

CANADA

PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

No: 500-11-049210-152  
41-2021835

SUPERIOR COURT  
(Commercial Division)

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IN THE MATTER OF THE NOTICE OF  
INTENTION TO MAKE A PROPOSAL OF  
MAGASIN LAURA (P.V.) INC. / LAURA'S  
SHOPPE (P.V.) INC.:

**MAGASIN LAURA (P.V.) INC. / LAURA'S  
SHOPPE (P.V.) INC.**, a legal person and  
corporation subsisting under the provisions of  
the *Business Corporations Act*, having its  
registered office at 4 Granville, in the City of  
Hampstead, in the Province of Québec, H3X  
3B1;

**Applicant**

-and-

**KPMG INC.**, a legal person duly constituted  
according to law, having a place of business at  
600 boul. de Maisonneuve West, Suite 1500, in  
the City of Montréal, in the Province of Québec,  
H3A 0A3, in its capacity as trustee to the Notice  
of Intention filing of the Applicant;

**Trustee**

-and-

**THE CADILLAC FAIRVIEW CORPORATION  
LIMITED**, a legal person duly constituted  
according to law, having a place of business at  
1160, avenue des Canadiens-de-Montréal, in the  
City of Montréal, Province of Québec, H3B 2S2;

**CF**

-and-

**SALUS CAPITAL PARTNERS, LLC**, a legal  
person duly constituted according to law, having  
its registered office at 197 First Avenue, Suite  
250, in the City of Needham Heights, in the State  
of Massachusetts, 02494;

**Salus**

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**APPLICATION FOR INTERIM FINANCING CHARGE**  
 (Section 50.6 of the *Bankruptcy and Insolvency Act*, Canada, RSC, 1985, c. B-3)

IN SUPPORT OF THE PRESENT APPLICATION FOR INTERIM FINANCING CHARGE (THE "APPLICATION"), THE APPLICANT RESPECTFULLY SUBMITS AS FOLLOWS:

**I. THE PARTIES**

**A. The Applicant**

1. The Applicant, Magasin Laura (P.V.) Inc. / Laura's Shoppe (P.V.) Inc., is a corporation subsisting under the provisions of the *Business Corporations Act*, having its registered office at the above stated location within the district of Montréal and the jurisdiction of this Court.
2. As appears from a printout of the *Registraire des Entreprises du Québec*, CIDREQ Report for the Applicant, a copy of which is attached hereto as **Exhibit A-1**, the Applicant's sole director is Kalman Fisher ("**Fisher**"). The Applicant's officers are Fisher and Mario Petraglia, the Applicant's Chief Financial Officer. The Applicant's shareholders are: (a) a numbered company, a corporation ultimately owned by Fisher; and (b) Melanie Fisher, Fisher's spouse.
3. On July 31, 2015, the Applicant filed a notice of intention to make a proposal (the "**NOI**") under the relevant provisions of the *Bankruptcy and Insolvency Act*, Canada (the "**BIA**") naming the Trustee as trustee to such NOI filing. A copy of such filing is attached hereto as **Exhibit A-2**.

**B. Salus**

4. Salus Capital Partners, LLC ("**Salus**") is the Applicant's working capital lender and has extended credit facilities to the Applicant by way of a revolving USD and CDN line of credit, and a term loan facility (collectively, the "**Salus Facility**").
5. Salus advised the Applicant that as of August 6, 2015, the amounts owing by the Applicant to Salus under the Salus Facility are CDN \$8,977,600.40 and USD \$10,377,836.82 (collectively, the "**Salus Indebtedness**").
6. Salus operates primarily in the U.S., where it has incurred substantial losses in its lending business. It should be emphasized that Salus itself is in liquidation and is in the process of liquidating its entire loan portfolio. Accordingly, Salus is not acting as a normal lender in its dealings with the Applicant.
7. Indeed, and without limitation,

- (a) in or around late April 2015, Marc Price, Salus' Executive Vice-President left Salus in connection with a \$250,000,000 loan loss tied to bankrupt electronics retailer RadioShack Corp. ("**RadioShack**");
- (b) on or around May 13, 2015, Salus dismissed approximately 20 of its 50 staff as a result of loan losses incurred in its RadioShack loans and its co-founder and CEO, Andy Moser left the company; and
- (c) on August 6, 2015, it was publicly reported that the HRG Group Inc. (formerly known as Harbinger Group Inc.), Salus' majority shareholder, is, following the RadioShack loss, focusing on winding down the loans held by Salus.

Copies of news articles on Bloomberg.com with respect to the foregoing are attached hereto, *en liasse*, as **Exhibit A-3**.

- 8. In addition, Mark Sturrock, Salus' only Canadian representative, was also terminated in or around the periods referred to above.
- 9. As is more fully described below, Salus has committed, among others, the following serious wrongful acts against the Applicant:
  - (a) it has induced the Applicant to waive the 10 day delay following its section 244 *BIA* notice by advising that it would support the Applicant's restructuring plan and filing of an NOI, when it had absolutely no intention of doing so;
  - (b) it has refused to advance funds to Applicant for the purchase of fall 2015 merchandise which is essential for Applicant's restructuring plan and future viability;
  - (c) it has imposed impossible deadlines on Applicant for the payment of its loans to Salus, failing which it would be put out of business;
  - (d) prior to the filing of the NOI by the Applicant, it approached major liquidators in the U.S. to submit liquidation proposals for all of the inventory of the Applicant;
  - (e) it surreptitiously set up a data room to assist liquidators in the preparation of their respective liquidation proposals;
  - (f) it has operated a soft receivership without Court approval by determining what payments could be made by the Applicant and which could not; and
  - (g) it has made false and misleading allegations and omissions in its motion for the appointment of a receiver.

C. CF

10. CF is a holding company having an office at the above stated location. As appears from an extract from its website, [www.cadillacfairview.com](http://www.cadillacfairview.com), a copy of which is attached hereto as **Exhibit A-4**, CF is one of North America's largest owners, operators and developers of commercial real estate. CF and its affiliates own and manage over 36 million square feet of leasable space at 66 properties across North America.
11. CF is the Applicant's landlord with respect to thirty-nine (39) of the Applicant's retail stores across Canada.
12. As will be more fully detailed herein, CF is prepared to provide the Applicant with financial support, as needed, of up to \$10,000,000 in order to allow the Applicant to continue to operate in the best interest of the Applicant, its employees and its creditors.

II. THE APPLICANT'S BUSINESS

13. The Applicant opened its first store in Montréal, Québec in 1930.
14. Today, the Applicant is a well-known women's retailer operating across Canada under the trade names "Laura", "Laura Petites", "Laura Outlet" and "Laura Plus" (collectively, the "**Laura Stores**").
15. The Applicant also owns and operates the retail stores operating across Canada under national brands "Melanie Lyne" and "Melanie Lyne Liquidation" (collectively, the "**Melanie Lyne Stores**"). Melanie Lyne was founded in Montréal, Québec in 1983.
16. The Applicant owns and operates approximately 162 separate Laura Stores and Melanie Lyne Stores across Canada (the "**Stores**"). Approximately 25% of the Stores are situated in the Province of Québec and 50% of Stores are situated in the Province of Ontario.
17. The Applicant employs approximately 2383 full time and part time employees in its Stores and other facilities related to its operations.
18. The Applicant also rents an office located at 2955 rue Jules-Brillant, Laval, Québec, H7P 6B2 (the "**Laval Office**"), a warehouse center located at 2519-2525 Le Corbusier, Laval, Québec, H7S 1Z4 (the "**Warehouse**"), and an office located at 151 City Centre Drive, Mississauga, Ontario, L5B 1M7 (the "**Mississauga Office**").
19. Each of the Stores is situated in a shopping mall and such Stores, as well as the Laval Office, the Warehouse and the Mississauga Office, are the object of various leases (the "**Leases**") between the Applicant, as tenant, and various landlords (the "**Landlords**").

20. The Applicant is an important participant in the Canadian women's apparel industry.
21. The Applicant pays annual rentals to the Landlords aggregating approximately \$59,000,000, approximately \$20,000,000 of which is paid to CF.
22. The Applicant has excellent business relationships with its Landlords, including in particular CF, who have supported and continue to support the Applicant during challenging financial periods.
23. The Applicant purchases its inventory from various domestic distributors and offshore suppliers. The Applicant's annual purchases from distributors and suppliers is approximately \$106,000,000.

### III. THE SECURED CREDITORS

24. Attached hereto, *en liasse*, as **Exhibit A-5**, is a detailed summary of search reports of the Register of Personal and Movable Real Rights of the Province of Québec as at July 22, 2015 (the "**Québec Search**"). The Québec Search reveals the publication of the following hypothecs or other rights, namely:
  - (a) Deeds of Hypothec and Issue of Bonds between the Applicant and certain guarantors in favor of Salus, acting in its capacity as *fondé de pouvoir*, securing the Salus Facility (collectively the "**Salus Hypothec**"). The Salus Hypothec charges the universality of all of the Applicant's present and future, corporeal and incorporeal, movable property (the "**General Property**"); and
  - (b) Hypothec on Movable Property between the Applicant and certain guarantors in favor of 3482731 Canada Inc.
25. The hypothecs of various Landlords revealed by the Québec Search are as follows:
  - (a) Landlord hypothec in favor of Riocan Holdings (Québec) Inc. charging the General Property situated in the Store located at Unit 19E of Mega Centre Notre-Dame, Autoroute 13, Laval, Québec;
  - (b) Landlord hypothec in favor of 9145-4090 Québec Inc., SITQ PVM II Inc. and SITQ PVM III Inc. charging the General Property situated in the Store located at 1 Place Ville Marie, Montréal, Québec; and
  - (c) Landlord hypothec in favor of SITQ PVM I Inc., SITQ PVM II Inc. and SITQ PVM III Inc. charging certain movable property situated in the Store located at 1 Place Ville Marie, Montréal, Québec.

26. Similar searches under the *Personal Property Security Act* registries for the Provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia and Newfoundland and Labrador (collectively, the "**PPSA Searches**"), a summary of which is attached as **Exhibit A-6**, reveal security interests in favor of Salus charging the General Property.
27. Likewise, in British Columbia, Alberta and Ontario, the PPSA Searches (Exhibit A-6) reveal security interests in favor of PNC Equipment Finance charging certain leasehold improvements located at the stores described therein.

#### IV. THE APPLICANT'S INSOLVENCY

28. In 2011, faced with an influx into Canada of large international retailers, the Applicant set out to make some significant changes, with the goal of being more competitive and better servicing its customers. Unfortunately, the changes resulted in merchandise that did not resonate with the Applicant's customers.
29. The Applicant suffered losses in 2011-2013. In order to offset such losses, Fisher made significant personal loans to the Applicant, including approximately \$11,000,000 subsequent to the execution of the financing agreement with Salus.
30. In April 2013, the Applicant and Salus executed the Salus Facility agreements. In June 2013, the Applicant met, for the first time, with Kyle C. Shonack ("**Shonack**"), Salus' then Executive Vice-President Special Opportunities and Risk Manager (since April 2015, Shonack has been Salus' Co-President) to discuss the Applicant's defaults pursuant to the Salus Facility. Since such time, Shonack has been the Applicant's principal contact at Salus and overseen the Applicant's account.
31. In 2014, the Applicant got back on track and generated positive cash flow.
32. It should be noted that in October 2014, Salus sought to nominate its August 2014 restructuring of the Applicant as the "Restructuring Deal of the Year". In the context of such nomination, Salus prepared a draft presentation (the "**Salus Presentation**") and sent same to the Applicant. A copy of the Salus Presentation is attached hereto as **Exhibit A-7**.
33. In the Salus Presentation, Salus indicated, without limitation, as follows:

Had the financing not been completed, Laura's may not have been unable [sic] to refinance with another lender, which could have led to the liquidation of this 80-year old retailer and family business and the loss of nearly 2,500 jobs.

Throughout this process, Salus was able to leverage its retail experience coupled with HRC's [Hilco Retail Consulting] expertise and a highly experienced senior management team at Laura's, to help this successful, Canadian-based, women's

apparel retailer successfully execute its turnaround plan and begin a new chapter of its growth. [our underlining]

34. Shonack appears to be determined – contrary to his previous representations to the Applicant referred to below – to liquidate the Applicant’s entire inventory and put it permanently out of business.
35. On July 15, 2015, Salus asked Hilco Global (“**Hilco**”) for permission to access Hilco’s detailed inventory data emanating from Hilco’s prior evaluation of the Applicant’s inventory mix.
36. On July 28, 2015, Fisher met with Shonack at the offices of Salus’ lawyers in Toronto. During such meeting:
  - (a) Shonack opened the meeting by stating that the Applicant had been an excellent borrower and he advised Fisher that Salus would support the Applicant in the restructuring of its business;
  - (b) Shonack did not request that the Applicant find a lender to buy out the Salus position. Shonack further indicated that Salus had executed several loan agreements since the RadioShack bankruptcy announcement in February 2015 and that Salus is honoring its commitments;
  - (c) Fisher advised Shonack of the Applicant’s restructuring plan and planned NOI filing. Shonack agreed that this was the appropriate course of action for the Applicant to take; and
  - (d) Shonack advised Fisher that Salus would be filing a Notice of Intention to Enforce Security pursuant to subsection 244 (i) of the *BIA* (the “**244 Notice**”) and induced Fisher to waive the 10 day delay required under section 244 of the *BIA* by advising that Salus would support the Applicant’s filing of an NOI and the Applicant’s business plan to restructure and refinance its business.
37. Prior and subsequent to the July 28, 2015 meeting, the Applicant has kept Salus fully informed of the efforts which the Applicant has made and which it continues to make in order to refinance the business and obtain financing in order to replace Salus.
38. On July 30, 2015, at Salus’ insistence, the Applicant consented to give Salus the Hilco inventory data.

39. By letter dated July 30, 2015 (the "**Salus Demand Letter**"), Salus, through its attorneys, advised the Applicant that it owed the following amounts, as of July 30, 2015, pursuant to the Salus Facility:

<i>CAD Revolving Loan</i>	
<i>Principal</i>	CAD \$3,631,425.55
<i>Interest</i>	CAD \$46,600.21
<i>Interest accrues at the Canadian Prime Rate + 4.00% per annum.</i>	

<i>USD Revolving Loan</i>	
<i>Principal</i>	US \$10,273,021.23
<i>Interest</i>	US \$64,102.36
<i>Interest accrues at the U.S. Base Rate + 4.00% per annum.</i>	

<i>Term Loan</i>	
<i>Principal</i>	CAD \$2,850,000.00
<i>Interest</i>	CAD \$16,070.83
<i>Interest accrues at the Canadian Prime Rate + 4.00% per annum.</i>	

A copy of the Salus Demand Letter and the attachment thereto is attached hereto, *en liasse*, as **Exhibit A-8**.

40. Pursuant to the Salus Demand Letter, Salus demanded payment of the amount indicated therein within ten (10) days.
41. Salus attached to the Salus Demand Letter the 244 Notice.
42. The Salus Demand Letter and 244 Notice were also sent to the guarantors pursuant to the Salus Facility.
43. During a call with Salus' advisors on July 31, 2015 (prior to the Applicant filing a waiver to the 244 Notice and the NOI), Richter Groupe Conseil Inc. ("**Richter**"), the Applicant's consultants, advised such representatives that the Applicant was prepared to file an NOI and to work collaboratively with Salus.
44. Based specifically on Salus' verbal representations to the Applicant in connection with Salus' delivery of its 244 Notice, on July 31, 2015, the Applicant waived the 10 day period set forth in the 244 Notice. A copy of the Applicant's signed acknowledgment and consent with respect to the 244 Notice is attached hereto as **Exhibit A-9**.
45. As soon as the Applicant waived the ten (10) days required under section 244 B/A, Salus, through its Ontario attorneys, commenced pressuring the Applicant to agree to an imminent liquidation of all of its Stores.
46. The Applicant would never have waived the ten (10) day period provided for in the 244 Notice had it known that Salus was going to refuse to allow the Applicant to take in merchandise for the fall 2015 season and was going to pursue an immediate liquidation of all of the Applicant's Stores. The Applicant is reserving



all of its rights and recourses with respect to its consent concerning the 244 Notice.

47. Indeed, even prior to Salus filing, on August 7, 2015, its Motion Seeking the Appointment of a Receiver, as appears from such motion, Salus invited major liquidators in the U.S. to submit proposals for the immediate liquidation of the inventory in all of the Applicant's Stores, thus severely disrupting its business plan. The liquidators included Hilco, Gordon Brothers Group, The Paul E. Saperstein Co., and others.
48. As referred to above, on July 31, 2015, the Applicant filed an NOI under the BIA.
49. The Applicant has a viable core business. The Applicant believes that the viability and profitability of its core business can be enhanced by, *inter alia*, the following (collectively the "Restructuring"), namely:
  - (a) disclaiming leases for 46 Stores, representing 28.4% of all Store leases. The Applicant intends to close 20 of the 46 stores and negotiate significant rent reductions with the other 26 Stores. The foregoing would result in savings with respect to the 26 Stores of in excess of approximately \$5,000,000 per year;
  - (b) disclaiming the leases with respect to the Laval Office, the Warehouse and the Mississauga Office and reducing its office space and expenses;
  - (c) proceeding, during the week of August 10, 2015, with a substantial temporary layoff of head office staff. A number of such layoffs will become permanent as part of the Restructuring;
  - (d) offering a viable financial settlement to the Applicant's unsecured creditors; and
  - (e) refinancing the Applicant's working capital loans with an alternate lender.
50. As referred to above, the Applicant engaged Richter, a firm with extensive restructuring experience, in order to monitor the Applicant's operations and financial position in accordance with the Restructuring.
51. The Richter team engaged by the Applicant includes numerous highly experienced professionals, including Raymond Massi, CPA, CA, CIRP ("**Massi**"). Massi has more than 35 years of corporate finance, financial restructuring, asset reorganization and insolvency experience.
52. On August 10, 2015 the Applicant sent notices of lease disclaimers to the Landlords of 46 separate Stores pursuant to Section 65.2(1) BIA, as contemplated by the Restructuring. The closing of Stores shall be effective September 13, 2015. In addition, the Applicant sent notices of disclaimer of

leases with respect to the Laval Office, the Warehouse, and the Mississauga Office.

## V. THE SALUS DEFAULT

53. As referred to above, the losses sustained by the Applicant have put the Applicant into default to respect its financial and other covenants towards Salus under the Salus Facility.
54. On or around July 24, 2015, Salus appointed a consultant, Alvarez & Marsal Canada Securities ULC ("**A&M**"), in order to closely monitor the Applicant's business operations and financial results on a continuing basis and at the Applicant's cost.
55. As referred to above, on July 30, 2015, Salus sent the Salus Demand Letter and 244 Notice.
56. Since on or around the date of the Salus Demand Letter, A&M representatives, with the Applicant's consent, have attended at the Applicant's office in order to monitor and examine the Applicant's operations and financial information.
57. Richter has fully cooperated with A&M and has provided A&M and Salus with all requested documentation and information with respect to the Applicant.
58. In order to properly effect the Restructuring, the Applicant requires a financing commitment from a lender that will enable the Applicant to finance its operations during the Restructuring and allow the Applicant to purchase critical merchandise for its upcoming fall season.
59. In addition to its efforts to find interim financing (as detailed below), the Applicant has been actively searching for financing to buy out Salus.
60. The Applicant's failure to effect the Restructuring would have devastating effects and would result in the closing and destruction of the Applicant's business and would destroy the interests of all of the Applicant's suppliers, creditors, continuing Landlords, 2383 employees, and other stakeholders.
61. In this regard, it should be emphasized that the Applicant is among the few Canadian retailers that purchase from Canadian vendors that produce domestically.
62. Given the importance of the Applicant's relationship with such domestic vendors, the Applicant's failure to effect the Restructuring would likely result in the closure or restructuring of such vendors' businesses and a further loss of jobs in the manufacturing sector in Canada.
63. Attached to this Application as **Exhibit A-10** is a letter dated August 10, 2015 from the Canadian Apparel Federation expressing its concerns and support of

the Applicant in connection with the Salus Motion (as defined below) and avoiding the closure of the Applicant's business.

## **VI. THE SALUS MOTION TO APPOINT A RECEIVER**

64. On Tuesday, August 4, 2015, Richter, working with A&M, finalized the Applicant's post-NOI filing cash flows. The cash flows showed that: (a) the Applicant could continue operating until the end of August 2015 with positive availability even with approximately \$10,000,000 of purchases for the fall 2015 season; (b) the Salus revolver loan would be maintained at approximately \$19,500,000 throughout the period; and (c) during the month of September 2015, while Salus' position would erode slightly, the Applicant's product mix would improve significantly as the majority of its spring/summer goods would be replaced with fall 2015 goods and Salus' position it would reverse itself as the Applicant purchased more fall 2015 goods at the Applicant's peak sales period, October to December.
65. In addition, on August 4, 2015, A&M prepared an inventory analysis and provided same to Richter. The inventory analysis shows that the quality of the Applicant's inventory would improve dramatically by the end of September 2015 if operations were continued and fall 2015 goods were purchased and received. A copy of the inventory analysis prepared by A&M on August 4, 2015 is attached hereto as **Exhibit A-11**.
66. On Wednesday, August 5, 2015, the Applicant advised Shonack of its discussions and meetings with CF and CF's genuine and serious interest in providing financial support to the Applicant.
67. However, notwithstanding the calls and information provided by the Applicant to Salus on August 4<sup>th</sup> and 5<sup>th</sup>, on August 5, 2015, Shonack advised the Applicant's consultants that Salus was not prepared to fund the Applicant's fall season and wanted the Applicant to immediately: (a) prepare for a chain wide liquidation of all Stores, to begin on August 15, 2015, under the supervision of a Salus appointed liquidation advisor; and (b) start an auction process to identify a liquidator.
68. On Thursday, August 6, 2015, Salus, through its attorneys, verbally advised the Applicant's attorneys that Salus would be filing a motion to appoint a receiver.
69. At 8:02 p.m. on Friday, August 7, 2015, Salus, through its attorneys, sent the Applicant's undersigned attorneys via email a Motion Seeking the Appointment of a Receiver (the "**Salus Motion**"). The exhibits alleged in support of the Salus Motion were not sent with such motion.
70. The Salus Motion contains numerous inaccurate and/or incomplete and/or misleading allegations with respect to the Applicant. The Applicant will vigorously contest the Salus Motion.

71. As referred to above, even prior to filing the Salus Motion, as appears from such motion, Salus invited major liquidators in the U.S. to submit proposals for the immediate liquidation of the inventory in all of the Applicant's Stores.
72. Salus had planned a full liquidation of the Applicant's inventory in advance of the appointment of a receiver and intends to use the receiver to implement the disguised receivership which Salus has already commenced.
73. As appears from the Salus Motion, and as referred to above, Salus appointed A&M to review the Applicant's operations. Salus was surreptitiously setting up a data room to be made available to liquidators to assist them in preparing a proposal to liquidate all of the Applicant's Stores.
74. Salus insisted that the Applicant repay the entire amount of the Salus Indebtedness by August 15, 2015, failing which it would face liquidation.
75. Salus is well aware that the time period imposed for the repayment of its loans is impossible to achieve and it has made the irrevocable decision to liquidate all of the Applicant's inventory and put it out of business for good.
76. Salus was advised, prior to the filing of the Salus Motion, that CF was prepared to consider financial support of the Applicant to the extent of \$10,000,000. Salus insisted that such support had to be subordinated to Salus.
77. On August 7, 2015, Salus' counsel advised that unless the Applicant agreed to Salus' conditions for a standstill until August 15-17, 2015, Salus would discontinue its financial support of the Applicant and the Trustee under the NOI could not file the required cash flow within 10 days of the filing of the NOI, thus forcing the Applicant into bankruptcy.
78. Salus has been operating a soft receivership of the Applicant without court approval by deciding which payments the Applicant was permitted to make and which it was not permitted to make on a daily basis.
79. Salus alleges in the Salus Motion discrepancies regarding the Applicant's inventory in transit. In fact, the Applicant *did* have inventory in transit worth \$2,700,000. However, Salus wanted the Applicant to take possession of such inventory *without* paying the supplier thereof. The Applicant refused to do so and participate in any fraudulent conduct.
80. Salus failed to disclose in the Salus Motion the relevant facts surrounding this inventory and left the false impression that there was some irregularity in the manner in which the Applicant had reported its inventory to Salus, which Salus knew to be false.
81. On August 7, 2015, Salus refused to approve a funding request for the payment of cheques to the Applicant's legal and financial advisory professionals after inducing them to provide services, on the pretext that the request was made after

11:00 a.m. When Salus' counsel was advised of this, no remedial action was taken.

82. As referred to above, Salus' counsel served the Salus Motion after business hours on Friday August 7, 2015. The Motion was served care of the Applicant's lead counsel, Me Gerald Kandestin, notwithstanding that it was fully aware that Me Kandestin had undergone surgery the day before, was convalescing at home and was not in a position to deal with this proceeding.

## VII. THE APPLICANT'S NOI CASH FLOW

83. Attached hereto as **Exhibit A-12**, is the Applicant's weekly cash flow statement (the "**NOI Cash Flow**"), prepared and filed on August 7, 2015, for the period of August 2, 2015 to August 31, 2015 (the "**Cash Flow Period**"). The NOI Cash Flow was filed in support of the NOI.
84. The NOI Cash Flow envisages disclaiming leases for 46 Stores and overhead reductions as well as the purchases of merchandise by the Applicant for its upcoming 2015 fall season. It does not take into account the Interim Financing by CF.
85. The NOI Cash Flow was prepared based on a number of assumptions (which are attached in support thereof), including the following:

*3. The Company's senior lender, Salus Capital ("Salus") has confirmed that they do not support the Company's funding requirements reflected in the Cash Flow Forecast. The Company is presently holding discussions with other potential lenders (the "Potential Lenders") to secure an alternative credit facility that would provide the necessary funding during the Cash Flow Period. The Cash Flow Projections assume that the Company will be successful in securing the required credit facility from one or more of the Potential Lenders, or that the Company and Salus would agree on an acceptable arrangement during the Cash Flow Period.*

86. The NOI Cash Flow showed that: (a) even if the Applicant were to purchase \$10,900,000 of fall 2015 goods, the Salus' revolver loan would improve, over the four week period, from approximately \$18,200,000 to approximately \$16,600,000; and (b) the Applicant's borrowing availability pursuant to the Salus Facility improved from a shortfall of \$700,000 to an excess availability of \$455,000.

## VIII. THE CF INTERIM FINANCING

87. As referred to above, CF is one of North America's largest owners, operators and developers of commercial leases. CF is also the Applicant's landlord with respect to thirty-nine (39) of its Stores.

88. CF, one of the Applicant's largest Landlords, has advised the Applicant that it believes in the Applicant's long-term viability and that it fully supports the Applicant's Restructuring and its long-term financial viability.
89. On August 10, 2015, the Applicant prepared, further to the CF Interim Financing (as defined below) a cash flow show, for the week ending August 15, 2015 to the week ending November 28, 2015 (the "**CF Cash Flow**") and provided same to CF. A copy of the CF Cash Flow is attached hereto as **Exhibit A-13**.
90. After an in-depth examination of the Applicant's business, inventories, cash flow and inventory liquidation needs as well as the CF Cash Flow, CF and the Applicant entered into a binding agreement on August 10, 2015, pursuant to which CF, subject to the Court's issuance of the Order sought herein, will provide the therein contained financing and services to the Applicant (the "**Interim Facility**"). A copy of the Interim Financing Loan Agreement with respect to the Interim Financing (the "**Interim Financing Loan Agreement**") is annexed hereto as **Exhibit A-14**. Schedule E to the Interim Financing Loan Agreement is filed under seal.
91. The CF Cash Flow (Exhibit A-13) assumes: (a) interim financing from CF aggregating \$9,800,000; (b) a \$76,400,000 cash collection over the period covered by such cash flow and that the Applicant will, if this Application is granted in accordance with the draft Order sought herein, have access to; (c) that all vendors will be paid cash on delivery. However, the Applicant believes that it will be able to negotiate terms with select vendors for purchases of fall 2015 goods and, in such case, this will improve its liquidity; (d) the closure of 20 Stores, as well as rent concessions for 26 Stores which the Applicant is in the process of negotiating with certain Landlords.
92. The CF Cash Flow show that the Applicant's liquidity will be positive throughout the period covered by such cash flow and that at the end of such period, the Applicant's weekly ending projected cash balance is projected at \$7,700,000 and its ending inventory position is project to be \$24,600,000.
93. On August 10, 2015, Richter, in conjunction with CF's professional advisors, prepared an Estimated Net Realization Analysis (the "**Realization Analysis**"). The Realization Analysis reflects that Salus' position (including accrued interest) pursuant to the Salus Facility would be covered at the end of the period contemplated by the CF Cash Flow. A copy of the Realization Analysis and the assumptions relied on by Richter in support thereof are attached hereto, *en liasse*, as **Exhibit A-15**.
94. As can be seen from the Interim Financing Loan Agreement, the financing to be furnished by CF to the Applicant is conditional upon:

- (a) the approval of the Interim Facility and the Interim Facility Loan Agreement by this Court and the issuance of an Order substantially in the form of the draft Order attached hereto as Exhibit A-16;
  - (b) a stay of proceedings in favor of the Applicant and the guarantors of certain of the Applicant's obligations, namely Boutique Laura Canada Ltée / Laura's Shoppe Canada Ltd., 3482731 Canada Inc., 9318-5494 Québec Inc. and Fisher;
  - (c) the implementation of a system (the "**Cash Management System**") pursuant to which all local deposit accounts of the Stores are transferred daily to a deposit account held with the Bank of Montreal, such account being subject to a blocked account agreement that shall be terminated by a CCAA Order to be sought by the Applicant. Thereafter, the Applicant will transfer funds, on daily basis, from such Bank of Montreal account to an account held at the Bank of Nova Scotia (the "**Deposit Account**") and CF will advance funds to the Deposit Account. The Cash Management System is to be supervised and monitored by CF's financial advisor, PricewaterhouseCoopers Inc. ("**PWC**"); and
  - (d) the appointment of KPMG Inc., as Interim Receiver pursuant to the *BIA* or, alternatively, as the Court-appointed Monitor in the context of a CCAA, who will control all receipts and disbursements of the Applicant, including the Cash Management System, under the supervision, monitoring, and with the approval of PWC.
95. The Interim Financing assumes that Salus would be bought out by November 28, 2015. It should be noted that in the event that the foregoing does not occur, Salus would be in the peak season to liquidate the Applicant's inventory.
96. Subject to the Court's issuance of the Order sought herein and on the basis of the terms, conditions and provisions of the Interim Financing Loan Agreement, CF will immediately advance funds to the Applicant.
97. Effectively, CF's financing and services under the Interim Financing Loan Agreement will constitute a "life-line" to the Applicant and will enable the Applicant to purchase critical merchandise for the fall 2015 season. Without such merchandise, the Applicant's business cannot survive.
98. The Interim Facility and CF's first ranking security rights in relation thereto (as referred to in the Interim Financing Loan Agreement) (the "**Interim Lender Security**") will not include any currently existing indebtedness towards the CF.
99. As appears from the Interim Financing Loan Agreement, the Interim Lender's financing is subject to the Court's issuance of the Order sought herein.
100. A draft of the Order sought by the Applicant with respect to the Interim Facility and the Interim Lender Security is attached hereto as **Exhibit A-16**.

101. In addition to the Interim Financing, the Applicant is continuing to actively explore every possible other alternative to obtain re-financing in order to repay Salus.

**IX. FACTORS TO BE DEALT WITH BY THE COURT**

102. With respect to the factors to be considered by this Court set forth in Section 50.6(5) BIA:
- (a) the Applicant intends to complete a Restructuring as quickly as possible having regard all of the circumstances;
  - (b) the Interim Facility is critical to maintaining the Applicant's ongoing business operations and the confidence of the Applicant's largest Landlords who are prepared to support the Applicant through this crucial phase of its restructuring;
  - (c) the Applicant's business and financial affairs will be managed by its current director and officers, who are honest and experienced retailers. They will be advised during this period by highly experienced outside consultants and attorneys and the Applicant's operations will be closely followed and maintained by the Trustee;
  - (d) the Applicant has been in business since 1930 and has operated successfully. It has enjoyed excellent relations with its suppliers and its Landlords. It will continue, as envisaged in the Cash Flow, to purchase new merchandise from its suppliers;
  - (d) without the Interim Facility envisaged by the Order sought herein, it will not be possible for the Applicant to make a viable proposal to its creditors;
  - (f) no creditor will be materially prejudiced as a result of the Interim Facility and the Interim Lender Security envisaged by the Order sought herein; and
  - (g) the Cash Flow needs will be properly financed by the Interim Facility envisaged in the Order sought herein. Such Cash Flow is realistic and achievable.
103. The Trustee has monitored and been involved in the financing to be provided by CF as contemplated by the Order sought herein and agrees with and supports the present Application.
104. By email sent at 2:19 p.m. on August 10, 2015, Salus' attorneys threatened to provoke the Applicant's bankruptcy based on an alleged issue with the NOI Cash Flow. In such email, Salus' attorneys further indicated, without limitation, as follows:



We reiterate our previous advice to you and remind you that Salus is not stayed and consequently, it is not required to make any advances whatsoever. Furthermore, absent an acceptable arrangement with the company regarding the commencement of an agreed upon liquidation process, it does not intend to fund the company. We also remind you that Salus has complete and sole dominion over cash receipts and that therefore your underlying assumption that the company will have use of its cash to fund itself during the applicable period is false.

A copy of the email from Salus' attorneys of August 10, 2015 is attached hereto as **Exhibit A-17**.

105. The Applicant's thousands of employees have to be paid on Thursday, August 13, 2015. In the normal course of business, funds for such payments have to be approved tomorrow, August 11, 2015, so that they can be processed by the Applicant's payroll management corporation, Ceridian, on Wednesday, August 12, 2015 in order to ensure that employees will be paid on Thursday, August 13, 2015. Salus has made clear that it will not fund such payroll.
106. Given the Salus Motion and its position, it is essential and urgent that this Application be presented for adjudication before the Court as quickly as possible. Therefore, it is necessary that the delay for service and presentation of this Application be abridged and that the judgment to be rendered herein be executory notwithstanding appeal.
107. This Application is well founded in fact and in law.

**X. CONCLUSION**

108. For the foregoing reasons, the Applicant submits that this Application should be maintained and the Salus Motion should be dismissed.

**WHEREFORE**, the Applicant asks this Court to:

- A. **GRANT** the present Application;
- B. **ABRIDGE** the delays to serve and present the present Application;
- C. **ISSUE** an Order in substantially the form of the draft Order attached to the Application as Exhibit A-16 (the "Order");
- D. **ORDER** the provisional execution of the Order notwithstanding appeal;

E. **THE WHOLE** without costs save in the event of contestation.

Montréal, August 10, 2015



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**KUGLER KANDESTIN LLP**

Attorneys for the Applicant, Laura's Shoppe  
(P.V.) Inc.

CANADA

SUPERIOR COURT  
(Commercial Division)

PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

No: 500-11-049210-152

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IN THE MATTER OF THE NOTICE OF  
INTENTION TO MAKE A PROPOSAL OF  
MAGASIN LAURA (P.V.) INC. / LAURA'S  
SHOPPE (P.V.) INC.:

MAGASIN LAURA (P.V.) INC. / LAURA'S  
SHOPPE (P.V.) INC.

Applicant

-and-

KPMG INC.

Trustee

-and-

THE CADILLAC FAIRVIEW CORPORATION  
LIMITED

CF

-and-

SALUS CAPITAL PARTNERS, LLC

Salus

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**AFFIDAVIT OF KALMAN FISHER**

I, the undersigned, **KALMAN FISHER**, residing at 4 Granville, in the City of Hampstead, in the Province of Québec, H3X 3B1, do hereby solemnly affirm the following:

1. I am President of the Applicant, Laura's Shoppe (P.V.) Inc.
2. I am affirming this Affidavit in support of the Applicant's Application for Interim Financing Charge (the "**Application**").

## I. THE PARTIES

### A. The Applicant

3. The Applicant, Magasin Laura (P.V.) Inc. / Laura's Shoppe (P.V.) Inc., is a corporation subsisting under the provisions of the *Business Corporations Act*, having its registered office within the district of Montréal and the jurisdiction of this Court.
4. As appears from a printout of the *Registraire des Entreprises du Québec, CIDREQ* Report for the Applicant, a copy of which is attached to the Application as Exhibit A-1, I am the Applicant's sole director. The Applicant's officers are myself and Mario Petraglia, the Applicant's Chief Financial Officer. The Applicant's shareholders are: (a) a numbered company, a corporation that I ultimately own; and (b) Melanie Fisher, my spouse.
5. On July 31, 2015, the Applicant filed a notice of intention to make a proposal (the "NOI") under the relevant provisions of the *Bankruptcy and Insolvency Act*, Canada (the "**BIA**") naming the Trustee as trustee to such NOI filing. A copy of such filing is attached to the Application as Exhibit A-2.

### B. Salus

6. Salus Capital Partners, LLC ("**Salus**") is the Applicant's working capital lender and has extended credit facilities to the Applicant by way of a revolving USD and CDN line of credit, and a term loan facility (collectively, the "**Salus Facility**").
7. Salus advised the Applicant that as of August 6, 2015, the amounts owing by the Applicant to Salus under the Salus Facility are CDN \$8,977,600.40 and USD \$10,377,836.82 (collectively, the "**Salus Indebtedness**").
8. Salus operates primarily in the U.S., where it has incurred substantial losses in its lending business. It should be emphasized that Salus itself is in liquidation and is in the process of liquidating its entire loan portfolio. Accordingly, Salus is not acting as a normal lender in its dealings with the Applicant.
9. Indeed, and without limitation,
  - a. in or around late April 2015, Marc Price, Salus' Executive Vice-President left Salus in connection with a \$250,000,000 loan loss tied to bankrupt electronics retailer RadioShack Corp. ("**RadioShack**");
  - b. on or around May 13, 2015, Salus dismissed approximately 20 of its 50 staff as a result of loan losses incurred in its RadioShack loans and its co-founder and CEO, Andy Moser left the company; and
  - c. on August 6, 2015, it was publicly reported that the HRG Group Inc. (formerly known as Harbinger Group Inc.), Salus' majority shareholder, is,

following the RadioShack loss, focusing on winding down the loans held by Salus.

Copies of news articles on Bloomberg.com with respect to the foregoing are attached to the Application, *en liasse*, as Exhibit A-3.

10. In addition, Mark Sturrock, Salus' only Canadian representative, was also terminated in or around the periods referred to above.
11. As is more fully described below, Salus has committed, among others, the following serious wrongful acts against the Applicant:
  - a. it has induced the Applicant to waive the 10 day delay following its section 244 *BIA* notice by advising that it would support the Applicant's restructuring plan and filing of an NOI, when it had absolutely no intention of doing so;
  - b. it has refused to advance funds to Applicant for the purchase of fall 2015 merchandise which is essential for Applicant's restructuring plan and future viability;
  - c. it has imposed impossible deadlines on Applicant for the payment of its loans to Salus, failing which it would be put out of business;
  - d. prior to the filing of the NOI by the Applicant, it approached major liquidators in the U.S. to submit liquidation proposals for all of the inventory of the Applicant;
  - e. it surreptitiously set up a data room to assist liquidators in the preparation of their respective liquidation proposals;
  - f. it has operated a soft receivership without Court approval by determining what payments could be made by the Applicant and which could not; and
  - g. it has made false and misleading allegations and omissions in its motion for the appointment of a receiver.

**C. CF**

12. CF is a holding company having an office at the above stated location. As appears from an extract from its website, [www.cadillacfairview.com](http://www.cadillacfairview.com), a copy of which is attached to the Application as Exhibit A-4, CF is one of North America's largest owners, operators and developers of commercial real estate. CF and its affiliates own and manage over 36 million square feet of leasable space at 66 properties across North America.
13. CF is the Applicant's landlord with respect to thirty-nine (39) of the Applicant's retail stores across Canada.

14. As will be more fully detailed herein, CF is prepared to provide the Applicant with financial support, as needed, of up to \$10,000,000 in order to allow the Applicant to continue to operate in the best interest of the Applicant, its employees and its creditors.

## II. THE APPLICANT'S BUSINESS

15. The Applicant opened its first store in Montréal, Québec in 1930.
16. Today, the Applicant is a well-known women's retailer operating across Canada under the trade names "Laura", "Laura Petites", "Laura Outlet" and "Laura Plus" (collectively, the "**Laura Stores**").
17. The Applicant also owns and operates the retail stores operating across Canada under national brands "Melanie Lyne" and "Melanie Lyne Liquidation" (collectively, the "**Melanie Lyne Stores**"). Melanie Lyne was founded in Montréal, Québec in 1983.
18. The Applicant owns and operates approximately 162 separate Laura Stores and Melanie Lyne Stores across Canada (the "**Stores**"). Approximately 25% of the Stores are situated in the Province of Québec and 50% of Stores are situated in the Province of Ontario.
19. The Applicant employs approximately 2383 full time and part time employees in its Stores and other facilities related to its operations.
20. The Applicant also rents an office located at 2955 rue Jules-Brillant, Laval, Québec, H7P 6B2 (the "**Laval Office**"), a warehouse center located at 2519-2525 Le Corbusier, Laval, Québec, H7S 1Z4 (the "**Warehouse**"), and an office located at 151 City Centre Drive, Mississauga, Ontario, L5B 1M7 (the "**Mississauga Office**").
21. Each of the Stores is situated in a shopping mall and such Stores, as well as the Laval Office, the Warehouse and the Mississauga Office, are the object of various leases (the "**Leases**") between the Applicant, as tenant, and various landlords (the "**Landlords**").
22. The Applicant is an important participant in the Canadian women's apparel industry.
23. The Applicant pays annual rentals to the Landlords aggregating approximately \$59,000,000, approximately \$20,000,000 of which is paid to CF.
24. The Applicant has excellent business relationships with its Landlords, including in particular CF, who have supported and continue to support the Applicant during challenging financial periods.

25. The Applicant purchases its inventory from various domestic distributors and offshore suppliers. The Applicant's annual purchases from distributors and suppliers is approximately \$106,000,000.

### III. THE SECURED CREDITORS

26. Attached to the application, *en liasse*, as Exhibit A-5, is a detailed summary of search reports of the Register of Personal and Movable Real Rights of the Province of Québec as at July 22, 2015 (the "**Québec Search**"). The Québec Search reveals the publication of the following hypothecs or other rights, namely:

- a. Deeds of Hypothec and Issue of Bonds between the Applicant and certain guarantors in favor of Salus, acting in its capacity as *fondé de pouvoir*, securing the Salus Facility (collectively the "**Salus Hypothec**"). The Salus Hypothec charges the universality of all of the Applicant's present and future, corporeal and incorporeal, movable property (the "**General Property**"); and
- b. Hypothec on Movable Property between the Applicant and certain guarantors in favor of 3482731 Canada Inc.

27. The hypothecs of various Landlords revealed by the Québec Search are as follows:

- a. Landlord hypothec in favor of Riocan Holdings (Québec) Inc. charging the General Property situated in the Store located at Unit 19E of Mega Centre Notre-Dame, Autoroute 13, Laval, Québec;
- b. Landlord hypothec in favor of 9145-4090 Québec Inc., SITQ PVM II Inc. and SITQ PVM III Inc. charging the General Property situated in the Store located at 1 Place Ville Marie, Montréal, Québec; and
- c. Landlord hypothec in favor of SITQ PVM I Inc., SITQ PVM II Inc. and SITQ PVM III Inc. charging certain movable property situated in the Store located at 1 Place Ville Marie, Montréal, Québec.

28. Similar searches under the *Personal Property Security Act* registries for the Provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia and Newfoundland and Labrador (collectively, the "**PPSA Searches**"), a summary of which is attached to the Application as Exhibit A-6, reveal security interests in favor of Salus charging the General Property.

29. Likewise, in British Columbia, Alberta and Ontario, the PPSA Searches (Exhibit A-6) reveal security interests in favor of PNC Equipment Finance charging certain leasehold improvements located at the stores described therein.

### IV. THE APPLICANT'S INSOLVENCY

30. In 2011, faced with an influx into Canada of large international retailers, the Applicant set out to make some significant changes, with the goal of being more competitive and better servicing its customers. Unfortunately, the changes resulted in merchandise that did not resonate with the Applicant's customers.
31. The Applicant suffered losses in 2011-2013. In order to offset such losses, I. made significant personal loans to the Applicant, including approximately \$11,000,000 subsequent to the execution of the financing agreement with Salus.
32. In April 2013, the Applicant and Salus executed the Salus Facility agreements. In June 2013, the Applicant met, for the first time, with Kyle C. Shonack ("**Shonack**"), Salus' then Executive Vice-President Special Opportunities and Risk Manager (since April 2015, Shonack has been Salus' Co-President) to discuss the Applicant's defaults pursuant to the Salus Facility. Since such time, Shonack has been the Applicant's principal contact at Salus and overseen the Applicant's account.
33. In 2014, the Applicant got back on track and generated positive cash flow.
34. It should be noted that in October 2014, Salus sought to nominate its August 2014 restructuring of the Applicant as the "Restructuring Deal of the Year". In the context of such nomination, Salus prepared a draft presentation (the "**Salus Presentation**") and sent same to the Applicant. A copy of the Salus Presentation is attached to the Application as Exhibit A-7.
35. In the Salus Presentation, Salus indicated, without limitation, as follows:
 

Had the financing not been completed, Laura's may not have been unable [sic] to refinance with another lender, which could have led to the liquidation of this 80-year old retailer and family business and the loss of nearly 2,500 jobs.

Throughout this process, Salus was able to leverage its retail experience coupled with HRC's [Hilco Retail Consulting] expertise and a highly experienced senior management team at Laura's, to help this successful, Canadian-based, women's apparel retailer successfully execute its turnaround plan and begin a new chapter of its growth. [our underlining]
36. Shonack appears to be determined – contrary to his previous representations to the Applicant referred to below – to liquidate the Applicant's entire inventory and put it permanently out of business.
37. On July 15, 2015, Salus asked Hilco Global ("**Hilco**") for permission to access Hilco's detailed inventory data emanating from Hilco's prior evaluation of the Applicant's inventory mix.



38. On July 28, 2015, I met with Shonack at the offices of Salus' lawyers in Toronto. During such meeting:
- a. Shonack opened the meeting by stating that the Applicant had been an excellent borrower and he advised Fisher that Salus would support the Applicant in the restructuring of its business;
  - b. Shonack did not request that the Applicant find a lender to buy out the Salus position. Shonack further indicated that Salus had executed several loan agreements since the RadioShack bankruptcy announcement in February 2015 and that Salus is honoring its commitments;
  - c. I advised Shonack of the Applicant's restructuring plan and planned NOI filing. Shonack agreed that this was the appropriate course of action for the Applicant to take; and
  - d. Shonack advised me that Salus would be filing a Notice of Intention to Enforce Security pursuant to subsection 244 (i) of the *BIA* (the "**244 Notice**") and induced me to waive the 10 day delay required under section 244 of the *BIA* by advising that Salus would support the Applicant's filing of an NOI and the Applicant's business plan to restructure and refinance its business.
39. Prior and subsequent to the July 28, 2015 meeting, the Applicant has kept Salus fully informed of the efforts which the Applicant has made and which it continues to make in order to refinance the business and obtain financing in order to replace Salus.
40. On July 30, 2015, at Salus' insistence, the Applicant consented to give Salus the Hilco inventory data.
41. By letter dated July 30, 2015 (the "**Salus Demand Letter**"), Salus, through its attorneys, advised the Applicant that it owed the following amounts, as of July 30, 2015, pursuant to the Salus Facility:

<i>CAD Revolving Loan</i>	
<i>Principal</i>	CAD \$3,631,425.55
<i>Interest</i>	CAD \$46,600.21
<i>Interest accrues at the Canadian Prime Rate + 4.00% per annum.</i>	

<i>USD Revolving Loan</i>	
<i>Principal</i>	US \$10,273,021.23
<i>Interest</i>	US \$64,102.36
<i>Interest accrues at the U.S. Base Rate + 4.00% per annum.</i>	

<i>Term Loan</i>	
<i>Principal</i>	CAD \$2,850,000.00
<i>Interest</i>	CAD \$16,070.83
<i>Interest accrues at the Canadian Prime Rate + 4.00% per annum.</i>	

A copy of the Salus Demand Letter and the attachment thereto is attached to the Application, *en liasse*, as Exhibit A-8.

42. Pursuant to the Salus Demand Letter, Salus demanded payment of the amount indicated therein within ten (10) days.
43. Salus attached to the Salus Demand Letter the 244 Notice.
44. The Salus Demand Letter and 244 Notice were also sent to the guarantors pursuant to the Salus Facility.
45. During a call with Salus' advisors on July 31, 2015 (prior to the Applicant filing a waiver to the 244 Notice and the NOI), Richter Groupe Conseil Inc. ("**Richter**"), the consultant's retained by the Applicant advised such representatives that the Applicant was prepared to file an NOI and to work collaboratively with Salus.
46. Based specifically on Salus' verbal representations to the Applicant in connection with Salus' delivery of its 244 Notice, on July 31, 2015, the Applicant waived the 10 day period set forth in the 244 Notice. A copy of the Applicant's signed acknowledgment and consent with respect to the 244 Notice is attached to the Application as Exhibit A-9.
47. As soon as the Applicant waived the ten (10) days required under section 244 B/A, Salus, through its Ontario attorneys, commenced pressuring the Applicant to agree to an imminent liquidation of all of its Stores.
48. The Applicant would never have waived the ten (10) day period provided for in the 244 Notice had it known that Salus was going to refuse to allow the Applicant to take in merchandise for the fall 2015 season and was going to pursue an immediate liquidation of all of the Applicant's Stores. The Applicant is reserving all of its rights and recourses with respect to its consent concerning the 244 Notice.
49. Indeed, even prior to Salus filing, on August 7, 2015, its Motion Seeking the Appointment of a Receiver, as appears from such motion, Salus invited major liquidators in the U.S. to submit proposals for the immediate liquidation of the inventory in all of the Applicant's Stores, thus severely disrupting its business plan. The liquidators included Hilco, Gordon Brothers Group, The Paul E. Saperstein Co., and others.
50. As referred to above, on July 31, 2015, the Applicant filed an NOI under the B/A.
51. The Applicant has a viable core business. The Applicant believes that the viability and profitability of its core business can be enhanced by, *inter alia*, the following (collectively the "**Restructuring**"), namely:

- a. disclaiming leases for 46 Stores, representing 28.4% of all Store leases. The Applicant intends to close 20 of the 46 stores and negotiate significant rent reductions with the other 26 Stores. The foregoing would result in savings with respect to the 26 Stores of in excess of approximately \$5,000,000 per year;
  - b. disclaiming the leases with respect to the Laval Office, the Warehouse and the Mississauga Office and reducing its office space and expenses;
  - c. proceeding, during the week of August 10, 2015, with a substantial temporary layoff of head office staff. A number of such layoffs will become permanent as part of the Restructuring;
  - d. offering a viable financial settlement to the Applicant's unsecured creditors; and
  - e. refinancing the Applicant's working capital loans with an alternate lender.
52. As referred to above, the Applicant has engaged Richter, a firm with extensive restructuring experience, in order to monitor the Applicant's operations and financial position in accordance with the Restructuring.
53. The Richter team engaged by the Applicant includes numerous highly experienced professionals, including Raymond Massi, CPA, CA, CIRP ("**Massi**"). Massi has more than 35 years of corporate finance, financial restructuring, asset reorganization and insolvency experience.
54. On August 10, 2015 the Applicant sent notices of lease disclaimers to the Landlords of 46 separate Stores pursuant to Section 65.2(1) *BIA*, as contemplated by the Restructuring. The closing of Stores shall be effective September 13, 2015. In addition, the Applicant sent notices of disclaimer of leases with respect to the Laval Office, the Warehouse, and the Mississauga Office.

#### V. THE SALUS DEFAULT

55. As referred to above, the losses sustained by the Applicant have put the Applicant into default to respect its financial and other covenants towards Salus under the Salus Facility.
56. On or around July 24, 2015, Salus appointed a consultant, Alvarez & Marsal Canada Securities ULC ("**A&M**"), in order to closely monitor the Applicant's business operations and financial results on a continuing basis and at the Applicant's cost.
57. As referred to above, on July 30 2015, Salus sent the Salus Demand Letter and 244 Notice.

58. Since on or around the date of the Salus Demand Letter, A&M representatives, with the Applicant's consent, have attended at the Applicant's office in order to monitor and examine the Applicant's operations and financial information.
59. Richter has fully cooperated with A&M and has provided A&M and Salus with all requested documentation and information with respect to the Applicant.
60. In order to properly effect the Restructuring, the Applicant requires a financing commitment from a lender that will enable the Applicant to finance its operations during the Restructuring and allow the Applicant to purchase critical merchandise for its upcoming fall season.
61. In addition to its efforts to find interim financing (as detailed below), the Applicant has been actively searching for financing to buy out Salus.
62. The Applicant's failure to effect the Restructuring would have devastating effects and would result in the closing and destruction of the Applicant's business and would destroy the interests of all of the Applicant's suppliers, creditors, continuing Landlords, 2383 employees, and other stakeholders.
63. In this regard, it should be emphasized that the Applicant is among the few Canadian retailers that purchase from Canadian vendors that produce domestically.
64. Given the importance of the Applicant's relationship with such domestic vendors, the Applicant's failure to effect the Restructuring would likely result in the closure or restructuring of such vendors' businesses and a further loss of jobs in the manufacturing sector in Canada.
65. Attached to the Application as Exhibit A-10 is a letter dated August 10, 2015 from the Canadian Apparel Federation expressing its concerns and support of the Applicant in connection with the Salus Motion (as defined below) and avoiding the closure of the Applicant's business.

#### **VI. THE SALUS MOTION TO APPOINT A RECEIVER**

66. On Tuesday, August 4, 2015, Richter, working with A&M, finalized the Applicant's post-NOI filing cash flows. The cash flows showed that: (a) the Applicant could continue operating until the end of August 2015 with positive availability even with approximately \$10,000,000 of purchases for the fall 2015 season; (b) the Salus revolver loan would be maintained at approximately \$19,500,000 throughout the period; and (c) during the month of September 2015, while Salus' position would erode slightly, the Applicant's product mix would improve significantly as the majority of its spring/summer goods would be replaced with fall 2015 goods and Salus' position it would reverse itself as the Applicant purchased more fall 2015 goods at the Applicant's peak sales period, October to December.

67. In addition, on August 4, 2015, A&M prepared an inventory analysis and provided same to Richter. The inventory analysis shows that the quality of the Applicant's inventory would improve dramatically by the end of September 2015 if operations were continued and fall 2015 goods were purchased and received. A copy of the inventory analysis prepared by A&M on August 4, 2015 is attached to the Application as Exhibit A-11.
68. On Wednesday, August 5, 2015, the Applicant advised Shonack of its discussions and meetings with CF and CF's genuine and serious interest in providing financial support to the Applicant.
69. However, notwithstanding the calls and information provided by the Applicant to Salus on August 4<sup>th</sup> and 5<sup>th</sup>, on August 5, 2015, Shonack advised the Applicant's consultants that Salus was not prepared to fund the Applicant's fall season and wanted the Applicant to immediately: (a) prepare for a chain wide liquidation of all Stores, to begin on August 15, 2015, under the supervision of a Salus appointed liquidation advisor; and (b) start an auction process to identify a liquidator.
70. On Thursday, August 6, 2015, Salus, through its attorneys, verbally advised the Applicant's attorneys that Salus would be filing a motion to appoint a receiver.
71. At 8:02 p.m. on Friday, August 7, 2015, Salus, through its attorneys, sent the Applicant's undersigned attorneys via email a Motion Seeking the Appointment of a Receiver (the "**Salus Motion**"). The exhibits alleged in support of the Salus Motion were not sent with such motion.
72. The Salus Motion contains numerous inaccurate and/or incomplete and/or misleading allegations with respect to the Applicant. The Applicant will vigorously contest the Salus Motion.
73. As referred to above, even prior to filing the Salus Motion, as appears from such motion, Salus invited major liquidators in the U.S. to submit proposals for the immediate liquidation of the inventory in all of the Applicant's Stores.
74. Salus had planned a full liquidation of the Applicant's inventory in advance of the appointment of a receiver and intends to use the receiver to implement the disguised receivership which Salus has already commenced.
75. As appears from the Salus Motion, and as referred to above, Salus appointed A&M to review the Applicant's operations. Salus was surreptitiously setting up a data room to be made available to liquidators to assist them in preparing a proposal to liquidate all of the Applicant's Stores.
76. Salus insisted that the Applicant repay the entire amount of the Salus Indebtedness by August 15, 2015, failing which it would face liquidation.
77. Salus is well aware that the time period imposed for the repayment of its loans is impossible to achieve and it has made the irrevocable decision to liquidate all of

the Applicant's inventory and put it out of business for good.

78. Salus was advised, prior to the filing of the Salus Motion, that CF was prepared to consider financial support of the Applicant to the extent of \$10,000,000. Salus insisted that such support had to be subordinated to Salus.
79. On August 7, 2015, Salus' counsel advised that unless the Applicant agreed to Salus' conditions for a standstill until August 15-17, 2015, Salus would discontinue its financial support of the Applicant and the Trustee under the NOI could not file the required cash flow within 10 days of the filing of the NOI, thus forcing the Applicant into bankruptcy.
80. Salus has been operating a soft receivership of the Applicant without court approval by deciding which payments the Applicant was permitted to make and which it was not permitted to make on a daily basis.
81. Salus alleges in the Salus Motion discrepancies regarding the Applicant's inventory in transit. In fact, the Applicant *did* have inventory in transit worth \$2,700,000. However, Salus wanted the Applicant to take possession of such inventory *without* paying the supplier thereof. The Applicant refused to do so and participate in any fraudulent conduct.
82. Salus failed to disclose in the Salus Motion the relevant facts surrounding this inventory and left the false impression that there was some irregularity in the manner in which the Applicant had reported its inventory to Salus, which Salus knew to be false.
83. On August 7, 2015, Salus refused to approve a funding request for the payment of cheques to the Applicant's legal and financial advisory professionals after inducing them to provide services, on the pretext that the request was made after 11:00 a.m. When Salus' counsel was advised of this, no remedial action was taken.
84. As referred to above, Salus' counsel served the Salus Motion after business hours on Friday August 7, 2015. The Motion was served care of the Applicant's lead counsel, Me Gerald Kandestin, notwithstanding that it was fully aware that Me Kandestin had undergone surgery the day before, was convalescing at home and was not in a position to deal with this proceeding.

## VII. THE APPLICANT'S NOI CASH FLOW

85. Attached to the Application as Exhibit A-12, is the Applicant's weekly cash flow statement (the "**NOI Cash Flow**"), prepared and filed on August 7, 2015, for the period of August 2, 2015 to August 31, 2015 (the "**Cash Flow Period**"). The NOI Cash Flow was filed in support of the NOI.
86. The NOI Cash Flow envisages disclaiming leases for 46 Stores and overhead reductions as well as the purchases of merchandise by the Applicant for its

upcoming 2015 fall season. It does not take into account the Interim Financing by CF.

87. The NOI Cash Flow was prepared based on a number of assumptions (which are attached in support thereof), including the following:

*3. The Company's senior lender, Salus Capital ("Salus") has confirmed that they do not support the Company's funding requirements reflected in the Cash Flow Forecast. The Company is presently holding discussions with other potential lenders (the "Potential Lenders") to secure an alternative credit facility that would provide the necessary funding during the Cash Flow Period. The Cash Flow Projections assume that the Company will be successful in securing the required credit facility from one or more of the Potential Lenders, or that the Company and Salus would agree on an acceptable arrangement during the Cash Flow Period.*

88. The NOI Cash Flow showed that: (a) even if the Applicant were to purchase \$10,900,000 of fall 2015 goods, the Salus' revolver loan would improve, over the four week period, from approximately \$18,200,000 to approximately \$16,600,000; and (b) the Applicant's borrowing availability pursuant to the Salus Facility improved from a shortfall of \$700,000 to an excess availability of \$455,000.

#### **VIII. THE CF INTERIM FINANCING**

89. As referred to above, CF is one of North America's largest owners, operators and developers of commercial leases. CF is also the Applicant's landlord with respect to thirty-nine (39) of its Stores.
90. CF, one of the Applicant's largest Landlords, has advised the Applicant that it believes in the Applicant's long-term viability and that it fully supports the Applicant's Restructuring and its long-term financial viability.
91. On August 10, 2015, the Applicant prepared, further to the CF Interim Financing (as defined below) a cash flow show, for the week ending August 15, 2015 to the week ending November 28, 2015 (the "**CF Cash Flow**") and provided same to CF. A copy of the CF Cash Flow is attached to the Application as Exhibit A-13.
92. After an in-depth examination of the Applicant's business, inventories, cash flow and inventory liquidation needs as well as the CF Cash Flow, CF and the Applicant entered into a binding agreement on August 10, 2015, pursuant to which CF, subject to the Court's issuance of the Order sought herein, will provide the therein contained financing and services to the Applicant (the "**Interim Facility**"). A copy of the Interim Financing Loan Agreement with respect to the Interim Financing (the "**Interim Financing Loan Agreement**") is

attached to the Application as Exhibit A-14. Schedule E to the Interim Financing Loan Agreement is filed under seal.

93. The CF Cash Flow (Exhibit A-13) assumes: (a) interim financing from CF aggregating \$9,800,000; (b) a \$76,400,000 cash collection over the period covered by such cash flow and that the Applicant will, if this Application is granted in accordance with the draft Order sought herein, have access to; (c) that all vendors will be paid cash on delivery. However, the Applicant believes that it will be able to negotiate terms with select vendors for purchases of fall 2015 goods and, in such case, this will improve its liquidity; (d) the closure of 20 Stores, as well as rent concessions for 26 Stores which the Applicant is in the process of negotiating with certain Landlords.
94. The CF Cash Flow show that the Applicant's liquidity will be positive throughout the period covered by such cash flow and that at the end of such period, the Applicant's weekly ending projected cash balance is projected at \$7,700,000 and its ending inventory position is project to be \$24,600,000.
95. On August 10, 2015, Richter, in conjunction with CF's professional advisors, prepared an Estimated Net Realization Analysis (the "**Realization Analysis**"). The Realization Analysis reflects that Salus' position (including accrued interest) pursuant to the Salus Facility would be covered at the end of the period contemplated by the CF Cash Flow. A copy of the Realization Analysis and the assumptions relied on by Richter in support thereof are attached to the Application, *en liasse*, as Exhibit A-15.
96. As can be seen from the Interim Financing Loan Agreement, the financing to be furnished by CF to the Applicant is conditional upon:
  - a. the approval of the Interim Facility and the Interim Facility Loan Agreement by this Court and the issuance of an Order substantially in the form of the draft Order attached to the Application as Exhibit A-16;
  - b. a stay of proceedings in favor of the Applicant and the guarantors of certain of the Applicant's obligations, namely Boutique Laura Canada Ltée / Laura's Shoppe Canada Ltd., 3482731 Canada Inc., 9318-5494 Québec Inc. and Fisher;
  - c. the implementation of a system (the "**Cash Management System**") pursuant to which all local deposit accounts of the Stores are transferred daily to a deposit account held with the Bank of Montreal, such account being subject to a blocked account agreement that shall be terminated by a CCAA Order to be sought by the Applicant. Thereafter, the Applicant will transfer funds, on daily basis, from such Bank of Montreal account to an account held at the Bank of Nova Scotia (the "**Deposit Account**") and CF will advance funds to the Deposit Account. The Cash Management System is to be supervised and monitored by CF's financial advisor, PricewaterhouseCoopers Inc. ("**PWC**"); and



- d. the appointment of KPMG Inc., as Interim Receiver pursuant to the *BIA* or, alternatively, as Court-appointed Monitor in the context of a *CCAA*, who will control all receipts and disbursements of the Applicant, including the Cash Management System, under the supervision, monitoring, and with the approval of PWC.
97. The Interim Financing assumes that Salus would be bought out by November 28, 2015. It should be noted that in the event that the foregoing does not occur, Salus would be in the peak season to liquidate the Applicant's inventory.
98. Subject to the Court's issuance of the Order sought herein and on the basis of the terms, conditions and provisions of the Interim Financing Loan Agreement, CF will immediately advance funds to the Applicant.
99. Effectively, CF's financing and services under the Interim Financing Loan Agreement will constitute a "life-line" to the Applicant and will enable the Applicant to purchase critical merchandise for the fall 2015 season. Without such merchandise, the Applicant's business cannot survive.
100. The Interim Facility and CF's first ranking security rights in relation thereto (as referred to in the Interim Financing Loan Agreement) (the "**Interim Lender Security**") will not include any currently existing indebtedness towards the CF.
101. As appears from the Interim Financing Loan Agreement, the Interim Lender's financing is subject to the Court's issuance of the Order sought herein.
102. A draft of the Order sought by the Applicant with respect to the Interim Facility and the Interim Lender Security is attached to the Application as Exhibit A-16.
103. In addition to the Interim Financing, the Applicant is continuing to actively explore every possible other alternative to obtain re-financing in order to repay Salus.
104. The Trustee has monitored and been involved in the financing to be provided by CF as contemplated by the Order sought herein and agrees with and supports the present Application.
105. By email sent at 2:19 p.m. on August 10, 2015, Salus' attorneys threatened to provoke the Applicant's bankruptcy based on an alleged issue with the NOI Cash Flow. In such email, Salus' attorneys further indicated, without limitation, as follows:

We reiterate our previous advice to you and remind you that Salus is not stayed and consequently, it is not required to make any advances whatsoever. Furthermore, absent an acceptable arrangement with the company regarding the commencement of an agreed upon liquidation process, it does not intend to fund the company. We also remind you that

Salus has complete and sole dominion over cash receipts and that therefore your underlying assumption that the company will have use of its cash to fund itself during the applicable period is false.

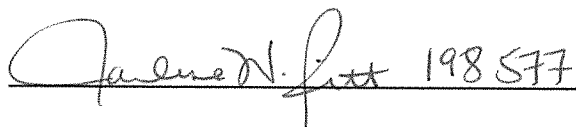
A copy of the email from Salus' attorneys of August 10, 2015 is attached to the Application as Exhibit A-17.

- 106. The Applicant's thousands of employees have to be paid on Thursday, August 13, 2015. In the normal course of business, funds for such payments have to be approved tomorrow, August 11, 2015, so that they can be processed by the Applicant's payroll management corporation, Ceridian, on Wednesday, August 12, 2015 in order to ensure that employees will be paid on Thursday, August 13, 2015. Salus has made clear that it will not fund such payroll.
- 107. Given the Salus Motion and its position, it is essential and urgent that this Application be presented for adjudication before the Court as quickly as possible. Therefore, it is necessary that the delay for service and presentation of this Application be abridged and that the judgment to be rendered herein be executory notwithstanding appeal.

AND I HAVE SIGNED:

  
\_\_\_\_\_  
KALMAN FISHER

SOLEMNLY AFFIRMED before me at the City of Montréal, Province of Québec, this 10<sup>th</sup> day of August, 2015.

  
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198 577

COMMISSIONER OF OATHS FOR QUÉBEC



CANADA

SUPERIOR COURT  
(Commercial Division)

PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

No: 500-11-049210-152

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IN THE MATTER OF THE NOTICE OF  
INTENTION TO MAKE A PROPOSAL OF  
MAGASIN LAURA (P.V.) INC. / LAURA'S  
SHOPPE (P.V.) INC.:

MAGASIN LAURA (P.V.) INC. / LAURA'S  
SHOPPE (P.V.) INC.

Applicant

-and-

KPMG INC.

Trustee

-and-

THE CADILLAC FAIRVIEW CORPORATION  
LIMITED

CF

-and-

SALUS CAPITAL PARTNERS, LLC

Salus

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**NOTICE OF PRESENTATION**

**TO: Me Avram Fishman**  
**FISHMAN FLANZ MELAND PAQUIN LLP**  
1250 René-Lévesque Boulevard West  
Suite 4100  
Montréal, Québec  
H3B 4W8

Attorneys for KPMG Inc.

**TO: Me François Viau**  
**GOWLING LAFLEUR HENDERSON LLP**  
1 Place Ville Marie  
Suite 3700  
Montréal, Québec  
H3B 3P4

Attorneys for The Cadillac Fairview Corporation Limited

**TO: Me Claude Paquet**  
**BCF LLP**  
1100 René-Lévesque Boulevard West  
25th Floor  
Montréal, Québec  
H3B 5C9

Attorneys for Salus Capital Partners, LLC

**TAKE NOTICE** that the Application for Interim Financing Charge will be presented for proof and hearing before the Commercial Division of the Québec Superior Court for the District of Montréal sitting in **Room 16.10** of the Palais de Justice, 1 Notre-Dame Street East, Montréal, Québec on **August 11, 2015**, at **9:00 AM**, or so soon thereafter as counsel may be heard.

**DO GOVERN YOURSELVES ACCORDINGLY.**

Montréal, August 10, 2015

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**KUGLER KANDESTIN LLP**  
Attorneys for the Applicant, Laura's  
Shoppe (P.V.) Inc.

CANADA

SUPERIOR COURT  
(Commercial Division)

PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

No: 500-11-049210-152

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IN THE MATTER OF THE NOTICE OF  
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MAGASIN LAURA (P.V.) INC. / LAURA'S  
SHOPPE (P.V.) INC.:

MAGASIN LAURA (P.V.) INC. / LAURA'S  
SHOPPE (P.V.) INC.

Applicant

-and-

KPMG INC.

Trustee

-and-

THE CADILLAC FAIRVIEW CORPORATION  
LIMITED

CF

-and-

SALUS CAPITAL PARTNERS, LLC

Salus

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**APPLICANT'S LIST OF EXHIBITS**

- EXHIBIT A-1:** *Registraire des Entreprises du Québec* CIDREQ Report for the Applicant;
- EXHIBIT A-2:** Applicant's Notice of Intention;
- EXHIBIT A-3:** News articles on Bloomberg.com, *en liasse*;
- EXHIBIT A-4:** Copy of an extract from its website [www.cadillacfairview.com](http://www.cadillacfairview.com);
- EXHIBIT A-5:** Search reports of the Register of Personal and Movable Real Rights of the Province of Québec as at July 22, 2015, *en liasse*;

- EXHIBIT A-6: Summary of *Personal Property Security Act* for the Provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick and Newfoundland and Labrador;
- EXHIBIT A-7: Salus Turnaround Presentation;
- EXHIBIT A-8: Salus demand letter dated July 30, 2015;
- EXHIBIT A-9: Applicant's signed Acknowledgment and Consent;
- EXHIBIT A-10: Letter from the Canadian Apparel Federation dated August 10, 2015;
- EXHIBIT A-11: Inventory analysis prepared by A&M on August 4, 2015;
- EXHIBIT A-12: Applicant's NOI Cash Flow prepared on August 7, 2015;
- EXHIBIT A-13: Applicant's Cash Flow prepared on August 10, 2015;
- EXHIBIT A-14: Cadillac Fairview's Interim Financing Loan Agreement;
- EXHIBIT A-15: Richter Estimated Net Realization Analysis and assumptions, *en liasse*;
- EXHIBIT A-16: Draft Order sought by Applicant;
- EXHIBIT A-17: Email of August 10, 2015 @ 2:19 p.m. from Salus' attorneys.

Montréal, August 10, 2015

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**KUGLER KANDESTIN LLP**  
Attorneys for the Applicant, Laura's  
Shope (P.V.)

No: 500-11-049210-152

SUPERIOR COURT (COMMERCIAL DIVISION)  
DISTRICT OF MONTRÉAL  
PROVINCE OF QUÉBEC

IN THE MATTER OF THE NOTICE OF  
INTENTION TO MAKE A PROPOSAL OF:

MAGASIN LAURA (P.V.) INC. / LAURA'S  
SHOPPE (P.V.) INC.

-and-

Applicant

KPMG INC.

Trustee

-and-

THE CADILLAC FAIRVIEW CORPORATION  
LIMITED

CF

-and-

SALUS CAPITAL PARTNERS, LLC  
SALUS

APPLICATION FOR INTERIM FINANCING  
CHARGE, AFFIDAVIT, NOTICE OF  
PRESENTATION, LIST OF EXHIBITS AND  
EXHIBITS A-1 TO A-17 INCLUSIVE

ORIGINAL

Me David Stollow

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