



**First Report to Court of
KSV Kofman Inc. as Proposal
Trustee of Mendocino Clothing Company
Ltd.**

August 4, 2020

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COURT FILE NO.: 31-2658047

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
MENDOCINO CLOTHING COMPANY LTD.
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

AUGUST 4, 2020

1.0 Introduction

1. This report (“Report”) is filed by KSV Kofman Inc. (“KSV”) in its capacity as proposal trustee (“Proposal Trustee”) in connection with a Notice of Intention to Make a Proposal (“NOI”) filed on July 14, 2020 (“Filing Date”) by Mendocino Clothing Company Ltd. (the “Company”) pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (“BIA”). A copy of the certificate of filing issued by the Office of the Superintendent of Bankruptcy is provided in Appendix “A”.
2. The principal purpose of this proceeding is to create a stabilized environment to allow the Company the opportunity to conduct a liquidation sale of its inventory and to restructure its business around significantly fewer retail locations and an e-commerce model.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information about the Company;
 - b) summarize the terms of a stalking horse offer made by Shop Mboutique Ecomm Ltd. (the “SH Purchaser”), a related company, pursuant to an asset purchase agreement (the “Stalking Horse Agreement”), which is subject to Court approval as the stalking horse bid;
 - c) discuss a proposed stalking horse sale process (the “Sale Process”);
 - d) report on the Company’s weekly cash flow projections for the period August 2, 2020 to September 28, 2020 (the “Forecast”); and

- e) recommend that this Court make an order:
- approving the Sale Process;
 - approving the Stalking Horse Agreement as the stalking horse bid and the Expense Reimbursement (as defined below);
 - granting, pursuant to Section 64.2 of the BIA, a priority charge over the Company's property, assets and undertaking in the principal amount of \$250,000 (the "Administration Charge") to secure the fees and disbursements of the Proposal Trustee, the Proposal Trustee's counsel, Goldman Sloan Nash & Haber LLP ("GSNH") and the Company's counsel, Chaitons LLP ("Chaitons");
 - granting the Company's request for an extension of the time required to file its proposal, from August 13, 2020, the date the current stay expires, to September 28, 2020; and
 - approving the Proposal Trustee's activities as set out in this Report.

1.2 Currency

1. Unless otherwise noted, all currency references in this Report are to Canadian dollars.

1.3 Restrictions

1. In preparing this Report, the Proposal Trustee has relied upon unaudited financial information prepared by the Company's representatives, the books and records of the Company and discussions with representatives of the Company. The Proposal Trustee has not performed an audit or otherwise attempted to verify the accuracy or completeness of the financial information relied on in a manner that complies with Canadian Auditing Standards ("CAS") pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Proposal Trustee expresses no opinion or other form of assurance contemplated under the CAS in respect of such information. Any party wishing to place reliance on the financial information should perform its own diligence.
2. The Proposal Trustee accepts no responsibility for any reliance placed by any third party on the Company's financial information presented herein.
3. Future oriented financial information relied upon in this Report is based on the Company's representative's assumptions regarding future events, including those related to the Covid-19 pandemic; actual results achieved may vary from this information and these variations may be material.

2.0 Background

1. The Company is incorporated under the *Business Corporations Act* (Ontario) and has been operating since 1987.
2. The Company is a retailer of women's clothing. Prior to the government-mandated shutdown due to the Covid-19 pandemic, the Company operated 27 stores from leased locations in the Greater Toronto and surrounding areas operating under the "Mendocino" (5 stores) and "M Boutique" (22 stores) names. The Company's head office is located at 496 Gilbert Avenue, Toronto.
3. Prior to the government-mandated shutdown, the Company had approximately 400 employees. Substantially all store sale staff were laid off as a result of the shutdown. As and when certain store locations were permitted to re-open according to governmental directives starting in May 2020, staff were re-hired for re-opened stores. The Company's workforce is not unionized and it does not provide a pension plan.
4. The Company recently made the decision to discontinue most of its store operations and to restructure its business primarily around an e-commerce model. There is a possibility that a few stores may continue to operate following a restructuring of the business.
5. The Company has been conducting a liquidation sale from certain of its locations since the Filing Date. As of the date of this Report, the Company has disclaimed 17 leases and it intends to continue to downsize its operations as the liquidation process continues. The Company has been terminating employees as stores close. The Company is aiming to complete the liquidation by the end of August 2020.

2.1 Financial Difficulties

1. Similar to many other retailers, the performance of the Company's business has been affected by the general shift away from brick-and-mortar stores to online channels, operational challenges and a highly competitive retail environment. The economic impact of the global COVID-19 pandemic further disrupted the Company's business and forced the Company to commence these NOI proceedings.
2. The Company's income statements for fiscal years 2018 and 2019 and the five months ending June 30, 2020 are presented in the following table.

(\$; 000s)	Fiscal 2018 (unaudited)	Fiscal 2019 (unaudited)	5 months ending June 30, 2020 (unaudited)
Net sales	39,535	37,323	4,352
Cost of sales	14,600	14,787	2,045
Gross margin	24,935	22,536	2,307
Gross margin (%)	63%	60%	53%
Selling, general and administrative	23,829	24,360	6,233
Net income (loss)	1,106	(1,824)	(3,926)

3. As reflected above, the Company incurred losses of approximately \$5.8 million since the start of fiscal 2019, with the majority of the losses being incurred in the five-month period ending June 30, 2020.

2.2 Assets

1. A summary of the Company's assets as at June 30, 2020 is provided below.

Description	Amount (\$000s)
Cash	952
Inventory	2,133
Other assets	401
Fixed assets	3,491
	<hr/> 6,977

- a) Inventory: represents the estimated book value of the Company's inventory in the remaining stores and at its warehouse as of the date of this Report.
- b) Other assets: largely comprised of prepaid assets.
- c) Fixed assets: primarily relates to furniture, fixtures and leasehold improvements at the retail stores.

2.3 Secured Creditors

1. Pursuant to a recent search of registrations under the *Personal Property Security Act* (Ontario), the Company's secured creditors are as follows:
 - The Toronto-Dominion Bank ("TD Bank"), which was owed approximately \$1.2 million as of the date of this Report. Interest and costs continue to accrue;
 - CF/Realty Holdings Inc. ("CFH"), the landlord of the Company's store at Don Mills Plaza in Toronto ("Don Mills");
 - First Place Tower Brookfield Properties Inc. ("FPT"), the landlord of the Company's store in First Canadian Place in Toronto ("FCP"), pursuant to a Security Agreement dated January 19, 2011; and
 - BMW Canada Inc. ("BMW") in respect of two leased automobiles.
2. Counsel to the Proposal Trustee is in the process of obtaining and reviewing the security documents held by TD Bank, CFH and FPT. Upon initial review, counsel to the Proposal Trustee has advised that the registration in favour of CFH indicates that the scope of the security is limited to collateral situated at the Don Mills store location. Likewise, the security agreement in favour of FPT also contains language which both limits the scope of the collateral charged to the FCP location and is capable of being contractually subordinated in certain circumstances to financing provided by lenders such as TD Bank. Counsel will update its views when it has had the opportunity to review the CFH security.

2.4 Unsecured Creditors

1. According to the Company's books and records, amounts owing to trade creditors and landlords for unpaid rent and other incentives at the Filing Date totaled approximately \$5.8 million.

3.0 Sale Process and Bidding Procedures

3.1 The Stalking Horse Agreement¹

1. A copy of the Stalking Horse Agreement is attached as Appendix "B".
2. The key terms and conditions of the Stalking Horse Agreement are provided below.
 - **Purchaser:** the SH Purchaser, a company related to the Company.
 - **Purchased Assets**²: Substantially all of the Company's assets related to the Business, including:
 - (i) Assumed Contracts;
 - (ii) Inventory; and
 - (iii) intellectual Property.
 - **Stalking Horse Purchase Price:** The purchase price payable by the Purchaser to the Vendor for the Purchased Assets shall be the sum of: (a) \$400,000 (Four Hundred Thousand Dollars); and (b) the assumption on a dollar-for-dollar basis of the cost of all inventory ordered subsequent to the NOI filing but not received as at the Closing Date.
 - **Deposit:** the SH Purchaser has not been required to pay a deposit given its connection with the Company and that its sole shareholder is also the sole shareholder of the Company and a personal guarantor of the TD Bank debt.
 - **Expense Reimbursement:** up to \$20,000 (including HST) (the "Expense Reimbursement") in respect of actual legal, diligence and other costs incurred by the SH Purchaser in respect of the Sale Process, including drafting and negotiating the Stalking Horse Agreement.
 - **Representation and Warranties:** consistent with the standard terms of an insolvency transaction, i.e. on an "as is, where is" basis, with limited representations and warranties.

¹ Capitalized terms in this section have the meaning provided to them in the Stalking Horse Agreement unless otherwise defined herein.

² The Purchased Assets will be those assets remaining after the completion of the liquidation sale.

- **Closing:** the date that is three (3) Business Days after the date that the Approval and Vesting Order is obtained or such other date as may be agreed by the Parties.
- **Material Conditions:**
 - (i) the Approval and Vesting Order shall have been obtained and shall not have been stayed, varied, or vacated (or any such appeal shall have been dismissed with no further appeal therefrom);
 - (ii) no order shall have been issued by a Governmental Authority which restrains or prohibits the completion of the Transaction; and
 - (iii) no motion, action or proceedings shall be pending by or before a Governmental Authority to restrain or prohibit the completion of the Transaction.
- **Termination:**
 - (i) The Stalking Horse Agreement can be terminated:
 - upon mutual written agreement of the Company and the SH Purchaser; or
 - if any of the conditions in favour of the SH Purchaser or the Company are not waived or satisfied.

3.1.1 Considerations Regarding the Stalking Horse Agreement

1. The Proposal Trustee considered whether the SH Purchaser's offer warrants approval of the Court as a stalking horse bid. The Proposal Trustee's considerations included:
 - the Stalking Horse Agreement provides an opportunity to continue a business that has operated since 1987 and has a loyal customer following; and
 - the value of the remaining inventory at the conclusion of the liquidation sale is expected to be negligible and the only asset of any materiality at that time will be the intellectual property. Based on the current retail environment, the recent significant losses incurred by the business and the risks associated with operating a retail business during the Covid-19 pandemic, the Proposal Trustee believes that the amount of the bid set out in the Stalking Horse Agreement is reasonable.

3.2 Sale Process

1. The primary purpose of the stalking horse Sale Process is to market the Company's intellectual property, including the Mendocino and M Boutique brands. Any inventory remaining at the conclusion of the Sale Process³, along with any other sundry assets, will also be included as purchased assets in the stalking horse Sale Process.

³ It is expected that the book value of the inventory remaining at the conclusion of the liquidation sale will be insignificant.

2. A summary of the proposed Sale Process is as follows (the timeline is to commence on the date that the Court makes an order approving the Sale Process):

Summary of Stalking Horse Sale Process		
Milestone	Description of Activities	Timeline
<i>Phase 1 – Pre-marketing</i>		
Marketing materials	<ul style="list-style-type: none"> ➤ Proposal Trustee to: <ul style="list-style-type: none"> ○ prepare a teaser; ○ populate a virtual data room (“VDR”); and ○ prepare a Confidentiality Agreement (“CA”). 	Ongoing
Prospect Identification	<ul style="list-style-type: none"> ➤ Proposal Trustee to identify strategic and financial prospects. 	
<i>Phase 2 – Marketing</i>		
Stage 1	<ul style="list-style-type: none"> ➤ Mass market introduction, including: <ul style="list-style-type: none"> ○ teaser to be sent to identified prospects; ○ telephone canvass of leading prospects; and ○ meet with and interview bidders. 	Week 1
Stage 2	<ul style="list-style-type: none"> ➤ Proposal Trustee to provide detailed information to qualified prospects that sign the CA, including access to the VDR; ➤ Proposal Trustee to facilitate diligence by interested parties; and ➤ Proposal Trustee to make Stalking Horse Agreement available to prospective purchasers in the VDR. 	Week 2-4
Stage 3	<ul style="list-style-type: none"> ➤ Bid deadline – in order to submit an offer, a prospective purchaser must submit a “Qualified Bid” (as discussed in section 3.2.2 below). 	September 1, 2020 (the “Bid Deadline”)
<i>Phase 3 – Auction, if applicable⁴</i>		
Auction	<ul style="list-style-type: none"> ➤ Proposal Trustee to conduct Auction; ➤ Leading Bid shall constitute the "Opening Bid" for the first round; ➤ Qualified bidders, including the SH Purchaser, to be invited to participate. 	By September 10, 2020
Sale Approval Motion and Closing	<ul style="list-style-type: none"> ➤ Motion for sale approval and close transaction. 	On or before September 18, 2020, or as soon as possible thereafter

⁴ If no Qualified Bid is submitted by the Bid Deadline, then no Auction will take place, the stalking horse agreement from the SH Purchaser shall be the Successful Bid, and the SH Purchaser shall be the Successful Bidder. The Bid Procedures are discussed in Section 3.2.1 and 3.2.2 below.

3.2.1 Bidding Procedures⁵

1. The process for making a bid (the “Bidding Procedures”) are set out below.

3.2.2 Qualified Bids

1. To be a “Qualified Bid”, a bid must meet the following requirements (the “Bid Assessment Criteria”):
 - a) a purchase price of at least \$440,000, being the sum of the estimated amounts payable under the Stalking Horse Agreement, an expense reimbursement (up to \$20,000, including HST) and an initial bid increment of \$20,000 (the “Base Purchase Price”);
 - b) confirmation that the bidder will assume all obligations related to inventory on order but not delivered as at the Closing Date;
 - c) a provision stating that the bidder’s offer is irrevocably open for acceptance until the Purchased Assets have been sold pursuant to a transaction approved by the Court;
 - d) an acknowledgement that if such Qualified Bid is selected by the Proposal Trustee as a back-up bid (a “Back-Up Bid”) at Auction, such Qualified Bid shall remain open for acceptance by the Proposal Trustee until the closing of the Successful Bid (defined below) and that such bidder’s Deposit (defined below) shall not be returnable until such time;
 - e) an executed copy of a proposed purchase agreement, together with a redline of the bidder’s proposed purchase agreement reflecting variations from the Stalking Horse Agreement on terms no less favourable and no more burdensome than the Stalking Horse Agreement;
 - f) evidence satisfactory to the Proposal Trustee as to the ability of the bidder to compete the proposed transaction;
 - g) contact information for the bidder as well as the identity of each entity or individuals (including ultimate shareholders) that will be bidding for the Purchased Assets;
 - h) not be conditional upon any bid protection of any type;
 - i) received by the Bid Deadline; and
 - j) include a cash deposit of not less than 10% (“Deposit”) of the Base Purchase Price offered.⁶

⁵ Capitalized terms in this section have the meaning provided to them in the Bidding Procedures unless otherwise defined herein.

⁶ The requirement for the SH Purchaser to provide a deposit has been waived.

2. In connection with the Bidding Procedures, the Proposal Trustee may make such modifications or amendments as it deems necessary or advisable in the circumstances, including the waiver of any of the foregoing criteria. The Proposal Trustee may extend the Bid Deadline if it determines in its sole discretion that it is in the best interest of the Sale Process.
3. The determination as to whether a bid constitutes a Qualified Bid shall be in the sole discretion of the Proposal Trustee. The SH Purchaser, as the stalking horse, is a Qualified Bidder. Only bidders who submit Qualified Bids will be considered "Qualified Bidders".

3.2.3 Auction

1. If no Qualified Bids are submitted by the Bid Deadline, the SH Purchaser will be the Successful Bidder.
2. If one or more Qualified Bids are received by the Bid Deadline:
 - a) the Proposal Trustee will notify the Qualified Bidders who made a Qualified Bid that the Auction will be held virtually on September 10, 2020 at 10:00 a.m. (Eastern Time) or such later date as the Proposal Trustee may determine is advisable in the circumstances;
 - b) the Proposal Trustee shall determine which Qualified Bid constitutes the starting bid (the "Leading Bid") for purposes of the Auction;
 - c) The only persons entitled to attend the Auction shall be: (i) the Proposal Trustee and its counsel; (ii) the Company and its counsel; (iii) Qualified Bidders and their advisors; and (iv) any other person to whom the Proposal Trustee may give its consent to attending the Auction;
 - d) The Proposal Trustee shall disclose to all Qualified Bidders the amount of the Leading Bid by 5:00 p.m. (Eastern Time) two (2) Business Days before the date scheduled for the Auction. Each Qualified Bidder must inform the Proposal Trustee whether it intends to participate in the Auction no later than 12:00 p.m. (Eastern Time) on the Business Day prior to the Auction;
 - e) any bid (an "Overbid") at the Auction shall be made in minimum cash purchase price increments of \$20,000 above the Opening Bid, or in such increments as the Proposal Trustee may determine in order to facilitate the Auction (the "Minimum Overbid Increment"). The amount of the cash purchase price consideration or value of any Overbid shall not be less than the cash purchase price consideration or value of the Leading Bid, plus the Minimum Overbid Increment(s) at that time, plus any additional Minimum Overbid Increments;
 - f) at the end of each round of bidding, the Proposal Trustee shall announce the identity of the Qualified Bidder and the material terms of the then highest and/or best Overbid, including the nature of the transaction, the assets proposed to be acquired and the obligations proposed to be assumed;

- g) if, at the end of any round of bidding, a Qualified Bidder (other than the Qualified Bidder that submitted the then highest and/or best Overbid or Leading Bid, as applicable) fails to submit an Overbid, then such Qualified Bidder shall not be entitled to continue to participate in the Auction;
 - h) the Auction shall be closed after the Proposal Trustee has: (i) reviewed the final Overbid of each Qualified Bidder taking into consideration the Bid Assessment Criteria; and (ii) identified the successful bid (the "Successful Bid") and, if applicable, a Back-Up Bid and advised the Qualified Bidders participating in the Auction of such determination; and
 - i) promptly following a Qualified Bid of a Qualified Bidder being declared the Successful Bid or the Back-Up Bid, the Qualified Bidder shall execute and deliver such revised and updated definitive transaction agreements as may be required to reflect and evidence the Successful Bid or Back-Up Bid. For greater certainty, every Bid made at Auction is deemed to be a signed and binding bid based on the terms and conditions of the bidder's original Qualified Bid (other than Purchase Price).
3. Deposits received in respect of any Qualified Bids other than the Successful Bid or the Back-Up Bid will be returned to the applicable Qualified Bidder by the Proposal Trustee within five (5) Business Days of the completion of the Auction.

3.3 Sale Process Recommendation

1. The Proposal Trustee recommends that this Court issue an order approving the Stalking Horse Agreement and the Sale Process for the following reasons:
- a) the Sale Process is commercially reasonable;
 - b) stalking horse sale processes are a recognized mechanism in restructuring proceedings to maximize recoveries, while creating stability for the business;
 - c) the Bidding Procedures allow a market test for the benefit of all stakeholders and provide an opportunity to complete a transaction with greater value than the Stalking Horse Agreement;
 - d) it is in the best interests of the Company's stakeholders that the Stalking Horse Agreement be preserved in order to have the opportunity to maximize value and to protect downside risk in the event that a superior offer is not submitted;
 - e) the Expense Reimbursement is minimal and will include costs incurred which will benefit prospective purchasers in the Sale Process. The Proposal Trustee does not believe that the Expense Reimbursement will discourage potential purchasers from participating in the Sale Process; and
 - f) the duration of the Sale Process is sufficient to allow interested parties to perform diligence and submit offers.

4.0 Cash Flow

1. The Company, with the assistance of the Proposal Trustee, prepared the Forecast for the period ending September 28, 2020 (“Forecast Period”). The Forecast and the related assumptions, together with Management’s Report on the Cash-Flow Statement as required by Section 50.4(2)(c) of the BIA and the Proposal Trustee’s Report on the Cash Flow Statement as required by Section 50.4(2)(b) of the BIA, are provided in Appendix “C”.
2. The Forecast reflects that the Company is projected to have sufficient liquidity to continue its operations.

5.0 Administration Charge

1. The Company is seeking an Administration Charge of \$250,000 in respect of the fees and expenses of the professionals incurred in connection with these proceedings. An Administration Charge is a standard feature of restructuring proceedings and is, in the Proposal Trustee’s view, appropriate in the present case given the Company’s limited liquidity.
2. The Administration Charge is required in these proceedings as the professionals retained have not been paid retainers. The Administration Charge is to cover the unpaid fees and expenses of Chaitons, the Proposal Trustee and its counsel, GSNH. Absent approval of the Administration Charge, the professionals are unlikely to be prepared to continue to act.
3. With the exception of BMW, all PPSA registrants, Canada Revenue Agency and Ministry of Finance will be given notice of this motion out of an abundance of caution. The Administration Charge will not rank in priority to BMW’s security interest.

6.0 Company’s Request for an Extension

1. The Company requires an extension of the time required to file a proposal from August 13, 2020 to September 28, 2020.
2. The Proposal Trustee supports the extension request for the following reasons:
 - the Company is acting in good faith and with due diligence;
 - the Company has indicated that it would likely be able to make a viable proposal to its creditors if the extension is granted, provided that sufficient funds are generated from store sales during the liquidation period;
 - the extension should not adversely affect or prejudice any group of creditors as the Company is projected to have funding to pay post-filing services and supplies in the amounts contemplated by the Forecast; and
 - it would provide the Company the additional time it requires for the Sale Process to be completed.

7.0 Overview of the Proposal Trustee's Activities

1. The Proposal Trustee's activities since the Filing Date have included, *inter alia*, the following:
 - monitoring the Company's sales, receipts and disbursements and corresponding with the Company regarding same;
 - assisting the Company to prepare forecasts for the liquidation period;
 - preparing Sale Process materials;
 - reviewing and commenting on the Stalking Horse Agreement;
 - corresponding with the Company regarding supplier issues, including critical vendors;
 - meeting and corresponding with the Company regarding operational and Sale Process matters;
 - corresponding with TD Bank regarding various matters in these proceedings;
 - corresponding with landlords and dealing with lease disclaimers;
 - responding to calls and inquiries from creditors;
 - drafting this Report; and
 - dealing with all other matters in this proceeding not specifically addressed above.

8.0 Conclusion and Recommendation

1. Based on the foregoing, the Proposal Trustee respectfully recommends that this Honourable Court make an order granting the relief detailed in Section 1.1(1)(e) of this Report.

* * *

All of which is respectfully submitted,



**KSV KOFMAN INC.
IN ITS CAPACITY AS TRUSTEE UNDER THE
NOTICE OF INTENTION TO MAKE A PROPOSAL OF
MENDOCINO CLOTHING COMPANY LTD.
AND NOT IN ITS PERSONAL CAPACITY**

Appendix “A”



Industry Canada
Office of the Superintendent
of Bankruptcy Canada

Industrie Canada
Bureau du surintendant
des faillites Canada

District of Ontario
Division No. 09 - Toronto
Court No. 31-2658047
Estate No. 31-2658047

In the Matter of the Notice of Intention to make a
proposal of:

Mendocino Clothing Company Ltd.
Insolvent Person

KSV KOFMAN INC.
Licensed Insolvency Trustee

Date of the Notice of Intention: July 14, 2020

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforementioned insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the *Bankruptcy and Insolvency Act*.

Pursuant to subsection 69(1) of the Act, all proceedings against the aforementioned insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: July 15, 2020, 12:25

E-File/Dépôt Electronique

Official Receiver

151 Yonge Street, 4th Floor, Toronto, Ontario, Canada, M5C2W7, (877)376-9902

Canada

Appendix “B”

ASSET PURCHASE AGREEMENT

This Agreement made this day of August, 2020.

BETWEEN:

MENDOCINO CLOTHING COMPANY LTD.

(the “Vendor”)

- and -

SHOP MBOUTIQUE ECOMM LTD.

(the “Purchaser”)

WHEREAS the Vendor has filed a notice of intention to make a proposal under the provisions of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA Proceeding**”);

AND WHEREAS KSV Kofman Inc. has been appointed as proposal trustee of the Vendor under the BIA Proceeding (the “**Trustee**”);

AND WHEREAS the Vendor will bring a motion for the Sales Process Order (as hereinafter defined) to authorize the Vendor to enter into this Agreement and conduct a sales process with respect to the Purchased Assets (as hereinafter defined);

AND WHEREAS, subject to the granting of the Approval and Vesting Order (as hereinafter defined), the Vendor has agreed to sell to the Purchaser, and the Purchaser has agreed to purchase from the Vendor its right, title and interest in and to the Purchased Assets in accordance with the terms of this Agreement;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by the parties) the parties hereto agree as follows:

ARTICLE 1 **INTERPRETATION**

1.1 Definitions

In this Agreement, the following terms shall have the meanings set out below unless the context requires otherwise:

“**Administrative Charge**” means the charge in favour of the Vendor’s Solicitors, the Trustee and the Trustee’s solicitors granted by the Court in the BIA Proceeding as security for their respective fees and expenses;

“**Agreement**” means this asset purchase agreement, including all schedules attached hereto and forming part hereof, written amendments and written restatements thereto from time to time;

“**Applicable Law**” means, with respect to any Person, property, transaction, event or other matter, all applicable laws, statutes, regulations, rules, by-laws, ordinances, protocols, regulatory policies, codes, guidelines, official directives, orders, rulings, judgments and decrees of any Governmental Authority;

“**Approval and Vesting Order**” has the meaning given in Section 4.2;

“**Article**” “**Section**” or “**Schedule**” mean the specified Article, Section of or Schedule to this Agreement and the expressions “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions refer to this Agreement and not to any particular Section or other portion of this Agreement;

“**Affiliate**” means, with respect to any Person, any other Person who directly or indirectly controls, is controlled by, or is under direct or indirect common control with, such Person, and includes any Person in like relation to an Affiliate;

“**Assumed Contracts**” has the meaning given in Section 2.9;

“**Assumed Obligations**” has the meaning given in Section 2.7;

“**Bid Deadline**” has the meaning set out in the Sales Process Order;

“**BIA**” means the *Bankruptcy and Insolvency Act* (Canada), R.S.C., 1985, c.B-3;

“**BIA Proceeding**” has the meaning given in the recitals above;

“**Books and Records**” means all of the books and records relating to the Purchased Assets, including, without limitation, all personnel files/records relating to all Transferred Employees and sales books, records, books of account, sales and purchase records, lists of suppliers and customers, business reports, projections and all other documents, surveys, plans, files, records, assessments, correspondence, and other data and information, financial or otherwise, including all data, information and databases stored on computer-related or other electronic media, excluding any of the foregoing as applicable to any Excluded Asset;

“**Business**” means the operation of a fashion apparel retailer;

“**Business Day**” means a day on which banks are open for business in the City of Toronto, but does not include a Saturday, Sunday or statutory holiday recognized in the Province of Ontario;

“**Claims**” means any and all claims, demands, complaints, grievances, actions, applications, suits, causes of action, orders, charges, indictments, prosecutions or other similar processes, and “**Claim**” means any one of them;

“**Closing**” means the completion of the purchase and sale of the Purchased Assets in accordance with the provisions of this Agreement;

“**Closing Date**” means subject to the terms hereof, three (3) Business Day following the date on which the conditions set forth in Article 4 have been satisfied or waived by the appropriate Party or such other date as may be agreed;

“**Closing Time**” has the meaning given in Section 3.1;

“**Contracts**” means the right, title and interest of the Vendor to and in all pending and/or executory contracts, agreements, leases and arrangements Related to the Business to or by which any of the Vendor or any of the Purchased Assets or Business is bound or affected;

“**Court**” means the Ontario Superior Court of Justice (Commercial List);

“**Deposit**” has the meaning given to it in Section (a);

“**Effective Time**” means 12:01 a.m. on the Closing Date;

“**Employee**” means an individual who was formerly employed or engaged by the Vendor (or any predecessor of the Vendor) or, as at the Effective Time, is employed or engaged by the Vendor in connection with the Business, and “**Employees**” means every Employee;

“**Employee Liabilities**” means any and all Liabilities having priority over registered security interests (whether by statute, contract, common law or otherwise) owed to any of the Employees, or otherwise arising out of, or resulting from, the relationship between the Vendor (or any predecessor of the Vendor) and any of the Employees, including any Liability arising as a result of such party being deemed to be a successor employer, related employer or otherwise responsible or liable for payment of any amounts owing to, on behalf of, or in respect of, any of the Employees (including, but not limited to, the Transferred Employees), whether pursuant to the *Employment Standards Act* (Ontario), the *Pay Equity Act* (Ontario) or the *Workplace Safety and Insurance Act, 1997* (Ontario). Without limiting the foregoing, Employee Liabilities shall include:

- (a) all salaries, wages, bonuses, commissions, vacation pay, public holiday pay and other compensation relating to the employment of the Employees (including accrued but unpaid vacation pay and any retroactive pay) and all Liabilities under employee benefit plans relating to employment of the Employees; and
- (b) all termination pay, severance pay, damages in lieu of reasonable notice and other related Liabilities (under statute, contract, common law or otherwise) in respect of the termination and/or severance of employment of the Employees.

“**Encumbrances**” means any security interests (whether contractual, statutory, or otherwise), mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, leases, title retention agreements, reservations of ownership, demands, executions, levies, charges, options or other rights to acquire any interest in any assets, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, including the Administrative Charge, and all contracts to create any of the foregoing, or encumbrances of any kind or character whatsoever, other than Permitted Encumbrances;

“**Excluded Assets**” means the following assets of the Vendor excluded from the Purchased Assets: (a) cash and cash equivalents; (b) any Contracts that are not Assumed Contracts; and (c) any other assets that the Purchaser elects to exclude in writing prior to Closing pursuant to Section 2.5;

“**Expense Reimbursement Fee**” shall have the meaning defined in Section 4.1(b);

“**Governmental Authorities**” means governments, regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, Crown corporations, courts, bodies, boards, tribunals or dispute settlement panels or other law or regulation-making organizations or entities: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory, state or other geographic or political subdivision thereof; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power, and “**Governmental Authority**” means any one of them;

“**HST**” means all of the harmonized sales tax imposed under Part IX of the *Excise Tax Act* (Canada);

“Intellectual Property” means any or all of the following items, wherever located: all patents and patent rights, trademarks and trademark rights, trade names and trade name rights, service marks and service mark rights, service names and service name rights, copyrights and copyright rights, brand names, trade dress, business and product names, domain names, corporate names, logos, slogans, trade secrets, inventions, processes, formulae, industrial models, designs, specifications, data, technology, methodologies, computer programs (including all source code), confidential and proprietary information, whether or not subject to statutory registration, all related technical information, manufacturing, engineering and technical drawings, know how, all pending applications for and registrations of patents, trademarks, service marks and copyrights, including all obligations of third parties relating to the protection of the foregoing, the goodwill associated with the foregoing, and the right to sue for past payment, if any, in connection with any of the foregoing, and all documents, disks and other media on which any of the foregoing is stored, including without limitation;

“Inventory and Supplies” means all items that are held by the Vendor for sale, license, rental, lease or other distribution (and includes all supplies used by the Vendor in the operation of the Business) on hand at Closing;

“Liability” means any debt, loss, damage, adverse claim, fines, penalties, liability or obligation (whether direct or indirect, known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, matured or unmatured, determined or determinable, disputed or undisputed, liquidated or unliquidated, or due or to become due, and whether in or under statute, contract, tort, strict liability or otherwise), and includes all costs and expenses relating thereto (including all fees, disbursements and expenses of legal counsel, experts, engineers and consultants and costs of investigation), including, without limitation, Employee Liabilities and **“Liabilities”** means the plural thereof;

“Licences and Permits” means all licences, permits, filings, certificates, authorizations, approvals or indicia of authority Related to the Business or the Purchased Assets or necessary for the operation or use of the Purchased Assets;

“Parties” means the Vendor and the Purchaser collectively, and **“Party”** means any one of them;

“Permitted Encumbrances” means all security interests and other interests arising exclusively from the Assumed Contracts;

“Person” is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization, the government of a country or any political subdivision thereof, or any agency or department of any such government, and the executors, administrators or other legal representatives of an individual in such capacity;

“Personal Property” means all of the Vendor’ machinery, equipment, furniture, including, without limitation, sound systems, artwork, desks, chairs, tables, copiers, telephone lines and numbers, telecopy machines and other telecommunication equipment, cubicles, cabinets, televisions, all computer hardware, including servers, computers and peripherals, printers and miscellaneous office furnishings and supplies, if any, laptops, cell phones and all other tangible personal property used in the Business, including all property subject to the Assumed Contracts;

“Prepaid Amounts” means all prepayments, prepaid charges, deposits, security deposits, sums and fees Related to the Business or in respect of the Purchased Assets;

“Purchase Price” has the meaning given in Section 2.2;

“Purchased Assets” means collectively, all of the Vendor’ right, title and interest in all of the assets, properties and undertakings Related to the Business, including, but not limited to, the following assets:

- (a) the Assumed Contracts;
- (b) the Personal Property;
- (c) the Inventory and Supplies;
- (d) the Receivables;
- (e) the Intellectual Property;
- (f) the Licenses and Permits;
- (g) the Prepaid Amounts;
- (h) the Books and Records;
- (i) the right to receive insurance recoveries under any insurance policies in existence on the date hereof in respect only of any claims with respect to Purchased Assets;
- (j) all rights and interests under or pursuant to all warranties, representations and guarantees, express implied or otherwise, of or made by suppliers or others in connection with the Purchased Assets or otherwise Related to the Business,
- (k) all goodwill and other intangible assets associated with the Business, including all telephone and facsimile numbers used in Related to the Business; and
- (l) all other property, assets and undertaking of the Vendor used in or relating to the Business of whatsoever nature or kind,

other than the Excluded Assets.

“Purchaser’s Solicitors” means such law firm as may be designated by the Purchaser;

“Qualified Bid(s)” has the meaning given to it in the Bidding Procedures (as defined in the Sale Process Order);

“Receivables” means the right, title and interest of the Vendor to all accounts receivable, bills receivable, trade accounts, book debts, insurance claims, and choses-in-action, now or hereafter due or owing to any of the Vendor, Related to the Business, together with any unpaid interest accrued on such items and any security or collateral for such items, including recoverable deposits, attributable to the period prior to Closing, and without limiting the generality of the foregoing, includes all tax refunds and government subsidies;

“Related to the Business” means, directly or indirectly, used in, arising from, or relating in any manner to the Business or the Purchased Assets.

“Sales Process Order” means an order to be sought from the Court upon terms acceptable to the Purchaser, acting reasonably, that, among other things, authorizes the Vendor to enter into this Agreement

and for the Trustee to conduct a sales process for the right, title and interest of the Vendor to the Purchased Assets and the Excluded Assets;

“**Stalking Horse Bid**” has the meaning ascribed thereto in Section 4.1(a) hereof;

“**Taxes**” means all taxes, charges, fees, levies, imposts and other assessments, including all income, sales, use, goods and services, harmonized, value added, capital, capital gains, alternative, net worth, transfer, profits, withholding, payroll, employer health, excise, franchise, real property and personal property taxes, and any other taxes, customs duties, fees, assessments or similar charges in the nature of a tax, including, Canada Pension Plan and provincial pension plan contributions, employment insurance payments and workers compensation premiums, together with any instalments with respect thereto, and any interest, fines and penalties, imposed by any Governmental Authority, and whether disputed or not;

“**Transferred Employees**” means Employees who have accepted an offer of employment from the Purchaser as of the Closing;

“**Trustee**” has the meaning given in the recitals above;

“**Winning Bidder**” has the meaning ascribed thereto in Section 4.1(c) hereof; and

“**Vendor’s Solicitors**” means Chaitons LLP.

1.2 Section References

Unless the context requires otherwise, references in this Agreement to Sections are to Sections of this Agreement.

ARTICLE 2 **PURCHASE AND SALE**

2.1 Purchase and Sale of Purchased Assets

At the Closing Time, subject to the terms and conditions of this Agreement, the Vendor shall sell and the Purchaser shall purchase the Purchased Assets and the Purchaser shall assume the Assumed Obligations.

2.2 Purchase Price

The purchase price payable by the Purchaser to the Vendor for the Purchased Assets shall be the sum of: (a) \$400,000 (Four Hundred Thousand Dollars); and (b) the assumption on a dollar-for-dollar basis of the cost of all inventory ordered subsequent to the commencement of the BIA Proceeding (July 14, 2020) but not received as at the Closing Date.

2.3 Satisfaction of Purchase Price

The Purchaser shall satisfy the Purchase Price by payment to the Trustee by way of a certified cheque, wire transfer or bank draft as follows:

- (a) an amount representing 10% of the Purchase Price will be paid by the Purchaser upon execution of this Agreement as a deposit (the “**Deposit**”) to be held by the Trustee in trust until the Closing and will be credited toward the Purchase Price upon Closing; and

- (b) the balance on Closing.

The Trustee agrees to cause the Deposit to be placed into a non-interest-bearing account or certificate of deposit.

Notwithstanding the foregoing, the Vendor waives the requirement of the Purchaser to provide a Deposit.

2.4 Allocation of Purchase Price

The Purchase Price shall be allocated among the Purchased Assets in the manner agreed to by the Purchaser and the Vendor (each acting reasonably) prior to the Closing Date, and the Purchaser and the Vendor shall report an allocation consistent with such allocation in preparing, determining and reporting their liabilities for Taxes, take no position inconsistent with such allocation in the preparation of their respective financial statements or for any other reason, and, without limitation, shall file their respective tax returns prepared in accordance with such allocations.

2.5 Additional Excluded Assets

Save and except as otherwise expressly set out herein, the Purchaser may, at its option, exclude any of the Purchased Assets from the transaction contemplated hereby at any time prior to Closing upon delivery of prior written notice to the Vendor, whereupon such assets shall be deemed to form part of the Excluded Assets, provided, however, that there shall be no reduction in the Purchase Price as a result of such exclusion.

2.6 Sales and Transfer Taxes; HST and Receivables Elections

- (a) The Purchaser shall be responsible for the payment on Closing of any Taxes that are required to be paid or remitted in connection with the consummation of the transactions contemplated in this Agreement.
- (b) At the Closing, the Vendor and the Purchaser shall, if applicable, jointly execute an election under Section 167 of the *Excise Tax Act* (Canada) to cause the sale of the Purchased Assets to take place on a HST-free basis under Part IX of the *Excise Tax Act* (Canada) and the Purchaser shall file such election with its HST return for the applicable reporting period in which the sale of the Purchased Assets takes place.
- (c) The Vendor transferring Receivables to the Purchaser and the Purchaser shall execute jointly an election in prescribed form under Section 22 of the *Income Tax Act* (Canada) in respect of the Receivables and shall file such election with their respective tax returns for their respective taxation years that include the Closing Date.

2.7 Assumed Obligations

At Closing, the Purchaser shall assume and be liable for the following (collectively, the “**Assumed Obligations**”):

- (a) any liabilities in connection with the Assumed Contracts as set out in Section 2.9;
- (b) all Liabilities and Claims arising or accruing from the use of the Purchased Assets from and after the Closing;

- (c) those Employee Liabilities set out in Section 6.2;
- (d) all Permitted Encumbrances; and
- (e) all Taxes arising or accruing from and after the Closing from the use of the Purchased Assets, including, without limitation, HST to be collected and remitted to Canada Revenue Agency when due.

2.8 Excluded Liabilities

Except for the Assumed Obligations, the Purchaser is not assuming, and shall not be deemed to have assumed, any Liabilities of the Vendor not specifically assumed (collectively, the “**Excluded Liabilities**”), which Excluded Liabilities include, but are not limited to, the following:

- (a) all Liabilities and Claims arising or accruing from the use of the Purchased Assets prior to the Closing;
- (b) all Employee Liabilities that arise out of, or result from the employment or engagement by the Vendor (or any predecessor to the Vendor) of any of the Employees (other than Transferred Employees) (unless otherwise imposed by law) and/or the termination or severance of such engagement or employment; and
- (c) all Encumbrances, other than Permitted Encumbrances.

2.9 Assumed Contracts

Save and except as hereinafter set out, the Purchaser shall give notice to the Vendor in writing, at least two (2) Business Days prior to the Closing Date, of those Contracts that it elects to assume on Closing (which Contracts shall be referred to as the “**Assumed Contracts**”). This Agreement and any document delivered under this Agreement will not constitute an assignment or an attempted assignment of any Contract contemplated to be assigned to the Purchaser under this Agreement which is not assignable without the consent of a third Person if such consent has not been obtained and such assignment or attempted assignment would constitute a breach of such Contract, in which event, the provisions of Section 2.10 hereof shall govern. The Purchaser shall be responsible for any pre-Closing Liabilities of the Vendor required to be paid by the third Person in order to complete the assignment of any Assumed Contract to the Purchaser.

2.10 Assignment of Purchased Assets

Notwithstanding anything in this Agreement to the contrary, this Agreement shall not constitute an assignment or transfer of any of the Purchased Assets or any right thereunder if an attempted assignment or transfer, without the consent of a third Person, would constitute a breach or in any way adversely affect the rights of the Purchaser hereunder. To the extent that any of the Purchased Assets to be transferred to the Purchaser on the Closing, or any claim, right or benefit arising under or resulting from such Purchased Assets (collectively, the “**Rights**” and each a “**Right**”) is not capable of being transferred without the approval, consent or waiver of any third Person, or if the transfer of a Right would constitute a breach of any obligation under, or a violation of, any Applicable Law unless the approval, consent or waiver of such third Person is obtained, then, except as otherwise expressly provided in this Agreement, and without limiting the rights and remedies of the Purchaser contained elsewhere in this Agreement, this Agreement shall not constitute an assignment or transfer of such Rights unless and until such approval, consent or

waiver has been obtained or an order of the Court is granted under the BIA Proceeding compelling assignment. After the Closing and until all such Rights are transferred to the Purchaser, the Vendor shall:

- (a) hold the Rights as bare trustee for the Purchaser;
- (b) cooperate with the Purchaser in any reasonable and lawful arrangements designed to provide the benefits of such Rights to the Purchaser; and
- (c) enforce, at the reasonable request of and at the expense of the Purchaser, any rights of the Vendor arising from such Rights against any third Person, including the right to elect to terminate any such Rights in accordance with the terms of such Rights upon the written direction of the Purchaser.

In order that the full value of the Rights may be realized for the benefit of the Purchaser, the Vendor shall, at the request and expense and under the direction of the Purchaser and in consultation with the Trustee, in the name of the Vendor or otherwise as the Purchaser may specify, take all such action and do or cause to be done all such things as are, in the opinion of the Purchaser, acting reasonably, necessary or proper in order that the obligations of the Vendor under such Rights may be performed in such manner that the value of such Rights is preserved and enures to the benefit of the Purchaser, and that any moneys due and payable and to become due and payable to the Purchaser in and under the Rights are received by the Purchaser. The Vendor shall hold as bare trustee and promptly pay to the Purchaser all moneys collected by or paid to the Vendor in respect of every such Right. To the extent that such approval, consent, waiver or order of the Court has not been obtained by the 90th day following the Closing, such Right shall deemed to be an Excluded Asset and the Vendor may terminate any agreement pertaining to such Right. The Purchaser shall indemnify and hold the Vendor harmless from and against any claim or liability under or in respect of such Rights arising because of any action of the Vendor taken in accordance with this Section.

ARTICLE 3 **CLOSING ARRANGEMENTS**

3.1 Closing

Closing shall take place at 10:00 a.m. (the “**Closing Time**”) on the Closing Date at the offices of the Purchaser’s Solicitors, or such other time and location as the Parties may agree upon in writing.

3.2 Tender

Any tender of documents or money under this Agreement may be made upon the Parties or their respective counsel and money may be tendered by official bank draft drawn upon a Canadian chartered bank, by negotiable cheque payable in Canadian funds and certified by a Canadian chartered bank or trust company, or by wire transfer of immediately available funds to the account specified by that Party.

3.3 Vendor’s Closing Deliveries

At the Closing, the Vendor shall deliver to the Purchaser the following, each in form and substance satisfactory to the Vendor and the Purchaser, acting reasonably:

- (a) if applicable, the elections referred to in Section 2.6;

- (b) a copy of the Approval and Vesting Order and the Trustee's Certificate contemplated thereby;
- (c) a bring down certificate dated as of the Closing Date, confirming that all of the representations and warranties of the Vendor contained in this Agreement are true and correct as of the Closing Date, with the same effect as though made on and as of the Closing Date;
- (d) a general conveyance and assumption of liabilities with respect to Purchased Assets and the Assumed Obligations;
- (e) a purchase price allocation agreement; and
- (f) such further and other documentation as is referred to in this Agreement or as the Purchaser or the Purchaser's Solicitors may reasonably require to complete the transactions provided for in this Agreement.

3.4 Purchaser's Closing Deliveries

At the Closing, the Purchaser shall deliver to the Vendor the following, each in form and substance satisfactory to the Vendor and the Purchasers, acting reasonably:

- (a) payment of the Purchase Price;
- (b) a general conveyance and assumption of liabilities with respect to Purchased Assets and the Assumed Obligations;
- (c) a purchase price allocation agreement;
- (d) if applicable, the elections referred to in Section 2.6;
- (e) a bring down certificate dated as of the Closing Date, confirming that all of the representations and warranties of the Purchaser contained in this Agreement are true and correct as of the Closing Date, with the same effect as though made on and as of the Closing Date; and
- (f) such further and other documentation as is referred to in this Agreement or as the Vendor or the Vendor's Solicitors may reasonably require to complete the transactions provided for in this Agreement.

ARTICLE 4 **SALES PROCESS AND CONDITIONS PRECEDENT**

4.1 Sale Process.

- (a) The Vendor shall bring a motion for the Sales Process Order on or before August 10, 2020. The Sales Process Order shall recognize the Purchase Price as a baseline or "stalking horse bid" (the "**Stalking Horse Bid**"), and shall also provide for a marketing process of the Purchased Assets by the Trustee with the potential for competitive bidding. The Purchaser acknowledges and agrees that the aforementioned process is in

contemplation of determining whether a superior bid can be obtained for the Purchased Assets.

- (b) In consideration for the Purchaser's expenditure of time and money and agreement to act as the initial bidder through the Stalking Horse Bid, and the preparation of this Agreement, and subject to Court approval, the Purchaser shall be entitled to an expense reimbursement fee in the amount of a maximum of \$20,000 (inclusive of HST, if any) (the “**Expense Reimbursement Fee**”) payable by the Vendor to the Purchaser only in the event that a successful bid other than the Stalking Horse Bid is accepted by the Vendor, approved by the Court and completed. The payment of the foregoing amount shall be approved in the Sales Process Order and shall be payable to the Purchaser out of the sale proceeds derived from and upon completion of the winning bid. The Parties acknowledge and agree that the foregoing amount represent a fair and reasonable estimate of the expenses that will be incurred by the Purchaser as a result of preparing for and entering into this Agreement, and is not intended to be punitive in nature nor to discourage competitive bidding for the Purchased Assets. For certainty, the Expense Reimbursement Fee does not form part of the Purchase Price.
- (c) In the event that one or more Persons submits a Qualified Bid, the Trustee shall conduct an auction for the determination and selection of a winning bid (the Person submitting such bid being the “**Winning Bidder**”). Upon the selection of the Winning Bidder, there shall be a binding agreement of purchase and sale between the Winning Bidder and the Vendor. The Vendor shall forthwith bring a motion following the selection of the Winning Bidder for an order approving the agreement reached with the Winning Bidder and to vest the Purchased Assets in the Winning Bidder and, if granted, shall proceed with closing the transaction forthwith.
- (d) Notwithstanding anything contained herein to the contrary, in the event that the Purchaser is not the Winning Bidder, then upon the closing of a transaction with such Winning Bidder, this Agreement shall be terminated and the Purchaser shall be entitled to the Expense Reimbursement Fee and neither Party hereto shall have any further liability or obligation, except as expressly provided for in this Agreement.
- (e) If no Qualified Bids are received by the Bid Deadline, the Vendor shall forthwith bring a motion to the Court to obtain the Approval and Vesting Order and, if granted, shall proceed with completing the transaction contemplated hereby forthwith.

4.2 Approval and Vesting Order

The Approval and Vesting Order shall approve this Agreement and the transactions contemplated hereby and vest, upon the delivery of the Trustee's Certificate (as defined therein) to the Purchaser, all right, title and interest of the Vendor in and to the Purchased Assets to the Purchaser, free and clear of all Claims and Encumbrances pursuant to the terms and conditions of this Agreement, other than Permitted Encumbrances (the “**Approval and Vesting Order**”). The Approval and Vesting Order shall be substantially in the form of the model order approved by the “Ontario Commercial List Users Committee”. The Approval and Vesting Order shall be served upon the necessary parties, and in the time frame, as approved by the Purchaser.

4.3 Conditions Precedent of the Purchaser

The Purchaser shall not be obliged to complete the transactions contemplated by this Agreement unless, at or before the Closing Time, each of the following conditions has been satisfied, it being understood that the following conditions are included for the exclusive benefit of the Purchaser and may be waived, in whole or in part, in writing, by the Purchaser at any time; and the Vendor agree with the Purchaser to take all such actions, steps and proceedings within its reasonable control as may be necessary to ensure that the following conditions are fulfilled at or before the Closing Time:

- (a) Representations and Warranties. The representations and warranties of the Vendor in Section 5.1 shall be true and correct at the Closing Time; and
- (b) Vendor's Compliance. The Vendor shall have performed and complied with all of the terms and conditions in this Agreement on its part to be performed or complied with at or before the Closing Time and shall have executed and delivered to the Purchaser at the Closing Time all the deliveries contemplated in Section 3.3 or elsewhere in this Agreement.

4.4 Conditions Precedent of the Vendor

The Vendor shall not be obliged to complete the transactions contemplated by this Agreement unless, at or before the Closing Time, each of the following conditions has been satisfied, it being understood that the following conditions are included for the exclusive benefit of the Vendor, and may be waived, in whole or in part, in writing by the Vendor at any time; and the Purchaser agrees with the Vendor to take all such actions, steps and proceedings within its reasonable control as may be necessary to ensure that the following conditions are fulfilled at or before the Closing Time:

- (a) Representations and Warranties. The representations and warranties of the Purchaser in Section 5.2 shall be true and correct at the Closing Time; and
- (b) Purchaser's Compliance. The Purchaser shall have performed and complied with all of the terms and conditions in this Agreement on its part to be performed by or complied with at or before the Closing Time and shall have executed and delivered to the Vendor at the Closing Time all the deliveries contemplated in Section 3.4 or elsewhere in this Agreement.

4.5 Non-Satisfaction of Conditions

If any condition precedent set out in this Article 4 is not satisfied or performed prior to the time specified therefor, the Party for whose benefit the condition precedent is inserted may:

- (a) waive compliance with the condition, in whole or in part, in its sole discretion by written notice to the other Party (but may not claim for any matter waived) and without prejudice to any of its rights of termination in the event of non-fulfilment of any other condition in whole or in part; or
- (b) elect on written notice to the other Party to terminate this Agreement.

4.6 Approval and Vesting Order

The obligations of the Vendor and the Purchaser hereunder are subject to the mutual conditions that:

- (a) the Purchaser becomes the Winning Bidder;
- (b) the Approval and Vesting Order shall have been made by the Court within 10 days of the Purchaser becoming the Winning Bidder (or such later date agreed upon by the Parties) approving this Agreement and vesting in the Purchaser all the right, title and interest of the Vendor in and to the Purchased Assets free and clear of all Encumbrances, other than Permitted Encumbrances; and
- (c) the Approval and Vesting Order will not have been stayed, varied or vacated and no order will have been issued to restrain or prohibit the completion of the transactions herein contemplated by the Closing Date.

The Parties hereto acknowledge that the foregoing conditions are for the mutual benefit of the Vendor and the Purchaser and cannot be waived by either Party.

ARTICLE 5 **REPRESENTATIONS AND WARRANTIES**

5.1 Representations and Warranties of the Vendor

As a material inducement to the Purchaser entering into this Agreement and completing the transactions contemplated by this Agreement and acknowledging that the Purchaser is entering into this Agreement in reliance upon the representations and warranties of the Vendor set out in this Section 5.1, the Vendor hereby represent and warrant to the Purchaser as follows:

- (a) **Incorporation and Power.** The Vendor is a corporation duly incorporated under the laws of the jurisdiction of its incorporation and is duly organized, validly subsisting and in good standing under such laws;
- (b) **Corporate Power and Authorization.** The Vendor has the requisite power to own its property and assets, including the Purchased Assets, and to carry on the Business as it is currently conducted;
- (c) **Enforceability of Obligations.** Subject to the granting of the Approval and Vesting Order, this Agreement constitutes a valid and binding obligation of the Vendor, enforceable against the Vendor, in accordance with its terms;
- (d) **HST.** The Vendor is a registrant under Part IX of the *Excise Tax Act* (Canada) and its Business Number is 103633046RT0001; and
- (e) **Residency.** The Vendor is not a non-resident within the meaning of section 116 of the *Income Tax Act* (Canada).

5.2 Representations and Warranties of the Purchaser

As a material inducement to the Vendor entering into this Agreement and completing the transactions contemplated by this Agreement and acknowledging that the Vendor are entering into this Agreement in reliance upon the representations and warranties of the Purchaser set out in this Section 5.2, the Purchaser hereby represents and warrants to the Vendor as follows:

- (a) Incorporation of the Purchaser. The Purchaser is a corporation duly incorporated under the laws of the jurisdiction of its incorporation and is duly organized, validly subsisting and in good standing under such laws;
- (b) Due Authorization. The Purchaser has all necessary corporate power, authority and capacity to enter into this Agreement and all other agreements and instruments to be executed by it as contemplated by this Agreement and to carry out its obligations under this Agreement and such other agreements and instruments;
- (c) Enforceability of Obligations. Subject to the granting of the Approval and Vesting Order, this Agreement constitutes a valid and binding obligation of the Purchaser, enforceable against the Purchaser, in accordance with its terms;
- (d) Approvals and Consents. Except as otherwise provided herein, no authorization, consent or approval of or filing with or notice to any Governmental Authority or other Person is required in connection with the execution, delivery or performance of this Agreement by the Purchaser or the purchase of any of the Purchased Assets hereunder;
- (e) HST. The Purchaser is a registrant under Part IX of the *Excise Tax Act* (Canada); and
- (f) Residency. The Purchaser is not a non-resident within the meaning of section 116 of the *Income Tax Act* (Canada).

5.3 Acquisition of Assets on “As Is, Where Is” Basis

The Purchaser acknowledges that the Vendor is selling the Purchased Assets on an “as is, where is” basis as they shall exist on the Closing Date, subject to the terms of the Approval and Vesting Order. The Purchaser further acknowledges that it has entered into this Agreement on the basis that the Vendor does not guarantee title to the Purchased Assets and that the Purchaser has conducted such inspections of the condition of and title to the Purchased Assets as it deemed appropriate and has satisfied itself with regard to these matters. No representation, warranty or condition is expressed or can be implied as to title, encumbrances, description, fitness for purpose, merchantability, condition, quantity or quality or in respect of any other matter or thing whatsoever concerning the Purchased Assets or the right of the Vendor to sell or assign same save and except as expressly represented or warranted herein. Without limiting the generality of the foregoing, any and all conditions, warranties or representations, expressed or implied, pursuant to the *Sale of Goods Act* (Ontario) or similar legislation do not apply hereto and have been waived by the Purchaser. The Purchaser further acknowledges that all written and oral information (including analyses, financial information and projections and studies) obtained by the Purchaser from the Vendor, the Trustee or any of their respective directors, officers, employees, professional consultants or advisors with respect to the Purchased Assets or otherwise relating to the transactions contemplated in this Agreement has been obtained for the convenience of the Purchaser only and is not warranted to be accurate or complete. The Purchaser further acknowledges that the Vendor shall be under no obligation to deliver the Purchased Assets to the Purchaser and that it shall be the Purchaser’s responsibility to take possession of the Purchased Assets.

ARTICLE 6
EMPLOYEES

6.1 Offers to Employees

The Purchaser may, in its sole discretion, offer new employment, conditional upon Closing and effective as of the Effective Time, to such of the Employees as determined by the Purchaser in its sole discretion, on terms and conditions to be agreed between the Purchaser and each Employee.

6.2 Transferred Employees

The Purchaser shall provide to the Trustee a list five (5) Business Days before Closing, indicating:

- (a) those Employees to whom offers of employment or expressions of interest have been made;
- (b) those Employees who have accepted any such offer; and
- (c) those Employees who the Purchaser has determined will not be offered employment with the Purchaser.

The Purchaser shall assume and be responsible for all Employee Liabilities following the Closing Date. The Purchaser shall also assume and be responsible for any vacation pay or wage liability with respect to the Transferred Employees, whether accruing or arising prior to or following the Closing Date.

ARTICLE 7
TERMINATION

7.1 Termination by the Parties

This Agreement may be terminated:

- (a) upon the mutual written agreement of the Vendor, the Purchaser and the Trustee;
- (b) pursuant to Section 4.5(b) by either Party; or
- (c) pursuant to Section 4.1(d).

7.2 Breach by Purchaser

If the Purchaser fails to comply with its obligations under this Agreement, the Vendor may by notice to the Purchaser elect to treat this Agreement as having been repudiated by the Purchaser. In that event, other than as provided for in Section 7.1, the Deposit and any other payments made by the Purchaser will be forfeited to the Trustee on account of its liquidated damages and the Purchaser shall have no further obligations to the Vendor, and the Purchased Assets may thereafter be sold by the Vendor to any other party.

ARTICLE 8
POST-CLOSING MATTERS

8.1 Post-Closing Receipts

If, following the Closing Date, any of the Purchased Assets are paid to or otherwise received by the Vendor, or if any of the Excluded Assets are paid to or otherwise received by the Purchaser, then the Vendor or the Purchaser, as the case may be, shall hold such assets in trust for the other and shall promptly deliver such assets to the Vendor or the Purchaser, as the case may be.

8.2 Books and Records

The Purchaser shall preserve and keep the Books and Records which relate to the Purchased Assets for a period of six years from the Closing Date or for any longer period as may be required by any Applicable Law or Governmental Authority. Upon reasonable advance notice, after the Closing Date, the Purchaser will grant the Vendor and the Trustee (or any of their assigns) and, in the event the Vendor are adjudged bankrupt, any trustee of the estate of any of the Vendor and their respective representatives, reasonable access during normal business hours, to use such Books and Records included in the Purchased Assets, including, without limitation, any personnel files/records of the Transferred Employees relating to the period up to the Closing and any Employees engaged by the Vendor at or in respect of the Purchased Assets up to and including the Closing Date, and computer systems, tapes, disks, records and software acquired as part of the Purchased Assets.

ARTICLE 9
GENERAL CONTRACT PROVISIONS

9.1 Headings and Sections

The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

9.2 Number and Gender

Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders. Where the word “including” or “includes” is used in this Agreement, it means “including (or includes) without limitation”.

9.3 Currency

Except as otherwise expressly provided in this Agreement, all dollar amounts referred to in this Agreement are stated in Canadian dollars.

9.4 Statute References

Any reference in this Agreement to any statute or any section thereof shall, unless otherwise expressly stated, be deemed to be a reference to such statute or section as amended, restated or re-enacted from time to time.

9.5 Time Periods

Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day.

9.6 Consent

Whenever a provision of this Agreement requires an approval or consent and such approval or consent is not delivered within the applicable time limit, then, unless otherwise specified, the Party whose consent or approval is required shall be conclusively deemed to have withheld its approval or consent.

9.7 No Strict Construction

The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party, including, without limitation, the doctrine of contra preferentum.

9.8 Entire Agreement

This Agreement and the agreements and other documents required to be delivered pursuant to this Agreement, constitute the entire agreement between the Parties and sets out all the covenants, promises, warranties, representations, conditions, understandings and agreements between the Parties relating to the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, oral or written, express, implied or collateral between the Parties in connection with the subject matter of this Agreement except as specifically set forth in this Agreement.

9.9 Expenses

Each Party shall pay their respective legal, accounting, and other professional advisory fees, costs and expenses incurred in connection with the transactions contemplated in this Agreement, and the preparation, execution and delivery of this Agreement and all documents and instruments executed pursuant to this Agreement.

9.10 Announcements

Except as required by Applicable Law, all public announcements concerning the transactions provided for in this Agreement or contemplated by this Agreement shall be jointly by the Parties approved in advance as to form, substance and timing.

9.11 Notices

Any notice, consent or approval required or permitted to be given in connection with this Agreement shall be in writing and shall be sufficiently given if delivered (whether in person, by courier service or other personal method of delivery), or if transmitted by facsimile:

- (a) in the case of notice to the Vendor at

Mendocino Clothing Company Ltd.
496 Gilbert Ave.
Toronto, Ontario M6E 4X5

Attention: Jan Kaplan
Email: jan@mendocino.ca

with a copy to:

Chaitons LLP
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

Attention: George Benchetrit
Email: george@chaitons.com

(b) in the case of notice to the Trustee:

KSV Kofman Inc.
150 King Street West, Suite 2308
Toronto, Ontario, M5H 1J9

Attention: Bobby Kofman/ Esther Mann
Email: bkofman@ksvadvisory.com/ emann@ksvadvisory.com

with a copy to:

Goldman Sloan Nash & Haber LLP
480 University Ave Suite 1600
Toronto, Ontario M5G 1V2

Attention: Mario Forte
Email: forte@gsnh.com

(c) in the case of a notice to the Purchaser at:

Shop Mboutique Ecomm Ltd.
496 Gilbert Ave.
Toronto, Ontario M6E 4X5

Attention: Jan Kaplan
Email: jan@mendocino.ca

with a copy to its lawyers as designated by the Purchaser and communicated in writing to the Trustee.:

Any notice delivered or transmitted to a Party as provided above shall be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a Business Day prior to 5:00 p.m. local time in the place of delivery or receipt. However, if the notice is delivered or transmitted after 5:00 p.m. local time or if such day is not a Business Day then the notice shall be deemed to have been given and received on the next Business Day.

Any Party may, from time to time, change its address by giving notice to the other Party in accordance with the provisions of this Section.

9.12 Successors and Assigns

This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors (including any successor by reason of amalgamation of any Party) and permitted assigns including a receiver or trustee in bankruptcy of the Vendor. Neither Party may assign or transfer, whether absolutely, by way of security or otherwise, all or any part of its respective rights or obligations under this Agreement without the prior written consent of the other Party. Notwithstanding the above, the Purchaser may at any time assign any of its rights or obligations arising under this Agreement to any Affiliate of the Purchaser and, upon such assignment and completion of the transactions contemplated by this Agreement, the Purchaser shall be released and discharged from all obligations hereunder but not before Closing.

9.13 Third Party Beneficiaries

Unless where provided to the contrary by the specific terms hereof, this Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns.

9.14 Time of the Essence

Time shall be of the essence in respect of the obligations of the Parties arising prior to Closing under this Agreement.

9.15 Amendment

No amendment, supplement, modification or waiver or termination of this Agreement and, unless otherwise specified, no consent or approval by any Party, shall be binding unless executed in writing by the Party to be bound thereby.

9.16 Further Assurances

The Parties shall, with reasonable diligence, do all such things and provide all such reasonable assurances as may be required to consummate the transactions contemplated by this Agreement, and each Party shall provide such further documents or instruments required by any other Party as may be reasonably necessary or desirable to effect the purpose of this Agreement and carry out its provisions, whether before or after the Closing Date, provided that the reasonable costs and expenses of any actions taken after the Closing Date at the request of a Party shall be the responsibility of the requesting Party.

9.17 Severability

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

9.18 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and each of the Parties irrevocably attorns to the non-

exclusive jurisdiction of the Courts of the Province of Ontario. The Parties consent to the jurisdiction and venue of the Court for the resolution of any disputes under this Agreement.

9.19 Execution and Delivery

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed and delivered either in original or faxed form or by electronic delivery in portable document format (PDF) and the parties adopt any signatures received by a receiving fax machine as original signatures of the parties.

9.20 Non-Merger

The representations, warranties and covenants of each Party contained in this Agreement (other than Article 4) will not merge on and will survive the closing of the Transaction and will continue in full force and effect, notwithstanding the closing of the Transaction or any investigation or knowledge acquired by or on behalf of the other Party.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS OF WHICH the Parties have executed this Agreement.

MENDOCINO CLOTHING COMPANY LTD.

Per: 

Name: JAN KAPLAN

Title: CEO

I have the authority to bind the corporation

SHOP MBOUTIQUE ECOMM LTD.

Per: 

Name: JAN KAPLAN

Title: CEO

I have the authority to bind the corporation

Appendix “C”

Mendocino Clothing Company Ltd
Projected Statement of Cash Flow
For the period ending September 28, 2020
(Unaudited; \$C)

	Notes	Weeks Ending								Total
		08-Aug-20	15-Aug-20	22-Aug-20	29-Aug-20	05-Sep-20	12-Sep-20	19-Sep-20	28-Sep-20	
<i>Receipts</i>										
Sales	2	240,125	200,575	129,950	124,300	45,200	45,200	45,200	58,114	888,664
<i>Disbursements</i>										
Payroll and Benefits	3	163,000	7,249	153,000	8,091	99,000	-	27,249	-	457,589
CEWS	4	-	-	-	(242,258)	-	-	-	-	(242,258)
Rent and Occupancy Costs	5	4,000	296,693	4,000	4,000	203,710	4,000	4,000	-	520,403
Other Operating Costs	6	2,382	16,818	2,131	56,764	17,850	800	11,445	-	108,190
HST	7	-	197,995	-	-	-	-	6,735	-	204,730
E-Commerce	8	6,480	10,125	6,480	152,539	6,480	6,480	9,145	6,480	204,209
<i>Total Operating Disbursements</i>		175,862	528,880	165,611	(20,864)	327,040	11,280	58,574	6,480	1,252,863
<i>Net Cash Flow before the Undernoted</i>		64,263	(328,305)	(35,661)	145,164	(281,840)	33,920	(13,374)	51,634	(364,198)
Professional Fees	9	-	150,000	-	-	-	150,000	-	-	300,000
<i>Net Cash Flow</i>		64,263	(478,305)	(35,661)	145,164	(281,840)	(116,080)	(13,374)	51,634	(664,198)
Opening Cash Balance	10	993,436	1,057,699	579,394	543,733	688,898	407,058	290,978	277,604	993,436
Closing Cash Balance		1,057,699	579,394	543,733	688,898	407,058	290,978	277,604	329,238	329,238


These financial projections are based on management's assumptions detailed in Appendix "I-1".
The note references correspond to the assumption numbers shown in Appendix "I-1"

MENDOCINO CLOTHING COMPANY LTD.


Per _____

Aug 2, 2020
Date

KSV KOFMAN INC.
IN ITS CAPACITY AS TRUSTEE UNDER THE
NOTICE OF INTENTION TO MAKE A PROPOSAL AND NOT
IN ITS PERSONAL CAPACITY


Per _____

August 2, 2020
Date

Notes to Projected Statement of Cash Flow

For the period ending September 28, 2020

(Unaudited; \$C)

Purpose and General Assumptions

1. The purpose of the projection is to present a forecast of the cash flow of Mendocino Clothing Company Ltd. (the "Company") from August 2, 2020 to September 28, 2020 ("Period") in respect of its proposal proceedings under the Bankruptcy and Insolvency Act.

The projected cash flow statement has been prepared based on hypothetical and most probable assumptions developed and prepared by the Company.

Hypothetical

2. Reflects projected sales during the proceedings.

Most Probable

3. Reflects payment of gross payroll and employee benefits, which is paid bi-weekly.
4. Reflects estimated receipts under the Canada Emergency Wage Subsidy program.
5. Reflects rent for occupied retail stores, head office rent and utilities.
6. Reflects other operating expense payments including store consolidation costs, software support, insurance, packaging and other administrative payments.
7. Reflects estimated monthly HST remittance net of input tax credits.
8. Reflects payments related to the operation of the Company's e-commerce site including inventory procurement, delivery and website administration fees.
9. Reflects the estimated fees of the Proposal Trustee, its counsel and the Company's counsel involved in this proceeding.
10. Opening cash balance excludes an income tax refund of \$431,602 for fiscal years 2017 to 2020. This amount is to be paid to TD Bank Canada and applied against the Company's indebtedness to it.

**Report on Cash Flow Statement by the Person Making the Proposal
(Paragraphs 50(6)(c) and 50.4(2)(c) of the BIA)**

The management of Mendocino Clothing Company Ltd. (the "Company") has developed the assumptions and prepared the attached statement of projected cash flow of the Company for the period ending September 28, 2020.

The hypothetical and probable assumptions are suitably supported and consistent with the purpose of the projection and the plans of the Company and provide a reasonable basis for the projection. All such assumptions are disclosed in Notes 2 to 10.

Since the projection is based on assumptions regarding future events, actual results will vary from the information presented, and the variations may be material.

The projection has been prepared solely for the purpose described in Note 1, using a set of hypothetical and probable assumptions set out in Notes 2 to 10. Consequently, readers are cautioned that it may not be appropriate for other purposes.

Dated at Toronto, this 2nd day of August, 2020.

Mendocino Clothing Company Ltd.



Per: Jan Kaplan

**Trustee's Report on Cash-flow Statement
(Paragraphs 50(6)(b) and 50.4(2)(b) of the Act)**

The attached statement of projected cash-flow of Mendocino Clothing Company Ltd. (the "Company"), as of the 2nd day of August, 2020, consisting of a weekly cash flow statement for the period August 2, 2020 to September 28, 2020, has been prepared by the management of the insolvent person for the purpose described in Note 1, using the probable and hypothetical assumptions set out in Notes 2-10.

Our review consisted of inquiries, analytical procedures and discussion related to information supplied to us by the management and employees of the insolvent person. Since hypothetical assumptions need not be supported, our procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the projection. We have also reviewed the support provided by management for the probable assumptions and the preparation and presentation of the projection.

Based on our review, nothing has come to our attention that causes us to believe that, in all material respects:

- (a) the hypothetical assumptions are not consistent with the purpose of the projection;
- (b) as at the date of this report, the probable assumptions developed by management are not suitably supported and consistent with the plans of the insolvent person or do not provide a reasonable basis for the projection, given the hypothetical assumptions; or
- (c) the projection does not reflect the probable and hypothetical assumptions.

Since the projection is based on assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material. Accordingly, we express no assurance as to whether the projection will be achieved.

The projection has been prepared solely for the purpose described in Note 1 and readers are cautioned that it may not be appropriate for other purposes.

Dated this 3rd day of August, 2020.



**KSV KOFMAN INC.
IN ITS CAPACITY AS TRUSTEE UNDER THE
NOTICE OF INTENTION TO MAKE A PROPOSAL OF
MENDOCINO CLOTHING COMPANY LTD.
AND NOT IN ITS PERSONAL CAPACITY**