

**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 A PLAN OF COMPROMISE OR  
ARRANGEMENT OF THE BODY SHOP CANADA LIMITED,  
IN THE CITY OF TORONTO, IN THE PROVINCE OF  
ONTARIO (the "**Applicant**")

**FACTUM OF THE BODY SHOP CANADA LIMITED  
(Motion for Approval and Vesting Order, Assignment Order  
and Ancillary Order)**

December 11, 2024

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TO: THE SERVICE LIST

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## PART I – OVERVIEW<sup>1</sup>

1. On March 1, 2024, The Body Shop Canada Limited (“**TBS Canada**” or the “**Company**”) commenced proposal proceedings under the *Bankruptcy and Insolvency Act* (the “**BIA**”).
2. On July 5, 2024, this Court issued (a) an order (the “**Initial Order**”) continuing the proposal proceedings under the *Companies’ Creditors Arrangement Act* (“**CCAA**”) and appointing Alvarez & Marsal Canada Inc. as the monitor (the “**Monitor**”),<sup>2</sup> and (b) an order approving a sale process to identify a purchaser for the Company or its assets (the “**Sale Process**”).<sup>3</sup>
3. After broadly canvassing the market, the Company, with the assistance of the Monitor, has completed the Sale Process and entered into an agreement (the “**APA**”) with 1001072685 Ontario Inc. (now Body and Lotion Inc.) (the “**Purchaser**”) to acquire substantially all of the assets and business of the Company as a going concern (the “**Transaction**”).<sup>4</sup>
4. This factum is filed in support of TBS Canada’s motion for the following orders:
  - (a) an order (the “**Approval and Vesting Order**”), among other things:

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<sup>1</sup> Capitalized terms used but not defined in this factum have the meaning given to them in the Affidavit of Jordan Searle sworn on December 7, 2024 (“**Searle Affidavit**”), Declaration Order Motion Record of the Applicant (“**DOMR**”), Tab 2, pp. A16-A53.

<sup>2</sup> [Initial Order](#) issued July 5, 2024 (“**Initial Order**”).

<sup>3</sup> [Sale Process Order](#) issued July 5, 2024.

<sup>4</sup> Searle Affidavit at paras. 22-23, 52 & 54, DOMR, Tab 2, pp. A24-A25 & A33.

- (i) approving the APA and the Transaction and vesting all of TBS Canada's right, title and interest in and to the Purchased Assets (as defined below) in the Purchaser; and
  - (ii) granting a sealing order to the extent necessary to retain confidentiality over the Confidential Information (as defined below);
- (b) an order (the "**Assignment Order**") assigning the rights and obligations of TBS Canada to the Purchaser under the Material Agreements (as defined below); and
- (c) an ancillary order (the "**Ancillary Order**"), among other things:
  - (i) expanding the powers of the Monitor;
  - (ii) making certain declarations to allow TBS Canada's eligible former employees to access the *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s 1 ("**WEPPA**"); and
  - (iii) extending the stay of proceedings from December 13, 2024 to March 31, 2025.

5. The APA and the Transaction represent the best possible outcome for TBS Canada and its stakeholders.<sup>5</sup> If approved, the Transaction ensures the continued operation of a significant number of retail stores and ongoing employment for in excess of 400 of TBS Canada's employees, plus approximately 100 additional seasonal workers,

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<sup>5</sup> Searle Affidavit at para. 74, DOMR, Tab 2, p. A39.

preserves valuable relationships with landlords and sustains the “The Body Shop” brand in Canada.<sup>6</sup>

6. The Material Agreements are needed for the Purchaser to operate “The Body Shop” and their assignment is a condition to closing the Transaction.<sup>7</sup> Due to timing constraints, the Company faces challenges in obtaining consents to the assignment of such agreements and is therefore seeking the Assignment Order.<sup>8</sup>

7. The Ancillary Order will enable TBS Canada to perform its post-closing obligations, provide benefits to eligible former employees through WEPPA, and grant the Monitor expanded powers to, among other things, run a claims process and manage the wind-down of this CCAA proceeding.

8. The Court’s approval of these orders is therefore essential to achieving the best possible outcome for the Company’s stakeholders.

## **PART II – FACTS**

9. The facts underlying this motion are more fully set out in the Affidavit of Jordan Searle sworn on December 6, 2024 (“**Searle Affidavit**”).<sup>9</sup>

### **A. The Sale Process**

10. The Sale Process was structured having regard to two key considerations. First, TBS Canada did not own the “The Body Shop” trademark or its associated intellectual

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<sup>6</sup> Searle Affidavit at para. 89, DOMR, Tab 2, p. A42.

<sup>7</sup> Searle Affidavit at para. 105, DOMR, Tab 2, p. A46; Asset Purchase Agreement dated December 6, 2024 (redacted in part) (the “**Redacted APA**”) at s. 2.5, Exhibit “D” to the Searle Affidavit, DOMR, Tab 2D, p. A86.

<sup>8</sup> Searle Affidavit at para. 105, DOMR, Tab 2, p. A46.

<sup>9</sup> Searle Affidavit, DOMR, Tab 2, pp. A16-A53.

property.<sup>10</sup> Instead, the Company held a license to sell “The Body Shop” products through a distribution and franchise agreement with the UK Parent. Second, a separate process was ongoing in the UK to identify a purchaser for the UK Parent’s business or assets (the **“UK Sale Process”**).<sup>11</sup>

11. In consideration of the ongoing UK Sale Process, the Sale Process provided that a bid deadline would not be set until a purchaser was identified in the UK Sale Process, and it was clear whether such purchaser would appoint a new operator to license the “The Body Shop” intellectual property for continued use in Canada.<sup>12</sup>

12. From June until October 2024, TBS Canada, with the assistance of the Monitor, conducted the Sale Process and engaged with over 55 parties to solicit interest in acquiring TBS Canada’s business or assets.<sup>13</sup> Interested Parties who executed non-disclosure agreements were provided access to a data room containing information and materials about the business and assets of the Company.<sup>14</sup>

13. On September 6, 2024, after learning that the UK Parent had finalized its transaction with a purchaser (the **“UK Purchaser”**) for nearly all of its assets, and that the UK Purchaser planned to convert the Canadian business into a franchise, the Monitor informed Interested Parties that the deadline for submitting offers was set for October 8, 2024 (the **“Bid Deadline”**).<sup>15</sup>

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<sup>10</sup> Searle Affidavit at para. 17, DOMR, Tab 2, p. A22.

<sup>11</sup> Searle Affidavit at para. 17, DOMR, Tab 2, p. A22.

<sup>12</sup> Searle Affidavit at para. 18, DOMR, Tab 2, p. A23.

<sup>13</sup> Searle Affidavit at para. 22, DOMR, Tab 2, p. A24.

<sup>14</sup> Searle Affidavit at para. 23, DOMR, Tab 2, p. A25.

<sup>15</sup> Searle Affidavit at paras. 25-26, DOMR, Tab 2, pp. A25-26.

14. The Bid Deadline was established to allow parties sufficient time to negotiate franchise and pricing terms with the UK Purchaser.<sup>16</sup> The goal was to finalize a franchise arrangement concurrently with an asset purchase agreement with the Company.<sup>17</sup>

15. Throughout the Sale Process, the Monitor and TBS Canada engaged with the UK Purchaser, its franchise team and Interested Parties on the terms of a potential franchise arrangement, including providing Interested Parties with a template master franchise agreement and business planning model that each current franchisee of the UK Parent maintains for its local market.<sup>18</sup>

16. On or about the Bid Deadline of October 8, 2024, four Interested Parties submitted non-binding letters of intent.<sup>19</sup> Two of the bids were “**Qualified Bids**” within the meaning of the Sale Process.<sup>20</sup> In the weeks that followed, TBS Canada and the Monitor and the UK Purchaser engaged with the Qualified Bidders with the goal of settling the terms of an asset purchase transaction and a franchise agreement, respectively.<sup>21</sup>

17. On November 18, 2024, the UK Purchaser advised the Company and the Monitor that had identified one of the Qualified Bidders, an affiliate of the Purchaser (“**Purchaser Affiliate**”), as its preferred franchise partner.<sup>22</sup>

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<sup>16</sup> Searle Affidavit at para. 28, DOMR, Tab 2, p. A26.

<sup>17</sup> Searle Affidavit at para. 41, DOMR, Tab 2, p. A30.

<sup>18</sup> Searle Affidavit at para. 30, DOMR, Tab 2, p. A27.

<sup>19</sup> Searle Affidavit at para. 29, DOMR, Tab 2, p. A26.

<sup>20</sup> Searle Affidavit at para. 29, DOMR, Tab 2, p. A26.

<sup>21</sup> Searle Affidavit at para. 30, DOMR, Tab 2, p. A27.

<sup>22</sup> Searle Affidavit at para. 37, DOMR, Tab 2, p. A29.



18. On November 20, 2024, TBS Canada and the Purchaser Affiliate signed a non-binding term sheet for the Transaction.<sup>23</sup> The next day, the Purchaser Affiliate paid a significant deposit to the Monitor, in escrow, and the parties settled the terms of a purchase agreement while the Purchaser finalized franchise terms with the UK Purchaser.<sup>24</sup>

19. The Purchaser has now entered into the APA with TBS Canada to acquire substantially all of the business and assets of the Company as a going concern (the “**Transaction**”), the details of which are more particularly described below.<sup>25</sup>

## **B. The APA and the Transaction**

20. Pursuant to the APA, the Purchaser will acquire substantially all of TBS Canada’s assets on an “as is, where is” basis, free and clear of all encumbrances.<sup>26</sup> The Transaction is scheduled to close on December 16, 2024 (the “**Closing Date**”).<sup>27</sup>

21. As part of the Transaction, the Purchaser will offer employment to at least 400 of the Company’s employees and 100 of its seasonal employees and continue to operate a significant number of TBS Canada’s retail store locations.<sup>28</sup> A summary of the Transaction and the key terms of the APA is attached to this Factum as Appendix “A”.

22. The APA includes customary closing conditions, including the Purchaser obtaining

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<sup>23</sup> Searle Affidavit at para. 39, DOMR, Tab 2, p. A29.

<sup>24</sup> Searle Affidavit at para. 39, DOMR, Tab 2, p. A29.

<sup>25</sup> Searle Affidavit at para. 12, DOMR, Tab 2, p. A21.

<sup>26</sup> Searle Affidavit at para. 57, DOMR, Tab 2, p. A34; Redacted APA at s. 6.2(b), Exhibit “D” to the Searle Affidavit, DOMR, Tab 2d, p. A91.

<sup>27</sup> Searle Affidavit at para. 53, DOMR, Tab 2, p. A33; Redacted APA at s. 1.1 (“Closing Date”), Exhibit “D” to the Searle Affidavit, DOMR, Tab 2D, p. A73.

<sup>28</sup> Searle Affidavit at para. 15, DOMR, Tab 2, p. A22.

the Approval and Vesting Order and the Assignment Order.<sup>29</sup>

23. The Transaction is also conditional on the Purchaser entering into a master franchise agreement with the UK Purchaser.<sup>30</sup> However, the UK Purchaser is currently unable to provide a franchise disclosure document (“**FDD**”) to the Purchaser, as may be required under certain provincial franchise laws.<sup>31</sup>

24. Failure to deliver an FDD, or providing a deficient one, may allow a franchisee to rescind the agreement and claim damages.<sup>32</sup> Under the circumstances, the Purchaser may also make claims against the Monitor, TBS Canada, and the UK Purchaser under Canadian franchise laws.<sup>33</sup> TBS Canada cannot delay the Transaction’s closing to allow time for delivery of the FDD without significantly affecting creditor recoveries.<sup>34</sup>

25. As an additional condition to closing of the Transaction, TBS Canada must obtain an order (the “**Declaration Order**”) to protect parties from rescission or damage claims due to non-compliance with franchise disclosure obligations, which is being sought separately prior to this Motion being heard.

### **C. The Material Agreements and the Parties’ Efforts to Assign**

26. The Purchaser has identified certain leases and contracts that are integral to the “The Body Shop” business as a going concern (collectively, the “**Material**

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<sup>29</sup> Redacted APA at s. 6.4(a), Exhibit “D” to the Searle Affidavit, DOMR, Tab 2D, p. A92.

<sup>30</sup> Searle Affidavit at para. 15, DOMR, Tab 2, p. A22; Redacted APA at s. 6.4(e), Exhibit “D” to the Searle Affidavit, DOMR, Tab 2D, p. A92.

<sup>31</sup> Searle Affidavit at para. 43, DOMR, Tab 2, p. A30-31; Affidavit of Michael Serruya sworn December 6, 2024 (the “**Serruya Affidavit**”) at para. 19, DOMR, Tab 3, p. A196.

<sup>32</sup> Searle Affidavit at para. 45, DOMR, Tab 2, p. A31.

<sup>33</sup> Searle Affidavit at para. 46, DOMR, Tab 2, p. A31.

<sup>34</sup> Searle Affidavit at para. 49, DOMR, Tab 2, p. A32.

**Agreements**").<sup>35</sup> Several of the Material Agreements require consent to assignment from their respective counterparties ("**Third Party Consents**").<sup>36</sup>

27. Under the APA, TBS Canada and the Purchaser must make commercially reasonable efforts to obtain all necessary Third Party Consents.<sup>37</sup> If any consents cannot be obtained, TBS Canada must obtain the Assignment Order to assign the Material Agreements to the Purchaser as a condition of closing the Transaction.<sup>38</sup>

28. Due to the short 10-day period between the execution of the APA and the Closing Date, the Company is uncertain about its ability to obtain all required Third Party Consents in time and is seeking the Assignment Order to facilitate the closing of the Transaction.<sup>39</sup>

#### **D. The Need for the Ancillary Order**

##### **(i) Enhanced Powers for the Monitor are Required**

29. A number of actions need to be taken post-closing by TBS Canada, including liquidating certain of its stores for the benefit of the Purchaser.<sup>40</sup> The Company's director and officers will resign on the Closing Date, leaving TBS Canada without any decision makers in respect of the Company.<sup>41</sup>

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<sup>35</sup> Searle Affidavit at para. 103, DOMR, Tab 2, p. A45. These agreements are listed on Schedule "A" to the draft Assignment Order.

<sup>36</sup> Searle Affidavit at para. 104, DOMR, Tab 2, p. A46.

<sup>37</sup> Searle Affidavit at para. 105, DOMR, Tab 2, p. A46; Redacted APA at s. 2.5, Exhibit "D" to the Searle Affidavit, DOMR, Tab 2D, p. A86.

<sup>38</sup> Searle Affidavit at para. 103, DOMR, Tab 2, p. A45; Redacted APA at s. 2.5, Exhibit "D" to the Searle Affidavit, DOMR, Tab 2D, p. A86.

<sup>39</sup> Searle Affidavit at para. 103, DOMR, Tab 2, p. A45.

<sup>40</sup> Searle Affidavit at para. 68, DOMR, Tab 2, p. A38; Redacted APA at s. 8.3(c)(i), Exhibit "D" to the Searle Affidavit, DOMR, Tab 2D, p. A97.

<sup>41</sup> Searle Affidavit at para. 112, DOMR, Tab 2, p. A47.

30. The Ancillary Order, among other things, expands the Monitor's powers to enable the Monitor to, among other things, perform TBS Canada's post-closing obligations, wind down the Company, run a claims process and terminate this CCAA proceeding. These powers will become effective on the closing of the Transaction.<sup>42</sup>

**(ii) Relief is Required for Terminated Employees**

31. There are two categories of employee terminations: (a) 220 former employees of TBS Canada whose employment was terminated following the filing of the NOI on March 1, 2024;<sup>43</sup> and (b) approximately 200 employees of the Company that will not be given offers of employment by the Purchaser<sup>44</sup> (such employees together with the 220 employees referred to above, the **"Former Employees"**).

32. TBS Canada's remaining employees (estimated to be approximately 500, inclusive of seasonal workers) will be given offers of employment by the Purchaser but will be terminated by the Company on the Closing Date.<sup>45</sup>

33. There are severance and termination amounts owing to some of the Former Employees. TBS Canada is seeking a declaration under the WEPP Regulations to allow eligible Former Employees to collect certain benefits under the WEPPA.

**PART III – ISSUES & THE LAW**

34. The issues to be determined on this motion are whether this Court should:

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<sup>42</sup> Ancillary Order, Approval and Vesting Order Motion Record of the Applicant ("**AVOMR**"), Tab 6, pp. A490-A501.

<sup>43</sup> Searle Affidavit at para. 118, DOMR, Tab 2, p. A50.

<sup>44</sup> Searle Affidavit at para. 119, DOMR, Tab 2, p. A50.

<sup>45</sup> Searle Affidavit at para. 119(a), DOMR, Tab 2, p. A50.

- (a) grant the Approval and Vesting Order: (i) approving the APA and the Transaction and vesting all of the Purchased Assets in the Purchaser; and (ii) sealing the Confidential Information;
- (b) grant the Assignment Order assigning the Material Agreements to the Purchaser pursuant to section 11.3 of the CCAA; and
- (c) grant the Ancillary Order: (i) expanding the powers of the Monitor; (ii) making certain declarations to allow TBS Canada's former employees to access WEPPA; and (iii) extending the stay of proceedings to March 31, 2025.

**A. The Approval and Vesting Order should be granted**

**(i) This Court Has Jurisdiction to Approve the Transaction and Vest the Purchased Assets in the Purchaser**

35. Section 36 of the CCAA authorizes a debtor company to sell assets outside of the ordinary course of business if authorized by the Court.<sup>46</sup> This aligns with the CCAA's goal of preserving businesses as going concerns.<sup>47</sup>

36. Section 36(3) of the CCAA sets out the factors for the Court to consider when determining whether to authorize a sale:

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

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<sup>46</sup> *Nortel Networks Corp. et al. (Re)*, [2009] OJ No 3169 (Ont. S.C.J. [Commercial List]) at [paras. 35-40, 48](#); *Brainhunter Inc.*, 2009 CanLII 67659 (Ont. S.C.J.) at [para. 12](#); *Target Canada Co. (Re)*, 2015 ONSC 846 [Commercial List] at para. 3, Abbreviated Book of Authorities ("ABOA"), Tab 7.

<sup>47</sup> *Nortel Networks Corp. et al. (Re)*, [2009] OJ No 3169 (Ont. S.C.J. [Commercial List]) at [para. 32](#); *Clothing for Modern Times Ltd. (Re)*, 2011 ONSC 7522 [Commercial List] at [para. 12](#); *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at [para. 15](#).

- (b) whether the monitor approved the process leading to the proposed sale or disposition;
- (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

37. The factors listed are not exhaustive or a mandatory checklist for every CCAA sale.<sup>48</sup>

38. In *Canwest*, the Court noted that the section 36(3) factors overlap with the common law factors developed in *Soundair* prior to the codification of section 36, which remain relevant guidance for this Court in deciding whether to approve the APA and the Transaction.<sup>49</sup> The *Soundair* factors include: (a) whether the debtor company has made sufficient effort to obtain the best price and has not acted improvidently; (b) whether the debtor company has considered the interests of all parties; (c) the efficacy and integrity of the offer process; and (d) whether there has been unfairness in the process.<sup>50</sup>

39. Finally, where a sale process undertaken by the debtor was fair, reasonable, transparent and efficient, the business judgment rule must guide this Court's decision.<sup>51</sup>

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<sup>48</sup> *Target Canada Co. (Re)*, 2015 ONSC 2066 [Commercial List] at para. 15, ABOA, Tab 6.

<sup>49</sup> *Canwest Global Communications Corp. (Re)*, 2010 ONSC 2870 (Ont. S.C.J. [Commercial List]) at [para. 13](#).

<sup>50</sup> *Royal Bank of Canada v. Soundair Corp.*, 1991 CarswellOnt 205 (Ont. C.A.) at para. 16, ABOA, Tab 5.

<sup>51</sup> *Stelco Inc. (Re)*, 2005 CarswellOnt 1188 (Ont. C.A.) at [paras. 65-68](#); *Bloom Lake, g.p.l.*, 2015 QCCS 1920 at [para. 28](#).

**(ii) The APA and the Transaction Satisfy the Requirements of Section 36(3) of the CCAA and the *Soundair* Criteria**

40. The APA and the Transaction, and the Sale Process that led to them, satisfy the requirements of section 36(3) of the CCAA and the *Soundair* criteria, each of which are reviewed in turn.

**(a) The Sale Process was Reasonable and Effective**

41. The APA and the Transaction is the result of an extensive exploration of the market carried out by the Company with the assistance of its professional advisors and the Monitor.

42. When reviewing a sale process, the Court will consider: (a) fairness, transparency and integrity of the process; (b) the commercial efficacy of the process; and (c) whether the process optimizes the chances of securing the best price for the assets.<sup>52</sup>

43. In this case, the Sale Process was undertaken in a fair and transparent manner, with the assistance of the Monitor and in consultation with the UK Purchaser at relevant times.<sup>53</sup> The Sale Process was designed to encourage transactions that would allow TBS Canada to continue as a going concern, preserve as many jobs as possible and limit business disruption.<sup>54</sup> The Sale Process was robust, spanning from June to October 2024, and engaged over 55 potential bidders.<sup>55</sup> This extensive effort generated interest

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<sup>52</sup> *CCM Master Qualified Fund Ltd. v. blutip Power Technologies Ltd.*, 2012 ONSC 1750 [Commercial List] at [para. 6](#); *Fire & Flower Holdings Corp., et al.*, 2023 ONSC 4048 [Commercial List] at [para. 26](#).

<sup>53</sup> Searle Affidavit at para. 19, DOMR, Tab 2, p. A23.

<sup>54</sup> Searle Affidavit at para. 16, DOMR, Tab 2, p. A22.

<sup>55</sup> Searle Affidavit at paras. 20, 22 & 25, DOMR, Tab 2, pp. A24-A25.

from multiple parties and resulted in the Transaction, the only viable going concern outcome for the Company.<sup>56</sup>

**(b) The Monitor Supports the Sale Process and the Transaction**

44. The recommendation of the Monitor carries significant weight with the Court in any approval process.<sup>57</sup> Here, the Monitor was actively engaged and extensively consulted during TBS Canada's negotiations with the Purchaser, the Interested Parties, and the UK Purchaser. The Monitor endorses the Sale Process, describing it as extensive process, which canvassed a broad group of potential purchasers.<sup>58</sup> The Monitor believes that the Transaction is fair and reasonable in the circumstances.<sup>59</sup>

**(c) The Monitor Believes the Transaction is Superior to a Bankruptcy**

45. The Monitor has expressed its view that the Transaction is superior to a bankruptcy.<sup>60</sup> The proposed Transaction is the sole viable option that guarantees a continuation of TBS Canada's operations and offers an economic recovery for the Company's stakeholders that is comparable to or better than what would be achieved through liquidation.<sup>61</sup> The Transaction also provides incremental going concern benefit to the majority of TBS Canada's stakeholders, including to a substantial number of its employees, landlords and counterparties to the Material Agreements.<sup>62</sup>

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<sup>56</sup> Searle Affidavit at para. 29, DOMR, Tab 2, p. A26.

<sup>57</sup> *Bloom Lake, g.p.l., (Re)*, 2015 QCCS 1920 at [para. 28](#).

<sup>58</sup> Searle Affidavit at para. 86, DOMR, Tab 2, p. A42.

<sup>59</sup> Second Report of the Monitor Alvarez & Marsal Canada Inc. dated December 9, 2024 (the "**Second Report**") at s. 5.2(vi), p. E22.

<sup>60</sup> Second Report at s. 5.14, p. E26.

<sup>61</sup> Second Report at s. 5.14, p. E26.

<sup>62</sup> *Nortel Networks Corp. et al. (Re)*, [2009] OJ No 3169 (Ont. S.C.J [Commercial List]) at [para. 49\(d\)](#).



**(d) TBS Canada Has Considered the Interests of All Parties**

46. TBS Canada considered the interests of *all* stakeholders in its efforts to pursue a going concern transaction, and engaged in appropriate consultation with certain stakeholders, including certain of the Company's former employees.<sup>63</sup> The Company's only secured creditor, Enterprise Fleet Management Canada, Inc. will remain largely unaffected, as the majority of its leased vehicles will continue to be leased by the Purchaser.

**(e) The Transaction Will Have a Positive Effect on Creditors**

47. The Transaction will offer various benefits to TBS Canada and its stakeholders. Among other things, the Transaction permits ongoing business operations, continuation of a significant number of Purchased Stores, future employment for over 400 of TBS Canada's employees, plus 100 additional seasonal employees, and maintaining relationships with landlords and customers of the Company.<sup>64</sup> The Transaction allows TBS Canada to avoid the many unfortunate consequences of liquidation, including loss of employment for over 600 employees during the holiday season.

48. Moreover, the Transaction positions the "The Body Shop" brand to thrive in Canada, as Serruya Private Equity Inc., the owner of the Purchaser, has a proven track record of success through founding or acquiring a number of companies in the past,

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<sup>63</sup> Searle Affidavit at paras. 16 & 77, DOMR, Tab 2, pp. A22 & A40.

<sup>64</sup> *Nortel Networks Corp. et al. (Re)*, [2009] OJ No 3169 (Ont. S.C.J. [Commercial List]) at [para. 49](#); *Brainhunter Inc.*, 2009 CanLII 67659 (Ont. S.C.J.) at [paras. 13-17](#); Searle Affidavit at para. 89, DOMR, Tab 2, p. A42; Redacted APA at s. 2.6(b)(ii), Exhibit D to the Searle Affidavit, DOMR, Tab 2D, p. A86; Second Report at s. 5.14, p. E26.

including Yogen Früz, Pinkberry, Swensen's Ice Cream, St. Louis Bar and Grill and Second Cup Coffee Co. (now sold), among others.<sup>65</sup>

49. The Purchaser has shown its commitment to closing by: (a) providing a sizeable deposit; (b) ensuring that the Transaction is not conditional on financing or governmental/regulatory approvals; and (c) supporting the Declaration Order.<sup>66</sup>

**(f) The Consideration to be Received is Reasonable and Fair, and TBS Canada Has Made Sufficient Effort to Obtain the Best Price and Has Not Acted Improvidently**

50. The Monitor agrees with TBS Canada that the consideration is fair and reasonable, in the circumstances and there has been no suggestion that either party to the Transaction has acted improvidently.<sup>67</sup>

51. The Purchase Price is the result of a rigorous marketing and sale process in which TBS Canada thoroughly tested the market to obtain the best possible outcome for TBS Canada's stakeholders.<sup>68</sup>

**(iii) This Court Should Seal the Confidential Information**

52. As part of the Approval and Vesting Order, TBS Canada is seeking an order sealing an unredacted copy of the APA, and the confidential appendices to the Second Report, containing a summary of the bids received in the Sale Process and the Monitor's liquidation analysis (collectively the "**Confidential Information**"). Section 137(2) of the

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<sup>65</sup> Searle Affidavit at para. 90, DOMR, Tab 2, p. A43; Serruya Affidavit at para. 17, DOMR, Tab 3, p. 195.

<sup>66</sup> Searle Affidavit at para. 39, DOMR, Tab 2, p. A29.

<sup>67</sup> Second Report at s. 5.2(vi), p. E22.

<sup>68</sup> Searle Affidavit at para. 23, DOMR, Tab 2, p. A25.

*Courts of Justice Act* provides this Court with discretion to order that any document filed in a civil proceeding, including in the insolvency context, be treated as confidential, sealed, and not part of the public record.<sup>69</sup>

53. When considering whether to grant a sealing order, courts apply the *Sierra Club* test, as re-framed by the Supreme Court of Canada in *Sherman Estate v. Donovan*.<sup>70</sup> The Confidential Information easily meets that test since: (a) the disclosure of this information poses a serious risk to an important public interest; (b) the order sought is necessary to prevent this risk (and reasonable alternative measures will not prevent it); and (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.<sup>71</sup>

54. Although the SCC was considering issues of personal privacy in *Sherman Estate*, it noted in citing *Sierra Club* that the term “important interest” can capture a broad array of public objectives including commercial interests.<sup>72</sup>

55. The Confidential Information contains sensitive commercial information relating to the Transaction, including the Purchase Price. Courts have recognized that disclosure of this type of information in the context of a sale process could undermine the integrity of the sale process and undermine an important public interest in CCAA proceedings in maximizing value.<sup>73</sup> If the Transaction does not close, disclosure of the Confidential

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<sup>69</sup> *Courts of Justice Act*, R.S.O. 1990, c. C. 43 at [s. 137\(2\)](#).

<sup>70</sup> *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 at [paras. 53-57](#); *Sherman Estate*, 2021 SCC 25 at [para. 38](#).

<sup>71</sup> *Sherman Estate*, 2021 SCC 25 at [para. 38](#).

<sup>72</sup> *Sherman Estate*, 2021 SCC 25 at [para. 41](#).

<sup>73</sup> *Rose-Isli Corp. v. Frame-Tech Structures Ltd.*, 2023 ONSC 832 [Commercial List] at [paras. 137-142](#); *Vector Financial Services v. 33 Hawarden Crescent*, 2024 ONSC 1635 [Commercial List] at [paras. 108-110](#); *B&M Handelman Investments Limited et al v. Mass Properties Inc. and Mass Banquet Halls Inc.*, 2009 CanLII 37930 (ONSC [Commercial List]) at [para. 26](#).

Information could jeopardize dealings with any future prospective purchasers of TBS Canada's assets.

56. There are no reasonable alternatives to redacting the Confidential Information that would protect this important public interest. The sealing request has been tailored so that it only applies until the earlier of the closing of the Transaction or further order of the Court.<sup>74</sup> Thereafter, the Monitor will post an unredacted version of the APA and the confidential appendices to its website.<sup>75</sup>

57. The benefits of a sealing order far outweigh any deleterious effects of the limited, targeted redactions proposed by TBS Canada. Importantly, TBS Canada has, or will, disclosed all of the terms of the APA that they believe are relevant to their stakeholders, including information concerning the Purchased Stores and the treatment of employees. Disclosure of the Confidential Information would provide no additional information of value to the Company's stakeholders.

58. Finally, the support of the Monitor in a request for a sealing order is significant.<sup>76</sup> Here, the Monitor supports the sealing of the Confidential Information, and this Court should give weight to the Monitor's professional assessment.<sup>77</sup>

## **B. This Court Should Assign the Material Agreements to the Purchaser**

59. Section 11.3 of the CCAA provides this Court with the authority to make an order assigning a debtor company's rights and obligations under an agreement.<sup>78</sup> Section

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<sup>74</sup> Draft Approval and Vesting Order at para. 14, AVOMR, Tab 3, p. A405.

<sup>75</sup> Second Report at s. 5.16, p. E26.

<sup>76</sup> *Crystallex International Corporation (Re)*, 2020 ONSC 3434 at [para. 10](#).

<sup>77</sup> Second Report at s. 5.16, p. E26.

<sup>78</sup> *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 at [s. 11.3](#).

11.3(3) sets out a non-exhaustive list of factors for this Court to consider when determining whether it is appropriate to grant such an order:

- (a) whether the Monitor approved the proposed assignment;
- (b) whether the person to whom the rights and obligations are to be assigned would be able to perform the obligations; and
- (c) whether it would be appropriate to assign the rights and obligations to that person.<sup>79</sup>

60. In addition, section 11.3(4) of the CCAA mandates that the Court may not make an assignment order unless it is satisfied that all monetary defaults in relation to the agreement to be assigned, other than those arising by reason only of the debtor company's insolvency, the commencement of CCAA proceedings or the debtor company's failure to perform a non-monetary obligation, will be remedied.<sup>80</sup>

61. Having regard to the factors set out in section 11.3(3) of the CCAA, this Court should grant the Assignment Order.

62. Section 11.3(3)(a): the Monitor is supportive of the relief sought in the Assignment Order.<sup>81</sup> Importantly, all of the counterparties to the Material Agreements have been served with notice of this Motion.

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<sup>79</sup> *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 at [s. 11.3\(3\)](#).

<sup>80</sup> *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 at [s. 11.3\(4\)](#).

<sup>81</sup> Searle Affidavit at para. 127, DOMR, Tab 2, p. A51; Second Report at s. 5.16, p. E26.

63. Section 11.3(3)(b): The Purchaser has agreed to assume all liabilities under the Material Agreements from and after the Closing Date.<sup>82</sup> Courts have found comfort in the ability of an assignee to perform the contract where that assignee is a sophisticated entity like the Purchaser.<sup>83</sup> In this case, the Purchaser has confirmed that it has the financial wherewithal to pay its share of the Cure Costs and perform its obligations under the Material Agreements following the closing of the Transaction.<sup>84</sup>

64. Section 11.3(3)(c): Each of the Material Agreements have been identified by the Purchaser as necessary to the continued operation of the “The Body Shop” business and are required to avoid business disruption following Closing of the Transaction.<sup>85</sup> The Court has found it appropriate to grant assignment orders where they are necessary for the continuation of a business as a going concern.<sup>86</sup>

65. When deciding to grant an order under section 11.3 of the CCAA, the Court will consider whether doing so will maximize the realizable value of the debtor company’s business for the benefit of its stakeholders.<sup>87</sup> There is no other option available to TBS Canada to continue the business as a going concern or that would better provide recoveries for stakeholders.<sup>88</sup> The Transaction and APA require the Material Agreements

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<sup>82</sup> Redacted APA at s. 2.3, Exhibit D to the Searle Affidavit, DOMR, Tab 2D, p. A84.

<sup>83</sup> *UrtheCast Corp. et al. (Re)*, 2021 BCSC 1819 at [para. 50](#).

<sup>84</sup> Serruya Affidavit at para. 27, DOMR, Tab 3, p. A199.

<sup>85</sup> Second Report at s. 7.8, pp. E31-32.

<sup>86</sup> *TBS Acquireco Inc. (Re)*, 2013 ONSC 4663 [Commercial List] at [para. 25](#); *BBB Canada Inc.*, 2023 ONSC 2308 [Commercial List] at [paras. 19-20](#); *Urbancorp et al. (Re)*, 2020 ONSC 7920 [Commercial List] at [para. 54](#).

<sup>87</sup> See *Bed Bath & Beyond Canada Ltd. v. Sixth Street Specialty Lending Inc.*, 2023 ONSC 2906 [Commercial List] at [para. 12](#); *BBB Canada Inc. (Re)*, 2023 ONSC 2308 [Commercial List] at [para. 19](#).

<sup>88</sup> Searle Affidavit at para. 29, DOMR, Tab 2, p. A26.

to be assigned, either by consent or court order.<sup>89</sup> Due to timing constraints, TBS Canada has not obtained all of the Third Party Consents assigning the Material Agreements to the Purchaser.<sup>90</sup> Without the Assignment Order, the Transaction cannot close, prejudicing TBS Canada's stakeholders.<sup>91</sup>

66. Finally, the requirements of section 11.3(4) of the CCAA are satisfied in this case. The Assignment Order expressly provides that any assignment is subject to the payment of all amounts required to be paid under section 11.3 of the CCAA.<sup>92</sup> Under the APA, TBS Canada will assume the Cure Costs for the leases associated with Purchased Locations and the Purchaser will assume the Cure Costs for the balance of the Material Agreements.<sup>93</sup>

### **C. This Court Should Grant the Ancillary Order**

#### **(i) This Court Should Authorize the Expansion of the Monitor's Powers**

67. This Court has the power to grant a monitor expanded powers pursuant to sections 11 and 23(1)(k) of the CCAA. Section 11 provides this Court with broad discretion to "make any order that is appropriate in the circumstances."<sup>94</sup> Section 23(1) sets out a monitor's duties and functions, and subsection 23(1)(k) provides the Court with the

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<sup>89</sup> Searle Affidavit at para. 105, DOMR, Tab 2, p. A46; Redacted APA at s. 2.5, Exhibit "D" to the Searle Affidavit, DOMR, Tab 2D, p. A86.

<sup>90</sup> Searle Affidavit at para. 105, DOMR, Tab 2, p. A46.

<sup>91</sup> Searle Affidavit at para. 106, DOMR, Tab 2, p. A46.

<sup>92</sup> Draft Assignment Order at para. 3(a), AVOMR, Tab 5, p. A461.

<sup>93</sup> Redacted APA at s. 2.4(n), Exhibit D to the Searle Affidavit, DOMR, Tab 2D, p. A85.

<sup>94</sup> *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 at [s. 11](#).

discretion to require a monitor to carry out any other functions in relation to the debtor company that the Court may direct.<sup>95</sup>

68. It is well established that this Court may enhance a monitor's powers to act as a "super monitor" under the CCAA when necessary to advance the interests of a debtor company, implement transaction steps, or wind down CCAA proceedings.<sup>96</sup> Courts have determined that expanding these powers is necessary where, as is the case here, the debtor lacks decision-makers due to the termination or resignation of its board or management.<sup>97</sup>

69. Consistent with the mandate of section 11 of the CCAA, the Ancillary Order expanding the Monitor's powers is necessary and appropriate in the circumstances.<sup>98</sup> As of the Closing Date, TBS Canada will be unable to deal with important post-closing and transition matters such as winding-down the remaining business of the Company, running a claims process and terminating this CCAA proceeding, due to the resignation of its director and officers.<sup>99</sup>

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<sup>95</sup> *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 at [s. 23\(1\)\(k\)](#).

<sup>96</sup> *Nortel Networks Corporation et al. (Re)*, 2015 ONSC 2987 [Commercial List] at [para. 42](#); *Just Energy Group Inc. et al. v. Morgan Stanley Capital Group Inc. et al.*, 2022 ONSC 6354 [Commercial List] at [paras. 68-69](#); *Harte Gold Corp. (Re)*, 2022 ONSC 653 [Commercial List] at [paras. 91-92](#); *Mountain Equipment Co-Operative (Re)*, 2020 BCSC 2037 at [para. 9](#).

<sup>97</sup> *Nortel Networks Corporation et al. (Re)*, 2015 ONSC 2987 [Commercial List] at [para. 42](#); *Mountain Equipment Co-Operative (Re)*, 2020 BCSC 2037 at [para. 9](#).

<sup>98</sup> *Harte Gold Corp. (Re)*, 2022 ONSC 653 [Commercial List] at [para. 91](#).

<sup>99</sup> Searle Affidavit at paras. 112-113, DOMR, Tab 2, pp. A47-A48; Second Report at s. 8.3(iii), pp. E36-E37.



70. Further, no stakeholder will be prejudiced by the expansion of the Monitor's powers. To the contrary, the granting of such powers is necessary to deal with all post-closing matters for the benefit of every relevant stakeholder.

71. The Monitor is supportive of the Ancillary Order and is of the view that it is best positioned to supervise and administer TBS Canada's estate and wind-down following closing.<sup>100</sup>

**(ii) This Court Should Grant a Declaration Under the WEPPA**

72. The WEPPA permits eligible former employees of a company subject to the CCAA to collect certain benefits, including termination and severance pay, if certain criteria are met.<sup>101</sup> As a preliminary matter, where a company is subject to CCAA proceedings, the Court must determine that the debtor company meets the criteria prescribed by section 3.2 of the WEPP Regulations.<sup>102</sup> In other words, the Court must determine that the debtor company is "the former employer all of whose employees in Canada have been terminated other than any retained to wind down its business operations."<sup>103</sup>

73. Accordingly, TBS Canada seeks a declaration that it meets the criteria prescribed by section 3.2 of the WEPP Regulations such that eligible employees may receive payments under the WEPPA following the Closing Date.

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<sup>100</sup> Second Report at s. 8.3, pp. E36-E37.

<sup>101</sup> *Wage Earner Protection Program Act*, SC 2005, c 47, s 1 at [ss. 5\(1\), 7\(1\)](#); *Wage Earner Protection Program Regulations*, SOR/2008-222 at [s. 3](#).

<sup>102</sup> *Wage Earner Protection Program Act*, SC 2005, c 47, s 1 at [ss. 5\(1\)\(iv\), 5\(5\)](#); *Wage Earner Protection Program Regulations*, SOR/2008-222 at [s. 3.2](#).

<sup>103</sup> *Wage Earner Protection Program Act*, SC 2005, c 47, s 1 at [s. 5\(5\)](#); *Wage Earner Protection Program Regulations*, SOR/2008-222 at [s. 3.2](#).

74. It is uncontroversial that TBS Canada is subject to this CCAA proceeding.<sup>104</sup> As a result, the only determination the Court must make is whether TBS Canada is a “former employer all of whose employees in Canada have been terminated.”<sup>105</sup>

75. As described above, approximately 600 employees of TBS Canada will be provided notices of termination effective on, or prior to, the Closing Date (although approximately 500 employees, including seasonal employees, will be given offers of employment by the Purchaser). As a result, TBS Canada will have terminated or given notice of termination of employment of all of its employees by December 16, 2024.<sup>106</sup>

76. Courts have consistently found debtor companies to be compliant with section 3.2 of the WEPP Regulations in analogous circumstances, including in *Bed Bath and Beyond*,<sup>107</sup> *Bad Boy Furniture*,<sup>108</sup> *DCL Corporation*<sup>109</sup> and *Mastermind*.<sup>110</sup>

77. This Court should similarly declare that TBS Canada meets the requirements in section 3.2 of the WEPP Regulations and is a “former employer” under the WEPPA.<sup>111</sup> This will allow eligible Former Employees, some of whom have been without termination

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<sup>104</sup> [Initial Order](#) at para. 3.

<sup>105</sup> *Wage Earner Protection Program Regulations*, SOR/2008-222 at [s. 3.2](#).

<sup>106</sup> Searle Affidavit at para. 119, DOMR, Tab 2, p. A50.

<sup>107</sup> *BBB Canada Ltd. (Re)*, Amended and Restated Initial Order granted February 21, 2023 (Court File No CV-23-00694493-00CL) (Ont. S.C.J. [Commercial List]) at para. 23, ABOA, Tab 3.

<sup>108</sup> *Bad Boy Furniture Warehouse Limited v. KSV Restructuring Inc.*, Endorsement of Justice Wilton-Siegel dated November 17, 2023 (Court File No. BK-23-03008133-0031) (Ont. S.C.J. [Commercial List]) at para. 5, ABOA, Tab 1; *Bad Boy Furniture Warehouse Limited v. KSV Restructuring Inc.*, Second Report to Court of KSV Restructuring Inc. as Proposal Trustee of Bad Boy Furniture Warehouse Limited dated November 15, 2023 (excluding Appendices) at paras. 5.0(1)-(2), (5), ABOA, Tab 2.

<sup>109</sup> *DCL Corporation (Re)*, 2023 ONSC 4475 [Commercial List] at [paras. 13-14](#).

<sup>110</sup> *Mastermind GP Inc. (Re)*, Ancillary Order granted January 12, 2024 (Court File No CV-23-00710259-00CL) (Ont. S.C.J. [Commercial List]) at para. 17, ABOA, Tab 4.

<sup>111</sup> *Wage Earner Protection Program Act*, SC 2005, c 47, s 1 at [s. 5\(5\)](#); *Wage Earner Protection Program Regulations*, SOR/2008-222 at

and severance pay since March 2024<sup>112</sup>, to access the benefits available under the WEPPA.

78. The Monitor supports this request and has indicated its willingness to assist eligible Former Employees in applying under the WEPPA.<sup>113</sup>

**(iii) This Court Should Extend the Stay Period to March 25, 2024**

79. The Stay Period currently expires on December 13, 2024.<sup>114</sup> Section 11.02(2) of the CCAA provides this Court with the express authority to extend a stay for any period necessary, provided the Court is satisfied that: (a) circumstances exist that make the order appropriate; and (b) the applicant has acted, and is acting, in good faith and with due diligence.<sup>115</sup> Each of these criteria is met in this case.

80. With respect to the first prong of the test under section 11.02, the requested extension of the Stay Period is necessary and appropriate in the circumstances for the following reasons: (a) the extension of the Stay Period will provide TBS Canada and the Monitor with the time needed to facilitate closing of the Transaction;<sup>116</sup> (b) the extension of the Stay Period will also allow the Monitor to exercise its expanded powers under the Ancillary Order, including performing TBS Canada's transition services under the APA, establishing and running a claims process, winding down TBS Canada and terminating

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<sup>112</sup> Searle Affidavit at para. 118, DOMR, Tab 2, p. A50.

<sup>113</sup> Second Report at s. 8.7, p. E38.

<sup>114</sup> Searle Affidavit at para. 11, DOMR, Tab 2, p. A21.

<sup>115</sup> *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 at s. [11.02\(2\)](#).

<sup>116</sup> Second Report at s. 8.9(i), p. E39.

this CCAA proceeding;<sup>117</sup> and (c) the Monitor reports that there will be sufficient liquidity through the extended Stay Period.<sup>118</sup>

81. With respect to the second prong of the test, the Monitor agrees that TBS Canada has acted, and continues to act, in good faith and with due diligence to advance this CCAA proceeding and consummate the Transaction for the benefit of its stakeholders.<sup>119</sup> TBS Canada has made best efforts to engage with its stakeholders and keep them apprised of updates in the Sale Process.<sup>120</sup> TBS Canada intends to continue engaging in discussions with all stakeholders as these proceedings progress.

#### **PART IV – ORDERS SOUGHT**

82. For the above reasons, TBS Canada respectfully requests that this Court grant the Approval and Vesting Order, the Assignment Order and the Ancillary Order in the forms requested.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 11<sup>th</sup> day of December, 2024.

  
For: **DAVIES WARD PHILLIPS & VINEBERG LLP**  
Natalie Renner, Rui Gao and Alexander Barnes

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<sup>117</sup> Second Report at s. 8.9(i), p. E39.

<sup>118</sup> Second Report at s. 8.9(ii), p. E39.

<sup>119</sup> Searle Affidavit at para. 127, DOMR, Tab 2, p. A52.

<sup>120</sup> Searle Affidavit at para. 127, DOMR, Tab 2, p. A52.

## APPENDIX A SUMMARY OF THE TRANSACTION

APA <sup>1</sup>	
<b>Parties</b>	<ul style="list-style-type: none"> <li>The Body Shop Canada Limited (as “<b>Seller</b>”).</li> <li>1001072685 Ontario Inc. (as “<b>Purchaser</b>”). The Purchaser is an affiliate of Serruya Private Equity.</li> </ul>
<b>Purchase Price</b>	<ul style="list-style-type: none"> <li>An analysis of the Purchase Price is included in Confidential Appendix “C” of the Monitor’s Second Report.</li> <li>The Purchase Price is confidential and has been redacted from the APA attached to the Seventh Searle Affidavit.</li> <li>The Purchase Price is comprised of (i) cash consideration for the purchase of inventory and other assets; and (ii) the assumption of the Assumed Liabilities.</li> </ul>
<b>Purchased Assets</b>	<ul style="list-style-type: none"> <li>A minimum number of store locations to be retained by the Purchaser (“<b>Purchased Locations</b>”) and the assumption of the real property leases for each such location. The minimum number of Purchased Locations is confidential and has been redacted from the APA attached to the Seventh Searle Affidavit.</li> <li>The property and assets including: <ul style="list-style-type: none"> <li>(i) inventory;</li> <li>(ii) equipment, fixtures furniture, furnishings, accessories and other fixed assets;</li> <li>(iii) rights under leases for motor vehicles and real property leases;</li> <li>(iv) petty cash, deposits and prepaid expenses;</li> <li>(v) Assumed Contracts;</li> <li>(vi) Express consents under privacy and anti-spam law; and</li> <li>(vii) all books and records apart from those required by law to be retained by Seller.</li> </ul> </li> </ul>
<b>Assumed Liabilities</b>	<ul style="list-style-type: none"> <li>The Purchaser will assume the following liabilities: <ul style="list-style-type: none"> <li>(i) all liabilities under the Assumed Contracts accrued from and after the Time of Closing;</li> <li>(ii) all Cure Costs, other than Cure Costs in respect of the Leases for the Purchased Locations;</li> <li>(iii) all Priority Payables relating to Transferred Employees, including accrued vacation amounts and all amounts related to Transferred Employees accruing after the Closing; and</li> <li>(iv) all liabilities with respect to the Purchased Assets from and after the Time of Closing.</li> </ul> </li> </ul>
<b>Excluded Assets</b>	<ul style="list-style-type: none"> <li>The Purchased Assets do not include the following: <ul style="list-style-type: none"> <li>(i) all cash and cash equivalents of the Seller (other than petty cash);</li> </ul> </li> </ul>

<sup>1</sup> Capitalized terms used in this table and not otherwise defined herein have the meanings given to such terms in the APA. This chart is provided as a summary only and parties should refer to the APA for further details regarding the Transaction.

<b>APA<sup>1</sup></b>	
	<ul style="list-style-type: none"><li>(ii) all securities of Seller, whether held by Seller or in the equity of Seller;</li><li>(iii) the rights of Seller as lessee of real property for the Excluded Locations and all Leases and leasehold improvements related thereto;</li><li>(iv) all Accounts Receivable accruing up to the Closing Date;</li><li>(v) any intercompany Accounts Receivable owing to Seller by any of its current or previous Affiliates at any time;</li><li>(vi) the rights of Seller under the APA;</li><li>(vii) the rights of Seller as against (1) the UK Parent or its current or former Affiliates, directors or officers, including any claim against the UK Parent in the UK Administration; and (2) Aurelius Investment Lux One SARL, Aurelius IV UK Acquico Seven Limited, Aurelius IV UK Acquico Eight Ltd., or any of their affiliates;</li><li>(viii) any bank accounts of Seller;</li><li>(ix) the Payment Terminals located at the Excluded Locations unless otherwise designated under the APA;</li><li>(x) books and records required to be retained at Law;</li><li>(xi) income tax installments and the right to any refund of income tax; and</li><li>(xii) the property and assets of Seller described in Schedule 2.2(o) of the APA.</li></ul>
<b>Employees</b>	<ul style="list-style-type: none"><li>• The Transaction will preserve continued employment for employees working at Purchased Locations and certain of the employees located at the Company's head office.</li><li>• In aggregate, the Monitor estimates that in excess of 400 employees plus approximately 100 seasonal workers will continue to be employed by the Purchaser.</li></ul>
<b>Closing Date</b>	<ul style="list-style-type: none"><li>• Anticipated to be December 16, 2024.</li></ul>
<b>Outside Date</b>	<ul style="list-style-type: none"><li>• Subject to section 9.1 of the APA, the agreement may be terminated by written notice from the Seller or the Purchaser if closing has not occurred on or before December 17, 2024 (or such later date as the Parties may agree).</li></ul>

## SCHEDULE A LIST OF AUTHORITIES

### Case Law

1. *B&M Handelman Investments Limited et al v. Mass Properties Inc. and Mass Banquet Halls Inc.*, 2009 CanLII 37930 (ONSC [Commercial List])
2. *Bad Boy Furniture Warehouse Limited v. KSV Restructuring Inc.*, Endorsement of Justice Wilton-Siegel dated November 17, 2023 (Court File No. BK-23-03008133-0031) (Ont. S.C.J. [Commercial List])
3. *Bad Boy Furniture Warehouse Limited v. KSV Restructuring Inc.*, Second Report to Court of KSV Restructuring Inc. as Proposal Trustee of Bad Boy Furniture Warehouse Limited dated November 15, 2023 (excluding Appendices)
4. *BBB Canada Inc.*, 2023 ONSC 2308 [Commercial List]
5. *BBB Canada Ltd. (Re)*, Amended and Restated Initial Order granted February 21, 2023 (Court File No CV-23-00694493-00CL) (Ont. S.C.J. [Commercial List])
6. *Bed Bath & Beyond Canada Ltd. v. Sixth Street Specialty Lending Inc.*, 2023 ONSC 2906 [Commercial List]
7. *Bloom Lake, g.p.l.*, 2015 QCCS 1920
8. *Brainhunter Inc.*, 2009 CanLII 67659 (Ont. S.C.J.)
9. *Canwest Global Communications Corp. (Re)*, 2010 ONSC 2870 (Ont. S.C.J. [Commercial List])
10. *CCM Master Qualified Fund Ltd. v. blutip Power Technologies Ltd.*, 2012 ONSC 1750 [Commercial List]
11. *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60
12. *Clothing for Modern Times Ltd. (Re)*, 2011 ONSC 7522 [Commercial List]
13. *Crystallex International Corporation (Re)*, 2020 ONSC 3434
14. *DCL Corporation (Re)*, 2023 ONSC 4475 [Commercial List]
15. *Fire & Flower Holdings Corp., et al.*, 2023 ONSC 4048 [Commercial List]
16. *Harte Gold Corp. (Re)*, 2022 ONSC 653 [Commercial List]
17. *Just Energy Group Inc. et al. v. Morgan Stanley Capital Group Inc. et al.*, 2022 ONSC 6354 [Commercial List]
18. *Mastermind GP Inc. (Re)*, Ancillary Order granted January 12, 2024 (Court File No CV-23-00710259-00CL) (Ont. S.C.J. [Commercial List])

19. *Mountain Equipment Co-Operative (Re)*, 2020 BCSC 2037
20. *Nortel Networks Corp. et al. (Re)*, [2009] OJ No 3169 (Ont. S.C.J. [Commercial List])
21. *Nortel Networks Corporation et al. (Re)*, 2015 ONSC 2987 [Commercial List]
22. *Rose-Isli Corp. v. Frame-Tech Structures Ltd.*, 2023 ONSC 832 [Commercial List]
23. *Royal Bank of Canada v. Soundair Corp.*, 1991 CarswellOnt 205 (Ont. C.A.)
24. *Sherman Estate v. Donovan*, 2021 SCC 25
25. *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41
26. *Stelco Inc. (Re)*, 2005 CarswellOnt 1188 (Ont. C.A.)
27. *Target Canada Co. (Re)*, 2015 ONSC 2066 [Commercial List]
28. *Target Canada Co. (Re)*, 2015 ONSC 846 [Commercial List]
29. *TBS Acquireco Inc. (Re)*, 2013 ONSC 4663 [Commercial List]
30. *Urbancorp et al. (Re)*, 2020 ONSC 7920 [Commercial List]
31. *UrtheCast Corp. et al. (Re)*, 2021 BCSC 1819
32. *Vector Financial Services v. 33 Hawarden Crescent*, 2024 ONSC 1635



**SCHEDULE B**  
**TEXT OF STATUTES, REGULATIONS & BY-LAWS**

**1. *Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36***

11. General power of court

Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

...

11.02(2) Stays, etc. — other than initial application

A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

...

11.3

11.3(1) Assignment of agreements

On application by a debtor company and on notice to every party to an agreement and the monitor, the court may make an order assigning the rights and obligations of the company under the agreement to any person who is specified by the court and agrees to the assignment.

11.3(2) Exceptions

Subsection (1) does not apply in respect of rights and obligations that are not assignable by reason of their nature or that arise under

- (a) an agreement entered into on or after the day on which proceedings commence under this Act;
- (b) an eligible financial contract; or
- (c) a collective agreement....

#### 11.3(3) Factors to be considered

In deciding whether to make the order, the court is to consider, among other things,

- (a) whether the monitor approved the proposed assignment;
- (b) whether the person to whom the rights and obligations are to be assigned would be able to perform the obligations; and
- (c) whether it would be appropriate to assign the rights and obligations to that person.

#### 11.3(4) Restriction

The court may not make the order unless it is satisfied that all monetary defaults in relation to the agreement — other than those arising by reason only of the company's insolvency, the commencement of proceedings under this Act or the company's failure to perform a non-monetary obligation — will be remedied on or before the day fixed by the court.

...

23.

#### 23(1) Duties and functions

The monitor shall

- (a) except as otherwise ordered by the court, when an order is made on the initial application in respect of a debtor company,
  - (i) publish, without delay after the order is made, once a week for two consecutive weeks, or as otherwise directed by the court, in one or more newspapers in Canada specified by the court, a notice containing the prescribed information, and
  - (ii) within five days after the day on which the order is made,

- (A) make the order publicly available in the prescribed manner,
- (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the company of more than \$1,000 advising them that the order is publicly available, and
- (C) prepare a list, showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner;
- (b) review the company's cash-flow statement as to its reasonableness and file a report with the court on the monitor's findings;
- (c) make, or cause to be made, any appraisal or investigation the monitor considers necessary to determine with reasonable accuracy the state of the company's business and financial affairs and the cause of its financial difficulties or insolvency and file a report with the court on the monitor's findings;
- (d) file a report with the court on the state of the company's business and financial affairs — containing the prescribed information, if any —
  - (i) without delay after ascertaining a material adverse change in the company's projected cash-flow or financial circumstances,
  - (ii) not later than 45 days, or any longer period that the court may specify, after the day on which each of the company's fiscal quarters ends, and
  - (iii) at any other time that the court may order;
- (iv) [Repealed 2007, c. 36, s. 72(2)]
  - (d.1) file a report with the court on the state of the company's business and financial affairs — containing the monitor's opinion as to the reasonableness of a decision, if any, to include in a compromise or arrangement a provision that sections 38 and 95 to 101 of the Bankruptcy and Insolvency Act do not apply in respect of the compromise or arrangement and containing the prescribed information, if any — at least seven days before the day on which the meeting of creditors referred to in section 4 or 5 is to be held;
- (e) advise the company's creditors of the filing of the report referred to in any of paragraphs (b) to (d.1);
- (f) file with the Superintendent of Bankruptcy, in the prescribed manner and at the prescribed time, a copy of the documents specified in the regulations;

(f.1) for the purpose of defraying the expenses of the Superintendent of Bankruptcy incurred in performing his or her functions under this Act, pay the prescribed levy at the prescribed time to the Superintendent for deposit with the Receiver General;

(g) attend court proceedings held under this Act that relate to the company, and meetings of the company's creditors, if the monitor considers that his or her attendance is necessary for the fulfilment of his or her duties or functions;

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

(i) advise the court on the reasonableness and fairness of any compromise or arrangement that is proposed between the company and its creditors;

(j) make the prescribed documents publicly available in the prescribed manner and at the prescribed time and provide the company's creditors with information as to how they may access those documents; and

(k) carry out any other functions in relation to the company that the court may direct.

**2. *Courts of Justice Act, R.S.O. 1990, c. C.43.***

137(2) Sealing documents

A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

**3. *Wage Earner Protection Program Act, S.C. 2005, c. 47.***

5.

5(1) Conditions of eligibility

An individual is eligible to receive a payment if

(a) the individual's employment ended for a reason prescribed by regulation;

(b) one of the following applies:

(i) the former employer is bankrupt,

(ii) the former employer is subject to a receivership,

(iii) the former employer is the subject of a foreign proceeding that is recognized by a court under subsection 270(1) of the Bankruptcy and Insolvency Act and

(A) the court determines under subsection (2) that the foreign proceeding meets the criteria prescribed by regulation, and

(B) a trustee is appointed, or

(iv) the former employer is the subject of proceedings under Division I of Part III of the Bankruptcy and Insolvency Act or under the Companies' Creditors Arrangement Act and a court determines under subsection (5) that the criteria prescribed by regulation are met; and

(c) the individual is owed eligible wages by the former employer.

(d) [Repealed 2009, c. 2, s. 343(2).]

...

#### 5(5) Prescribed criteria — other proceedings

On application by any person, a court may, in proceedings under Division I of Part III of the Bankruptcy and Insolvency Act or under the Companies' Creditors Arrangement Act, determine that the former employer meets the criteria prescribed by regulation.

...

#### 7(1) Amount of payment

The amount that may be paid under this Act to an individual is the amount of eligible wages owing to the individual up to a maximum of an amount equal to seven times the maximum weekly insurable earnings under the Employment Insurance Act.

### 4. ***Wage Earner Protection Program Regulations – SOR/2008-222***

#### 3.

An individual's employment has ended for the purposes of paragraph 5(a) of the Act if it has ended for any of the following reasons:

(a) the individual resigned or retired;

(b) the individual's employment has terminated; or

(c) the term of the individual's employment has expired

...

### 3.2

For the purposes of subsection 5(5) of the Act, a court may determine whether the former employer is the former employer all of whose employees in Canada have been terminated other than any retained to wind down its business.

**IN THE MATTER** OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED  
**IN THE MATTER** OF A PLAN OF COMPROMISE OR ARRANGEMENT OF THE BODY SHOP CANADA LIMITED, IN THE CITY OF  
TORONTO, IN THE PROVINCE OF ONTARIO (the "**Applicant**")

Court File No. CV-24-00723586-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO

**FACTUM OF THE BODY SHOP CANADA LIMITED  
(Motion for Approval and Vesting Order, Assignment  
Order and Ancillary Order)**

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