

Court File No.: BK-24-03050418-0031
Estate / Court File No.: BK- 31-3050418

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF THE BODY SHOP CANADA
LIMITED, IN THE CITY OF TORONTO, IN THE PROVINCE
OF ONTARIO

**RESPONDING MOTION RECORD OF
THE BODY SHOP CANADA LIMITED**

(RETURNABLE JULY 4, 2024)

May 10, 2024

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**AFFIDAVIT #3 OF JORDAN SEARLE
Sworn May 10, 2024**

I, Jordan Searle, of the City of Toronto, in the Province of Ontario, MAKE
OATH AND SAY:

1. I am the General Manager, North America and the sole director of The Body Shop Canada Limited ("**TBS Canada**" or the "**Company**"). I have been the General Manager since February 10, 2023. I am also an officer and director of TBS Canada's U.S. affiliate, Buth-Na-Bodhaige Inc. ("**TBS US**"). I have been actively engaged in the discussions and negotiations surrounding the financial circumstances of TBS Canada prior to the commencement of these proceedings. As such I have personal knowledge of the matters referred to in this Affidavit. Where I have relied upon other sources of information, I have stated the source of that information and verily believe such information to be true.

2. On March 1, 2024 (the “**Filing Date**”), TBS Canada filed a notice of intention to make a proposal (the “**NOI**”) under the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3. Alvarez & Marsal Canada Inc. was appointed to act as the proposal trustee (the “**Proposal Trustee**”).

3. This Affidavit is sworn in connection with the motion (the “**Representation Motion**”) brought by Stephanie Hood seeking an order, among other things:

- (a) appointing Koskie Minsky LLP (“**Koskie Minsky**”) as representative counsel to all terminated employees of TBS Canada who were employed by the Company and terminated on or after the Filing Date (such counsel, “**Representative Counsel**”); and
- (b) that the costs incurred by Representative Counsel before and after the date of the order shall be paid by TBS Canada.

4. In connection with this NOI proceeding, I swore an affidavit dated March 1, 2024 (the “**Affidavit #1**”), a copy of which is attached to this Affidavit as **Exhibit “A**”, without the exhibits referred to therein. I also swore an affidavit dated April 8, 2024 (the “**Affidavit #2**”) and together with Affidavit #1, the “**Prior Affidavits**”), a copy of which is attached to my Affidavit as **Exhibit “B**”, without the exhibits referred to therein. Where relevant, I have repeated certain portions of the Prior Affidavits in this Affidavit.

A. Background and Overview

5. TBS Canada is a retailer specializing in the sale of skincare, haircare, bath and body products with 72 stores across Canada.¹ TBS Canada and TBS US are indirect wholly owned subsidiaries of The Body Shop International Limited (“**TBS International**” or the “**UK Parent**”), which is indirectly owned by Aurelius IV UK Acquico Eight Limited. On February 13, 2024, the UK Parent filed for administration (the “**UK Administration**”) in the United Kingdom, which I understand is the dominant legal procedure for restructuring insolvent companies in the UK.

6. As I have explained in my Prior Affidavits, historically, the UK Parent provided several accounting and cash management functions for TBS Canada whereby all of TBS Canada’s cash collections were swept from TBS Canada by the UK Parent and then the UK Parent would remit payment on behalf of TBS Canada for its trade payables, including its rent and payroll. In the weeks leading up to the UK Administration, the UK Parent swept cash from TBS Canada’s bank accounts but failed to remit payment for amounts owing to the TBS Canada’s vendors, suppliers and landlords. This caused an immediate liquidity crisis for TBS Canada because all funding for the Company and its Canadian

¹ On the Filing Date, the Company operated 105 stores but has closed 33 of its stores as part of its restructuring efforts.

operations were cut off with no advance notice. As a result, TBS Canada has significant overdue payables that it could not satisfy—the key fact that led to these proceedings.

7. The principal purpose of this NOI proceeding is to enable TBS Canada to devise a viable proposal for the benefit of its stakeholders. As described in the Prior Affidavits, since the Filing Date, TBS Canada has acted in good faith and made diligent efforts to stabilize its operations and pursue a going-concern solution for the continuation of “The Body Shop” business in Canada.

8. On April 15, 2024, this Court made an order (the “**April 15 Order**”), among other things, extending the time for TBS Canada to file a proposal to May 31, 2024 and granting certain other relief that the Company required to allow it to continue its business operations and protect the value of its assets. A copy of the April 15 Order and endorsement are attached to my Affidavit as **Exhibit “C”**.

9. On April 12, 2024, TBS Canada was served with a copy of the Representation Motion. On April 24, 2024, this Court made an endorsement, among other things, scheduling the Representation Motion for July 4, 2024 (the “**April 24, 2024 Endorsement**”). A copy of the April 24, 2024 Endorsement is attached to my Affidavit as **Exhibit “D”**.

10. The Company has determined that it should oppose the Representation Motion. As I attempt to explain below in support of that determination, TBS Canada is concerned that the benefit of Representative Counsel to the efficient administration of these proceedings is minimal given (i) the lack of complexity in this proceeding and stakeholder claims; (ii) the duplication of efforts between Representative Counsel, the Company's counsel, and the Proposal Trustee; and (iii) the Company and Proposal Trustee's commitment to keep the Former Employees apprised of any updates in these proceedings. The Company is further concerned that the appointment and payment of fees of Representative Counsel will prejudice its other stakeholders, most especially landlords, because it would reduce the overall funds available for recovery.

B. The Former Employee Group and Claims

11. Before turning to the Company's evaluation of the benefits of Representative Counsel, I will provide some background regarding the Former Employees and their claims against TBS Canada.

(i) The Former Employees

12. As of the Filing Date, TBS Canada employed approximately 780 individuals across Canada. As part of its restructuring efforts, the Company has terminated approximately 220 individuals (collectively, the "**Former Employees**") since the Filing Date.

13. The Former Employees are predominantly comprised of former store-level employees. As described in my Prior Affidavits, the Company closed 33 underperforming stores in an effort to improve its liquidity position (collectively, the “**Closing Stores**”) and terminated the employment of the 197 employees whose employment related to the Closing Stores.

14. The balance of the Former Employees worked in TBS Canada’s head office and their employment was terminated as part of certain head-count reductions made by the Company, also to improve its liquidity position.

15. Approximately 70 of the Former Employees were salaried (20 of those being former head-office employees) and approximately 150 Former Employees were paid on an hourly basis.

16. Many of the Company’s employees, including the Former Employees, were hired through TBS Canada’s “Open Hiring” process. “Open Hiring” is a process whereby TBS Canada hires entry level positions on a first-come, first-serve basis, meaning the first applicant to apply receives the first call when a vacancy arises. The Company aspires to this process removing typical barriers to employment such as lack of experience, a criminal record or citizenship status. TBS Canada does not track whether its employees

have physical or mental disabilities nor does the Company track the family or marital status of its employees.

17. The Company continues to employ approximately 570 employees. As I have stated in my Prior Affidavits, at this time, TBS Canada does not have any further headcount reductions planned.

18. TBS Canada has continued to pay the wages and benefits of its current employees in the ordinary course. Further, TBS Canada has not proposed or implemented any changes to the terms and conditions of employment of its current employees, other than retention payments to certain key employees. Moreover, the Company has not sought to compromise or reduce the claims of its Former Employees.

(ii) The Claims of the Former Employees

19. The Former Employees have claims against TBS Canada in respect of the following: statutory termination and severance pay, health benefits coverage (or pay in lieu thereof), group RRSP contributions, vacation pay, bonuses, and in some circumstances, reasonable notice damages at common law (which, where applicable, are inclusive of the aforementioned claims).

20. Since before the Filing Date, TBS Canada has been working closely with its legal counsel, Davies Ward Phillips & Vineberg LLP ("**Davies**") and the Proposal Trustee to

calculate the claims of each of the Former Employees. Davies has expertise in employment and labour law and their lawyers have been recognized in *Chambers Canada: Canada's Leading Lawyers for Business – Employment and Labour: Ontario*, *The Canadian Legal Lexpert Directory – Employment Law: Employer*, *The Best Lawyers in Canada – Labour and Employment Law* and are members of the *Canadian Association of Counsel to Employers*.

21. I also understand the Proposal Trustee has extensive experience calculating the claims of former employees, including experience using an established reasonable notice methodology to determine common law notice periods. I further understand that Davies is validating the reasonable notice assessments of the Proposal Trustee.

22. To assist in the above assessments, TBS Canada has worked diligently to collect and assemble the facts and documents pertinent to determining the claims of the Former Employees. As part of its analysis, the Company, with the assistance of Davies and the Proposal Trustee, has reviewed the following:

- (a) forms of employment agreements for the Former Employees, and an analysis of their enforceability, including the termination provisions which limit recovery to the statutory minimums in each province;
- (b) term of employment, seniority date and termination date;
- (c) the province and municipality where each Former Employee worked;

- (d) character of employment (e.g., full- or part-time);
- (e) scope of any group benefit coverage;
- (f) group RRSP information;
- (g) salary or hourly pay structure;
- (h) statutory vacation pay entitlements;
- (i) calculations of statutory termination pay, benefit continuation, and severance pay (which is only applicable in Ontario) entitlements for the Former Employees;
- (j) bonus entitlements, including bonus tracker and payout spreadsheets for the Former Employees in the month preceding termination; and
- (k) estimates of common law reasonable notice for the Former Employees based on a review of the applicable factors including age, length of service and position.

23. The Company estimates that the claims of the Former Employees are approximately \$2.1 million in the aggregate. TBS Canada is working diligently to determine the individual claim of each Former Employee.

24. I understand from Davies that this task is relatively straightforward given that there are only two groups of Former Employees: hourly and salaried. The Former Employees were paid their wages and accrued and unused vacation pay as of the date of their termination. There are no unionized employees, no retirement or pension plans and no defined benefits plans.

25. In the circumstances, I believe that the Company, with the assistance of the Proposal Trustee, can determine each Former Employee's claim in a fair, consistent and efficient manner, given the lack of complexity of the claims, the substantial information that the Company has at its disposal in respect of the Former Employees and the expertise provided by Davies and the Proposal Trustee.

26. If it would be helpful to them, TBS Canada and its counsel are prepared to discuss the methodology it is using to determine the Former Employees claims with the Former Employees and their counsel.

C. The Benefit of Representation in this Proceeding

27. As I noted at the outset of this Affidavit, TBS Canada does not believe that the appointment of Representative Counsel will benefit the efficient administration of this proceeding for at least three reasons: (i) this proceeding and the Company's stakeholders claims are not complex; (ii) the work proposed to be undertaken by Representative Counsel would be duplicative of efforts of the Company and the Proposal Trustee; and (iii) the Company and the Proposal Trustee have, and will continue to, keep the Former Employees apprised of any updates in this proceeding. I elaborate on each of these reasons below.

(i) **The Nature of this Proceeding and the Company's Stakeholders**

28. Throughout the NOI process, TBS Canada has concentrated its efforts on shoring up its business activities and maintaining the intrinsic value of the Company as an ongoing entity. This approach is aimed at crafting a proposal that would ensure the ongoing operations of the business within the Canadian market.

29. In furtherance of that objective, the Company's activities since the Filing Date have been limited to the following:

- (a) closing underperforming stores (i.e., the Closing Stores);
- (b) engaging with TBS US, the UK Parent and UK Administrators;
- (c) engaging with its key stakeholders;
- (d) operating its remaining 72 stores in the ordinary course;
- (e) ensuring the ongoing supply of inventory to its operating stores; and
- (f) engaging with the UK Parent, the UK Administrators and Aurelius Investment Lux One SARL, or its affiliates (together "**Aurelius**"), and potential buyers, on the terms of a going-concern solution for TBS Canada.

30. Stakeholders who will make claims against TBS Canada fall into three key groups: (a) the Former Employees; (b) landlords; and (c) trade creditors.

31. TBS Canada does not have any meaningful secured creditors. There are three parties with security registrations against TBS Canada (collectively, the “**Registered Parties**”): (a) Aurelius IV UK Acquico Seven Limited; (b) HSBC Bank Canada and HongKong Bank of Canada; and (c) Enterprise Fleet Management Canada, Inc. However, TBS Canada does not believe any amounts are owed to Aurelius IV UK Acquico Seven Limited, HSBC Bank Canada or HongKong Bank of Canada. Further, the security registrations in favour of Enterprise relate exclusively to corporate vehicles that are leased by TBS Canada.

32. As noted in my Affidavit #2, none of the Registered Parties or their counsel has asserted any claims against the Company. That remains true as of the swearing of this Affidavit.

(ii) Duplication of Efforts

33. As part of the Representation Motion, Koskie Minsky has proposed that the appointment of Representative Counsel would (a) facilitate the filing of one claim on behalf of all of the Former Employees using consistent and accurate methodology, and

(b) allow Representative Counsel to pursue the application of the *Wage Earner Protection Program Act* (“**WEPPA**”) on behalf of the Former Employees.

34. TBS Canada is keenly aware of the challenges confronting the Former Employees and is working diligently with its counsel and the Proposal Trustee to address these challenges, including by calculating the claims of the Former Employees and exploring the availability of WEPPA for the Former Employees. For the reasons discussed below, I accordingly believe that the proposed mandate of the Representative Counsel is duplicative of efforts that Company is already undertaking and would thus undermine the efficient operation of this NOI proceeding.

(a) Calculating and Filing a Claim on behalf of the Former Employees

35. As described above, TBS Canada is working closely with Davies and the Proposal Trustee to finalize the calculations of the claims of the Former Employees. This work has been underway for over two months and began well before Koskie Minsky contacted the Company to advocate for a role for Representative Counsel in these proceedings.

36. As described herein, TBS Canada, with the assistance of Davies and the Proposal Trustee, is well positioned to calculate these entitlements because it has the necessary information in its possession (including hire date, position, compensation, and termination date) and access to the necessary expertise (including the relevant factors used by

practitioners and judges to determine the quantum of the Former Employee's claims under statutory and common law).

37. Once TBS Canada has finally determined the claim of each of the Former Employees, the Company intends to send each Former Employee an employee claims package that includes: (a) a single, omnibus proof of claim (the "**Single Claim**") reflecting the aggregate claim of all of the Former Employees; (b) a letter explaining the Single Claim and advising the Former Employees that they may (but are not required to) submit their own proof of claim; (c) the Former Employee's individual entitlement and how it was calculated; and (d) contact information for the Proposal Trustee to address any questions that the Former Employee may have in respect of the Single Claim or individual entitlement.

38. Should the Former Employees choose to seek independent support for filing their claims, such services are already available free of charge. I am advised by Davies that the Former Employees may file an application under the employment standards legislation in each applicable Canadian province, which will trigger the involvement of a statutorily appointed Employment Standards Officer who could advance any employee claims. There is no cost to the Former Employees or TBS Canada for such representation. I have been advised by Davies that to the extent that an employment standards branch

becomes aware of multiple claims with one employer, they typically consolidate claims to one officer, who could address multiple claims at once.

39. Further, if TBS Canada ultimately files a proposal, it will send separate communications to the Former Employees describing the terms of the proposal and how the claims of the Former Employees will be addressed within the proposal.

(b) WEPPA

40. TBS Canada is dedicated to ensuring that the Former Employees can be paid on account of all, or some portion of their claims as quickly as possible in a commercially reasonable manner. To achieve this, the Company is actively following a two-pronged strategy, involving both (a) ongoing interactions with Service Canada, and (b) efforts to settle the terms of a proposal that will be submitted to its stakeholders for consideration.

41. Taking each of these strategies in turn, the Company has engaged with Service Canada to explore the possibility of allowing the Former Employees to access WEPPA. To facilitate the ability of Former Employees to access WEPPA, one of the options that the Company is exploring is the appointment of the Proposal Trustee to act as the receiver for specific assets belonging to TBS Canada.

42. In parallel with these efforts, the Company is finalizing a confidential term sheet to be sent to the UK Parent, UK Administrators and Aurelius, among others, in respect of a

proposal that TBS Canada intends to make to its creditors. TBS Canada remains optimistic that if it is able to settle and implement the proposal contemplated by the term sheet, it will result in significant recoveries for the Company's stakeholders, including Former Employees.

43. If TBS Canada ultimately determines that the quickest and most commercially reasonable manner for the Former Employees to receive payment is through WEPPA, the Proposal Trustee can then assist the Former Employees in navigating the WEPPA process. I understand from the Proposal Trustee that it has experience filing WEPPA claims on behalf of former employees in retail insolvencies, and that the Proposal Trustee is prepared to provide assistance to the Former Employees so that they can receive their WEPPA entitlements in a timely and efficient manner.

(iii) Communication with Stakeholders

44. Finally, TBS Canada has, and will continue to keep its stakeholders, including the Former Employees, apprised of any material updates in respect of the above matters, or any other matters that arise in these proceedings.

45. As part of these efforts, TBS Canada has disseminated the following communications to its employees and Former Employees, with the goal of ensuring that they are well-informed of their rights and the NOI proceeding:

- (a) on the Filing Date, I held a town hall of TBS Canada where all head office and store-level employees were invited, including Former Employees, advising them of the NOI filing, the Store Closures and directing them to the Proposal Trustee with any questions;
- (b) TBS Canada provided termination letters to the Former Employees, which specifically identified the Former Employees' entitlement to "the balance of any outstanding wages and vacation pay, statutory notice remaining in the form of termination pay, severance pay as applicable, together with continued benefit eligibility over the remaining statutory notice period" and their potential eligibility under WEPPA. The letters also advised the Former Employees: "If these claims processes are available to you, you will receive further information under separate cover about how to apply." Finally, the termination letters invited the Former Employees to contact the Company with any questions by emailing na.peopleoperations@thebodyshop.com. One such letter is attached as Exhibit "A" to the Affidavit of Stephanie Hood dated April 12, 2004; and
- (c) a press release was issued by the Company advising of the commencement of the NOI proceedings, identifying and advising of the closure of the Closing Stores and directing parties to a dedicated case website at

www.alvarezandmarsal.com/TheBodyShop (the “**Case Website**”) for further information. A copy of the press release is attached to this Affidavit as **Exhibit “E”**.

46. As of the date hereof, neither the Company nor the Proposal Trustee has received a significant number of inquiries from Former Employees. In each case, the Company and the Proposal Trustee have promptly responded to any inquiries that they have received.

47. Notably, the Proposal Trustee has created a dedicated page on the Case Website for the purpose of sharing information to employees and Former Employees that includes information about the NOI proceeding, frequently asked questions for Former Employees, access to relevant documents and advises the Former Employees that TBS Canada is calculating their claims. As any further updates become available affecting the Former Employees, the Company will work with the Proposal Trustee to ensure the Case Website is promptly updated.

48. Beyond the above, TBS Canada is open to engaging with the Former Employees and working with them to ensure their interests are properly considered. For example, on April 11, 2024, Natasha MacParland from Davies wrote Koskie Minsky to confirm that TBS Canada is open to discussions with Koskie Minsky regarding their clients’ concerns. Ms. MacParland’s letter emphasized, however, the need for written consent from each

represented individual to comply with provincial privacy laws before the Company could share any personal information about them with Koskie Minsky. A copy of Ms. MacParland's letter is attached as **Exhibit "F"** to my Affidavit. To date, I am informed by Davies that Koskie Minsky has yet to furnish the required consents and has not shared a list of the Former Employees that Koskie Minsky claims it represents.

49. TBS Canada is also required to appear before this Court at least every 45 days to seek permission to extend the time for the Company to file a proposal (each, an "**Extension Motion**"). As part of each Extension Motion, I have sworn affidavits providing information on TBS Canada's activities since the Company last appeared before the Court. I will continue with this practice in connection with future Extension Motions. These affidavits are posted on the Case Website, together with the associated Court orders and endorsements.

50. To the extent there are any material developments that occur between the Extension Motions, as reflected in the April 24, 2024 Endorsement (attached at Exhibit "D"), TBS Canada has agreed to keep stakeholders, including Former Employees, aware of significant events or matters directly affecting them in the usual course.

D. Other Stakeholder Considerations

51. As part of the relief sought on the Representation Motion, I understand that Koskie Minsky is seeking an order that the reasonable professional costs incurred by Representative Counsel before and after the date of the order shall be paid by TBS Canada. I further understand that Koskie Minsky is also seeking the Court's permission to retain professional or expert advisors. Finally, I understand that Koskie Minsky has not provided a budget or estimate for what its fees and any advisor's fees in connection with service as Representative Counsel would be.

52. As noted above at paragraph 30, the Company's key stakeholders who will make claims are its landlords, trade creditors and the Former Employees. No other unsecured creditor or creditor group has sought funding from TBS Canada.

53. Davies has advised me that at least seven of TBS Canada's landlords intend to oppose the Representative Counsel Motion. These landlords represent 50 of TBS Canada's 72 operating stores and 13 out of the 33 Closing Stores. I understand that the landlords are concerned that the appointment of Representative Counsel would prejudice them and other stakeholders as it would reduce the overall funds available for recovery.

54. TBS Canada shares these concerns. Particularly in view of what the Company sees is a lack of any material benefit to the efficient administration of these proceedings,

SWORN remotely by Jordan Searle at the City of Toronto, in the Province of Ontario, before me on the 10th day of May, 2024 in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely.



Frank Gillies

Frank Gillies
Commissioner for Taking Affidavits
(or as may be)

Jordan Searle

This is Exhibit "A" referred to in the Affidavit of Jordan Searle sworn by Jordan Searle at the City of Toronto, in the Province of Ontario, before me on May 10, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Frank Gillies, a Commissioner, etc., Province of Ontario, while a Student-at-Law. Expires April 27, 2025.

Frank Gillies

Commissioner for Taking Affidavits (or as may be)

FRANK GILLIES

Estate / Court File No.: 31-3050418

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PROVINCE OF ONTARIO**

**AFFIDAVIT OF JORDAN SEARLE
Sworn March 1, 2024**

I, Jordan Searle, of the City of Toronto, in the Province of Ontario, MAKE
OATH AND SAY:

1. I am the General Manager, North America and the sole director of The Body Shop Canada Limited ("**TBS Canada**" or the "**Company**"). I have been the General Manager since February 10, 2023. I am also an officer and director of the Company's U.S. affiliate, Buth-Na-Bodhaige Inc. ("**TBS US**"). I have been actively engaged in the discussions and negotiations surrounding the financial circumstances of TBS Canada and TBS US. As such I have personal knowledge of the matters referred to in this Affidavit. Where I have relied upon other sources of information, I have stated the source of that information and verily believe such information to be true.

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2. On March 1, 2024 (the "**Filing Date**"), TBS Canada filed a notice of intention to make a proposal (the "**NOI**") under the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (the "**BIA**"). Alvarez & Marsal Canada Inc. was appointed to act as the proposal trustee (the "**Proposal Trustee**"). A Certificate of Filing for the NOI is attached as **Exhibit "A"** to my Affidavit.

3. This Affidavit is made in support of the motion brought by the Company for an Order:

- (a) expanding the stay of proceedings by ordering the continuation of services and other protections to the Company;
- (b) granting an administration charge to secure the fees and disbursements of the Proposal Trustee, counsel to the Proposal Trustee and counsel to the Company;
- (c) approving an indemnity and priority charge to indemnify the director and officers of TBS Canada for any obligations and liabilities they may incur following the Filing Date in such capacities;
- (d) directing all persons who have in their possession or power, any property of TBS Canada, or any book, document or paper of any kind relating to

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TBS Canada, to produce the book, document or paper for the Company, or to deliver to the Company any property of TBS Canada in their possession promptly upon request of the Company or the Proposal Trustee;

- (e) extending the time for the Company to file a proposal under the BIA or seek a further extension to April 16, 2024 (being 19 days from its current expiry of March 28, 2024); and
- (f) certain additional relief.

A. Background and Overview

4. TBS Canada is a federally incorporated corporation, specializing in the sale of skincare, haircare, bath and body products with stores across Canada. As more particularly set out below, the Company and TBS US are wholly owned subsidiaries of The Body Shop International Limited (“**TBS International**” or the “**UK Parent**”).

5. On February 13, 2024, the UK Parent filed for administration (the “**UK Administration**”) in the United Kingdom, less than three months after it was acquired by the private equity firm Aurelius Group. I understand that administration is the dominant legal procedure for restructuring insolvent companies in the UK. Historically,

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the UK Parent has provided several accounting and cash management functions for the Company whereby all of TBS Canada's cash collections were swept from the Company by the UK Parent and then the UK Parent would remit payment on behalf of the Company for its trade payables, including its rent and payroll.

6. In the weeks leading up to the UK Administration, the UK Parent swept cash from TBS Canada's bank accounts but failed to remit payment for amounts owing to the Company's vendors/suppliers and landlords. Payroll and HST obligations, however, have continued to be paid in the ordinary course. This has caused an immediate liquidity crisis for TBS Canada because all funding for the Company and its Canadian operations were cut off with no advance notice. TBS Canada has significant overdue payables that it cannot now satisfy. But for the improper withholding of the Company's funds, TBS Canada would be able to pay all its obligations in full. The Company contacted the UK Administrator (as defined below), members of the Aurelius Group and the UK Parent requesting that they either return the funds that were swept from the Company's accounts or advance funds, but they refused to do so.

7. In the circumstances, the Company urgently needs the benefit of a stay of proceedings to provide it with the breathing room required to organize its financial affairs and develop a plan for the continuation, or orderly wind-down, of the Canadian

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business. As result, TBS Canada took the prudent step of commencing these NOI proceedings.

8. The relief sought on this motion will enable the Company to maintain its business operations and preserve the value of its assets by preventing parties from discontinuing or ceasing to perform any contract or other arrangement in favour of TBS Canada while it explores and advances its restructuring or liquidation options. The charges requested are essential to secure the services of the professionals and director and officers who are required to facilitate a successful restructuring or liquidation of TBS Canada.

B. The Business

(i) The Company

9. TBS Canada is a retailer focused on cosmetics, perfume and skin care products with 105 stores across Canada (other than Quebec and the Territories), an e-commerce platform and a wholesale business. The Company's merchandise is marketed under the "The Body Shop" brand, which enjoys a global reputation for offering high-quality, natural and ethically sourced beauty products.

10. TBS Canada is a federally incorporated corporation that is extra-provincially registered to operate throughout Canada (other than Quebec and the Territories). The Company's registered head office is located at 1 Yorkdale Road, Suite 510, Toronto,

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Ontario. The majority of the Company's stores are located in Ontario. A breakdown of the Company's stores by Province is set out below:

Stores by Province	
Ontario	49
British Columbia	18
Alberta	17
Nova Scotia	5
Manitoba	5
Saskatchewan	5
New Brunswick	3
Newfoundland	2
Prince Edward Island	1
TOTAL	105

11. As of March 1, 2024, TBS Canada employed 784 individuals across Canada.¹ The Company is not party to a collective agreement, nor are any of its employees represented by a union or other employee association.

12. The Company and TBS US are wholly-owned subsidiaries of TBS International. TBS International is owned by Natura (Brasil) International B.V. ("**Natura**"), which is owned by Aurelius IV UK Acquico Eight Ltd. ("**Aurelius Purchaser**"). As more particularly described in paragraph 17 below, the shares of Natura were acquired by Aurelius Purchaser on or about December 2023. TBS International and all of its foreign

¹ As described in paragraph 43 below, the Company intends to make certain headcount reductions as part of its restructuring efforts.

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subsidiaries are ultimately owned by Aurelius Investment Lux One SARL (together with Aurelius Purchaser and Aurelius Seven (defined below) “**Aurelius**”). A copy of The Body Shop’s global organizational chart is attached to my Affidavit as **Exhibit “B”**.

(ii) Intercompany Arrangements

13. The Company has the right to market and sell “The Body Shop” branded products pursuant to a Selective Master Distribution & Franchise Agreement between TBS Canada and TBS International (the “**Franchise Agreement**”). Under the Franchise Agreement, the Company receives all of its inventory from the UK Parent for sale exclusively in its designated retail stores. However, as a franchisee under the Franchise Agreement, TBS Canada does not enjoy exclusivity or ownership over “The Body Shop” brand or related intellectual property. A copy of the Franchise Agreement is attached to my Affidavit as **Exhibit “C”**

14. Historically, TBS Canada has relied heavily on its working relationship with the UK Parent and TBS US, for inventory, distribution and logistics services, among other things. The UK Parent ships products designated for TBS Canada to TBS US, who then holds them at its distribution centre located in the United States (the “**US Distribution Centre**”). At the US Distribution Centre, TBS US either mixes inventory or virtually designates items for TBS Canada. TBS US transports the inventory to the US-Canadian border, where it gets picked up by third-party couriers on TBS Canada’s behalf.

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15. Pursuant to the Franchise Agreement and the Company's working arrangement with the UK Parent, title to inventory only passes from TBS International to TBS Canada once it leaves the US Distribution Centre. As long as inventory is housed at the US Distribution Centre, TBS International holds title. I understand that approximately US \$85 million (book value) in inventory currently resides at the US Distribution Centre.

16. As more particularly described below, the UK Parent has provided several accounting and cash management functions for TBS US and the Company whereby all of TBS US and TBS Canada's cash collections were swept by the UK Parent and then the UK Parent would remit payment on behalf of TBS US or the Company, as applicable, for its trade payables. Like the Company, the UK Parent also swept all of TBS US' cash immediately prior to the UK Administration, leaving TBS US in a severe liquidity crisis. As a result, on March 1, 2024, TBS US terminated substantially all of their employees and closed their operations, including the US Distribution Centre.

C. The Company's Creditors

(i) Aurelius Transaction and Security

17. On or about December 2023, the Aurelius Purchaser acquired all of the shares of Natura (and indirectly, TBS International) (the "**Acquisition**"). In connection with the Acquisition, Aurelius IV UK Acquico Seven Limited ("**Aurelius Seven**"), the immediate parent company of the Aurelius Purchaser, entered into a Loan Agreement with TBS

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International, pursuant to which GBP £2,720,741.98 was made available to TBS International (the "**Loan Agreement**"). Attached as **Exhibit "D"** to my Affidavit is a copy of the Loan Agreement.

18. The Loan Agreement provides in section 4.2 that the purpose of the loan is to "assist the [Aurelius] Purchaser with funding the Acquisition. For this purpose, the Borrower [the UK Parent] may on-lend the proceeds of any [L]oan to the [Aurelius] Purchaser". I am not aware of any of the loan proceeds being made available to TBS Canada, nor did the Company require any of these funds.

19. The obligations of the UK Parent under the Loan Agreement are guaranteed by TBS Canada pursuant to a Guarantee and Indemnity Agreement (the "**Guarantee**"). The Guarantee is attached to my Affidavit as **Exhibit "E"**. The obligations of the Company under the Guarantee are enforceable after Aurelius Seven issues a demand to TBS Canada. To date, TBS Canada has not received any such demand and is unaware of the current status of the loan facility.

20. To secure its obligations under the Guarantee, TBS Canada executed a General Security Agreement ("**GSA**") and a deed of hypothec (the "**Hypothec**") granting Aurelius Seven a security interest over all of its present and after-acquired property (collectively, the "**Aurelius Security**"). Attached to my Affidavit as **Exhibit "F"** is a copy of the

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Hypothec. To the best of my knowledge, TBS Canada was never provided with an executed copy of the GSA.

21. Aurelius Seven has registered notice of its security interest pursuant to the personal property regimes in each Canadian provincial and territorial jurisdiction against TBS Canada. Attached as **Exhibit "G"** are the search results (the "**Searches**") conducted against the Company under the personal property security regimes in each province and territory in Canada, which shows the personal property security registrations in favour of Aurelius.

(ii) Other Secured Creditors

22. The Searches also showed registrations in favour of Enterprise Fleet Management Canada, Inc. in the Provinces of British Columbia, Alberta, Nova Scotia and Ontario (the "**Enterprise Security**"), and registrations in favour of HSBC Bank Canada and HongKong Bank of Canada in Saskatchewan (collectively, the "**HSBC Registrations**"). The Enterprise Security relates to corporate vehicles that are leased by the Company for certain of its employees. I am not aware of what the HSBC Registrations relate to and I do not believe any amounts are owing to HSBC in connection with the HSBC Registrations.

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(iii) Unsecured Creditors

23. The Company also has various unsecured creditors, including (a) trade creditors, to which it owes approximately \$2.5 million; and (b) landlords, to which it owes \$900,000, primarily representing February rent. TBS Canada is up to date on all of its payroll and source deduction obligations as well as HST obligations.

D. The Financial Situation of TBS Canada

24. Historically, TBS International has provided several functions to TBS Canada and TBS US, including human resources, accounts payables and cash management and information technology. In the case of the Company, TBS International achieved this through a cash pooling arrangement between the entities, under which all of TBS Canada's funds were deposited into seven separate accounts at HSBC Bank Canada which are in TBS Canada's name (collectively, the "**HSBC Accounts**") and swept by TBS International (the "**Cash Pooling Arrangement**"). In exchange, TBS International would then remit payment for TBS Canada's payables upon direction by the Company. A similar cash pooling arrangement is in place in respect of TBS US. I am not aware of any documentation executed by TBS Canada or TBS US and TBS International in respect of the Cash Pooling Arrangement.

25. Pursuant to the Cash Pooling Arrangement, TBS International had full control over all seven of the HSBC Accounts even though the accounts are in the name of TBS

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Canada. While TBS Canada could historically review the HSBC Accounts and their balances, only TBS International could process payments. To pay its vendors, TBS Canada must issue directions to TBS International, who then, in turn, issues the payments. This historic arrangement has been in place between TSB International and the Company since at least 2007.

26. The Cash Pooling Arrangement has allowed TBS Canada to operate with little to no institutional debt, helping it to weather a particularly difficult period for the retail industry: the COVID-19 pandemic. Emerging from the pandemic, TBS Canada's performance has shown significant improvement and was on track to being profitable by the end of 2023.

27. TBS Canada's finances deteriorated sharply beginning in December 2023, when TBS International, while continuing to sweep the HSBC Accounts, failed to remit payments in full to TBS Canada's vendors. Initially, the UK Parent explained that it had lost access to its financing and was slowing down payments to creditors to conserve cash in the interim.

28. Nevertheless, this process continued throughout the holiday period and into January 2024. As with most retailers, the holiday period accounts for the most significant percentage of TBS Canada's total annual sales. This holiday period was no

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exception and TBS Canada generated approximately \$12M (EBIT) in profit in November 2023, December 2023 and January 2024 combined.

29. Until February 12, 2024, the day before the UK Administration was commenced, the UK Parent continued to sweep the HSBC Accounts without remitting payments in full to TBS Canada's creditors and despite numerous formal payment requests being submitted by the Company. This created a backlog of overdue debt that has now ballooned to approximately \$3.3 million. This growing debt is due and owing to a wide variety of vendors, including landlords, utilities, logistics providers, insurers and marketing agencies. TBS International swept \$42.9 million from the HSBC Accounts between November 1, 2023 and February 13, 2024, while only remitting \$21.8 million on account of the Company's payables and payroll during this period.

30. TBS International also swept TBS US' bank accounts during this time and failed to payments in full to TBS US' creditors, leaving TBS US with significant overdue payables in excess of US\$3.3 million and in dire financial circumstances.

31. On February 13, 2024, TBS International unexpectedly filed for UK Administration and Tony Wright, Geoff Rowley and Alastair Massey of FRP Advisory were appointed as joint administrators of the UK Parent (collectively, the "**UK Administrator**"). This news came without warning and was quite a shock to me and my

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team, not least because of our historic reliance on TBS International for a variety of integral corporate services for both TBS Canada and TBS US. However, TBS International assured the Company and TBS US that only the U.K. market would be affected and that all other markets could continue to operate in the ordinary course. A screenshot of the TBS International intranet announcement is attached to this Affidavit as **Exhibit “H”**.

32. Despite reassurances, later that day, TBS International informed the Company, among others, that they would no longer be complying with the well established and historical Cash Pooling Arrangement and advised the Company, and others, that it must now use only post February 13, 2024 revenue to finance all their market activities. This left the Company without access to TBS Canada’s pre February 13, 2024 cash of approximately \$20 million, as well as depleted bank accounts, significant outstanding payables and severed shared services. A copy of the email correspondence from TBS International to TBS Canada and TBS US, among others, is attached to this Affidavit as **Exhibit “I”**.

E. The NOI Proceedings

(i) Events Leading up to the NOI Filing

33. The UK Administration crystallized the Company’s liquidity crisis. With little cash and growing debts, TBS Canada urgently sought to keep the Company properly funded.

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On February 13, 2024, I emailed Katrina Wright, Global People Director of TBS International outlining the Company's growing liquidity issues. Above all else, the purpose of this email was to advise of a plan for proposed headcount reductions, solicit funding and ensure the Company's survival. The next day, I sent a follow-up email advising of the Company's intent to pursue a reorganization plan with a proposed execution date of February 20, 2024. I have attached the email correspondence to Katrina Wright to this affidavit as **Exhibits "J" and "K"**, respectively.

34. On February 15, 2024, I received a reply from Katrina Wright advising that having discussed with Aurelius finance, "they have said this will be under review, but we can not take the decision at this time to approve the payments. Therefore we will not be able to go ahead next week with your planned exits". I then wrote to Aurelius and the UK Administrator to explain the severity of TBS Canada's liquidity situation and to impress on them the importance of a prompt response. To date, I have not received a response. Copies of this correspondence are attached to this affidavit as **Exhibits "L" and "M"**.

35. On February 20, 2024, I met with the UK Administrator and its legal team. In that meeting, the UK Administrator made it clear that there would be no financing for, or return of, pre February 13, 2024 funds to TBS Canada or TBS US. In response, I sent an email to Aurelius, the UK Administrator and TBS International to once again impress on them the urgency and explain the severity of the consequences for TBS Canada and

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TBS US should they not receive the funding they required. In this email, I urged that if the Company did not receive funding by February 26, 2024, it would have no choice but to commence insolvency proceedings in Canada. Nevertheless, the next day, the UK Administrator unequivocally informed us that TBS International would not be providing any financial support to the Company or TBS US or returning funds swept from TBS Canada or TBS US. I have attached my email correspondence requesting funding to this affidavit as **Exhibit "N"**.

36. I am advised that our counsel, Davies Ward Phillips & Vineberg LLP also spoke to Jones Day LLP, U.S. counsel for Aurelius and the UK Administrator, and understand that that they advised that neither TBS Canada nor TBS US would receive funding. I am further advised that we are not aware of any Canadian insolvency counsel or advisors for Aurelius or the UK Administrator.

37. On February 26, 2024, the Company did not receive the requested funding or return of TBS Canada's funds by the UK Parent, the UK Administrator or Aurelius. On the same day, TBS Canada engaged Alvarez & Marsal Canada Inc., an affiliate of the Proposal Trustee, to assist the Company in its reorganization efforts.

38. As described above, the actions of the UK Parent have caused TBS US to cease all operations in the United States, including retail stores and the US Distribution

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Centre. On March 1, 2024, TBS US closed all of its stores and terminated substantially all of its employees. Due to the integrated nature of TBS Canada and TBS US, the closure of the US business will make it exceedingly difficult to access existing inventory stored in the US Distribution Centre or to process any future inventory requests. As a consequence, TBS Canada has lost access to its e-commerce platform and is no longer accepting or fulfilling orders through their website. The Company has also lost the ability to ship to its wholesale customers, being Shoppers Drug Mart and Amazon.ca because it can no longer fulfil such orders.

39. Faced with mounting debt, no prospect of assistance from the UK Parent or Aurelius or return of its funds, and an inability to fulfill e-commerce orders, TBS Canada determined that it was in the best interests of the Company to commence these NOI proceedings. The NOI proceedings provide the Company with the breathing room that it desperately requires so that it can establish and begin executing a clear plan for the benefit of its many stakeholders.

40. TBS International, Aurelius and the UK Administrator will receive notice of the Motion.

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(ii) Steps Taken Since filing the NOI

41. The Company has identified the following 33 underperforming stores (the “Closing Stores”) that it will immediately start to liquidate and ultimately close by the end of March in an effort to improve its liquidity position:

Bayview Village (Toronto, ON)	Lawson Heights (Saskatoon, SK)	Rideau Centre (Ottawa, ON)
Carlingwood Mall (Ottawa, ON)	Lloyd Mall (Lloydminster, AB)	Semiahmoo (White Rock, BC)
Catarauqui Town Centre (Kingston, ON)	Londonderry Mall (Edmonton, AB)	Shoppers Mall (Brandon, MB)
Champlain Place (Dieppe, NB)	Lynden Park Mall (Brantford, ON)	Stone Road Mall (Guelph, ON)
Corner Brook Plaza (Corner Brook, NFLD)	Mayflower Mall (Sydney, NS)	Sunridge Mall (Calgary, AB)
Cornwall Centre (Regina, SK)	McAllister Place (Saint John, NB)	The Centre (Saskatoon, SK)
Dufferin Mall (Toronto, ON)	Medicine Hat Mall (Medicine Hat, AB)	The Shops at Don Mills (Toronto, ON)
Fairview Park Mall (Kitchener, ON)	Midtown Plaza (Saskatoon, SK)	Timmins Square (Timmins, ON)
Hillside Shopping Centre (Victoria, BC)	Park Place (Lethbridge, AB)	Toronto Pearson Term. 1 (Toronto, ON)
Lambton Mall (Sarnia, ON)	Place d'Orleans (Orleans, ON)	Truro Mall (Truro, NS)
Lansdowne Place (Peterborough, ON)	Queen Street East (Toronto, ON)	Village Green (Vernon, BC)

42. On March 1, 2024, TBS Canada sent notices of disclaimers for the leases to the landlords for the Closing Stores. Unless successfully disputed in accordance with the BIA, the disclaimers of the applicable leases for the Closing Stores will be effective as of March 31, 2024.

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43. The Company has made certain headcount reductions and terminated approximately 20 of its head-office employees and two contractors effective March 1, 2024. The Company will also be terminating approximately 200 employees who are employed at the Closing Stores by March 31, 2024.

44. The Company historically offered gift cards to be redeemed in-store or online and offered a loyalty club program under which members accumulate points with purchases to be redeemed in-store or online. Due to the current financial position of the business, TBS Canada cannot continue honouring gift cards or points accumulated under the loyalty program during these NOI proceedings. The Company has also ceased providing refunds or exchanges for purchased products.

F. Relief Sought on this Motion

(i) Expansion of the Stay of Proceedings

45. TBS Canada is seeking the Court's approval to provide enhanced stay protections, which require suppliers and service providers to continue to provide goods and services to the Company during these NOI proceedings. The expanded stay provisions will not require any person to extend credit to the Company or prohibit them from requiring immediate payment for goods or services provided after the Filing Date. In this way, the relief that TBS Canada seeks aims to preserve the value of its business in a fair, measured manner.

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46. The expanded stay is necessary and appropriate in the circumstances so that TBS Canada may continue to have the breathing room necessary to consider its restructuring options without disruption and establish a clear plan for the benefit of its stakeholders. Additionally, it is critical that the Company continues to generate the revenue needed to fund the NOI proceedings and generate a viable proposal for its creditors.

47. The proposed expanded stay would also prohibit HSBC Bank Canada, or any other person, from paying, transferring or disbursing any of the funds in the HSBC Accounts without the prior consent of the Company or the Proposal Trustee.

48. On February 29, 2024, I received verbal confirmation from the treasury group at the UK Parent that TBS Canada will be the administrator on the HSBC Accounts and the UK Parent would continue to move money at the direction of TBS Canada, if needed. Notwithstanding these assurances, I believe the expanded stay in respect of the HSBC Accounts is necessary given the past conduct of the UK Parent and in light of the fact that TBS International has not provided any written evidence that the necessary controls in respect of the HSBC Accounts have been transferred to TBS Canada.

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49. I understand that the Proposal Trustee is supportive of this relief and believes that expanding the scope of the stay of proceedings is essential to the continued operation of the Company and beneficial to its stakeholders.

(ii) The Charges

(a) Administration Charge

50. TBS Canada is seeking a charge on its assets (the "**Administration Charge**") in favour of the Proposal Trustee, counsel to the Proposal Trustee and counsel to the Company as security for payment of their respective fees and disbursements in each case at their standard rate and charges.

51. The expertise and continued participation of the beneficiaries of the Administration Charge is essential to the success of these proceedings. The Company has determined the quantum of the Administration Charge in consultation with the Proposal Trustee, who agrees that such quantum is commensurate with the fees and disbursements expected to be incurred by the beneficiaries of the Administration Charge.

52. The Administration Charge will be in the amount of \$700,000 and will rank ahead of the D&O Charge (as defined below), the Aurelius Security and HSBC Registrations but behind the Enterprise Security.

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(b) D&O Charge

53. As part of these proceedings, the Company is seeking a charge on its assets in favour of its director and officers in an amount not to exceed \$2,100,000 (the "**D&O Charge**"), which would rank behind the Administration Charge and Enterprise Security but ahead of the Aurelius Security and HSBC Registrations. TBS Canada has worked with the Proposal Trustee to determine the amount of the D&O Charge and I believe it is reasonable in the circumstances. The Proposal Trustee will provide further detail in their Report to be filed in connection with the Motion.

54. TBS International currently has a global directors' and officers' insurance policy through Aon UK Limited (collectively, the "**D&O Policy**"), which covers the UK Parent and its subsidiaries from December 29, 2023, to December 28, 2024. However, despite numerous requests, TBS Canada does not have access to the wording of the D&O Policy, nor has it received any proof that premiums have been paid. Instead, it has received a summary of the D&O Policy and a Client Information Letter from Aon UK Limited. While these documents give some indication that the D&O Policy existed, they say little about its terms or whether it is in good standing. Attached as Exhibits "**O**" and "**P**" are the D&O Policy Summary and Client Information Letter, respectively.

55. In a series of email correspondence beginning on February 5, 2024, TBS Canada sought to gain access to the D&O Policy's terms and proof that premiums have

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been paid up to date. On February 28, 2024, TBS International responded by informing the Company the “paperwork ... does not exist” and could not provide evidence of payment of the premium. Consequently, it is unclear whether the director and officers are sufficiently covered for events arising after the filing of the NOI. I have attached these emails as **Exhibits “Q” and “R”**.

56. Given the Company’s financial circumstances and the lack of comfort regarding the D&O Policy, the officers of the Company and I have indicated that we are not prepared to remain in office without knowing that we will be fully protected from any liability which may arise during our continuance as director and as officers. I believe that the continued involvement of the Company’s core upper management team is integral to the success of these proceedings. Accordingly, TBS Canada requests the D&O Charge against post-filing obligations that the director and officers may become personally liable for (except for misconduct or gross negligence) to the extent that the Company is unable to satisfy its indemnity obligations.

(iii) Compelling Delivery of the Property of the Company

57. TBS Canada is seeking an order compelling any person who has any property, book, document or paper of any kind, of the Company in its possession to deliver such property to the Company promptly upon the request of the Company or the Proposal Trustee.

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58. This relief is necessary because the UK Parent, Aurelius and the UK Administrator are in possession of certain of the Company's accounting and other records in light of the centralized structure and Cash Pooling Arrangement that was historically carried out by TBS International.

59. TBS Canada requires this information in order to continue operating as a going concern. Without this information, the Company cannot disentangle its accounting services from TBS International and will be unable to perform many of the human resource, accounts payable and accounts receivable functions that were previously performed by TBS International.

(iv) Extension of Time to File a Proposal

60. The Company is seeking an extension of the time to file a proposal or seek a further extension from March 28, 2024, which is the current expiration date, to April 16, 2024 (the "**Extension**"). The April 16 date was selected having regard to the upcoming Easter and Passover celebrations. The Extension will provide the Company with the time it needs to pursue its restructuring options and stabilize its operations.

61. The Company has prepared a cash flow forecast with the assistance of the Proposal Trustee, which sets out projected cash flows for the period of March 1, 2024 to May 24, 2024 (the "**Cash Flow Forecast**"). I understand that the Proposal Trustee will

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file the Cash Flow Forecast with the Court in connection with this Motion. The Cash Flow Forecast shows that TBS Canada has sufficient liquidity to operate to the end of the requested Extension. Notably, the Cash Flow Forecast contemplates that rent for premises that have not been disclaimed will be paid weekly. As a result, as part of the order sought in connection with this Motion, the Company is seeking this Court's permission to pay rent on a weekly basis.

62. TBS Canada has and intends to continue to work in good faith and due diligence in the period prior to and during these NOI proceedings. The Company has worked cooperatively with the Proposal Trustee in preparing the Cash Flow Forecast, has provided a list of its creditors and as described above, is working on reducing under performing stores and implementing headcount reductions.

G. Conclusion

63. For the reasons expressed herein, I am of the view that the Company is acting in good faith and with due diligence in seeking the relief sought on this Motion.

SWORN remotely by Jordan Searle at the City of Toronto, in the Province of Ontario, before me on the 1st day of March, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Frank Gillies

Commissioner for taking Affidavits (or as may be)

Jordan Searle

Frank Michael Gillies, a Commissioner, etc., Province of Ontario, while a Student-at-Law. Expires April 27, 2025.

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF THE
BODY SHOP CANADA LIMITED, IN THE CITY OF TORONTO, IN THE PROVINCE OF
ONTARIO

Estate/Court File No: 31-3050418

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)
IN BANKRUPTCY AND INSOLVENCY**

Proceeding commenced at Toronto

**AFFIDAVIT OF JORDAN SEARLE
SWORN MARCH 1, 2024**

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Lawyers for The Body Shop Canada Limited

This is Exhibit "B" referred to in the Affidavit of Jordan Searle sworn by Jordan Searle at the City of Toronto, in the Province of Ontario, before me on May 10, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Frank Gillies, a Commissioner, etc., Province of Ontario, while a Student-at-Law. Expires April 27, 2025.

Frank Gillies

Commissioner for Taking Affidavits (or as may be)

FRANK GILLIES

Estate No.: BK-24-03050418-0031
Court File No.: BK- 31-3050418

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF THE BODY SHOP CANADA
LIMITED, IN THE CITY OF TORONTO, IN THE PROVINCE
OF ONTARIO

**AFFIDAVIT #2 OF JORDAN SEARLE
Sworn April 8, 2024**

I, Jordan Searle, of the City of Toronto, in the Province of Ontario, MAKE
OATH AND SAY:

1. I am the General Manager, North America and the sole director of The Body Shop Canada Limited ("**TBS Canada**" or the "**Company**"). I have been the General Manager since February 10, 2023. I am also an officer and director of TBS Canada's U.S. affiliate, Buth-Na-Bodhaige Inc. ("**TBS US**"). I have been actively engaged in the discussions and negotiations surrounding the financial circumstances of TBS Canada prior to the commencement of these proceedings. As such I have personal knowledge of the matters referred to in this Affidavit. Where I have relied upon other sources of information, I have stated the source of that information and verily believe such information to be true.

2. On March 1, 2024, TBS Canada filed a notice of intention to make a proposal (the “**NOI**”) under the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (the “**BIA**”). Alvarez & Marsal Canada Inc. was appointed to act as the proposal trustee (the “**Proposal Trustee**”).

3. This Affidavit is sworn in support of the motion brought by TBS Canada for an order:

- (a) approving a key employee retention plan (the “**KERP**”) for certain employees and independent contractors of TBS Canada;
- (b) approving a priority charge against the property of TBS Canada (the “**KERP Charge**”) as security for amounts that may become payable under the KERP, up to the maximum amount of \$470,000;
- (c) granting a sealing order in relation to the KERP;
- (d) extending the time for TBS Canada to file a proposal under the BIA to May 31, 2024; and
- (e) approving the activities and conduct of the Proposal Trustee as set out in its First Report dated March 2, 2024 and second report, filed in connection with this motion (the “**Second Report**”).

4. In addition to the relief being sought in the accompanying motion, the purpose of this Affidavit is to update the Court and the Company's stakeholders on the activities of TBS Canada since the Filing Date.

5. In connection with this NOI proceeding, I swore an affidavit dated March 1, 2024 (the "**Initial Affidavit**"), a copy of which is attached to my Affidavit as **Exhibit "A"**, without the exhibits referred to therein. Where relevant, I have repeated certain portions of the Initial Affidavit in this Affidavit.

A. Background and Overview

6. TBS Canada is a retailer specializing in the sale of skincare, haircare, bath and body products with 72 stores across Canada.¹ TBS Canada and TBS US are indirect wholly owned subsidiaries of The Body Shop International Limited ("**TBS International**" or the "**UK Parent**"), which is indirectly owned by Aurelius IV UK Acquico Eight Limited ("**Aurelius**").

7. Historically, the UK parent has provided several services for TBS Canada and TBS US, including inventory, human resources, accounts payables, accounts receivable and cash management and information technology. These services have been provided

¹ On the Filing Date, the Company operated 105 stores but as more particularly described below, has closed 33 of its stores as part of its restructuring efforts.

pursuant to a cash management system and Cash Pooling Arrangement (as defined and described below) between the entities, whereby all funds deposited in the bank accounts held by the Company at Royal Bank of Canada (formerly HSBC Bank Canada) (“**RBC**” and such accounts, collectively, the “**RBC Accounts**”) were regularly swept by the UK Parent and used to pay the Company’s payables, among other things.

8. On February 13, 2024, TBS International filed for administration (the “**UK Administration**”) in the United Kingdom and Tony Wright, Geoff Rowley and Alastair Massey of FRP Advisory were appointed as joint administrators of the UK Parent (collectively, the “**UK Administrator**”).

9. In the weeks leading up to the UK Administration, the UK Parent swept cash from the RBC Accounts but failed to remit payment for amounts owing to TBS Canada’s vendors/suppliers and landlords. This created an immediate liquidity crisis for the Company and significant outstanding payables.

10. TBS Canada urgently required a stay of proceedings to give it the breathing room needed to review and advance its restructuring options. As a result, on March 1, 2024 (the “**Filing Date**”), the Company filed the NOI.

11. The UK Parent also swept all of TBS US’s cash immediately prior to the commencement of the UK Administration, similarly leaving TBS US in a severe liquidity

crisis. As a result, on March 1, 2024, TBS US terminated substantially all of their employees and ceased their operations.

12. On March 4, 2024, this Court made an Order (the “**March 4 Order**”), among other things, extending the time for TBS Canada to file a proposal to April 16, 2024 and granting certain other relief that the Company required to allow it to continue its business operations and protect the value of its assets. A copy of the March 4 Order and endorsement are attached to my Affidavit as **Exhibit “B”**.

13. The March 4 Order, among other things:

- (a) authorized TBS Canada to (i) permanently or temporarily cease, downsize or shut down any of its business or operations, (ii) dispose of redundant or non-material assets within a certain specified value, and (iii) refuse to honour any gift cards, existing return policies, refunds or discounts or other similar customer programs or obligations;
- (b) prohibited any person, specifically RBC, from disbursing any funds in the RBC Accounts without the prior consent of TBS Canada or the Proposal Trustee;

- (c) directed all persons who have in their possession or power, any property of TBS Canada, or any book, document or paper of any kind relating to the Company, to produce the book, document or paper for TBS Canada, or to deliver to the Company any property of TBS Canada in their possession;
- (d) authorized TBS Canada to pay rent to its landlords on a weekly basis until April 1, 2024 and on a bi-weekly basis thereafter; and
- (e) granted certain charges over TBS Canada's property, in the following order of priority: (i) in favour of the Proposal Trustee, counsel to the Proposal Trustee and counsel to TBS Canada in the amount of \$700,000 (the "**Administration Charge**"); (ii) in favour of the directors and officers of TBS Canada in the amount of \$2,100,000 (the "**D&O Charge**"); and (iii) in favour of the Company's landlords under each property lease (the "**Landlords**"), a charge for an aggregate amount, in each case, not exceeding 50% of the monthly rent payable under the lease between TBS Canada and the applicable Landlord (the "**Landlord Charge**" and together with the Administration Charge and the D&O Charge, the "**Charges**").

14. On March 8, 2024, TBS US filed a voluntary petition under chapter 7 of title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of New York (the “**Chapter 7 Proceedings**”). Mr. Kenneth Silverman from Rimon P.C. has been appointed as the trustee for TBS US under the Chapter 7 Proceedings (the “**Chapter 7 Trustee**”). A copy of the notice dated March 12, 2024, setting out, among other things, the notice of appointment of the Chapter 7 Trustee, is attached to my Affidavit as **Exhibit “C”**. The first meeting of creditors in the Chapter 7 Proceedings is scheduled for April 9, 2024.

15. The principal purpose of this NOI proceeding is to enable TBS Canada to devise a viable proposal for the benefit of its stakeholders. The relief sought on this motion will further that objective and not cause any prejudice to TBS Canada’s creditors. As described in this Affidavit, since the Filing Date, TBS Canada has acted in good faith and made diligent efforts to stabilize its operations and pursue a going-concern solution for the continuation of “The Body Shop” business in Canada. If granted, the relief sought on this motion will provide TBS Canada with the time needed, and ensure the retention of the key employees essential to furthering these efforts.

B. Overview of TBS Canada's Activities since the Filing Date

(i) Engagement with Key Stakeholders and other Parties

16. On March 6, 2024, our counsel, Davies Ward Phillips & Vineberg LLP ("**Davies**") served the service list, including all of the Landlords, with the March 4 Order. Any party on the service list that is not represented by counsel or does not have an email address was mailed a letter by Davies serving them with the March 4 Order by directing them to the Proposal Trustee's website. The form of letter sent by Davies to those parties is attached to my Affidavit as **Exhibit "D"**. Five of the mailed letters were returned to sender and Davies identified alternate mailing addresses for the applicable parties and re-sent the letter attached as Exhibit "D" on March 21, 2024.

17. The Company has engaged with the Landlords on various issues relating to payment of rent and store closures. Per the terms of the March 4 Order, the Company is now paying rent on a bi-weekly basis on the first and fifteenth day of each month.

18. TBS Canada also separately provided copies of the March 4 Order to, among others, TBS International, Aurelius, the UK Administrator and the Chapter 7 Trustee, and directed these parties to the case website maintained by the Proposal Trustee for this matter.

19. The UK Administrator has been responsive to the Company and Proposal Trustee's requests for production of documents in respect of the Company and its financial affairs, including by providing certain agreements between the UK Parent and TBS Canada in respect of the cash management system and Cash Pooling Arrangement, which are more particularly described in subsection (v) below.

20. At the request of the Company, the UK Administrator also provided TBS Canada with an executed copy of the general security agreement (the "**GSA**") in favour of Aurelius IV UK Acquico Seven Limited ("**Aurelius Seven**"), which the Company entered into on or about December 2023. As described in my Initial Affidavit, the GSA secures the Company's guarantee of the UK Parent's obligations under a loan agreement with Aurelius Seven and Aurelius Seven registered notice of its security interest against the Company in the personal property regimes across Canada (the "**Aurelius Security**"). In the Initial Affidavit, I advised that, to my knowledge, TBS Canada was never provided with an executed copy of the GSA. A copy of the executed GSA is attached as **Exhibit "E"** to my Affidavit.

21. In addition to Aurelius Seven, I identified two other parties in my Initial Affidavit that had security registrations against the property of TBS Canada: (a) Enterprise Fleet Management Canada, Inc. ("**Enterprise**" and such registrations being, the "**Enterprise Security**"), and (b) RBC (HSBC Bank Canada at such time) and HongKong Bank of

Canada (the “**RBC Registrations**”). The March 4 Order provided that the Administration Charge and the D&O Charge would rank ahead of the registrations in favour of Aurelius Seven and the RBC Registrations but behind the Enterprise Security. The March 4 Order was served on RBC and Enterprise.

22. To date, none of Aurelius, Aurelius Seven, Enterprise, RBC or their counsel, has raised any concerns with the priority of the Charges or asserted any claims against TBS Canada under the Aurelius Security, the Enterprise Security or RBC Registrations.

23. TBS Canada has also requested supporting documentation from RBC in respect of the Cash Pooling Arrangement, which is discussed in subsection (v) below.

(ii) Store Closures and Canadian Employee Matters

24. In my Initial Affidavit, I listed 33 stores identified by TBS Canada as underperforming and which the Company intended to close in an effort to improve its liquidity position (collectively, the “**Closing Stores**”). In connection with such efforts, the leases for each of the Closing Stores were disclaimed effective March 31, 2024, and the Company began liquidating the inventory located at the Closing Stores. The Company

has now liquidated all of the inventory located at the Closing Stores and has terminated 197 employees whose employment related to the Closing Stores.

25. Historically, TBS Canada has divided its operations into seven regions, with each region being managed by a separate regional manager. In an effort to reduce costs and streamline its operations, the Company has reorganized its operational structure and consolidated its operations across five (rather than seven) separate regions and eliminated two regional manager positions.² The elimination of these two roles is in addition to the 20 head-office employees and two contractors that were terminated effective March 1, 2024 and as described in my Initial Affidavit.

26. Overall, TBS Canada has retained the majority of its workforce. Out of a total workforce of more than 780 individuals as of March 1, 2024, the Company has terminated approximately 220 individuals, representing less than one-third of its workforce. Approximately 70 of the terminated employees were salaried (approximately 20 of those being head office employees) and approximately 150 terminated employees were hourly. Most of the terminated individuals did not hold claims for accrued vacation pay or other benefits.

² The Canadian Retail Director of TBS Canada has voluntarily resigned from her position. In her place, the Company is promoting a regional manager and eliminating that regional manager's position. Another regional manager position has been eliminated and the employment of that regional manager has been terminated by TBS Canada.

27. The Company continues to employ approximately 570 employees. At this time, TBS Canada does not have any further headcount reductions planned. TBS Canada has also continued to pay the wages and benefits of its current employees in the ordinary course.

28. I am advised that on March 11, 2024 Mr. Andrew Hatnay from Koskie Minsky LLP had a call with Davies and counsel to the Proposal Trustee to discuss the appointment of Koskie Minsky LLP as representative counsel for employees that have been terminated by TBS Canada in connection with this NOI proceeding (“**Representative Counsel**”).

29. Following that call, on March 14, 2024, Natasha MacParland of Davies sent Andrew Hatnay the letter attached as **Exhibit “F”** (the “**March 14 Letter**”) to my Affidavit. The letter reflects TBS Canada’s position that the appointment of Representative Counsel is not necessary and would not benefit TBS Canada’s restructuring proceedings. Among other reasons, the March 14 Letter sets out the following:

- (a) the appointment of Representative Counsel would create additional costs and complications. The terminated employees already have the benefit of the protection and assistance of the Proposal Trustee, who has extensive

experience in dealing with employee matters in restructurings and has established a website for the creditors to access information and updates on the proceedings and to submit inquiries and concerns. The appointment of Representative Counsel for the terminated employees would introduce another layer of communication and consultation, which could potentially create confusion or conflict among the parties and increase costs;

- (b) TBS Canada has not proposed or implemented any changes to the terms and conditions of employment of its current employees. The terminated employees are not at risk of being prejudiced or disadvantaged by the Company or any relief it is seeking;
- (c) the Company continues to pursue a going-concern solution for its business and there has been no decision to wind-up the Canadian operations. It is premature and unnecessary to appoint Representative Counsel for the terminated employees - the Company has not filed a proposal, no claims process has been established and there is no evidence of any disputes or issues arising from the terminated employees' claims; and

- (d) the Proposal Trustee and certain of TBS Canada's stakeholders do not support the appointment of the Representative Counsel.

(iii) TBS US Employees

30. Due to the highly integrated nature of the operations of TBS Canada, TBS US and TBS International, TBS Canada has historically relied on TBS US (in addition to the UK Parent) and certain of its employees to manage and fulfill its inventory orders and provide other key corporate functions (including IT, human resources and treasury services).

31. As described above, TBS US terminated all of its employees and ceased operations on March 1, 2024. Following these terminations, the Company identified seven former TBS US employees that provided shared services to TBS Canada and whose ongoing employment is critical to the Company's continued operations and restructuring efforts

32. Effective March 18, 2024, in consultation with the Proposal Trustee, TBS Canada entered into independent contractor agreements with the seven former TBS US employees (collectively, the "**Contractors**"). The agreements provide that the Contractors will be paid on an hourly basis, at a rate reflective of the applicable Contractor's salary received prior to the termination of their employment by TBS US.

Certain of the Contractors will also receive retention bonuses. It is anticipated that the aggregate amount of the retention bonuses will not exceed US\$75,000. The retention bonuses for two of the Contractors will be part of the KERP and KERP Charge that TBS Canada is asking this Court to approve.

(iv) Inventory Replenishment Efforts

33. TBS Canada's liquidity position is strong, with sales since the Filing Date exceeding projections across its store network. However, due to the robust sales, the Company's stores are facing the imminent risk of running out of core merchandise in the coming weeks, which would force it to close otherwise profitable store locations. As more particularly described below, efforts are ongoing to avoid a shortfall of inventory in the Company's stores.

34. Pursuant to a Selective Master Distribution & Franchise Agreement between TBS Canada and TBS International (the "**Franchise Agreement**"), the Company historically received all of its inventory from the TBS International. The Franchise Agreement is attached as Exhibit "C" to my Initial Affidavit. For ease of reference, I have reattached the Franchise Agreement as **Exhibit "G"**.

35. The UK Administrator has provided the Proposal Trustee with TBS International's "general terms and conditions of sale" ("**General T&C**") that supplement the Franchise Agreement. A copy of the General T&C are attached to my Affidavit as **Exhibit "H"**.

36. In the ordinary course, the UK Parent would ship inventory to a distribution centre located in the United States (the "**US Distribution Centre**") and arrange for shipping and logistics to transfer the inventory from the US Distribution Centre to Canada. The Franchise Agreement and General T&C, read together, provide that TBS International's ownership and title of the inventory at the US Distribution Centre remains with TBS International until the UK Parent receives payment for such inventory from the applicable franchisee (i.e., TBS Canada in this case).

37. The Company has not received any inventory from the US Distribution Centre since the UK Administration was commenced and TBS US has ceased operations. Inventory valued at US\$85 million (retail value)³ currently resides at the US Distribution Centre that cannot be shipped to TBS Canada absent collective assistance from the Chapter 7 Trustee, the UK Parent and the UK Administrator.

³ There is an error in paragraph 15 of my Initial Affidavit which refers to the value of the inventory in the US Distribution Centre as US\$85 million (book value) when it is in fact, US\$85 million (retail value).

38. Since the Filing Date, the Company and the Proposal Trustee have had regular discussions with the UK Administrator and the Chapter 7 Trustee, with the goal of urgently replenishing the Company's inventory supplies in Canada. In addition, to facilitate the purchase and delivery of inventory to Canada, the Company has been required to establish relationships with shipping, brokerage, warehousing and logistics providers.

39. Through these discussions, TBS Canada and the Proposal Trustee have progressed a number of workstreams designed to replenish the Company's inventory. These workstreams have included:

- (a) purchasing inventory that was in-transit to the United States at the Filing Date. This in-transit inventory is (i) held at various ports in the United States by a brokerage company who is owed unpaid freight and storage costs associated with importing the inventory, or (ii) on boats being shipped to the United States from various locations. This inventory is not currently located at the US Distribution Centre, but is owned by the UK Parent. I understand that the Proposal Trustee is in discussions with the brokerage company and the UK Administrator to settle the terms of sale and release of this inventory to Canada;

- (b) purchasing inventory from the UK Parent that is located in the UK Parent's warehouse in the United Kingdom;
- (c) purchasing inventory from the UK Parent that is located in the US Distribution Centre; and
- (d) coordinating the delivery of approximately US\$100,000 (cost value) of inventory that was en-route to TBS Canada but was stopped at the border and turned back to the US Distribution Centre prior to the Filing Date ("**Returned Inventory**"). TBS Canada paid for the Returned Inventory in full prior to the Filing Date. With the assistance of the Proposal Trustee, TBS Canada has made arrangements with a third-party courier and a customs and duties agent to pick up the Returned Inventory from the Distribution Centre and complete the delivery to TBS Canada. Once received, the Returned Inventory should provide TBS Canada with sufficient inventory to replenish certain of its stores. To continue operating its remaining 72 stores as a going concern in the ordinary course, TBS Canada will require incremental inventory from the other workstreams discussed above.

40. A complicating factor associated with purchasing inventory located in the US Distribution Centre is that all of the inventory will need to be picked and packaged for delivery, but such individuals that would have previously performed such task were previously employed by TBS US. The Chapter 7 Trustee has advised that, absent a court order, operations are not permitted under the Chapter 7 Proceedings. The Chapter 7 Trustee has further advised that it does not have the funds required to pay the ex-U.S. employees to assist with fulfilling any replenishment orders or the related utility or insurance costs.

(v) Cash Management System and Cash Pooling Arrangement

41. As described in my Initial Affidavit, TBS International has historically been in full control of several functions of TBS Canada and TBS US, including legal, accounting/finance, treasury, tax, human resources, payroll, information technology, real estate, marketing, procurement and logistics services (collectively, the “**Shared Services**”). In Canada, the UK Parent achieved this through a cash management system and cash pooling arrangement (the “**Cash Pooling Arrangement**”). Pursuant to the Cash Pooling Arrangement, all of TBS Canada’s funds were deposited into the RBC Accounts held in the Company’s name and then swept by TBS International in the UK. TBS International would use the swept funds to pay TBS Canada’s payables upon

direction by the Company and to pay intercompany payables, including the Shared Services.

42. As previously explained to this Court in my Initial Affidavit, in the period between November 1, 2023 and February 13, 2024, the UK Parent swept \$42.9 million from the RBC Accounts, while only remitting \$21.8 million on account of the Company's payables and payroll during this period (the "**Swept Cash**"). This created a backlog of over \$3.3 million in indebtedness and forced the Company to commence this NOI proceeding.

43. Since the Filing Date, the Proposal Trustee and TBS Canada have made enquiries of the UK Parent and the UK Administrator regarding (a) the Cash Pooling Arrangement and how the Canadian sweeps were administered, (b) the cash management system and intercompany Shared Services, and (c) the Swept Cash.

44. The UK Administrator has provided the following documents in response:

- (a) a market supply and royalty letter between TBS International and TBS Canada dated January 1, 2016, a copy of which is attached to my Affidavit as **Exhibit "I"** (the "**Market Supply Agreement**");
- (b) an agreement for the provision of services by and between TBS International and TBS Canada dated November 16, 2016, a copy of which

is attached to my Affidavit as **Exhibit “J”** (the “**Services Agreement**”);
and

- (c) a financing agreement between TBS International and TBS Canada dated July 19, 2017 and an amendment thereto dated June 26, 2018 (collectively, the “**Financing Agreement**”), a copy of which is attached to my Affidavit as **Exhibit “K”**.

45. Pursuant to the Market Supply Agreement, TBS International is required to pay market support payments to TBS Canada if the Company does not meet a designated operating income threshold. If TBS Canada exceeds the operating income threshold, it is charged a franchise fee that is payable to the UK Parent.

46. In addition to the Shared Services, the fees payable under the Marketing Supply Agreement, and amounts owing for inventory purchases from the UK Parent, among other intercompany payables, were administered through the Cash Pooling Arrangements and cash management system in place between TBS International and TBS Canada.⁴

⁴ The Second Report includes a detailed discussion on the intercompany accounting between TBS International and TBS Canada and the administration of the cash management system between the companies.

47. The Services Agreement and the Financing Agreement, taken together, (a) provide TBS International with the authority to make decisions regarding the operations and cash management of TBS Canada, and (b) establish the Cash Pooling Arrangements and the ability of TBS International to sweep the RBC Accounts.

48. Pursuant to the Services Agreement, the Company authorized TBS International to act as its treasury manager (in such capacity, the “**Treasury Manager**”) and make decisions in relation to its cash management. In exchange, the UK Parent provided the Shared Services to assist the Company in the operation and management of its business.

49. The Financing Agreement established loan facilities between the UK Parent and TBS Canada that comprised (a) revolving loan facilities made available by both TBS International and the Company to the other party (each, a “**Revolving Loan Facility**”), (b) an overdraft facility, pursuant to which TBS Canada had the ability to draw amounts from TBS International (“**Overdraft Facility**”), and (c) a deposit facility under which TBS Canada deposited amounts to be drawn (or swept) by the UK Parent (“**Deposit Facility**”).

50. Under the Services Agreement and Financing Agreement, the cash management system and Cash Pooling Arrangements were structured such that:

- (a) transfers would be made as required to or by TBS International from or to TBS Canada in an amount determined by TBS International, either for itself or in its capacity as Treasury Manager. To the extent that funds were transferred from the Company to TBS International, it was recorded as a deposit under the Deposit Facility and to the extent that money was transferred from TBS International to TBS Canada, it was recorded as a loan under the Overdraft Facility; and
- (b) from time to time, the (i) aggregate amount of deposits were deemed as loans from the Company to TBS International under the relevant Revolving Loan Facility and (ii) the amount outstanding under the Overdraft Facility were deemed as loans from TBS International to the Company under the relevant Revolving Loan Facility. The effect of the designation of the deemed loans was to bring the balance on the Overdraft Facility and the Deposit Facility to zero.

51. The UK Administrator also provided a relationship acceptance form executed among TBS Canada, RBC (HSBC Bank Canada at such time) and HSBC Bank plc⁵ in October 2018 (the “**Relationship Acceptance Form**”), which appears to be part of a

⁵ HSBC Bank plc is a company registered and established in England and Wales. This company is the member of the HSBC Bank group that provides services in the United Kingdom.

series of documents with HSBC Bank Canada that authorized the UK Parent to sweep the RBC Accounts. A copy of the Relationship Acceptance Form annexing, among other things, a Master Services Agreement and Cash Concentration Services schedule is attached to this Affidavit as **Exhibit “L”**.

52. Pursuant to the Relationship Acceptance Form, TBS Canada authorized “cash concentration” services, including granting authority to the “relevant individuals” located in Canada or the United Kingdom, as applicable, to operate the RBC Accounts. The Relationship Acceptance Form does not identify the “relevant individuals”. The Cash Concentration Services schedule annexed to the Relationship Acceptance Form sets out the specific terms that apply to the cash concentration services.⁶ The Master Services Agreement indicates that each “Authorised Person” shall have authority in respect of any RBC Account or service, including cash concentration services. Under that agreement, TBS Canada is required to provide documents to RBC identifying the “Authorised Persons”.

53. My understanding is that, as per the Cash Concentration Services schedule, “debit sweep amounts” are swept from “Subordinated Accounts” and transferred to a “Master Account”. I am advised by my counsel Davies that based on the Relationship

⁶ Page 265 of Exhibit “L” (Relationship Acceptance Form).

Acceptance Form alone, it is difficult to ascertain the nexus between the “Subordinated Accounts” and the “Master Account” and the RBC Accounts, the Overdraft Facility or the Deposit Facility. It is also not clear on the face of the documents as to who TBS Canada designated as an “Authorised Person” with the authority to direct RBC in respect of the cash concentration services.

54. The Proposal Trustee has made inquiries of RBC to provide additional supporting documents in respect of the Cash Pooling Arrangements to obtain further clarity. In particular, the Proposal Trustee has requested, (a) bank account openings and related agreements, (b) cash pooling / intercompany banking agreements between TBS Canada and the UK Parent, (c) a listing of accounts and individuals with control/read access (being “Authorised Persons”), and (d) any other agreements with TBS Canada and RBC (or HSBC). I understand the Proposal Trustee is still awaiting a reply and that timing is delayed, in part, due to RBC’s recent acquisition of HSBC Bank Canada.

55. Since the Filing Date, the UK Parent is no longer sweeping the RBC Accounts but payments to TBS Canada’s creditors have continued in the ordinary course through the cash management system, *albeit* with the Proposal Trustee’s prior approval in each instance. In other words, when TBS Canada submits a payment request to TBS International, TBS International in turn instructs RBC to process a payment towards the

Company's payables and RBC transfers the amounts from the RBC Accounts only after securing the Proposal Trustee's prior approval, in accordance with the March 4 Order.

(vi) Efforts to Pursue a Going Concern Solution

56. Together with the Proposal Trustee, I have engaged in discussions with the UK Parent, the UK Administrator and Aurelius to discuss options to continue the Canadian operations. The structure of any transaction is inextricably linked to the outcome of the UK Administration. As a result, while parties have expressed interest in the Canadian business, it has not yet been clearly determined whether TBS International will preserve the current organisational structure with TBS Canada as its subsidiary, or whether it would be supportive of a sale of TBS Canada's business to a third-party or related buyer.

57. On April 4, 2024, the UK Administrators issued an Administrator's Statement of Proposals, which appears to be a report to the creditors of the UK Parent (the "**UK Report**"). Attached as **Exhibit "M"** to my Affidavit is a copy of the UK Report.

58. The UK Report provides information about the circumstances giving rise to the appointment of the UK Administrators and the go-forward plan for TBS International. In the UK Report, the UK Administrators state "At present the Administrators are expecting to propose a CVA [Company Voluntary Arrangement] to the Company's creditors

allowing the Company to be rescued and exit from Administration [...] In the event that a CVA cannot be agreed, the Joint Administrators will proceed with a sale of the business and assets”.⁷

59. TBS Canada is in the process of engaging counsel in the United Kingdom to assist it in navigating the UK Administration and assessing any plan or arrangement that is proposed by the UK Parent for its creditors.

60. Notwithstanding the forgoing, I believe that there has been a sufficient level of interest from parties in preserving the Canadian business to warrant continuing to pursue a going concern sale and the continuation of this NOI proceeding.

C. Relief Sought on this Motion

(i) Key Employee Retention Plan and KERP Charge

61. As part of this proceeding, TBS Canada is seeking this Court’s approval of the KERP, which is designed to retain and incentivize five individuals made up of Canadian employees and Contractors (the “**KERP Participants**”) that have been identified as crucial to TBS Canada’s restructuring efforts. TBS Canada is also seeking a charge

⁷ The UK Report also indicates that steps had been taken to place certain intellectual property assets into a separate entity prior to the UK Administration, but that following their appointment the UK Administrators had obtained comfort and confirmation that the relevant intellectual property assets remain available to TBS International. TBS Canada and the Proposal Trustee are taking steps to understand this transfer and its impact on the Company.

over its property in the amount of \$470,000 to secure the amounts payable under the KERP (the “**KERP Charge**”). I am advised by the Proposal Trustee that it supports the KERP and the KERP Charge.

62. The KERP contemplates that each of the KERP Participants will be entitled to a retention payment based on a percentage of their annual salary. The aggregate retention payment for all of the KERP Participants is \$470,000.

63. Payments under the KERP will be paid in three installments with the first installment being due immediately following approval of the KERP, if granted. Further payments would be conditional upon the terms and conditions set out in the KERP letter, including that such KERP Participants have not resigned or been terminated due to misconduct prior to the applicable payment dates.

64. The KERP Participants are a group of skilled and experienced individuals who are critical to value preservation and maintaining operational efficiencies at TBS Canada. The KERP Participants perform important management or business functions and the institutional knowledge and skills possessed thereby are irreplaceable, making their continued services vital to TBS Canada’s operations.

65. TBS Canada, with the assistance of the Proposal Trustee and their advisors, developed the KERP. The KERP takes into consideration the KERP Participants' existing compensation packages and the circumstances of this NOI proceeding.

66. I believe the KERP is necessary to ensure the continued engagement of the KERP participants. I have been informed by a number of the KERP Participants that the approval of the KERP is a significant factor as to whether they will be willing to continue working with TBS Canada during this NOI proceeding.

67. If approved, the KERP Charge would rank behind the Administration Charge and the D&O Charge. The Landlord Charge will expire on April 16, 2024, which coincides with the first bi-weekly rent payment period by TBS Canada. As a result, the form of draft order approving the KERP contemplates that the KERP Charge will not be effective until April 16, 2024. The KERP Charge would rank ahead of the Aurelius Security and RBC Registrations but behind the Enterprise Security.⁸ Aurelius Seven, RBC, and Enterprise will all be served with this motion. Each KERP Participant will only obtain the benefit of the KERP Charge up to their respective individual entitlements under the KERP.

⁸ This ranking is consistent with the ranking afforded the Administration Charge and the D&O Charge in the March 4 Order.

(ii) Sealing the KERP

68. The KERP is attached as an appendix to the Second Report. The KERP includes a detailed listing of the KERP Participants along with their names, current positions, compensation and proposed payments under the KERP. Salary information is highly personal to the KERP Participants and is not generally made public by TBS Canada or TBS US. In order to protect the KERP Participants and to minimize disruption during the NOI proceeding, TBS Canada is seeking an order sealing the KERP subject to a further court order.

(iii) Extension of Time to File a Proposal

69. TBS Canada is seeking an extension of the time to file a proposal from its current expiration date of April 16, 2024 to May 31, 2024 (the “**Extension**”).

70. The Extension will provide TBS Canada with the requisite time to further its inventory replenishment efforts and continue to engage with the UK Parent, the UK Administrator, Aurelius and potential buyers, all with the goal of facilitating a going concern sale of the business. TBS Canada has and intends to continue to work in good faith and due diligence in the period prior to and during this NOI proceeding.

71. The Company has prepared an updated cash flow forecast with the assistance of the Proposal Trustee, which sets out the projected cash flows for the 13-week period

ending June 28, 2024 (the “**Updated Cash Flow**”). I understand that the Proposal Trustee will file the Updated Cash Flow with the Court in connection with this motion. The Updated Cash Flow shows that TBS Canada has sufficient liquidity to operate to the end of the requested Extension.

D. Conclusion

72. For the reasons expressed herein, I am of the view that TBS Canada is acting in good faith and with due diligence in seeking the relief sought on this motion and that if granted, the relief will not prejudice any of the Company’s creditors.

SWORN remotely by Jordan Searle at the City of Toronto, in the Province of Ontario, before me on the 8th day of April, 2024 in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely.

}

Mehak Suri

Mehak Suri
Commissioner for Taking Affidavits
(or as may be)



Jordan Searle

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL
OF THE BODY SHOP CANADA LIMITED, IN THE CITY OF TORONTO, IN
THE PROVINCE OF ONTARIO

Estate No.: BK-24-03050418-0031
Court File No: BK -31-3050418

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
IN BANKRUPTCY AND INSOLVENCY**

Proceeding commenced at Toronto

**AFFIDAVIT OF JORDAN SEARLE
SWORN APRIL 8, 2024**

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Lawyers for The Body Shop Canada Limited

This is Exhibit "C" referred to in the Affidavit of Jordan Searle sworn by Jordan Searle at the City of Toronto, in the Province of Ontario, before me on May 10, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Frank Gillies, a Commissioner, etc., Province of Ontario, while a Student-at-Law. Expires April 27, 2025.

Frank Gillies

Commissioner for Taking Affidavits (or as may be)

FRANK GILLIES

Court File No: BK-24-03050418-0031
Estate /Court File No.: BK -31-3050418

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
IN BANKRUPTCY AND INSOLVENCY**

THE HONOURABLE) MONDAY, THE 15th DAY
JUSTICE OSBORNE) OF APRIL, 2024.



IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE
A PROPOSAL OF THE BODY SHOP CANADA LIMITED, IN
THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

ORDER

THIS MOTION, made by The Body Shop Canada Limited (the “**Company**”) for an order, *inter alia*: (a) granting an extension of time for the Company to file a proposal under the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3 (the “**BIA**”) to May 31, 2024; (b) approving the KERP (defined below); (c) approving the KERP Charge (defined below); (d) granting a sealing order in relation to the KERP; (e) approving the First Report of Alvarez & Marsal Canada Inc., in its capacity as Proposal Trustee of the Company (the “**Proposal Trustee**”) dated March 2, 2024 (the “**First Report**”) and the Second Report (defined below) and the activities described therein; and (f) granting certain other relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Jordan Searle sworn on April 8, 2024 (the “**Searle Affidavit #2**”), the Second Report (the “**Second Report**”) of the Proposal Trustee dated April 9, 2024 filed, and on hearing the submissions of respective counsel for the Company, the Proposal Trustee and such other counsel as were present as shown on the Participant Information Form, no one else appearing although duly served:

SERVICE AND DEFINED TERMS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, Motion Record and Second Report are hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms used but not defined in this Order shall have the meanings given to them in the Order of the Honourable Justice Osborne made March 4, 2024 (the “**March 4 Order**”).

EXTENSION OF TIME TO FILE A PROPOSAL

3. **THIS COURT ORDERS** that pursuant to section 50.4(9) of the BIA, the Company be and is hereby granted an extension of time to file a proposal to May 31, 2024.

KEY EMPLOYEE RETENTION PLAN AND KERP CHARGE

4. **THIS COURT ORDERS** that the key employee retention plan (the “**KERP**”) attached as Confidential Appendix C to the Second Report be and is hereby approved and the Company is hereby authorized to make payments in accordance with the terms and conditions of the KERP.

5. **THIS COURT ORDERS** that each of the KERP Participants (as defined in the Searle Affidavit #2) shall be entitled to the benefit of and are hereby granted a charge (the “**KERP Charge**”) on all of the Company’s present and future assets, undertakings and property of every nature and kind whatsoever and wherever situate, including all proceeds thereof (collectively, the “**Property**”), which charge shall not exceed an aggregate amount of \$470,000 for all KERP Participants (as defined in the Searle Affidavit #2), as security for the amount payable by the Company to each such KERP Participant in accordance with the KERP.

6. **THIS COURT ORDERS** that the filing, registration or perfection of the KERP Charge shall not be required, and that the KERP Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the KERP Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.

VALIDITY AND PRIORITY OF CHARGES

7. **THIS COURT ORDERS** that the priorities of the Administration Charge, D&O Charge and the KERP Charge (collectively, the “**Charges**”), as among them, with respect to the Property shall be as follows:

First – Administration Charge

Second – D&O Charge

Third – KERP Charge

8. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other Encumbrances in favour of any Person, notwithstanding the order of perfection or attachment, provided that the Charges shall

rank subordinate to the Encumbrances evidenced by registrations listed on Schedule "A" to the March 4 Order.

9. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, in the March 4 Order, or as may otherwise be approved by this Court, the Company shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, the Charges unless the Company also obtains the prior written consent of the beneficiaries of the Charges (the "**Chargees**"), or by further Order of this Court.

10. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees thereunder shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any right, renewal right, contract, agreement, licence, permit, lease, purchase order or other arrangement, whether written or oral (each, an "**Agreement**") which binds the Company, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the KERP Charge shall not create or be deemed to constitute a breach by the Company of any Agreement to which it is a party;
- (b) none of the KERP Participants shall have any liability to any person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the KERP Charge; and
- (c) the payments made under the KERP pursuant to this Order, and the granting of the KERP Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

SEALING

11. **THIS COURT ORDERS** that Confidential Appendix C to the Second Report is hereby sealed and shall not form part of the public record subject to further order of this Court.

APPROVAL OF ACTIVITIES

12. **THIS COURT ORDERS** that the First Report and the Second Report are each hereby approved, and the activities and conduct of the Proposal Trustee described therein are hereby approved; provided, however, that only the Proposal Trustee, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

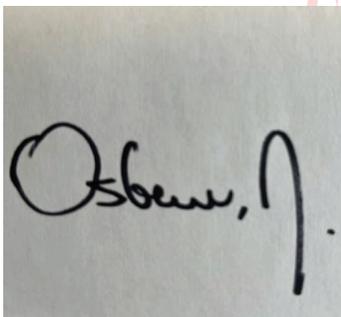
GENERAL

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

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

15. **THIS COURT ORDERS** that each of the Company and the Proposal Trustee be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

16. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:00 a.m. Eastern Time on April 16, 2024 without the need for entry or filing.

~~2024.04.1~~~~5 14:15:10~~~~-04'00'~~

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF THE BODY SHOP CANADA LIMITED, IN THE CITY
OF TORONTO, IN THE PROVINCE OF ONTARIO

Court File No: BK-24-03050418-0031
Estate/Court File No.: BK-31-3050418

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
IN BANKRUPTCY AND INSOLVENCY**
Proceeding commenced at Toronto

ORDER

DAVIES WARD PHILLIPS & VINEBERG LLP
155 Wellington Street West
Toronto ON M5V 3J7

Natasha MacParland (LSO# 42383G)
Tel: 416.863.5567
nmacparland@dwpv.com

Natalie Renner (LSO #55954A)
Tel: 416.863.5502
nrenner@dwpv.com

Counsel for The Body Shop Canada Limited

This is Exhibit "D" referred to in the Affidavit of Jordan Searle sworn by Jordan Searle at the City of Toronto, in the Province of Ontario, before me on May 10, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Frank Gillies, a Commissioner, etc., Province of Ontario, while a Student-at-Law. Expires April 27, 2025.

Frank Gillies

Commissioner for Taking Affidavits (or as may be)

FRANK GILLIES



**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

COUNSEL SLIP/ENDORSEMENT

**COURT FILE
NO.:**

BK-24-03050418-0031

DATE: April 24, 2024

NO. ON LIST: 1

TITLE OF

In the Matter of The Body Shop Canada Limited

PROCEEDING:

BEFORE: Justice Osborne

PARTICIPANT INFORMATION

For Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Andrew Hatnay	Counsel for Stephanie Hood and Other Terminated Employees, and the Proposed Representative Counsel for Terminated Canadian Employees	ahatnay@kmlaw.ca
Abir Shamim		ashamim@kmlaw.ca
James Harnum		jharnum@kmlaw.ca

For Other:

Name of Person Appearing	Name of Party	Contact Info
Natalie Renner	Counsel for The Body Shop Canada Limited	nrenner@dwpv.com
Chanakya Sethi		csethi@dwpv.com
David Bish	Counsel for The Cadillac Fairview Corporation Limited	dbish@torys.com
Jane Dietrich	Counsel for the Proposal Trustee	jdietrich@cassels.com
Linda Galessiere	Counsel for RioCan Real Estate Investment Trust and Cushman & Wakefield Asset Services ULC	lgalessiere@cglegal.ca

ENDORSEMENT OF JUSTICE OSBORNE:

1. Koskie Minsky LLP, (“KM”) as counsel to Stephanie Hood and other terminated employees of The Body Shop (“TBS”) seek to schedule a motion to seek an order appointing them as Representative Counsel for Terminated Canadian Employees.
2. TBS seeks to schedule a stay extension motion.
3. The KM Representative Counsel motion will be heard on **July 4, 2024 commencing at 10 AM and continuing as necessary for one half day before me via Zoom.** All counsel have confirmed their availability for that date, and have worked out a timetable for the delivery and exchange of materials to ensure that the matter is fully briefed and can proceed on the merits on that date.
4. The hearing date is further out than I would have preferred as a result of counsel schedules. TBS will continue to keep stakeholders, including employees and terminated employees, aware of significant events or matters directly affecting them in the usual course.
5. The stay of proceedings currently expires on May 31. The stay extension motion will be heard on **May 30, commencing at 10 AM via Zoom before Justice Cavanagh.**

Osborne, J.

This is Exhibit "E" referred to in the Affidavit of Jordan Searle sworn by Jordan Searle at the City of Toronto, in the Province of Ontario, before me on May 10, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Frank Gillies, a Commissioner, etc., Province of Ontario, while a Student-at-Law. Expires April 27, 2025.

Frank Gillies

Commissioner for Taking Affidavits (or as may be)

FRANK GILLIES

THE BODY SHOP CANADA LIMITED COMMENCES RESTRUCTURING PROCEEDINGS

NEWS PROVIDED BY

The Body Shop Canada Ltd. →

Mar 01, 2024, 12:00 ET

TORONTO, March 1, 2024 /CNW/ - The Body Shop Canada Limited (the "Company" or "The Body Shop Canada"), the Canadian subsidiary of the global beauty brand with 105 stores across the country, announced today that it has commenced restructuring proceedings by filing a Notice of Intention to Make a Proposal pursuant to the Bankruptcy and Insolvency Act (Canada) (the "NOI").

Following the commencement of administration proceedings in the United Kingdom by its parent company, The Body Shop Canada is commencing this NOI process to obtain a stay of proceedings to provide additional breathing room while it evaluates its strategic alternatives and implements certain restructuring initiatives.

All of The Body Shop Canada's 105 store locations are currently open for business, however online sales via Canada's ecommerce store will stop and certain stores noted below will close in the near term.

Store Closure Sales

As part of the NOI process, The Body Shop Canada is immediately commencing liquidation sales at the following 33 closing stores:

Bayview Village (Toronto)	Lawson Heights (Saskatoon)	Rideau Centre (Ottawa)
Carlingwood Mall (Ottawa)	Lloyd Mall (Lloydminster)	Semiahmoo (White Rock)
Cataraqui Town Centre (Kingston)	Londonderry Mall (Edmonton)	Shoppers Mall (Brandon)
Champlain Place (Dieppe)	Lynden Park Mall (Brantford)	Stone Road Mall (Guelph)
Corner Brook Plaza (Corner Brook)	Mayflower Mall (Sydney)	Sunridge Mall (Calgary)
Cornwall Centre (Regina)	McAllister Place (Saint John)	The Centre (Saskatoon)
Dufferin Mall (Toronto)	Medicine Hat Mall (Medicine Hat)	The Shops at Don Mills (Toronto)
Fairview Park Mall (Kitchener)	Midtown Plaza (Saskatoon)	Timmins Square (Timmins)
Hillside Shopping Centre (Victoria)	Park Place (Lethbridge)	Toronto Pearson Term. 1 (Toronto)
Lambton Mall (Sarnia)	Place d'Orleans (Orleans)	Truro Mall (Truro)
Lansdowne Place (Peterborough)	Queen Street East (Toronto)	Village Green (Vernon)

Alvarez & Marsal Canada Inc. was appointed as the Proposal Trustee. Additional information related to the NOI proceedings are available here: www.alvarezandmarsal.com/TheBodyShop.

The Body Shop US

Also effective today, March 1, 2024, The Body Shop US Limited has ceased operations.

About The Body Shop

The Body Shop International Limited (The Body Shop), a once pioneering beauty brand known for its cruelty free heritage and ethical beauty products was acquired from Natura & Co. by AURELIUS GROUP in December 2023.

SOURCE The Body Shop Canada Ltd.

For further information: Jennifer Wale, HR Director, The Body Shop North America, E:
Jennifer.Wale@thebodyshop.com

This is Exhibit "F" referred to in the Affidavit of Jordan Searle sworn by Jordan Searle at the City of Toronto, in the Province of Ontario, before me on May 10, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Frank Gillies, a Commissioner, etc., Province of Ontario, while a Student-at-Law. Expires April 27, 2025.

Frank Gillies

Commissioner for Taking Affidavits (or as may be)

FRANK GILLIES

DAVIES155 Wellington Street West
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Natasha MacParland
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File 289456

April 11, 2024

BY EMAILKoskie Minsky LLP
20 Queen Street West
Suite 900, Box 52
Toronto, ON M5H 3R3
ahatnay@kmlaw.ca**Attention: Andrew Hatnay**

Dear Andrew,

The Body Shop Limited Canada (the “Company”) - NOI Proceedings

We acknowledge receipt of your correspondence dated April 10, 2024.

We welcome the opportunity to discuss your clients' matters with you. To properly comply with all applicable provincial privacy laws, we require the express written consent of each current and former employee of the Company that you represent before we can discuss any personally identifiable information.

With regard to the other issues raised in your letter, we will speak with our client and other stakeholders and will respond in due course.

Yours truly,



NATASHA MACPARLAND

cc: Jane Dietrich, *Cassels Brock & Blackwell LLP*
Josh Nevsky, *Alvarez & Marsal Canada Inc.*
Natalie Renner, *Davies Ward Phillips & Vineberg LLP*
Jordan Searle, *The Body Shop Canada Ltd.*
Abir Shamim, *Koskie Minsky LLP*

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL
OF THE BODY SHOP CANADA LIMITED, IN THE CITY OF TORONTO, IN
THE PROVINCE OF ONTARIO

Estate No.: BK-24-03050418-0031
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**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
IN BANKRUPTCY AND INSOLVENCY**

Proceeding commenced at Toronto

**AFFIDAVIT OF JORDAN SEARLE
SWORN MAY 10, 2024**

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Toronto ON M5V 3J7

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Tel: 416.863.5516

Email: csethi@dwpv.com

Lawyers for The Body Shop Canada Limited

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF THE BODY SHOP CANADA LIMITED, IN THE
CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

Court File No.: BK-24-03050418-0031
Estate / Court File No.: BK- 31-3050418

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
IN BANKRUPTCY AND INSOLVENCY**

Proceeding commenced at Toronto

**RESPONDING MOTION RECORD OF
THE BODY SHOP CANADA LIMITED
(RETURNABLE JULY 4, 2024)**

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Lawyers for The Body Shop Canada Limited