

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
THE BODY SHOP CANADA LIMITED, IN THE CITY OF TORONTO, OF THE
PROVINCE OF ONTARIO**

**AIDE-MÉMOIRE
OF THE TERMINATED CANADIAN EMPLOYEES**

(Re Motion by The Body Shop Canada Limited, returnable October 4, 2024)

October 3, 2024

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Counsel to Stephanie Hood and the other
Terminated Canadian Employees attached
hereto as Schedule "A"

1. This Aide-Mémoire is filed on behalf of 40 terminated Canadian employees of The Body Shop Canada Ltd. ("**TBS Canada**") who have retained Koskie Minsky LLP ("**KM**"). Their names are attached hereto as Schedule A (the "**Terminated Canadian Employees**").

2. Starting on March 1, 2024, approximately 220 Canadian employees were terminated by TBS Canada after it filed a Notice of Intention to Make a Proposal ("**NOI**") under the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 ("**BIA**").

3. None of the Terminated Canadian Employees were given prior notice of termination, nor given pay in lieu of notice. KM estimates that the amount owing to all terminated TBS Canada employees is over \$2M.

The Terminated Canadian Employees have been marginalized, with no access to WEPP payments and no distributions in respect of unpaid severance pay

4. A payment under the Wage Earner Protection Program ("**WEPP**") would pay each of the Terminated Canadian Employees up to \$8,507.66 with respect to their claims for unpaid severance pay with no prejudice to other creditors or any other stakeholder. WEPP is automatically available to terminated employees in the bankruptcy or receivership of their employer. However, for a Proposal or proceeding under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("**CCAA**"), a court order is required to make WEPP applicable.

5. In the period from March 2024 to June 2024, counsel to the Terminated Canadian Employees urged the company and Monitor (Alvarez & Marsal Canada Inc.) to pursue the application of WEPP to this proceeding by way of a court application or a receivership application. Lawyers for TBS Canada subsequently advised that they approached the federal government on May 3, 2024 to discuss bringing a receivership application in respect of TBS Canada to make

WEPP applicable, but were told by the representatives they contacted that the federal government would not accept a receivership to trigger WEPP. As far as KM is aware, TBS Canada has taken no further steps to facilitate WEPP for the Terminated Canadian Employees.

6. Employees terminated under previous restructuring proceedings¹ before this Court have been able to apply for WEPP where a receivership application was brought to make WEPP applicable. Since this approach has been successful in past proceedings, including those that were recently initiated², it should be pursued more diligently.

The Monitor should provide its liquidation analysis to demonstrate the Terminated Canadian Employees would not fare better under a bankruptcy proceeding, since bankruptcy triggers WEPP

7. TBS Canada is a subsidiary company of The Body Shop International Limited ("**TBS UK**") and essentially operates as a franchise of its parent. In November 2023, TBS UK was acquired by the private equity firm, Aurelius IV UK Acquico Eight Limited. Soon after that transaction closed, TBS UK, as well as all other global franchises of The Body Shop, were placed under insolvency protection. As noted above, TBS Canada initiated its NOI proceeding on March 1, 2024.

8. On July 5, 2024, TBS Canada moved before the Court to terminate its NOI proceedings as it could not achieve a Proposal to present to its creditors. It is continuing under insolvency protection under the CCAA.

¹ *In the Matter of Metroland Media Group Ltd.* (BK-23-02986886-0031) & *In the Matter of Sears Canada Inc., et al* (CV-17-11846-00CL).

² WEPP payments were available to terminated employees in the Metroland Media Group Ltd. proposal proceeding. That proceeding was initiated on September 15, 2023.

9. Also on July 5, 2024, TBS Canada moved for approval to conduct its own sales process. In the materials filed in support of that motion, TBS Canada noted that any transaction it could enter into was "dependent" on reaching an agreement with TBS UK for its consent to use of The Body Shop name and products since TBS UK "is the owner of the trademark and intellectual property associated with The Body Shop brand" (para. 43, TBS Factum).

10. The deadline to receive bids is on October 8, 2024, four days after this motion hearing.

11. It was recently reported that in mid-July 2024, the Aurea Group (the "**UK Purchaser**") was selected as the preferred bidder of TBS UK under the sale process carried out in the UK insolvency administration process. The UK Purchaser closed the transaction to acquire TBS UK on September 6, 2024. TBS Canada was not acquired under that sale.

12. On August 9, 2024, and following the public announcement that TBS UK had been acquired by the UK Purchaser and that TBS Canada was excluded, KM wrote to the lawyers for TBS Canada and the Monitor stating that TBS Canada should be placed into bankruptcy so that the Terminated Canadian Employees could receive WEPP payments. On August 15, 2024, lawyers for TBS Canada responded generally that, "bankruptcy would cause significant prejudice" to stakeholders such as landlords and the remaining employees and independent contractors. On September 25, 2024, KM attended a meeting with lawyers for TBS Canada and the Monitor and inquired whether it had performed liquidation analyses to determine whether it is more beneficial to Canadian creditors, including Terminated Canadian Employees, that TBS Canada be assigned into bankruptcy. To date, the Monitor has not provided a liquidation analysis to KM.

13. Section 23(1)(h) of the CCAA states:

Duties and functions

...

23 (1) The monitor shall:

(h) if the monitor is of the opinion that it would be more beneficial to the company's creditors if proceedings in respect of the company were taken under the *Bankruptcy and Insolvency Act*, so advise the court without delay after coming to that opinion;

14. Pursuant to section 23(1)(h) of the CCAA, KM requests that the Monitor provide its opinion as to whether "it would be more beneficial to the company's creditors", and in particular the Terminated Canadian Employees who will be paid up to \$8507.66 under WEPP in a bankruptcy, if proceedings in respect of the company were now taken under the BIA.

15. In the meanwhile, TBS Canada continues to spend and take on debt. While it continues in its sales process, it has entered into a contract to purchase "Remaining Inventory" from the TBS UK in the amount of \$1.5M, secured with a Critical Supplier charge, spread out because "TBS Canada does not have sufficient liquidity" (para. 34 of TBS Canada Factum).

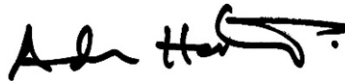
16. In addition, the sales process that TBS Canada is pursuing is contingent on achieving a franchise agreement with TBS UK who would have to agree to license a purchaser to use The Body Shop name and sell its products.

17. The Terminated Canadian Employees are concerned that there will not be any assets to even pay a distribution in the CCAA proceeding toward their severance claims. They are also concerned that the delay in bankruptcy continues to prevent them from obtaining a WEPP payment.

The stay extension should be shorter

18. The deadline to receive bids under TBS Canada's sales process is on October 8, 2024. The company is seeking a lengthy stay extension to December 13, 2024. That is too long in the circumstances. The company and the Monitor should report to the Court promptly after October 8, 2024 as to whether an appropriate bidder has been identified, its next steps for a transaction, if any, how TBS Canada intends to pay the Terminated Canadian Employees and other creditors, and the results of the liquidation analysis under section 23(1)(h) of the CCAA. The stay extension should be for no longer than one month from today.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 3rd day of October, 2024.



Andrew Hatnay



James Harnum



Abir Shamim

SCHEDULE "A"**The Body Shop Canada Limited
Terminated Canadian Employees**

1. Sarah Adjepong-Duodu
2. Mark Baker
3. Colette Bell
4. Gabrielle Berube
5. Zorica Bosev
6. Rayvyn Braun
7. Alexander Kenneth Taylor Buglass
8. Ashley Campbell
9. Danielle Caplette
10. Hannah Clarke
11. Cathi Crook
12. Rebekah Fielding
13. Brittany Ford
14. Alyshia Forsyth
15. Besty Gelliseau
16. Catherine Yamila Griffone
17. Joanne Henderson
18. Shayla Holland
19. Stephanie Hood
20. Abby Kate Johnson
21. Inna Kakoian
22. Harika Katamoni
23. Mikhael Klassenkay
24. Prudence Lalgie-Tulloch
25. Sarah Lam
26. Elizabeth Landry
27. Rebecca Lloyd
28. Jacqueline McIntyre
29. Kenia Jasmin Miranda Amaya
30. Elizabeth Palacios
31. Do Diep Anh Phan
32. Natalina Roy
33. Dagmar Sanjenko
34. Katrina Saripa
35. Ryan Dominic Sequeira
36. Anjali Soman
37. Lauri Spagnuolo
38. Heather Stephens
39. Kelli Warder
40. Jennifer Wihbey

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