

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

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

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

Applicant

**AFFIDAVIT OF JOSHUA FOSTER**  
(Sworn November 16, 2023)

I, Joshua Foster, of the City of Oakville, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am an associate at the law firm of Bennett Jones LLP, counsel for Alvarez & Marsal Canada Inc., in its capacity as the Court-appointed Monitor (in such capacity, the “**Monitor**”) in the above-noted proceeding (the “**CCAA Proceeding**”). As such, I have personal knowledge of the matters to which I hereinafter depose in this affidavit. Where I do not have personal knowledge of the matters set out herein, I have stated the source of my information and, in all cases, believe it to be true.

2. The Eighth Report of the Monitor dated November 14, 2023 (the “**Eighth Report**”) was served on the service list established in the CCAA Proceedings on November 14, 2023, and was filed with the Ontario Superior Court of Justice (Commercial List) shortly thereafter. The Eighth Report refers to a reimbursement agreement (the “**Reimbursement Agreement**”) to be finalized in advance of BBB Canada Ltd.'s motion returnable November 17, 2023 in the CCAA Proceedings. A copy of the Reimbursement Agreement is attached hereto as **Exhibit “A”**.

**SWORN REMOTELY** by Joshua Foster  
stated as being located in the City of Oakville,  
in the Province of Ontario, before me at the  
City of Toronto, in the Province of Ontario, on  
November 16<sup>th</sup>, 2023 in accordance with O.  
Reg. 431/20, Administering Oath or  
Declaration Remotely.



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**MIKE SHAKRA**

Commissioner for Taking Affidavits  
(or as may be)



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**JOSHUA FOSTER**

THIS IS **EXHIBIT “A”** REFERRED TO IN THE AFFIDAVIT  
OF JOSHUA FOSTER, SWORN BEFORE ME  
THIS 16<sup>TH</sup> DAY OF NOVEMBER, 2023.

A handwritten signature in black ink, appearing to read 'Mike Shakra', is positioned above a horizontal line.

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**MIKE SHAKRA**

A Commissioner for taking Affidavits  
(or as may be)

## **REIMBURSEMENT AGREEMENT**

**THIS REIMBURSEMENT AGREEMENT** (this "**Agreement**") is made as of the 16<sup>th</sup> day of November, 2023

**BETWEEN:**

**BBB CANADA LTD. ("BBB Canada") and BED BATH & BEYOND  
CANADA L.P. ("BBB LP" and together with BBB Canada, the "BBB Entities")**

- and -

**MICHAEL I. GOLDBERG.**, on behalf of Bed Bath & Beyond Inc. and its affiliated debtors (collectively, the "**US Debtors**") in their proceedings under chapter 11 of title 11 of the United States Code (the "**Chapter 11 Proceedings**"), solely in his capacity as Plan Administrator of the US Debtors (the "**Plan Administrator**")

**WHEREAS:**

- A. On February 10, 2023, the BBB Entities were granted protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") pursuant to an initial order (the "**Initial Order**") of the Ontario Superior Court of Justice (Commercial List) (the "**Canadian Court**"). Pursuant to the Initial Order, Alvarez & Marsal Canada Inc. was appointed as monitor (in such capacity, the "**Monitor**") in the CCAA proceedings (the "**CCAA Proceedings**");
- B. On February 21, 2023, the Canadian Court granted an amended and restated Initial Order (the "**ARIO**"). Pursuant to paragraph 14 of the ARIO, sweep rights under the Amended Credit Agreement<sup>1</sup> may continue to be exercised with respect to the BBB Entities, provided that, among other things, effective as of March 27, 2023, the BBB Entities were to continue to hold cash in the amount of no less than \$6,000,000 (the "**Minimum Balance**") unless decreased by the BBB Entities with the consent of the Monitor;

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<sup>1</sup> As defined in the Affidavit of Holly Etlin sworn February 9, 2023.

- C. The Minimum Balance remained subject to, among other things, the Administration Charge and the Directors' Charge (each as defined in the ARIO and together, the "**Charges**"), each of which rank in priority to all claims of the Lenders;
- D. On April 23, 2023, the US Debtors commenced the Chapter 11 Proceedings in the United States Bankruptcy Court for the District of New Jersey (the "**US Court**");
- E. Pursuant to a Plan Administrator Agreement effective October 1, 2023, the Plan Administrator was appointed to observe and perform the duties and obligations imposed upon the Plan Administrator under a Second Amended Joint Chapter 11 Plan of Bed Bath & Beyond, Inc. and its Debtor Affiliates;
- F. On or around October 1, 2023, approximately \$6,100,000 constituting the Minimum Balance belonging to the BBB Entities (the "**BBB Canada Cash**") was transferred to a U.S. operating account and subsequently distributed to the agent and the lenders (collectively, the "**Lenders**") in error, without the knowledge or consent of the BBB Entities or the Monitor. The Lenders were also unaware of the error. In any event, the BBB Entities no longer hold cash in an amount equal to the Minimum Balance contrary to the terms of the ARIO;
- G. The BBB Entities and their current and former directors and officers may have certain priority obligations owing to creditors and the beneficiaries of the Charges that would have been paid from the BBB Canada Cash; and
- H. The Plan Administrator has agreed to segregate and hold in trust for the benefit of the BBB Entities \$3,000,000 as such funds become available (the "**Segregated Amount**").

**IN CONSIDERATION** of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby irrevocably acknowledged by the parties, the parties hereby agree as follows:

1. In this Agreement, "**Prior Claim**" means: (i) any claim by, or an amount payable, allocable or distributable for any amounts secured by the Directors' Charge or the Administration Charge; (ii) any claim by, allocable or distributable to the Monitor for any amount with respect to which the Monitor is entitled to be indemnified or otherwise reimbursed by any of the BBB Entities and/or from the Property (as defined in the ARIO) in priority to the claims of the Lenders under the Amended and Restated Credit Agreement; and (iii) any claim the Canadian Court determines should be paid in priority to any claim of the Lenders, or should otherwise be satisfied in whole or in part by, the BBB Canada Cash.
2. The Plan Administrator shall hold the Segregated Amount separate and apart from all other funds in its possession or under its control in trust for the benefit of the BBB Entities in accordance with the terms of this Agreement and acknowledges and agrees that such Segregated

Amount shall constitute Property to which the Administration Charge and the Directors' Charge shall attach.

3. Subject to the terms of this Agreement, the Plan Administrator, on behalf of himself and the US Debtors, hereby irrevocably and unconditionally agrees, to pay or repay to the BBB Entities, the Monitor on behalf of the BBB Entities or any officer of the Canadian Court appointed in respect of the BBB Entities (each, a "**Court Officer**") (such person being herein referred to as the "**Repayment Party**"), all or any portion of the Segregated Amount in an amount equal to any Prior Claim or Prior Claims as determined by the Repayment Party in its sole and absolute discretion or as otherwise ordered by the Court (the "**Repayment Amount**") within five (5) business days of demand by the applicable Repayment Party by wire transfer of immediately available funds. Any Repayment Amount paid by the Plan Administrator shall be used exclusively for payment of such Prior Claim or Prior Claims and for no other purpose. For greater certainty, nothing in this Agreement is intended to eliminate or supercede any commitment by the BBB Entities to provide notice to the Agent and Lenders prior to paying any Prior Claim.
4. Although the Repayment Party may determine the amount of any Prior Claim(s), the obligation of the Plan Administrator to pay or repay the Repayment Amount as determined by the Repayment Party in its sole and absolute discretion is absolute and not subject to set-off, counterclaim, reduction or recoupment by the Plan Administrator. The liability of the Plan Administrator to reimburse the Repayment Party under this Agreement in respect of any Prior Claim(s) shall be limited to the Segregated Amount. From and after the Effective Date, the Minimum Balance shall equal the Segregated Amount less any funds disbursed by the Plan Administrator in accordance with this Reimbursement Amount.
5. On the Effective Date (as defined below), the Plan Administrator shall also pay to the Monitor's counsel \$100,000 for professional fees that have been incurred and are to be incurred in connection with the CCAA Proceedings that are secured by the Administration Charge and would have otherwise been satisfied from the BBB Canada Cash in accordance with the terms of the ARIO by wire transfer of immediately available funds.
6. The Plan Administrator has all of the requisite authority to enter into this Agreement on behalf of itself and the US Debtors and does not require any other authority or approval to enter into this Agreement, including approval of the US Court or the Lenders.
7. The parties hereto, the Monitor or any Court Officer may seek advice and directions from the Canadian Court at any time regarding performance of the terms of this Agreement and may disclose this Agreement to the Canadian Court and the parties in interest in the CCAA Proceedings.
8. This Agreement need not be executed by the BBB Entities to be binding on and enure to the benefit of the BBB Entities.
9. All notices, consents, waivers and other communications under this Agreement must be in writing and shall be deemed to have been duly given when: (i) delivered by hand (with written

confirmation of receipt); (ii) sent by email (with read receipt requested, with the receiving party being obligated to respond affirmatively to any read receipt requests delivered by the other party); (iii) received by the addressee, if sent by a delivery service (prepaid, receipt requested); or (iv) received by the addressee, if sent by registered or certified mail (postage prepaid, return receipt requested), in each case to the appropriate addresses and representatives (if applicable) set forth below (or to such other addresses and representatives as a party may designate by notice to the other parties):

In the case of the BBB Entities:

C/O  
Osler, Hoskin & Harcourt LLP  
First Canadian Place, 100 King St W  
Suite 6200, Toronto, ON M5X 1B8  
Attention: David Rosenblat  
Email: [drosenblat@osler.com](mailto:drosenblat@osler.com)

with a copy to the Monitor:

Alvarez & Marsal Canada Inc.  
200 Bay Street, Suite 2900  
Toronto ON M5J 2J1  
Attention: Al Hutchens / Nate Fennema  
Email: [ahutchens@alvarezandmarsal.com](mailto:ahutchens@alvarezandmarsal.com) / [nfennema@alvarezandmarsal.com](mailto:nfennema@alvarezandmarsal.com)

and the Monitor's counsel:

Bennett Jones LLP  
First Canadian Place, 100 King St W  
Suite 6200, Toronto, ON M5X 1A4  
Attention: Mike Shakra / Josh Foster  
Email: [shakram@bennettjones.com](mailto:shakram@bennettjones.com) / [fosterj@bennettjones.com](mailto:fosterj@bennettjones.com)

In the case of the Plan Administrator:

Michael I. Goldberg  
201 E Las Olas Blvd Suite 1800,  
Fort Lauderdale, FL 33301 USA

Email: [michael.goldberg@akerman.com](mailto:michael.goldberg@akerman.com)

with a copy to:

Pachulski Stang Ziehl & Jones LLP  
780 3rd Avenue #34  
New York, N.Y. 10017  
Attention: Bradford Sandler  
Email: bsandler@pszjlaw.com

Any notice of other communication shall be deemed conclusively to have been given and received, if delivered or transmitted by electronic mail, on the day on which it was delivered or transmitted.

10. This Agreement shall be effective as of the date first written above (the "**Effective Date**") and shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to principles of conflicts or choice of laws or any other law that would make the laws of any other jurisdiction other than the Province of Ontario applicable hereto. The Canadian Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes that may arise or result from, or be connected with, this Agreement, any breach or default hereunder and any and all claims relating to the foregoing shall be filed and maintained only in the Canadian Court, and the parties hereby consent and submit to the exclusive jurisdiction and venue of the Canadian Court and irrevocably waive the defense of an inconvenient forum to the maintenance of any such action or proceeding.

11. This Agreement and any amendment hereto may be executed in two or more counterparts, each of which shall be deemed to be an original of this Agreement or such amendment and all of which, when taken together, shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement or any amendment hereto by email attachment shall be effective as delivery of a manually executed counterpart of this Agreement or such amendment, as applicable.

12. Upon execution of this Agreement by the parties, it will be binding upon and enure to the benefit of the BBB Entities, the Plan Administrator and their respective successors and permitted assigns. Neither this Agreement nor any of the rights or obligations under this Agreement may be assigned or transferred, in whole or in part, by any party without the prior written consent of the other party and the Monitor or a Court Officer, as applicable.

13. Each party shall, from time to time, and at all times after the Effective Date, at the request of any other party, but without further consideration, do all such further acts and execute and deliver all such further documents and instruments as shall be reasonably required in order to fully perform and carry out the terms and intent of this Agreement.

***[Signature Page Follows]***



**DATED** as of the date first written above.

**MICHAEL I GOLDBERG**, in his capacity as Plan Administrator

Per:  \_\_\_\_\_ c/s

**Acknowledged by ALVAREZ & MARSAL CANADA INC.,  
solely in its capacity as Court-appointed Monitor and not in  
its personal or corporate capacity**

Per:  \_\_\_\_\_ c/s

Name: Alan J. Hutchens

Title: Senior Vice President

**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.**

Applicant

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COMMERCIAL LIST**

Proceeding commenced at Toronto

**AFFIDAVIT OF JOSHUA FOSTER  
(Sworn November 16, 2023)**

**BENNETT JONES LLP**

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Lawyers for Alvarez & Marsal Canada Inc., solely  
in its capacity as the Court-appointed Monitor and  
not in its personal or corporate capacity