

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
(D&O Claims Procedure)

June 29, 2023

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SUPERIOR COURT OF JUSTICE
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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 Justice Osborne of the Ontario Superior Court of Justice (Commercial List) on July 6, 2023 at 2:00 p.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;

X 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 (the “**D&O Claims Procedure Order**”) approving a procedure for the solicitation, determination and resolution of claims against the current and former directors and officers of BBB Canada (the “**D&O Claims Process**”); and

- 2 -

2. Such other and further relief as counsel may request and this Honourable Court may allow.

THE GROUNDS FOR THIS MOTION ARE:

3. Capitalized terms used but not defined herein have the meanings given to such terms in the D&O Claims Procedure Order;

Background

4. On February 10, 2023, the Applicant and Bed Bath & Beyond Canada L.P. (“**BBB LP**”, and together with the Applicant, “**BBB Canada**”) were 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**”);

5. On February 21, 2023, the Court granted an Amended and Restated Initial Order (the “**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;

6. BBB Canada commenced these CCAA proceedings in order to obtain the flexibility and breathing space afforded by the CCAA to effect a wind down of its Canadian business. As that wind down is now largely complete, BBB Canada now wishes to conduct the proposed D&O Claims Process so that the universe of claims against BBB Canada’s Directors and Officers can be ascertained, determined and addressed so as to avoid any requirement for BBB Canada to maintain a reserve for potential claims on a go forward basis. As such, the proposed D&O Claims Process and D&O Claims Procedure Order will facilitate the wind down of BBB Canada’s operations and

- 3 -

business and allow for the release of the Directors' Charge with a view to permitting distributions to BBB Canada's senior secured creditors;

The Proposed D&O Claims Process

7. The Applicant is seeking this Court's approval of the D&O Claims Process substantially in the form of the proposed D&O Claims Procedure Order;

8. Under the proposed D&O Claims Procedure Order, BBB Canada will solicit any D&O Claim of any person that may be asserted or made against one or more Directors or Officers of the Applicant or BBB LP, that: (a) relates to a claim for which such Directors or Officers are by law liable to pay in their capacity as Directors or Officers; or (b) is in connection with any indebtedness, liability or obligation of any kind whatsoever, and any interest accrued thereon or costs payable in respect thereof, which, in either case, is based in whole or in part on facts existing prior to the "**Claims Bar Date**" (August 7, 2023, or such later date as may be ordered by the Court) or that relates to a period of time prior to the Claims Bar Date (each, a "**D&O Claim**", and collectively, the "**D&O Claims**");

9. The D&O Claims expressly exclude any claims that cannot be compromised pursuant to subsection 5.1(2) or 19(2) of the CCAA;

10. By no later than July 7, 2023, BBB Canada will cause copies of the D&O Claims Procedure Order, the "**Notice to Claimants**" and the "**Proof of Claim**" to be served on the Service List, and the Monitor will cause copies of the D&O Claims Procedure Order, the Notice to Claimants and the Proof of Claim to be posted on the Monitor's website. As soon as practicable after the date of

- 4 -

the D&O Claims Procedure Order, the Monitor will cause the Notice to Claimants to be published in the Globe and Mail (National Edition);

11. Any person asserting a D&O Claim must deliver a Proof of Claim, together with all relevant supporting documentation, to the Monitor by the Claims Bar Date. Any person who fails to do so will be forever barred, estopped and enjoined from asserting or enforcing such D&O Claim against any Directors or Officers of BBB Canada, and will not be entitled to receive further notice with respect to, or participate as a claimant or creditor in, the D&O Claims Process or these CCAA proceedings in respect of such D&O Claim;

12. All Proofs of Claim received by the Claims Bar Date will be reviewed by BBB Canada, in consultation with the Monitor and any applicable Directors and Officers, and either accepted, revised or disallowed;

13. If BBB Canada, in consultation with the Monitor and applicable Directors and Officers, decide to revise or disallow a D&O Claim, they will send a “**Notice of Revision or Disallowance**” to the applicable claimant;

14. If the claimant disputes the revision or disallowance, the claimant must deliver a “**Notice of Dispute**” to the Monitor by no later than fifteen (15) days after the date the Notice of Revision or Disallowance is deemed to be received by the claimant pursuant to the D&O Claims Procedure Order, or such later date as BBB Canada, in consultation with the Monitor, may agree in writing or the Court may order. Any claimant who fails to deliver a Notice of Dispute to the Monitor by the foregoing deadline will be deemed to accept the amount of its D&O Claim as set out in the applicable Notice of Revision or Disallowance;

- 5 -

15. Any claimant who delivers 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 its Notice of Dispute, file a motion with the Court seeking determination of the D&O Claim, which motion must be returnable within seven (7) Business Days of the filing of the motion, or such first date thereafter as the Court may schedule for the hearing of the motion;

16. The establishment of a D&O Claims Process is an important and necessary step in winding down the Applicant's and BBB LP's estates. The proposed D&O Claims Process is fair and reasonable in the circumstances, appropriately balances competing interests, and will facilitate the determination of D&O Claims against BBB Canada's Directors and Officers in a fair, comprehensive, and expeditious manner; and

17. The Monitor supports the establishment of the D&O Claims Process in the form of the proposed D&O Claims Procedure Order;

Other Grounds for Relief

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

19. 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

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

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

(a) the Affidavit of Wade Haddad, sworn June 29, 2023; and

- 6 -

- (b) such further and other material as counsel may advise and this Honourable Court may allow.

June 29, 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 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 "**D&O Claims Procedure Order**") approving a procedure for the solicitation, determination and resolution of D&O Claims (as defined below) against the current and former directors and officers of BBB Canada (the "**D&O Claims Process**"). Capitalized terms not defined herein have the meaning ascribed to them in the Affidavit of Holly Etlin sworn February 9, 2023 (the "**Etlin Affidavit**") or my affidavit sworn June 16, 2023 (the "**Haddad Affidavit**"). Copies of the Etlin Affidavit and the Haddad Affidavit (each without exhibits) are attached hereto as **Exhibits "A" and "B"**, respectively.

A. Background and Update on the CCAA Proceedings

4. On February 10, 2023, 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**"). The Initial Order, among other things: (a) appointed Alvarez & Marsal Canada Inc. as monitor (the "**Monitor**") in these 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 a 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**").

5. 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 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, 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.

6. 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). 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.

7. 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.

8. 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.

9. 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 substantially all of BBB Canada’s employees, closed all of its stores, and disclaimed all leases not previously assigned or surrendered.

10. On June 22, 2023, the Court granted an Order extending the Stay Period to August 22, 2023. In his Endorsement (the “**Endorsement**”) issued June 22, 2023, Chief Justice Morawetz noted:

In seeking the extension of the Stay Period up to August 22, 2023, the Applicant's state that the extension is necessary so as to allow the Applicant, with the assistance of the Monitor, time to complete certain steps necessary to wind down its business and to complete various postclosing matters. Further, the Applicant stated that it 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 the Applicant.

A copy of the Endorsement is attached hereto as **Exhibit “C”**.

B. The D&O Claims Process

11. All capitalized terms in this section not defined elsewhere have the meaning ascribed to them in the proposed D&O Claims Procedure Order.

12. As discussed further in the Etlin Affidavit, BBB Canada commenced these CCAA proceedings in order to obtain the flexibility and breathing space afforded by the CCAA to effect a wind down of its business. As that wind down is now largely complete, and as foreshadowed in the Haddad Affidavit and the Endorsement, BBB Canada now wishes to conduct the proposed D&O Claims Process.

13. The D&O Claims Process was developed by BBB Canada, in consultation with the Monitor. It is intended to ensure that the universe of claims against BBB Canada's Directors and Officers can be ascertained, determined and addressed so as to avoid any requirement for BBB Canada to maintain a reserve for potential claims on a go forward basis. As such, the proposed D&O Claims Process and D&O Claims Procedure Order will facilitate the wind down of BBB Canada's operations and business and allow for the release of the Directors' Charge with a view to permitting distributions to BBB Canada's senior secured creditors.

14. Under the proposed D&O Claims Procedure Order, BBB Canada will solicit any D&O Claim of any person that may be asserted or made against one or more Directors or Officers of the Applicant or BBB LP, that: (a) relates to a claim for which such Directors or Officers are by law liable to pay in their capacity as Directors or Officers; or (b) is in connection with any indebtedness, liability or obligation of any kind whatsoever, and any interest accrued thereon or costs payable in respect thereof, which, in either case, is based in whole or in part on facts existing prior to the Claims Bar Date (as defined below) or that relates to a period of time prior to the Claims Bar Date

(each, a “**D&O Claim**”, and collectively, the “**D&O Claims**”). The D&O Claims expressly do not include any claims that cannot be compromised pursuant to subsections 5.1(2) or 19(2) of the CCAA.

15. BBB Canada will not solicit any claims as against the Applicant or BBB LP as part of the D&O Claims Process as no distributions will be available or made to any of BBB Canada’s unsecured creditors.

16. The D&O Claims Process will be noticed to all potential claimants as follows:

- (a) as soon as practicable after the date of the D&O Claims Procedure Order, but no later than July 7, 2023:
 - (i) BBB Canada will cause copies of the D&O Claims Procedure Order, the Notice to Claimants in the form attached as Schedule “A” to the D&O Claims Procedure Order (the “**Notice to Claimants**”) and the Proof of Claim (as defined below) to be served on the Service List, and
 - (ii) the Monitor will cause copies of the D&O Claims Procedure Order, the Notice to Claimants and the Proof of Claim to be posted on the Monitor’s Website until the Monitor’s discharge in these CCAA proceedings; and
- (b) as soon as practicable after the date of the D&O Claims Procedure Order, the Monitor will cause the Notice to Claimants to be published in the Globe and Mail (National Edition).

17. To the extent any claimant requests documents or information regarding the D&O Claims Process prior to the Claims Bar Date, or if BBB Canada or the Monitor becomes aware of any person having a D&O Claim, the Monitor will send such claimant or person such documents or information, direct such claimant or person to the Monitor's Website, or otherwise respond to the request for documents or information, as the Monitor may consider appropriate in the circumstances, in consultation with BBB Canada.

18. The proposed D&O Claims Procedure Order establishes a claims bar date of August 7, 2023, or such later date as may be ordered by the Court (the "**Claims Bar Date**"). Any person asserting a D&O Claim must deliver a Proof of Claim in the form attached as Schedule "B" to the D&O Claims Procedure Order (each, a "**Proof of Claim**"), together with all relevant supporting documentation, so as to be received by the Monitor by no later than 5:00 p.m. on the Claims Bar Date.

19. The Claims Bar Date was selected by BBB Canada in consultation with the Monitor. BBB Canada believes that the Claims Bar Date is reasonable in that it provides sufficient time for potential claimants to evaluate and submit a Proof of Claim, while simultaneously recognizing the limited scope of D&O Claims that can properly be submitted in the circumstances and the limited number of potential claimants. BBB Canada is of the view that the proposed Claims Bar Date is fair and reasonable in the circumstances.

20. The proposed D&O Claims Procedure Order provides that any person who does not deliver a Proof of Claim to the Monitor by the Claims Bar Date: (a) will be forever barred, estopped and enjoined from asserting or enforcing such D&O Claim against any Directors or Officers of BBB Canada, and such unasserted D&O Claims will be forever extinguished, barred and

discharged as against the Directors and Officers without any further act or notification; and (b) will not be entitled to receive further notice with respect to, or participate as a claimant or creditor in, the D&O Claims Process or these CCAA proceedings in respect of such D&O Claim.

21. To the extent any D&O Claim is filed in accordance with the D&O Claims Process, a corresponding D&O Indemnity Claim (defined as any existing or future right of any Director or Officer against BBB Canada 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 BBB Canada) will be deemed to have been timely filed in respect of such D&O Claim.

22. Pursuant to the proposed D&O Claims Procedure Order:

- (a) all Proofs of Claim received by the Claims Bar Date will be reviewed by BBB Canada, in consultation with the Monitor and any applicable Directors and Officers, and either accepted, revised or disallowed;
- (b) BBB Canada, 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;
- (c) if BBB Canada, in consultation with the Monitor and applicable Directors and Officers, decide to revise or disallow a D&O Claim, they will send a Notice of Revision or Disallowance in the form attached at Schedule “C” to the D&O Claims

Procedure Order (each, a “**Notice of Revision or Disallowance**”) to the applicable claimant;

- (d) if the claimant disputes the revision or disallowance set forth in the Notice of Revision or Disallowance, the claimant must deliver a Notice of Dispute in the form attached at Schedule “D” to the D&O Claims Procedure Order (each, a “**Notice of Dispute**”) so as to be received by the Monitor by no later than 5:00 p.m. on the day that is fifteen (15) days after the date the Notice of Revision or Disallowance is deemed to be received by the claimant pursuant to the Claims Procedure Order,¹ or such later date as BBB Canada, in consultation with the Monitor, may agree in writing or the Court may order;
- (e) any claimant who fails to deliver a Notice of Dispute to the Monitor by the foregoing deadline will be deemed to accept the amount of its D&O Claim as set out in the applicable Notice of Revision or Disallowance; and
- (f) any claimant who delivers 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 its Notice of Dispute, file a motion with the Court seeking determination of the D&O Claim, which motion must be returnable within seven

¹ 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. If sent by courier or personal delivery, on the next Business Day following dispatch. 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.

(7) Business Days of the filing of the motion or such first available date thereafter as the Court may schedule for the hearing of the motion.

23. Copies of all forms delivered in the D&O Claims Process will be maintained by the Monitor. The Monitor will promptly provide copies of all received Proofs of Claim and Notices of Dispute to counsel for BBB Canada by email.

24. BBB Canada, in consultation with the Monitor and any applicable Directors and Officers, is authorized under the D&O Claims Procedure Order to enter into settlement negotiations with a claimant at any stage of the D&O Claims Process and to enter into agreements with claimants resolving the value of their respective D&O Claims.

25. BBB Canada and the Monitor are also authorized under the proposed D&O Claims Procedure Order to use reasonable discretion as to the adequacy of compliance with the D&O Claims Process with respect to any D&O Claims submitted thereunder, and to request any further documentation from a claimant that BBB Canada or the Monitor may require.

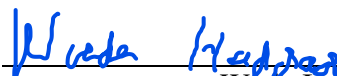
26. BBB Canada believes that the establishment of a D&O Claims Process is an important and necessary step in winding down the Applicant's and BBB LP's estates. In BBB Canada's view, the proposed D&O Claims Process is fair and reasonable in the circumstances, appropriately balances competing interests, and will facilitate the determination of D&O Claims against BBB Canada's Directors and Officers in a fair, comprehensive, and expeditious manner. I understand that the Monitor supports the establishment of the D&O Claims Process in the form of the proposed D&O Claims Procedure Order.

27. BBB Canada accordingly request that this Honourable Court approve the proposed D&O Claims Process substantially in the form of the proposed D&O Claims Procedure Order.

SWORN BEFORE ME over video
teleconference this 29th 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 “A”** REFERRED TO IN THE AFFIDAVIT OF WADE HADDAD SWORN BEFORE ME over video teleconference this 29th 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)

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. This Affidavit is made in support of an application by BBB Canada Ltd. (the “**Applicant**”) for an initial order (the “**Initial Order**”) and related relief under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). While Bed Bath & Beyond Canada L.P. (“**BBB LP**”, and together with the Applicant, “**BBB Canada**”) is not an applicant in this proceeding, the Applicant seeks to have the stay of proceedings and other benefits of the Initial Order under the CCAA extended to BBB LP as it is related, and carries on operations that are integral, to the business of the Applicant.

2. I am the Interim Chief Financial Officer (“**Interim CFO**”) of BBB Canada’s parent company, Bed Bath & Beyond Inc. (“**BBBI**” and together with its various U.S. subsidiaries and BBB Canada, the “**Bed Bath & Beyond Group**”). I have served in the capacity of Interim CFO of BBBI since February 2, 2023. I am also a Managing Director at AlixPartners, LLP (“**AlixPartners**”). AlixPartners has served as the financial advisor to the Bed Bath & Beyond

Group 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 am familiar with the Bed Bath & Beyond Group's day-to-day operations, business and financial affairs, and books and records and 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. All references to monetary amounts in this Affidavit are in Canadian dollars unless noted otherwise.

A. Overview

5. The North American retail industry has undergone a period of rapid change and shifting consumer demands over the past number of years, including dramatic declines in retail foot traffic, a loss of brand loyalty, and increasing demands for online retail options. A surge of retail bankruptcy filings has resulted in both Canada and the United States.

6. The Bed Bath & Beyond Group has not been immune to the foregoing challenges. By 2018, the Bed Bath & Beyond Group's revenues were rapidly declining and it was reporting significant net losses. Over this period, BBB Canada has also seen dramatic declines in revenues.

7. In an effort to improve the Bed Bath & Beyond Group's financial performance, BBBI's former management embarked on a series of initiatives designed to transform the business, including attempts to improve the omni-channel experience for customers and putting a significant focus on newly developed private label brands. Former management also initiated a comprehensive cost restructuring program. At the same time, the Bed Bath & Beyond Group spent over \$1 billion on a share buyback program.

8. Unfortunately, the COVID-19 pandemic and the broader economic downturn, including global supply chain disruptions and persistent inflation, significantly disrupted the Bed Bath & Beyond Group's operations, putting further financial strain on the entire enterprise, including BBB Canada, and hindering the transformational efforts of management.

9. The Bed Bath & Beyond Group's situation significantly worsened throughout 2022, with declining year-over-year sales in both the United States and Canada, multiple credit rating downgrades, cash flow constraints, and significant inventory reductions. Cash constraints caused delays and stoppages of merchandise shipments to BBB Canada's stores, causing inventory levels to decrease dramatically.

10. In June 2022, certain management of BBBI were replaced, and the new, current management embarked on an aggressive campaign to preserve cash, reduce costs, and strengthen the balance sheet.

11. By August 2022, the Bed Bath & Beyond Group believed it was well-positioned for success. However, less than one week after announcing its strategic and business update, BBBI's Chief Financial Officer passed suddenly and tragically. The CFO's death left the Bed Bath & Beyond Group with a significant leadership gap at a critical juncture in its restructuring efforts.

12. The process of remedying the Bed Bath & Beyond Group's business and financial decline continued to be challenging through the Fall of 2022. The Bed Bath & Beyond Group announced that during the third quarter holiday period, it suffered from a lower in stock position of approximately 70%. For the third quarter ending November 26, 2022, the Bed Bath & Beyond Group reported a net loss of US \$393 million and sales declines of 33% over the previous year. For the same nine-month period, the Bed Bath & Beyond banner in Canada had a net loss of \$87.6 million and its EBITDA was negative \$81.8 million.

13. On December 22, 2022, the ABL Agent (as defined below) under BBBI's then US \$1.13 billion ABL Facility (of which BBB LP is a borrower and the Applicant is a guarantor) delivered a notice to BBBI imposing additional reserves under BBBI's borrowing base.

14. The situation continued to decline in January 2023. On January 5, 2023, in its notice of late filing with respect to its Form 10-Q for the three months ended November 26, 2022, the Bed Bath & Beyond Group disclosed that there was substantial doubt about its ability to continue as a going concern. Shortly thereafter, the ABL Agent declared events of default and delivered notices of acceleration under both the ABL Facility and BBBI's then US \$375 million FILO Facility (of which BBB LP is also a borrower and the Applicant is a guarantor), thereby causing the principal amount of such facilities, together with all accrued interest thereon and other fees and obligations, to become immediately due and payable. The ABL Agent also declared cash dominion, restricting the entire Bed Bath & Beyond Group, including BBB Canada, from spending any cash on hand.

15. During this time, the Bed Bath & Beyond Group continued to pursue actions and take steps to improve its cash position and mitigate liquidity shortfalls, and to consider and pursue all strategic alternatives, including restructuring or refinancing its debt, seeking additional debt or

capital, reducing or delaying the company’s business activities and strategic initiatives, selling assets—including a sale of some or all of the Canadian business—and other strategic measures, including the possibility of obtaining relief under the U.S. Bankruptcy Code. Lazard Frères & Co. LLC (“**Lazard**”), an investment bank retained by the Bed Bath & Beyond Group, undertook a marketing process to identify an executable transaction, including a sale of some or all of the Canadian business.

16. As a result of these efforts, earlier this week, BBBI announced a proposed underwritten public offering of shares (the “**Offering**”), together with amendments to its Credit Facilities, which, if all of the conditions are met, will provide BBBI with additional capital to continue its turnaround efforts for Bed Bath & Beyond Group’s business in the United States outside of a bankruptcy filing. The Offering is subject to certain conditions which, if not fully satisfied, could result in less than full proceeds received from the Offering. The Bed Bath & Beyond Group expects that a failure to receive the full amount of proceeds from the Offering would likely force a bankruptcy filing by BBBI and its U.S. subsidiaries under the U.S. Bankruptcy Code.

17. Unfortunately, Lazard’s efforts to identify a going concern solution for Canada were not successful. Multiple outreaches to third parties have not resulted in an executable transaction.

18. Faced with extremely limited funding and significant constraints upon its use of cash, the Bed Bath & Beyond Group has reluctantly concluded that there is not enough capital available (even with the lifeline provided by the Offering) to restructure both its business in the United States and properly resuscitate the Canadian business to achieve profitability.

19. BBB Canada is not profitable on a standalone basis. As noted above, BBB Canada has realized significant net losses for the nine months ending November 26, 2022. Each of the

Applicant and BBB LP reported net losses on their respective annual tax filings with the Canada Revenue Agency (“CRA”) for 2021.

20. Moreover, BBB Canada contributes negative EBITDA margin to the Bed Bath & Beyond Group’s consolidated business. While consideration was given to closing a smaller subset of poorly performing stores, and continuing operations in Canada with a reduced footprint of stronger performing locations, the Bed Bath & Beyond Group has concluded that the economics of doing so are not justifiable. Without an operation of scale, the costs of accessing inventory, securing necessary transportation arrangements, and maintaining operational infrastructure would significantly impact the profitability (if any) of these remaining Canadian locations.

21. Further, a significant amount of capital is required to replenish the inventory in Canada, satisfy accounts payable, and rebuild vendor relationships. Inventory levels at the Canadian stores are at historic lows, due to the financial challenges faced by the enterprise, tightened or unavailable trade credit, and/or the unwillingness of suppliers to ship merchandise.

22. In addition, BBB Canada is dependent on BBBI to provide critical Shared Services (as defined below), including executive, legal, accounting, finance, treasury, tax, human resources, information technology, and inventory procurement. BBBI is not prepared to continue offering those Shared Services (which have not historically been cash settled) or continuing to allow the use of the “Bed Bath & Beyond” and “buybuy BABY” marks (which are not owned by BBB Canada), in light of its current financial circumstances.

23. Finally, continuation of Canadian operations does not have support from BBB Canada’s lenders under the Approved Budget (defined below), which is one of the conditions to the amendment and deceleration that made the Offering possible. Notwithstanding the recent

amendments to the Amended Credit Agreement, the Bed Bath & Beyond Group, including BBB Canada, remain under cash dominion. The Approved Budget (as defined below) contemplated by the recently announced Amended Credit Agreement (as defined below) (against which variances may constitute an event of default) does not provide for any further funding of the Canadian operations. BBB Canada does not have capacity or ability to independently effect a recapitalization or restructuring of the Canadian operations without access to cash and the support of BBBI and its lenders.

24. Accordingly, after consideration of all strategic alternatives, including an unsuccessful attempt to achieve a going concern solution for the Canadian business, and without any ability to access further funding under the Approved Budget, the Bed Bath & Beyond Group has determined that it is no longer in a position to provide financial and operational support to BBB Canada. BBB Canada is insolvent. Without the support of BBBI, it will be unable to satisfy its obligations as they come due. BBB Canada is required to wind down its business in Canada. It has commenced these proceedings to obtain the flexibility and breathing space afforded by the CCAA to effect an orderly liquidation of its remaining inventory with assistance from a third-party professional liquidator and vacate its leased retail stores and premises.

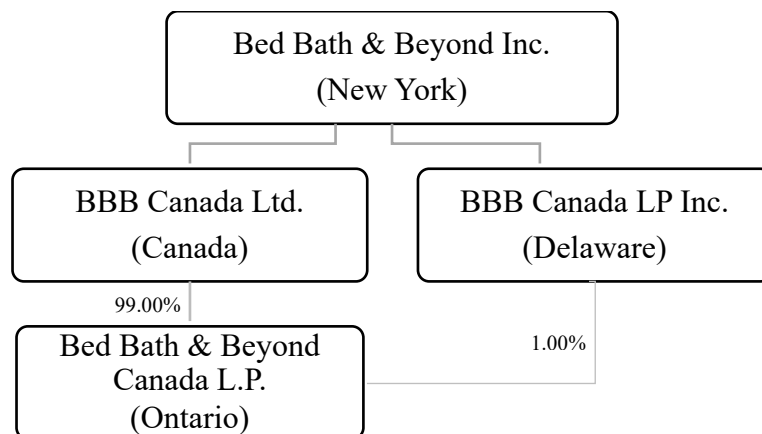
B. Corporate Structure

25. The Applicant is a federal corporation incorporated pursuant to the *Canada Business Corporations Act*, R.S.C. 1985, c C-44 and has a registered office in Toronto, Ontario. The Applicant is a wholly-owned subsidiary of BBBI, a corporation incorporated pursuant to the laws of the State of New York with a head office in Union, New Jersey. BBBI is the ultimate parent corporation of the entire Bed Bath & Beyond Group. BBBI's shares are listed on the NASDAQ exchange.

26. The Applicant has two directors: Mr. Greg Dyer and Ms. Mara Sirhal. Mr. Dyer is the Vice President, GM of Canada and became a director of the Applicant on May 28, 2009. Ms. Sirhal is the Executive Vice President, Brand President (Bed Bath & Beyond) at BBBI and became a director of the Applicant on October 14, 2022. Pursuant to a Unanimous Shareholder's Declaration, dated April 25, 2007, all powers of the directors of the Applicant to manage or supervise the management of the business and affairs of the Applicant including, without limitation, the power to pass resolutions, were terminated and vested wholly in BBBI as 100% shareholder.

27. BBB LP is a limited partnership formed under the laws of the Province of Ontario with its principal place of business in Richmond Hill, Ontario. The Applicant is the general partner and 99% unitholder of BBB LP. While BBB LP is not an applicant in this proceeding, the Applicant seeks to have the stay of proceedings and other provisions of the Initial Order extended to BBB LP in order to maintain stability and business operations through this restructuring process. The business and operations of the Applicant are heavily intertwined with that of BBB LP. In particular, BBB LP is the operating entity in Canada which conducts substantially all of Bed Bath & Beyond's retail operations and is party to all commercial real property leases throughout Canada.

28. A corporate chart detailing the structure of the Bed Bath & Beyond Group as of January 2023 is attached as **Exhibit "A"**. A simplified version of the corporate chart showing the corporate structure relating to the Bed Bath & Beyond Group's Canadian operations is below:



29. The chief place of business of BBB Canada is Ontario. The Applicant's registered office is in Toronto, Ontario, and BBB LP is formed pursuant to the laws of Ontario. The corporate office for BBB Canada's operations is located in Mississauga, Ontario. Twenty-two (22) of Bed Bath & Beyond's fifty-four (54) Canadian retail stores and five (5) of buybuy BABY's eleven (11) Canadian retail stores are located in Ontario. In addition, almost 50% of BBB Canada's employees are located in Ontario.

C. The Business of the Bed Bath & Beyond Group

(a) The Bed Bath & Beyond Group's Retail Business

30. The Bed Bath & Beyond Group is an omni-channel retailer that sells a wide assortment of merchandise in the home, baby, beauty, and wellness markets using multiple end-user customer platforms consisting of websites, applications, and physical retail stores. The Bed Bath & Beyond Group's e-commerce platforms include bedbathandbeyond.com, bedbathandbeyond.ca, harmondiscout.com, facevalues.com and buybuybaby.com. As of the date of this Affidavit, the Bed Bath & Beyond Group's physical retail stores consist of (i) approximately 760 Bed Bath & Beyond stores in the United States and Canada, (ii) approximately 135 buybuy BABY stores in the United States and Canada, and (iii) 50 Harmon stores in the United States. All 50 Harmon

stores have either permanently closed or are in the process of being permanently closed. In addition, a wholly-owned subsidiary of BBBI is a partner in a joint venture which operates retail stores in Mexico under the name Bed Bath & Beyond.

31. Within Canada, BBB Canada operates 54 Bed Bath & Beyond stores and 11 buybuy BABY stores, summarized as follows:

Province	Open Stores
Bed Bath & Beyond	
Alberta	13
British Columbia	10
Manitoba	1
New Brunswick	2
Newfoundland	1
Nova Scotia	2
Ontario	22
Prince Edward Island	1
Saskatchewan	2
TOTAL:	54
buybuy BABY	
Alberta	4
British Columbia	1
Manitoba	1
Ontario	5
TOTAL:	11

32. On average, Canadian sales make up approximately 6.2% of the Bed Bath & Beyond Group's sales.

33. Bed Bath & Beyond stores typically sell or carry the following categories of merchandise:

- (a) *Home décor*: including rugs, candles and fragrances, pillows and blankets, wall art and decor, artificial flowers and plants, lighting, clocks, mirrors, decorative accessories, and holiday décor;

- (b) *Household essentials*: including bedding, bath linens and accessories, small appliances, cookware, bakeware, cutlery and knives, kitchen gadgets, kitchen organization and food storage, dinnerware and flatware, and curtain and window coverings;
- (c) *Furniture*: including nursery furniture, bedroom furniture, accent furniture, living room furniture, office furniture, and kitchen and dining furniture;
- (d) *Outdoor accessories*: including patio furniture, patio accessories, grills and cooking accessories, outdoor décor, and patio umbrellas and screens;
- (e) *Storage and cleaning solutions*: including heating and cooling appliances, cleaning supplies, vacuums, storage solutions, laundry care, and trash and recycling solutions; and
- (f) *Health and beauty*: including hair care, oral care, skin care and personal care products, spa and sleep accessories, fitness and wellness, first aid, and men's grooming.

34. buybuy BABY stores typically sell or carry infant and child related merchandise, including apparel, furniture, storage and organization, strollers, car seats, bedding, highchairs, bath and diapering equipment, nursing and feeding solutions, and health and safety accessories.

35. Many of the brands carried and sold by the Bed Bath & Beyond Group are corporately owned (or “private label” brands), including Mighty Goods™, Ever and Ever™, Simply Essential™, Bee & Willow Home™, Squared Away™, Nestwell™, and H is for Happy™. Thousands of products in key categories such as bed, bath, home organization, food prep, and

indoor décor are marketed and sold by the Bed Bath & Beyond Group under these wholly-owned brands.

(b) Leases and Retail Stores

36. As noted above, BBB Canada operates 54 Bed Bath & Beyond stores and 11 buybuy BABY stores throughout Canada. Each store is located in premises leased by BBB LP. BBB Canada does not own any real property.

37. The vast majority of the retail leases to which BBB LP is party (excluding its warehouse and office leases) are indemnified by BBBI. Attached as **Exhibit “B”** is an example indemnity granted by BBBI with confidential information redacted. Most indemnities granted by BBBI with respect to Canadian retail leases are generally on the same form.

38. Certain of the Bed Bath & Beyond and buybuy BABY store leases in Canada are held or managed by large national retail landlords, while others are held or managed by non-national retail landlords. Certain of these large national retail landlords lease multiple locations to BBB LP. Most of these leases are for an initial term of 10 to 15 years, with an option to renew such lease for additional 5-year terms. The average size of a Bed Bath & Beyond store in Canada is between 20,000 and 30,000 square feet and the average size of a buybuy BABY store in Canada is between 18,000 and 22,000 square feet.

39. Typical of retail leases in Canada, many of the leases contain provisions that impact store operations, including:

- (a) restrictions that relate to going out of business or liquidation sales in one form or another. Some of the leases contain blanket prohibitions, while others permit such

sales if conducted pursuant to a court order. Some leases only prohibit the operation of a store that primarily sells merchandise that is classified as “clearance”, “close out”, “discontinued” or “odd lot”, but do not prohibit one-off going out of business sales. Many of the leases prohibit the posting of “liquidation” or “going out of business” signage;

- (b) requirements to notify the landlords prior to ceasing operations. No retail leases currently require BBB LP to remain open and operating, provided that some require notice be given to the landlord a certain number of days prior to BBB LP ceasing operations. Many of the leases include recapture rights that permit the landlord to terminate the lease if the store ceases operations beyond the permitted number of non-operational days;
- (c) obligations to comply with exclusive use rights the landlord may have granted to other tenants; and
- (d) restrictions on assignment of the lease and change of control transactions. Some of the leases exempt changes of control where the incoming entity purchases substantially all of the Bed Bath & Beyond stores in Canada or a certain province or geographic region and carries on the same business as Bed Bath & Beyond thereafter. Some leases exempt change of control transactions when the incoming entity purchases all of the assets of the tenant.

40. In addition to the above, BBB LP is also party to:

- (a) a lease for an approximately 5,200 square foot warehouse in Surrey, B.C. (the “**BC Warehouse**”). As discussed below, the BC Warehouse was historically used by BBB Canada to temporarily store inventory imported directly into Canada for sale in buybuy BABY stores and, occasionally, Bed Bath & Beyond stores. The BC Warehouse was also used to fulfill online customer orders. Currently, there is very limited, if any, inventory remaining in the BC Warehouse as most of it has been moved to retail store locations; and
- (b) a lease for a Canadian corporate office in Mississauga, Ontario.

41. Under the majority of store leases, BBB Canada’s filing for protection under the CCAA constitutes an “Event of Default” entitling the applicable landlord to exercise certain remedies against BBB LP, including termination of the lease, acceleration of rent and other charges under the lease, and repossession of the premises.

(c) Merchandising, Distribution and Logistics

42. BBB Canada sources merchandise for its Canadian operations from two main sources. First, approximately 68% to 70% of all Bed Bath & Beyond Canadian merchandise and approximately 50% of all buybuy BABY Canadian merchandise is sourced from the same assortment stocked by BBBI at U.S. supplier warehouses or flowed through U.S. import warehouses. This merchandise is comprised both of corporately owned brands, as well as product sourced from various U.S. vendors. The Bed Bath & Beyond Group had, until recently, four pooling facilities along the U.S./Canada border where U.S. based suppliers shipped their product to be re-organized onto pallets for forwarding to individual stores in Canada. Two of the four

pooling facilities were recently closed as part of the Bed Bath & Beyond Group's efforts to restructure and reduce costs.

43. Logistics providers retrieve the product from the pooling facilities and then transport it to individual retail stores throughout Canada. The Bed Bath & Beyond Group currently maintains, among other things, two general customs bonds in Canada with the Canada Border Services Agency (the "**CBSA bonds**"). Aon Reed Stenhouse Inc. provides surety bond brokerage services to the Bed Bath & Beyond Group in connection with their CBSA bonds.

44. Second, approximately 30% to 32% of all merchandise for Bed Bath & Beyond's Canadian operations and approximately 50% of all merchandise for buybuy BABY's Canadian operations is sourced directly from Canadian vendors. This Canadian-sourced product falls into four categories: (i) products for which a distributor in Canada has broad distribution rights; (ii) substantially all electronics sold in BBB Canada's retail operations; (iii) products that must be purchased in Canada as the corresponding product sold in the United States does not meet defined specifications for sale in Canada (which includes products without bilingual packaging, most cleaning chemicals, beauty products, and all food); and (iv) products geared toward the Canadian market but would not be sensible for the U.S. market, including warmth products such as duvets and quilts and all recycling and compost-related goods.

45. All procurement for BBB Canada is completed by Liberty Procurement Co., Inc. ("**Liberty Procurement**"), a wholly-owned subsidiary of BBBI. In Canada, BBB LP is party to a Buying Agency Agreement with Liberty Procurement, dated March 17, 2015, pursuant to which BBB LP has appointed Liberty Procurement as its non-exclusive agent for sourcing all merchandise

purchased in the United States and Canada. The costs of merchandise purchased for BBB Canada's retail operations is generally paid by BBBI and recorded by BBBI as an intercompany receivable.

46. As at January 2023, BBB Canada sourced product from approximately 137 different vendors and suppliers.

47. Unlike many retailers, the Bed Bath & Beyond Group does not have any distribution centers in Canada. All Canadian-sourced merchandise is shipped directly by the vendor to each store, or in some cases directly to the consumer. If a Canadian vendor is shipping less than 14 cartons to a Bed Bath & Beyond or buybuy BABY store in Canada, such cartons are shipped by FedEx ground service. If a Canadian vendor is shipping more than 14 cartons to a Bed Bath & Beyond or buybuy BABY store in Canada, the cartons are sent to Speedy Transport to be consolidated with other packages and then shipped at regular intervals to the applicable store.

48. Within Canada, Bed Bath & Beyond and buybuy BABY have very limited storage space for excess inventory apart from the limited space available in each store and the BC Warehouse. To supplement, Metro Logistics Inc. ("**Metro**") provides warehousing and freight brokerage services to BBB Canada pursuant to a Warehousing and Transportation Management Services Agreement, dated December 13, 2019, between Metro and BBBI (the "**Metro Agreement**"). Custom brokers and other supply chain providers also provide services to BBB Canada.

49. Unlike in the United States where Bed Bath & Beyond and buybuy BABY have separate websites for online ordering by customers, in Canada, the online offerings for both brands are sold through a single website: <https://www.bedbathandbeyond.ca/>. Until December 2022, online orders submitted by customers located in Canada were fulfilled 50% in Canada and 50% in the United States. While Bed Bath & Beyond and buybuy BABY stores were the largest fulfillers of online

orders in Canada, a significant portion of such orders were also fulfilled by corporate fulfillment centers located in the United States and by direct shipment from the applicable vendors to the customer. In December 2022, BBB Canada eliminated all U.S. order fulfillment for Canadian-based customers as such practice was unprofitable, resulting in significantly longer delivery periods as compared to Canadian-fulfilled orders, and diverted potential orders from Canadian-based vendors.

(d) Gift Cards and Customer Programs

50. Bed Bath & Beyond and buybuy BABY customers can purchase gift cards in stores and online. The gift cards are redeemable for in-store and online purchases. As at January 21, 2023, BBB Canada had a net liability for outstanding gift cards of approximately \$10.2 million under the Bed Bath & Beyond banner and \$0.4 million under the buybuy BABY banner.

51. BBB Canada also has a net liability as at January 21, 2023 of approximately \$3,600 relating to bonus gift cards issued under the buybuy BABY banner as part of historical promotions undertaken by the company.

52. In addition to gift cards, as at January 21, 2023, BBB Canada had a net liability for merchandise credits issued to customers in accordance with BBB Canada's Return Policy of approximately \$2.5 million under the Bed Bath & Beyond banner and \$0.8 million under the buybuy BABY banner. It is proposed in the Initial Order that outstanding gift cards and merchandise credits will be honoured during BBB Canada's proposed liquidation process until and including March 12, 2023.

53. The Bed Bath & Beyond Group also offers customers the ability to earn and redeem reward points every time they shop at Bed Bath & Beyond, buybuy BABY or Harmon (in the United States only) online or in store. As at January 21, 2023, BBB Canada had a net liability for outstanding points held, but not yet redeemed, of approximately \$0.8 million.

(e) Customer Payments and Deferred Payments

54. Customers of BBB Canada purchase products using a number of different payment methods, including cash, credit cards, debit cards, gift cards, and merchandise credit.

55. All customer credit card payments in respect of the Canadian business (including for retail store and e-commerce sales) are processed by third-party payment processing service providers, including *Amex Bank of Canada* and *First Data Canada*. BBB Canada incurs processor fees in connection with its service agreements with credit card processors that relate to the processing of BBB Canada's credit card and gift card transactions. The proposed Initial Order authorizes BBB Canada, with the consent of the Monitor, to make payments to providers of payment processing services (including credit card processing services) supplied to BBB Canada prior to the date of the Initial Order.

56. In addition to the traditional forms of payment accepted at Canadian retail operations, BBB Canada has partnered with *Afterpay* and *Welcome Pay powered by Zip* to allow customers who make purchases at both the Bed Bath & Beyond and buybuy BABY banners to defer immediate payment for such purchases. *Afterpay* allows qualifying customers to pay for their purchases in four installments made every two weeks without interest. *Welcome Pay powered by Zip* allows qualifying customers to pay for their purchases over time at certain installments established at the time of purchase.

57. Both *Afterpay* and *Welcome Pay powered by Zip* pay BBB Canada upfront for all goods purchased by qualifying customers using their services, and then recover such funds directly from the customers in accordance with applicable terms.

(f) Intellectual Property

58. The Bed Bath & Beyond Group use the service marks “Bed Bath & Beyond”, “buybuy BABY”, “Harmon”, and “Face Values” in connection with their retail services. Only the “Bed Bath & Beyond” and “buybuy BABY” marks are used in Canada.

59. All of the intellectual property rights held by the Bed Bath & Beyond Group are owned by Liberty Procurement and BBBI with respect to “Bed Bath & Beyond” related intellectual property, and by Buy Buy Baby Inc. (“**BBBaby Inc.**”) with respect to “buybuy BABY” related intellectual property. No intellectual property is owned directly by BBB Canada.

60. With respect to the “Bed Bath & Beyond” related intellectual property, BBB LP is party to a License Agreement with Liberty Procurement, dated November 14, 2007, pursuant to which Liberty Procurement has granted a non-exclusive right to BBB LP to use all trademarks, tradenames, service marks, logos, copyrights, and other intellectual property related to “Bed Bath & Beyond”, and all goodwill associated therewith, in its partnership name and its business in Canada.

61. With respect to the “buybuy BABY” related intellectual property, BBB LP is party to a License Agreement with BBBaby Inc., dated November 30, 2014, pursuant to which BBBaby Inc. has granted a non-exclusive right to BBB LP to use all trademarks, tradenames, service marks,

logos, copyrights, and other intellectual property related to “buybuy BABY”, and all goodwill associated therewith, in its partnership name and its business in Canada.

(g) Employees and Employee Benefits

62. As of January 31, 2023, BBB LP employed approximately 387 full-time employees (also referred to as associates) and 1,038 part-time associates in connection with its retail operations across Canada. The majority of BBB LP’s associates are employed at its retail stores in customer-facing functions and are paid hourly rates. Certain associates, such as corporate personnel and store managers, are salaried employees and are eligible to participate in certain bonus programs according to their respective roles. BBB LP does not have any unionized employees and there are no pensions for their benefit. BBB LP has not retained any independent contractors or consultants in Canada. Further detail regarding BBB LP’s employees, including their location and designation as of January 31, 2023, is set out in the table below:

Province / Territory	Full Time Employees	Part Time Employees	Total Employees
Alberta	101	303	404
British Columbia	65	172	237
Manitoba	11	23	34
New Brunswick	7	24	31
Newfoundland	5	12	17
Nova Scotia	10	25	35
Ontario	172	430	602
Prince Edward Island	5	15	20
Saskatchewan	11	34	45
TOTAL	387	1,038	1,425

63. On the corporate side, BBB LP employs eight Canadian-based employees to manage the Bed Bath & Beyond Group’s Canadian operations. Such employees include (i) Vice President,

GM of Canada, (ii) four district managers located throughout the country, (iii) a director of merchandise, (iv) a vice president of stores, and (v) a director of category management.

64. BBB LP uses a payroll services provider to manage payroll functions on behalf of BBB Canada, including payroll processing and the collection and remittance of certain related source deductions. Associates are paid bi-weekly, five days in arrears. BBB LP is current with respect to the remittance of employee source deductions. BBB LP's average gross biweekly payroll between October 23, 2022 and January 28, 2023 was \$1.5 million. The proposed Initial Order authorizes BBB Canada, with the consent of the Monitor, to pay payroll services providers for services supplied to BBB Canada prior to the date of the Initial Order.

65. BBB LP sponsors a registered retirement savings plan ("**RRSP**") and a deferred profit-sharing plan ("**DPSP**") and together with the RRSP, the "**BBB Canada Retirement Plans**") and a full suite of group health and welfare benefits for certain eligible associates (collectively, the "**BBB Canada Group Benefits**").

66. BBB LP associates who have completed one (1) year of employment with BBB Canada and have worked at least 1000 hours of service in a year are eligible to participate in the BBB Canada Retirement Plans. BBB LP associates contribute to the RRSP up to the lesser of 18% of earnings and the maximum permitted under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) and BBB LP contributes to the DPSP \$0.50 for each \$1.00 that the employee contributes to the RRSP, to a maximum of the lesser of 6% of the associate's earnings and a maximum dollar amount determined by BBB LP each year.

67. BBB LP's contributions to the DPSP are made out of BBB LP's profits and are subject to change at BBB LP's discretion. Contributions to the DPSP are remitted on an annual basis, typically in the first quarter of the year.

68. BBB LP provides BBB Canada Group Benefits to its full-time associates, and in Saskatchewan, to its full and part-time associates. Full-time associates generally receive the following insured benefits: (i) extended health; (ii) dental; (iii) short-term disability ("STD"); and (iv) basic and optional life insurance. Certain managers also receive long term disability ("LTD") insurance. Basic and optional life insurance are employee paid, STD and LTD are employer paid, and extended health and dental is cost-shared between BBB LP and covered associates.

69. Part-time associates in Saskatchewan who work more than 15 hours in a 26-week period receive the following insured benefits: (i) extended health; (ii) dental; and (iii) basic and optional life insurance. Life and optional life are employee paid, and extended health and dental is cost-shared between BBB LP and covered associates.

70. The BBB Canada Retirement Plans are administered through agreements with Manulife Financial, and the BBB Canada Group Benefits are administered through contracts of insurance with GreenShield Canada (extended health and dental) and Industrial Alliance (STD, LTD, and life).

71. BBB LP also provides full-time associates with maternity leave and parental leave "top-up" benefits that, together with amounts available under Employment Insurance, pays eligible associates 100% of their average pay for 6 and 8 weeks respectively. These programs are funded and administered by BBB LP.

72. BBB LP also offers all associates certain fringe benefits such as an employee assistance plan, an employee relief fund, and a discount program.

73. Certain employees of BBB LP are eligible to participate in BBBI's stock equivalent unit plan pursuant to which participants are awarded equity that vests annually. The vested equity is provided to employees either as cash or stock, depending on the type of equity.

74. At this time, it is expected that a significant portion of BBB LP's associates in Canada will be provided with working notice of termination on, or shortly after, the commencement of these CCAA proceedings. BBB LP anticipates that it will continue to employ many of its associates through the liquidation process.

(h) Support Services provided by BBBI

75. BBB Canada relies on BBBI for certain administrative and business support services that are integral to BBB Canada's operations. These services include executive, legal, accounting, finance, treasury, tax, insurance/risk management, real estate, human resources, and information technology support services, among other things (collectively, the "**Shared Services**").

76. BBBI provides these Shared Services from its head office in Union, New Jersey. BBB Canada cannot operate or function without the provision of the Shared Services from BBBI as it does not have any head office management employees in Canada who complete these services for BBB Canada. If the Shared Services were not provided, BBB Canada would be required to immediately cease operations and shut down in an uncontrolled manner.

77. As consideration for the provision of the Shared Services, BBB Canada is allocated a monthly fee calculated as a percentage of sales on its monthly profit and loss statement as part of

its selling, general, and administrative expenses. As discussed further below, such intercompany allocations are booked, but not settled, by BBBI and so continue to accumulate on a monthly basis.

(i) Banking and Cash Management

78. BBB Canada is part of an enterprise-wide centralized cash management system administered by BBBI from its head office to collect, transfer, and disburse funds generated by the operations of the entire Bed Bath & Beyond Group, including BBB Canada (the “**Cash Management System**”). The main components of the Cash Management System include, among others, collections from brick-and-mortar store locations and credit card sales, transfers between Bed Bath & Beyond Group entities, and disbursements to fund daily operations of the business. As of the date of this Affidavit, the Cash Management System is comprised of 76 bank accounts that are owned by the Bed Bath & Beyond Group and are maintained at various branches of 12 banks. Of the 76 total bank accounts, 20 are maintained by BBB Canada for purposes of funding the Canadian businesses.

79. BBB Canada is dependent upon BBBI for all treasury, banking, and related services that are provided by BBBI. BBBI’s treasury department maintains daily oversight over the Cash Management System and implements cash management controls for entering, processing, and releasing funds, including in connection with intercompany transactions. Additionally, BBBI’s corporate accounting department and treasury department regularly reconcile the Bed Bath & Beyond Group’s books and records to ensure transfers are accounted for properly.

80. With respect to the Canadian operations:

- (a) BBB LP maintains four store depository accounts with Scotiabank (the “**Canadian Depository Accounts**”) into which all non-credit card, store level cash sales are deposited by the store manager on a daily basis. Under ordinary circumstances, each week, armored cars collect and transfer cash from each store location to a depository account where the cash is counted and electronically deposited into the applicable store depository accounts. Of the four Canadian Depository Accounts, two are in CAD and two are in USD. All are located in Canada; and
- (b) BBB LP maintains two collection accounts with JP Morgan (the “**Canadian Collection Accounts**”) into which income proceeds from stores, credit card funds, and e-commerce and website receipts are deposited. Both Canadian Collection Accounts are in CAD and are located in Canada.

81. On a daily basis, cash deposited in the Canadian Depository Accounts is either moved to the Canadian Collection Accounts or swept to the Concentration Accounts (discussed further below), as applicable. Funds from the Canadian Collection Accounts are also swept daily to the applicable Concentration Accounts.

82. BBB LP maintains five concentration accounts and the Applicant maintains two concentration accounts, all with JP Morgan (collectively, the “**Concentration Accounts**”). Three of the Concentration Accounts are in CAD. The remaining four Concentration Accounts are in USD. All Concentration Accounts are located in Canada. The Concentration Accounts pool incoming funds, on a daily basis, from the Canadian Collection Accounts and Canadian Depository Accounts.

83. The Concentration Accounts fund seven disbursement accounts maintained by BBB LP in Canada with JP Morgan (the “**Disbursement Accounts**”). The Disbursement Accounts are used to fund BBB Canada’s daily operations, such as accounts payable (including payments made to vendors and freight providers), payroll (including benefits), sales tax and other tax obligations, employee obligations, and rent.

84. As discussed above, the handling and processing of all disbursements from the Disbursement Accounts for payroll, accounts payable, and other obligations is completed by BBBI on behalf of BBB Canada. BBB Canada does not independently direct any of the Canadian Collection Accounts, Concentration Accounts, or Disbursement Accounts.

85. BBB Canada provides credit cards to certain of its corporate employees and retail associates. The credit cards are used by BBB Canada’s corporate employees for a variety of expenses, including business travel and business expenses, and by certain of its retail associates as an alternative to petty cash.

86. The Applicant anticipates that during the proposed liquidation process, disbursements from the Disbursement Accounts will be funded, as they have previously been in the ordinary course of business, from funds in the Concentration Accounts generated from BBB Canada’s retail operations. Because of the nature of BBB Canada’s business and the disruption that would result if BBB Canada was forced to close its existing bank accounts, the continued existence of the Cash Management System is critical to the orderly wind down of BBB Canada. In connection with these CCAA proceedings, the Applicant is seeking the authority to continue the Cash Management System to maintain the funding and banking arrangements already in place for BBB Canada. The Cash Management System includes the necessary accounting controls to enable the Bed Bath &

Beyond Group to trace funds and ensure that all transactions are adequately documented and readily ascertainable.

D. The Financial Position of the Applicant

87. As a publicly traded company, BBBI files consolidated financial statements with the U.S. Securities and Exchange Commission (the “SEC”). These financial statements include the consolidated results of both the U.S. and Canadian operations. A copy of the Bed Bath & Beyond Group’s audited financial statements for the fiscal year ended January 28, 2022, is attached hereto as **Exhibit “C”**. A copy of the Bed Bath & Beyond Group’s unaudited financial statements for the nine months ended November 26, 2022, is attached hereto as **Exhibit “D”**. These financial statements are the Bed Bath & Beyond Group’s most recent annual and quarterly financial statements.

88. BBB Canada prepares, but does not separately audit or release, stand-alone balance sheets and profit & loss (“P&L”) statements for the Canadian operations. Even though the Bed Bath & Beyond banner and the buybuy BABY banner are both operated in Canada by BBB Canada, BBBI tracks the operations of each banner in Canada separately. Accordingly, in Canada, the Bed Bath & Beyond banner, including all in-store and online sales, are tracked in one balance sheet and P&L statement, while the buybuy BABY banner, including all in-store and online sales, are tracked on another. Attached as **Exhibit “E”** is the most recent balance sheet and P&L statement for Bed Bath & Beyond’s Canadian operations. Attached as **Exhibit “F”** is the most recent balance sheet and P&L statement for buybuy BABY’s Canadian operations. Both balance sheets and P&L statements are for the quarter ended November 26, 2022, and neither have been audited.

89. Importantly, the balance sheets and P&L statements do not incorporate all allocations made and costs incurred by the consolidated Bed Bath and Beyond Group enterprise. The balance sheets and P&L statements are not trued up at any time with the Applicant's or BBB LP's annual tax filings with the CRA. The net losses reported by the Applicant and BBB LP on their respective 2021 tax filings are discussed further below.

(a) Assets

90. As at November 26, 2022, the Bed Bath and Beyond banner in Canada had total assets of approximately \$427.4 million, broken down as follows:

Current Assets: \$312.2 million	
Cash & Cash Equivalents	\$33.2 million
Inventory	\$82.9 million
Accounts Receivable	\$1.5 million
Due from Affiliates	\$174.9 million
Prepaid Expenses	\$12.3 million
Restricted Cash	\$4.7 million
Other Current Assets	\$2.7 million
Non-Current Assets: \$115.2 million	
Property and Equipment	\$23 million
Fixed Asset Clearing	\$1 million
Operating Lease Assets	\$71.6 million
Non-Current Deferred Income Taxes	\$19.5 million
Security Deposits	\$177,000
Other Non-Current Assets	\$57,000

91. As at November 26, 2022, the buybuy BABY banner in Canada had total assets of approximately \$52.7 million, broken down as follows:

Current Assets: \$39.9 million	
Cash & Cash Equivalents	(\$1.2 million)
Inventory	\$11.2 million
Accounts Receivable	(\$22,000)
Due from Affiliates	\$30.3 million

Prepaid Expenses	(\$442,000)
Other Current Assets	\$93,000
Non-Current Assets: \$12.8 million	
Property and Equipment	\$7.2 million
Fixed Asset Clearing	\$124,000
Operating Lease Assets	\$5.5 million
Security Deposits	\$23,000

(b) Liabilities

92. As at November 26, 2022, the Bed Bath and Beyond banner in Canada had total liabilities of approximately \$342.8 million,¹ broken down as follows:

Current Liabilities: \$267.3 million	
Accounts Payable	\$216.6 million
Accrued Expenses and Other Current Liabilities	\$16.3 million
Merchandise Credit and Gift Card Liabilities	\$12.5 million
Income Tax Payable	\$47,000
Current Operating Lease Liabilities	\$21.9 million
Non-Current Liabilities: \$75.5 million	
Operating Lease Liabilities	\$75.5 million

93. As at November 26, 2022, the buybuy BABY banner in Canada had total liabilities of approximately \$86.9 million,² broken down as follows:

Current Liabilities: \$67.6 million	
Accounts Payable	\$51.4 million
Accrued Expenses and Other Current Liabilities	\$11.7 million
Merchandise Credit and Gift Card Liabilities	\$1.2 million
Income Tax Payable	\$1,000
Current Operating Lease Liabilities	\$3.3 million
Non-Current Liabilities: \$19.4 million	
Operating Lease Liabilities	\$19.4 million

¹ The enumerated liabilities do not include the Credit Facilities in respect of which BBB LP is a borrower and the Applicant is a guarantor.

² The enumerated liabilities do not include the Credit Facilities in respect of which BBB LP is a borrower and the Applicant is a guarantor.

(c) Shareholder Equity

94. As at November 26, 2022, the shareholder's equity in respect of the Bed Bath & Beyond banner in Canada was valued at \$84.6 million.

95. As at November 26, 2022, the shareholder's equity in respect of the buybuy BABY banner in Canada was valued at (\$34.3 million).

(d) Earnings

96. For the nine-month period ending November 26, 2022, the Bed Bath & Beyond banner in Canada reported a net loss of \$87.6 million and its EBITDA was negative \$81.8 million. For the same period, the buybuy BABY banner in Canada reported a net loss of \$11.9 million and its EBITDA was negative \$10.4 million.

(e) Secured Debt of BBB Canada

97. BBBI, certain of its U.S. and Canadian subsidiaries (including BBB LP), JPMorgan Chase Bank, N.A., as administrative agent and collateral agent (in such capacity, the "**ABL Agent**"), Sixth Street Specialty Lending, Inc. as the "first-in, last-out" agent ("**Sixth Street**"), and certain lenders (collectively, the "**Lenders**"), are parties to an Amended and Restated Credit Agreement, dated as of August 9, 2021, as amended by the First Amendment to the Amended and Restated Credit Agreement, dated as of August 31, 2022, and the Second Amendment to the Amended and Restated Credit Agreement, dated as of February 7, 2023 (the "**Second Amendment**"), and as may otherwise be amended, restated, supplemented, or otherwise modified from time to time (the

“**Amended Credit Agreement**”). A copy of the Amended Credit Agreement is attached hereto as **Exhibit “G”**.

98. As a result of recent amendments entered into in connection with the Offering (described below), the Amended Credit Agreement provides for aggregate revolving commitments of US \$565 million (the “**ABL Facility**”) and a “first-in, last-out” term loan facility of US \$475 million (the “**FILO Facility**” and together with the ABL Facility, the “**Credit Facilities**”). Prior to the Second Amendment being executed on February 7, 2023, the aggregate revolving commitments under the ABL Facility were US \$1.13 billion and the FILO Facility was US \$375 million. With respect to BBB LP in particular, borrowing availability under the ABL Facility is determined based on certain eligible assets and subject to a US \$75 million sublimit (previously US \$150 million prior to the Second Amendment).

99. The ABL Facility matures on August 9, 2026 (or on May 1, 2024 if the 2024 Notes (as defined below) are outstanding on such date), or unless otherwise required to mature earlier pursuant to the terms of the Amended Credit Agreement. The FILO Facility matures on August 31, 2027 (or May 1, 2024 if the 2024 Notes are outstanding as of such date), or unless otherwise required to mature earlier pursuant to the terms of the Amended Credit Agreement.

100. In Canada, the Credit Facilities are secured against all present and after-acquired personal property of BBB LP and the Applicant pursuant to the terms of an Amended and Restated Canadian Security Agreement, dated as of August 31, 2022 between the ABL Agent, BBB LP and the Applicant (the “**Canadian Security Agreement**”), and a Canadian Guarantee, dated as of June 19, 2020 (the “**Guarantee**”). Copies of the Canadian Security Agreement and the Guarantee are attached hereto as **Exhibits “H”** and “**I**”, respectively. In the United States, the Credit Facilities

are secured on a first priority basis (subject to customary exceptions) on substantially all assets (other than certain real property or equipment located in the United States that is owned by, or leased to, BBBI or any of its subsidiaries exceeding a certain threshold, referred to herein as the “**Excluded Property**”) of BBBI and its subsidiaries that are borrowers or guarantors under the Credit Facilities. Attached as **Exhibits “J”** and **“K”** are copies of personal property security searches of the Applicant and BBB LP, respectively, dated between February 1 and 3, 2023 from British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador.

101. Pursuant to the Amended Credit Agreement:

- (a) the ABL Agent is granted a senior security interest, and Sixth Street is granted a junior security interest, on the “ABL Assets” which includes, but is not limited to, all Accounts and Credit Card Receivables, Inventory, cash and cash equivalents, Deposit Accounts, Securities Accounts, Intellectual Property and Chattel Paper (all as defined in the Amended Credit Agreement);
- (b) the ABL Agent is granted a junior security interest, and Sixth Street is granted a senior security interest on the “Specified Collateral” which includes all collateral other than “ABL Assets”, provided that Excluded Property shall not be included, subject to the terms of the Amended Credit Agreement; and
- (c) the ABL Agent and Sixth Street agreed to certain arrangements as between themselves both before and after institution of any insolvency proceeding by any borrower or loan party under the Amended Credit Agreement relating to bankruptcy

financing, relief from the stay, plans of reorganization, credit bids, releases, and restrictions on the exercise of rights or remedies, among other matters.

102. As discussed further below, concurrently with the closing of the Offering, the ABL Agent and Sixth Street agreed to enter into the Second Amendment to, among other things: (i) waive any outstanding defaults or events of default under the existing Credit Facilities; (ii) rescind the acceleration notices issued under the existing Credit Facilities; and (iii) decrease the ABL Facility from US \$1.13 billion to US \$565 million and increase the FILO Facility by US \$100 million.

103. Notwithstanding the Second Amendment, the Bed Bath & Beyond Group, including BBB Canada, will remain under cash dominion until all obligations under the Credit Facilities are repaid and the commitments thereunder are terminated. During the Cash Dominion Period (as defined below), the ABL Agent must apply all funds credited to any collection accounts (including Canadian Collection Accounts) to prepay any revolving protective advances or revolving loans under the ABL Facility and to cash collateralize letter of credit exposure. The Second Amendment requires that all proceeds from the Offering, along with the US \$100 million to be drawn under the upsized FILO Facility, be used to repay outstanding revolving loans under the ABL Facility.

(f) Unsecured Debt of BBB Canada

104. As noted above, as at November 26, 2022, BBB Canada had liabilities for accounts payable of \$216.6 million relating to the Bed Bath & Beyond banner and \$51.4 million relating to the buybuy BABY banner. Of these amounts, \$189.2 million and \$37.2 million under the Bed Bath & Beyond and buybuy BABY banners, respectively, were amounts due to affiliates.

105. As discussed above, one of the Shared Services administered by BBBI on behalf of BBB Canada is accounts payable. BBBI remits payment to all suppliers, vendors, and other accounts payable due and owing by BBB Canada, and then records such payment as an affiliate obligation on the balance sheet. Also included as an “affiliate obligation” are the monthly fees allocated to BBB Canada with respect to the Shared Services. Such intercompany obligations are booked, but not regularly settled, by BBBI and so continue to accumulate on a monthly basis. For certainty, such amounts are not reflective of sums due and owing to third party vendors and suppliers.

(g) Senior Notes of BBBI

106. BBBI is also the issuer of the following three tranches of senior unsecured notes (collectively, the “**Senior Notes**”):

- (a) 3.479% senior notes due 2024. BBBI issued US \$300 million of 3.479% senior unsecured notes due August 1, 2024 (approximately US \$215.4 million of which remains outstanding at the date of this Affidavit).
- (b) 4.915% senior notes due 2034. BBBI issued US \$300 million of 4.915% senior unsecured notes due August 1, 2034 (approximately US \$209.7 million of which remains outstanding as of the date of this Affidavit).
- (c) 5.165% senior notes due 2044. BBBI issued US \$900 million of 5.165% of senior unsecured notes due August 1, 2044 (approximately US \$604.8 million of which remains outstanding as of the date of this Affidavit).

107. Neither the Applicant, nor BBB LP, are obligors or guarantors under the Senior Notes.

E. Events Leading to the CCAA Filing

(a) Bed Bath & Beyond's Efforts to Restructure the Business

108. BBB Canada operates in the highly competitive North American homeware and infant/early childhood retail industries. BBB Canada's significant competitors include *Walmart*, *IKEA*, *The Hudson Bay Company*, *Costco*, *Winners/Marshalls*, and *Loblaws/Superstore*. BBB Canada has also increasingly faced competition from online retailers like *Wayfair* and *Amazon* which are based entirely online and do not offer physical retail locations to their customer base.

109. The North American retail industry has experienced a period of rapid change and shifting consumer demands over the past number of years. Even prior to the COVID-19 pandemic, retailers like the Bed Bath & Beyond Group faced dramatic declines in retail foot traffic in both mall stores and standalone stores as consumers shifted their spending to online platforms like *Amazon* and *Wayfair*. The shift to online commerce brought with it a host of shifting consumer trends, including: (i) a loss of brand loyalty as consumers easily switch from one brand or e-commerce platform to another; (ii) the blurring of industry boundaries as nonretailers gain access directly to consumers through online platforms rather than selling their product through one or more retail chains; and (iii) a rapid increase in the demand for convenience, including expedited delivery of online orders, evergreen availability of inventory, and easy options for the expedient return of online purchases. The rapid changes resulted in a surge of retail bankruptcy filings, including *Sears*, *JCPenney*, *Toys "R" Us*, *Neiman Marcus*, *Forever 21*, *Target Canada*, and others.

110. The Bed Bath & Beyond Group was not immune to the foregoing challenges. By 2018, its revenues were declining and it was reporting significant net losses. Recognizing the need to quickly adapt to the dynamic retail environment and evolving needs of its customers, the Bed Bath

& Beyond Group's former management developed a comprehensive plan to transform its business and position itself for long-term success. As part of that comprehensive plan, the Bed Bath & Beyond Group, among other things:

- (a) restructured its leadership team, which included the appointment of a new Chief Executive Officer and six other senior members in merchandising, digital, marketing, owned brands and legal;
- (b) completed a sale-leaseback transaction with respect to 2.1 million square feet of owned real estate, which generated over US \$250 million in net proceeds;
- (c) divested non-core assets and reinvested the proceeds in core business operations in order to drive growth and fund share repurchases, among other things;
- (d) closed 249 Bed Bath & Beyond stores across Canada and the United States between 2019 and 2021;
- (e) implemented a workforce reduction of approximately 2,800 roles from across its corporate headquarters and retail stores, designed to further reduce layers at the corporate level, significantly reposition field operations to better serve customers, and realign technology, supply chain, and merchandising teams to support its strategic growth initiatives; and
- (f) introduced and launched a number of corporately-owned brands and thousands of new products in key destination categories of bed, bath, kitchen food prep, home organization and indoor décor.

111. At the same time, the Bed Bath & Beyond Group authorized a US \$1 billion three-year share-repurchase plan.

112. Unfortunately, the Bed Bath & Beyond Group's efforts to restructure its operations and reposition itself for long-term success was interrupted in its early stages by the global COVID-19 pandemic in March 2020. All retail stores across Canada and the United States were closed in accordance with applicable government directives (other than certain stand-alone buybuy BABY stores that were categorized as essential). While leadership of the Bed Bath & Beyond Group reacted quickly to implement cost reductions, net sales in 2020 continued to decline.

113. The impact of the COVID-19 pandemic extended beyond the immediate impact of store closures and has resulted in global supply chain disruptions and persistent inflation experienced throughout Canada and the United States (and around the world) since approximately 2021. The persistent inflation pressures, in turn, led to higher inventory costs and reductions in consumer discretionary spending. By the end of 2021, the Bed Bath & Beyond Group reported net losses of US \$559.6 million, an increase of approximately 14.8% compared to fiscal year 2020. Each of the Applicant and BBB LP reported net losses on their respective annual tax filings with the CRA for 2021.

114. On June 29, 2022, the Bed Bath & Beyond Group announced significant changes to its senior leadership team. Mr. Triton left his role as President and Chief Executive Officer and was replaced by Ms. Sue Gove as interim Chief Executive Officer. At the time that Ms. Gove assumed the role of interim Chief Executive Officer, the Bed Bath & Beyond Group was facing not only steadily declining sales and lower than expected gross margin, but also seriously constrained cash flows resulting from the extended effects of such issues. As at May 28, 2022, the Bed Bath &

Beyond Group had US \$108 million in cash reserves, down from more than US \$1 billion the previous year.

115. Given the Bed Bath & Beyond Group's liquidity constraints, a significant number of key suppliers, including suppliers to BBB Canada, either tightened or revoked the ability of the Bed Bath & Beyond Group to access inventory on credit, thereby exacerbating the already significant cash flow constraints and inventory shortages. For the quarter ended August 27, 2022, the Bed Bath & Beyond Group reported sales of US \$1.437 billion, a 28% decrease from second quarter 2021.

116. In addition to the above, BBBI, for a brief period, was a part of the "meme-stock" movement started and fueled on Reddit boards and social media websites. In March 2022, Mr. Ryan Cohen, the manager of RC Ventures, revealed that RC Ventures had acquired approximately 9.8% of BBBI's outstanding shares. However, on August 18, 2022, just five months later, RC Ventures disclosed that it had sold its entire stake in the company, sparking a selloff of BBBI stock. Overnight, BBBI shares fell roughly 40% and S&P Global Ratings lowered the Bed Bath & Beyond Group's rating to 'CCC' based on worsening macroeconomic conditions and tightening liquidity. By August 22, 2022, market reaction to RC Venture's sellout erased 60% of BBBI's market capitalization.

117. On August 31, 2022, the Bed Bath & Beyond Group, under the leadership of Ms. Gove, announced that it had taken steps to address its liquidity constraints and improve its balance sheet and cash flows by, among other things: (i) securing commitments for more than US \$500 million of new financing, including its newly expanded US \$1.13 billion ABL Facility and its new US \$375 million FILO; and (ii) filing a Form S-3 Registration Statement with the SEC to prepare for

the potential launch of an at-the-market offering program for up to 12 million shares of BBBI common stock (the “**First ATM Offering**”).

118. In addition, the Bed Bath and Beyond Group also announced, among other things, that it had:

- (a) changed its merchandising and inventory strategy to move away from the prior focus on internally-owned brands and products by discontinuing three of its nine private labels and reducing all other corporately-owned brands by 20 percentage points, instead focusing on offering a full suite of national brands demanded by customers;
- (b) begun implementing significant additional selling, general and administrative (“**SG&A**”) expense reductions to right-size its cost structure and reduce SG&A by approximately US \$250 million in fiscal 2022;
- (c) reduced its plan for capital spending from the US \$400 million previously disclosed to US \$250 million and focused strategic investments on technology, digital capabilities and offerings, and store maintenance;
- (d) completed further changes to its leadership team; and
- (e) commenced the closure of approximately 150 lower-producing Bed Bath & Beyond banner stores.

Attached as **Exhibit “L”** is BBBI’s press release, dated August 31, 2022 announcing the foregoing.

119. The process of remedying the Bed Bath & Beyond Group's business and financial decline continued to be complex and challenging throughout the Fall of 2022. While the Bed Bath & Beyond Group successfully reduced its accounts payable, raised gross proceeds of approximately US \$75 million in the First ATM Offering, and cleared out a significant portion of its excess private-label goods, inventory issues continued to plague the Bed Bath & Beyond Group (including BBB Canada) through the 2022 holiday season. The Bed Bath & Beyond Group announced that during the third quarter holiday period, it suffered from a lower in stock position of approximately 70%. For the business critical third quarter ending November 26, 2022, the Bed Bath & Beyond Group reported a net loss of US \$393 million and sales declines of 33% over the previous year. For the same nine-month period, the Bed Bath & Beyond banner in Canada had a net loss of \$87.6 million and its EBITDA was negative \$81.8 million.

120. Throughout 2022, the Bed Bath & Beyond Group saw multiple downgrades to its credit rating as a result of liquidity constraints and fears of its inability to meet impending debt.

121. In addition, an offer to exchange any and all of the outstanding Senior Notes announced by the Bed Bath & Beyond Group in October 2022 in an effort to further strengthen BBBI's balance sheet was declared unsuccessful and terminated as a result of insufficient participation.

(b) The Bed Bath & Beyond Group defaults under the Credit Facilities

122. On December 22, 2022, the ABL Agent delivered a notice to BBBI imposing additional reserves under BBBI's borrowing base as a result of the Bed Bath & Beyond Group's constrained inventory levels.

123. On or around January 13, 2023, certain events of default were triggered under the Amended Credit Agreements (collectively, the “**Events of Default**”) as a result of BBBI’s failure to prepay an over-advance and satisfy a financial covenant, among other things. The Bed Bath & Beyond Group and its advisors engaged in discussions with the ABL Agent and Sixth Street regarding a forbearance agreement, but after multiple rounds of negotiations, no agreement was reached.

124. On January 23, 2023, advisors to the ABL Agent informed the Bed Bath & Beyond Group that, as a result of the ongoing Events of Default, a cash dominion period (the “**Cash Dominion Period**”) had occurred and the ABL Agent had delivered the applicable dominion notices to each applicable depository bank or securities intermediary. Such significant restrictions on the Bed Bath & Beyond Group’s cash use severely hampered its ability to continue operating both in Canada and the United States.

125. Further, on January 25, 2023, the ABL Agent sent a notice of acceleration and default interest (the “**Acceleration Notice**”) to the Bed Bath & Beyond Group (including BBB Canada) as a result of the ongoing Events of Default. The Acceleration Notice notified the Bed Bath & Beyond Group that: (i) the principal amount of the Credit Facilities, together with accrued interest thereon, a FILO premium, and all fees and other obligations owing under the Amended Credit Agreement, were due and payable immediately, (ii) it would be required to put up cash collateral to back letters of credit, and (iii) interest rates under the Amended Credit Agreement were increased by 2%.

126. As of the date of this Affidavit, BBBI has not funded a US \$28 million interest payment on the Senior Notes (the “**Senior Notes Interest Payment**”).

(c) Bed Bath & Beyond explores Strategic Alternatives

127. In light of the Bed Bath & Beyond Group's rapidly declining financial results, the Bed Bath & Beyond Group undertook a further in-depth review in December 2022 and January 2023 of all strategic alternatives in an effort to maximize the value of its business for the benefit of all stakeholders. To assist in its restructuring efforts, the Bed Bath & Beyond Group retained Kirkland & Ellis LLP as restructuring counsel in the United States, Osler, Hoskin & Harcourt LLP ("**Osler**") as restructuring counsel in Canada, Lazard as investment banker, and AlixPartners as financial advisor.

128. Among the various strategic alternatives pursued, Lazard commenced a marketing process for certain of the Bed Bath & Beyond Group's assets, including some or all of the Canadian business. Lazard contacted a multitude of strategic partners, including two with respect to the Canada-only operations. One additional third party independently contacted Lazard about the Canadian business.

129. As a result of Lazard's efforts, on February 6, 2023, BBBI announced the Offering of (i) shares of the BBBI's convertible preferred stock ("**Series A Convertible Preferred Stock**"), (ii) warrants to purchase shares of Series A Convertible Preferred Stock, and (iii) warrants to purchase BBBI's common stock. The Offering is expected to raise approximately US \$225 million of gross proceeds in the Offering, together with an additional approximately US \$800 million of gross proceeds through the issuance of securities requiring the holder thereof to exercise warrants to purchase shares of Series A Preferred Stock in future installments assuming certain condition are met. There is no assurance that the company will receive any or all of the future installments. A failure to receive the full amount of gross proceeds will likely force the Bed Bath & Beyond Group to file for bankruptcy protection in the United States.

130. Concurrently with the closing of the Offering, BBBI and certain of its U.S. and Canadian subsidiaries, the ABL Agent and Sixth Street also agreed to enter into the Second Amendment to the Amended Credit Agreement to: (i) decrease the total revolving commitments under the ABL Facility from US \$1.13 billion to US \$565 million, (ii) result in an outstanding principal amount of US \$428,897,500 as a result of the call protection being capitalized as principal to the initial loans under the FILO Facility, and (iii) increase the loans available under the FILO Facility by US \$100 million. Pursuant to the Second Amendment, each of the ABL Agent and Sixth Street agreed to waive any outstanding defaults or events of default under the Credit Facilities and rescind the Acceleration Notices.

131. Under the Second Amendment, among other things:

- (a) BBBI is required to apply all net cash proceeds received from the upsized FILO Facility and the Offering to repay outstanding revolving loans under the ABL Facility;
- (b) the borrowers will be permitted to continue borrowing under the ABL Facility subject to availability thereunder;
- (c) the borrowers are required to use proceeds from certain dispositions of assets and subsequent equity offerings to pay down outstanding borrowings under the Credit Facilities; and
- (d) BBBI is required to make the Senior Notes Interest Payment before expiry of the 30-day grace period (i.e., on or before March 3, 2023) using availability under the Credit Facilities.

132. In its public disclosure announcing the Offering, BBBI confirmed that unless the Offering closes in accordance with its terms, BBBI will not have the financial resources to satisfy its payment obligations under the Credit Facilities or the Senior Notes and would likely be required to file for bankruptcy protection. In that scenario, BBBI confirmed that equity holders would likely not receive any recovery. Attached as **Exhibit “M”** is BBBI’s Form 8-K filed with the SEC on February 6, 2023 with respect to the Offering, the Second Amendment, and the continuing risks with respect thereto.

133. Notwithstanding the best efforts of the Bed Bath & Beyond Group and its advisors, including Lazard, and after active engagement with a number of third parties, no acceptable bids were received for any executable transaction involving the Canada-only business. In particular, of the three parties who expressed interest in the Canadian business: (i) one was only interested in assets owned by BBBI and its U.S. subsidiaries; (ii) one was interested both in assets owned by BBBI and its U.S. subsidiaries and by BBB Canada, but offered consideration significantly less than the estimated liquidation value for the Canadian-owned inventory; and (iii) one advised that it was only interested in certain assets (not a going concern bid), but subsequently failed to provide any further information or details to Lazard, notwithstanding its multiple requests for same.

134. Following announcement of the Offering on February 6, 2023, Lazard re-initiated discussions with the potential acquiror who had expressed interest in the Canadian-owned inventory and certain other assets to canvass the potential for an increased bid amount. While further discussions were undertaken and information exchanged, no bids have been received that would provide value in excess of the estimated liquidation value of BBB Canada’s inventory.

F. The Urgent Need for Relief under the CCAA

135. BBB Canada is in urgent need of protection under the CCAA. Facing extremely limited funding and significant constraints on its use of cash, the Bed Bath & Beyond Group has reluctantly concluded that there is not enough capital available – even with the lifeline provided by the Offering – to restructure both its business in the United States and properly resuscitate the Canadian business to achieve profitability.

136. Importantly, BBB Canada is not profitable on a standalone basis. In 2021, both the Applicant and BBB LP reported net losses on their respective annual tax filings with the CRA. For the nine-month period ending November 26, 2022, both the Bed Bath & Beyond and buybuy BABY banners in Canada reported significant net losses and negative EBITDA.

137. Even prior to 2022, BBB Canada contributed negative EBITDA margin to the Bed Bath & Beyond Group's consolidated business. While certain Canadian stores were EBITDA positive during the 2021 fiscal year, the economics of maintaining those limited retail locations on a standalone basis are not justifiable. Without a larger operation, the costs of accessing inventory, securing necessary transportation arrangements, and maintaining operational infrastructure would significantly impact the profitability (if any) of these remaining Canadian locations.

138. Further, a significant amount of capital is required to replenish store inventories in Canada, satisfy accounts payable, and rebuild vendor relationships. Inventory levels at Canadian retail locations are at historic lows, due to the financial challenges faced by the enterprise, tightened or unavailable trade credit, and/or the unwillingness of suppliers to ship merchandise.

139. BBB Canada is wholly dependent on BBBI to provide critical Shared Services, including executive, legal, accounting, finance, treasury, tax, human resources, information technology and inventory procurement. BBBI is not prepared to continue offering those Shared Services (which

have not historically been cash settled) or allowing BBB Canada use of the “Bed Bath & Beyond” and “buybuy BABY” marks (which are not owned by BBB Canada) in light of current financial circumstances.

140. Finally, notwithstanding the Second Amendment, the Bed Bath & Beyond Group, including BBB Canada, remain under cash dominion. The Approved Budget (as defined in the Second Amendment) contemplated by the Amended Credit Agreement (against which variances may constitute an event of default) does not provide for any further funding of the Canadian operations. BBB Canada does not have the capacity or ability to independently effect a recapitalization or restructuring of the Canadian operations without the support of BBBI. BBB Canada is insolvent from a balance sheet and cash flow perspective.

141. Accordingly, after consideration by BBB Canada of all strategic alternatives, including an unsuccessful attempt to achieve a going concern solution for the Canadian business, and without any ability to access further funding under the Approved Budget, on February 9, 2023, BBBI resolved to file the Applicant for creditor protection under the CCAA. The Bed Bath & Beyond Group believes that these CCAA proceedings are the only practical means of ensuring a fair and orderly wind-down in the interests of all stakeholders.

G. Relief Sought

(a) Stay of Proceedings

142. The Applicant urgently requires a stay of proceedings and other protections provided by the CCAA so that it will have the breathing room to develop and conduct a controlled and orderly wind-down of operations in Canada for the benefit of all stakeholders.

143. As noted above, while BBB LP is not an applicant in this proceeding, the Applicant seeks to have the stay of proceedings and other benefits of the Initial Order under the CCAA extended to BBB LP as it is related, carries on operations that are integral to the business of the Applicant, is party to all Canadian retail leases, and is a borrower under the Credit Facilities.

144. Having regard to the circumstances, I believe that the granting of a stay is in the best interests of BBB Canada and its stakeholders. The stay will provide BBB Canada with the time required to develop and oversee an orderly wind-down process which, in turn, will help to protect the interests of BBB Canada's stakeholders, including associates, suppliers, landlords, and customers.

(b) Stay of Certain Derivative Claims against BBBI

145. As discussed above, most of the retail leases to which BBB LP is party in Canada are subject to an indemnity by BBBI in favour of the landlord. All the indemnities contain language providing that BBBI's obligations are not affected by the bankruptcy or insolvency of the tenant or disclaimer of the lease. The proposed Initial Order includes a temporary stay of any proceeding against or in respect of BBBI arising out of or in connection with any indemnity, guarantee, or surety relating to a lease of real property by BBB LP or the Applicant. The proposed Initial Order also provides that any landlord claim pursuant to a guarantee in relation to either BBB LP or the Applicant shall be unaffected and shall not be released or affected in any way in any Plan filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3.

146. BBB Canada believes that this relief is necessary to allow it to have sufficient "breathing space" under the CCAA to focus its resources on a fair and orderly wind down process. Any

derivative litigation against BBBI would necessarily require the participation of BBB Canada and would result in a significant distraction of the already limited senior management in Canada from the goals of this proceeding. Further, it is crucial that BBBI's resources be focused on providing the Shared Services and other support to wind-down process over the next several months in Canada. Such resources are already significantly taxed addressing the financial distress of the broader Bed Bath & Beyond Group and efforts to right size U.S. operations and implement its restructuring initiatives. It is imperative that BBBI not be distracted by derivative litigation at this time.

(c) Appointment of Monitor

147. It is proposed that Alvarez & Marsal Canada Inc. ("**A&M**") will act as monitor (in such capacity, the "**Monitor**") in respect of the Applicant and BBB LP in the CCAA proceedings if the proposed Initial Order is issued. A&M has consented to act as the Monitor in these CCAA proceedings, a copy of which consent is attached hereto as **Exhibit "N"**.

(d) Funding of these CCAA Proceedings

148. The Applicant, with the assistance of A&M, has prepared cash flow projections up to and including May 11, 2023. A copy of the cash flow statement is attached hereto as **Exhibit "O"**. The cash flow projections show that the Applicant will have sufficient liquidity to fund its ongoing operations using its cash on hand and proceeds from the proposed liquidation (discussed further below) during the proposed stay period should the stay of proceedings be granted, and the orderly wind-down process commence as forecast.

149. As BBB Canada requires the use of its cash on hand to fund these CCAA proceedings, the draft Initial Order provides that any sweep rights exercised by the Lenders pursuant to the

Amended Credit Agreement with respect to BBB Canada may only be exercised if BBB Canada will continue to hold at least US \$12 million of cash immediately after the applicable sweep and such funds constitute repayment of obligations under, and subject to, the Amended Credit Agreement.

(e) Payments During the CCAA Proceedings

150. During the course of these CCAA proceedings, BBB Canada intends to make payments for goods and services supplied to it post-filing in the ordinary course, as set out in the cash flow projections described above and as permitted by the Initial Order.

151. BBB Canada is proposing in the Initial Order that it be authorized, but not required, and in all cases with the consent of the Monitor, to make payments for goods or services actually supplied to BBB Canada prior to the date of the Initial Order by third-party suppliers or service providers up to a maximum aggregate amount of \$500,000 if, in the opinion of BBB Canada, the supplier or service provider is critical to the orderly wind-down of BBB Canada's business.

(f) Liquidation of the Canadian Operations

152. As part of the overall liquidation and wind-down of BBB Canada, the Applicant intends to file a motion shortly after the granting of the Initial Order seeking an Order approving:

- (a) a consulting agreement with Hilco Merchant Resources, LLC ("**Hilco**") regarding the liquidation of the merchandise ("**Merchandise**") and owned furnishings, trade fixtures, equipment and improvements to real property ("**FF&E**") that are located in each of the Canadian retail stores (the "**Canadian Hilco Agreement**"); and

- (b) the proposed sale guidelines for the orderly liquidation of the Merchandise and FF&E in Canada.

153. Hilco has been selected by BBB Canada to assist in the liquidation based on its in-depth expertise and knowledge of the Bed Bath & Beyond Group's business, merchandise, and store operations. Over the past two years, Hilco has been engaged, and is currently engaged, by the Bed Bath & Beyond Group pursuant to a Letter Agreement Governing Inventory Disposition for each of the Bed Bath & Beyond and buybuy BABY banners to facilitate numerous store closures including, most recently, the closure of the approximately 150 Bed Bath & Beyond banner stores announced in August 2022.

154. Accordingly, based on Hilco's extensive expertise and knowledge regarding the Bed Bath & Beyond Group, and in order to ensure that Hilco can continue uninterrupted the liquidation of the approximately 150 stores already underway, the BBB Canada concluded that: (i) Hilco's services are necessary for a seamless and efficient large-scale store closing process and to maximize the value of the saleable Merchandise and FF&E; and (ii) Hilco is qualified and capable of performing the required tasks in a value-maximizing manner.

155. The proposed wind-down of BBB Canada's operations is currently contemplated to run for ten weeks. The terms of the Canadian Hilco Agreement are currently under discussion and will be provided once finalized.

156. The Bed Bath & Beyond Group, in consultation with Hilco and AlixPartners, estimate that the aggregate proceeds from the liquidation of the Merchandise and FF&E will be approximately \$40.5 million in Canada.

157. The wind-down process must be commenced as soon as possible to maximize recoveries and limit costs by ensuring that BBB Canada can exit from all retail stores as soon as practicable and avoid further rent, employee costs, critical supplier/service provider fees, bank fees, and other ongoing amounts. In the circumstances, any delay in commencing the wind-down process may compromise the net recoveries generated from the sale of BBB Canada's Merchandise and FF&E.

(g) Administration Charge

158. The Applicant proposes that the Monitor, its counsel, and counsel to BBB Canada be granted a Court-ordered charge as security for their respective fees and disbursements relating to services rendered in respect of BBB Canada (the "**Administration Charge**"). With the concurrence of the proposed Monitor, the Applicant is proposing that the Administration Charge for the first ten days be limited to \$0.55 million and will be seeking to increase the charge at the comeback hearing. The Administration Charge is proposed to have first priority over all other charges and was developed in consultation with the proposed Monitor.

(h) D&O Charge

159. An orderly wind-down of BBB Canada will only be possible with the continued participation of BBB Canada's directors, officers, management, and employees who are essential to the viability of the orderly wind-down of BBB Canada's business.

160. I am advised by Mr. Wasserman of Osler and believe that, in certain circumstances, directors of Canadian companies can be held liable for certain obligations of a company owing to employees and government entities, which may include unpaid accrued wages, unpaid accrued vacation pay, and unremitted sales, goods and services, and harmonized sales taxes. BBB Canada

estimates, with the assistance of A&M in its capacity as proposed Monitor, that these obligations may amount to as much as approximately \$7.8 million during the initial 10-day stay period, increasing to \$9.4 million by the comeback hearing.

161. It is my understanding that BBB Canada's present and former directors and officers who are or were employed by the Applicant or BBB LP are among the potential beneficiaries under a liability insurance policy that covers an aggregate limit of US \$10 million, plus various excess insurance policies that together provide US \$40 million of excess coverage above the primary policy, as well as a Side A DIC policy providing US \$40 million of coverage. I understand that the foregoing insurance policies cover not only BBB Canada, but also all present and former directors and officers of all corporate entities in the Bed Bath & Beyond Group. I also understand that the D&O insurance has various exceptions, exclusions, and carve-outs where coverage may not be available. I therefore do not believe that these insurance policies provide sufficient coverage against the potential liability that the directors and officers could incur in relation to these CCAA proceedings.

162. In light of the complexity and scope of BBB Canada's operations and potential liabilities, and the uncertainty surrounding available indemnities and insurance, the directors and officers have indicated to the Applicant that their continued service to BBB Canada and involvement in this proceeding is conditional upon the granting of an order under the CCAA that grants a charge in favour of the directors and officers of BBB Canada (the "**D&O Charge**"). With the concurrence of the proposed Monitor, BBB Canada is proposing that the D&O Charge for the first ten days be limited to \$7.5 million and will be seeking to increase the charge at the comeback hearing. The quantum of the D&O Charge was developed in consultation with the Monitor.

163. The D&O Charge is proposed to be subordinate to the Administration Charge. The D&O Charge is necessary so that BBB Canada may benefit from its directors' and officers' experience with BBB Canada's business and industry, and so that its directors and officers can guide BBB Canada's wind down.

H. Conclusion

164. I am confident that granting the Initial Order sought by the Applicant is in the best interests of BBB Canada and its stakeholders, generally. Without the stay of proceedings, the Applicant faces an immediate and uncontrolled cessation of operations rather than a responsible, controlled, and orderly wind-down. I believe that these CCAA proceedings are the only viable method to effect a controlled and orderly wind-down process for the benefit of all stakeholders.

SWORN BEFORE ME over video
teleconference this 9th day of February, 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 “B”** REFERRED TO IN THE AFFIDAVIT OF WADE HADDAD SWORN BEFORE ME over video teleconference this 29th 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)

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.

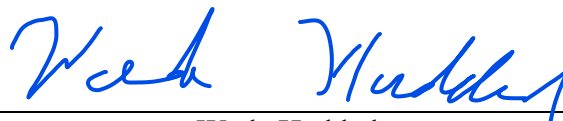
18. I believe that BBB Canada has acted, and continues to act, in good faith and with due diligence in pursuing these final steps in the wind down of its business. I understand that the Fifth Report of the Monitor, to be filed, will include, among other things, a cash flow forecast demonstrating that, 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.

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 “C”** REFERRED TO IN THE AFFIDAVIT OF WADE HADDAD SWORN BEFORE ME over video teleconference this 29th 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)

CITATION: Bed Bath & Beyond Canada Ltd. (Re), 2023 ONSC 3752

COURT FILE NO.: CV-23-694493-00CL

DATE: 2023-06-22

SUPERIOR COURT OF JUSTICE - ONTARIO

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

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

BEFORE: Chief Justice Geoffrey B. Morawetz

COUNSEL: *Shawn Irving, Emily Paplawski and David Rosenblat*, for BBB Canada Ltd. and
Bed Bath & Beyond Inc.

Evan Cobb, Agent to the Secured Lenders

Mike Shakra and Joshua Foster, for the Monitor, Alvarez & Marsal Canada Inc.

HEARD: June 22, 2023

ENDORSEMENT

[1] BBB Canada Ltd. (the "Applicant") brings this motion to extend the Stay Period to August 22, 2023.

[2] The basis for the relief is set out in the Affidavit of Wade Haddad, sworn June 16, 2023 and in the Fifth Report of the Monitor, Alvarez & Marsal Canada Inc. (the "Report").

[3] The Applicant has completed the Liquidation Sale and has finalized, pending final approvals, the reconciliation and assessment of all revenues, costs and expenses with respect to the Liquidation Sale.

[4] The Applicant also reports that the transactions involving the assignment of various lease agreements have closed.

[5] The Applicant has substantially completed the wind down of its retail operations, including terminating substantially all of the Applicant's employees, closing all stores, and disclaiming all leases not subject to assignments.

[6] In seeking the extension of the Stay Period up to August 22, 2023, the Applicant's state that the extension is necessary so as to allow the Applicant, with the assistance of the Monitor, time to complete certain steps necessary to wind down its business and to complete various post-closing matters. Further, the Applicant stated that it 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 the Applicant.

[7] Having reviewed the record and hearing submissions of counsel to the Applicant and to the Monitor, I am satisfied that the Applicant has acted, and continues to act, in good faith and with due diligence in the wind down of its business. The updated Cash Flow Forecast contained in the Report indicates that the Applicant has sufficient liquidity to fund forecasted disbursements through the proposed extension of the Stay Period.

[8] The Monitor also reports that it is not aware of any party that would be materially prejudiced by the proposed extension of the Stay Period. The Monitor supports the Applicant's request to extend the Stay Period to August 22, 2023.

[9] I am satisfied that the request to extend the Stay Period is both reasonable and appropriate in the circumstances.

[10] The motion is granted and the order has been signed.


Chief Justice Geoffrey B. Morawetz

Date: June 22, 2023

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.

Applicants

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at: Toronto

AFFIDAVIT OF WADE HADDAD

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Emily Paplawski (LSA# 17693)

Tel: (416) 362-2111
Fax: (416) 862-6666

Lawyers for the Applicant

TAB 3

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 ●, 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.

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	Amount¹
•	\$ _____
•	\$ _____
•	\$ _____
•	\$ _____

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

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Shawn Irving (LSO# 50035U)
Dave Rosenblat (LSO# 64586K)
Emily Paplawski (LSA# 17693)

Tel: (416) 362-2111
Fax: (416) 862-6666

Lawyers for the Applicant

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
(D&O Claims Procedure)

OSLER, HOSKIN & HARCOURT LLP
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Suite 6200, P.O. Box 50
Toronto ON M5X 1B8

Marc Wasserman (LSO# 44066M)
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