termination of these CCAA proceedings as may be required.

15. THIS COURT ORDERS that, notwithstanding its discharge and the termination of these CCAA proceedings, A&M shall continue to have the benefit of the provisions of all Orders made in these CCAA proceedings, including all releases, approvals, protections and stays of proceedings in favour of A&M in its capacity as Monitor.

16. THIS COURT ORDERS that effective at the CCAA Termination Time, A&M is hereby forever discharged and released from any and all liability that A&M now or may hereafter have by reason of, or in any way arising out of, any act, omission, transaction, dealing or other occurrence in any way relating to arising out of, or in respect of these CCAA proceedings, whether known or unknown, matured or unmatured, foreseen or unforeseen while acting in its

capacity as Monitor or relating to matters that were raised, or could have been raised, in the within proceedings, save and except for any gross negligence or wilful misconduct on its part.

17. THIS COURT ORDERS that no action or other proceeding shall be commenced against the Monitor in any way arising from or related to its capacity or conduct as Monitor except with prior leave of this Court and on prior written notice to the Monitor.

### **DISCHARGE OF THE CRO**

18. THIS COURT ORDERS that effective at the CCAA Termination Time, the appointment of FAAN as CRO in these CCAA proceedings pursuant to the Initial Order is hereby terminated and FAAN shall have no further duties or responsibilities as CRO of the Applicant from and after the CCAA Termination Time and further that prior to its discharge the CRO shall have the authority to carry out all matters that are incidental to the termination of these CCAA proceedings as may be required.

19. THIS COURT ORDERS that, notwithstanding its discharge and the termination of these CCAA proceedings, FAAN shall continue to have the benefit of the provisions of all Orders made in these CCAA proceedings, including all releases, approvals, protections and stays of proceedings in favour of FAAN in its capacity as CRO.

20. THIS COURT ORDERS that effective at the CCAA Termination Time, FAAN is hereby forever discharged and released from any and all liability that FAAN now or may hereafter have by reason of, or in any way arising out of, any act, omission, transaction, dealing or other occurrence in any way relating to arising out of, or in respect of these CCAA proceedings, whether known or unknown, matured or unmatured, foreseen or unforeseen while acting in its capacity as CRO of the Applicant or relating to matters that were raised, or could have been raised, in the within proceedings, save and except for any gross negligence or wilful misconduct on its part.

21. THIS COURT ORDERS that no action or other proceeding shall be commenced against FAAN in any way arising from or related to its capacity or conduct as CRO except with prior leave of this Court and on prior written notice to FAAN.

### **BOOKS AND RECORDS**

22. THIS COURT ORDERS that the CRO is hereby authorized to make any arrangements that it deems necessary in its sole discretion for the destruction of the Applicant's books and records following the filing of the Monitor's Certificate, including any of the Applicant's financial, corporate, operations and sales books, records, books of account, sales and purchase records, lists of suppliers and customers, formulae, business reports, plans and projections and all other documents, surveys, plans, files, records, servers, assessments, correspondence, and other data and information, financial or otherwise including all data, information and databases stored on computer-related or other electronic media, whether physical or intangible.

### **SEALING**

23. THIS COURT ORDERS that an unredacted summary of offers received by the CRO in connection with the Sundry Inventory Sale Process (as defined in the Sixth Manzoor Affidavit) attached as Confidential Exhibit "A" to the Sixth Manzoor Affidavit be sealed, kept confidential and not form part of the public record, but rather shall be placed separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order only to be opened upon further Order of the Court.

### **GENERAL**

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

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**Schedule A – Form of Monitor’s Certificate**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF BEN MOSS JEWELLERS WESTERN  
CANADA LTD.**

Applicant

**MONITOR’S CERTIFICATE**

**RECITALS**

- A. Alvarez & Marsal Canada Inc. was appointed as the Monitor of the Applicant in the within CCAA Proceedings pursuant to an Order of the Ontario Superior Court of Justice (the “**Court**”) dated May 18, 2016 (as amended, the “**Initial Order**”).
- B. Pursuant to the Order of this Court dated February ●, 2017 (the “**CCAA Termination Order**”), the Monitor shall be discharged and the CCAA Proceedings shall be terminated upon the filing of this Monitor’s Certificate with the Court.
- C. Pursuant to the CCAA Termination Order, FAAN Advisor Group Inc. shall be discharged as CRO upon the filing of this Monitor’s Certificate with the Court.
- D. Pursuant to the CCAA Termination Order, the Administration Charge and the Directors’ Charge shall be terminated, released and discharged upon the filing of this Monitor’s Certificate with the Court.
- E. Unless otherwise indicated herein, capitalized terms used in this Monitor’s Certificate shall have the meanings given to them in CCAA Termination Order.

**THE MONITOR CERTIFIES** the following:

1. To the knowledge of the Monitor, all matters to be attended to in connection with the CCAA Proceedings have been completed.

**ACCORDINGLY**, the CCAA Termination Time as defined in the CCAA Termination Order has occurred.

DATED at Toronto, Ontario this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**Alvarez & Marsal Canada Inc., in its capacity  
as Monitor of the Applicant, and not in its  
personal capacity**

Per: \_\_\_\_\_

Name:

Title:



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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF BEN MOSS JEWELLERS WESTERN CANADA LTD.

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

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

PROCEEDING COMMENCED AT  
TORONTO

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**MONITOR'S CERTIFICATE**

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**DAVIES WARD PHILLIPS & VINEBERG LLP**  
155 Wellington St. W., 40th Floor  
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Lawyers for the Monitor

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF BEN MOSS JEWELLERS WESTERN CANADA LTD.

**APPLICANT**

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

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

PROCEEDING COMMENCED AT  
TORONTO

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**ORDER  
(Stay Extension, Discharge, and CCAA Termination  
Order)**

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**OSLER, HOSKIN & HARCOURT LLP**

Box 50, 1 First Canadian Place  
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Sean Stidwill (LSUC #: 71078J)

Tel: 416.862.4871

Lawyers for the Applicant

Matter No: 1172245

**IN THE MATTER OF COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF BEN MOSS JEWELLERS WESTERN  
CANADA LTD.**

APPLICANT

Court File No. CV16-11397-00CL

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

PROCEEDING COMMENCED AT  
TORONTO

**NOTICE OF MOTION  
(Stay Extension, Discharge, and  
CCAA Termination Order)**

**OSLER, HOSKIN & HARCOURT LLP**

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Tel: 416.862.4871

Lawyers for the Applicant

Matter No: 1172245

# TAB 2

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

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF BEN MOSS JEWELLERS WESTERN  
CANADA LTD.

APPLICANT

**AFFIDAVIT OF NAVEED Z. MANZOOR**  
(Sworn February 15, 2017)

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

1. Pursuant to the Initial Order (defined below), among other things, FAAN was appointed as the Chief Restructuring Officer (the "CRO") of the Applicant, Ben Moss Jewellers Western Canada Ltd. ("Ben Moss" or the "Applicant"). As the managing director of FAAN, I have personal knowledge of the matters deposed to herein. Where I have relied on other sources for information, I have so stated and I believe them to be true.

2. I swear this Affidavit in support of the motion brought by Ben Moss seeking an Order, among other things: (i) granting a stay extension to April 30, 2017; (ii) approving the activities, conduct, and reports to Court of Alvarez & Marsal Canada Inc. ("A&M") as the Court-appointed Monitor of Ben Moss (in such capacity, the "Monitor"); (iii) approving the fees and disbursements of the Monitor and the Monitor's legal counsel, Davies, Ward, Phillips and Vineberg LLP, as described in the Monitor's fifth report to Court (the "Fifth Report") and the affidavits attached

thereto; (iv) approving the fees and disbursements of the Monitor and the Monitor's counsel that have been or will be incurred in the performance of the remaining duties of the Monitor up to a maximum aggregate amount further described in the Monitor's Fifth Report; (v) approving the activities and conduct of FAAN as CRO; (vi) terminating the proceedings (the "CCAA Proceedings") commenced by Ben Moss under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), upon the filing of a certificate by the Monitor (the "Monitor's Certificate"); (vii) reducing the amount of the Administration Charge and the Directors' Charge (as such terms are defined in the Initial Order); (viii) terminating the Administration Charge and the Directors' Charge upon filing of the Monitor's Certificate; (ix) terminating the DIP Charge (as defined in the Initial Order) and the Agent's Charge and Security Interest (as defined in paragraph 20 of the Approval Order - Agency Agreement dated July 29, 2016); (x) discharging and releasing A&M as the Court-appointed Monitor of Ben Moss as at the time of filing of the Monitor's Certificate; and (xi) discharging FAAN as Court-appointed CRO of Ben Moss as at the time of filing of the Monitor's Certificate.

3. I swore affidavits on May 16, 2016 (the "First Manzoor Affidavit"), June 12, 2016 (the "Second Manzoor Affidavit"), June 30, 2016 (the "Third Manzoor Affidavit"), July 25, 2016 (the "Fourth Manzoor Affidavit") and December 5, 2016 (the "Fifth Manzoor Affidavit"). Capitalized terms contained herein that are not otherwise defined have the meaning ascribed to them in the First, Second, Third, Fourth, and Fifth Manzoor Affidavits.

#### **A. Background**

4. On May 18, 2016 (the "Filing Date"), Ben Moss was granted protection under the CCAA, pursuant to an initial order of the Ontario Superior Court of Justice (Commercial List) (the "Initial Order"). In the Initial Order, the Court, among other things:

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

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

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

with standard Court-approved sale guidelines and of which the Applicant would seek approval at its next motion before the Court.

6. On June 15, 2016, this Court granted an Order, among other things:
  - (a) extending the Stay Period to July 15, 2016;
  - (b) approving the GBC Sale Guidelines; and
  - (c) approving an amendment to the DIP Agreement whereby the Repayment Waterfall was revised such that Ben Moss's cash from business operations would, from and after the date of the Order, only be applied to obligations under the DIP Facility, without any application to the Permitted Overadvance (the "DIP Amendment").
7. On July 7, 2016, this Court granted an Order (the "July 7 Order"), among other things:
  - (a) extending the Stay Period to August 30, 2016; and,
  - (b) replacing phase two of the RISP with the Revised Phase 2 Process (the "Process").
8. On July 14, 2016, Salus Capital sought and was granted an Order, among other things, amending and expediting the RISP, such that final bids were due on July 15, 2016 with the auction scheduled for July 19, 2016.
9. On July 29, 2016, this Court granted an Order (the "July 29 Order"), among other things:
  - (a) extending the Stay Period to December 30, 2016;
  - (b) approving the agency agreement (the "Liquidation Agreement") dated July 22, 2016, between a contractual joint venture composed of GBC and Merchant Retail



Solutions ULC (such joint venture being the “Liquidator”) and Ben Moss for the liquidation of certain inventory, furniture, fixtures and equipment of Ben Moss (the “Sale”) and authorizing and directing Ben Moss to enter into and complete the transactions contemplated by the Liquidation Agreement, including the right to designate certain leases and intellectual property for assignment and sale (the “Transaction”);

- (c) authorizing the Liquidator to conduct the Sale in accordance with applicable Orders, the Liquidation Agreement and the Liquidation Guidelines (as defined in the Fourth Manzoor Affidavit);
  - (d) approving the Liquidation Guidelines;
  - (e) granting the Liquidator’s Charge (as defined in the Fourth Manzoor Affidavit);
  - (f) approving certain distributions from the Initial Guaranty Payment (as defined in the Fourth Manzoor Affidavit);
  - (g) approving certain modifications to the Cash Management System; and
  - (h) approving the activities of the Monitor, and the fees and disbursements of the Monitor and its counsel.
10. On December 12, 2016, this Court granted an Order (the “December 12 Order”), among other things:
- (a) extending the Stay Period until February 28, 2017;

- (b) approving the assignment of certain leases by the Applicant to certain assignees and vesting the Applicant's right, title and interest in those leases in the respective assignees;
- (c) authorizing the sale of certain intellectual property to 3300393 Nova Scotia Limited ("Charm");
- (d) authorizing the CRO to execute such documents as are required to change the name of the Applicant;
- (e) modifying the thresholds on asset sales prescribed in paragraph 11(a) of the Initial Order to allow Ben Moss to sell its remaining assets;
- (f) approving the activities and conduct of the CRO;
- (g) approving the activities and conduct of the Monitor;
- (h) authorizing, but not directing, the CRO, acting alone, to assign the Applicant into bankruptcy proceedings under the Bankruptcy and Insolvency Act (the "BIA");
- (i) authorizing, but not directing, the Applicant with the consent of the Monitor, to effect further distributions;
- (j) authorizing certain amendments to the Liquidation Agreement; and
- (k) amending the Liquidation Guidelines attached as Schedule A to the July 29 Order.

**B. Update Regarding Ben Moss**

**(a) Completion of the Sale**

11. Since I swore the Fifth Manzoor Affidavit, Ben Moss and the Monitor continued to assist the Liquidator with the Sale. The Sale concluded on December 30, 2016, in accordance with the Liquidation Agreement. Further, the CRO and the Applicant have resolved all of the outstanding consignment vendor matters.

**(b) Subsequent Transactions**

12. Following the conclusion of the Sale, Ben Moss's remaining inventory and assets were transported to Ben Moss's head office location in Winnipeg, Manitoba. As more particularly described below, two further transactions took place in January 2017 generating net aggregate proceeds for Ben Moss in an amount that is below the authorized limit of \$1.5 million for transactions as prescribed in paragraph 11(a) of the Initial Order (as amended by the December 12 Order). The Liquidator was also provided with access to Ben Moss's head office location during January 2017 for ongoing liquidation of the FF&E (as defined below), which was approved as part of the Liquidation Agreement and is described below.

**(i) Residual Assets Sale**

13. Ben Moss anticipated that it would not be able to sell all of its finished goods inventory by the conclusion of the Sale on December 30, 2016. By the end of the Sale, such inventory had already been marked down to between 80% and 90% off retail prices. At the conclusion of the Sale, with the assistance of the Liquidator, Ben Moss arranged to sell the balance of its finished inventory at retail stores (the "Residual Assets") to a jewellery wholesaler who agreed to pay 14% of the original retail price (or approximately 40% of cost) for such Residual Assets. This realization is consistent with the realization achieved for finished goods inventory in the final week of the sale to retail customers. The Residuals Assets transaction generated net proceeds of approximately \$536,000, plus HST.

14. Given that the proceeds generated from the sale of the Residual Assets is below the \$1 million threshold for a single transaction requiring Court approval set out in paragraph 11(a) of the Initial Order (as amended by the December 12 Order) and, when combined with the sale of Sundry Inventory (as more particularly described in paragraphs 15-17 herein), is below the \$1.5 million threshold for aggregate transactions requiring Court approval also set out in paragraph 11(a) of such Order, the Applicant is not seeking Court approval of the sale. The Monitor was consulted and approved the process followed in respect of the sale of the Residual Assets. Salus, the only remaining economic stakeholder, was aware of the sale process and supports the sale.

**(ii) Sundry Inventory Sale Process**

15. Ben Moss also had certain other inventory assets, such as loose diamond stones and loose mounts that would be used for repairs or for a trade-in program with customers (the “Sundry Inventory”). The Sundry Inventory was not sold to the Liquidator pursuant to the Liquidation Agreement.

16. Commencing on January 5, 2017, the Applicant conducted a sale solicitation process for the Sundry Inventory (the “Sundry Inventory Sale Process”). The Applicant contacted 16 industry participants (in Canada and the U.S.) and provided them with a confidential information memorandum that described the Sundry Inventory and the opportunity to participate in the Sundry Inventory Sale Process. Five parties expressed a meaningful interest and elected to view the Sundry Inventory at a secure facility in Toronto. Ben Moss received four bids prior to the January 31, 2017 bid deadline. The Applicant selected the highest bid received, which was from Simplexdiam Inc. (“Simplex”). The sale to Simplex closed on February 2, 2017 and the Sundry Inventory was released to Simplex on February 3, 2017.

17. Due to the highly transactional wholesale nature of the Sundry Inventory and industry considerations, Simplex has requested that Ben Moss not publically disclose the purchase price. Attached as Confidential Exhibit "A" is a summary of the offers received. Given that the proceeds generated from the sale of the Sundry Inventory is below the \$1 million threshold for a single transaction requiring court approval set out in paragraph 11(a) of the Initial Order (as amended by the December 12 Order) and, when combined with the sale of the Residual Assets, is below the \$1.5 million threshold for aggregate transactions requiring court approval also set out in paragraph 11(a) of such Order, the Applicant is not seeking Court approval of the sale. The Monitor was consulted throughout the Sundry Inventory Sale Process and supported the sale to Simplex. Salus, the only remaining economic stakeholder, was aware of the sale process and supports the sale to Simplex.

**(iii) Remaining FF&E**

18. Certain furniture, fixtures and equipment (the "FF&E") located at Ben Moss's head office was also sold after December 30, 2016. Ben Moss agreed to provide the Liquidator with continued access to the head office for up to one additional month for ongoing liquidation of the FF&E. The sale of the FF&E was approved as part of the Liquidation Agreement. The Liquidator concluded the sales of the FF&E on January 30, 2017. All purchased FF&E was removed from Ben Moss's head office by January 31, 2017.

**(c) Final Reconciliation**

19. Throughout the Sale, the Liquidator provided regular updates on the results of the Sale to the CRO, the Monitor and Salus. As provided under the Liquidation Agreement, inventory reconciliations were prepared weekly by the Liquidator and reviewed by the CRO, Ben Moss and

the Monitor. In connection with these reconciliations, the CRO regularly reviewed reports and information on sales, expenses, and adjustment amounts.

20. The final reconciliation was to be completed within 30 days of the completion of the Sale. The parties continue to work diligently to complete the final reconciliation and anticipate concluding the reconciliation shortly. I understand that the Monitor will provide a final update on the outcome of the Sale once the full results of the Sale are known and the various reconciliations have been completed.

**(d) Assignments**

**(i) Intellectual Property**

21. Pursuant to the Liquidation Agreement, and in accordance with its terms, the Liquidator had the exclusive right to direct Ben Moss to designate an assignee of certain of Ben Moss's intellectual property rights and assets (the "IP"). The Liquidator negotiated the sale of IP to Charm (the "IP Sale") and the parties executed an IP conveyance agreement. The IP conveyance agreement was authorized by the Court in the December 12 Order, and the IP Sale closed on December 31, 2016. The transfer of IP has been completed and, pursuant to the Liquidation Agreement, the proceeds of this transaction were retained by the Liquidator.

22. As the Applicant's trademarks and tradename were transferred to Charm, the Applicant and the CRO intend to execute such documents as would be required to change the legal name of the Applicant to its underlying Manitoba numbered company name before the end of February 2017.

**(ii) Leases**

23. Pursuant to the Liquidation Agreement, the Liquidator had the exclusive right to direct Ben Moss to designate an assignee in respect of each of Ben Moss's real property leases. The Liquidator negotiated the transfer of 22 out of 52 of Ben Moss store leases (the "Assigned Leases") to various parties, including Charm, by way of lease assignment. The assignment of leases and the vesting of Ben Moss's right, title and interest in each Assigned Lease to the respective assignee was authorized by the Court in the December 12 Order. The effective date of the lease assignments was December 31, 2016, and the respective assignment transactions closed on December 31, 2016. The assignees under each lease assignment have entered each of the assigned premises.

24. Ben Moss is currently working with the landlords to determine and pay any outstanding percentage rent adjustments.

**(e) Real Estate Lease Disclaimers**

25. As set out in the Fourth and Fifth Manzoor Affidavits, Ben Moss previously delivered Notices to Disclaim or Resiliate an Agreement ("Disclaimers") with respect to all of Ben Moss's unassigned retail locations. Ben Moss did not receive any formal responses to those Disclaimers from any of the landlords.

26. Ben Moss delivered an additional Disclaimer dated January 1, 2017 to the landlord of its head office location in Winnipeg, Manitoba. Ben Moss did not receive a formal response to this Disclaimer and vacated the premises on January 31, 2017. A copy of this Disclaimer is attached as Exhibit "B".

**(f) Employees**

27. The vast majority of the approximately 500 Ben Moss individuals employed at the stores remained employed during the Sale. Employees working at the 22 store locations that were

assigned were provided an opportunity for ongoing employment with the respective lease assignees. I understand from discussions with Troy Calder of Charm and other Ben Moss employees that approximately 125 of those employees have entered into new employment agreements with the lease assignees. As of the conclusion of the Sale, the employment of all of the remaining Ben Moss retail employees was terminated and the employees were paid their final pay, along with any vacation pay outstanding, in the normal course.

28. Since I swore the Fifth Manzoor Affidavit, Ben Moss delivered notices of termination to each of its remaining head office employees. Ben Moss has engaged one of its former employees as a contractor to assist with the final reconciliation between Ben Moss and the Liquidator, as well as other miscellaneous and administrative matters, including the payment of December rent adjustments. It is anticipated that Ben Moss will continue to engage this contractor until the end of February 2017.

**(g) D&O Claims Solicitation**

29. In late January 2017, the Monitor commenced a truncated director and officer claims notice procedure. The Monitor sent letters soliciting potential claims against Ben Moss's directors and officers (a "D&O Claim") to potential claimants that the Monitor and Ben Moss determined were most likely to have a D&O Claim. On Friday, January 20, 2017, letters were sent to the former directors of the company. On Monday, January 23, 2017, additional letters were sent to the Canada Revenue Agency and the provincial taxing authorities. A form of the letter sent to potential claimants is attached as Exhibit "C".

30. The letters required potential claimants to notify the Monitor of their potential claims by no later than 5:00 p.m. on Monday, February 20, 2017. I understand that as of the swearing of this affidavit, the Monitor has received one formal response to these letters, which inquires about



asserting a potential D&O Claim for a de minimus amount. I also understand that the Monitor has received a letter from the Canada Revenue Agency indicating that they will not assert a D&O Claim.

**(h) Books and Records**

31. As Ben Moss no longer has any real property, the CRO has made certain temporary arrangements for maintaining Ben Moss's books and records. Physical records have been moved to off-site storage at Iron Mountain, a company that offers records management services. Ben Moss and Iron Mountain have entered into a month-to-month contract for this temporary storage.

32. The CRO has also arranged for Ben Moss's server to be stored temporarily at the CRO's office location in Toronto, Ontario. The CRO anticipates that either it or the Canada Revenue Agency ("CRA") may require certain information related to the Applicant only available on the accounting system located on the server at a future date.

33. Upon filing of the Monitor's Certificate, FAAN anticipates that it will be discharged from its role as CRO of the Applicant and the Applicant will no longer have any employees, office space, retail stores, or material assets. In order to deal with the books and records and in anticipation of the ultimate discharge of the CRO, the Applicant is seeking authorization for the CRO to arrange for the destruction of all of the Applicant's books and records, including its server.

**(i) Shilon Litigation**

34. I understand that the Monitor provided an update on certain litigation brought by Joseph Shilon, the sole ultimate shareholder of Ben Moss, against Salus Capital, FAAN and A&M in its report dated December 8, 2016. I understand that a further update will be provided in the Monitor's Fifth Report.

**C. Distribution to Salus**

35. As all of the obligations of Ben Moss under the credit agreement with Salus are secured by all of Ben Moss's assets, and given that there is no foreseeable scenario where the indebtedness of Ben Moss to Salus can repaid in full, it is anticipated that one or more distributions will be made to Salus in accordance with the December 12 Order. No other party's claims against Ben Moss would be impacted by any proposed distributions to Salus. Following these distributions, the Applicant will have no material assets.

**D. Termination of CCAA Proceedings**

36. In order to complete the administration of the Applicant's estate, Ben Moss will need to complete the Sale reconciliation with the Liquidator, file a final HST return once the final professional fees and other invoices have been rendered and paid, receive the return of certain credit card holdback amounts that arose during the Sale, and distribute the Applicant's remaining assets to Salus. I anticipate that each of these items will be completed prior to the end of April, 2017. Following completion of these and other administrative tasks, as well as the final distribution to Salus, the CRO does not anticipate any further responsibilities in its role as CRO of the Applicant in these CCAA Proceedings. The administration of these CCAA Proceedings will be concluded.

37. As described above, the CRO expects that the final distribution to Salus will be significantly less than the remaining Salus secured claim. Accordingly, there will be no funds available to distribute to any other creditors of the Applicant.

38. The CRO has duly and properly discharged and performed its duties and obligations in these CCAA proceedings in compliance and in accordance with the CCAA and all Orders of this Court made in these CCAA proceedings.

39. I believe that rather than incurring the cost and time of a further proceeding before this Court to seek termination of these CCAA Proceedings, it is appropriate and more efficient at this stage for FAAN as CRO and A&M as Monitor to be discharged and these CCAA proceedings to be terminated upon the filing of the Monitor's Certificate which confirms that, to the Monitor's knowledge, all matters to be attended to in these CCAA proceedings have been completed.

40. The Applicant is requesting that upon the granting of the Order sought in this motion that the DIP Charge and the Agent's Charge and Security Interest will terminate and be released. The Applicant is also requesting that the Administration Charge and the Directors' Charge be reduced from \$600,000 to \$100,000 and \$1,500,000 to \$100,000, respectively, and that upon filing of the Monitor's Certificate, the Administration Charge and the Directors' Charge will terminate and be released.

41. In addition to the termination of the proceedings and release of the remaining Charges, upon filing of the Monitor's Certificate, both the Monitor and the CRO will be fully released from any and all liability in any way relating to, arising out of, or in respect of the Applicant's CCAA proceedings. Both will still have the benefit of all previous Orders made in the Applicant's CCAA proceedings, including the relief granted in the Initial Order and the Amended and Restated Initial Order. At paragraph 23 of the Initial Order, the Court ordered that the CRO shall not be or be deemed to be a director, officer, or employee of the Applicant, and at paragraph 25 the Court ordered that the CRO shall not have any liability with respect to any losses, claims, damages or liabilities of any nature or kind, to any Person (as defined in the Initial Order) from and after the

date of the Initial Order, except to the extent such losses, claims, damages, or liabilities result from the gross negligence or wilful misconduct on the part of the CRO. The CRO will also continue to benefit from the release ordered by the Court at paragraph 16 of the December 12 Order, which provided that the CRO shall not have any liability whatsoever with respect to any losses, claims, damages or liabilities, of any nature or kind, to any Person (as defined in the Initial Order) in relation to each Assigned Lease and the sale of the IP from and after the date, respectively, that the agreement assigning the Assigned Lease or the agreement selling the IP becomes effective, except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct on the part of the CRO.

**E. CRO's Activities**

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

- (a) Working with the Liquidator to ensure that stores continued operating during the Sale;
- (b) Working with the Liquidator towards concluding the Sale;
- (c) Attending to lease assignment matters;
- (d) Assisting the Liquidator with store closures effective December 30, 2016;
- (e) Issuing the head office lease disclaimer;

- (f) Vacating the head office location;
- (g) Attending to matters relating to the sale of IP to Charm;
- (h) Meeting and corresponding regularly with the Liquidator regarding the planning and execution of the Sale;
- (i) Attending to residual sale matters for remaining merchandise and the ongoing liquidations during January, 2017;
- (j) Working with the Monitor on the weekly reconciliation of inventory purchases by the Liquidator;
- (k) Working with the Monitor on the final reconciliation;
- (l) Holding employee meetings and conference calls;
- (m) Delivering notices of termination to certain employees;
- (n) Attending regularly at the Applicant's head office in Winnipeg;
- (o) Meeting and corresponding regularly with the Applicant's landlords and their representatives;
- (p) Meeting and corresponding with Ben Moss's suppliers regarding, among other things, their pre-filing accounts, purported consignment agreements/arrangements and post-filing payments/purchases and settling consignment matters;
- (q) Reconciling amounts with creditors regarding goods and services received post-filing;

- (r) Corresponding with lessors to the Applicant regarding certain equipment and leasehold improvement leases;
- (s) Corresponding with lessors to Whitpay Inc. (“Whitpay”), a company the CRO understands is controlled by Joseph Shilon, regarding the lessors’ requests for Ben Moss return the equipment leased to Whitpay, but which is physically located in Ben Moss’ stores;
- (t) Corresponding and meeting with Salus Capital and its advisors;
- (u) Preparing information for Salus Capital regarding the Sale, including ongoing reporting on the results of the Sale;
- (v) Corresponding and meeting regularly with the Monitor;
- (w) Answering queries from Ben Moss’s creditors;
- (x) Assisting with the preparation of tax returns and tax filings;
- (y) Continuing dealings with Ben Moss’s insurer and broker and taking steps to renew certain of the Ben Moss’s policies;
- (z) Preparing for court hearings and reviewing related materials;
- (aa) Attending to matters regarding a counter-claim filed by Joseph Shilon in response to a claim filed by Salus Capital, including dealing with the CRO’s legal counsel, Lax O’Sullivan Lisus Gottlieb LLP; and
- (bb) Attending to matters regarding the truncated D&O claims notice procedure.

**F. Stay Extension is Appropriate**


43. As noted above, the Court granted a stay of proceedings in favour of Ben Moss, its directors and officers, the CRO and the Monitor during the Stay Period. The Court also granted a limited stay of proceedings in favour of JSN Inc. for the duration of the Stay Period. On December 12, 2016, the Court extended the Stay until February 28, 2017, or such later date as the Court may order.

44. Ben Moss seeks an extension of the Stay Period up to and including April 30, 2017. The extension is necessary and appropriate in the circumstances to allow Ben Moss to complete, among other things, the final Sale reconciliation, the return of certain credit card holdback amounts that arose during the Sale, the distribution of the Applicant's remaining assets to Salus, and the resolution of certain tax matters. This extension will be cost-effective in that the Applicant will not be required to return to Court for a separate termination hearing.

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

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

SWORN BEFORE ME at the City of  
Toronto, in the Province of Ontario on  
February 15, 2017.

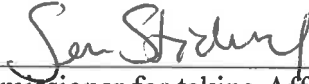
  
\_\_\_\_\_  
*Commissioner for Taking Affidavits*  
SEAN STIDWILL

  
\_\_\_\_\_  
NAVEED Z. MANJOOR

# TAB A



THIS IS **EXHIBIT "A"** REFERRED TO IN THE  
AFFIDAVIT OF NAVEED Z. MANZOOR, SWORN BEFORE ME  
THIS 15 DAY OF FEBRUARY, 2017.



---

A Commissioner for taking Affidavits, etc.

SEAN STIDWILL

# **Confidential Exhibit**

# TAB B

THIS IS **EXHIBIT "B"** REFERRED TO IN THE  
AFFIDAVIT OF NAVEED Z. MANZOOR, SWORN BEFORE ME  
THIS 15 DAY OF FEBRUARY, 2017.

*Sean Stidwill*

\_\_\_\_\_  
A Commissioner for taking Affidavits, etc.

SEAN STIDWILL

**Osler, Hoskin & Harcourt LLP**

Box 50, 1 First Canadian Place  
 Toronto, Ontario, Canada M5X 1B8  
 416.362.2111 MAIN  
 416.862.6666 FACSIMILE

**OSLER**

Toronto

January 1, 2017

Montréal

Sean Stidwill  
 Direct Dial: 416.862.4871  
 sstidwill@osler.com  
 Our Matter Number: 1172245

Calgary

Ottawa

Portage & Main Development Ltd.  
 Suite 590, 201 Portage Avenue  
 Winnipeg, Manitoba  
 R3B 3K6  
**Attention: President**

New York

Harvard Property Management  
 Suite 590, 201 Portage Avenue  
 Winnipeg, Manitoba  
 R3B 3K6  
**Attention: James Caplin and Gail Auriti**

Taylor McCaffrey LLP  
 9th Floor, 400 St. Mary Avenue  
 Winnipeg Manitoba  
 Canada R3C 4K5  
**Attention: David Jackson**

Dear Sirs/Madams:

**CCAA Proceedings of Ben Moss Jewellers Western Canada Ltd. (the "Ben Moss")**

As you may be aware, Ben Moss filed for and was granted protection from its creditors under the *Companies' Creditors Arrangement Act* (Canada) (the "CCAA") pursuant to an Initial Order issued by Justice Newbould of the Ontario Superior Court of Justice (Commercial List) on May 18, 2016, (as amended and restated from time to time). We act for Ben Moss in connection with these CCAA proceedings (the "CCAA Proceedings").

Please find enclosed a Notice by Debtor Company to Disclaim or Resiliate an Agreement which is being delivered to you in connection with the CCAA Proceedings pursuant to section 32 of the CCAA, and which will become effective on January 31, 2017.

Yours very truly,



Sean Stidwill

# OSLER

Page 2

SS:

Enclosure

c: Naveed Manzoor, *Ben Moss Jewellers Western Canada Ltd.*  
Michael De Lellis, *Osler, Hoskin & Harcourt LLP*  
Adam Zalev, *Alvarez & Marsal Canada Inc.*

## FORM 4

## NOTICE BY DEBTOR COMPANY TO DISCLAIM OR RESILIAE AN AGREEMENT

To: **Alvarez & Marsal Canada Inc.**, in its capacity as court-appointed Monitor, and **Portage & Main Development Ltd.**

Take notice that

1. Proceedings under the *Companies' Creditors Arrangement Act* ("the Act") in respect of **Ben Moss Jewellers Western Canada Ltd.** (the "Ben Moss") were commenced on the 18<sup>th</sup> day of May, 2016.
2. In accordance with subsection 32(1) of the Act, the debtor company gives you notice of its intention to disclaim or resiliate the following agreement(s):

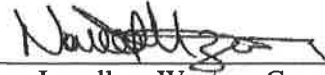
<b>Title of Agreement</b>	<b>Company</b>	<b>Vendor Name/Counter Party</b>	<b>Dated</b>
Lease	The Toronto-Dominion Bank	Ben Moss Jewellers Western Canada Ltd.	June 19, 1997
Offer to Extend and Amend Lease	Portage & Main Development Ltd.	Ben Moss Jewellers Western Canada Ltd.	May 26, 2006
Lease Extension and Amending Agreement	Portage & Main Development Ltd.	Ben Moss Jewellers Western Canada Ltd.	January 31, 2007
Lease Extension Agreement	Portage & Main Development Ltd.	Ben Moss Jewellers Western Canada Ltd.	January 19, 2016

(as assigned, amended, renewed, extended, restated, modified and/or supplemented from time to time, together with all other agreements and instruments, whether written or oral, between Ben Moss and **Portage & Main Development Ltd.** (or any predecessor in interest), arising out of or relating to the premises leased by Ben Moss Jewellers Western Canada Ltd. at 201 Portage Avenue in Winnipeg, Manitoba, in each case as assigned, amended, renewed, extended, restated, modified and/or supplemented from time to time, the "Agreement").

3. In accordance with subsection 32(2) of the Act, any party to the Agreement may, within 15 days after the day on which this notice is given and with notice to the other parties to the agreement and to the Monitor, apply to court for an order that the Agreement is not to be disclaimed or resiliated.
4. In accordance with paragraph 32(5)(a) of the Act, if no application for an order is made in accordance with subsection 32(2) of the Act, the Agreement is disclaimed or resiliated on the 31<sup>st</sup> day of January, 2017, being 30 days after the day on which this notice has been given.

- 2 -

Dated at Toronto, Ontario, on January 1, 2017.

A handwritten signature in black ink, appearing to read "N. H. Z.", is written above a horizontal line.

Ben Moss Jewellers Western Canada Ltd.



- 3 -

The Monitor approves the proposed disclaimer or resiliation.

Dated at Toronto, Ontario, on January 1, 2017.



Monitor's representative  
responsible for the proceedings

## FORM 4

## NOTICE BY DEBTOR COMPANY TO DISCLAIM OR RESILIAE AN AGREEMENT

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2. In accordance with subsection 32(1) of the Act, the debtor company gives you notice of its intention to disclaim or resiliate the following agreement(s):

Title of Agreement	Company	Vendor Name/Counter Party	Dated
Lease	CN Transactions Inc.	Unitel Communications Inc.	July 1, 1990
Lease Extension and Amending Agreement	Portage & Main Development Ltd.	AT&T Canada Corp.	June 1, 2000
Letter Agreement	Portage & Main Development Ltd.	MTS Allstream Inc.	April 12, 2005
Sublease	MTS Allstream Inc.	Ben Moss Jewellers Western Canada Ltd.	October 1, 2006
Lease Extension Agreement	Portage & Main Development Ltd.	Ben Moss Jewellers Western Canada Ltd.	January 29, 2007
Lease Extension Agreement	Portage & Main Development Ltd.	Ben Moss Jewellers Western Canada Ltd.	January 19, 2016

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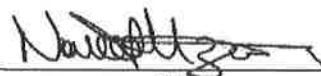
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- 2 -

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- 3 -

Dated at Toronto, Ontario, on January 1, 2017.

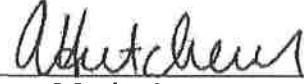
A handwritten signature in black ink, appearing to read "N. [unclear] [unclear]", written over a horizontal line.

Ben Moss Jewellers Western Canada Ltd.

- 4 -

The Monitor approves the proposed disclaimer or resiliation.

Dated at Toronto, Ontario, on January 1, 2017.



\_\_\_\_\_  
Monitor's representative  
responsible for the proceedings

## FORM 4

## NOTICE BY DEBTOR COMPANY TO DISCLAIM OR RESILIAE AN AGREEMENT

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- 2 -

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3. In accordance with subsection 32(2) of the Act, any party to the Agreement may, within 15 days after the day on which this notice is given and with notice to the other parties to the agreement and to the Monitor, apply to court for an order that the Agreement is not to be disclaimed or resiliated.
4. In accordance with paragraph 32(5)(a) of the Act, if no application for an order is made in accordance with subsection 32(2) of the Act, the Agreement is disclaimed or resiliated on the 31<sup>st</sup> day of January, 2017, being 30 days after the day on which this notice has been given.

- 3 -

Dated at Toronto, Ontario, on January 1, 2017.



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Ben Moss Jewellers Western Canada Ltd.



The Monitor approves the proposed disclaimer or resiliation.

Dated at Toronto, Ontario, on January 1, 2017.



\_\_\_\_\_  
Monitor's representative  
responsible for the proceedings

# TAB C

THIS IS **EXHIBIT "C"** REFERRED TO IN THE  
AFFIDAVIT OF NAVEED Z. MANZOOR, SWORN BEFORE ME  
THIS 15 DAY OF FEBRUARY, 2017.



---

A Commissioner for taking Affidavits, etc.

SEAN STIDWELL

January 20, 2017

Dear potential claimant:

**RE: Notice of Distribution and Requirement for Submission of Director and Officer Claims by February 20, 2017**

As you know, on May 18, 2016, Ben Moss Jewellers Western Canada Ltd. ("**Ben Moss**") commenced court-supervised restructuring proceedings under the *Companies' Creditors Arrangement Act* (the "**CCAA**"). On the same day, Ben Moss obtained an order granting a stay of proceedings (as amended and restated on May 26, 2016, the "**Initial Order**") from the Ontario Superior Court of Justice (Commercial List) (the "**Court**"). Pursuant to the Initial Order, Alvarez & Marsal Canada Inc. was appointed as Monitor of Ben Moss (in such capacity, the "**Monitor**"). A copy of the Initial Order, as well as all other Court orders and related motion materials, can be found on the Monitor's website at the following address: <https://www.alvarezandmarsal.com/benmoss>.

Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Initial Order.

On July 29, 2016, the Court issued an order, among other things, approving an agency agreement dated July 22, 2016 (the "**Liquidation Agreement**") entered into between Ben Moss and a contractual joint venture composed of Gordon Brothers Canada ULC and Merchant Retail Solutions ULC (the "**Liquidator**") for the liquidation of certain assets of Ben Moss (the "**Liquidation**").

On December 31, 2016, the Liquidator completed the Liquidation. Ben Moss is now in the process of completing the reconciliation required under the Liquidation Agreement and selling its remaining sundry and redundant assets (the "**Sale**"), all of which it anticipates completing on or around January 31, 2017.

Pursuant to an order of the Court granted on December 12, 2016 (the "**December 12 Order**"), Ben Moss is authorized to make such further distributions to Salus Capital Partners, LLC ("**Salus**"), at such times and in such amounts as Ben Moss and the Monitor may determine in their sole discretion, acting reasonably, in the maximum amount of Salus's secured claim owing by Ben Moss under the Amended and Restated Credit Agreement dated July 18, 2013 (as amended).

In advance of concluding the Sale and the eventual distribution of all remaining assets to Salus, the Monitor is soliciting potential claims against Ben Moss's directors and officers (each a "**D&O Claim**") from those potential claimants that have been determined by the Monitor and the Company, acting reasonably, as most likely to have a D&O Claim. Potential claimants that intend to assert a D&O Claim must contact the Monitor for more

information about submitting a D&O Claim (a “**Claims Inquiry**”) by email at [monitor.benmoss@alvarezandmarsal.com](mailto:monitor.benmoss@alvarezandmarsal.com) by **no later than 5:00 p.m. on Monday, February 20, 2017.**

The subject line of your email should read “Ben Moss – D&O Claim Inquiry – [insert name of claimant].”

If you are aware of any other potential D&O claimants please inform the Monitor.

In the event that you are unable or unwilling to contact the Monitor by email, you may courier your Claims Inquiry and contact details to the address below, following which a representative of the Monitor will contact you:

Alvarez & Marsal Canada Inc.  
Royal Bank Plaza, South Tower  
200 Bay Street, Suite 2900  
P.O. Box 22  
Toronto ON M5J 2J1  
Canada

Attention: Matthew Brouwer

If the Monitor has not received your Claims Inquiry by 5:00 p.m. on Monday, February 20, 2017, the Monitor and Ben Moss reserve the right to make a distribution of all remaining cash pursuant to paragraph 15 of the December 12 Order.

If you have any questions or concerns regarding this notice, please contact the Monitor by phone at 1-855-499-1480 or by sending an email to the Monitor at [monitor.benmoss@alvarezandmarsal.com](mailto:monitor.benmoss@alvarezandmarsal.com).

Sincerely,

Alvarez & Marsal Canada Inc., in its capacity as Monitor of Ben Moss and not in its personal or corporate capacity

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.

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

Applicant

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

Proceeding commenced at Toronto

**MOTION RECORD OF THE APPLICANT**  
(Stay Extension, Discharge and CCAA Termination Order)

**OSLER, HOSKIN & HARCOURT LLP**  
P.O. Box 50, 1 First Canadian Place  
Toronto, ON M5X 1B8

**Marc Wasserman** (LSUC# 44066M)  
Tel: 416.862.4908  
Email: [mwasserman@osler.com](mailto:mwasserman@osler.com)

**Michael De Lellis** (LSUC#: 48038U)  
Tel: 416.862.5997

**Karen Sachar** (LSUC#: 59944E)  
Tel: 416.862.5949

**Sean Stidwill** (LSUC#: 71078J)  
Tel: 416.862.4871  
Fax: 416.862.6666

Counsel for the Applicant