

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

SALUS CAPITAL PARTNERS, LLC

Applicant

- and -

J.S.N. JEWELLERY INC., J.S.N. JEWELLERY UK LIMITED, GMJ CORP., 2373138
ONTARIO INC., ALWAYS & FOREVER FAMILY COLLECTION INCORPORATED AND
P.M.R. INC.

Respondents

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

FIRST REPORT OF RICHTER ADVISORY GROUP INC.,
IN ITS CAPACITY AS RECEIVER OF
J.S.N. JEWELLERY INC., J.S.N. JEWELLERY UK LIMITED, GMJ CORP.,
2373138 ONTARIO INC., ALWAYS & FOREVER FAMILY COLLECTION INCORPORATED AND P.M.R.
INC.

September 22, 2016

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I. INTRODUCTION

1. Richter Advisory Group Inc. ("**Richter**") was appointed as receiver (the "**Receiver**"), without security, of all of the assets, properties and undertakings (the "**Property**") of J.S.N. Jewellery Inc. ("**JSN Inc.**"), J.S.N. Jewellery UK Ltd. ("**JSN UK**"), GMJ Corp. ("**GMJ**" or "**JSN US**"), (JSN Inc., JSN UK and JSN US are collectively referred to as "**JSN**"), 2373138 Ontario Inc. ("**2373138**"), Always & Forever Family Collection Inc. ("**A&F**" or "**Always and Forever**"), and P.M.R. Inc. ("**PMR**") (all collectively, the "**Debtors Companies**"), pursuant to an Order of the Honourable Justice Newbould dated the 16th day of August, 2016 (the "**Receivership Order**").

2. Pursuant to an Approval and Vesting Order of Justice Newbould, also dated the 16th day of August 2016 (the "**AVO**"), the Receiver was authorized to execute the Sale Agreement¹ and the Purchased Assets² were ordered to be vested in the purchaser, Unique Designs, Inc. ("**Unique**"), free and clear of all claims but subject to the determination of the Sharon Stone Claim³.

3. Pursuant to a Notice of Motion dated August 22, 2016, Utopia Jewellery Ltd. ("**Utopia**") and Sharon Stone Inc. ("**Sharon Stone**")⁴ commenced a motion in the receivership proceedings seeking, *inter alia*, a declaration that the assets defined as "Molds" in the affidavits of Shmuel (Samuel) Cohen ("**Cohen**") and Carla Eisnor ("**Eisnor**") are the property of Sharon Stone and do not form any part of the assets purchased by Unique pursuant to the Sale Agreement.

II. PURPOSE OF REPORT

4. The purpose of this report (the "**Report**") is to report to the Court on the outcome of the Receiver's investigation into the Sharon Stone Claim, including certain conclusions reached by the Receiver as a result of its investigation.

¹ As defined in the Order.

² As defined in the Sale Agreement.

³ As defined in the Order.

⁴ The Notice of Motion describes the Sharon Stone corporate entity as "Sharon Stone Inc." The affidavit of Shmuel Cohen describes the entity as "Sharon Stone Co. Ltd." As hereinafter set out the Receiver believes that the description in the affidavit is accurate.

III. QUALIFICATIONS

5. In preparing this Report, Richter has relied upon audited and unaudited financial information, the Debtor Companies' books and records, financial information prepared by the Debtor Companies and discussions with the CRO⁵ and A&M⁶ (collectively, the "Information"). Richter has reviewed the Information for reasonableness, internal consistency, and use in the context in which it was provided, and in consideration of the nature of the evidence provided to this Court, in relation to the issues reported on herein. Richter has not, however, audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Auditing Standards ("GAAS") pursuant to the *Canadian Institute of Chartered Accountants Handbook* and, as such, Richter expresses no opinion or other form of assurance contemplated under GAAS in respect of the information. An examination of the Company's financial forecasts in accordance with the *Canadian Institute of Chartered Accounts Handbook* has not been performed.

6. The Receiver wishes to make clear to the Court that, other than a review of certain pre-receivership sales and/or investment processes undertaken with respect to the Debtor Companies, the Receiver did not participate, prior to the Receivership Order, in the business of the Debtor Companies and does not have independent personal knowledge of the pre-receivership operation of the Debtor Companies. The information contained in this Report was obtained as a result of an investigation conducted by the Receiver which included a review of some of the books and records (hardcopy and electronic) of some of the Debtor Companies, a review of the CCAA court proceedings of Ben Moss,⁷ certain searches of public corporate records in Thailand, information from Thai counsel and information provided by the CRO, A&M, Salus⁸, Utopia and Sharon Stone⁹.

IV. BACKGROUND

The JSN Group of Companies

7. The JSN Group of Companies was founded in or around 1991 by Joseph Shilon ("Joseph"). The JSN Group of Companies was comprised of two primary operating businesses; (i) a jewellery wholesale

⁵ As hereinafter defined.

⁶ As hereinafter defined.

⁷ As hereinafter defined.

⁸ As hereinafter defined.

⁹ In their affidavit material and through counsel.

and manufacturing business with global operations, and (ii) Ben Moss Jewellers Western Canada Ltd. ("**Ben Moss**") a jewellery retailing business with 65 stores across Canada. The wholesale and manufacturing business was the original business of the JSN Group of Companies.

8. In 2013, the JSN Group of Companies acquired Ben Moss, a premier Canadian jewellery retailer. Ben Moss operated 65 corporately owned retail outlets across Canada. The management of the JSN Group of Companies acquired the Ben Moss business in order to create a vertically integrated operation that could drive synergies and provide a unique competitive advantage, while maintaining its existing customer base. In order to finance the Ben Moss acquisition, JSN utilized equity from Joseph and debt financing provided by Salus Capital Partners, LLC ("**Salus**").

9. As hereinafter set out, the business of Ben Moss is being liquidated within CCAA proceedings. The business of the Debtor Companies, including JSN Inc., are subject to the present receivership proceedings.

JSN Inc.

10. JSN Inc. is an Ontario corporation incorporated on December 24, 1993. It carried on business from leased premises located at 64 Jardin Drive, Unit 7, Concord, Ontario (the "**JSN Head Office**"). JSN Inc. operated a jewellery wholesale business. (The strategic decisions for all of the Debtor Companies and Utopia were directed from the JSN Head Office.)

11. JSN Inc. is owned by Joseph who is its President and Chief Executive Officer.

12. JSN was one of Canada's largest jewellery manufacturers and wholesalers. It offered thousands of SKU's, including a wide selection of products ranging from entry-level priced diamond designs to fully certified, top-quality diamond jewellery available in 9 carat to 18 carat gold and platinum castings. Designed and manufactured collections included trademarked Canadian Ice Diamonds, Blossom Diamonds, Always & Forever, Colour Couture and Passionate Heart Canadian Diamonds, as well as a number of private labels.¹⁰

13. JSN Inc.'s jewellery inventory was largely manufactured in Thailand by JSN Inc.'s affiliate, Utopia, a Thailand corporation.

¹⁰ It is the Receiver's understanding that, other than limited special orders, sales of particular items of jewellery would have exceeded 50 copies of each style.

14. JSN Inc.'s jewellery inventory was sold to retailers in the United Kingdom through JSN UK. Sales to U.S. customers took place through JSN US and an independent sales agent, Suncor Jewellery Ltd. ("**Suncor**"). JSN UK is a wholly owned subsidiary of JSN Inc. JSN US is indirectly owned by Joseph. Attached hereto as Appendix "A" is an Organization Chart of the JSN Group of Companies.¹¹

15. Joseph is a jewellery design specialist, diamond expert and cutter by trade.

16. Joseph's daughters, Miri Shilon ("**Miri**") and Gila Shilon ("**Gila**") both worked at JSN Inc. The Receiver understands that Miri was JSN inc.'s Director of Product Development. She is a gemologist with certificates issued to her by the Gemological Institute of America. Both Miri and Gila are jewellery designers. Joseph, Miri and Gila were the JSN design team working at the Head Office.

17. Eisnor was the Interim Chief Financial Officer and Senior Vice President of Corporate Finance and Treasurer of JSN Inc. and the various related companies.

18. JSN Inc. was the Lead Borrower with respect to various credit facilities advanced by Salus (the "**Salus Credit Facilities**") as particularized in the Affidavit of Kyle Shonak sworn August 3, 2016 (the "**Shonak Affidavit**") and filed in support of the receivership application herein. Salus was the operating lender to the Debtor Companies. As a result of defaults relating to the Salus Credit Facilities, Salus applied for the Receivership Order in these proceedings. The Shonak Affidavit Indicates that as of August 3, 2016, the Debtor Companies owed Salus CDN\$31,012,999 and US\$29,814,991 pursuant to the Salus Credit Facilities.

Utopia

19. As hereinafter set out in greater detail, Utopia operated as a jewellery manufacturing division of the JSN Group of Companies. To the best of the Receiver's information, at least from and after the acquisition of Ben Moss, the sole customer of Utopia was JSN.

¹¹ This Organization Chart was prepared by Eisnor in August 2015 in order to form part of a confidential information memorandum ("**CIM**") to be prepared by A&M in relation to a proposed investment in or refinancing of the JSN Group of Companies. The Organization Chart may not be accurate with respect to the ownership of Utopia - see paragraph 20 hereof and Appendix B.

20. The Receiver has retained the Bangkok, Thailand office of Baker & McKenzie Ltd. ("**Baker & McKenzie**") to conduct certain corporate searches with respect to Utopia in Thailand. Such searches reveal that:

- (i) Utopia was incorporated in Thailand on August 9, 1999;
- (ii) as of April 30, 2016:
 - Joseph owns 999,994 shares;
 - Gilla Shilon owns 1 share;
 - Jagatnarin Taki owns 1 share;
 - Zefra Shilon owns 1 share;
 - Aitria Seminara owns 1 share;
 - Douglas Wood owns 1 share; and
 - Lora Fitkaletti owns 1 share;
- (iii) Joseph and Cohen are directors; and
- (iv) the main activities of the corporation is stated to be "manufacturer, sell and export of jewelleryes and semi-precious stones".

Attached as Appendix "B" is a Data Sheet prepared by Baker & McKenzie summarizing information obtained in its searches.¹²

21. The Organization Chart (Appendix "A") prepared by Eisnor, and the Confidential Information Memoranda hereinafter described, all show Utopia as being owned by Joseph through Whitpay Inc. This information conflicts with the information in the Thailand public records. In either scenario, Joseph either directly or indirectly owns all, or nearly all, of the shares of Utopia and has legal control of it.

22. The Receiver understands that Cohen has the title Managing Director of Utopia and that he reports directly to Joseph. Attached hereto as Appendix "C" is a JSN Jewellery Group (Staff Organization Chart) found by the CRO in the computer records of JSN Inc. indicating that Cohen reported to Joseph. (Similar

¹² The Receiver has in its possession the following public corporate documents relating to Utopia obtained by Baker & McKenzie and written in Thai - list of shareholders, Articles of Association, balance sheet, Certification Document and Memorandum of Association. The Receiver will provide a copy of such documents to any stakeholder requesting such copy.

information is contained in the JSN Organization Chart contained in the Confidential Information Memoranda hereinafter referred to.)

23. Utopia was not a borrower from Salus, however, as set out later in this Report, JSN Inc. financed the operating costs of Utopia on a weekly basis. JSN Inc. was, in turn, financed by Salus. Accordingly, Salus indirectly financed the operations of Utopia.

Sharon Stone Co. Ltd.

24. At the request of the Receiver, Baker & McKenzie conducted certain corporate searches with respect to Sharon Stone Co. Ltd. (no records could be found with respect to an entity named "Utopia Jewellery Ltd.").

25. Based upon those corporate searches, the Receiver understands that:

- (i) Sharon Stone was incorporated on January 7, 1999 in Thailand;
- (ii) as of April 30, 2016 the shareholders are:
 - Duangkamon Chuanchaiyasit owns 25,496 shares;
 - Shmuel Cohen owns 12,250 shares;
 - Sharon Cohen owns 12,250 shares;
 - Manit Chinchueam owns 1 share;
 - Chittra Selanon owns 1 share;
 - Woraphat Joemjitphong owns 1 share; and
 - Somsak Piamwilai owns 1 share;
- (iii) the directors are Shmuel Cohen and Sharon Cohen; and
- (iv) the main activities of the corporation are described as "wholesale of diamonds and precious stones".

Attached hereto as Appendix "D" is a copy of the Data Sheet prepared by Baker & McKenzie.¹³

¹³ The Receiver has in its possession the following public corporate documents relating to Sharon Stone obtained by Baker & McKenzie and written in Thai - list of shareholders, Articles of Association, balance sheet, Certification Document and Memorandum of Association. The Receiver will provide a copy of such documents to any stakeholder requesting such copy.

26. More information with respect to Sharon Stone is set out later in this Report.

A&M, the CRO and the Ben Moss CCAA Proceedings

27. In August 2015, A&M Canada Securities ULC ("**A&M Corporate Finance**") was engaged by JSN Inc. to initiate a process to effectuate a refinancing of the Salus Credit Facilities.

28. In February 2016, the management of JSN Inc., including Joseph and Eisnor prepared, with the assistance of A&M Corporate Finance, a Confidential Information Memorandum ("**CIM**") that was used in a process seeking a refinancing of the Salus Credit Facilities. Attached hereto as Appendix "E" is a copy of the CIM dated February 2016. Attached hereto as Appendix "F" is an email correspondence among A&M Corporate Finance, management at JSN Inc., including Joseph and Eisnor, containing JSN Inc.'s "sign-off" on the final form of the CIM.

29. In March 2016, JSN Inc. engaged Alvarez & Marsal Canada ULC to assist with JSN Inc.'s strategic review process.

30. On April 18, 2016, FAAN Advisors Group Inc. ("**FAAN**") was appointed as interim Chief Financial Officer of Ben Moss. On May 13, 2016, FAAN was appointed as Chief Restructuring Officer ("**CRO**") of Ben Moss. FAAN was also appointed as CRO of JSN Inc. and the other Debtor Companies. The engagement was led by FAAN's managing directors, Naveed Manzoor ("**Manzoor**") and Daniel Sobel ("**Sobel**"). The duties of FAAN included a review of the businesses, assets, liabilities and operations of the appointing entities and the power to direct the operations and management of the appointing entities to the exclusion of other persons, including any board member of the appointing entities. Attached hereto as Appendix "G" is a copy of the appointment letter relating to JSN Inc. and the Debtor Companies.

31. On May 18, 2016, Ben Moss applied for, and was granted an initial order (the "**Initial Order**") under the CCAA. Among other provisions, the Initial Order:

- (i) appointed Alvarez & Marsal Canada Inc.¹⁴ as monitor;
- (ii) appointed FAAN as Court-appointed CRO of Ben Moss;
- (iii) authorized a Refinancing and/or Investment Solicitation Process ("**RISP**") for the purpose of offering the opportunity for potential investors to refinance all or part of

¹⁴ A&M Corporate Finance, Alvarez & Marsal Canada ULC and Alvarez & Marsal Canada Inc. are sometimes collectively referred to as "**A&M**".

the Salus Credit Facilities, to invest in Ben Moss and/or JSN and/or purchase all or a portion of Ben Moss's assets;

- (iv) authorized a DIP Facility provided by Salus; and
- (v) extended the stay of proceedings to include JSN and its property. Attached hereto as Appendix "H" is a copy of the said Initial Order.

32. As part of the RISP process, a revised CIM dated May 2016 was prepared. The CIM closely resembles the February CIM with some update and a discussion of the Ben Moss restructuring plan. A copy of the May 2016 CIM was provided to Eisnor. Attached hereto as Appendix "I" is a copy of the May 2016 CIM and email from A&M to Eisnor dated May 30, 2016.

33. The RISP was not successful and the business of Ben Moss is being liquidated within the CCAA proceedings.

34. It is evident from the above that both the CRO and A&M have extensive knowledge of the business and operations of the Debtor Companies, Ben Moss and their relationship with Utopia. The Receiver has relied upon information provided by the CRO and A&M in conducting its investigation of the Sharon Stone Claim and in preparing this Report.

The Receivership Proceedings and The Sale to Unique

35. As particularized in the Shonak Affidavit, prior to the receivership herein, the assets of JSN Inc., JSN UK, GMJ and A&F (together the "**Vendors**") were marketed for sale. Ultimately, Unique (the "**Purchaser**") submitted an irrevocable offer to purchase the "Purchased Assets" of the Vendors made as of August 1, 2016. (A redacted copy of that offer to purchase is attached as Exhibit "BB" to the Shonak Affidavit and is attached hereto as Appendix "J".)

36. Pursuant to a Notice of Application commenced by Salus and originally returnable on August 11, 2016, Salus sought an order, among other relief:

- (i) appointing Richter as Receiver of the Debtor Companies; and
- (ii) authorizing the Receiver to enter into the Unique offer on behalf of the Vendors, vest the Purchased Assets in the Purchaser free and clear of all claims and authorizing the Receiver to complete that transaction.

37. The application was not opposed by the Debtor Companies.

38. At the return of the application on August 11, 2016, Jeffrey Simpson, of Torkin Manes LLP, appeared on behalf of Utopia and Sharon Stone and advised the Court that his firm had been recently retained and that his clients were disputing the ownership of certain assets that were subject to the Unique offer. The Court adjourned the application to Tuesday, August 16, 2016, and ordered Utopia/Sharon Stone to deliver an affidavit particularizing their claim by noon on Monday, August 15, 2016.

39. Utopia and Sharon Stone delivered an affidavit of Cohen sworn on August 15, 2016 prior to the deadline ordered by the Court. (That affidavit is the supporting affidavit in support of the present motion of Utopia and Sharon Stone.)

40. The Purchaser, Salus, and the Receiver negotiated an amended offer made as of August 15, 2016 (the "**Sale Agreement**") whereby, simplistically, the assets claimed by Utopia/Sharon Stone are "carved-out" from the "Purchased Assets" pending resolution of the present motion, with a price deduction in the event that the motion is successful.

41. On August 16, 2016, Justice Newbould granted the requested Receivership Order, which Order is attached hereto as Appendix "K". Pursuant to the Receivership Order (paragraphs 13 - 17), FAAN was also appointed as CRO of the Debtor Companies.

42. At the same time Justice Newbould granted the AVO which, among other relief, authorized the Receiver to execute the Sale Agreement and to complete the Transaction. The Court ordered, at paragraph 2 of the Order as follows:

"This Court orders and declares that the determination of the Sharon Stone Claim shall be dealt with by further Order of the Court. Sharon Stone retains the right to assert the Sharon Stone Claim, and nothing in this Order shall be deemed to prejudice or otherwise limit the Sharon Stone Claim."

43. The AVO, at paragraph 10 ordered that the "Rosenstein Affidavit" (which included an unredacted copy of the Sale Agreement) be sealed until further order of the Court - no such order has been made as at the date hereof. A copy of the AVO is attached as Appendix "L".

44. At the time of the granting of the Receivership Order and the AVO, Justice Newbould made an endorsement requiring Sharon Stone to file its motion within 5 days. Utopia and Sharon Stone duly filed

their Notice of Motion herein on Monday, August 22, 2016, in accordance with the endorsement of Justice Newbould.

Sale Agreement

45. Pursuant to Section 2.1 of the Sale Agreement, the Receiver agreed to sell to the Purchaser, amongst other assets, all of the Intellectual Property owned by the Vendors.

46. Intellectual Property is defined in the Sale Agreement as follows:

"Intellectual Property" means domestic and foreign: (i) patents, applications for patents and reissues, divisions, continuations, renewals, extensions and continuations-in-part of patents or patent applications; (ii) proprietary and non-public business information, including inventions (whether patentable or not), invention disclosures, improvements, discoveries, trade secrets, confidential information, know-how, methods, processes, designs, technology, technical data, schematics, formulae, and documentation relating to any of the foregoing; (iii) copyrights, copyright registrations and applications for copyright registration; (iv) mask works, mask work registrations and applications for mask work registrations; (v) designs, design registrations, design registration applications, sketches, trade dress, waxes, molds, models, samples, routers, bills of materials and integrated circuit topographies; (vi) trade names, business names, corporate names, Data Universal Numbering System numbers, vendor numbers, SKU numbers, domain names, website names and URLs, common law trade-marks, trade-mark registrations, trade mark applications, trade dress and logos, service marks and the goodwill associated with any of the foregoing; (vii) information with respect to transactions between the Vendors and Customers other than as required for the ongoing collection by the Vendors or the Receiver of existing accounts receivable from such Customers; and (viii) any other intellectual property and industrial property." (underlining added)

47. Accordingly, it is the position of Unique that it has acquired all of the Vendors' intellectual property relating to jewellery sold by JSN Inc. prior to its receivership which includes such rights in all jewellery manufactured by Utopia and sold to JSN Inc. or any of its related companies. As hereinafter set out, the Receiver supports that position.

48. Section 4.2(d) of the Sale Agreement contains a carve out with respect to the portion of the Purchased Assets that are subject to the Utopia/Sharon Stone motion. At section 7.1 of the Sale Agreement the Receiver, with the assistance of the CRO and Salus, agreed to diligently defend the claim brought by Sharon Stone and Utopia.

The Utopia/Sharon Stone Motion

49. Pursuant to the motion herein, Utopia and Sharon Stone are, among other relief, seeking a declaration that:

- (i) "the assets defined as 'Molds' in the Affidavits of Shmuel Cohen and Carla Eisnor sworn in support of this motion are the property of Sharon Stone; and
- (ii) the Molds do not form any part of the assets purchased by Unique Designs Inc...pursuant to the Sale Agreement dated August 16, 2016...".

50. The affidavit of Cohen defines "Molds" as "Those assets are generally referred to as molds which are used to manufacture jewellery, but include designs, sketches, waxes, models, samples and/or styles (collectively the "Molds")."

51. It appears that Utopia and Sharon Stone do not object to Unique's purchase of the Vendors' trademarks, business names, goodwill and other "Intellectual Property".

V. THE SCOPE OF THE RECEIVER'S INVESTIGATION

52. As previously stated, the Receiver was not involved in the business of the Debtor Companies prior to the receivership. The Receiver has no personal knowledge of the matters that are in issue in the Sharon Stone Claim.

53. In order to obtain factual information needed to respond to the Sharon Stone Claim, the Receiver has:

- (i) conferred extensively with Manzoor and Sobel of the CRO. These individuals have been involved in the business of the Debtor Companies since approximately three months prior to the Receivership Order. They have detailed information with respect to the operations of the Debtor Companies and access to the Debtor Companies' computer systems and records;
- (ii) consulted with Salus and its counsel. Salus and its counsel had background information with respect to the business of the Debtor Companies and Utopia arising from its relationship as lender over a period of approximately 3 years. As hereinafter set out, Salus was involved in the funding of Utopia's operating costs through its funding of JSN Inc.;
- (iii) consulted with A&M. A&M and its affiliates were involved, initially in an investment banking capacity for the JSN Group of Companies commencing in August 2015

and ultimately as CCAA Monitor of Ben Moss prior to the present receivership proceedings;

- (iv) reviewed the Ben Moss CCAA court material;
- (v) reviewed the Motion Record of Utopia and Sharon Stone. On August 29, 2016 Fasken Martineau DuMoulin LLP ("**Fasken**"), counsel to the Receiver, wrote to Jeffrey Simpson requesting certain information with respect to the issues raised in the Motion Record. As at the date of this Report no response has been received. A copy of that letter is attached hereto as Appendix "M"; and
- (vi) retained Baker & McKenzie in Bangkok, Thailand to undertake certain corporate searches of Utopia and Sharon Stone and to provide information with respect to certain principles of Thailand intellectual property law.

VI. CONCLUSIONS REACHED BY THE RECEIVER

54. As a result of its investigation, the Receiver has come to the following conclusions;

- Conclusion #1 the business of Utopia was not run as a separate business from that of JSN Inc. - rather, Utopia functioned as a division of JSN Inc., without regard to corporate distinctions. The 2 entities, along with other entities in the JSN Group of Companies, operated an integrated business;
- Conclusion #2 to the extent there was original design undertaken in the jewellery sold by JSN and manufactured by Utopia, such design was a collaborative effort as between Joseph, Miri and Gila, of JSN Inc., and individuals at Utopia; and
- Conclusion #3 there is no independent evidence, known to the Receiver, from its enquiries, to substantiate that Sharon Stone participated in the design of jewellery manufactured by Utopia and sold by JSN or that the Molds are the property of Sharon Stone.

55. The following is the evidence obtained by the Receiver in support of the above conclusions.

Conclusion #1: The Business Of Utopia Was Not Run As A Separate Business From That Of JSN Inc. Rather, Utopia Functioned As A Division Of JSN Inc., Without Regard To Corporate Distinctions. The Two Entities Operated An Integrated Business.

(i) JSN Inc. and Utopia Were Not Arm's Length Companies – both owned by Joseph

56. As indicated in the Organization Chart (Appendix "A"), JSN Inc. was owned by Joseph. Utopia was also owned by Joseph either directly or through his company, Whitpay Inc. As indicated in the Staff Organization Chart attached as Appendix "C", Cohen reported to Joseph. Accordingly, the two corporations were related and did not carry on business at arm's length.

(ii) JSN and Utopia Had Combined Audited Financial Statements

57. As previously stated, in August 2015, A&M Corporate Finance was engaged by JSN Inc. with respect to a refinancing of the Salus Credit Facilities. A&M Corporate Finance sought information from Eisnor to assist in the preparation of the original CIM. Under cover of an email dated August 27, 2015, from Eisnor to A&M, Eisnor provided certain requested information to A&M (the "**Eisnor Email**"). Attached hereto as Appendix "N" is a copy of the Eisnor Email (without attachments).¹⁵

58. In the Eisnor Email she attached fiscal 2012 and 2014 audited combined financial statements for the JSN Jewellery Group. These financial statements are combined financial statements of "JSN Jewellery Group" prepared on a carved-out basis from the combined financial statements of JSN Inc., GMJ, JSN UK and Utopia. Inter-company sales, expenses and receivables and payables between entities in the Group have been eliminated. The auditors, PricewaterhouseCoopers LLP, state at Note 1 of both financial statements as follows:

"Because the Jewellery Group was a part of a group of companies under common control, these combined financial statements depict the equity in that assets representing the amounts associated specifically with the Jewellery Group."

"The Jewellery Group's principal business activities include the manufacture, distribution and sale of diamond jewellery. The Group's primary sales markets are in Canada, the United States and the United Kingdom. The Jewellery Group's manufacturing facilities are located in Thailand and Ontario, Canada."

Attached hereto as Appendix "O" are the combined financial statements as at August 31, 2012. Attached hereto as Appendix "P" are the combined financial statements as at March 31, 2014.

(iii) JSN and Utopia Prepared Combined Budgets

59. In the Eisnor Email she attached a 2016 combined budget for JSN Inc., Ben Moss, GMJ, JSN UK and Utopia. With respect to Utopia, the budget included the following information:

- (i) in the document entitled "Assumptions" the projected gross margin percentage for Utopia is 0% as opposed to 25% for JSN Inc., JSN UK and JSN US for the 2016 fiscal year budget ending on March 31, 2016. This indicates that the budget for Utopia provided for no profit margin on sales from Utopia to JSN;

¹⁵ The Corporate Organization Chart appended hereto as Appendix "A" is Attachment No. 1 to the Eisnor Email.

- (ii) the projected income statement shows an excess of the cost of sales (\$72,771,000) over net sales (\$70,131,000) resulting in a projected net loss at the end of the budget period of \$2,640,000. After the addition of operating expenses, the loss increased to \$3,711,000;
- (iii) the budgeted monthly loss (after deduction of "Amortization and Depreciation") is reflected under current liabilities as "due to related group party (JSN Canada)". This indicates that the monthly projected losses would be financed by JSN Inc.; and
- (iv) in the section headed "Intangible Assets" no value is shown for intangible Assets such as copyrights.

Attached hereto as Appendix "Q" is the aforesaid budget for the 2016 fiscal period.

(iv) The CIMs Describe Utopia as Part of a Vertically Integrated JSN Group of Companies

60. As previously noted, CIMs were prepared in February 2016 and May 2016 with the assistance of A&M (Appendix "E" and Appendix "i"). The CIMs include the Utopia business. The following are some extracts from the CIMs:

- "The Company is comprised of two businesses; (i) a jewellery **wholesale and manufacturing** business with global operations; and (ii) a jewellery **retailing** business with 67 stores across Canada (together the 'JSN Group').";
- "Joseph Shilon, a jewellery design specialist, diamond expert and cutter by trade, founded JSN in Toronto in 1985 shortly after arriving in Canada from Israel. JSN has grown to become one of Canada's leading jewellery manufacturers and wholesalers and has established international operations and production distribution around the world.";
- "JSN differentiates itself with innovative and evolving designs that are often at the forefront of industry trends. JSN's design and production capabilities coupled with the strength of its growing portfolio of brands has become a competitive advantage that is difficult to replicate within the industry." (Underling added);
- "1996 - JSN begins overseas manufacturing in Bangkok, Thailand.";
- "JSN offers class-leading service to its customers in the design, manufacture and launch of exclusive product lines; this service component has allowed JSN to develop meaningful partnerships with its customers." (Underling added);
- "Vertical integration provides the JSN Group with 'mine to market' control across the entire value chain, including direct sourcing diamonds, jewellery manufacturing, wholesale and retail sales.";

- The Organizational Chart set out at page 17 of the CIM shows the managing director, Thailand,¹⁶ reporting to Joseph as President and CEO.

61. The Receiver has been advised by A&M that, at no time during its engagement as financial advisor to the JSN Group of Companies, or as Monitor of Ben Moss, did any person involved in the JSN Group of Companies indicate that JSN Inc. did not own the intellectual property relating to the inventory it sold. At no time was A&M advised that Sharon Stone was involved in the design of jewellery manufactured by Utopia.

(v) JSN Did the Costing of JSN Inventory Manufactured by Utopia

62. Based upon information provided by the CRO and A&M, the Receiver understands that the costing of jewellery inventory manufactured by Utopia and provided to JSN was not undertaken in a traditional manner. Typically a manufacturer undertakes the costing of its products. With JSN and Utopia, the final costing appears to have been determined by JSN and provided to Utopia. Attached as Appendix "R" is an email chain between Salus, A&M and JSN in May 2016. It appears that the costing of jewellery styles manufactured by Utopia was developed by JSN Inc. on JSN's Navision software.

63. The attached "style cards" for each SKU" was prepared on JSN Inc.'s system by JSN Inc. staff. It calculates the cost of material for each SKU and adds a labour component.

(vi) JSN Inc. Funded Utopia's Weekly Operating Costs

64. Based upon information received from the CRO and the Receiver's review of the documentation appended to this Report, it appears that Utopia did not render customary invoices to JSN and receive payment, therefore, in a typical fashion. Rather, JSN Inc. funded the operating costs of Utopia on a weekly (or more frequent) basis with the respective indebtedness as between Utopia and JSN Inc. accounted for by way of book entries in intercorporate accounts.

65. The Receiver understands that JSN Inc. funded Utopia's operating costs on a weekly (or more frequent) basis. The funding was by way of:

- (i) cash transfers from JSN Inc. or JSN UK to Utopia;
- (ii) gold purchased by JSN from third-party suppliers and directed to be delivered to Utopia; and

¹⁶ Cohen of Utopia.

- (iii) diamonds purchased by JSN or JSN UK sometimes through related parties (Global Diamonds) or from third-party suppliers and directed to be delivered to Utopia.

Attached hereto as Appendix "S" is email correspondence from October 2014 as between Utopia, Eisnor, Cohen and Joseph dealing with the wire payment of cash transfers, provision of gold and budgetary requirements of Utopia.

66. As part of the October 20, 2014 email correspondence dealing with JSN funding Utopia's weekly budget is an email from Utopia to Eisnor, Cohen and Joseph dated October 10, 2014. The email requests a transfer totalling \$2,447,500 from JSN Inc. to Utopia for the following weeks budget. An attachment to the email is an Excel spreadsheet entitled "Madam's Utopia Owe". In that document is a reference to amounts that appear to have been advanced by "Sharon Stone" to Utopia. The Receiver is not clear as to the meaning or import of the entries but is referring to the document as it contains references to Sharon Stone. Attached hereto as Appendix "T" is a copy of that email with the Excel spreadsheet.

67. By way of further example, after the initial appointment of the CRO, the CRO was asked to authorize continued funding of Utopia's operating expenses by JSN Inc. on a weekly or more frequent basis. The CRO and Salus requested information with respect to Utopia's requirements. Attached hereto as Appendix "U" is an email correspondence between Eisnor, Salus, the CRO and A&M with information relating to the funding of Utopia's operating costs dated May 17, 2016. Attached hereto as Appendix "V" is email correspondence amongst Manzoor, Sobel, Eisnor and Joseph (without attachments) dated June 7 and 8, 2016 also with respect to requested funding.

68. All of the above reflects the fact that JSN Inc. funded for Utopia's weekly operating costs. This ties into the combined budget (Appendix "Q") which shows the projected losses in Utopia and the related amount due to JSN Inc.

69. Included in the operating costs of Utopia, funded by JSN Inc., are the costs of Utopia's labour force. Functionally, JSN Inc. funded Utopia's payroll.

70. The Receiver is of the view that the above arrangement, whereby JSN Inc. funded the weekly operating costs of Utopia would be highly unusual in a normal relationship between a manufacturer of an item and an ordinary customer. This financing arrangement recognizes that, as within the JSN Group of

Companies corporate distinctions were blurred. The various corporations operated as one vertically integrated entity.

(vii) The Ordering Process as Between JSN and Utopia Was One Integrated System

71. Based upon information provided by the CRO and former JSN accounting staff, the Receiver understands that the following was the process pursuant to which orders were received from third-party retailers and Ben Moss, communicated to Utopia and later received by JSN Inc., JSN UK or GMJ:

- (i) orders would be received from third-party retailers or Ben Moss by JSN by fax, email or electronic data interchange;
- (ii) orders would be inputted by JSN Inc.'s staff to the JSN Group's Navision ERP/Accounting System;
- (iii) a data file would be transmitted by JSN staff to Utopia;
- (iv) Utopia's staff also had remote access to the JSN Jewellery Group's systems to, amongst other things, access the orders;
- (v) orders were placed into the production schedule by Utopia. Utopia would then estimate how much cash, gold, platinum, findings and diamond purchases it would require for the upcoming production schedule and request funding and/or purchases from JSN Inc. (as set out above under the heading "JSN Inc.'s Funded Utopia's Weekly Operating Costs");
- (vi) when product was ready to ship, it was sent by Utopia to JSN Inc., JSN UK or JSN US;
- (vii) a Utopia-generated commercial invoice to JSN, for the cost of the jewellery, would accompany shipments for customs' purposes. The invoice would reflect the cost of material only. Attached hereto as Appendix "W" is a sample invoice from Utopia to JSN UK dated June 3, 2016. The invoice does not show a price per ring, earring or pendant. Rather, the invoice shows the quantity of material and sets out a price therefore; and
- (viii) at month end, a further accounting entry was performed as between Utopia and JSN for the cost of labour and overhead attributable to the inventory sold during the period that was not otherwise included on the commercial invoice. As stated above, at year end, entries would be performed to adjust the price of the product bought/sold between the companies using a transfer pricing policy established between the related parties in the group.

(viii) JSN Inc. "Paid For" Jewellery Inventory Manufactured by Utopia By Way Of Book Entries In Intercompany Accounts As Between JSN Inc. and Utopia

72. Based upon information provided by the CRO and former JSN accounting staff, the Receiver understands that the following is a summary of the accounting entries/flow of funds that occurred relating to JSN Inc.'s funding of the operating costs of Utopia and the accounting for payment of jewellery inventory provided by Utopia:

- (i) when JSN Inc. provided operating funds to Utopia, JSN Inc. would record the cash payment as a reduction in its intercompany account with Utopia. Utopia in turn would record the receipt of the funds in an intercompany account to increase its intercompany account with JSN Inc.;
- (ii) when JSN provided gold, diamonds or other materials to Utopia, JSN would pay the third-party vendor directly and Utopia would receive the material. A month end reconciliation process occurred whereby JSN Inc. posted the payments as a reduction to the Utopia intercompany account and Utopia posted the amount to increase its intercompany account with JSN Inc.;
- (iii) when Utopia shipped product to JSN no cash changed hands, but rather intercompany journal entries were performed as described above; and
- (iv) Attached as Appendix "X" is a copy of ledgers from JSN Inc.'s records reflecting a sample of such entries.

73. Under the above system, JSN did not pay Utopia for individual shipments of jewellery manufactured by Utopia - as would be the case in a "normal" customer-manufacturer relationship. Rather, JSN paid Utopia's operating costs and the parties "netted out" accounting entries in the intercompany accounts.

Summary

74. By reason of the information set out under the following subheadings:

- (i) JSN Inc. and Utopia Were Not Arm's Length Companies – both owned by Joseph;
- (ii) JSN and Utopia Had Combined Audited Financial Statements;
- (iii) JSN and Utopia Prepared Combined Budgets;
- (iv) The CIMs Describe Utopia as Part of a Vertically Integrated JSN Group of Companies and the CIMs were specifically approved by management of the JSN Group of Companies;
- (v) JSN Did the Costing of JSN Inventory Manufactured by Utopia;

- (vi) JSN Inc. Funded Utopia's Weekly Operating Costs;
- (vii) The Ordering Process as Between JSN and Utopia Was One Integrated System; and
- (viii) JSN Inc. "Paid For" Jewellery Inventory Manufactured by Utopia By Way Of Book Entries In Intercorporate Accounts As Between JSN Inc. and Utopia;

the Receiver has concluded that the business of Utopia was not run as a separate business from that of JSN Inc. and the other entities in the JSN Group of Companies - rather, Utopia functioned as a vertically integrated division of JSN Inc. without regard to corporate distinctions. The 2 entities carried on an integrated business.

Conclusion #2: To The Extent There Was Original Design Undertaken In The Jewellery Sold By JSN And Manufactured By Utopia, Such Design Was A Collaborative Effort As Between Joseph, Miri And Gila, Of JSN Inc., And Individuals At Utopia

75. The design of the jewellery sold by JSN and manufactured by Utopia was a collaborative effort among Joseph, Miri and Gila of JSN Inc. and individuals at Utopia.

76. As set out above, each of Joseph, Miri and Gila were jewellery designers.

77. As set out above, Utopia, functionally, operated an integrated business with the JSN Group of Companies and was, functionally, a division of JSN Inc., financially supported by JSN Inc.

78. Based upon the Receiver's review of email correspondence between JSN Inc. and Utopia it appears to the Receiver that the design of the jewellery manufactured by Utopia and sold by JSN, JSN UK and GMJ was a collaborative effort among Joseph, Miri and Gila and the staff at Utopia. By way of example:

- (i) Email dated March 9, 2016 from Gila to Utopia (cc: Miri) providing instructions with respect to revised designs as per Gila's attached notes;
- (ii) Email dated March 14, 2016 from Gila to Utopia (cc: Miri) dealing with new designs and requesting incorporation of the notes Gila has attached in more detailed outlines;
- (iii) Email dated March 17, 2016 from Gila to Utopia (cc: Miri) with comments on the design of a ring;
- (iv) Email chain ending on May 19, 2016 between Gila and Utopia dealing with revisions to designs requested by Gila for the previous past couple of months that have not been received;

- (v) Email chain ending on May 25, 2016 as between Gila, Miri and Utopia with revisions to various styles;
- (vi) Email dated May 25, 2016 from Utopia to Gila asking for instructions with respect to a particular design;
- (vii) Email chain ending on May 31, 2016 amongst Gila, Miri and Utopia dealing with the redesign of a ring; and
- (viii) Email chain ending on June 9, 2016 amongst Gila, Miri and Utopia dealing with Gila's comments on the design of a ring.

Attached hereto as Appendix "Y" is a copy of the aforesaid emails.

79. It appears that in June 2016 Sushll Kumar's ("**Kumar**") (who appears from the emails attached at Appendix "R" to be a designer at Utopia) employment at Utopia was terminated. By email dated June 19, 2016 from Kumar to Joseph, with a copy to Gila, Kumar asked for payment of compensation of three months' salary and enquired about doing work in the future for "JSN Canada". A copy of this email is attached hereto as Appendix "Z".

80. It appears that subsequent to the termination of Kumar, Utopia asked various questions of Joseph, Miri or Gila with respect to design issues previously dealt with by Kumar. Attached hereto as Appendix "AA" are emails dated June 21, 2016, June 23, 2016, June 23, 2016 and June 26, 2016 in this regard.

81. Given the integrated nature of the JSN Inc. and Utopia businesses and the information contained in paragraphs 71 - 76 hereof, it is the conclusion of the Receiver that the design of the jewellery sold by JSN Inc. and manufactured by Utopia was a collaborative effort amongst Joseph, Miri and Gila of JSN Inc. and Individuals at Utopia. It appears that ultimate direction with respect to design issues came from JSN Inc.

Conclusion #3: There Is No Independent Evidence, Known To The Receiver, From Its Enquiries, To Substantiate That Sharon Stone Participated In The Design Of Jewellery Manufactured By Utopia And Sold By JSN Or That The Molds Are The Property Of Sharon Stone.

82. In all of the emails reviewed by the Receiver with respect to the design of jewellery inventory, a sample of which is attached as Appendix "Y" and Appendix "Z", there is not one email sent by, to or copied to Sharon Cohen or Sharon Stone.¹⁷

¹⁷ As previously indicated the only email reviewed by the Receiver which makes any reference to "Sharon Stone" is found at Appendix "T" and appears to deal with monies advanced by Sharon Stone to Utopia.

83. As previously stated, the Receiver has been advised by A&M that, at no time during its engagement as financial advisor to the JSN Group of Companies, or as Monitor of Ben Moss, did any person involved in the JSN Group of Companies indicate that JSN Inc. did not own the intellectual property relating to the inventory it sold. At no time was A&M advised that Sharon Stone was involved in the design of jewellery manufactured by Utopia.

84. The Receiver has been advised by A&M that A&M's understanding, which it obtained by way of discussions with management of the JSN Group of Companies, including Joseph, was that Sharon Stone was no longer an active company. Historically, the business of Sharon Stone had been to source, design and manufacture colored gem stone jewellery in Thailand but that the business had been wound down many years prior. A&M was also advised that the business of Sharon Stone was owned by Cohen and/or Cohen's wife, Sharon.

85. The Receiver has also been advised by the CRO that, throughout its mandate as CRO of JSN Inc. (and related companies) (both privately appointed and court-appointed), no one at the JSN Group of Companies raised any issue with respect to JSN Inc.'s ownership of intellectual property relating to the jewellery it sold. The CRO was not advised that Sharon Stone was involved in the design of jewellery manufactured by Utopia or had any legal interest in the design of that jewellery. The CRO was not aware of any company by the name of Sharon Stone until the receivership court hearing.

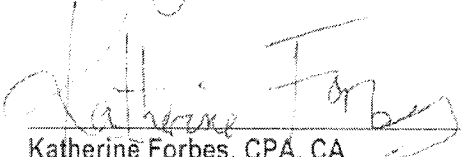
86. The CRO has advised the Receiver that in its review of JSN Inc.'s documents from time to time, it is not aware of any document within the records of JSN Inc. which corroborates that design services were provided by Sharon Stone to Utopia or to JSN Inc. or that Sharon Stone had any legal rights to intellectual property in jewellery manufactured by Utopia for JSN Inc.

All of which is respectfully submitted on the 22nd day of September, 2016.

Richter Advisory Group Inc.
as the Receiver of J.S.N. Jewellery Inc., J.S.N. Jewellery UK Limited, GMJ Corp.,
2373138 Ontario Inc., Always & Forever Family Collection Incorporated, and P.M.R. Inc. and not in
its personal capacity



Clark Lonergan, CPA, CA, CIRP
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