

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

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

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

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

Applicant

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

November 13, 2023

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

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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 Chief Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) on November 17, 2023 at 10:00 a.m., or as soon after that time as the motion can be heard.

**PROPOSED METHOD OF HEARING:**

☐ In writing under subrule 37.12.1 (1) because it is (*insert one of* on consent, unopposed *or* made without notice);

☐ In writing as an opposed motion under subrule 37.12.1 (4);

☐ In person;

☐ By telephone conference;

X By video conference.

at the following location:

<https://ca01web.zoom.us/j/65320507233?pwd=b3NoOWJ4ZXhjVFhjdHhhOU9GZGpTUT09#success>; Meeting ID: 653 2050 7233; Passcode: 576643

**THE MOTION IS FOR:**

1. An Order substantially in the form attached at **Tab 3** to the Motion Record:
  - (a) extending the Stay Period (as defined below) to and including May 22, 2024; and
  - (b) such other and further relief as counsel may request and this Honourable Court may allow.



- 2 -

**THE GROUNDS FOR THIS MOTION ARE:**

2. On February 10, 2023 (the “**Filing Date**”), the Applicant and Bed Bath & Beyond 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 (the “**CCAA**” and the within proceedings, these “**CCAA Proceedings**”) pursuant to an Initial Order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). On February 21, 2023 an Amended and Restated Initial Order (the “**ARIO**”) was granted by the Court which, among other things, extended the stay of proceedings granted in favour of BBB Canada until and including May 1, 2023, or such later date as the Court may order (the “**Stay Period**”).

3. The Stay Period has subsequently been extended on numerous occasions including, most recently, to November 22, 2023.

4. On July 6, 2023, BBB Canada sought, and the Court granted, a D&O Claims Procedure Order establishing a process for the universe of claims against BBB Canada’s Directors and Officers to be ascertained, determined and addressed (the “**D&O Claims Procedure Order**”). BBB Canada received one (1) Proof of Claim from His Majesty the King in right of the Province of British Columbia filed against the previous directors of BBB LP (the “**D&O Claim**”). After confirming that the D&O Claim was valid, BBB Canada paid the claim in full.

***CRA Audit***

5. In addition to the D&O Claim, in or around August 2023, BBB Canada became aware that the Canada Revenue Agency (“**CRA**”) had commenced an audit of BBB Canada’s GST/HST returns for the period from March 1, 2021 to February 28, 2023. BBB Inc. retained Deloitte to assist it in responding to the audit.

- 3 -

6. Over the past several months, Deloitte has been conducting a review of BBB Canada's records for the 2021 and 2022 taxation years and performing a reconciliation of all reported GST/HST with that accrued and paid by BBB Canada. On the basis of that review, on October 11, 2023, Deloitte delivered a submission to the CRA on behalf of BBB Canada in which Deloitte asserted that, in its view, no additional amounts were owing by BBB Canada with respect to the 2021 and 2022 taxation years.

7. The CRA did not accept Deloitte's position. On November 1, 2023, BBB Canada received a letter from the CRA advising, among other things, that BBB Canada owed \$2,084,044.28 on account of GST/HST (the "**CRA Assessment**"). The CRA advised that a separate Notice of Reassessment would be sent under separate cover.

8. BBB Canada and Deloitte are currently considering the CRA Assessment. Based on the advice of Deloitte, BBB Canada intends to appeal the reassessment by filing a Notice of Objection (in such case, the "**CRA Audit Appeal**") within 90 days of the Notice of Reassessment.

### ***Stay Extension***

9. The Stay Period expires on November 22, 2023. BBB Canada is accordingly seeking to extend the Stay Period to May 22, 2024 to maintain continued stability for BBB Canada while it works diligently, in good faith and in consultation with the Monitor, to address the CRA Audit, including potentially pursuing the CRA Audit Appeal. Such process must conclude before BBB Canada will be in a position to seek approval to make distributions and terminate these CCAA Proceedings.

- 4 -

10. Costs of the CCAA Proceedings on a go forward basis are expected to be minimal given that almost all matters to be attended to in connection with these CCAA Proceeding are now complete, except for the CRA Audit and the CRA Audit Appeal. All anticipated costs through the extended Stay Period will be funded by the retainer provided by BBB Canada to its counsel prior to the Filing Date, and by the limited cash remaining in BBB Canada's bank accounts for the professional fees of the Monitor and its counsel incurred in connection with these CCAA Proceedings.

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

***Other Grounds for Relief***

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

13. 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

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

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

15. The Affidavit of Michael Goldberg, sworn November 13, 2023; and

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

- 5 -

November 13, 2023

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

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

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

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

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

Applicant

**AFFIDAVIT OF MICHAEL GOLDBERG**

I, Michael Goldberg, of the City of Hollywood, in the State of Florida, MAKE OATH  
AND SAY:

1. On April 23, 2023, BBB Inc. and 73 affiliated debtors (the “**Chapter 11 Debtors**”) each filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of New Jersey (the “**US Court**”). On July 20 and 21, 2023, the Chapter 11 Debtors filed their Joint Plan of Reorganization (as subsequently amended, the “**Chapter 11 Plan**”). The Chapter 11 Plan was approved by the US Court on September 12, 2023, and became effective on September 29, 2023 (the “**Plan Implementation Date**”). On the Plan Implementation Date, I was appointed as the Plan Administrator (as defined in the Chapter 11 Plan) of the Chapter 11 Debtors pursuant to a Plan Administrator Agreement. In that capacity, I became the sole officer of the Chapter 11 Debtors and, among other things, all rights, powers, duties and privileges of the Chapter 11 Debtors’ officers were vested in me. Since my appointment as Plan Administrator, I have retained a number of former BBB Inc. employees to assist me in the implementation of the Chapter 11 Plan and the wind-down of the Chapter 11

Debtors' estates and to assist, where required, with the wind-down of BBB Canada Ltd. and Bed Bath & Beyond L.P. ("**BBB LP**" and together with BBB Canada Ltd., "**BBB Canada**") and the eventual termination of these CCAA Proceedings (as defined below).

2. Based on my role as Plan Administrator, I have personal knowledge of the matters deposed to in this Affidavit or have obtained such knowledge from BBB Canada's counsel and/or the Chapter Debtors' professionals. 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.

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**") extending the Stay Period (as defined below) to May 22, 2024.

#### **Background to these CCAA Proceedings**

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

5. 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 the Administration Charge (as defined in the Initial Order) as security for the respective fees and disbursements of counsel to BBB Canada, the Monitor and the Monitor's counsel relating to services rendered in respect of BBB Canada; and (vi) granted the



Directors' Charge (as defined in the Initial Order) in favour of the directors and officers of BBB Canada.

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

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

7. Further details regarding the background to these CCAA Proceedings, including the outcome of the Liquidation Sale, can be found in the Affidavit of Holly Etlin sworn February 9, 2023 in support of the Initial Order (the "**First Etlin Affidavit**"), the Affidavit of Holly Etlin sworn February 15, 2023 in support of the ARIO (the "**Second Etlin Affidavit**") and the Affidavit of Wade Haddad sworn June 16, 2023 (the "**Haddad Affidavit**") and in the various reports filed by the Monitor. Copies of the First Etlin Affidavit, Second Etlin Affidavit and Haddad Affidavit (each without exhibits) are attached as **Exhibits "A", "B" and "C"** to this Affidavit.

### **D&O Claims Procedure Order**

8. On July 6, 2023, BBB Canada sought, and the Court granted, a D&O Claims Procedure Order establishing a process for ascertaining, determining and addressing the universe of claims against BBB Canada's directors and officers (the "**D&O Claims Procedure Order**"). The D&O Claims Procedure Order established a claims bar date of August 7, 2023 (the "**Claims Bar Date**").

9. One (1) Proof of Claim was received by BBB Canada on or before the Claims Bar Date. Specifically, His Majesty the King in right of the Province of British Columbia filed a Proof of Claim (the "**BC Tax Claim**") against the previous directors of BBB LP in the amount of \$489,528.95 for alleged outstanding provincial sales tax owing by BBB LP.

10. After confirming that the BC Tax Claim was valid, BBB Canada paid the BC Tax Claim in full.

### **CRA Audit**

11. In addition to the BC Tax Claim, in or about August 2023, it came to the attention of BBB Canada that the Canada Revenue Agency ("**CRA**") had commenced an audit of BBB Canada's GST/HST returns for the period from March 1, 2021 to February 28, 2023 (the "**CRA Audit**"). BBB Inc. retained Deloitte to assist it in responding to the CRA Audit.

12. Over the past several months, Deloitte has been conducting a review of BBB Canada's records for the 2021 and 2022 taxation years and performing a reconciliation of all reported GST/HST with that accrued and paid by BBB Canada. On the basis of that review, on October 11, 2023, Deloitte delivered a submission to the CRA on behalf of BBB Canada in which Deloitte

asserted that, in its view, no additional amounts were owing by BBB Canada with respect to the 2021 and 2022 taxation years.

13. The CRA did not accept Deloitte's position. On November 1, 2023, BBB Canada received a letter from the CRA advising that (i) the CRA Audit was now complete; and (ii) having considered all available information, including the October 11 submission from Deloitte, the CRA had concluded that BBB Canada owed \$2,084,044.28 on account of GST/HST (the "**CRA Assessment**"). The CRA advised that a separate Notice of Reassessment would be sent under separate cover.

14. I understand that BBB Canada and Deloitte are currently considering the CRA Assessment. Based on the advice of Deloitte, BBB Canada intends to appeal the reassessment by filing a Notice of Objection (in such case, the "**CRA Audit Appeal**"). I am advised by Deloitte that the Notice of Objection for the CRA Audit Appeal must be filed within 90 days following receipt of the Notice of Assessment. It is my understanding that Deloitte will assist BBB Canada in connection with the CRA Audit Appeal.

#### **Distribution of BBB Canada Cash**

15. Since late March 2023, BBB Canada has been maintaining a minimum balance of \$6 million in its bank accounts. Pursuant to paragraph 14 of the ARIO, sweep rights under the Amended Credit Agreement (as defined in the First Etlin Affidavit) may continue to be exercised with respect to BBB Canada in repayment of obligations under the Amended Credit Agreement, provided that, among other things, effective as of March 27, 2023, BBB Canada was to continue to hold cash in the amount of no less than \$6 million (the "**Minimum Balance**") unless decreased by BBB Canada with the consent of the Monitor.

16. I have been advised by Mr. David Rosenblat of Osler, Hoskin & Harcourt LLP (“**Osler**”), counsel for BBB Canada, that in late September, BBB Inc.’s financial advisor, Alix Partners (the “**Financial Advisor**”), reached out to BBB Canada and the Monitor to advise that, as a result of the impending implementation of the Chapter 11 Plan, all of the remaining employees of BBB Inc. would be terminated or deemed terminated as of the Plan Implementation Date, including those employees who had been administering BBB Inc.’s cash management system (which included the Canadian bank accounts). I have been informed that the Financial Advisor indicated that the individuals who were in the process of being retained by me, in my capacity as Plan Administrator, to wind-down the estate (all of whom would reside in the United States) were not comfortable being named as signatories of bank accounts located in Canada. As a result, all of BBB Canada’s remaining cash in the Canadian accounts (the “**BBB Canada Cash**”) was to be transferred to the U.S. accounts.

17. I am further advised by Mr. Rosenblat and believe that the Monitor expressly advised the Financial Advisor that the BBB Canada Cash must be held in a segregated bank account in light of these CCAA Proceedings and the terms of the ARIO, including, among others, the requirement to maintain the Minimum Balance and the encumbrances created by the Charges (as defined in the ARIO). However, subsequent to my appointment I learned that this did not occur. Rather, I have been informed that substantially all of the BBB Canada Cash (totaling approximately \$6.1 million) was transferred to a US concentration account, where it was comingled with other funds, and then subsequently distributed to the lenders (the “**Lenders**”) in accordance with the Chapter 11 Plan. As a result, BBB Canada no longer holds cash in an amount equal to the Minimum Balance.

18. BBB Canada and the Monitor reached out to me, in my capacity as Plan Administrator, and the Lenders to address and to seek to remedy the situation. Meetings were held between BBB

Canada (through counsel), the Monitor and its counsel, the Lenders and me, in my capacity as Plan Administrator, to explore options to return the funds. During these discussions, I am advised by Mr. Rosenblat that the Lenders advised BBB Canada and the Monitor that they were not able to promptly return the BBB Canada Cash to BBB Canada.

19. Based on information available to me as Plan Administrator, I anticipate that the Chapter 11 Debtors will receive at least USD \$3 million in connection with the wind-down and realization of the Chapter 11 Debtors' estates. To ensure that BBB Canada has sufficient cash to satisfy its potential priority obligations, I have agreed, with the Lenders' consent, to segregate and hold in trust CAD \$3 million from the available cash that would otherwise be distributed to the Lenders (the "**Segregated Amount**"), for the benefit of BBB Canada in light of the distribution of the BBB Canada Cash.

20. To that end, BBB Canada and the Plan Administrator, with the support and involvement of the Monitor, are in the process of drafting an agreement (the "**Reimbursement Agreement**"), the terms of which will provide that the Plan Administrator will hold the Segregated Amount separate and apart from all other funds in its possession or under its control in trust for the benefit of BBB Canada and will agree to make applicable distributions or reimbursements therefrom for which the BBB Canada Cash would otherwise have been available.

21. The Reimbursement Agreement is expected to be in place prior to the hearing of this motion.

### **Extension of the Stay Period**

22. The current Stay Period expires on November 22, 2023. I am advised by counsel to BBB Canada that BBB Canada is seeking to extend the Stay Period to May 22, 2024 (the “**Extended Stay Period**”) to maintain continued stability for BBB Canada while it works diligently, in good faith and in consultation with the Monitor, to address the CRA Audit, including potentially pursuing the CRA Audit Appeal.

23. The costs of these CCAA Proceedings on a go forward basis are expected to be minimal. Almost all matters to be attended to in connection with these CCAA Proceeding are now complete, except for the CRA Audit and the CRA Audit Appeal. I understand that the anticipated costs through the extended Stay Period will be funded by the retainer provided by BBB Canada to its counsel prior to the Filing Date, and by the limited cash remaining in BBB Canada’s bank accounts for the professional fees of the Monitor and its counsel incurred in connection with these CCAA Proceedings.

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

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

SWORN BEFORE ME over video  
teleconference this 13<sup>th</sup> day of November,  
2023 pursuant to O. Reg 431/20,  
Administering Oath or Declaration  
Remotely. The affiant was located in the City  
of Hollywood, in the State of Florida while  
the Commissioner was located in the City of  
Toronto, in the Province of Ontario.



---

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



---

Michael Goldberg

THIS IS **EXHIBIT “A”** REFERRED TO IN THE AFFIDAVIT OF  
MICHAEL GOLDBERG SWORN BEFORE ME over video  
teleconference this 13th day of November, 2023 pursuant to O. Reg  
431/20, Administering Oath or Declaration Remotely. The affiant  
was located in the City of Hollywood, in the State of Florida 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**

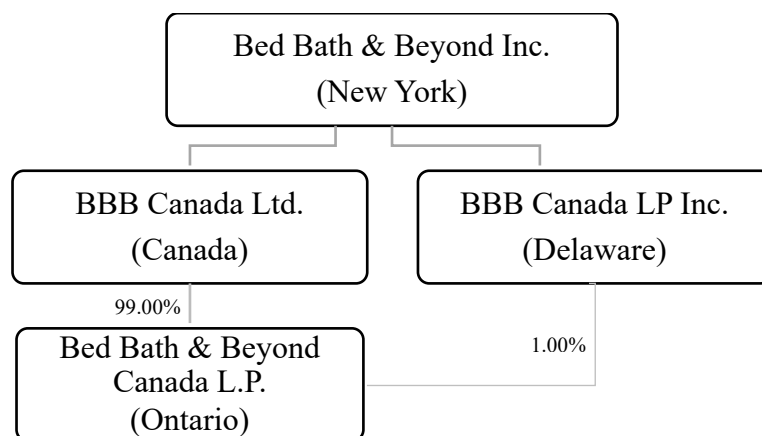
25. The Applicant is a federal corporation incorporated pursuant to the *Canada Business Corporations Act*, R.S.C. 1985, c C-44 and has a registered office in Toronto, Ontario. The Applicant is a wholly-owned subsidiary of BBBI, a corporation incorporated pursuant to the laws of the State of New York 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](http://bedbathandbeyond.com), [bedbathandbeyond.ca](http://bedbathandbeyond.ca), [harmondiscout.com](http://harmondiscout.com), [facevalues.com](http://facevalues.com) and [buybuybaby.com](http://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
<b>Bed Bath &amp; Beyond</b>	
Alberta	13
British Columbia	10
Manitoba	1
New Brunswick	2
Newfoundland	1
Nova Scotia	2
Ontario	22
Prince Edward Island	1
Saskatchewan	2
<b>TOTAL:</b>	<b>54</b>
<b>buybuy BABY</b>	
Alberta	4
British Columbia	1
Manitoba	1
Ontario	5
<b>TOTAL:</b>	<b>11</b>

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:

<b>Province / Territory</b>	<b>Full Time Employees</b>	<b>Part Time Employees</b>	<b>Total Employees</b>
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
<b>TOTAL</b>	<b>387</b>	<b>1,038</b>	<b>1,425</b>

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 (5<sup>th</sup> 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:

<b>Current Assets: \$312.2 million</b>	
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
<b>Non-Current Assets: \$115.2 million</b>	
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:

<b>Current Assets: \$39.9 million</b>	
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
<b>Non-Current Assets: \$12.8 million</b>	
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,<sup>1</sup> broken down as follows:

<b>Current Liabilities: \$267.3 million</b>	
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
<b>Non-Current Liabilities: \$75.5 million</b>	
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,<sup>2</sup> broken down as follows:

<b>Current Liabilities: \$67.6 million</b>	
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
<b>Non-Current Liabilities: \$19.4 million</b>	
Operating Lease Liabilities	\$19.4 million

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

<sup>2</sup> 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 9<sup>th</sup> 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.




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




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Holly Etlin

THIS IS **EXHIBIT “B”** REFERRED TO IN THE AFFIDAVIT OF  
MICHAEL GOLDBERG SWORN BEFORE ME over video  
teleconference this 13th day of November, 2023 pursuant to O. Reg  
431/20, Administering Oath or Declaration Remotely. The affiant  
was located in the City of Hollywood, in the State of Florida while  
the Commissioner was located in the City of Toronto, in the Province  
of Ontario.



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

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

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

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

Applicant

**AFFIDAVIT OF HOLLY ETLIN**

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

1. I am the Interim Chief Financial Officer ("**Interim CFO**") of Bed Bath & Beyond Inc. ("**BBBI**"), the ultimate parent corporation of BBB Canada Ltd. (the "**Applicant**") and Bed Bath & Beyond Canada L.P. ("**BBB LP**", and together with the Applicant, "**BBB Canada**"). I have served in the 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 BBBI and its various U.S. and Canadian subsidiaries, including BBB Canada (collectively, 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.

2. 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.

3. This Affidavit is made in support of an application by BBB Canada for:

- (a) an Amended and Restated Initial Order (the "**ARIO**"), among other things, extending the Stay Period (as defined below) to May 1, 2023, increasing the Administration Charge and the D&O Charge (each as defined below), approving a key employee retention plan for three non-store employees (the "**KERP**") and granting a Court-ordered charge (the "**KERP Charge**") as security for payments under the KERP; and
- (b) a Sale Approval Order (the "**Sale Approval Order**"), among other things, approving the Consulting Agreement and the Sale Guidelines (each as defined below) and authorizing BBB LP, with the assistance of the Consultant (as defined below), to undertake a liquidation process in accordance with the terms of the Sale Approval Order, the Consulting Agreement and the Sale Guidelines.

4. All references to monetary amounts in this Affidavit are in Canadian dollars unless noted otherwise.



**A. Overview of BBB Canada's Activities since the Initial Order**

5. On February 10, 2023, BBB Canada was granted protection under the *Companies' Creditors Arrangement Act*, RSC 1985 c C-36 (the "CCAA") pursuant to an Initial Order (the "**Initial Order**") of the Ontario Superior Court of Justice (Commercial List) (the "**Court**"). A copy of the Initial Order is attached hereto as **Exhibit "A"**. A copy of the Court's Endorsement issued in connection with the Initial Order is attached hereto as **Exhibit "B"**.

6. In support of the Initial Order, I swore an Affidavit dated February 9, 2023 (the "**Initial Order Affidavit**"), which described, among other things, the events leading to BBB Canada's insolvency, its urgent need for relief under the CCAA, and its intended liquidation and orderly wind-down within these CCAA proceedings. A copy of my Initial Order Affidavit (without exhibits) is attached hereto as **Exhibit "C"**.

7. The Initial Order, among other things: (i) appointed Alvarez & Marsal Canada Inc. as monitor within these CCAA proceedings (the "**Monitor**"); (ii) 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**"); (iii) extended the stay of proceedings and other benefits and requirements of the Initial Order and the CCAA to BBB LP; (iv) granted a stay of any proceeding against 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 "**BBBI Indemnities**") until and including February 21, 2023; (v) granted a charge as security for the respective fees and disbursements of counsel to BBB Canada, the Monitor and Monitor's counsel relating to services rendered in respect of BBB Canada (the "**Administration Charge**"); and (vi) granted a charge in favour of the directors and officers of BBB Canada (the "**D&O Charge**").

8. Since the granting of the Initial Order, BBB Canada, in close consultation and with the assistance of the Monitor, has been working in good faith and with due diligence to:

- (a) stabilize its business and operations as part of these CCAA proceedings;
- (b) advise its stakeholders, including all landlords, employees and others, of the granting of the Initial Order;
- (c) engage in preliminary discussions with counsel to certain landlords regarding the relief being sought in the proposed ARIO, the Sale Guidelines and the proposed liquidation process;
- (d) develop sale guidelines and finalize arrangements with Hilco Merchant Resources, LLC (“**Hilco**”) (on behalf of the Consultant) for the orderly liquidation of all merchandise (“**Merchandise**”) and owned furnishings, trade fixtures, equipment and improvements to real property (“**FF&E**”) that are located in each of the Bed Bath & Beyond and buybuy BABY retail stores located in Canada and, with respect to FF&E, the warehouse leased by BBB Canada in Surrey, B.C. and the corporate office in Mississauga; and
- (e) respond to numerous creditor and stakeholder inquiries regarding these CCAA proceedings.

9. I am advised by David Rosenblat at Osler, Hoskin & Harcourt LLP (“**Osler**”), counsel for BBB Canada, and believe that, promptly after obtaining the Initial Order, Osler (on behalf of BBB Canada) sent letters to all landlords of BBB Canada’s Canadian retail locations advising that BBB Canada had applied for and been granted an Initial Order under the CCAA, providing a link to the

Monitor's Website (as defined below) and directing the recipient to the Initial Order. The letters further advised that:

- (a) in connection with these CCAA proceedings, BBB Canada intends to wind-down its operations and conduct store closings at each of its 54 Bed Bath & Beyond stores and 11 buybuy BABY stores with the assistance of a third-party liquidator;
- (b) BBB Canada intends to seek Court approval of a proposed liquidation agreement and typical sale guidelines at a hearing to be scheduled for February 21, 2023 and anticipates that the liquidation sales will begin shortly after Court approval of same; and
- (c) the Initial Order stays all proceedings or enforcement processes against BBB Canada and any proceedings against BBBI arising out of or in connection with the BBBI Indemnities until and including February 21, 2023.

Attached as **Exhibit "D"** is an example of BBB Canada's letter to each landlord, all of which are in substantially the same form.

10. In addition to the landlords, BBB Canada completed the following employee outreach promptly after obtaining the Initial Order on February 10, 2023:

- (a) at approximately 2:00 p.m. ET, Ms. Mara Sirhal (one of the Applicant's two directors and the Executive Vice President, Brand President (Bed Bath & Beyond) at BBBI), conducted a conference call with all BBB Canada store managers, district managers and corporate employees to advise of the Bed Bath & Beyond Group's difficult decision to wind-down the Canadian operations, the issuance of the Initial

Order, and the expected impact of these CCAA proceedings on Canadian employees;

- (b) at approximately 4:00 p.m. ET, Ms. Sirhal and Mr. Greg Dyer (the Vice President, GM, Bed Bath & Beyond – Canada) issued (i) an internal memo to all Canadian associates, a copy of which is attached hereto as **Exhibit “E”**, and (ii) a leader toolkit and customer FAQ sheet to all store managers; and
- (c) commencing at approximately 4:15 ET and continuing throughout the following days, each store manager held a meeting with his/her staff to discuss these CCAA proceedings and provide information about the intended wind-down of BBB Canada’s operations.

11. Further, in accordance with the Initial Order:

- (a) on February 10, 2023, the Monitor posted the Initial Order and related motion materials on the Monitor’s website (the “**Monitor’s Website**”) at <https://www.alvarezandmarsal.com/BBBCanada>;
- (b) the Monitor will publish a notice in *The Globe and Mail* (National Edition) containing the information prescribed under the CCAA on February 16, 2023; and
- (c) on February 15, 2023, the Monitor sent a notice to, among others, all of BBB Canada’s known creditors who had claims over \$1,000. Additionally, on February 15, 2023, the Monitor made publicly available on the Monitor’s Website a list containing the names and addresses of those creditors and the estimated amounts of their claims (subject to the exclusions required by the Initial Order).

12. On February 10, 2023, a CaseLines database was established for these CCAA proceedings and all persons currently listed on the Service List (as defined in the Initial Order) were granted access thereto. A copy of the Initial Order and BBB Canada's motion materials and factum were uploaded to the CaseLines database that same day.

**B. Sale Approval Order**

**(a) Liquidation Process**

13. As foreshadowed in my Initial Order Affidavit, BBB Canada intends to wind-down the Canadian business in a fair and orderly manner. In order to maximize the value of its Merchandise and FF&E for the benefit of its stakeholders, BBB Canada is seeking the Court's approval of:

- (a) a Consulting Agreement with a contractual joint venture comprised of Hilco Merchant Retail Solutions ULC, Gordon Brothers Canada ULC, Tiger Asset Solutions Canada, ULC, and B. Riley Retail Canada ULC (the "**Consultant**") dated February 15, 2023 (the "**Consulting Agreement**") regarding the liquidation of the Merchandise and FE&E that are located in the Canadian retail stores, the warehouse, and the corporate office in Mississauga, a copy of which is attached hereto as **Exhibit "F"**; and
- (b) the proposed sale guidelines for the orderly liquidation of the Merchandise and FF&E in Canada (the "**Sale Guidelines**"), a copy of which is attached as Exhibit B to the Consulting Agreement.

14. The joint venture comprising the Consultant is led by Hilco Merchant Retail Solutions ULC, an affiliate of Hilco. Over the past two years, Hilco has been engaged, and is currently

engaged, by BBBI and Buy Buy Baby Inc. to facilitate numerous store closures including, most recently, the closure of approximately 150 Bed Bath & Beyond banner stores announced in August 2022 (as described in detail in my Initial Order Affidavit). More generally, Hilco has extensive experience conducting retail liquidations in Canada, including *Target Canada*, *Sears Canada*, *American Apparel Canada*, *BCBG Canada*, *Express Fashion Apparel*, *Danier Leather*, and *Forever 21*.

15. The joint venture led by Hilco's affiliate was accordingly selected by BBB Canada to assist in the liquidation of the Canadian retail stores based on its in-depth expertise and knowledge of the Bed Bath & Beyond Group's business, merchandise, and store operations, and its extensive experience conducting retail liquidations in Canada. BBB Canada concluded that: (i) the Consultant'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) the Consultant is qualified and capable of performing the required tasks in a value-maximizing manner.

16. The proposed liquidation of BBB Canada's Merchandise and FF&E is currently contemplated to run for ten weeks (until April 30, 2023), which date can be extended or abridged by BBB Canada and the Consultant, in consultation with the Monitor. Key terms of the Consulting Agreement and the Sale Guidelines include:

- (a) the Consultant is appointed as exclusive consultant for purposes of conducting a sale of BBB Canada's Merchandise and FF&E through a "Store Closing", "Everything Must Go", "Everything on Sale" or similar themed sale;

- (b) the sale will commence on the first business day following entry of the Sale Approval Order (the “**Sale Commencement Date**”) which shall, in no event, be later than February 24, 2023;
- (c) loyalty points, gift cards, gift certificates and similar items and programs issued by BBB Canada prior to the Sale Commencement Date will be honoured by BBB Canada until and including March 9, 2023;
- (d) during the sale, rent will be paid by BBB Canada to landlords in accordance with the Initial Order (i.e. twice monthly in equal payments on the first and fifteenth day or each month, in advance, but not in arrears);
- (e) all sales during the liquidation will be final with no returns accepted or allowed unless otherwise directed by BBB Canada;
- (f) as consideration for its services in accordance with the Consulting Agreement, the Consultant is entitled to payment of a base fee equal to 1.5% of the gross proceeds (net only of sales taxes) of Merchandise sold in the stores and 12.5% of the gross proceeds (net only of sales taxes) of FF&E. The Consultant is also entitled to payment of an incentive fee (the “**Incentive Fee**”) not to exceed \$1.5 million in the aggregate in the event net recoveries from the sale of Merchandise exceed certain net recovery thresholds, as determined in accordance with the Consulting Agreement,<sup>1</sup> as follows:

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<sup>11</sup> Exhibit C of the Consulting Agreement sets forth an Expense Budget and terms with respect to the calculation of the Net Recovery Threshold.

<b>Net Recovery Threshold</b>	<b>Consultant Incentive Fee</b>
39.50%-39.99%	An additional 0.875% of Net Proceeds
40.00%-40.49%	An additional 1.125% of Net Proceeds
40.50%-40.99%	An additional 1.375% of Net Proceeds
41.00%-41.49%	An additional 1.625% of Net Proceeds
41.50% and above	An additional 1.875% of Net Proceeds

- (g) BBB Canada is responsible for all expenses of the sale, including (without limitation) all store level operating expenses, all costs and expenses related to BBB Canada's other retail store operations, and all of the Consultant's documented out of pocket expenses;
- (h) concurrently with the execution of the Consulting Agreement, BBB Canada is required to pay \$735,000 to the Consultant to be held by the Consultant on account of any final amounts owing by BBB Canada after conclusion of the liquidation process;
- (i) BBB Canada and the Consultant, in consultation with the Monitor, will reconcile all accounting matters every Wednesday for the prior calendar week and will complete a final reconciliation and settlement of all amounts payable pursuant to the Consulting Agreement no later than 45 days after termination of the liquidation sale; and
- (j) to the extent there is Merchandise or FF&E remaining following the sale termination date and disclaimer of the applicable real property lease, such Merchandise or FF&E shall be deemed abandoned and the applicable landlord will have the right to dispose of same as the landlord chooses, without any liability on the part of the landlord.



17. The Consultant has the right under the Consulting Agreement to supplement the Merchandise in the retail stores with additional goods (the “**Additional Consultant Goods**”) procured by the Consultant that are of like kind, and no lesser quality to the Merchandise in the stores, provided, however, that such Additional Consultant Goods may not exceed \$15 million in the aggregate and must be distributed amongst the Canadian retail stores such that no store receives more than 10% of the Additional Consultant Goods. The Consultant must pay BBB Canada an amount equal to 7.5% of the gross proceeds (net only of sales taxes) from the sale of all Additional Consultant Goods.

18. BBB Canada is of the view that augmentation of the Merchandise with the Additional Consultant Goods will contribute to the success of the proposed liquidation sale by encouraging increased foot traffic and ensuring that consumers find the mix and quality of goods they expect, thereby benefitting BBB Canada’s stakeholders by maximizing recoveries. It will also directly enhance recoveries for BBB Canada since the Consultant will pay 7.5% of the gross proceeds from all sales of Additional Consultant Goods to BBB Canada.

19. The Consulting Agreement is expressly subject to, among other things, approval of this Court. The realization process set out in the Consulting Agreement and the Sale Guidelines was designed by BBB Canada and the Consultant, in consultation with the Monitor. I expect that the proposed liquidation process will maximize the value realized from the sale of BBB Canada’s Merchandise and FF&E for the benefit of stakeholders. I also am of the view that engaging the Consultant to assist with the sale of the Merchandise and FF&E will produce better results than attempting to liquidate without professional assistance.

20. The Bed Bath & Beyond Group, in consultation with Hilco and AlixPartners, currently estimates that the aggregate net proceeds from the liquidation of the Merchandise and FF&E will be approximately \$32.7 million in Canada. The wind-down process must be commenced as soon as possible to maximize recoveries and limit operating costs, ensuring that BBB Canada can exit from all retail stores as soon as practicable and avoid further rent, employee costs, critical supplier/service provider payments, bank fees, and other ongoing amounts. In the circumstances, any delay in commencing the wind-down process could compromise the net recoveries generated from the sale of BBB Canada's Merchandise and FF&E.

**(b) Sale Approval Order**

21. The proposed Sale Approval Order requested by BBB Canada, among other things:

- (a) approves, authorizes and ratifies the Consulting Agreement, the Sale Guidelines and the transactions contemplated thereunder;
- (b) authorizes BBB LP, with the assistance of the Consultant, to conduct the proposed liquidation sale in accordance with the terms of the Sale Approval Order, the Consulting Agreement and the Sale Guidelines;
- (c) subject to the landlord notice provisions at paragraph 12 of the ARIO, authorizes BBB LP, with the assistance of the Consultant to market and sell the Merchandise, FF&E and Additional Consultant Goods in accordance with the Sale Guidelines, free and clear of all liens, claims, encumbrances, security interests, mortgages, charges, trusts, deemed trusts, executions, levies, financial, monetary or other claims; and

- (d) grants certain protections from liability in favour of the Consultant, including that:
- (i) the Consultant shall not be deemed to be an owner or in possession, care, control or management of the stores; (ii) the Consultant shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payor within the meaning of any legislation; and (iii) BBB LP shall bear all responsibility for any liability whatsoever relating to claims of customers, employees and any other persons arising from events occurring at the stores during and after the term of the liquidation sale, or otherwise in connection with the sale, except to the extent that such claims are the result of events or circumstances caused or contributed to by the gross negligence or wilful misconduct of the Consultant, its employees, agents or other representatives, or otherwise in accordance with the Consulting Agreement.

22. I am advised by the Monitor and believe that the Monitor supports the proposed Consulting Agreement, the Sale Guidelines, including the proposed timeline, and BBB Canada's request for the Sale Approval Order.

**C. Amended and Restated Initial Order**

**(a) Wage Earner Protection Program**

23. I am advised by Sven Poysa at Osler, and believe that, the *Wage Earner Protection Program Act*, SC 2005, c 47, s 1 ("WEPPA") permits eligible former employees to collect certain eligible wages, including termination and severance pay, owed to such former employees where the former employer is the subject of CCAA proceedings and a court determines that the criteria prescribed by regulation are met. I am advised that the *Wage Earner Protection Program*

*Regulations*, SOR/2008-222 (the “**WEPP Regulation**”) requires that the Court 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 operations.

24. As part of the wind-down of the Bed Bath & Beyond Group’s Canadian operations, BBB Canada intends to provide all, or substantially all, of its Canadian employees with notice of termination of their employment with BBB Canada by no later than February 24, 2023.

25. It is expected that all employees who are required to assist in the wind-down of the Canadian operations, including the completion of the proposed liquidation sales, will be provided with working notice of termination ranging between 8 to 12 weeks. It is expected that a limited number of BBB Canada’s employees who are not required for the wind-down of the Canadian business will be given notice of termination, effective immediately upon the granting of the Sale Approval Order.

26. Paragraph 46 of the proposed ARIO deems any employee of the Applicant or BBB LP that receives a notice of termination to have received such notice of termination by no more than the third day following the date such notice of termination is delivered, if such notice of termination is sent by email, ordinary mail, expedited parcel, registered mail.

27. In order to assist eligible terminated employees of BBB Canada access payments in respect of eligible wages under WEPPA in a timely manner following their termination, BBB Canada is seeking a declaration in the ARIO that, pursuant to subsections 5(1)(b)(iv) and 5(5) of WEPPA, the Applicant and BBB LP meet the criteria prescribed by section 3.2 of the WEPP Regulation and their former employees are eligible to receive payments under and in accordance with WEPPA

following the termination of their employment. I understand that the Monitor supports the requested relief.

**(b) KERP**

28. The Applicant is seeking approval of the KERP for three non-store employees and the granting of the KERP Charge up to a maximum aggregate amount of \$161,000 as security for payments under the KERP.

29. The KERP was developed by BBB Canada, in consultation with the Monitor, to facilitate the continued participation of three key employees of BBB Canada who each respectively have in-depth knowledge of BBB Canada's business, including in particular, its payroll, operations and facilities. These employees have significant experience and specialized expertise that cannot be easily replicated or replaced. Each of these employees is required to guide the business through the contemplated orderly wind down process in order to preserve value for BBB Canada's stakeholders.

30. The KERP will provide the three participants with retention payments as an incentive to continue their employment, as required, through these CCAA proceedings. The Applicant proposes that the KERP be structured so that each of the three individuals will receive, in aggregate, 30% of their current annualized base salary, payable in three installments: (a) 15% payable following one month of service after the commencement of the proposed liquidation sales (for a total aggregate payment of \$24,121); (b) 15% payable following two months of service after the commencement of the proposed liquidation sales (for a total aggregate payment of \$24,121); and (c) 70% payable following the earlier of (i) four months of service after the commencement of the proposed liquidation sales or (ii) the date on which the participants' services are no longer

required, as determined by BBB Canada in a written notice of termination (for a total aggregate payment of \$112,565).

31. Any payments under the KERP are conditional upon the employee continuing to provide services to BBB Canada until such time as they are advised that they are no longer required to assist in the wind down, sale, or other matters in these CCAA proceedings.

32. Assuming BBB Canada is able to retain all three key employees, the total amount payable under the KERP will be a maximum of approximately \$161,000. As previously noted, the Applicant is seeking the KERP Charge to secure amounts payable under the KERP. The KERP Charge is proposed to rank behind the Administration Charge and the D&O Charge, but in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise.

33. A summary of the proposed KERP is attached hereto as **Confidential Exhibit “G”**. The KERP summary contains commercially sensitive information, including compensation information, as well as personal information relating to BBB Canada’s employees. BBB Canada therefore seeks an order that Confidential Exhibit G be sealed and not form part of the court record pending further order of the Court.

**(c) Increase to the Administration Charge**

34. The Administration Charge is described at paragraph 158 of my Initial Order Affidavit. The Initial Order approved the Administration Charge in the amount of \$0.55 million, which was sized only to reflect fees and disbursements expected to be incurred by BBB Canada’s counsel, the Monitor and Monitor’s counsel during the initial 10-day Stay Period. With the concurrence of the Monitor, BBB Canada is now seeking to increase the Administration Charge to \$1.25 million.

**(d) Increase to the D&O Charge**

35. The D&O Charge is described at paragraphs 159 to 163 of my Initial Order Affidavit. The Initial Order approved the D&O Charge for the initial 10-day Stay Period in the amount of \$7.5 million. With the concurrence of the Monitor, BBB Canada is now seeking to increase the D&O Charge to \$8.25 million.

**(e) Amendment of Permitted Periodic Repayments**

36. The Initial Order provides that any sweep rights exercised by the Lenders pursuant to the Amended Credit Agreement (each as defined in my Initial Order Affidavit) with respect to BBB Canada may only be exercised if BBB Canada continues to hold at least \$7.5 million of cash immediately after the applicable sweep and such swept funds constitute repayment of obligations under, and subject to, the Amended Credit Agreement.

37. Subsequent to the granting of the Initial Order, the Lenders and BBB Canada, in close consultation with the Monitor, undertook further discussions regarding both the minimum sweep threshold and the details of the sweep mechanism to ensure that any proposed sweeps would leave sufficient liquidity for the anticipated liquidation and wind-down of BBB Canada.

38. BBB Canada and the Lenders have agreed to amend the sweep provisions in the Initial Order to increase the minimum sweep threshold from \$7.5 million to \$9.5 million (the “**Minimum Balance**”), provided that effective March 27, 2023, the Minimum Balance will be reduced to \$6 million, and may be further reduced thereafter by BBB Canada with the consent of the Monitor. The updated Minimum Balance and declining minimum sweep threshold is intended to protect the ability of BBB Canada to fund these proceedings using its cash on hand, while recognizing that

such cash needs will decline as the liquidation process progresses and additional cash should therefore be available to the Lenders without any risk to BBB Canada.

**(f) Extension of Stay of Proceedings of Derivative Claims**

39. As discussed above, promptly after obtaining the Initial Order, Osler sent letters to all BBB Canada's landlords on February 10 and 13, 2023, advising that BBB Canada had applied for and been granted an Initial Order under the CCAA and requesting the contact information for each landlord's counsel. To date, Osler has received responses from 11 landlords providing counsel information and has commenced discussions regarding these CCAA proceedings, the relief being sought in the proposed ARIO, the Sale Guidelines, and the proposed liquidation process.

40. BBB Canada intends at the comeback hearing to seek an extension to May 1, 2023, of the temporary stay granted in the Initial Order of all proceedings against BBBI arising out of or in connection with the BBBI Indemnities. BBB Canada believes that such extension of the temporary stay is necessary to allow it the breathing space and time necessary to complete an orderly liquidation while engaging in good faith with landlords with respect to the BBBI Indemnities.

41. All rent payments to landlord in Canada are paid current and will be made on an ongoing basis throughout these CCAA proceedings in accordance with the Initial Order until the applicable lease is disclaimed and the premises vacated by BBB Canada, which as noted above, is expected to occur at the end of April – immediately prior to the expiration of the proposed extended Stay Period on May 1, 2023. BBB Canada is accordingly of the view that no landlord will be prejudiced by the requested extension to the temporary stay of proceedings and that such extension will provide the necessary time and space for constructive, good faith discussions to be undertaken by BBB Canada and the landlords regarding resolution of the BBBI Indemnities.



**(g) Extension of Stay Period**


42. The Applicant is seeking to extend the Stay Period up to and including May 1, 2023. The extension of the Stay Period is necessary and appropriate in the circumstances to allow for the proposed liquidation process to be undertaken and for BBB Canada to focus on the orderly wind down of the Canadian business. As noted above, the targeted completion date for the liquidation process is April 30, 2023.

43. I believe that BBB Canada has acted, and continues to act, in good faith and with due diligence in pursuing the orderly wind down of its business. As described above, BBB Canada has given notice of these CCAA proceedings to stakeholders including, most significantly, its landlords and employees. In consultation with the Monitor, BBB Canada has engaged, and will continue engaging, in discussions with its stakeholders as these CCAA proceedings progress.

44. The cash flow projections attached as Exhibit "O" to my Initial Order Affidavit demonstrate that BBB Canada will have access to sufficient liquidity to fund operations during the requested extension of the Stay Period.

SWORN BEFORE ME over video  
teleconference this 15<sup>th</sup> 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  
Viktor Nikolov (LSO No. 84503P)

  
\_\_\_\_\_  
Holly Etlin

THIS IS **EXHIBIT “C”** REFERRED TO IN THE AFFIDAVIT OF  
MICHAEL GOLDBERG SWORN BEFORE ME over video  
teleconference this 13th day of November, 2023 pursuant to O. Reg  
431/20, Administering Oath or Declaration Remotely. The affiant  
was located in the City of Hollywood, in the State of Florida while  
the Commissioner was located in the City of Toronto, in the Province  
of Ontario.



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

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

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

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

Applicant

**AFFIDAVIT OF WADE HADDAD**

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

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

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

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

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

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

**A. Background and Update on the CCAA Proceeding**

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

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

7. On February 21, 2023, the Court granted:
- (a) a Sale Approval Order (the “**Sale Approval Order**”) which, among other things, approved BBB Canada entering into an amended and restated consulting agreement with a contractual joint venture party (the “**Consultant**”) to complete the liquidation of all merchandise, and owned furnishings, trade fixtures, equipment and improvements to real property located in BBB Canada’s retail stores, warehouse, and corporate office in Mississauga (the “**Liquidation Sale**”), and approved sale guidelines for the orderly liquidation; and
  - (b) an Amended and Restated Initial Order (the “**ARIO**”) which, among other things, extended the Stay Period up to and including May 1, 2023,<sup>1</sup> 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

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<sup>1</sup> 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 \$1,180,470<sup>2</sup> 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.

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<sup>2</sup> 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.

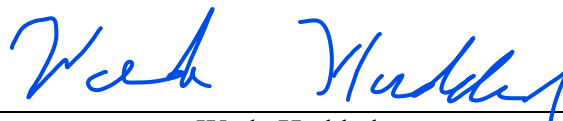
19. I swear this Affidavit in support of BBB Canada's motion for the proposed Order and for no other or improper purpose.

SWORN BEFORE ME over video  
teleconference this 16<sup>th</sup> 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.



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



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Wade Haddad

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

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

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**AFFIDAVIT OF MICHAEL GOLDBERG**

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Lawyers for the Applicant

**TAB 3**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE	)	FRIDAY, THE 17 <sup>th</sup>
	)	
CHIEF JUSTICE MORAWETZ	)	DAY OF NOVEMBER, 2023

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF BBB CANADA LTD.  
(the "**Applicant**")

**STAY EXTENSION ORDER**

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

**ON READING** the Notice of Motion of the Applicant, the Affidavit of Michael Goldberg sworn on November 13, 2023 including the exhibits thereto, and the Eighth Report of Alvarez & Marsal Canada Inc., in its capacity as Court-appointed monitor (in such capacity, the "**Monitor**"), dated November ●, 2023, filed, and on hearing the submissions of respective counsel for the Applicant and Bed Bath & Beyond Canada L.P. (together with the Applicant, the "**BBB Entities**"), the Monitor, and such other counsel as were present and listed on the Counsel Slip, no one else appearing although duly served as appears from the Affidavit of Service of ●, sworn November ●, 2023, filed:

**SERVICE**

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

**STAY EXTENSION**

2. **THIS COURT ORDERS** that the Stay Period is hereby extended until and including May 22, 2024.

**GENERAL**

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

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

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

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

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

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

Applicant

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

Proceeding commenced at Toronto

**STAY EXTENSION ORDER**

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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**  
**(Motion for Stay Extension)**

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