

CANADA

**SUPERIOR COURT**

Commercial Division

(under the *Bankruptcy and Insolvency Act* and  
the *Companies' Creditors Arrangement Act*)

PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

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

NO.: 500-11-049210-152  
41-2021835

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

Debtor / Petitioner

-and-

**KPMG INC.**

Proposal Trustee / Monitor

-and-

**SALUS CAPITAL PARTNERS, LLC**

Mise-en-cause

-and-

**THE CADILLAC FAIRVIEW CORPORATION  
LIMITED**

Mise-en-cause

-and-

**BOUTIQUE LAURA CANADA LTÉE / LAURA'S  
SHOPPE CANADA LTD.**, a corporation having its  
registered office at 4 Granville, in the City of  
Hampstead, in the Province of Québec, H3X 3B1

Mise-en-cause

-and-

**3482731 CANADA INC.**, a corporation having its  
registered office at 4 Granville, in the City of  
Hampstead, in the Province of Québec, H3X 3B1

Mise-en-cause

-and-

**9318-5494 QUEBEC INC.**, formerly known as  
7735235 Canada Inc., a corporation having its  
registered office at 4 Granville, in the City of  
Hampstead, in the Province of Québec, H3X 3B1

Mise-en-cause

-and-

**KALMAN FISHER**, a natural person domiciled and residing at 4 Granville, in the City of Hampstead, in the Province of Québec, H3X 3B1

Mise-en-cause

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**MOTION TO CONTINUE A RESTRUCTURING PROCEEDING UNDER THE CCAA  
AND TO OBTAIN AN INITIAL ORDER**

(Sections 4, 5, 9, 11, 11.6 of the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (the "**CCAA**"))

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**IN SUPPORT OF THE PRESENT MOTION, PETITIONER STATES:**

1. On July 31, 2015, the Petitioner, Laura's Shoppe (P.V.) Inc. ("**Laura**") filed a Notice of Intention to Make a Proposal to its Creditors ("**NOI**") under the *Bankruptcy and Insolvency Act* ("**BIA**"). By the present motion, Laura seeks to continue the restructuring proceedings under the CCAA.

**I. THE PARTIES**

2. Laura is an important participant in the Canadian women's apparel industry. The company operates 162 women's fashion retail stores in shopping malls across Canada under the trade names "Laura", "Laura Outlet", "Laura Petites", "Laura Plus", "Melanie Lyne" and "Melanie Lyne Liquidation" (the "**Stores**").
3. Laura employs approximately 2383 full time and part time employees in its Stores and other facilities related to its operations.
4. Each of the Stores is situated in a shopping mall and such Stores, as well as certain premises operated by Laura in the course of its business, are the object of certain leases between Laura, as tenant, and various landlords (the "**Landlords**"). Laura has excellent business relationships with the Landlords, who have supported and continue to support Laura during challenging financial periods.
5. The Cadillac Fairview Corporation Limited ("**CF**") is one such Landlord, who is currently prepared to provide Laura with financial support, as needed, up to \$10,000,000 in order to allow Laura to continue to operate in the best interest of the company, its employees and its creditors.
6. Salus Capital Partners, LLC ("**Salus**") is Laura's working capital lender and has extended secured credit facilities to Laura by way of revolving USD and CDN lines of credit, and a term loan facility (collectively, the "**Salus Facility**"). As at August 6, 2015,

the amounts owing by Laura to Salus under the Salus Facility are CDN \$8,977,600.40 and USD \$10,377,836.82 (collectively, the “**Salus Indebtedness**”).

## II. LAURA’S INSOLVENCY AND THE FILING OF ITS NOI

7. In 2011, faced with an influx into Canada of large international retailers, Laura 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 Laura’s customers.
8. Laura suffered losses in 2012 and 2013. In order to offset such losses, Kalman Fisher (“**Fisher**”), Laura’s President, sole Director and beneficial owner, made significant personal loans to Laura, including approximately \$11,000,000 subsequent to the execution of the financing agreement with Salus.
9. In April 2013, Laura and Salus executed the Salus Facility agreements. In June 2013, Laura 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 Laura’s defaults pursuant to the Salus Facility. Since such time, Shonack has been Laura’s principal contact at Salus and overseen Laura’s account.
10. In 2014, Laura got back on track and generated positive cash flow.
11. It should be noted that in October 2014, Salus sought to nominate its August 2014 restructuring of Laura as the “Restructuring Deal of the Year”. In the context of such nomination, Salus prepared a draft presentation, a copy of which is attached hereto as Exhibit P-1, and sent same to Laura. In the 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.

12. 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 Laura had been an excellent borrower and he advised Fisher that Salus would support Laura in the restructuring of its business;

- b. Shonack did not request that Laura 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 Laura's restructuring plan and planned NOI filing. Shonack agreed that this was the appropriate course of action for Laura to take; and
  - d. Shonack advised Fisher that Salus would be filing a Notice of Intention to Enforce Security pursuant to subsection 244(1) 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 Laura's filing of an NOI and its plan to restructure and refinance its business.
13. Prior and subsequent to the July 28, 2015 meeting, Laura has kept Salus fully informed of the efforts which Laura has made in order to refinance the business and obtain financing in order to replace Salus.
14. Nonetheless, Shonack appears to be determined to liquidate Laura's entire inventory and put it permanently out of business, contrary to his previous representations.
15. By letter dated July 30, 2015 (the "**Salus Demand Letter**"), Salus demanded payment within ten (10) days of the following amounts, due to it pursuant to the Salus Facility, as at July 30, 2015:

CAD Revolving Loan			
Principal	CAD \$		3,631,425.55
Interest	CAD \$		46,600.21
Interest accrues at the Canadian Prime Rate + 4.00% per annum			
USD Revolving Loan			
Principal	US \$		64,102.36
Interest	US \$		10,273,021.23
Interest accrues at the U.S. Base Rate + 4.00% per annum.			
Term Loan			
Principal	CAD \$		2,850,000.00
Interest	CAD \$		16,070.83
Interest accrues at the Canadian Prime Rate + 4.00% per annum.			

the Salus Demand Letter and the attachment thereto are attached hereto, *en liasse*, as Exhibit P-2.

16. Salus also attached to the Salus Demand Letter a Notice of Intention to Enforce Security pursuant to subsection 244(i) of the *BIA* (the "**244 Notice**").

17. The Salus Demand Letter and the 244 Notice were also sent to the guarantors under to the Salus Facility.
18. On July 31, 2015, Laura filed an NOI and KPMG Inc. was named the proposal trustee. A copy of the NOI is attached hereto as Exhibit P-3.
19. Based specifically on Salus' verbal representations to Laura in connection with Salus' delivery of the 244 Notice to the effect that Salus would support Laura's restructuring, Laura waived, on July 31, 2015, the ten (10) day period set forth in such notice. A copy of Laura's signed acknowledgment and consent with respect to the 244 Notice is attached hereto as Exhibit P-4 (the "**244 Waiver**").
20. As soon as Laura waived the ten (10) days required under section 244 of the *BIA*, Salus, through its Ontario attorneys, commenced pressuring Laura to agree to a liquidation of all of its Stores.
21. Laura 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 it to take in merchandise for the fall 2015 season and was going to pursue an immediate liquidation strategy. Laura reserves all of its rights and recourses with respect to its consent concerning the 244 Notice.

### **III. SALUS' IMPROPER LIQUIDATION STRATEGY**

22. As referred to above, on July 31, 2015, Laura filed an NOI under the *BIA*.
23. On or around July 24, 2015, Salus appointed a consultant, Alvarez & Marsal Canada Securities ULC ("**A&M**"), in order to closely monitor Laura's business operations and financial results on a continuing basis and at Laura's cost. Since on or around July 30, 2015, A&M representatives, with Laura's consent, have attended at Laura's head office in order to monitor and examine its operations and financial information.
24. For its part, Laura engaged Richter Groupe Conseil Inc. ("**Richter**"), a firm with extensive restructuring experience, in order to monitor Laura's operations and financial position in accordance with the Restructuring (as hereinafter defined).
25. On Tuesday, August 4, 2015, Richter, working with A&M, finalized Laura's post-NOI filing cash flows. The cash flows showed that: (a) Laura 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, Laura's product mix would improve significantly as the majority of its spring/summer goods would be replaced with fall 2015 goods it would reverse itself as Laura purchased more fall 2015 goods at Laura's peak sales period, October to December.
26. In addition, on August 4, 2015, A&M prepared an inventory analysis and provided same to Richter. The inventory analysis showed that the quality of Laura'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 P-5.

27. On Wednesday, August 5, 2015, Laura advised Shonack of its discussions and meetings with CF and CF's genuine and serious interest in providing financial support to Laura.
28. However, notwithstanding the calls and information provided by Laura to Salus on August 4<sup>th</sup> and 5<sup>th</sup>, on August 5, 2015, Shonack advised Laura's consultants that Salus was not prepared to fund Laura's fall season and wanted Laura 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.
29. On August 6, 2015, Salus, through its attorneys, verbally advised the undersigned attorneys that it would be seeking forthwith the appointment of a receiver.
30. At 8:02 p.m. on Friday, August 7, 2015, Salus, through its attorneys, sent Laura'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.
31. Indeed, even prior to the filing of the Salus Motion, as appears from such motion, Salus invited major liquidators in the United States to submit proposals for the immediate liquidation of the inventory in all of Laura's Stores, thus severely disrupting its business plan. The liquidators included Hilco Global, Gordon Brothers Group, The Paul E. Saperstein Co., and others.
32. Salus has insisted that Laura repay the entire amount of the Salus Indebtedness by August 15, 2015, which, as Salus is well aware, is an impossible time period for the repayment of its loans.
33. Salus has effectively been operating a soft receivership of Laura without court approval by deciding which payments Laura was permitted to make and which it was not permitted to make, on a daily basis.
34. Salus has made the decision to liquidate Laura's entire inventory and put it out of business for good despite being advised, prior to the filing of the Salus Motion, that CF was prepared to consider financial support of Laura to the extent of \$10,000,000. Salus insisted that such support had to be subordinated to Salus.
35. On August 7, 2015, Salus' counsel advised that, unless Laura agreed to Salus' conditions for a standstill until August 15-17, 2015, Salus would discontinue its financial support of Laura and the trustee under the NOI could not file the required cash flow within 10 days of the filing of the NOI, thus forcing Laura into bankruptcy.
36. Salus' counsel served the Salus Motion after business hours on Friday, August 7, 2015. It was served care of M<sup>re</sup> Gerald F. Kandestin, Laura's lead counsel notwithstanding that it was fully aware that M<sup>re</sup> Kandestin had undergone surgery the

day before, was convalescing at home and was not in a position to deal with this proceeding.

37. Salus operates primarily in the United States where it has incurred substantial losses in its lending business, such that its entire loan portfolio is in the process of being liquidated.
38. Salus is aware that Laura made efforts and continues to make efforts to refinance its business and obtain financing to replace Salus. Nevertheless, Salus appears to be determined to liquidate the entire inventory of Laura and put it permanently out of business. Salus has planned the liquidation in advance of the appointment of a receiver and intends to use the receiver to implement the liquidation.
39. Salus' deceitful attempt to liquidate Laura is being contested, as Laura believes that the viability and profitability of its core business can be established by the Restructuring.

#### **IV. LAURA'S RESTRUCTURING AND INTERIM FINANCING**

40. Laura has a viable core business and believes that the viability and profitability of its business can be enhanced by, *inter alia*, the following (collectively the "Restructuring"):
  - a. disclaiming leases for 46 Stores, representing 28.4% of all Store leases. Laura 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 office and warehouse in Laval and the office in Mississauga, 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 Laura's unsecured creditors; and
  - e. refinancing Laura's working capital loans with an alternate lender.
41. As indicated above Laura has engaged Richter, whose team includes numerous highly experienced insolvency professionals to assist in the Restructuring.
42. Attached hereto as Exhibit P-6, is Laura's weekly cash flow statement (the "Cash Flow"), prepared on August 7, 2015, for the period of August 2, 2015 to August 31, 2015. The Cash Flow envisages the closing of 46 Stores and overhead reductions as well as the purchases of merchandise by Laura for its upcoming 2015 fall season.
43. On August 10, 2015 Laura sent notices of lease disclaimers to the Landlords of 46 separate Stores pursuant to subsection 65.2(1) of the *BIA*, as contemplated by the

Restructuring. The closing of Stores shall be effective September 13, 2015. In addition, Laura sent notices of disclaimer of leases with respect to the office and warehouse in Laval and the office in Mississauga.

44. CF, one of North America's largest owners, operators and developers of commercial leases and Laura's landlord with respect to thirty-nine (39) of its Stores, has indicated that it believes in Laura's long-term viability and that it fully supports the Restructuring.
45. After an in-depth examination of Laura's business, inventories, cash flow and inventory liquidation needs as well as the Cash Flow, CF and Laura have entered into a binding agreement on August 10, 2015, pursuant to which CF, subject to the Court's issuance of the Order sought in Laura's *Application for an Interim Financing Charge* (the "**Interim Financing Order**"), will provide the therein contained financing and services to Laura (the "**Interim Financing Loan Agreement**"). A copy of such Interim Financing Loan Agreement is annexed hereto as Exhibit P-7.
46. As appears from the Interim Financing Loan Agreement, the financing to be furnished by CF to Laura is conditional, *inter alia*, upon the Court granting a CCAA Initial Order substantially in the form of the draft Order attached hereto as Exhibit P-8.
47. Subject to the Court's issuance of the Interim Financing Order and on the basis of the terms, conditions and provisions of the Interim Financing Loan Agreement, CF will immediately advance funds to Laura, which will serve as a "life-line" to the company and will enable Laura to purchase critical merchandise for the fall 2015 season. Without such merchandise, Laura's business cannot survive.

#### **V. CONTINUATION OF THE RESTRUCTURING UNDER THE CCAA**

48. The requirements for continuing *BIA* proposal proceedings under the CCAA are met in this case, as:
  - a. Laura is an insolvent company;
  - b. the claims against Laura total more than \$5,000,000;
  - c. Laura has not filed a proposal under the *BIA*;
  - d. the present Motion is accompanied by:
    - i. a statement indicating, on a weekly basis, the projected cash flow of the debtor company, a copy of which is annexed hereto as Exhibit P-6;
    - ii. a report containing the prescribed representations of the debtor company regarding the preparation of the cash-flow statement, a copy of which is annexed hereto as Exhibit P-6; and
    - iii. copies of all financial statements, audited or unaudited, prepared during the year before the motion, annexed hereto, *en liasse*, as Exhibit P-9.



49. The continuation is consistent with the purposes of the CCAA, in that it will create conditions for preserving the *status quo* while attempts are made to find common ground amongst stakeholders for a reorganization that is fair to all.
50. By the effect of section 69(2)(c) of the *BIA* and of the 244 Waiver obtained following Salus' verbal representations that Salus would support the Restructuring, Salus is not subject to the automatic stay provided by section 69(1) of the *BIA*. The continuation under the CCAA would allow Laura, as well as the *mise-en-cause* Laura's Shoppe Canada Ltd., 3482731 Canada Inc., 9318-5494 Quebec Inc. and Fisher, to benefit from the stay sought by the present Motion pursuant to section 11.02 of the CCAA. This stay will protect Laura from any interference by Salus and will limit the implementation of Salus' improper liquidation strategy.
51. Without the continuation under the CCAA, Laura will not receive the interim financing to be provided under the Interim Financing Loan Agreement, which is necessary to make a viable proposal to its creditors and to maintain its ongoing business operations.
52. Laura's failure to effect the Restructuring would have devastating effects and would likely result in the closing of Laura's business and would cause a grave prejudice to all of Laura's suppliers, creditors, continuing landlords, as well as over two thousand employees and other stakeholders.
53. In this regard, it should be emphasized that Laura is among the few Canadian retailers that purchase from Canadian vendors that produce domestically. Given the importance of Laura's relationship with such domestic vendors, Laura'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.
54. As indicated above, a draft of the Order sought by Laura is attached hereto as Exhibit P-8.
55. Given the Salus Motion, it is essential and urgent that this motion be presented for adjudication before the Court as quickly as possible. Therefore, it is necessary that the delay for service and presentation of this motion be abridged and that the judgment to be rendered herein be executory notwithstanding appeal.

**FOR THESE REASONS, MAY IT PLEASE THIS COURT TO:**

- A. **EXEMPT** Petitioner from any applicable delays for the service and filing of the present *Motion to Continue a Restructuring Proceeding Under the CCAA and to Obtain an Initial Order* (the "**Motion**");
- B. **GRANT** the Motion;
- C. **ISSUE** an order in substantially the form of the draft Order attached to the Motion as Exhibit P-8 (the "**Order**");

- D. **ORDER** the provisional execution of the Order notwithstanding appeal;
- E. **THE WHOLE** without costs.

Montréal, August 10, 2015

*Kugler Kandestin LLP*  

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**KUGLER KANDESTIN LLP,**  
Attorneys for the Debtor / Petitioner  
Laura's Shoppe (P.V.) Inc., and mise-en-  
cause Laura's Shoppe Canada Ltd.,  
3482731 Canada Inc., 9318-5494 Quebec  
Inc. and Kalman Fisher

CANADA

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Commercial Division

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Proposal Trustee / Monitor

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**SALUS CAPITAL PARTNERS, LLC**

Mise-en-cause

-and-

**THE CADILLAC FAIRVIEW CORPORATION  
LIMITED**

Mise-en-cause

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**BOUTIQUE LAURA CANADA LTÉE / LAURA'S  
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Mise-en-cause

-and-

**KALMAN FISHER**, a natural person domiciled and residing at 4 Granville, in the City of Hampstead, in the Province of Québec, H3X 3B1

Mise-en-cause

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**AFFIDAVIT OF KALMAN FISHER**

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I, the undersigned, Kalman Fisher, domiciled and residing at 4 Granville, in the City of Hampstead, in the Province of Québec, H3X 3B1, solemnly affirm the following:

1. I am the President of Laura's Shoppe (P.V.) Inc.;
2. I have read the attached *Motion to Continue a Restructuring Proceeding Under the CCAA to Obtain an Initial Order* (the "**Motion**");
3. All the facts alleged in the said Motion are true and correct.

And I have signed:

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

Solemnly affirmed before me at  
Montréal, Québec, on August 10, 2015

  
\_\_\_\_\_  
#198 577

Commissioner of Oaths for the  
Province of Québec



**NOTICE OF PRESENTATION**

**TO:**

**Gowling Lafleur Henderson LLP**

Attention: M<sup>re</sup> François Viau  
3700-1 Place Ville Marie  
Montreal, Quebec H3B 3P4

Attorneys for The Cadillac Fairview  
Corporation Limited

**Fishman Flanz Meland Paquin LLP**

Attention: M<sup>re</sup> Avram Fishman  
4100-1250 René-Lévesque West Blvd  
Montreal, Quebec H3B 4W8

Attorneys for KMPG Inc.

**Office of the Superintendent of  
Bankruptcy**, having a Division Office at  
1155 Metcalfe Street, 10th Floor, Montreal,  
Quebec, H3B 2V6

**BCF LLP**


Attention: M<sup>re</sup> Claude Paquet  
1100 René-Lévesque West Blvd, 25th floor  
Montreal, Quebec H3B 5C9

Attorneys for Salus Capital Partners, LLC

**TAKE NOTICE** that the present *Motion to Continue a Restructuring Proceeding Under the CCAA and to Obtain an Initial Order* will be presented for adjudication before Superior Court sitting in Commercial Division, in and for the District of Montréal, in **Room 16.10** of the Montréal Courthouse, at 1 Notre-Dame Street East, on **August 11, 2015**, at **9:00 a.m.** or so soon thereafter as counsel may be heard.

**DO GOVERN YOURSELVES ACCORDINGLY.**

Montréal, August 10, 2015

  
\_\_\_\_\_  
**KUGLER KANDESTIN LLP,**  
Attorneys for the Debtor / Petitioner  
Laura's Shoppe (P.V.) Inc., and mise-en-  
cause Laura's Shoppe Canada Ltd.,  
3482731 Canada Inc., 9318-5494 Quebec  
Inc. and Kalman Fisher

## LIST OF EXHIBITS

	<b>Exhibit</b>
Presentation by Salus, October 2014.....	P-1
Letter from Salus dated July 30, 2015.....	P-2
Notice of Intention to Make a Proposal dated July 31, 2015.....	P-3
Acknowledgment and Consent dated July 31, 2015 .....	P-4
Inventory analysis dated August 4, 2015 .....	P-5
Weekly cash flow statement .....	P-6
Interim Financing Loan Agreement .....	P-7
Draft Initial Order.....	P-8
Financial statements, <i>en liasse</i> .....	P-9

No: 500-11-049210-152  
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MOTION TO CONTINUE A RESTRUCTURING  
PROCEEDING UNDER THE CCAA AND TO OBTAIN  
AN INITIAL ORDER, AFFIDAVIT, NOTICE OF  
PRESENTATION, LIST OF EXHIBITS

ORIGINAL

Me David Stollow

**KuglerKandestin**

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