

Court File No. CV-23-00694493-00CL

**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

IN THE MATTER OF THE PLAN OF COMPROMISE OR
ARRANGEMENT OF **BBB CANADA LTD.**

Applicant

**MOTION RECORD OF THE APPLICANT
(Motion for Stay Extension)**

August 15, 2023

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Court File No.: CV-23-00694493-00CL

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**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 BBB CANADA LTD.**

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Court File No. CV-23-00694493-00CL

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

IN THE MATTER OF THE PLAN OF COMPROMISE OR
ARRANGEMENT OF **BBB CANADA LTD.**

Applicant

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TAB 1

Court File No. CV-23-00694493-00CL

**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

IN THE MATTER OF THE PLAN OF COMPROMISE OR
ARRANGEMENT OF BBB CANADA LTD.

NOTICE OF MOTION

The Applicant, BBB Canada Ltd. (the "**Applicant**") will make a motion before the Honourable Chief Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) on August 22, 2023 at 9:00 a.m., or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING:

- ☐ In writing under subrule 37.12.1 (1) because it is (*insert one of* on consent, unopposed *or* made without notice);
- ☐ In writing as an opposed motion under subrule 37.12.1 (4);
- ☐ In person;
- ☐ By telephone conference;
- ☒ By video conference.

at the following location: Videoconference details will be circulated when provided by the Court.

THE MOTION IS FOR:

1. An Order substantially in the form attached at **Tab 3** to the Motion Record:
 - (a) extending the Stay Period (as defined below) to and including November 22, 2023; and
 - (b) such other and further relief as counsel may request and this Honourable Court may allow.

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THE GROUNDS FOR THIS MOTION ARE:

2. On February 10, 2023, BBB Canada was granted protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") pursuant to an Initial Order (the "**Initial Order**") of the Ontario Superior Court of Justice (Commercial List) (the "**Court**"). On February 21, 2023 an Amended and Restated Initial Order was granted by the Court.
3. On July 6, 2023, BBB Canada sought, and the Court granted, a D&O Claims Procedure Order establishing a process for the universe of claims against BBB Canada's Directors and Officers to be ascertained, determined and addressed (the "**D&O Claims Procedure Order**"). One Proof of Claim was received by the Monitor on or before the Claims Bar Date in accordance with the D&O Claims Procedure Order. BBB Canada is in the process of confirming the validity of the D&O Claim.
4. In addition to the D&O Claim filed by the Province of British Columbia, BBB Canada recently became aware that the Canada Revenue Agency ("**CRA**") had commenced an audit of BBB Canada's GST/HST returns for the period from March 1, 2021 to February 28, 2023. BBB Canada retained Deloitte Canada to assist it in responding to the audit. The audit remains ongoing.
5. While BBB Canada had initially intended to seek an Order at the motion terminating the CCAA Proceedings and discharging the Monitor, such relief is now premature in light of the filing of the D&O Claim and commencement of the GST/HST audit by the CRA. Such processes must conclude before BBB Canada can seek approval to distribute remaining funds in the BBB Canada estates and terminate the CCAA Proceedings.
6. BBB Canada is accordingly seeking to extend the Stay Period to November 22, 2023 to maintain continued stability for BBB Canada while it: (a) works diligently, in good faith and in consultation with the Monitor, to ascertain the validity of, and address, the one D&O Claim filed pursuant to the D&O Claims Procedure Order; and (b) participates in the CRA's ongoing GST/HST audit of BBB Canada.
7. Costs of the CCAA Proceedings on a go forward basis are expected to be minimal given that BBB Canada has ceased operations, sold or disclaimed all assets and property, and terminated all employees. Almost all matters to be attended to in connection with the CCAA Proceeding have

- 3 -

been completed. Both BBB Canada and the Monitor currently expect that all anticipated costs through the extended Stay Period will be funded by retainers provided by BBB Canada to its counsel, the Monitor, and Monitor's counsel prior to the Filing Date. To the extent that the professionals' respective existing retainers are insufficient, additional professional fees will be funded from BBB Canada's remaining cash.

8. BBB Canada has been acting, and continues to act, in good faith and with due diligence in these CCAA Proceedings. The proposed extension of the Stay Period is appropriate and necessary in the circumstances. The Monitor supports the requested extension to the Stay Period.

Other Grounds for Relief

9. The provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;

10. Rule 1.04, 1.05, 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990 Reg. 194, as amended; and

11. Such further and other grounds as the counsel may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of this motion:

12. the Affidavit of Holly Etlin, sworn August 15, 2023; and

13. such further and other material as counsel may advise and this Honourable Court may allow.

- 4 -

August 15, 2023

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Lawyers for the Applicant

TO: THE SERVICE LIST

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

Court File No: CV-23-00694493-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
BBB CANADA LTD.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION

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Lawyers for the Applicant

TAB 2

**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

IN THE MATTER OF THE PLAN OF COMPROMISE OR
ARRANGEMENT OF BBB CANADA LTD.

Applicant

AFFIDAVIT OF HOLLY ETLIN

I, Holly Etlin, of the City of New York, in the State of New York, MAKE OATH AND SAY:

1. I am the Chief Financial Officer (“**CFO**”) and Chief Restructuring Officer (“**CRO**”) of Bed Bath & Beyond Inc. (“**BBBI**”), the ultimate parent corporation of BBB Canada Ltd. (the “**Applicant**”) and Bed Bath & Beyond Canada L.P. (“**BBB LP**”, and together with the Applicant, “**BBB Canada**”). I have served in the capacities of CFO and CRO of BBBI since April 2023. I was previously Interim CFO of BBBI since February 2, 2023.

2. I am also a Managing Director at AlixPartners, LLP (“**AlixPartners**”). AlixPartners has served as the financial advisor to BBBI and its various U.S. and Canadian subsidiaries, including BBB Canada, since 2022. I have worked in various positions at AlixPartners since 2007. I have more than 30 years of experience in providing turnaround services for companies in the retail, distribution, consumer products, financial services, media, and hospitality industries and have frequently been appointed as Interim CEO, Interim CFO, and Chief Restructuring Officer of these businesses. I am admitted to the American College of Bankruptcy and the International Insolvency Institute and am a Certified Turnaround Professional.

3. I have personal knowledge of the matters deposed to in this Affidavit. Where I have relied on other sources for information, I have stated the source of my information and I believe such information to be true. In preparing this Affidavit, I consulted with BBB Canada’s legal, financial,

and other advisors and with other members of BBB Canada's and BBBI's senior management teams.

4. This Affidavit is made in support of a motion by BBB Canada for an Order substantially in the form attached at **Tab 3** to the Motion Record (the "**Order**") extending the Stay Period (as defined below) to November 22, 2023.

Background and Update on the CCAA Proceeding

5. On February 10, 2023 (the "**Filing Date**"), BBB Canada was granted protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") and the within proceedings, the "**CCAA Proceedings**") pursuant to an Initial Order (the "**Initial Order**") of the Ontario Superior Court of Justice (Commercial List) (the "**Court**").

6. The Initial Order, among other things: (a) appointed Alvarez & Marsal Canada Inc. as Monitor (the "**Monitor**") in the CCAA Proceedings; (b) granted a stay of proceedings in favour of BBB Canada until and including February 21, 2023, or such later date as the Court may order (the "**Stay Period**"); (c) granted the Administration Charge (as defined in the Initial Order) as security for the respective fees and disbursements of counsel to BBB Canada, the Monitor and the Monitor's counsel relating to services rendered in respect of BBB Canada; and (vi) granted the Directors' Charge (as defined in the Initial Order) in favour of the directors and officers of BBB Canada.

7. On February 21, 2023, the Court granted:

- (a) a Sale Approval Order which, among other things, approved BBB Canada entering into an amended and restated consulting agreement with a contractual joint venture party to complete the liquidation of all merchandise, and owned furnishings, trade fixtures, equipment and improvements to real property located in BBB Canada's retail stores, warehouse, and corporate office (the "**Liquidation Sale**"), and approved sale guidelines for the Liquidation Sale; and
- (b) an Amended and Restated Initial Order ("**ARIO**") which, among other things, extended the Stay Period up to and including May 1, 2023, approved a key

employee retention plan and granted a charge to secure the amounts expected to be paid thereunder, and increased the Administration Charge and the Directors' Charge.

8. The ARIO also authorized BBB Canada to dispose of redundant or non-material assets not exceeding \$500,000 in any one transaction or \$2.5 million in the aggregate and to apply to the Court for such approval, vesting or other orders as may be necessary to consummate sale transactions for all or any part of the Property (as defined in the ARIO), all to permit BBB Canada to proceed with an orderly wind-down of the Business (as defined in the ARIO). The ARIO authorized and empowered BBB Canada to retain, among other persons, contractors, consultants, agents or advisors as it deems reasonably necessary or desirable in the ordinary course of business or to carry out the terms of the ARIO.

9. In accordance with the ARIO, on or about February 27, 2023, BBB LP entered into an Exclusive Listing Agreement with Retail Ventures CND Inc. ("**RVC**") for RVC to market and, where there was interest, facilitate the sale of BBB Canada's leases across Canada.

10. On April 11, April 28 and May 15, 2023, the Court granted four (4) Assignment, Approval and Vesting Orders (collectively, the "**Assignment, Approval and Vesting Orders**"), which, among other things, approved the transactions contemplated by five (5) Assignment and Assumption of Lease Agreements. Three (3) of the four (4) Assignment, Approval and Vesting Orders also assigned certain leases to the respective purchaser pursuant to section 11.3 of the CCAA.

11. As discussed further in the Affidavit of Wade Haddad, sworn June 16, 2023 (the "**June 16 Affidavit**"), all of the transactions subject to the Assignment, Approval and Vesting Orders have closed, together with four (4) additional transactions, which each provided consideration (both on a standalone basis and on an aggregate basis) below the defined monetary thresholds in the ARIO and so were completed without any additional Court approvals. The Liquidation Sale is now complete and the final reconciliation of all funds realized in the Liquidation Sale has been finalized. BBB Canada has completed the wind down of its retail operations across Canada, terminated all of BBB Canada's employees, closed all of its stores, and disclaimed all leases not

previously assigned or surrendered. A copy of the June 16 Affidavit (without exhibits) is attached hereto as **Exhibit “A”**.

12. In order to complete the wind down of BBB Canada’s business and avoid the requirement for BBB Canada to maintain a reserve for potential claims on a go forward basis, on July 6, 2023, BBB Canada sought, and the Court granted, a D&O Claims Procedure Order establishing a process for ascertaining, determining and addressing the universe of claims against BBB Canada’s Directors and Officers¹ (the “**D&O Claims Procedure Order**”). A copy of the D&O Claims Procedure Order is attached hereto as **Exhibit “B”**.

13. In accordance with the noticing requirements in the D&O Claims Procedure Order:

- (a) on July 6, 2023, BBB Canada’s counsel served a copy of the D&O Claims Procedure Order, the Notice to Claimants and the Proof of Claim (as those terms are defined in the D&O Claims Procedure Order) on the Service List established in these CCAA Proceedings, a copy of which is attached hereto as **Exhibit “C”**;
- (b) on July 6, 2023, the Monitor posted a copy of the D&O Claims Procedure Order, the Notice to Claimants and the Proof of Claim on the Monitor’s Website; and
- (c) on July 14, 2023, the Monitor caused a copy of the Notice to Claimants to be published in *The Globe and Mail* (National Edition), a copy of which is attached hereto as **Exhibit “D”**.

14. One (1) Proof of Claim was received by BBB Canada on or before the Claims Bar Date. Specifically, His Majesty the King in right of the Province of British Columbia filed a Proof of Claim against the previous directors of BBB LP in the amount of \$489,528.95 for alleged outstanding provincial sales tax owing by BBB LP. BBB Canada is currently confirming the validity of this D&O Claim (as defined in the D&O Claims Procedure Order).

¹ Anyone who is or was or may be deemed to be or have been, whether by statute, operation of law or otherwise, a director or officer or de facto director or officer of either of the Applicant or BBB LP, in such capacity.

15. In addition to the D&O Claim filed by the Province of British Columbia, BBB Canada recently became aware that the Canada Revenue Agency (“CRA”) commenced an audit of BBB Canada’s GST/HST returns for the period from March 1, 2021 to February 28, 2023. BBBI has retained Deloitte to assist it in responding to the audit. I understand that as at the date of this Affidavit, Deloitte has reviewed and confirmed all of BBB Canada’s records for the 2022 taxation year and has reconciled all reported GST/HST with that accrued and paid by BBB Canada, resulting in a possible net amount of \$0 owing by BBB Canada for the 2022 taxation year (subject to review and validation by the CRA). I further understand that Deloitte recently received BBB Canada’s records for 2021 and is in the process of reviewing same and, as a result, no conclusions regarding the 2021 taxation year have yet been formed by Deloitte. I understand that Deloitte intends to submit a response to the CRA regarding both the 2021 and 2022 taxation years (including its view that no amounts are outstanding with respect to the 2022 taxation year) on Friday, August 18, 2023.

16. While BBB Canada had initially intended to seek an Order at the present motion terminating the CCAA Proceedings and discharging the Monitor, such relief is now premature in light of the filing of the D&O Claim and commencement of the GST/HST audit by the CRA. Such processes must conclude before BBB Canada can seek approval to distribute remaining funds in the BBB Canada estates, release and discharge the Directors’ Charge and terminate the CCAA Proceedings.

17. Accordingly, BBB Canada is only seeking to extend the Stay Period at this time. A further motion for termination of the CCAA Proceedings and discharge of the Monitor will be brought by BBB Canada as soon as it is in a position to do so.

Extension of the Stay Period

18. The current Stay Period expires on August 22, 2023. BBB Canada is seeking to extend the Stay Period to November 22, 2023 to maintain continued stability for BBB Canada while it: (a) works diligently, in good faith and in consultation with the Monitor, to ascertain the validity of, and address, the one D&O Claim filed pursuant to the D&O Claims Procedure Order; and (b) participates in the CRA’s ongoing GST/HST audit.

19. Costs of the CCAA Proceedings on a go forward basis are expected to be minimal given that BBB Canada has ceased operations, sold or disclaimed all assets and property, and terminated all employees. Almost all matters to be attended to in connection with the CCAA Proceeding have been completed. I understand that both BBB Canada and the Monitor currently expect that all anticipated costs through the extended Stay Period will be funded by retainers provided by BBB Canada to its counsel, the Monitor, and Monitor's counsel prior to the Filing Date. To the extent that the professionals' respective existing retainers are insufficient, additional professional fees will be funded from BBB Canada's remaining cash.

20. BBB Canada has been acting, and continues to act, in good faith and with due diligence in these CCAA Proceedings. BBB Canada believes that the proposed extension of the Stay Period is appropriate and necessary in the circumstances. I understand that the Monitor supports the requested extension to the Stay Period.

21. I swear this Affidavit in support of the BBB Canada's motion for the proposed Order extending the Stay Period and for no other or improper purpose.

SWORN BEFORE ME over video
teleconference this 15th day of August, 2023
pursuant to O. Reg 431/20, Administering
Oath or Declaration Remotely. The affiant was
located in the City of New York, in the State
of New York while the Commissioner was
located in the City of Toronto, in the Province
of Ontario.



Commissioner for Taking Affidavits
Emilie Dillon (LSO No. 85199L)



Holly Etlin

THIS IS **EXHIBIT “A”** REFERRED TO IN THE AFFIDAVIT OF HOLLY ETLIN SWORN BEFORE ME over video teleconference this 15th day of August, 2023 pursuant to O. Reg 431/20, Administering Oath or Declaration Remotely. The affiant was located in the City of New York, in the State of New York while the Commissioner was located in the City of Toronto, in the Province of Ontario.



Commissioner for Taking Affidavits
Emilie Dillon (LSO No. 85199L)

Court File No. CV-23-00694493-00CL

**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

IN THE MATTER OF THE PLAN OF COMPROMISE OR
ARRANGEMENT OF BBB CANADA LTD.

Applicant

AFFIDAVIT OF WADE HADDAD

I, Wade Haddad, of the City of Union, in the State of New Jersey, MAKE OATH AND
SAY:

1. I am the Senior Vice President, Real Estate and Store Development, at Bed Bath & Beyond Inc. (“**BBBI**”), the ultimate parent corporation of BBB Canada Ltd. (the “**Applicant**”) and Bed Bath & Beyond Canada L.P. (“**BBB LP**”, and together with the Applicant, “**BBB Canada**”). I have served in the capacity of Senior Vice President, Real Estate and Store Development at BBBI since September 2020. I am also an officer of the Applicant. I have more than 25 years of experience in retail and corporate multi-brand portfolio management and have overseen real estate and store development functions for numerous companies and brands throughout my career. I hold a Bachelor of Arts from Princeton University and a Juris Doctor from the University of Detroit Mercy School of Law.

2. I have personal knowledge of the matters deposed to in this Affidavit. Where I have relied on other sources for information, I have stated the source of my information and I believe such information to be true. In preparing this Affidavit, I consulted with BBB Canada’s legal, financial,

and other advisors and with other members of BBB Canada's and BBBI's senior management teams.

3. This Affidavit is made in support of a motion by BBB Canada for an Order substantially in the form attached at **Tab 3** to the Motion Record (the "**Order**"), among other things, extending the Stay Period (as defined below) to August 22, 2023.

4. All references to monetary amounts in this Affidavit are in Canadian dollars unless noted otherwise. Capitalized terms not defined herein have the meaning ascribed to them in the Affidavit of Holly Etlin sworn February 9, 2023 (the "**Etlin Affidavit**"). A copy of the Etlin Affidavit (without exhibits) is attached hereto as **Exhibit "A"**.

A. Background and Update on the CCAA Proceeding

5. On February 10, 2023 (the "**Filing Date**"), BBB Canada was granted protection under the *Companies Creditors' Arrangement Act*, R.S.C. 1985, c. C-36, as amended ("**CCAA**") pursuant to an Initial Order (the "**Initial Order**") of the Ontario Superior Court of Justice (Commercial List) (the "**Court**").

6. The Initial Order, among other things: (a) appointed Alvarez & Marsal Canada Inc. as monitor (the "**Monitor**") in the CCAA Proceedings; (b) granted a stay of proceedings in favour of the Applicant until and including February 21, 2023, or such later date as the Court may order (the "**Stay Period**"); (c) granted the Administration Charge as security for the respective fees and disbursements of counsel to BBB Canada, the Monitor and the Monitor's counsel relating to services rendered in respect of BBB Canada (the "**Administration Charge**"); and (d) granted a charge in favour of the directors and officers of BBB Canada (the "**Directors' Charge**").

7. On February 21, 2023, the Court granted:
- (a) a Sale Approval Order (the “**Sale Approval Order**”) which, among other things, approved BBB Canada entering into an amended and restated consulting agreement with a contractual joint venture party (the “**Consultant**”) to complete the liquidation of all merchandise, and owned furnishings, trade fixtures, equipment and improvements to real property located in BBB Canada’s retail stores, warehouse, and corporate office in Mississauga (the “**Liquidation Sale**”), and approved sale guidelines for the orderly liquidation; and
 - (b) an Amended and Restated Initial Order (the “**ARIO**”) which, among other things, extended the Stay Period up to and including May 1, 2023,¹ approved a key employee retention plan and granted a charge to secure the amounts expected to be paid thereunder, increased the Administration Charge and the Directors’ Charge, and declared that pursuant to subsections 5(1)(b)(iv) and 5(5) of the *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s. 1, as amended (“**WEPPA**”), BBB Canada meets the criteria prescribed by s. 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222 and that BBB Canada’s employees are eligible to receive payments under and in accordance with the WEPPA following the termination of their employment.
8. The ARIO also authorized BBB Canada to dispose of redundant or non-material assets not exceeding \$500,000 in any one transaction or \$2.5 million in the aggregate and to apply to the

¹ On April 28, 2023, the Court extended the Stay Period up to and including June 27, 2023.

Court for such approval, vesting or other Orders as may be necessary to consummate sale transactions for all or any part of the Property (as defined in the ARIO), all to permit BBB Canada to proceed with an orderly wind-down of the Business (as defined in the ARIO). BBB Canada was authorized and empowered to retain, among other persons, contractors, consultants, agents or advisors as it deems reasonably necessary or desirable in the ordinary course of business or to carry out the terms of the ARIO.

9. In accordance with the ARIO, on or about February 27, 2023, BBB LP entered into an Exclusive Listing Agreement with Retail Ventures CND Inc. (“**RVC**”) for RVC to market and, where there was interest, facilitate the sale or assignment of BBB Canada’s leases across Canada.

10. On April 11, April 28 and May 15, 2023, the Court granted four (4) Assignment, Approval and Vesting Orders (collectively, the “**Assignment, Approval and Vesting Orders**”) which, among other things, approved the transactions contemplated by five (5) Assignment and Assumption of Lease Agreements between BBB LP, BBBI (in all cases but one) and various purchasers, including 11607987 Canada Inc. dba DKB Capital (“**DKB Capital**”), Winners Merchant International L.P., Canadian Tire Corporation, Limited, and Giant Tiger Stores Limited. Three (3) of the four (4) Assignment, Approval and Vesting Orders also assigned certain leases to the respective purchaser pursuant to section 11.3 of the CCAA.

11. As at the date of this Affidavit, BBB Canada has:

- (a) completed the Liquidation Sale and finalized the final reconciliation of all funds realized in the Liquidation Sale (as discussed in greater detail below);

- (b) closed each of the transactions contemplated by the Assignment, Approval and Vesting Orders;
- (c) closed all of the transactions contemplated by three (3) Lease Surrender Agreements with various landlords (the “**Lease Surrender Agreements**”), and a second Assignment and Assumption of Lease Agreement with DKB Capital (the “**Second DKB Capital Agreement**”), all of which provided consideration (both on a standalone basis and on an aggregate basis) below the defined monetary thresholds in the ARIO and so were completed without any additional Court approvals. The transactions defined under the Assignment, Approval and Vesting Orders, the Lease Surrender Agreements, and the Second DKB Capital Agreement are collectively referred to in this Affidavit as the “**Lease Assignments**”;
- (d) completed the wind down of its retail operations across Canada, including terminating substantially all of BBB Canada’s employees, closing all BBB Canada’s stores, and disclaiming all leases not subject to the Lease Assignments; and
- (e) worked with the Monitor to assist eligible employees of BBB Canada in applying for benefits under the WEPPA.

B. Final Reconciliation of Liquidation Sale and Lease Assignments

12. Under the terms of the Consulting Agreement, BBB Canada and the Consultant, in consultation with the Monitor, were required to complete the final reconciliation and assessment of all revenues, costs and expenses with respect to the Liquidation Sale (the “**Final**

Reconciliation”) by no later than 45 days following the date of termination of the Liquidation Sale. The Consulting Agreement requires all amounts payable as between BBB Canada and the Consultant to be settled within 10 days of completion of the Final Reconciliation.

13. The Final Reconciliation is now substantively complete and is pending final approval. The Liquidation Sale generated net proceeds of \$53,028,405 from the sale of BBB Canada’s merchandise and \$1,180,470² from the sale of BBB Canada’s furniture, fixtures, and equipment (“FF&E”). BBB Canada also earned \$647,633, or 7.5% of the gross proceeds, from the sale of Additional Consultant Goods (as defined in the Sale Approval Order).

14. BBB Canada’s efforts with respect to the Lease Assignments were also successful, resulting in the sale, assignment or surrender of forty-six (46) of BBB LP’s sixty-five (65) store leases for gross proceeds of \$5,252,142.27 plus certain adjustments for prepaid realty taxes, monetary defaults and non-resident consideration holdback of \$50,461.94. The Lease Assignments also generated gross proceeds of \$748,658.05 from the sale of certain FF&E to DKB Capital, for total gross proceeds \$6,051,262.27. After payment of all taxes, adjustments, deductions and required commissions to RVC, the Lease Assignments resulted in net proceeds payable to BBB Canada of \$5,695,417.23.

C. Extension to the Stay Period

15. The Applicant is seeking to extend the Stay Period up to and including August 22, 2023.

² Excluding FF&E sold as part of the Lease Assignments.

16. The extension to the Stay Period is necessary and appropriate in the circumstances to allow the Applicant, with the assistance of the Monitor, to:

- (a) complete various post-closing real property registrations that are required in connection with certain of the Lease Assignments, which registrations are expected to be completed in the near term; and
- (b) complete the steps required to assist eligible terminated employees of BBB Canada in applying under WEPPA.

17. In addition, prior to making a final distribution to the Lenders under the Amended Credit Agreement, the Applicant must release and discharge the various court-approved charges that rank in priority to the Lenders' claims, including the Directors' Charge. To that end, the Applicant intends to return to court in the near future to seek an order establishing a limited claims procedure with respect to the directors and officers of BBB Canada.

18. I believe that BBB Canada has acted, and continues to act, in good faith and with due diligence in pursuing these final steps in the wind down of its business. I understand that the Fifth Report of the Monitor, to be filed, will include, among other things, a cash flow forecast demonstrating that, subject to the underlying assumptions contained therein, BBB Canada will have sufficient funds to continue its operations and fund these CCAA Proceedings until August 22, 2023. I further understand that the Monitor is supportive of the proposed extension to the Stay Period in the circumstances.

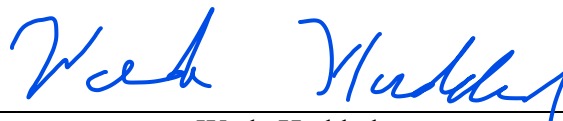
19. I swear this Affidavit in support of BBB Canada's motion for the proposed Order and for no other or improper purpose.

- 8 -

SWORN BEFORE ME over video
teleconference this 16th day of June, 2023
pursuant to O. Reg 431/20, Administering
Oath or Declaration Remotely. The affiant was
located in the City of Union, in the State of
New Jersey while the Commissioner was
located in the City of Toronto, in the Province
of Ontario.



Commissioner for Taking Affidavits
Emilie Dillon (LSO No. 85199L)



Wade Haddad

THIS IS **EXHIBIT “B”** REFERRED TO IN THE AFFIDAVIT OF HOLLY ETLIN SWORN BEFORE ME over video teleconference this 15th day of August, 2023 pursuant to O. Reg 431/20, Administering Oath or Declaration Remotely. The affiant was located in the City of New York, in the State of New York while the Commissioner was located in the City of Toronto, in the Province of Ontario.



Commissioner for Taking Affidavits
Emilie Dillon (LSO No. 85199L)



Court File No. CV-23-00694493-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)	THURSDAY, THE 6TH
)	
JUSTICE OSBORNE)	DAY OF JULY, 2023

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 BBB CANADA LTD.
(the "**Applicant**")

D&O CLAIMS PROCEDURE ORDER

THIS MOTION, made by the Applicant pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order, among other things, approving a procedure for the solicitation, determination and resolution of certain claims against the current and former directors and officers of the Applicant and Bed Bath & Beyond Canada L.P. ("**BBB L.P.**", and together with the Applicant, the "**BBB Entities**"), was heard this day via videoconference.

ON READING the Notice of Motion of the Applicant, the Affidavit of Wade Haddad sworn on June 29, 2023 including the exhibits thereto, and the Sixth Report of Alvarez & Marsal Canada Inc., in its capacity as Court-appointed monitor (in such capacity, the "**Monitor**"), dated July 4, 2023, filed, and on hearing the submissions of respective counsel for the BBB Entities, the Monitor, and such other counsel as were present and listed on the Counsel Slip, no one else appearing although duly served as appears from the Affidavit of Service of Emily Paplawski, sworn June 29, 2023, filed:

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Amended and Restated Initial Order in these proceedings dated February 21, 2023 (the “**Initial Order**”).
3. **THIS COURT ORDERS** that for purposes of this Order, the following terms shall have the following meanings:
 - (a) “**Accepted Claim**” means a D&O Claim of a Claimant as finally accepted by the BBB Entities, in consultation with the Monitor, or determined by the Court, in accordance with this Order;
 - (b) “**Assessments**” means current or future claims of His Majesty the King in Right of Canada or any province or territory or municipality or any other taxation authority in any Canadian or non-Canadian jurisdiction, including, without limitation, amounts which may arise or have arisen under any current or future notice of assessment, notice of objection, notice of reassessment, notice of appeal, audit, investigation, demand or similar request from any taxation authority;
 - (c) “**Business Day**” means a day, other than a Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Toronto, Ontario;
 - (d) “**CCAA Proceedings**” means the within proceedings in respect of the BBB Entities under the CCAA;
 - (e) “**Claimant**” means a Person asserting a D&O Claim against any of the Directors or Officers;
 - (f) “**Claims Bar Date**” means 5:00 p.m. (prevailing Toronto time) on August 7, 2023, or such later date as may be ordered by the Court;

- (g) “**Claims Procedure**” means the procedure outlined in this Order, including the Schedules attached hereto;
- (h) “**Court**” means the Ontario Superior Court of Justice (Commercial List);
- (i) “**Director**” means anyone who is or was or may be deemed to be or have been, whether by statute, operation of law or otherwise, a director or *de facto* director of either of the BBB Entities, in such capacity;
- (j) “**D&O Claim**” means: (i) any right or claim of any Person that may be asserted or made in whole or in part against one or more of the Directors or Officers that relates to a claim for which such Directors or Officers are by law liable to pay in their capacity as Directors or Officers; or (ii) any right or claim of any Person that may be asserted or made in whole or in part against one or more Directors or Officers, in that capacity, whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever, and any interest accrued thereon or costs payable in respect thereof, including by reason of the commission of a tort (intentional or unintentional), by reason of any breach of contract or other agreement (oral or written), by reason of any breach of duty (including any legal, statutory, equitable or fiduciary duty) or by reason of any right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise), and whether or not any indebtedness, liability or obligation is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present or future, known or unknown, by guarantee, surety or otherwise, including any right or claim with respect to any Assessment, and whether or not any right or claim is executory or anticipatory in nature, including any right or ability of any Person to advance a claim for contribution or indemnity from any such Directors or Officers or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, which indebtedness, liability or obligation, and any interest accrued thereon or costs payable in respect thereof; and in respect of (i) and (ii) above (A) is based in whole or in part on facts existing prior

to the Claims Bar Date, or (B) relates to a time period prior to the Claims Bar Date, provided that “D&O Claim” does not include a claim that cannot be compromised pursuant to subsections 5.1(2) or 19(2) of the CCAA;

- (k) **“D&O Indemnity Claim”** means any existing or future right of any Director or Officer against the BBB Entities which arose or arises as a result of any Person filing a D&O Claim in respect of such Director or Officer for which such Director or Officer is entitled to be indemnified by the BBB Entities;
- (l) **“Filing Date”** means February 10, 2023;
- (m) **“Notice to Claimants”** means the notice for publication by the Monitor substantially in the form attached hereto as Schedule “A”;
- (n) **“Notice of Dispute”** means a notice delivered to the Monitor by a Claimant disputing a Notice of Revision or Disallowance, which notice shall be substantially in the form attached hereto as Schedule “D”;
- (o) **“Notice of Revision or Disallowance”** means a notice delivered by the BBB Entities informing a Claimant that the BBB Entities have revised or disallowed such Claimant’s D&O Claim, which notice shall be substantially in the form attached hereto as Schedule “C”;
- (p) **“Officer”** means anyone who is or was or may be deemed to be or have been, whether by statute, operation of law or otherwise, an officer or *de facto* officer of either of the BBB Entities, in such capacity;
- (q) **“Person”** means any individual, partnership, firm, joint venture, trust, entity, corporation, unincorporated organization, union, pension plan administrator, pension plan regulator, governmental authority, ministry or agency, regulatory body, labour board, employee, legal representative or litigation guardian, or other association, or similar entity, howsoever designated or constituted;
- (r) **“Proof of Claim”** means the proof of claim referred to herein to be filed by Claimants in connection with any D&O Claim, substantially in the form attached

as Schedule “B”, which shall include all supporting documentation in respect of such D&O Claim; and

(s) “**Monitor’s Website**” means www.alvarezandmarsal.com/BBBCanada.

4. **THIS COURT ORDERS** that all references as to time herein shall mean local time in Toronto, Ontario and any references to an event occurring on a Business Day shall mean prior to 5:00 p.m. on such Business Day unless otherwise indicated herein, and any reference to an event occurring on a day that is not a Business Day shall mean the next following day that is a Business Day.

5. **THIS COURT ORDERS** that all references to the word “including” shall mean “including without limitation”, all references to the singular herein include the plural, the plural include the singular, and any gender includes all genders.

6. **THIS COURT ORDERS** that all D&O Claims shall be denominated in Canadian dollars. Any D&O Claims denominated in a foreign currency shall be converted to Canadian dollars at the Bank of Canada daily average exchange rate on the Filing Date.

7. **THIS COURT ORDERS** that amounts claimed in Assessments shall be subject to this Order and there shall be no presumption of validity or deeming of the amount due in respect of the Claim set out in any Assessment.

GENERAL PROVISIONS

8. **THIS COURT ORDERS** that the Claims Procedure and the forms of Notice to Claimants, Proof of Claim, Notice of Revision or Disallowance and Notice of Dispute are hereby approved. Notwithstanding the foregoing, the BBB Entities, in consultation with the Monitor, may, from time to time, make non-substantive revisions to the forms of Notice to Claimants, Proof of Claim, Notice of Revision or Disallowance and Notice of Dispute as the BBB Entities consider necessary or desirable.

9. **THIS COURT ORDERS** that the BBB Entities and the Monitor are hereby authorized to (i) use reasonable discretion as to the adequacy of compliance with respect to the manner in which any forms delivered hereunder are completed and executed and the time in which they are submitted and may, where the BBB Entities and the Monitor are satisfied that a D&O Claim has

been adequately filed or accepted, waive strict compliance with the requirements of this Order as to completion and execution of such forms, and (ii) request any further documentation from a Claimant that the BBB Entities or the Monitor may require.

10. **THIS COURT ORDERS** that, notwithstanding any other provisions of this Order, the solicitation of Proofs of Claim, the filing by any Claimant of a Proof of Claim or Notice of Dispute and the delivery of a Notice of Revision or Disallowance shall not, for that reason only, grant any Person any rights, including without limitation, in respect of the amount and characterization of its D&O Claim or its standing in the CCAA Proceedings, except as specifically set out in this Order.

11. **THIS COURTS ORDERS** that copies of all forms delivered pursuant to this Order shall be maintained by the Monitor. The Monitor shall promptly provide copies of all Proofs of Claim and Notices of Dispute received by the Monitor in connection with the Claims Procedure to counsel for the BBB Entities by email.

MONITOR'S ROLE

12. **THIS COURT ORDERS** that, in addition to its prescribed rights, duties, responsibilities and obligations under the CCAA, the Initial Order and any other Orders of the Court in the CCAA Proceedings, the Monitor shall assist the BBB Entities in connection with the administration of the Claims Procedure, including the determination and resolution of D&O Claims, if applicable, and is hereby authorized, directed and empowered to take such actions and fulfill such other roles as are contemplated by this Claims Procedure Order or incidental thereto.

13. **THIS COURT ORDERS** that, in carrying out the terms of this Order, the Monitor: (i) shall have all of the protections given to it by the CCAA, the Initial Order, this Order, and any other Orders of the Court in the CCAA Proceedings, or as an officer of the Court, including the stay of proceedings in its favour; (ii) shall incur no liability or obligation as a result of the carrying out of the provisions of this Order, other than in respect of any gross negligence or wilful misconduct on its part; (iii) shall be entitled to rely on the books and records of the BBB Entities and any information provided by or on behalf of the BBB Entities, all without independent investigation; (iv) shall not be liable for any claims or damages resulting from any errors or omissions in such books, records and information; and (v) may seek such assistance as may be

reasonably required to carry out its duties and obligations pursuant to this Order from the BBB Entities or any of their affiliated companies, partnerships or other corporate entities.

NOTICE TO CLAIMANTS

14. **THIS COURT ORDERS** that as soon as practicable after the date of this Order, but no later than 5:00 p.m. on July 7, 2023: (i) the BBB Entities shall cause copies of this Order, the Notice to Claimants, and the Proof of Claim to be served on the Service List; and (ii) the Monitor shall cause copies of this Order, the Notice to Claimants, and the Proof of Claim to be posted on the Monitor's Website until the Monitor's discharge as Monitor in the CCAA Proceedings.

15. **THIS COURT ORDERS** that the Monitor shall cause the Notice to Claimants to be published once in the *Globe and Mail (National Edition)* as soon as practicable after the date of this Order.

16. **THIS COURT ORDERS** that, to the extent any Claimant requests documents or information regarding the Claims Procedure prior to the Claims Bar Date, or if the BBB Entities or the Monitor become aware of any Person having a D&O Claim, the Monitor shall forthwith send, or cause to be sent, to such Claimant or Person, direct such Claimant or Person to the documents posted on the Monitor's Website or otherwise respond to the requests for documents or information as the Monitor may consider appropriate in the circumstances, in consultation with the BBB Entities.

17. **THIS COURT ORDERS** that the service of this Order, the Notice to Claimants and the Proof of Claim on the Service List, the publication of the Notice to Claimants in accordance with this Order, and the posting of this Order, the Notice to Claimants and the Proof of Claim on the Monitor's Website, shall constitute good and sufficient service and delivery of notice of this Order and the Claims Bar Date on all Persons that may be entitled to receive notice and who may wish to assert a D&O Claim, and no other notice or service need to be given or made and no other document or material need be sent to or served upon any Person in respect of this Order.

DEADLINE FOR FILING A D&O CLAIM PROOF OF CLAIM

18. **THIS COURT ORDERS** that any Person that intends to assert a D&O Claim shall deliver a completed Proof of Claim to the Monitor in accordance with paragraphs 30 and 31 herein,

together with all relevant supporting documentation in respect of such D&O Claim, so that such Proof of Claim is actually received by the Monitor by no later than the Claims Bar Date. Following receipt from the Monitor, the BBB Entities shall deliver a list of the Proof of Claims received with respect to the D&O Claims and a copy of each such Proof of Claim to the applicable Directors and Officers.

19. **THIS COURT ORDERS** that any Person who does not deliver a Proof of Claim in accordance with this Order so that such Proof of Claim is actually received by the Monitor on or before the Claims Bar Date shall:

- (a) not be entitled to receive further notice with respect to, and shall not be entitled to participate as a Claimant or creditor in, the Claims Procedure or the CCAA Proceedings in respect of such D&O Claim; and
- (b) be forever barred, estopped and enjoined from asserting or enforcing such unasserted D&O Claim against any of the Directors and Officers, and the Directors and Officers shall not have any liability whatsoever in respect of, and shall be released and discharged from, any and all such unasserted D&O Claims, and all such unasserted D&O Claims shall be forever extinguished, barred, and discharged as against the Directors and Officers without any further act or notification.

D&O INDEMNITY CLAIMS

20. **THIS COURT ORDERS** that, to the extent that any D&O Claim is filed in accordance with this Claims Procedure, a corresponding D&O Indemnity Claim shall be deemed to have been timely filed in respect of each D&O Claim. For the avoidance of doubt, Directors and Officers shall not be required to take any action in respect of such D&O Indemnity Claim.

DETERMINATION OF D&O CLAIMS

21. **THIS COURT ORDERS** that the BBB Entities, in consultation with the Monitor and any applicable Directors and Officers, shall review each Proof of Claim that is received by the Claims Bar Date and may accept, revise or disallow all or any part of the D&O Claim. At any time, the BBB Entities, in consultation with the Monitor and any applicable Directors and Officers, may

attempt to consensually resolve the classification or amount of any asserted D&O Claim with the Claimant prior to accepting, revising or disallowing such D&O Claim.

22. **THIS COURT ORDERS** that if the BBB Entities, in consultation with the Monitor and the Directors and Officers named in such D&O Claim, determine to revise or disallow a D&O Claim that has been filed in accordance with this Order, the BBB Entities shall send a Notice of Revision or Disallowance to the applicable Claimant. The failure by the BBB Entities to send a Notice of Revision or Disallowance shall not result in any D&O Claim being accepted or being deemed to be accepted.

23. **THIS COURT ORDERS** that if a Claimant disputes the disallowance or revision of its D&O Claim as set forth in a Notice of Revision or Disallowance and intends to contest the Notice of Revision or Disallowance, then such Claimant shall deliver a Notice of Dispute so that such Notice of Dispute is actually received by the Monitor by no later than 5:00 p.m. on the day which is fifteen days after the date the Notice of Revision or Disallowance is deemed to be received by the Claimant pursuant to paragraph 30 herein or such later date as the BBB Entities, in consultation with the Monitor, may agree in writing or the Court may order.

24. **THIS COURT ORDERS** that (i) any Claimant who fails to deliver a Notice of Dispute to the Monitor by the deadline set forth in paragraph 23 shall be deemed to accept the amount of its D&O Claim as set out in the Notice of Revision or Disallowance and the D&O Claim as set out in the Notice of Revision or Disallowance shall constitute an Accepted Claim (or, if the D&O Claim is disallowed in full in the Notice of Revision or Disallowance, the applicable Claimant shall be deemed to accept such disallowance and the D&O Claim shall be deemed to be fully disallowed); and (ii) any D&O Claim, or any portion thereof, that is disallowed pursuant to a Notice of Revision or Disallowance and in respect of which no Notice of Dispute is received by the Monitor by the deadline set forth in paragraph 23 hereof, shall be forever extinguished, barred, discharged and released as against the Directors and Officers without any further act or notification.

25. **THIS COURT ORDERS** that a Claimant who has delivered a Notice of Dispute and who intends to continue to dispute the Notice of Revision or Disallowance must, within ten (10) Business Days of delivery of such Notice of Dispute, file a motion with the Court seeking determination of the D&O Claim, which motion shall be returnable within seven (7) Business Days of the filing of the motion or such first available date thereafter as the Court may schedule the

motion for hearing. Any Claimant who fails to file a motion in accordance with this paragraph 25 shall: (i) be deemed to accept the amount of its D&O Claim as set out in the Notice of Revision or Disallowance and the D&O Claim as set out in the Notice of Revision or Disallowance shall constitute an Accepted Claim (or, if the D&O Claim is disallowed in full in the Notice of Revision or Disallowance, the applicable Claimant shall be deemed to accept such disallowance and the D&O Claim shall be deemed to be fully disallowed), and (ii) any D&O Claim, or any portion thereof, that is disallowed pursuant to a Notice of Revision or Disallowance and in respect of which no motion is filed by the deadline set forth in paragraph 25 hereof, shall be forever extinguished, barred, discharged and released as against the Property and as against the Directors and Officers without any further act or notification.

NOTICE OF TRANSFEREES

26. **THIS COURT ORDERS** that if a Claimant or any subsequent holder of a D&O Claim, who has been acknowledged by the BBB Entities, in consultation with the Monitor, as the holder of the D&O Claim, transfers or assigns that D&O Claim to another Person, the BBB Entities and the Monitor shall not be obligated to give notice to or to otherwise deal with the transferee or assignee of the D&O Claim as the holder of such D&O Claim unless and until actual written notice of the transfer or assignment, together with satisfactory evidence of such transfer or assignment, has been delivered to the Monitor and the Monitor has provided written confirmation acknowledging the transfer or assignment of such D&O Claim. Thereafter, such transferee or assignee shall, for all purposes hereof, constitute the holder of such D&O Claim and shall be bound by any notices given and steps taken in respect of such D&O Claim in accordance with the provisions of this Order prior to receiving written confirmation from the Monitor acknowledging the transfer or assignment of such D&O Claim. After the Monitor has delivered a written confirmation acknowledging the notice of the transfer or assignment of a D&O Claim, the BBB Entities and the Monitor shall thereafter be required only to deal with the transferee or assignee and not the original holder of the D&O Claim. A transferee or assignee of a D&O Claim takes the D&O Claim subject to any defences and rights of set-off to which the applicable Director or Officer may be entitled with respect to such D&O Claim.

27. **THIS COURT ORDERS** that if a Claimant or any subsequent holder of a D&O Claim, who has been acknowledged by the BBB Entities, in consultation with the Monitor, as the holder

of the D&O Claim, transfers or assigns the whole of such D&O Claim to more than one Person or part of such D&O Claim to another Person, such transfers or assignments shall not create separate D&O Claims and such D&O Claims shall continue to constitute and be dealt with as a single D&O Claim notwithstanding such transfers or assignments. The BBB Entities and the Monitor shall not, in each case, be required to recognize or acknowledge any such transfers or assignments and shall be entitled to give notices to and to otherwise deal with such D&O Claim only as a whole and then only to and with the Person last holding such D&O Claim, provided such Person or Claimant may, by notice in writing delivered to the Monitor, direct that subsequent dealings in respect of such D&O Claim, but only as a whole, shall be dealt with by a specified Person and in such event such Person shall be bound by any notices given or steps taken in respect of such D&O Claim with such Claimant in accordance with the provisions of this Order.

SERVICE AND NOTICE

28. **THIS COURT ORDERS** that any notice or communication required to be delivered pursuant to the terms of this Order shall be in writing and may be delivered by email or electronic transmission, personal delivery, courier or, as necessary, by prepaid mail to such Persons at the physical or electronic address, as applicable, last shown on the books and records of the BBB Entities or set out in such Claimant's Proof of Claim. Any such service and delivery shall be deemed to have been received: (i) if sent by ordinary mail, on the third Business Day after mailing within Ontario, the fifth Business Day after mailing within Canada (other than within Ontario), and the tenth Business Day after mailing internationally; (ii) if sent by courier or personal delivery, on the next Business Day following dispatch; and (iii) if delivered by facsimile transmission or email by 5:00 p.m. on a Business Day, on such Business Day and if delivered after 5:00 p.m. or other than on a Business Day, on the following Business Day.

29. **THIS COURT ORDERS** that any document, notification or notice required to be delivered to the Monitor under this Order shall be delivered to:

Alvarez & Marsal Canada Inc.
In its capacity as Monitor of BBB Canada Ltd.
200 Bay St., Suite 2900, P.O. Box 22
Toronto, ON M5J 2J1
Attention: Connor Good
Email: BBBCanada@alvarezandmarsal.com

30. **THIS COURT ORDERS** that in the event that the day on which any notice or communication required to be delivered pursuant to this Order is not a Business Day, then such notice or communication shall be required to be delivered on the next Business Day.

31. **THIS COURT ORDERS** that, notwithstanding any other provisions of this Order, the BBB Entities, in consultation with the Monitor and any applicable Directors and Officers, are authorized to enter into settlement negotiations with any Claimant at any stage of the Claims Procedure and to enter into agreements with such Claimants resolving the value of their D&O Claims.

32. **THIS COURT ORDERS** that if during any period during which notices or other communications are being given pursuant to this Order, a postal strike or postal work stoppage of general application should occur, such notices, notifications or other communications sent by ordinary or registered mail and then not received shall not, absent further Order of the Court, be effective and notices and other communications given hereunder during the course of any such postal strike or work stoppage of general application shall only be effective if given by courier, personal delivery, facsimile transmission or email in accordance with this Order.

33. **THIS COURT ORDERS** that in the event that this Order is later amended by further Order of the Court, the Monitor shall post such further Order on the Monitor's Website, and such posting shall constitute adequate notice to Claimants of such amended Order and Claims Procedure.

MISCELLANEOUS

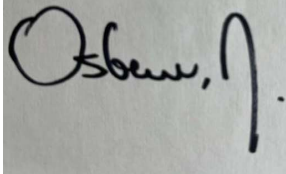
34. **THIS COURT ORDERS** that the BBB Entities or the Monitor may apply to the Court from time to time for directions from the Court with respect to this Order, or for such further Order or Orders as any of them may consider necessary or desirable to amend, supplement or clarify the terms of this Order.

35. **THIS COURT ORDERS** that nothing in this Order shall prejudice the rights and remedies of any Directors or Officers under the Directors' Charge or any applicable insurance policy or prevent or bar any Person from seeking recourse against or payment from any Director's or Officer's liability insurance policy or policies that exist to protect or indemnify the Directors or Officers whether such recourse or payment is sought directly by the Person asserting a D&O Claim

from the insurer or derivatively through the Director or Officer or any of the BBB Entities; provided, however, that nothing in this Order shall create any rights in favour of such Person under any policies of insurance nor shall anything in this Order limit, remove, modify or alter any defence to such D&O Claim available to the insurer pursuant to the provisions of any insurance policy or at law; and further provided that any D&O Claim or portion thereof for which the Person receives payment directly from, or confirmation that he or she is covered by, any Director's or Officer's liability insurance or other liability insurance policy or policies that exist to protect or indemnify the Directors or Officers, shall not be recoverable as against a Director or Officer as applicable.

36. **THIS COURT HEREBY REQUESTS** the aid and recognition of any Court, tribunal, regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the BBB Entities, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the BBB Entities and to the Monitor, as an officer of the Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the BBB Entities and the Monitor and their respective agents in carrying out the terms of this Order.

37. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of the date of this Order without the need for entry or filing.



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SCHEDULE "A"

This claims process only calls for D&O Claims and NOT general claims against the BBB Entities. DO NOT file a claim if it does not meet the definition of a D&O Claim in the D&O Claims Procedure Order

NOTICE OF D&O CLAIMS PROCEDURE AND D&O CLAIMS BAR DATE

NOTICE IS HEREBY GIVEN that, pursuant to an order of the Ontario Superior Court of Justice (Commercial List) dated July 6, 2023 (the "**D&O Claims Procedure Order**") a claims process has been commenced for the purpose of identifying and determining certain claims against the Directors and Officers of the BBB Entities. All capitalized terms used and not otherwise defined in this Notice have the meaning ascribed to them in the D&O Claims Procedure Order, a copy of which can be found on the website of the Monitor, Alvarez & Marsal Canada Inc. at www.alvarezandmarsal.com/BBBCanada.

PLEASE TAKE NOTICE that the D&O Claims Procedure only addresses certain claims against the Directors and Officers of the BBB Entities, being those defined as "D&O Claims" in the D&O Claims Procedure Order. Any Person who believes that they/it has a D&O Claim against a Director or Officer of the BBB Entities should send a Proof of Claim to the Monitor to be received **by the Monitor by 5:00 p.m. local Toronto time on August 7, 2023 (the "Claims Bar Date")**.

D&O CLAIMS WHICH ARE NOT RECEIVED BY THE CLAIMS BAR DATE WILL BE FOREVER BARRED AND EXTINGUISHED.

Claimants may access a Proof of Claim form on the Monitor's website at www.alvarezandmarsal.com/BBBCanada or may contact the Monitor (Attention: Connor Good, Telephone: 705-717-9025) to obtain a Proof of Claim.

Claimants should file their Proof of Claim with the Monitor by mail, email, courier or hand delivery, so that the Proof of Claim is actually received by the Monitor by the Claims Bar Date at the address below.

Address of the Monitor

Alvarez & Marsal Canada Inc.
In its capacity as Monitor of the BBB Entities
200 Bay St., Suite 2900, P.O. Box 22
Toronto, ON M5J 2J1

Attention: Connor Good
E-mail: BBBCanada@alvarezandmarsal.com

SCHEDULE “B”

PROOF OF CLAIM

**IN RESPECT OF CLAIMS AGAINST THE DIRECTORS AND OFFICERS OF BBB
CANADA LTD. AND BED BATH & BEYOND CANADA L.P.
(TOGETHER, THE “BBB ENTITIES”)**

A. PARTICULARS OF D&O CLAIM CLAIMANT

1. Full Legal Name of Claimant: _____ .
(Full legal or Corporate name should be the name of the original Claimant.)

2. Full Mailing Address of Claimant:

3. Telephone Number of Claimant: _____ *

4. Facsimile Number of Claimant: _____ *

5. Attention (Contact Person): _____ *

6. Email Address: _____ *

7. Has the D&O Claim been sold or assigned by Claimant to another party?

Yes___ No___ (If yes please complete section D)

B. PROOF OF D&O CLAIM:

I, _____ [Name of Claimant or Representative of the Claimant], do
hereby certify:

that I am (please check one):

_____ the Claimant; or

_____ hold the following position of _____ the Claimant

and have personal knowledge of all the circumstances connected with the D&O Claim described herein;

C. PARTICULARS OF D&O CLAIM:

Name of the Director/Officer and the amount for each Director/Officer which owes the amount claimed:

Director/Officer	Amount ¹
•	\$ _____
•	\$ _____
•	\$ _____
•	\$ _____

Description of transaction, agreement or event giving rise or relating to the D&O Claim:

If the D&O Claim is contingent or unliquidated, state the basis and provide evidence upon which the D&O Claim has been valued:

¹ All D&O Claims must be denominated in Canadian dollars. Any D&O Claims denominated in a foreign currency must be converted to Canadian dollars at the Bank of Canada daily average exchange rate on the Filing Date (i.e. February 10, 2023).

IF CLAIMANTS REQUIRE ADDITIONAL SPACE, PLEASE ATTACH A SCHEDULE HERETO. CLAIMANTS MUST ALSO PROVIDE COPIES OF ALL RELEVANT DOCUMENTATION OR AGREEMENTS.

PROVIDE ALL PARTICULARS OF THE CLAIM AND SUPPORTING DOCUMENTATION, INCLUDING THE AMOUNT AND DESCRIPTION OF TRANSACTION(S), AGREEMENT(S) OR LEGAL BREACH(ES) GIVING RISE TO THE CLAIM.

D. PARTICULARS OF ASSIGNEE(S) (IF ANY):

1. Full Legal Name of Assignee(s) of the D&O Claim (if all or a portion of the Claim has been sold). If there is more than one assignee, please attach separate sheets with the following information:

(the "Assignee(s)")

Amount of Total D&O Claim Assigned \$ _____

Amount of Total D&O Claim Not Assigned \$ _____

Total Amount of D&O Claim \$ _____
(should equal "Total D&O Claim" as entered on Section B)

2. Full Mailing Address of Assignee(s):

3. Telephone Number of Assignee(s): _____

4. Facsimile Number of Assignee(s): _____

5. Email address of Assignee(s): _____

6. Attention (Contact Person): _____

E. FILING OF CLAIMS:

The duly completed Proof of Claim, together with all supporting documentation, must be delivered to and received by the Monitor, no later than 5:00 p.m. local Toronto time on August 7, 2023, to the email address or address for the Monitor appearing below.

Failure to file your Proof of Claim by such date will result in your claim being forever extinguished and barred and you will be prohibited from making or enforcing such D&O Claim against the applicable Directors or Officers.

This Proof of D&O Claim must be delivered by email, personal delivery, courier or prepaid mail at the following address:

Address of the Monitor:

Alvarez & Marsal Canada Inc.
In its capacity as Monitor of the BBB Entities
200 Bay St., Suite 2900, P.O. Box 22
Toronto, ON M5J 2J1

Attention: Connor Good
E-mail: BBBCanada@alvarezandmarsal.com

DATED at _____ this _____ day of _____, 2023.

(Signature of Witness)

(Signature of individual completing this form)

(Please print name)

(Please print name)

SCHEDULE “C”

NOTICE OF REVISION OR DISALLOWANCE

**IN RESPECT OF D&O CLAIMS AGAINST THE DIRECTORS AND OFFICERS OF BBB
CANADA LTD. AND BED BATH & BEYOND CANADA L.P.
(TOGETHER, THE “BBB ENTITIES”)**

TO: [insert name and address of Claimant]

FROM: Alvarez & Marsal Canada Inc., in its capacity as Monitor of the BBB Entities

CLAIM REFERENCE NO. _____

Capitalized terms used and not otherwise defined in this Notice of Revision or Disallowance have the meaning ascribed to them in the Order of the Ontario Superior Court of Justice (Commercial List) made July 6, 2023 (the “**Claims Procedure Order**”). You can obtain a copy of the Claims Procedure Order on the Monitor’s website at www.alvarezandmarsal.com/BBBCanada or by contacting the Monitor as set out below.

This Notice of Revision or Disallowance is issued pursuant to the Claims Procedure Order.

The BBB Entities, in consultation with the Monitor, have reviewed your D&O Claim, **as set out in your Proof of Claim** and hereby give you notice that they have revised or rejected your D&O Claim as follows:

Claim Against Director/Officer	Amount Per Proof of Claim	Disallowed Amount	Allowed Amount
	\$ _____	\$ _____	\$ _____
	\$ _____	\$ _____	\$ _____
	\$ _____	\$ _____	\$ _____
TOTAL	\$ _____	\$ _____	\$ _____

REASONS FOR DISALLOWANCE:

If you do not agree with this Notice of Revision or Disallowance please take notice of the following:

1. If you intend to dispute this Notice of Revision or Disallowance, you must:
 - (i) by 5:00 p.m. local Toronto time on the day which is fifteen (15) days after the delivery of this Notice of Revision or Disallowance or such later date as the Court may order, deliver a Notice of Dispute by email, courier, personal delivery or prepaid mail to the Monitor at the address indicated herein. The form of Notice of Dispute is attached to this Notice; and
 - (ii) within ten (10) Business Days of delivery of the Notice of Dispute, file a motion with the Court seeking determination of the value and/or status of the D&O Claim, which motion shall be returnable within seven (7) Business Days of the filing of the motion or such first available date thereafter as the Court may schedule the motion for hearing.
2. If you do not deliver a Notice of Dispute and file a motion seeking determination of your D&O Claim in accordance with the terms of the Claims Procedure Order, your Claim shall be deemed to be as set out in this Notice of Revision or Disallowance.

Address for Service of Notices of Dispute:

Address of the Monitor

Alvarez & Marsal Canada Inc.
In its capacity as Monitor of the BBB Entities
200 Bay St.
Toronto, ON M5J 2J1

Attention: Connor Good
E-mail: BBBCanada@alvarezandmarsal.com

IF YOU FAIL TO TAKE ACTION WITHIN THE PRESCRIBED TIME PERIOD, THIS NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU.

Dated at _____ this _____ day of _____, 2023.

BED BATH & BEYOND CANADA L.P.
by its general partner BBB CANADA
LTD.

By: _____
Name:
Title:

By: _____
Name:
Title:

BBB CANADA LTD.

By: _____
Name:
Title:

By: _____
Name:
Title:

SCHEDULE “D”

NOTICE OF DISPUTE

IN RESPECT OF D&O CLAIMS AGAINST BBB CANADA LTD. AND BED BATH & BEYOND CANADA L.P. (TOGETHER, THE “BBB ENTITIES”)

Pursuant to the order of the Court dated July 6, 2023 we hereby give you notice of our intention to dispute the Notice of Revision or Disallowance issued by the BBB Entities.

A. PARTICULARS OF CLAIMANT

1. Full Legal Name of Claimant: _____

2. Claim Reference No.: _____

3. Full Mailing Address of the Claimant:

4. Telephone Number of Claimant: _____ *

5. Facsimile Number of Claimant: _____ *

6. Email Address: _____ *

7. Attention (Contact Person): _____ *

B. PARTICULARS OF ORIGINAL CLAIMANT FROM WHOM YOU ACQUIRED CLAIM, IF APPLICABLE:

1. Have you acquired this Claim by assignment? Yes ☐ No ☐

(if yes, attach documents evidencing assignment)

2. Full Legal Name of original Claimant (s): _____

C. DISPUTE:

We hereby disagree with the value or classification of our D&O Claim as set out in the Notice of Revision or Disallowance:

Director/Officer	Claim per Notice of Revision or Disallowance	Claim per Claimant
	\$ _____	\$ _____
	\$ _____	\$ _____
	\$ _____	\$ _____
	\$ _____	\$ _____
Total Claim	\$ _____	\$ _____

IF CLAIMANTS REQUIRE ADDITIONAL SPACE PLEASE ATTACH A SCHEDULE HERETO. CLAIMANTS MUST ALSO PROVIDE COPIES OF ALL RELEVANT AGREEMENTS.

PROVIDE ALL PARTICULARS OF THE CLAIM AND SUPPORTING DOCUMENTATION, INCLUDING THE AMOUNT AND DESCRIPTION OF TRANSACTION(S), AGREEMENT(S) OR LEGAL BREACH(ES) GIVING RISE TO THE CLAIM.

D. REASONS FOR DISPUTE:

(Provide full particulars of the D&O Claim and supporting documentation, including amount, description of transaction(s), agreement(s) or legal breach(es) giving rise to the D&O Claim.

THIS FORM AND SUPPORTING DOCUMENTATION TO BE RETURNED BY EMAIL, COURIER, PERSONAL SERVICE OR PREPAID MAIL TO THE MONITOR AT THE ADDRESS INDICATED HEREIN AND TO BE RECEIVED BY 5:00 P.M. LOCAL TORONTO TIME ON THE DAY WHICH IS FIFTEEN (15) DAYS AFTER THE DATE OF DELIVERY OF THE NOTICE OF REVISION OR DISALLOWANCE, OR SUCH LATER DATE AS THE COURT MAY ORDER.

IN ADDITION TO THE DELIVERY OF THIS NOTICE OF DISPUTE, WITHIN TEN (10) BUSINESS DAYS OF DELIVERY OF THIS NOTICE OF DISPUTE, YOU ARE REQUIRED TO FILE A MOTION WITH THE COURT SEEKING DETERMINATION OF THE VALUE AND/OR STATUS OF THE D&O CLAIM, WHICH MOTION SHALL BE RETURNABLE WITHIN SEVEN (7) BUSINESS DAYS OF THE FILING OF THE MOTION.

Address for Service of Dispute Notices:

Address of the Monitor:

Alvarez & Marsal Canada Inc.
In its capacity as Monitor of the BBB Entities
200 Bay St.
Toronto, ON M5J 2J1

Attention: Connor Good
E-mail: BBBCanada@alvarezandmarsal.com

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

Court File No: CV-23-00694493-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF BBB CANADA LTD.

Applicant

	ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST
	Proceeding commenced at Toronto
	CLAIMS PROCEDURE ORDER
	OSLER, HOSKIN & HARCOURT, LLP P.O. Box 50, 1 First Canadian Place Toronto, ON M5X 1B8 Marc Wasserman (LSO# 44066M) Shawn Irving (LSO# 50035U) Dave Rosenblat (LSO# 64586K) Emily Paplawski (LSA# 17693) Tel: (416) 362-2111 Fax: (416) 862-6666 Lawyers for the Applicant

THIS IS **EXHIBIT “C”** REFERRED TO IN THE AFFIDAVIT OF HOLLY ETLIN SWORN BEFORE ME over video teleconference this 15th day of August, 2023 pursuant to O. Reg 431/20, Administering Oath or Declaration Remotely. The affiant was located in the City of New York, in the State of New York while the Commissioner was located in the City of Toronto, in the Province of Ontario.



Commissioner for Taking Affidavits
Emilie Dillon (LSO No. 85199L)

From: Paplawski, Emily
Sent: Thursday, July 06, 2023 5:27 PM
To: joshua.sussberg@kirkland.com; derek.hunter@kirkland.com; Geier, Emily; ross.fiedler@kirkland.com; charles.sterrett@kirkland.com; max.freedman@kirkland.com; ahutchens@alvarezandmarsal.com; rgruneir@alvarezandmarsal.com; nfennema@alvarezandmarsal.com; cgood@alvarezandmarsal.com; zychk@bennettjones.com; zweigs@bennettjones.com; shakram@bennettjones.com; fosterj@bennettjones.com; hetlin@alixpartners.com; iaranadeuriarte@alixpartners.com; ryenumula@alixpartners.com; SLXAccounting@sixthstreet.com; wael.rostom@mcmillan.ca; jeffrey.levine@mcmillan.ca; DHillman@proskauer.com; CDale@proskauer.com; Abloom@proskauer.com; alexis.johnson@chase.com; jpm.agency.cri@jpmorgan.com; jpm.agency.servicing.1@jpmorgan.com; david.amato@nortonrosefulbright.com; evan.cobb@nortonrosefulbright.com; marshall.huebner@davispolk.com; kenneth.steinberg@davispolk.com; natasha.tsiouris@davispolk.com; daniel.schwartz@davispolk.com; adam.shpeen@davispolk.com; pat.confalone@justice.gc.ca; pat.confalone@cra-arc.gc.ca; ministryofjustice@gov.ab.ca; jus.minister@gov.sk.ca; minjus@leg.gov.mb.ca; leslie.crawford@ontario.ca; insolvency.unit@ontario.ca; justice.comments@gnb.ca; andrew.hill@novascotia.ca; DeptJPS@gov.pe.ca; justice@gov.nl.ca; jdietrich@cassels.com; msassi@cassels.com; ggalati@dv-law.com; pwallner@dv-law.com; dpeat@dv-law.com; hsniderman@wittenlaw.com; ateadale@lawsonlundell.com; ptolensky@lawsonlundell.com; bgibbons@lawsonlundell.com; lwilliams@mccarthy.ca; hmeredith@mccarthy.ca; nrambaran@mccarthy.ca; Stuart.Hathaway@BentallGreenOak.com; jwolf@blaney.com; bjones@blaney.com; spommerville@bellbaker.com; ghendela@riocan.com; John.McGee@wem.ca; jpockett@anthemproperties.com; info@anthemproperties.com; vancouver@anthemproperties.com; john.sandrelli@dentons.com; neild@daviefane.com; jessica.ranger@qualico.com; ryan.bosch@qualico.com; mike.intveld@qualico.com; maria.serrano@gowlingwlg.com; jgracey@bentallgreenoak.com; steve@voisindevelopments.ca; randy@mcintoshproperties.ca; danielle@mcintoshproperties.ca; kyle@nwproperties.ca; debora.mathias@shape.ca; dragan.stojanov@shape.ca; mark.morris@shape.ca; keith.ennis@plaza.ca; debora.lamont@plaza.ca; Barry.Greening@centralwalk.ca; sandy.weinmeyer@centralwalk.ca; ccleaver@bbo.on.ca; jsousa@bbo.on.ca; ben.delanghe@yorkdev.ca; apalfreyman@mobiusgroup.ca; lwilliams@tgf.ca; mgrossell@tgf.ca; peter.havens@cadillacfairview.com; lillyzhou@dorsetrealty.com; shane.ross@ctreit.com; kbebeau@harvard.ca; kwood@anthemproperties.com; nroos@anthemproperties.com; gasa@efforttrust.ca; grace.duff@stranville.com; cory@shermanbrown.com; gbrady@riocan.com; zchen@macrealty.com; kerry@forumproperties.com; jblamauer@skylinegrp.ca; abaranov@skylinegrp.ca; rebecca.towning@beedie.ca; kflockton@towersrealty.ca; lmuron@towersrealty.ca; rfrasca@riocan.com; lgalessiere@cglegal.ca; gcamelino@cglegal.ca; cfrith@mcdougallgauley.com; mmilani@mcdougallgauley.com; legalteam@reorg.com; jcarhart@millerthomson.com; cmills@millerthomson.com; peter.connolly@indocount.com; edmond.lamek@dlapiper.com; dfawcett@fillmoreriley.com; AGLSBRevTaxInsolvency@gov.bc.ca; sweisz@cozen.com; shafez@cozen.com; alison.tortorice@cadillacfairview.com; kenneth.kraft@dentons.com; afshan.naveed@dentons.com; kplunkett@airdberlis.com; John.vryonides@officedepot.com; peter.aispuro@officedepot.com; leaseadmin@officedepot.com; amink@penguinrandomhouse.com; nrenner@dwvp.com

Cc: Wasserman, Marc; Irving, Shawn; Rosenblat, Dave; McRadu, Blair
Subject: RE: IN THE MATTER OF BBB CANADA LTD., Court File No. CV-23-00694493-00CL
Attachments: Order of Justice Osborne - Applicant - BBB Canada Ltd. - 06-JUL-2023.pdf; CV-23-00694493-00CL BBB CANADA v SIXTH STREET Endorsement July 6 23.pdf; Proof of Claim (D&O Claims Procedure Order).pdf; Notice to Claimants (D&O Claims Procedure Order).pdf

Service List,

Please find attached for service upon you the D&O Claim Procedure Order and the Endorsement of the Honourable Justice Osborne, both dated today.

Further, in accordance with section 14 of the D&O Claims Procedure Order, we attach copies of the Notice to Claimants and the Proof of Claim form.

Regards,

OSLER

Emily Paplawski

Partner

403.260.7071 | EPaplawski@osler.com

Osler, Hoskin & Harcourt LLP | [osler.com](https://www.osler.com)

From: Paplawski, Emily

Sent: Thursday, July 06, 2023 10:25 AM

To: joshua.sussberg@kirkland.com; derek.hunter@kirkland.com; Geier, Emily <emily.geier@kirkland.com>; ross.fiedler@kirkland.com; charles.sterrett@kirkland.com; max.freedman@kirkland.com; ahutchens@alvarezandmarsal.com; rgruneir@alvarezandmarsal.com; nfennema@alvarezandmarsal.com; cgood@alvarezandmarsal.com; zychk@bennettjones.com; zweigs@bennettjones.com; shakram@bennettjones.com; fosterj@bennettjones.com; hetlin@alixpartners.com; iaranadeuriarte@alixpartners.com; ryenumula@alixpartners.com; SLXAccounting@sixthstreet.com; wael.rostom@mcmillan.ca; jeffrey.levine@mcmillan.ca; DHillman@proskauer.com; CDale@proskauer.com; Abloom@proskauer.com; alexis.johnson@chase.com; jpm.agency.cri@jpmorgan.com; jpm.agency.servicing.1@jpmorgan.com; david.amato@nortonrosefulbright.com; evan.cobb@nortonrosefulbright.com; marshall.huebner@davispolk.com; kenneth.steinberg@davispolk.com; natasha.tsiouris@davispolk.com; daniel.schwartz@davispolk.com; adam.shpeen@davispolk.com; pat.confalone@justice.gc.ca; pat.confalone@cra-arc.gc.ca; ministryofjustice@gov.ab.ca; jus.minister@gov.sk.ca; minjus@leg.gov.mb.ca; leslie.crawford@ontario.ca; insolvency.unit@ontario.ca; justice.comments@gnb.ca; andrew.hill@novascotia.ca; DeptJPS@gov.pe.ca; justice@gov.nl.ca; jdietrich@cassels.com; msassi@cassels.com; ggalati@dv-law.com; pwallner@dv-law.com; dpeat@dv-law.com; hsniderman@wittenlaw.com; ateadale@lawsonlundell.com; ptolensky@lawsonlundell.com; bgibbons@lawsonlundell.com; lwilliams@mccarthy.ca; hmeredith@mccarthy.ca; nrambaran@mccarthy.ca; Stuart.Hathaway@BentallGreenOak.com; jwolf@blaney.com; bjones@blaney.com; spommerville@bellbaker.com; ghendela@riocan.com; John.McGee@wem.ca; jpockett@anthemproperties.com; info@anthemproperties.com; vancouver@anthemproperties.com; john.sandrelli@dentons.com; neild@daviefane.com; jessica.ranger@qualico.com; ryan.bosch@qualico.com; mike.intveld@qualico.com; maria.serrano@gowlingwlg.com; jgracey@bentallgreenoak.com; steve@voisindevelopments.ca; randy@mcintoshproperties.ca; danielle@mcintoshproperties.ca; kyle@nwproperties.ca; debora.mathias@shape.ca; dragan.stojanov@shape.ca; mark.morris@shape.ca; keith.ennis@plaza.ca; debora.lamont@plaza.ca; Barry.Greening@centralwalk.ca; sandy.weinmeyer@centralwalk.ca; ccleaver@bbo.on.ca; jsousa@bbo.on.ca; ben.delanghe@yorkdev.ca; apalfreyman@mobiustrgroup.ca; lwilliams@tgf.ca; mgrossell@tgf.ca; peter.havens@cadillacfairview.com; lilyzhou@dorsetrealty.com; shane.ross@ctreit.com; kbebeau@harvard.ca; kwood@anthemproperties.com; nroos@anthemproperties.com; gasa@efforttrust.ca; grace.duff@stranville.com; cory@shermanbrown.com; gbrady@riocan.com; zchen@macrealty.com; kerry@forumproperties.com; jblamauer@skylinegrp.ca; abaranov@skylinegrp.ca; rebecca.towning@beedie.ca; kflockton@towersrealty.ca;

lmuron@towersrealty.ca; rfrasca@riocan.com; lgalessiere@cglegal.ca; gcamelino@cglegal.ca;
 cfrith@mcdougallgauley.com; mmilani@mcdougallgauley.com; legalteam@reorg.com; jcarhart@millerthomson.com;
 cmills@millerthomson.com; peter.connolly@indocount.com; edmond.lamek@dlapiper.com;
 dfawcett@fillmoreriley.com; AGLSBRevTaxInsolvency@gov.bc.ca; sweisz@cozen.com; shafez@cozen.com;
 alison.tortorice@cadillacfairview.com; kenneth.kraft@dentons.com; afshan.naveed@dentons.com;
 kplunkett@airdberlis.com; John.vryonides@officedepot.com; peter.aispuro@officedepot.com;
 leaseadmin@officedepot.com; amink@penguinrandomhouse.com; nrenner@dwvpv.com
Cc: Wasserman, Marc <MWasserman@osler.com>; Irving, Shawn <Sirving@osler.com>; Rosenblat, Dave
 <drosenblat@osler.com>; McRadu, Blair <bmcradu@osler.com>

Subject: RE: IN THE MATTER OF BBB CANADA LTD., Court File No. CV-23-00694493-00CL

Service List,

Please find below the videoconference information for the hearing today before Justice Osborne at 2:00 p.m. ET:

SCJVirtualCourtroom397 is inviting you to a scheduled Zoom meeting.

Join Zoom Meeting

<https://ca01web.zoom.us/j/65979875939?pwd=VVRJZHVRWQ1cGdkRERtTGpRajNFUT09>

Meeting ID: 659 7987 5939

Passcode: 879894

One tap mobile

+15873281099,,65979875939#,,, *879894# Canada

+16132093054,,65979875939#,,, *879894# Canada

Dial by your location

+1 587 328 1099 Canada

+1 613 209 3054 Canada

+1 647 374 4685 Canada

+1 647 558 0588 Canada

+1 778 907 2071 Canada

+1 204 272 7920 Canada

+1 438 809 7799 Canada

855 703 8985 Canada Toll-free

833 955 1088 Canada Toll-free

Meeting ID: 659 7987 5939

Passcode: 879894

Find your local number: <https://ca01web.zoom.us/u/gzLTlZTXT>

Join by SIP

65979875939@zmca.us

Join by H.323

69.174.57.160 (Canada Toronto)

65.39.152.160 (Canada Vancouver)

Meeting ID: 659 7987 5939

Passcode: 879894

OSLER

Emily Paplawski

Partner
403.260.7071 | EPaplawski@osler.com
Osler, Hoskin & Harcourt LLP | osler.com

From: Paplawski, Emily

Sent: Tuesday, July 04, 2023 9:35 AM

To: joshua.sussberg@kirkland.com; derek.hunter@kirkland.com; Geier, Emily <emily.geier@kirkland.com>; ross.fiedler@kirkland.com; charles.sterrett@kirkland.com; max.freedman@kirkland.com; ahutchens@alvarezandmarsal.com; rgruneir@alvarezandmarsal.com; nfennema@alvarezandmarsal.com; cgood@alvarezandmarsal.com; zychk@bennettjones.com; zweigs@bennettjones.com; shakram@bennettjones.com; fosterj@bennettjones.com; hetlin@alixpartners.com; iaranadeuriarte@alixpartners.com; ryenumula@alixpartners.com; SLXAccounting@sixthstreet.com; wael.rostom@mcmillan.ca; jeffrey.levine@mcmillan.ca; DHillman@proskauer.com; CDale@proskauer.com; Abloom@proskauer.com; alexis.johnson@chase.com; jpm.agency.cri@jpmorgan.com; jpm.agency.servicing.1@jpmorgan.com; david.amato@nortonrosefulbright.com; evan.cobb@nortonrosefulbright.com; marshall.huebner@davispolk.com; kenneth.steinberg@davispolk.com; natasha.tsiouris@davispolk.com; daniel.schwartz@davispolk.com; adam.shpeen@davispolk.com; pat.confalone@justice.gc.ca; pat.confalone@cra-arc.gc.ca; ministryofjustice@gov.ab.ca; jus.minister@gov.sk.ca; minjus@leg.gov.mb.ca; leslie.crawford@ontario.ca; insolvency.unit@ontario.ca; justice.comments@gnb.ca; andrew.hill@novascotia.ca; DeptJPS@gov.pe.ca; justice@gov.nl.ca; jdietrich@cassels.com; msassi@cassels.com; ggalati@dv-law.com; pwallner@dv-law.com; dpeat@dv-law.com; hsniderman@wittenlaw.com; ateasdale@lawsonlundell.com; ptolensky@lawsonlundell.com; bgibbons@lawsonlundell.com; lwilliams@mccarthy.ca; hmeredith@mccarthy.ca; nrambaran@mccarthy.ca; Stuart.Hathaway@BentallGreenOak.com; jwolf@blaney.com; bjones@blaney.com; spommerville@bellbaker.com; ghendela@riocan.com; John.McGee@wem.ca; jpockett@anthemproperties.com; info@anthemproperties.com; vancouver@anthemproperties.com; john.sandrelli@dentons.com; neild@daviefane.com; jessica.ranger@qualico.com; ryan.bosch@qualico.com; mike.intveld@qualico.com; maria.serrano@gowlingwlg.com; jgracey@bentallgreenoak.com; steve@voisindevelopments.ca; randy@mcintoshproperties.ca; danielle@mcintoshproperties.ca; kyle@nwproperties.ca; debora.mathias@shape.ca; dragan.stojanov@shape.ca; mark.morris@shape.ca; keith.ennis@plaza.ca; debora.lamont@plaza.ca; Barry.Greening@centralwalk.ca; sandy.weinmeyer@centralwalk.ca; ccleaver@bbo.on.ca; jsousa@bbo.on.ca; ben.delanghe@yorkdev.ca; apalfreyman@mobiugroup.ca; lwilliams@tgf.ca; mgrossell@tgf.ca; peter.havens@cadillacfairview.com; lillyzhou@dorsetrealty.com; shane.ross@ctreit.com; kbebeau@harvard.ca; kwood@anthemproperties.com; nroos@anthemproperties.com; gasa@efforttrust.ca; grace.duff@stranville.com; cory@shermanbrown.com; gbrady@riocan.com; zchen@macrealty.com; kerry@forumproperties.com; jblamauer@skylinegrp.ca; abaranov@skylinegrp.ca; rebecca.towning@beedie.ca; kflockton@towersrealty.ca; lmuron@towersrealty.ca; rfrasca@riocan.com; lgalessiere@cglegal.ca; gcamelino@cglegal.ca; cfrith@mcdougallgauley.com; mmilani@mcdougallgauley.com; legalteam@reorg.com; jcarhart@millertthomson.com; cmills@millertthomson.com; peter.connolly@indocount.com; edmond.lamek@dlapiper.com; dfawcett@fillmoreriley.com; AGLSBRevTaxInsolvency@gov.bc.ca; sweisz@cozen.com; shafez@cozen.com; alison.tortorice@cadillacfairview.com; kenneth.kraft@dentons.com; afshan.naveed@dentons.com; kplunkett@airdberlis.com; John.vryonides@officedepot.com; peter.aispuro@officedepot.com; leaseadmin@officedepot.com; amink@penguinrandomhouse.com; nrenner@dwvp.com
Cc: Wasserman, Marc <MWasserman@osler.com>; Irving, Shawn <SIrving@osler.com>; Rosenblat, Dave <drosenblat@osler.com>; McRadu, Blair <bmcradu@osler.com>

Subject: IN THE MATTER OF BBB CANADA LTD., Court File No. CV-23-00694493-00CL

Service List,

Please find attached for service upon you the Factum of the Applicant, dated July 4, 2023 with respect to the motion returnable before the Honourable Justice Osborne on July 6, 2023 at 2:00 p.m. ET.

Regards,

OSLER

Emily Paplawski

Partner
403.260.7071 | EPaplawski@osler.com
Osler, Hoskin & Harcourt LLP | osler.com

THIS IS **EXHIBIT “D”** REFERRED TO IN THE AFFIDAVIT OF HOLLY ETLIN SWORN BEFORE ME over video teleconference this 15th day of August, 2023 pursuant to O. Reg 431/20, Administering Oath or Declaration Remotely. The affiant was located in the City of New York, in the State of New York while the Commissioner was located in the City of Toronto, in the Province of Ontario.



Commissioner for Taking Affidavits
Emilie Dillon (LSO No. 85199L)

ChatGPT: Advocacy group pushing for ethical use of AI wants new versions blocked

■ FROM B1

It also signals that the technology may increasingly come under scrutiny as people, businesses and governments use more AI-powered products. The rapidly evolving technology has raised alarms as chatbots, which can generate answers in response to prompts, have the potential to replace people in their jobs and spread disinformation.

Sam Altman, who leads OpenAI, has said the fast-growing AI industry needs to be regulated. In May, he testified in Congress to invite AI legislation and has visited hundreds of lawmakers, aiming to set a policy agenda for the technology.

"I think if this technology goes wrong, it can go quite wrong," he said at the May hearing. "We want to work with the government to prevent that from happening."

OpenAI has already come under regulatory pressure internationally. In March, Italy's data protection authority banned ChatGPT, saying OpenAI unlawfully collected personal data from users and did not have an age-verification system in place to prevent minors from being exposed to illicit material. OpenAI restored access to the system the next month, saying it had made the changes the Italian authority asked for.

The FTC is acting on AI with notable speed, opening an investigation less than a year after OpenAI introduced ChatGPT. Lina Khan, the FTC chair, has said tech companies should be regulated while technologies are nascent, rather than only when they become mature.

In the past, the agency typically



Sam Altman, CEO of Microsoft-backed OpenAI, has said the fast-growing AI industry needs to be regulated. Mr. Altman aims to set a policy agenda for the technology. AMIR COHEN/REUTERS

reports that it shared user data with a political consulting firm, Cambridge Analytica, in 2018.

Ms. Khan, who testified at a House committee hearing Thursday over the agency's practices, previously said the AI industry needed scrutiny.

"Although these tools are novel, they are not exempt from existing rules, and the F.T.C. will vigorously enforce the laws we are charged with administering, even in this new market," she wrote in an opinion piece in the New York Times in May. "While the technology is moving swiftly, we already can see several risks."

The investigation could force

major shift in the way computer software is built and used. They are poised to reinvent internet search engines such as Google Search and Bing, talking digital assistants such as Alexa and Siri and e-mail services such as Gmail and Outlook.

The FTC is acting on AI with notable speed, opening an investigation less than a year after OpenAI introduced ChatGPT.

When OpenAI released ChatGPT in November, it instantly captured the public's imagination with its ability to answer questions, write poetry and riff on almost any topic. But the technology can also blend fact with fiction and even make up information, a phenomenon scientists call "hallucination."

ChatGPT is driven by what AI

gle Translate and identifies pedestrians as self-driving cars navigate city streets. A neural network learns skills by analyzing data. By pinpointing patterns in thousands of cat photos, for example, it can learn to recognize a cat.

Researchers at labs like OpenAI have designed neural networks that analyze vast amounts of digital text, including Wikipedia articles, books, news stories and online chat logs. These systems, known as large language models, have learned to generate text on their own but may repeat flawed information or combine facts in ways that produce inaccurate information.

In March, the Center for AI and Digital Policy, an advocacy group pushing for the ethical use of technology, asked the FTC to block OpenAI from releasing new commercial versions of ChatGPT, citing concerns involving bias, disinformation and security.

The organization updated the complaint less than a week ago, describing additional ways the chatbot could do harm, which it said OpenAI had also pointed out.

"The company itself has acknowledged the risks associated with the release of the product and has itself called" for regulation, said Marc Rotenberg, the president and founder of the Center for AI and Digital Policy. "The Federal Trade Commission needs to act."

OpenAI has been working to refine ChatGPT and to reduce the frequency of biased, false or otherwise harmful material. As employees and other testers use the system, the company asks them to rate the usefulness and truthfulness of its responses. Then, through a technique called rein-

Microsoft on Tuesday, saying the agency had failed to show the deal would be illegal under antitrust law. The FTC appealed that loss late on Wednesday,

court. Any outstanding regulatory hurdle makes it more likely the agreement between Microsoft and Activision will expire on

1.7 per cent and Activision was down 0.3 per cent. In its motion for the stay to Judge Jacqueline Scott Corley, the FTC argued her denial of a

junction. "Granting an injunction pending appeal is warranted because the FTC is likely to succeed on appeal," the agency

action, said a restructured deal between Microsoft and Activision Blizzard could satisfy its concerns, subject to a new investigation. REUTERS

Remote working may wipe out billions from global office property values by 2030: study

A shift to remote working is likely to wipe off US\$800-billion from the value of office buildings in major global cities by 2030, according to a study published by consulting firm McKinsey on Thursday.

The survey on nine "superstar" cities – Beijing, Houston, London, New York, Paris, Munich, San Francisco, Shanghai and Tokyo – showed that demand for office space would be 13 per cent lower in 2030 than it was in pre-pandemic 2019.

"Superstar" cities are locations with a disproportionate share of the world's urban gross domestic product (GDP) and GDP growth.

The survey said employees continued to spend far less time working at the office compared to prepandemic times. Remote working seemed to have contributed to migration away from prime cities, partly influenced by complete work-from-home models and cheaper housing availability in suburban areas.

In the aftermath of the COVID-19 pandemic, tenants have reduced their office real estate and several corporates have switched to a permanent hybrid work model.

"The decline in demand has prompted tenants ... to negotiate



A vacant office building stands in New York last week. A study on nine major cities showed that demand for office space would be 13 per cent lower in 2030 than it was in 2019. BRENDAN McDERMID/REUTERS

shorter leases from owners," said the McKinsey report, adding that short-term leases might make it more difficult for property owners to secure financing.

Besides rising vacancy rates, commercial property firms globally are battling steep declines in valuation of their properties as a surge in borrowing costs amid high interest rate environment forces investors to look at more profitable avenues.

Similarly, the impact could be

stronger if troubled financial institutions decide to more quickly reduce the value of property they finance or own, according to the survey.

The McKinsey report comes at a time when world economies are navigating an array of macroeconomic challenges such as elevated inflation, high interest rate levels and mounting recession fears.

REUTERS

ONLINE SALES JUMP 6.1% FROM LAST YEAR DURING AMAZON'S PRIME DAY EVENT

U.S. online sales during Amazon.com's Prime Day shopping event rose 6.1 per cent to US\$12.7-billion from last year, as inflation-hit Americans hunted for discounts on the e-commerce platform, Adobe Analyt-

Amazon said over the two-day event, Prime members bought more than 375 million items worldwide and saved more than US\$2.5-billion on several deals, making it the biggest Prime Day event ever.

appliances were up 52 per cent compared to average daily sales in June, while apparel was up 24 per cent and stationary and office supplies was up 76 per cent.

Adobe data on Wednesday

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LEGALS

Court File No. CV-23-00694493-00CL
**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
 BBB CANADA LTD. (the "Applicant")**

This claims process only calls for D&O Claims and NOT general claims against the BBB Entities. DO NOT file a claim if it does not meet the definition of a D&O Claim in the D&O Claims Procedure Order.

NOTICE OF D&O CLAIMS PROCEDURE AND D&O CLAIMS BAR DATE

NOTICE IS HEREBY GIVEN that, pursuant to an order of the Ontario Superior Court of Justice (Commercial List) dated July 6, 2023 (the "D&O Claims Procedure Order") a claims process has been commenced for the purpose of identifying and determining certain claims against the Directors and Officers of the BBB Entities. All capitalized terms used and not otherwise defined in this Notice have the meaning ascribed to them in the D&O Claims Procedure Order, a copy of which can be found on the website of the Monitor, Alvarez & Marsal Canada Inc. at www.alvarezandmarsal.com/BBBCanada.

PLEASE TAKE NOTICE that the D&O Claims Procedure only addresses certain claims against the Directors and Officers of the BBB Entities, being those defined as "D&O Claims" in the D&O Claims Procedure Order. Any Person who believes that they/it has a D&O Claim against a Director or Officer of the BBB Entities should send a Proof of Claim to the Monitor to be received by the Monitor by 5:00 p.m. local Toronto time on August 7, 2023 (the "Claims Bar Date").

D&O CLAIMS WHICH ARE NOT RECEIVED BY THE CLAIMS BAR DATE WILL BE FOREVER BARRED AND EXTINGUISHED.

Claimants may access a Proof of Claim form on the Monitor's website at www.alvarezandmarsal.com/BBBCanada or may contact the Monitor (Attention: Connor Good, Telephone: 416-847-5181) to obtain a Proof of Claim.

Claimants should file their Proof of Claim with the Monitor by mail, email, courier or hand delivery, so that the Proof of Claim is actually received by the Monitor by the Claims Bar Date at the address below.

Address of the Monitor

Alvarez & Marsal Canada Inc.
 In its capacity as Monitor of the BBB Entities
 200 Bay St., Suite 2900, P.O. Box 22
 Toronto, ON M5J 2J1

Attention: Connor Good
 E-mail: BBBCanada@alvarezandmarsal.com

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

Court File No: CV-23-00694493-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF BBB
CANADA LTD.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

AFFIDAVIT OF HOLLY ETLIN

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Lawyers for the Applicant

TAB 3

Court File No. CV-23-00694493-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)	TUESDAY, THE 22 ND
)	
CHIEF JUSTICE MORAWETZ)	DAY OF AUGUST, 2023

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 BBB CANADA LTD.
(the "**Applicant**")

STAY EXTENSION ORDER

THIS MOTION, made by the Applicant pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order extending the Stay Period (as defined in paragraph 15 of the Amended and Restated Initial Order, granted February 21, 2023) was heard this day via videoconference.

ON READING the Notice of Motion of the Applicant, the Affidavit of Holly Etlin sworn on August 15, 2023 including the exhibits thereto, and the Seventh Report of Alvarez & Marsal Canada Inc., in its capacity as Court-appointed monitor (in such capacity, the "**Monitor**"), dated August ●, 2023, filed, and on hearing the submissions of respective counsel for the Applicant and Bed Bath & Beyond Canada L.P. (together with the Applicant, the "**BBB Entities**"), the Monitor, and such other counsel as were present and listed on the Counsel Slip, no one else appearing although duly served as appears from the Affidavit of Service of Emily Paplawski, sworn August ●, 2023, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

STAY EXTENSION

2. **THIS COURT ORDERS** that the Stay Period is hereby extended until and including November 22, 2023.

GENERAL

3. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

4. **THIS COURT HEREBY REQUESTS** the aid and recognition of any Court, tribunal, regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the BBB Entities, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the BBB Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the BBB Entities and the Monitor and their respective agents in carrying out the terms of this Order.

5. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of the date of this Order without the need for entry or filing.

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

Court File No: CV-23-00694493-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF BBB CANADA LTD.

Applicant

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

STAY EXTENSION ORDER

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

Court File No. CV-23-00694493-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF BBB CANADA LTD.

Applicant

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at: TORONTO

MOTION RECORD OF THE APPLICANT
(Motion for Stay Extension)

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