

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.**

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

JULY 5, 2016

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APPENDIX A FIRST REPORT OF THE MONITOR DATED JUNE 13, 2016
(WITHOUT APPENDICES)

APPENDIX B 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 (the "**Initial Order**"), Alvarez & Marsal Canada Inc. ("**A&M**" or the "**Monitor**") was appointed Monitor of the Applicant in the CCAA proceedings (the "**CCAA Proceedings**").

1.2 On May 26, 2016, this Court issued an amended and restated Initial Order (the "**Amended and Restated Initial Order**", hereinafter, unless the context otherwise requires, the "**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. The First Report (without Appendices) is attached as **Appendix "A"** to this report.

1.3 This report is the second report of the Monitor (the "**Second Report**") in connection with these CCAA Proceedings. In addition to the Second Report, the Monitor has provided to this Court the First 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, 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.

1.4 On June 15, 2016, this Court issued an order (the "**Stay Extension and Sales Guidelines 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 ("**GBC**") in respect of the sale to liquidate (the "**Liquidation Sale**") the inventory, furniture, fixtures and equipment in certain of the Applicant's stores; and (c) approving an amendment to the Applicant's \$8 million debtor-in-possession facility ("**DIP Facility**") from Salus CLO 2012-1 Ltd. ("**DIP Lender**") which is managed by Salus Capital Partners, LLC ("**Salus Capital**") as the agent, whereby the Repayment Waterfall (as defined and described below) was revised.

2.0 PURPOSE OF THIS REPORT

2.1 The purpose of this Second Report is to provide this Court with the following:

- (a) an update regarding the Applicant's operations and restructuring efforts since the First Report, including matters related to:
 - (i) the Liquidation Sale;
 - (ii) landlord negotiations and lease disclaimers;
 - (iii) employees of Ben Moss; and
 - (iv) the Applicant's suppliers and the treatment of consignment arrangements;
- (b) an update on Forevery Jewellery Inc. ("**FJI**"), a company that is not affiliated with Ben Moss but affiliated with its principal, and matters involving companies affiliated with Ben Moss, including J.S.N. Inc. ("**JSN**");
- (c) an update on the first phase ("**Phase I**") of the refinancing and investment solicitation process (the "**RISP**") and the proposed replacement of the second phase ("**Phase II**") of the RISP with the Process (as defined and described below);

- (d) an update on the DIP Facility and the borrowings thereunder;
- (e) the receipts and disbursements of Ben Moss for the three-week period ended June 24, 2016, as compared to the cash-flow forecast previously included with the First Report;
- (f) the Applicant's cash-flow forecast for the period ending September 2, 2016;
- (g) the proposed extension of the Stay Period until August 31, 2016;
- (h) the Applicant's request to approve the activities of FAAN Advisors Group Inc. in its capacity as the Chief Restructuring Officer (the "CRO") of Ben Moss since its appointment;
- (i) the Monitor's activities since the date of the First Report (June 13, 2016); and
- (j) the Monitor's conclusions and recommendations in connection with the foregoing.

3.0 TERMS OF REFERENCE

3.1 In preparing this Second 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* 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 Second Report consists of forecasts and projections. An examination or review of the financial forecasts and projections, as outlined in the *Chartered Professional Accountants Canada Handbook*, has not been performed.

3.3 Future oriented financial information referred to in this Second 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 Second Report are expressed in Canadian dollars.

3.5 This Second Report should be read in conjunction with the Affidavit of Mr. Naveed Z. Manzoor, Managing Director of the CRO, sworn June 30, 2016 (the "**Third Manzoor Affidavit**").

4.0 OPERATIONS AND RESTRUCTURING UPDATE

4.1 Since the date of the First Report, the Monitor has continued to work closely with Ben Moss and the CRO to normalize the Applicant's business and assist the Applicant with operating its business as a going concern. These efforts have included assisting with the ongoing Liquidation Sale and engaging in communications with stakeholders, including landlords, employees and suppliers, each of which is summarized below.

The Liquidation Sale

4.2 As previously reported, GBC has been engaged as the Applicant's agent to liquidate the merchandise, furniture, fixtures and equipment in certain of the Ben Moss stores. The Liquidation Sale has been underway for approximately nine weeks and currently involves ten¹ of the Applicant's stores (the "Clearance Locations").

4.3 As discussed in the First Report, the Liquidation Sale initially performed below expectations. However, over the last few weeks, sales have improved due to changes to advertising and mark-down structures, improved merchandise mix and increased store traffic. Sales are currently meeting the expectation of GBC and Ben Moss. The Liquidation Sale is expected to end on or about July 31, 2016; however, as inventory levels in the stores decline, it is possible that certain Clearance Locations will close prior to that date.

Landlord Negotiations and Lease Disclaimers

4.4 During the week of June 13, 2016, Ben Moss and the Monitor held a number of meetings with the Applicant's major landlords to discuss Ben Moss's real estate portfolio and opportunities to improve the economic terms of certain underperforming locations. In addition,

subsequent to the week of June 13, 2016, with the assistance of the CRO and Ben Moss, the Monitor has participated in numerous additional discussions and meetings with a number of landlords. Certain landlords have offered lease concessions, while others have advised that they would like the RISIP to advance further before responding to Ben Moss's request for assistance. If appropriate, Ben Moss will continue discussions with these landlords in an effort to determine if a consensual resolution can be achieved.

4.5 On June 16, 2016, Ben Moss, with the consent of the Monitor, provided a Notice to Disclaim or Resiliate an Agreement to Midtown Plaza Inc. (the "Midtown Kiosk Disclaimer") with respect to an unprofitable kiosk located in the Midtown Plaza. A copy of the Midtown Kiosk Disclaimer is attached to the Third Manzoor Affidavit as Exhibit "D".

4.6 On June 30, 2016, Ben Moss, with the consent of the Monitor, issued a Notice to Disclaim or Resiliate an Agreement (together with the Midtown Kiosk Disclaimer, the "Disclaimers") to landlords in respect of ten of its stores (nine of which are Clearance Stores from which the Liquidation Sale is being conducted). The affected stores (collectively, the "Affected Stores") are listed below:

<u>Store Name</u>	<u>Location</u>
Halifax Centre	Halifax, Nova Scotia
Gateway Mall	Prince Albert, Saskatchewan
Sherway Gardens	Etobicoke, Ontario
Fairview Park	Kitchener, Ontario
Bayshore Shopping Centre	Ottawa, Ontario

¹ The Liquidation Sale initially included 11 of the Applicant's stores but, as described below, the Applicant's store in Halifax, Nova Scotia, was closed due to a fire and is no longer part of the Liquidation Sale.

Cambridge Centre	Cambridge, Ontario
Northgate Mall	North Bay, Ontario
Pine Centre	Prince George, British Columbia
McAllister Place	Saint John, New Brunswick
Georgian Mall	Barrie, Ontario

4.7 It is anticipated that the Disclaimers will improve operating results. As at the date of this Second Report, the Applicant had not received any response to the Disclaimers.

Employees

4.8 Upon the remainder of the Disclaimers becoming effective (i.e. 30 days after their delivery to the applicable landlords), Ben Moss will terminate approximately 70 employees who work at the Affected Stores. If viable, Ben Moss will attempt to offer certain terminated employees jobs in other store locations. The Applicant, in consultation with the Monitor, continues to evaluate other opportunities to reduce labour related costs.

4.9 As described in the Third Manzoor Affidavit, the CRO and the remaining members of Ben Moss's senior management team continue to operate Ben Moss as a going concern in the ordinary course.

Suppliers and Consignment

4.10 In general, the Applicant's major suppliers have continued to accept orders and supply goods to Ben Moss throughout the CCAA Proceedings. JSN Inc. an affiliate of the Applicant which is owned by Joseph Shilon, continues to supply products to the Applicant but the Applicant is in the process of establishing supply relationships with other suppliers to enable it to improve its inventory mix in its retail locations.

4.11 As described in the First Report, certain parties (“**Potential Consignment Suppliers**”) have asserted that their supply arrangements with Ben Moss constitute consignment arrangements, thereby entitling them to reclaim the goods that they supplied to Ben Moss. The Monitor continues to work with its legal counsel and the Applicant to review the supply arrangements between Ben Moss and the Potential Consignment Suppliers to determine whether they meet the strict legal test of consignment and to formally document the business terms relating to the supply and payment of valid consignment arrangements.

Stores Closed Due to Fire

4.12 As described in the First Report, the Applicant suffered a fire at its Halifax store and was forced to close its Fort McMurray store temporarily due to the wild fires in that region. As described above, the Halifax store is one of the Affected Stores for which a Disclaimer was issued to the applicable landlord. The Fort McMurray store has reopened, albeit on restricted hours. Ben Moss has filed an insurance claim in respect of both of these stores.

5.0 MATTERS INVOLVING FJI

5.1 FJI operates a wholesale jewellery business. FJI acquires products for its business from JSN Inc. FJI is owned by Joseph Shilon’s daughter and is not an affiliate of Ben Moss.

5.2 As described in the Prior Reports, FJI has guaranteed the obligations of Ben Moss under the DIP Facility and the obligations of Ben Moss and JSN Inc., J.S.N. Jewellery UK Limited (“**JSN UK**”) and GMJ Corporation (the “**Other Borrowers**”) under a credit facility (the “**Credit Facilities**”) provided by Salus Capital, which was in default as at the Filing Date. Salus Capital has agreed to forebear from enforcing the defaults under the Credit Facilities and to continue to make the Credit Facilities available, subject to certain terms and conditions which are reflected in an accommodation agreement between Ben Moss, the Other Borrowers, FJI, P.M.R.

Inc. ("PMR"), Always & Forever Family Collection Incorporated ("AFFC"), Joseph Shilon, Salus Capital and the DIP Lender (the "Accommodation Agreement").

5.3 Recently, Salus Capital terminated its forbearance obligations in respect of FJI under the Accommodation Agreement due to certain breaches of the Accommodation Agreement. On June 27, 2016, Salus Capital obtained an order of the Ontario Superior Court of Justice (Commercial List) appointing Richter Advisory Group Inc. ("Richter") as the interim receiver of the assets of FJI. On June 30, 2016, Salus Capital obtained an order of the Ontario Superior Court of Justice (Commercial List) appointing Richter as the receiver of the assets of FJI (the "Receiver"). Additional details in respect of FJI and its relationship with the Applicant are provided in materials filed with the Court, which can be found at the Receiver's website.

6.0 UPDATE ON PHASE I OF THE RISP AND PROPOSED REPLACEMENT OF PHASE II

Update on Phase I of the RISP

6.1 An overview of the RISP and the Monitor's activities in respect of the RISP were provided in the Prior Reports.

6.2 The purpose of the RISP is to seek proposals from Qualified Bidders (as defined in the RISP) for one or a combination of the following transactions:

- (a) a refinancing of all or part of the Credit Facilities (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"**, and together with a Reinvestment Proposal and JSN Group Refinancing, the **"Potential Transactions"**).

6.3 As described in the First Report, on June 10, 2016, the Monitor provided all participants with a letter setting out the instructions for bid submission in accordance with Phase I of the RISP, which required, among other things, that participants submit their non-binding letters of intent ("**LOIs**") by 5:00 p.m. EDT on or before June 17, 2016 (the "**Phase I LOI Deadline**"). Following the Phase I LOI Deadline, the Monitor, in consultation with the CRO and Salus Capital, reviewed the LOIs received with a view to determining whether the LOIs constituted Qualified LOIs (as defined in the RISP) capable of resulting in a Qualified Bid (as defined in the RISP).

6.4 During Phase I, 37 parties executed a non-disclosure agreement ("**NDA**") with the Applicant, received confidential information and conducted due diligence in respect of the Potential Transactions. On or before the Phase I LOI Deadline, the Monitor received a number of LOIs from bidders in respect of the Potential Transactions. The Monitor will be providing this Court with a more comprehensive update in this regard at a later time. Given the ongoing nature of the RISP and the Process (as described further below) the Monitor is of the view that it is too commercially sensitive to provide further details at this time.

6.5 No Qualified LOIs were received for a JSN Group Refinancing Proposal or a Reinvestment Proposal. Pursuant to the RISP, Salus Capital may terminate the RISP if it is determined that no Qualified LOI has been received. As a result, on June 22, 2016, Salus Capital provided written notice to the CRO and the Monitor that it exercised its right, pursuant to the

RISP, to terminate the RISP with respect to transactions involving JSN Inc., JSN UK, 2373138 Ontario Inc., AFFC, GMJ, FJI and PMR (collectively, the "JSN Group") and it was determined that JSN Group Refinancing Proposals and Reinvestment Proposals would no longer be pursued.

6.6 The Monitor received LOIs for BM Sale Proposals that it determined, in consultation with the CRO and Salus Capital, to be Qualified LOIs. Based on the LOIs 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 specifically as it relates to Ben Moss. Accordingly, the Applicant is seeking to modify the RISP to provide for both BM Sale Proposals and, in order to establish a "valuation floor", the solicitation of transactions involving the liquidation of the inventory, furniture, fixtures and equipment located in the Applicant's stores (other than the Clearance Locations) (each, an "Agent Proposal").

6.7 On this basis, the Monitor, exercising its reasonable judgment and following consultation with Salus Capital and the CRO, took the following steps on or about June 23, 2016:

- (a) recommended to the CRO that certain LOIs for BM Sale Proposals be accepted as Qualified LOIs;
- (b) contacted certain parties (each, a "Qualified Sale Bidder") to advise them that their LOIs had been accepted as Qualified LOIs and that the Applicant would be seeking modifications to Phase II to the RISP to, among other things, permit the submission and consideration of Agent Proposals; and

- (c) identified and contacted parties that may have an interest in submitting an Agent Proposal and invited such interested parties to execute NDAs and commence due diligence regarding potential Agent Proposals.

6.8 Following the communications described above, Phase I of the RISP came to an end. After consultation with Salus Capital, the Monitor has recommended to the CRO that the RISP proceed to Phase II, subject to the amendments to the RISP described below.

Proposed Modifications to the RISP: Replacement of Phase II of the RISP

6.9 The Applicant is proposing to replace Phase II of the current RISP with the process (the "Process") attached as Schedule "A" to the draft Order found at Tab 1A to the Applicant's motion record dated June 30, 2016. A summary of the Process is set out below.

Removal of JSN Group Refinancing Proposals and Reinvestment Proposals

6.10 As described above, Salus Capital has terminated the RISP with respect to the JSN Group. As a result, the Process has revised Phase II to remove the procedures for submitting and evaluating JSN Group Refinancing Proposals or Reinvestment Proposals.

Inclusion of Agent Proposals

6.11 The Process establishes the requirements for the submission of an Agent Proposal. A party that wishes to submit an Agent Proposal (each, a "Potential Agent Bidder") must deliver to the Monitor a letter setting forth the identity of the Potential Agent Bidder, contact information and full disclosure of the principals of the Potential Agent Bidder and an executed NDA. A Potential Agent Bidder that has provided the foregoing documents and information and that the Monitor in its reasonable business judgment, in consultation with the CRO and Salus

Capital, determines is likely to be able to consummate an Agent Proposal on or before September 6, 2016, or such later date as may be agreed to by the Applicant and the Monitor, in consultation with Salus Capital (the “**Outside Date**”) will be deemed a “Qualified Bidder” (each a “**Qualified Agent Bidder**”).

BM Sale Proposals; Qualified Sale Bidders

6.12 The Process deems Qualified Sale Bidders to be Qualified Bidders for the purposes of the Process and authorizes such parties to participate in Phase II, as replaced by the Process.

Information and Documents Provided to Qualified Bidders

6.13 The Monitor will provide each Qualified Sale Bidder or Qualified Agent Bidder (each, a “**Qualified Bidder**”) with access to an electronic data room (the “**Data Room**”) and facility tours. Qualified Agent Bidders will also be given on-site presentation(s) by Senior Management.

6.14 A form of agreement of purchase and sale (the “**Form of APS**”) and a form of agency agreement (the “**Form of Agency Agreement**”) will be developed by Ben Moss in consultation with the Monitor and will be provided to Qualified Bidders in respect of a BM Sale Proposal or an Agent Proposal, respectively.

Submission of Draft Bids and Final Bids

6.15 A Qualified Bidder that wishes to pursue a BM Sale Proposal or Agent Proposal must deliver a draft proposal (the “**Draft Bid**”) based on the Form of APS or Form of Agency Agreement, as applicable, to the Monitor by no later than 5:00 p.m. (Eastern Daylight Time) on

July 15, 2016 or such other date determined by the Monitor, Ben Moss and Salus Capital (the "**Draft Bid Deadline**"). Following receipt of Draft Bids, the CRO and the Monitor shall review the Draft Bids and may provide Qualified Bidders with comments thereon in advance of the Bid Deadline (as defined below).

6.16 Final binding proposals (each, the "**Final Bid**") shall be delivered to the Monitor by no later than 5:00 p.m. (Eastern Daylight Time) on July 22, 2016 or such other date determined by the Monitor, Ben Moss and Salus Capital (the "**Bid Deadline**"). A Qualified Bidder must have submitted a Draft Bid in order to submit a Final Bid, unless such requirement is waived in accordance with the terms of the Process.

Evaluation of Final Bids

6.17 The factors to be considered for Final Bids to become Qualified Bids are outlined in the Process, together with a non-exhaustive evaluation criteria for Final Bids. Among other things, a Final Bid must be an irrevocable offer that include a fully executed agreement of purchase and sale or agency agreement based on the Form of APS or Form of Agency Agreement, as applicable and be accompanied by a refundable deposit in an amount equal to not less than 10% of the purchase price, in the case of a BM Sale Proposal, or 10% of the guaranteed payment amount, in the case of an Agent Proposal and be irrevocable until Court approval of the Successful Bid (as defined in the RISP). The Monitor, in consultation with the CRO and with the approval of Salus Capital, may waive compliance with any of the requirements of a Qualified Bid.

6.18 If one or more Qualified Bids are received in respect of either or both of a BM Sale Proposal or an Agent Proposal, the Monitor, exercising its reasonable business judgment, in consultation with the CRO and with the approval of Salus Capital, will either:

- (a) recommend to the Applicant that the most favourable Qualified Bid be selected and that the Monitor, the Applicant and their advisors negotiate and settle the terms of definitive closing documents, which, if accepted by Ben Moss, would become the Successful Bid; or
- (b) proceed with an auction process to determine the Successful Bid (the "Auction").

Auction

6.19 In the event that the Auction will be held, the Monitor will send a process letter (the "Process Letter") to all Auction participants by no later than July 29, 2016. The Process Letter will include, among other things: (a) detailed bidding procedures, including bid assessment criteria; and (b) provide an overview of the Comparison Model (as defined below), including underlying assumptions. To the extent determined appropriate by the Monitor, the Process Letter shall offer each Qualified Bidder an opportunity to meet with the Monitor prior to the Auction date to review the procedures in respect of same.

6.20 The Monitor, in consultation with the CRO and Salus Capital, is in the process of developing a financial comparison model (the "Comparison Model") which will be used to compare Qualified Bids and subsequent bids submitted during the Auction, if applicable.

6.21 If the Auction is held, it will be conducted by the Monitor or its designate and is scheduled to proceed on August 4, 2016, or such other date determined by the Monitor, Ben Moss and Salus Capital. During the Auction, the Monitor will use the Comparison Model and such other factors that the Monitor, in consultation with the CRO and Salus Capital, considers appropriate (including, non-financial criteria) to determine the Successful Bid.

6.22 The Applicant will apply to the Court for an order approving the Successful Bid to be held on a date to be scheduled by the Court. All Qualified Bids (other than the Successful Bid) will be deemed rejected on the date of approval of the Successful Bid by the Court.

Summary of Key Dates

6.23 In summary, the key dates under the Process are as follows:

Key Dates	Milestones
July 15, 2016*	Draft Bid Deadline
July 22, 2016*	Bid Deadline
No later than July 29, 2016	Identification of Qualified Bidders
No later than July 29, 2016	Process Letter Sent to Qualified Bidders
August 4, 2016*	Auction (if applicable)
September 6, 2016*	Outside Date

* or such other date determined by the Monitor, Ben Moss and Salus Capital

The Monitor's Comments and Observations Regarding the Process

6.24 The Monitor supports the Applicant's request to replace Phase II of the RISP with the Process as it creates a more competitive environment in an effort to maximize realizations for stakeholders. The Monitor will continue to have the ability to supervise all aspects of the RISP, as amended by the Process, and any transactions resulting therefrom, make recommendations as to whether the RISP should be terminated and determine whether Final Bids constitute Qualified Bids. In addition, the Monitor or the Applicant retains the right to seek the advice and direction of the Court if clarification is required with respect to the RISP. Furthermore, the Monitor in consultation with the CRO and Salus Capital, can modify the Process if in its reasonable business judgment, it is appropriate.

6.25 The Process was developed by way of extensive negotiations among the Applicant, Salus Capital, the Monitor and their respective legal advisors and the CRO. The RISP is intended to maximize the value of Ben Moss for the benefit of its stakeholders and the Monitor believes that the changes to the RISP resulting from the Process will facilitate this objective.

6.26 The RISP specifically provides the Monitor, in consultation with the CRO and Salus Capital, to consider a range of factors when determining the Successful Bid, including non-financial criteria. Accordingly, to the extent appropriate, other factors, beyond simply the highest price achieved (such as other favourable terms and conditions) will be taken into account to determine the Successful Bid and ensure that the interests of all of the stakeholders of Ben Moss are considered.

6.27 The Monitor continues to be satisfied that the RISP is being managed in accordance with its terms and that parties are being provided a reasonable opportunity to participate in the process. The Monitor will report to this Court on the results of Phase II as revised by the Process in a subsequent report to the Court.

7.0 DEBTOR IN POSSESSION FINANCING

7.1 In accordance with the Initial Order and subject to the terms of the DIP Facility, the Applicant has access to maximum borrowings under the DIP Facility equal to the principal amount of the U.S. dollar equivalent of Cdn.\$8 million.

7.2 As discussed in the First Report, it was a condition of the DIP Facility that cash from the Applicant's operations be deposited into blocked accounts and transferred to Salus Capital to: (a) first, repay the amounts drawn on the Credit Facilities that exceed the maximum revolving loan thereunder (the "**Permitted Overadvance**"); (b) then repay obligations under the DIP Facility; and (c) finally, pay pre-filing obligations under the Credit Facilities (the

“**Repayment Waterfall**”). On June 15, 2016, the Applicant obtained the Stay Extension and Sales Guideline Order, which approved the DIP Agreement Amendment dated June 14, 2016, where the Repayment Waterfall was amended to provide that cash receipts from Ben Moss’s operations are first applied to obligations under the DIP Facility rather than being applied to reduce the Permitted Overadvance.

7.3 As at June 29, 2016, Ben Moss has made seventeen borrowing requests and borrowed approximately \$8.7 million under the DIP Facility and used cash from its operations to pay down \$3.2 million of the DIP Facility in accordance with the Repayment Waterfall. As of June 29, 2016, \$5.5 million remains outstanding under the DIP Facility.

8.0 CASH FLOW RESULTS RELATIVE TO FORECAST

Cash Flow Results

8.1 Cash receipts and disbursements for the three-week period ended June 24, 2016 (the “**Reporting Period**”) as compared to the cash flow forecast found as Appendix A to the First Report (the “**June 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 June 24, 2016			
(\$000's CAD)			
	Forecast	Actual	Variance
Cash Receipts			
Sales Receipts	4,016	4,205	189
Total Cash Receipts	4,016	4,205	189
Cash Disbursements			
Inventory purchases	1,404	1,004	400
Occupancy, taxes, capital leases, SG&A and other	1,447	1,022	425
Payroll & related payments	1,281	1,222	59
Professional fees	255	808	(553)
Interest and fees (note 2)	-	67	(67)
Total Cash Disbursements	4,387	4,123	264
Total Net Cash Flow	(371)	82	453
<u>CONTINUITY OF FINANCING</u>			
DIP FACILITY			
Opening DIP Balance	3,692	3,692	-
Draw / (repayment), net	1,327	2,062	(735)
ENDING DIP BALANCE	5,019	5,753	(735)
Note 1	Readers are cautioned to read the Terms of Reference as set out in the First Report of the Monitor dated June 13, 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.		
Note 3	For continuity of financing including the pre-filing revolving credit facility and DIP Facility, please refer to Appendix B of the First Report of the Monitor dated June 13, 2016.		

8.2 During the Reporting Period, Ben Moss's total cash receipts were approximately \$200,000 higher than projected in the June Cash Flow Forecast. Senior Management attributes this variance to improvement in performance of the Liquidation Sale which, after disappointing initial results, has performed much better for the reasons described in paragraph 4.3 above.

8.3 Ben Moss' total disbursements during the Reporting Period were approximately \$300,000 lower than projected in the June Cash Flow Forecast. Inventory purchases were lower than planned due to timing of receipts from suppliers while non-trade payments relating to certain operating expenses were lower than budget. The positive variances were partially offset

by professional fee payments, which were higher than budget, largely due to payments related to expenses incurred in the pre-filing period.

8.4 Overall, during the Reporting Period, Ben Moss experienced a positive cash flow variance of approximately \$500,000 relative to the June Cash Flow Forecast due to positive variances in both cash receipts and disbursements. As at June 24, 2016, Ben Moss had an ending cash balance of approximately \$350,000.

Variance Report and Credit Facilities

8.5 As described in the First Report, Ben Moss and the Other Borrowers are in breach of the Accommodation Agreement and the agreements in respect of the Credit Facilities and the DIP Facility due to the fact that the 13-week cash flow projections for Ben Moss and the Other Borrowers (which are prepared on a consolidated basis) for the two-week period ended May 27, 2016 showed negative variances in excess of 10%. The performance of the Applicant is expected to continue to improve due to the turnaround in the Liquidation Sale and is expected to reduce future variances. Ben Moss, the Monitor and Salus Capital continue to monitor the variance.

8.6 Salus Capital has reserved its rights in connection with the variance but has continued to permit the Other Borrowers to access the Credit Facilities in accordance with the terms of the Accommodation Agreement. As at June 24, 2016, the total amount outstanding under the Credit Facilities was approximately \$50.2 million.

8.7 Due to the DIP Amendment and the resulting changes to the Repayment Waterfall, it is not anticipated that the outstanding balance under the Credit Facilities will be materially reduced.

9.0 CASH FLOW FORECAST

9.1 The Applicant has prepared an updated and extended cash flow forecast (the "Cash Flow Forecast") for the period of June 25, 2016 to September 2, 2016 (the "Cash Flow Period"). The Applicant is seeking an extension of the Stay Period to August 31, 2016 and the Cash Flow Period corresponds with this extension request. The Cash Flow Forecast shows that Ben Moss currently has sufficient cash resources through the DIP Facility to sustain its operations through the proposed Stay Period. A copy of the Cash Flow Forecast is attached as Appendix "B" to this report.

9.2 The Cash Flow Forecast is presented on a weekly basis during the Cash Flow Period and represents Ben Moss 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").

9.3 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.

9.4 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 10-week period ended September 2	
(\$000's)	
	<u>Amount (\$)</u>
Forecast Cash Inflow	
Collections	12,472
Forecast Total Receipts	<u>12,472</u>
Forecast Cash Outflow	
Occupancy, taxes, capital leases, SG&A and other	5,871
Payroll & related payments	3,803
Inventory purchases	3,430
Professional fees	1,250
Interest and fees	348
Total Forecast Outflow	<u>14,702</u>
Total Net Cash Flow	<u>(2,231)</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.
Note 2	For continuity of financing including the pre-filing revolving credit facility and DIP facility, please refer to Appendix B.

9.5 The Cash Flow Forecast projects that the Applicant will require a total net draw on the DIP Facility of \$2.2 million over the Cash Flow Period.

9.6 The Cash Flow Forecast includes purchases of approximately \$3.4 million of product and \$400,000 of interest and fees to the DIP Lender in relation to the DIP Facility. For additional detail surrounding the Cash Flow Forecast refer to Appendix "B".

9.7 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.

10.0 EXTENSION OF THE STAY PERIOD

10.1 Pursuant to the Stay Extension and Sales Guideline Order, the Stay Period will expire on July 15, 2016. The Applicant is seeking an extension of the Stay Period to August 31, 2016. The Applicant is also seeking an extension of the Stay Period to August 31, 2016 in favour of JSN Inc. solely with respect to the Applicant Related Liabilities². As described in the First Report, pursuant to the Amended and Restated Initial Order, landlords will continue to be excluded from the stay in favour of JSN Inc. in respect of Applicant Related Liabilities, provided that landlords must provide the Applicant and Salus Capital with five days' written notice that they intend to commence or continue a proceeding against JSN Inc.

10.2 The Monitor supports the extension of the Stay Period to August 31, 2016 for the following reasons:

- (a) the stay is required to provide the necessary stability and certainty to enable Ben Moss to implement its operational restructuring and continue the RISP;
- (b) the DIP Facility remains available to the Applicant and as shown in the Cash Flow Forecast, is projected to provide Ben Moss with sufficient liquidity to continue operations during the proposed extension of the Stay Period;
- (c) Ben Moss continues (although to a lesser extent than as at the Filing Date) to rely on the JSN Group for its inventory and, as a result, an extension of the Stay Period to JSN Inc. for cross-defaults will continue to facilitate the ongoing operations of Ben Moss; and

² Applicant Related Liabilities are defined in paragraph 15 of the Amended and Restated Initial Order as any guarantee, contribution or indemnity obligation, liability or claim in respect of, or that relates to, any agreement involving the Applicant, or the obligations, liabilities and claims of, against or affecting the Applicant or its business.

- (d) the Applicant continues to act in good faith and with due diligence in these CCAA Proceedings since the granting of the Initial Order.

11.0 APPROVAL OF THE CRO'S ACTIVITIES

11.1 As part of its motion, the Applicant is seeking approval of the CRO's activities since its appointment on May 13, 2016. The activities of the CRO are described in the Third Manzoor Affidavit.

11.2 The CRO has directed the operations and management of the Applicant and its restructuring since its appointment. Among other things, the CRO has facilitated many of the restructuring efforts described herein and in the Prior Reports and has implemented Phase I of the RISP. The Monitor believes the presence of the CRO has enhanced potential recoveries for stakeholders and therefore supports the approval of the CRO's activities.

12.0 MONITOR'S ACTIVITIES TO DATE

12.1 In addition to the Monitor's ongoing supervision and involvement with the overall stabilization of the Applicant's business, the activities of the Monitor from the date of the First Report include the following:

- (a) assisting the Applicant with communications with employees, suppliers, landlords and other parties;
- (b) continuing to assist the Applicant in stabilizing its supply chain;
- (c) discussions with landlords, the Applicant and legal counsel in respect of lease concessions and the Disclaimers;

- (d) responding to enquiries 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;
- (e) assisting and supervising activities in connection with the RISP, including:
 - (i) soliciting, reviewing and responding to information requests from interested parties during Phase I;
 - (ii) reviewing materials for inclusion in the Data Room;
 - (iii) reviewing the draft management presentation prepared by Ben Moss and assisting Ben Moss with its preparation for delivering the management presentation to prospective bidders in Phase II;
 - (iv) discussions with the CRO and Salus Capital regarding the termination of the RISP in respect of the JSN Group and implementing the Process, including assisting with preparing the Form of APS and the Form of Agency Agreement;
 - (v) assisting Salus Capital in connection with its consideration of strategic alternatives in respect of the JSN Group upon the termination of the RISP as it relates to the JSN Group;
 - (vi) contacting certain prospective parties to solicit Agent Proposals and negotiating non-disclosure agreements with interested parties;
 - (vii) communicating with Qualified Sale Bidders concerning their LOIs and the proposed changes to Phase II of the RISP;

- (viii) developing the Comparison Model; and
- (ix) along with its legal counsel, providing general assistance and advice to the Applicant and its legal counsel regarding the implementation of the RISP;
- (f) monitoring receipts, disbursements, purchase commitments, and arrangements in respect of payment terms and for deposits with certain suppliers and creditors of the Applicant, including tracking outstanding balances and commitments;
- (g) posting non-confidential materials filed with the Court to the website established by the Monitor for the CCAA Proceedings;
- (h) attending the stay extension hearing on July 15, 2016;
- (i) assisting the Applicant in its reporting to the DIP Lender as required under the DIP Facility, reviewing cash-flow variances and engaging in discussions with Senior Management and the DIP Lender;
- (j) assisting the Applicant in the preparation of the June Cash Flow Forecast;
- (k) reviewing the Applicant's DIP Facility draw requests; and
- (l) preparing this Second Report in consultation with the Monitor's legal counsel.

13.0 MONITOR'S CONCLUSIONS AND RECOMMENDATIONS

13.1 For the reasons set out in this Second 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 sought by the Applicant.

All of which is respectfully submitted to this Court this 5th day of July, 2016.

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

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

Per: Alan J. Hutchens
Senior Vice-President

TAB 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.**

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

JUNE 13, 2016

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APPENDIX A PRE-FILING REPORT OF THE PROPOSED MONITOR DATED
MAY 17, 2016 (WITHOUT APPENDICES)

APPENDIX B 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, 2018 (the “**Initial Order**”), Alvarez & Marsal Canada Inc. (“**A&M**” or the “**Monitor**”) was appointed Monitor of the Applicant in the CCAA proceedings (the “**CCAA Proceedings**”).

1.2 The Initial Order, among other things:

- (a) granted a stay of proceedings (the “**Stay**”) to June 15, 2016 (the “**Stay Period**”) in favour of Ben Moss and in favour of J.S.N. Jewellery Inc. (“**JSN Inc.**”) with respect to the Applicant Related Liabilities¹;
- (b) authorized and directed Ben Moss to immediately commence, under the supervision and with the assistance of the Monitor, a refinancing and/or investment solicitation process (the “**RISP**”);
- (c) approved the retention of FAAN Advisors Group Inc. (“**FAAN**”) as Chief Restructuring Officer (the “**CRO**”) of Ben Moss;
- (d) authorized Gordon Brothers Canada ULC (“**GBC**” or the “**Agent**”) to conduct a sale (the “**Liquidation Sale**”) pursuant to the Consulting and Agency Agreement dated April 28, 2016 between GBC and Ben Moss (the “**Agency Agreement**”) to

¹ Applicant Related Liabilities are defined in paragraph 15 of the Amended and Restated Initial Order as any guarantee, contribution or indemnity obligation, liability or claim in respect of, or that relates to, any agreement involving the Applicant, or the obligations, liabilities and claims of, against or affecting the Applicant or its business.

liquidate the inventory, furniture, fixtures and equipment, in certain of the Applicant's stores;

- (e) authorized Ben Moss to obtain and borrow up to \$8 million under a debtor-in-possession facility (the "**DIP Facility**") from Salus CLO 2012-1 Ltd. ("**Salus CLO**" or the "**DIP Lender**"), provided that the borrowings under the DIP Facility could not exceed \$3.5 million prior to May 26, 2016, the date of the comeback hearing (the "**Comeback Hearing**"); and
- (f) approved the Administration Charge, the DIP Charge and the Directors' Charge (each as defined in the Initial Order) in the amounts and priority as set out in the Pre-Filing Report.

1.3 In connection with the Applicant's application for protection under the CCAA, A&M provided to this Court a pre-filing report (the "**Pre-Filing Report**") dated May 17, 2016 in its capacity as proposed monitor. A copy of the Pre-Filing Report (without Appendices) is attached as **Appendix "A"**.

1.4 On May 26, 2016, this Court issued an amended and restated Initial Order (the "**Amended and Restated Initial Order**", hereinafter, unless the context otherwise requires, the "**Initial Order**"), which made certain changes to the Initial Order that are described below. 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.

2.0 PURPOSE OF THIS REPORT

2.1 The purpose of this report (the "First Report") is to provide this Court with the following:

- (a) an update concerning communications with the Applicant's stakeholders;
- (b) information regarding the Applicant's operations and restructuring efforts since the Filing Date including matters related to:
 - (i) the Liquidation Sale;
 - (ii) negotiations with landlords and leases;
 - (iii) employees of Ben Moss;
 - (iv) the Applicant's suspension of the Layaway Program (as defined below);
 - (v) communications with the Applicant's suppliers and the treatment of consignment arrangements; and
 - (vi) the closure of the Applicant's Halifax store due to fire and the temporary closure of the Applicant's Fort McMurray store due to the wildfires that affected that region;
- (c) a description of the Comeback Hearing and the amendments to the Initial Order;
- (d) an update on matters involving Utopia Jewellery Co. ("Utopia Jewellery") and Utopia Diamond Inc. (collectively with Utopia Jewellery, "Utopia"), P.M.R. Inc. ("PMR") and Forever Jewellery Inc. ("FJI") and a demand for financial

information that was made by the Monitor in respect of those entities as well as certain other entities related to the Applicant;

- (e) an update on the RISP;
- (f) an update on the DIP Facility and borrowings thereunder;
- (g) the receipts and disbursements of Ben Moss for the two-week period ended May 27, 2016, as compared to the cash-flow forecast previously filed with the Pre-Filing Report;
- (h) the notification by Salus Capital (as defined below) in respect of the negative variances shown in the cash-flow forecasts of the Applicant and the Other Borrowers (as defined below);
- (i) a proposed amendment to the DIP Facility to, among other things, address the negative cash flow variances described herein;
- (j) the Applicant's cash-flow forecast for the period ending July 15, 2016;
- (k) the Applicant's motion (the "**Motion**") seeking (i) approval of the amendment to the DIP Facility, (ii) approval of the sale guidelines regarding the conduct of the Agent in respect of the Liquidation Sale, (iii) an extension of the Stay Period until July 15, 2016, and (iv) approving the activities and conduct of the Monitor since the Filing Date; and
- (l) the Monitor's conclusions and recommendations in connection with the foregoing.

3.0 TERMS OF REFERENCE

3.1 In preparing this First 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* 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 First Report consists of forecasts and projections. An examination or review of the financial forecasts and projections, as outlined in the *Chartered Professional Accountants Canada Handbook*, has not been performed.

3.3 Future oriented financial information referred to in this First 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 First Report are expressed in Canadian dollars.

3.5 This First Report should be read in conjunction with the Affidavit of Mr. Naveed Z. Manzoor, Managing Director of FAAN, CRO of Ben Moss, sworn June 12, 2016 (the "Second Manzoor Affidavit").

4.0 COMMUNICATIONS WITH THE APPLICANT'S STAKEHOLDERS

4.1 Pursuant to the Initial Order, the Monitor was required to, without delay, publish in the Globe and Mail (National Edition) and the Winnipeg Free Press, a notice containing the information prescribed under the CCAA. In addition, within five days after the date of the Initial Order, the Monitor was required to (a) make the Initial Order publicly available in the manner prescribed under the CCAA; (b) send a notice in the prescribed manner to every known creditor who has a claim against Ben Moss of more than \$1,000; and (c) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make the list publicly available in the prescribed manner, all in accordance with section 23(1)(a) of the CCAA and its associated regulations.

4.2 A notice containing the information prescribed under the CCAA was published in each of the Winnipeg Free Press and Globe and Mail (National Edition) on May 24, 2016 and May 26, 2016, respectively.

4.3 On the day the Initial Order was made, the Monitor activated its website for the CCAA Proceedings, www.alvarezandmarsal.com/benmoss and posted a copy of the Initial Order to the website.

4.4 On May 20, 2016, a notice was mailed by the Monitor to every known creditor who may have a claim of more than \$1,000 against Ben Moss as well as the Applicant's landlords or property managers. On May 24, 2016, a notice was also sent to Salus Capital Partners, LLC ("**Salus Capital**") and together with Salus CLO, the "**Senior Secured Lenders**").

4.5 On May 22, 2016, the Monitor posted to its website a list showing the names and addresses of every known creditor who may have a claim of more than \$1,000 against Ben Moss.

4.6 The Monitor has established an e-mail account, monitor.benmoss@alvarezandmarsal.com, and a toll free number, 1-855-499-1480, where stakeholders can contact the Monitor in order to address questions or concerns.

5.0 OPERATIONS AND RESTRUCTURING UPDATE

5.1 Since the Filing Date, the Monitor has worked closely with Ben Moss and the CRO to stabilize and normalize its business and operations. These efforts have included assisting with the Liquidation Sale, engaging in extensive communications with various stakeholders (including landlords, employees, creditors, suppliers, representatives and stakeholders of affiliates of the Applicant and other interested parties) and participating in negotiations to amend the Initial Order to address the concerns of certain stakeholders, each of which are described in greater detail in the Second Manzoor Affidavit and summarized below.

The Liquidation Sale

5.2 Pursuant to the Agency Agreement, GBC has been engaged as the Applicant's agent to liquidate the merchandise, furniture, fixtures and equipment located in 11 of the Applicant's stores (the "**Clearance Locations**"). GBC commenced the Liquidation Sale prior to

the commencement of the CCAA Proceedings as part of the Applicant's operational restructuring efforts. As described above, the Initial Order authorized GBC to continue the Liquidation Sale.

5.3 The Liquidation Sale has performed below expectations (though sales have improved over the last two weeks). The Monitor, GBC and Senior Management have all been working collaboratively to consider the reasons why the Liquidation Sale is performing below initial expectations. Identified issues include the general weakness of the retail locations where the sale is taking place, historical trends in the mark-down structure that have impacted consumer expectations and the seasonal nature of the industry itself. Ben Moss worked closely with GBC and made certain changes to the Liquidation Sale, including advertising and mark-down structures, which have resulted, more recently, in an improvement in sales. The CRO, in conjunction with the Senior Secured Lenders, GBC and Senior Management have considered whether it is appropriate to reduce the number of locations conducting the Liquidation Sale, and at the current time, all parties are of the view that it should continue as originally planned. The Monitor has been extensively involved in these discussions and is supportive of the views of the parties.

Landlord and Lease Negotiations

Amendments to the Initial Order and Sale Guidelines

5.4 After the Filing Date, Ben Moss was contacted by certain of its landlords regarding the CCAA Proceedings and the Liquidation Sale. In particular, certain landlords requested that a comprehensive set of sale guidelines in respect of the Liquidation Sale be agreed upon. In addition, these landlords requested to be granted certain protections in connection with the Liquidation Sale and be permitted to enforce their rights against JSN Inc. in certain circumstances. Following discussions between Ben Moss, the Monitor and these landlords, the

parties agreed to amend the Initial Order to reflect the concerns of the landlords. The corresponding amendments to the Initial Order are discussed below in section 6.0.

5.5 Accordingly, Ben Moss, in consultation with the Monitor, has engaged in extensive negotiations with many of its landlords and settled on acceptable sale guidelines (the "Sale Guidelines") in respect of the Liquidation Sale, which the Applicant seeks approval of as part of this Motion. The Sale Guidelines are described in section 13.0 below.

Disclaimers and Lease Amendments

5.6 In the Pre-Filing Report, the Monitor advised that the Applicant may close underperforming stores to improve operating performance and disclaim the leases associated with those stores. In consultation with the Monitor, Ben Moss is continuing its review of its real estate portfolio. Ben Moss and the Monitor have scheduled a number of meetings with its major landlords during the week of June 13, 2016 to discuss Ben Moss's real estate portfolio and opportunities to improve the economic terms of certain underperforming locations. The Monitor understands that, at a minimum, Ben Moss anticipates disclaiming the leases associated with some of the Clearance Locations.

Employees

5.7 The Applicant, in consultation with the Monitor, is currently evaluating opportunities to reduce employee count. If Ben Moss closes any of the Clearance Locations following completion of the Liquidation Sale, it will likely result in termination of employees at those locations (though Ben Moss will attempt to place employees at its other store locations, where possible).

Layaway Program

5.8 As described in the Pre-Filing Report, Ben Moss offered a layaway program (the "Layaway Program"), which allows customers to pay for their goods over the course of six months. When the Initial Order was granted, the Layaway Program was temporarily suspended in an effort to ensure that arrangements could be made to protect participants. After consultation with the Monitor and the Senior Secured Lenders, Ben Moss has decided to discontinue the Layaway Program for the duration of the CCAA Proceedings. To the extent that a Ben Moss customer participated in the Layaway Program prior to its suspension, the customer can pay the balance owing for its goods and take possession of the item(s) placed on layaway.

Suppliers

5.9 After the Filing Date, Senior Management, with the participation of the Monitor in many cases, initiated calls with its significant suppliers to negotiate payment terms. The Monitor has also engaged directly with numerous suppliers. In general, Ben Moss's suppliers have been supportive and have continued to accept orders and supply goods.

5.10 Certain parties (the "Potential Consignment Suppliers") have asserted that their supply arrangements with Ben Moss constitute consignment arrangements, thereby entitling them to reclaim the goods that they supplied to Ben Moss.

5.11 The Monitor is currently working with its legal counsel to review the supply arrangements between Ben Moss and the Potential Consignment Suppliers to determine whether they meet the strict legal test of a true consignment. As described below, the Initial Order was amended at the Comeback Hearing to provide certain protections for parties with valid consignment arrangements. To the extent that a Potential Consignment Supplier has a true

consignment arrangement, the Applicant, in consultation with the Monitor, intends to formally document the business terms relating to the supply and payment of Consignment Goods.

Stores Closed Due to Fire

5.12 There was a small fire at the Applicant's Halifax store caused by construction activity taking place nearby in the mall. This store is one of the Clearance Locations from which the Liquidation Sale is being conducted. While damage to the store was quite extensive, the inventory located in that store was removed and is in the process of being redistributed throughout Ben Moss's retail network.

5.13 The Ben Moss store in Fort McMurray, Alberta has also been closed due to the wild fires in that region. It is expected that the store will reopen by the end of June.

5.14 The Applicant is communicating with its insurance company in respect of both of these stores in connection with both its claim for damages to the location as well as business interruption.

6.0 THE COMEBACK HEARING AND AMENDMENTS TO INITIAL ORDER

6.1 As contemplated in the Initial Order, the Applicant attended the Comeback Hearing on May 26, 2016. The Comeback Hearing was unopposed.

6.2 At the Comeback Hearing, this Court issued the Amended and Restated Initial Order which, as described above, included amendments to the Initial Order to address concerns raised by certain landlords in connection with the CCAA Proceedings and the Liquidation Sale, and concerns raised by suppliers in connection with goods on consignment. A blackline of the Initial Order and the Amended and Restated Initial Order showing the changes is attached as Exhibit "A" to the Second Manzoor Affidavit.

6.3 A summary of the key amendments made to the Initial Order are as follows

- (a) ***Stay Against JSN Inc. Regarding Applicant Related Liabilities:*** The Initial Order was amended to provide that the extension of the stay to JSN Inc. regarding *Applicant Related Liabilities* does not apply to a landlord of the Applicant, provided that it gives five days written notice that it intends to commence or continue a proceeding against JSN Inc. or exercise any right or remedy against it or its property;
- (b) ***Approval of Sale Guidelines:*** The Initial Order requires the Agent to conduct the Liquidation Sale in accordance with sale guidelines to be agreed to between the Applicant, the Agent, Salus Capital and the landlords of the Clearance Locations, which shall be consistent with standard Court-approved sale guidelines and which the Applicant shall seek approval of at its next motion before the Court. As described herein, in compliance with this provision of the Initial Order, Ben Moss is seeking approval of Sale Guidelines (which are defined and described in section 13.0 below) as part of the Motion;
- (c) ***Assigned Landlord Rights Regarding Agent Liability:*** The Initial Order now provides that to the extent that any landlord may have a claim against the Applicant arising solely out of the conduct of the Agent in conducting the Liquidation Sale, subject to certain exceptions and provided that the notice requirements are complied with, the claim is deemed to be assigned to the landlord. The Initial Order was also amended to provide each landlord with reasonable access to the applicable Clearance Locations following the end of the Liquidation Sale to assess whether they may have such a claim; and

- (d) **Consignment Goods:** The Initial Order now provides that the proceeds from the sale of any goods that were supplied by the Applicant on a consignment basis, as determined by the Monitor in its sole discretion (the “**Consignment Goods**”), shall be returned by the Applicant to the supplier of such Consignment Goods on terms to be agreed upon between the Applicant and each such supplier. In addition, Consignment Goods do not form part of the Property (as defined in the Initial Order) of Ben Moss.

7.0 **MATTERS INVOLVING UTOPIA, PMR AND DEMAND FOR FINANCIAL INFORMATION**

Utopia

7.1 As described in the Pre-Filing Report, Utopia operates manufacturing facilities for JSN Inc. and certain of its affiliates (collectively, the “**JSN Group**”) and its operations are funded directly by the JSN Group. Utopia is located in Bangkok, Thailand.

7.2 Also as described in the Pre-Filing Report, Salus Capital provides a credit facility to Ben Moss and the other borrowers thereunder, being JSN Inc., JSN UK and GMJ Corporation (collectively, the “**Other Borrowers**”) under a credit agreement dated as of July 18, 2013 (the “**Credit Facilities**”), which was in default as at the Filing Date.

7.3 Since the Filing Date, JSN Inc., among others, has had continued access to the Credit Facilities in accordance with the terms of an accommodation agreement (“**Accommodation Agreement**”) between Ben Moss, the Other Borrowers, Forever Jewellery Inc. (“**FJI**”), Always & Forever Family Collection Incorporated (“**AFFC**”), P.M.R. Inc. (“**PMR**”), Joseph Shilon and the Senior Secured Lenders. Through this funding, JSN Inc. has

continued to fund Utopia's manufacturing operations since the commencement of the CCAA Proceedings.

PMR

7.4 In the Pre-Filing Report, the Monitor advised that it was investigating certain payments that were made by PMR to a related party. The Monitor continues to investigate these payments. In addition, the Monitor became aware that two days prior to the Filing Date, a payment was made by PMR to an affiliated company. On May 26, 2016, counsel to Ben Moss issued a demand letter requesting return of the payment. As of the date of this First Report, the payment has not been returned and while the Monitor is aware that there have been some discussions between the CRO, representatives of PMR and the other affiliated company, a resolution has not been reached.

Demand for Financial Information

7.5 The Initial Order authorizes the Monitor to provide reporting to the DIP Lender relating to the Other Borrowers, FJI, AFFC, PMR and Joseph Shilon (collectively, the "Guarantors"), each of which provided a guarantee under the DIP Facility. The Monitor has become aware of payments that have been made by and between the Guarantors and other affiliated entities, which may have implications for Ben Moss and the CCAA Proceedings.

7.6 As a result, on May 27, 2016, the Monitor's counsel sent a letter to the principals and/or officers of certain of the Guarantors demanding the books, records and financial information, among other things, in respect of each of the Guarantors and other affiliated companies, including Utopia and Whitpay Inc. (the "Requested Information"). The Monitor

has received some, but not all, of the Requested Information and will update the Court when this work is concluded.

7.7 The Monitor continues to review and monitor the matters described above and intends to update the Court further as more information becomes available.

8.0 RISP UPDATE

8.1 As described in the Pre-Filing Report, the Applicant's overall Restructuring Plan includes the RISP. The RISP provides for the solicitation of the following potential transactions: (a) a refinancing of all or part of the Credit Facilities of the JSN Group; (b) an equity investment in JSN Inc. and/or Ben Moss; and/or (c) a sale of all or a portion of the business and property of Ben Moss.

8.2 Since the Filing Date, the Monitor has assisted the Applicant with the implementation of the RISP in accordance with its terms, by contacting prospective parties, distributing teaser letters, inviting parties to execute a non-disclosure agreement ("NDA") and providing those parties who have executed an NDA with access to an applicable confidential information memorandum ("CIM") describing the Applicant and sale or refinancing/investment opportunity and responding to information requests from those parties who have signed an NDA.

8.3 Salus Capital has engaged Consensus Advisory Services LLC ("**Consensus**") as its advisor to assist it with maximizing the outcome of the RISP. Consensus is a financial advisor, based in Boston, with particular strength in both retail and jewellery. Consensus has been working collaboratively with the Monitor to provide its assistance in contacting and identifying parties that may be interested in participating in the RISP.

8.4 The Monitor is of the view that strong interest has been expressed to-date from parties participating in the RISP. Numerous parties have executed an NDA and have been provided information to facilitate the preparation of letters of intent in accordance with the RISP.

8.5 On June 10, 2016, the Monitor provided all participants with a letter setting out the instructions for bid submission in accordance with Phase I of the RISP (the "**Phase I Bid Letter**"). The Phase I Bid Letter sets out, among other things, the requirement that participants submit their non-binding letters of intent by the Phase I Bid Deadline of 5:00 p.m. EDT on or before June 17, 2016.

8.6 At this time, the Monitor is satisfied that the RISP has been managed in accordance with its terms and that parties are being provided a reasonable opportunity to participate in the process. The Monitor will continue to undertake and supervise the RISP in accordance with its terms and the Initial Order and will provide a further update in its next report to the Court.

9.0 DEBTOR IN POSSESSION FINANCING

9.1 In accordance with the Initial Order and subject to the terms of the DIP Facility, the Applicant has access to maximum borrowings under the DIP Facility equal to the principal amount of the U.S. dollar equivalent of CDN\$8 million.

9.2 Ben Moss is only permitted to access the DIP Facility if the Credit Facilities are fully drawn. As at the Filing Date, the Credit Facilities were fully drawn and Salus Capital had facilitated the continued funding of Ben Moss and the Other Borrowers by permitting them to draw on the revolving credit facility despite the fact that such draws exceeded the maximum revolving loan available under the Credit Facilities (the "**Permitted Overadvance**"). As at the Filing Date, the total Permitted Overadvance was \$7.5 million. Accordingly, the May Cash Flow

Forecast projected that Ben Moss would need to access funding under the DIP Facility immediately upon commencement of the CCAA Proceedings.

9.3 As at June 7, 2016, Ben Moss had made ten borrowing requests and borrowed approximately \$4.6 million under the DIP Facility.

10.0 CASH FLOW RESULTS RELATIVE TO FORECAST

Cash Flow Results and Variances

10.1 Cash receipts and disbursements for the two-week period ended May 27, 2016 (the "Reporting Period") as compared to the cash flow forecast found as Appendix A to the Pre-Filing Report (the "May 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 Two-Week Period Ended May 27, 2016 (\$000's CAD)			
	Forecast	Actual	Variance
Cash Receipts			
Sales Receipts	3,169	2,398	(771)
Total Cash Receipts	<u>3,169</u>	<u>2,398</u>	<u>(771)</u>
Cash Disbursements			
Payroll & related payments	1,957	907	150
Occupancy costs	150	-	150
Trade vendor payments (third party)	829	129	500
Purchases of JSN product	1,277	-	1,277
Sales and business taxes	58	44	14
Capital leases and bank fees	44	44	-
Non-trade payments	351	57	294
Professional fees	210	233	(23)
Interest and fees (note 2)	85	62	23
Other Expenses	150	-	150
Total Cash Disbursements	<u>4,011</u>	<u>1,476</u>	<u>2,535</u>
Total Net Cash flow	<u>(842)</u>	<u>922</u>	<u>1,764</u>
Beginning Cash Balance	-	(13)	(13)
Net operating cash flow	(843)	922	1,764
Net drawdown/(repayment)	843	(79)	(922)
Ending Cash Balance	<u>0</u>	<u>830</u>	<u>830</u>
Pre-filing revolving credit facility (balance at May 27)	49,903	52,987	(3,084)
DIP facility (balance at May 27)	4,012	2,149	1,863
Total Financing (note 3)	<u>53,915</u>	<u>55,136</u>	<u>(1,221)</u>
Note 1	Readers are cautioned to read the Terms of Reference as set out in the Pre-Filing Report of the Proposed Monitor dated May 17, 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.		
Note 3	For continuity of financing including the pre-filing revolving credit facility and DIP Facility, please refer to Appendix A of the Pre-Filing Report of the Proposed Monitor dated May 17, 2016.		

10.2 During the Reporting Period, Ben Moss's total cash receipts were approximately \$771,000 lower than projected in the May Cash Flow Forecast. Senior Management attributes this variance to lower than anticipated sales in the retail stores following the announcement of the CCAA Proceedings. In particular, a significant portion of the variance relates to underperformance at the Clearance Locations during the Liquidation Sale as described in paragraph 5.3 above.

10.3 Ben Moss's total disbursements during the Reporting Period were approximately \$2.5 million less than projected in the May Cash Flow Forecast. Senior Management attributes this variance primarily to timing differences as disbursements for items such as inventory purchases (both from third parties and JSN Inc.) and the fact that certain sales and general expenses were delayed during the Reporting Period as Ben Moss worked with vendors to confirm payment terms. It is anticipated that the majority of this variance will reverse in the next several weeks as payments are made for these expenses.

10.4 Overall, during the Reporting Period, Ben Moss experienced a positive cash flow variance of approximately \$1.8 million relative to the May Cash Flow Forecast due to the timing of disbursements. As at May 27, 2016, Ben Moss had an ending cash balance of approximately \$830,000, due to timing differences.

DIP Facility and Credit Facilities

10.5 As at May 27, 2016, the amount outstanding under the DIP Facility was approximately \$2.2 million and the total amount outstanding under the Credit Facilities was approximately \$53.0 million. The outstanding balance under the DIP Facility as at May 27, 2016 was approximately \$1.8 million lower than forecast due to the timing of supplier payments at Ben Moss.

10.6 Notwithstanding the positive variance under the DIP Facility, the total amount of financing extended since the Filing Date (combined between the Credit Facilities (which includes the Permitted Overadvance) and the DIP Facility) is higher than forecast by approximately \$1.2 million. The negative variance in the estimated financing needs was due to (a) negative cash flow variances at other JSN Group entities, and (b) lower than anticipated collections at Ben Moss.

10.7 As described in the Pre-Filing Report and the Affidavit of Naveed Manzoor sworn May 16, 2016, the cash from Ben Moss's business operations is deposited into blocked deposit accounts at various institutions that are swept and transferred to Salus Capital to pay down the Credit Facilities. A condition of the DIP Facility is that the cash from the Applicant's operations continues to be deposited into blocked accounts and transferred to Salus Capital to (a) first, repay the Permitted Overadvance, (b) then repay obligations under the DIP Facility, and (c) finally, pay down pre-filing obligations under the Credit Facilities (the "Repayment Waterfall").

10.8 Pursuant to the Repayment Waterfall, collections from the Ben Moss operations are being applied against the Permitted Overadvance under the pre-filing Credit Facilities. Since the Filing Date, cash from the Applicant's operations have reduced the Permitted Overadvance to approximately \$5.8 million from \$7.5 million. Notwithstanding these payments however, due to the fact that the Applicant's collections are lower than anticipated, the Permitted Overadvance has not been reduced to the extent it was forecast to do so under the May Cash Flow Forecast, which as described in section 11.0 below, will impact the amount available to the Applicant under the DIP Facility.

Notification from the Senior Secured Lenders

10.9 As described above, the Other Borrowers have had continued access to the Credit Facilities in accordance with the terms of the Accommodation Agreement. The Accommodation Agreement requires Ben Moss and the Other Borrowers to operate their business consistent with the 13-week cash flow projections / budget under the DIP Facility set out therein (the "13-Week Cash Flows"), which are prepared on a consolidated basis for Ben Moss and the Other Borrowers.

10.10 Salus Capital notified Ben Moss and the Other Borrowers that the 13-Week Cash Flows for the two-week period ended May 27, 2016 show negative variances in excess of 10%, in among other items, cash receipts and net cash flows, which constitutes a breach of the Accommodation Agreement and the agreements in respect of the DIP Facility and the Credit Facilities. The Senior Secured Lenders have reserved their rights in connection with the breach. Notwithstanding, the Senior Secured Lenders continue to fund Ben Moss and the Other Borrowers subject to the Accommodation Agreement and the amendments to the DIP Facility described in section 11.0 below.

10.11 As described above, the negative variances in respect of Ben Moss are due, in part, to lower than anticipated retail sales in the Applicant's stores, particularly the Clearance Locations, following the announcement of the CCAA Proceedings and timing differences that impact disbursements for items such as inventory purchases and disruption that resulted while Ben Moss was confirming payment terms with its vendors.

10.12 Since the Filing Date however, overall same store sales results for the Applicant's stores (other than the Clearance Locations), have improved by approximately 10%. Senior

Management believes that as recent inventory balancing initiatives take effect, near-term improvements will continue.

10.13 With respect to Ben Moss's inventory balancing initiatives, new shipments from key, third party vendors have been received and are improving the overall inventory mix at the stores. Ben Moss has received positive feedback from both its customers and vendors.

10.14 Ben Moss has also reduced its operating costs in respect of store wages and jewellery repair costs and the costs of other service providers.

10.15 The Monitor is working with Ben Moss to provide the Senior Secured Lenders with information in respect of the negative variances to the extent they relate to the Other Borrowers.

11.0 AMENDMENT TO THE DIP FACILITY

11.1 In order to address the variances discussed above and simplify the completion of the diligence for the participants in the RISP by providing them with better visibility on Ben Moss's distinct funding requirements, the Senior Secured Lenders, the Applicant and the other parties to the Accommodation Agreement propose to amend the DIP Facility (the "**Amendment**") to revise the Repayment Waterfall such that cash receipts from Ben Moss's operations will first be applied to obligations under the DIP Facility rather than first being applied to reduce the Permitted Overadvance.

11.2 As discussed above, the outstanding balance of the Permitted Overadvance is approximately \$5.8 million. Accordingly, without the modification to the Repayment Waterfall, the Applicant's funding requirements would exceed the maximum borrowings available under the DIP Facility because Ben Moss's cash collections would first be applied to repay the

Permitted Overadvance. If the Amendment is approved, the outstanding balance of the Permitted Overadvance will not likely be further reduced.

11.3 The proposed amendment to the Repayment Waterfall is reflected in the Applicant's Cash Flow Forecast (as defined and described below).

12.0 CASH FLOW FORECAST

12.1 The Applicant has prepared an updated and extended cash flow forecast (the "Cash Flow Forecast") for the period ending July 15, 2016 (the "Cash Flow Period"). Pursuant to the Initial Order, the Stay Period is set to expire on June 15, 2016. The Applicant is seeking an extension of the Stay Period to July 15, 2016 and the Cash Flow Period corresponds with this extension request. A copy of the Cash Flow Forecast is attached as **Appendix "B"** to this report.

12.2 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").

12.3 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.

12.4 The Cash Flow Forecast has been updated for actual cash flow results through to the week ended May 27, 2016 and assumes the Amendment is approved and the corresponding amendment to the Repayment Waterfall is in effect. 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 6-week period ended July 15	
(\$000's)	
	Amount (\$)
Forecast Cash Inflow	
Collections	8,271
Forecast Total Receipts	<u>8,271</u>
Forecast Cash Outflow	
Occupancy, taxes, capital leases, SG&A and other	3,726
Payroll & related payments	2,117
Inventory purchases	1,964
Professional fees	510
Interest and fees	95
Total Forecast Outflow	<u>8,412</u>
Total Net Cash Flow	<u>(141)</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.
Note 2	For continuity of financing including the pre-filing revolving credit facility and DIP facility, please refer to Appendix B.

12.5 The Cash Flow Forecast projects total cash receipts of \$8.3 million and total cash disbursements of \$8.4 million for a total negative cash flow of approximately \$141,000. The Cash Flow Forecast includes purchases of approximately \$2 million of product from both third party vendors as well as from other entities in the JSN Group as well as \$95,000 of interest and fees to the DIP Lender in relation to the DIP Facility.

12.6 Total amounts advanced in aggregate under the DIP Facility and Credit Facilities is expected to increase by as much as \$1.5 million during the Cash Flow Period relative to current amounts, as other entities in the JSN Group will also require funding pursuant to the Credit Facilities. By the end of the Cash Flow Forecast, such incremental exposure is expected to reduce to approximately \$1.0 million. For additional detail surrounding the Cash Flow Forecast refer to **Appendix "B"**.

12.7 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.

13.0 RELIEF REQUESTED ON THE MOTION

13.1 As described above, on the Motion, the Applicant seeks the approval of the Court for the following, each of which is described further below:

- (a) amendment to the DIP Facility;
- (b) the Sale Guidelines;
- (c) the extension of the Stay Period to July 15, 2016; and
- (d) the activities and conduct of the Monitor.

Amendment to the DIP Facility

13.2 The Amendment is the result of negotiations between the DIP Lender, the Applicant, the CRO and the Senior Secured Lenders, in consultation with the Monitor, and will ensure that notwithstanding the cash flow variances described above, there will be sufficient funds available under the DIP Facility until July 15, 2016, the proposed extension of the Stay Period. The Monitor supports the requested Amendment.

Approval of the Sale Guidelines

13.3 As described above, the Amended and Restated Initial Order requires the Applicant to seek approval of the Sale Guidelines in its next motion before this Court, being this Motion.

13.4 The Sale Guidelines reflect extensive negotiations between the Applicant and certain of its landlords and are attached to the Second Manzoor Affidavit and are described in greater detail therein. The Sale Guidelines, among other things, provide for the following:

- (a) the Liquidation Sale will be conducted in accordance with the terms of the applicable leases, subject to certain exceptions. The Agent may sell the furniture, fixtures and equipment owned by Ben Moss located in the Clearance Locations during the Liquidation Sale;
- (b) the Liquidation Sale will be conducted so that the Clearance Locations remain open during normal hours of operation provided for in the applicable leases;
- (c) the Agent may advertise the Liquidation Sale at the Clearance Locations, subject to certain restrictions that are imposed in respect of the appearance and location of signage. Among other things, the signage cannot use the words "bankruptcy", "liquidation" or "going out of business";
- (d) the Liquidation Sale will end no later than July 31, 2016. At the end of the Liquidation Sale, the applicable Clearance Locations shall be left in "broom-swept" and clean condition; and

- (e) GBC is permitted to augment the inventory included in the Liquidation Sale (the "Additional Merchandise"), provided it is of a like kind and category to the inventory sold by Ben Moss, in compliance with the use provisions in the applicable leases and subject to the requirements that the Additional Merchandise will not exceed a \$2 million cost cap (subject to increase in certain circumstances) and that no Clearance Location can receive more than 20% of the Additional Merchandise.

13.5 The Monitor is of the view that the Sale Guidelines are consistent with standard Court-approved guidelines for liquidation sales and supports the relief requested by the Applicant.

Extension of the Stay Period

13.6 Pursuant to the Initial Order, the Stay Period is to expire on June 15, 2016. The Applicant is seeking an extension of the Stay Period to July 15, 2016. This will have the result of extending the stay in favour of JSN Inc. solely with respect to the Applicant Related Liabilities. As described above, pursuant to the Amended and Restated Initial Order, landlords will continue to be excluded from the stay in favour of JSN Inc. in respect of Applicant Related Liabilities.

13.7 The Monitor supports the extension of the Stay Period to July 15, 2016 for the following reasons:

- (a) the stay is required to provide the necessary stability and certainty to enable Ben Moss to implement its operational restructuring and continue the RISP;

- (b) the DIP Facility remains available to the Applicant and, provided the Amendment is approved, is projected to provide Ben Moss with sufficient liquidity to continue operations during the proposed extension of the Stay Period; and
- (c) the Applicant continues to act in good faith and with due diligence in these CCAA Proceedings since the granting of the Initial Order.

Approval of the Activities and Conduct of the Monitor

13.8 The activities and conduct of the Monitor from the date of the Initial Order include the matters described herein and, 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, the Liquidation Sale, the Sale Guidelines and amendments to the Initial Order;
- (c) responding to enquiries 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;
- (d) assisting Ben Moss in implementing an appropriate accounting cut-off to ensure proper determination of pre and post-filing obligations and liabilities;

- (e) monitoring the receipts, disbursements, purchase commitments, and arrangements in respect to payment terms and for deposits with certain suppliers and creditors of the Applicant, including tracking outstanding balances and commitments;
- (f) assisting the Applicant in assessing certain components of its operational restructuring, including the Liquidation Sale and its strategic inventory rebalancing efforts in connection with its current on-hand inventory and forecast inventory requirements for the balance of Ben Moss's fiscal year and going forward;
- (g) supervising and assisting the Applicant with implementing the RISP in accordance with its terms, including (as described above) preparing and distributing the teaser letters, NDAs, the CIMs and the Phase I Bid Letter and engaging in discussions with Consensus and with numerous interested parties regarding the RISP and related matters;
- (h) providing extensive assistance to the CRO to understand the business and operations of the Other Borrowers;
- (i) posting materials filed with the Court to the Monitor's website;
- (j) attending to the notice requirements as described above, completing the statutory filings pursuant to Section 23 of the CCAA and filing the necessary forms with the Office of the Superintendent of Bankruptcy (Canada);
- (k) providing assistance to Ben Moss in its reporting to the DIP Lender, as required under the DIP Facility, reviewing Ben Moss' weekly DIP Facility draw requests and cash-flow variances, and extensive discussions with Senior Management and

the DIP Lender regarding same and the Amendment, and preparing and providing reporting to the DIP Lender in respect of supplier or other payments made by the Guarantors; and

- (l) preparing this First Report in consultation with the Monitor's legal counsel.

14.0 MONITOR'S CONCLUSIONS AND RECOMMENDATIONS

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

All of which is respectfully submitted to this Court this 13th day of June, 2016.

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



Per: Alan J. Hutchens
Senior Vice-President

TAB B

APPENDIX B

Cash Flow Forecast for the 10-Week Period Ending September 2, 2016

Ben Moss Jewellers Western Canada Ltd.
 Weekly Cash Flow Forecast
 For the 10- week period ended September 2, 2016
 (Unaudited, in \$000s CAD)

Week Ended >>>>	Note	1-Jul-16	8-Jul-16	15-Jul-16	22-Jul-16	29-Jul-16	5-Aug-16	12-Aug-16	19-Aug-16	26-Aug-16	2-Sep-16	Total 10 - weeks
Sales Receipts	1	1,324	1,413	1,518	1,396	1,193	1,154	1,187	1,147	1,088	1,051	12,472
TOTAL RECEIPTS		1,324	1,413	1,518	1,396	1,193	1,154	1,187	1,147	1,088	1,051	12,472
DISBURSEMENTS												
Payroll & related payments	2	109	708	19	727	51	707	163	556	274	489	3,803
Occupancy costs	3	-	549	549	43	13	500	13	492	13	500	2,673
Inventory purchases	4	273	311	288	201	155	326	384	616	475	399	3,430
Sales and business taxes	5	354	8	3	60	-	198	-	3	60	268	952
Capital leases and bank fees	6	27	107	10	34	16	120	-	40	4	143	501
Non-trade payments	7	79	84	220	121	168	79	153	144	153	94	1,296
Professional fees	8	125	125	125	125	125	125	125	125	125	125	1,250
Interest and fees	9	108	-	-	-	-	110	-	-	-	130	348
Other Expenses	10	45	45	45	45	45	45	45	45	45	45	450
TOTAL DISBURSEMENTS		1,121	1,937	1,259	1,356	573	2,210	883	2,021	1,149	2,192	14,702
NET CASH FLOW		203	(524)	258	40	620	(1,056)	303	(873)	(61)	(1,141)	(2,231)
CONTINUITY OF FINANCING												
DIP FACILITY												
Opening Balance		5,753	5,550	6,073	5,815	5,776	5,156	6,212	5,909	6,782	6,843	5,753
Draw / (repayment), net	11	(203)	524	(258)	(40)	(620)	1,056	(303)	873	61	1,141	2,231
ENDING DIP BALANCE		5,550	6,073	5,815	5,776	5,156	6,212	5,909	6,782	6,843	7,984	7,984

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" or the "Company")

Disclaimer

In preparing this cash flow forecast (the "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 Forecast is based on assumptions about future events and conditions that are not ascertainable, the actual results achieved during the Forecast period will vary from the Forecast, 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 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 Sales Receipts

Sales Receipts are forecast based on Management's current sales forecast with adjustments made for the closure of underperforming stores. Collections are inclusive of sales taxes. Also included in sales receipts are proceeds under the inventory liquidation related to store closures, net of associated costs.

Note 2 Payroll & Related Payments

Payroll and related payments include salaries, wages, regular occurring annual bonuses, commissions, remittances and employee benefits for salaried and hourly employees and other employee related expenses. Payments are forecast based on historical run-rates and expected seasonal activity. Employees are paid bi-weekly. Payroll & related payments also includes payments for CRO services.

Note 3 Occupancy Costs

The Forecast assumes that rent and occupancy expenses are paid semi-monthly. Rent includes all store locations as well as the head office located in Winnipeg, Manitoba. Payments include occupancy costs, utilities (hydro, gas, internet and telephone), CAM, and realty taxes. Occupancy costs also include an estimate for percentage rent payments.

Note 4 Inventory Purchases

Ben Moss purchases inventory from both JSN and third party suppliers. The timing of disbursements for inventory purchases is based on expected shipping and delivery dates of on-order goods and future purchases.

Note 5 Sales and Business Taxes

Sales tax disbursements represent monthly remittances of sales tax collected, net of taxes paid. Business taxes include provincial and municipal licenses required for operating in certain jurisdictions. Taxes are paid monthly but timing varies based on the province.

Note 6 Capital Leases and Bank Fees

Capital lease disbursements relate to leasehold improvements in various stores and lease payments are made on a monthly basis. Bank and credit card fees are paid monthly at the beginning of each month relating to the prior month.

Note 7 Non-trade Disbursements

Non-trade disbursements relate to various day-to-day expenses including administrative costs, repairs, petty cash refills at stores, weekly refunds, packaging, advertising and promotion, security, POS systems, freight and other operating costs.

Note 8 Professional Fees

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

Note 9 Interest and Fees

During the current 10 week period, Interest and fees include interest and fees for the DIP facility.

Note 10 Other Expenses

These disbursements include provisions for various other unforeseen and miscellaneous payments required to be made in accordance with the Initial Order.

Note 11 Debt facility continuity

Throughout the Forecast Period, Ben Moss sales receipts will be applied against the DIP in accordance with the DIP Amendment as described in the First Report and the DIP Facility will be utilized by the Company to fund its ongoing cash requirements through the Forecast period.

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)

SECOND REPORT OF THE MONITOR

Davies Ward Phillips & Vineberg LLP
155 Wellington Street West
Toronto, ON M5V 3J7

Natasha MacParland (LSUC #42383G)
nmacparland@dwpv.com

Natalie Renner (LSUC #55954A)
nrenner@dwpv.com

Telephone: 416.863.0900
Facsimile: 416.863.0871

Lawyers for the Monitor
Alvarez & Marsal Canada Inc.