

Court File No. 31-2464088
Estate File No. 31-2464088

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

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF GYMBOREE, INC.

**MOTION RECORD
(Re: Order Extending the Time to File a Proposal)
(returnable March 13, 2019)**

March 8, 2019

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TO: THE SERVICE LIST

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IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
GYMBOREE, INC.

**NOTICE OF MOTION
(EXTENDING THE TIME TO FILE A PROPOSAL)
(returnable March 13, 2019)**

Gymboree, Inc. ("**Gymboree Canada**"), will make a motion before a Judge of the Ontario Superior Court of Justice (Commercial List), on Wednesday, March 13, 2019 at 10:00 a.m. or as soon after that time as the motion can be heard at 330 University Ave, Toronto, Ontario.

THE MOTION IS FOR:

- 1 An Order substantially in the form attached as Schedule "A" hereto, among other things:
 - (a) abridging the time for, and validating service of, this Notice of Motion and supporting materials such that the motion is properly returnable on March 13, 2019, and dispensing with further service thereof;

(b) further extending the time for Gymboree Canada to file a proposal pursuant to Section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 , as amended (the “**BIA**”) up to and including April 12, 2019 (the “**Extension Date**”).

2 Such further and other relief as counsel may advise and as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

1 Gymboree Canada operates a children apparel retail business from a total of 49 stores in Alberta, British Columbia, Manitoba, Ontario and Nova Scotia (the “**Stores**”);

2 On January 17, 2019, a Notice of Intention to Make a Proposal (the “**NOI**”) was filed for Gymboree Canada pursuant to Section 50.4 of the BIA. KPMG Inc. was appointed as proposal trustee under the NOI (the “**Trustee**”). Concurrent with the filing of the NOI, other entities in the Gymboree Group commenced proceedings under Chapter 11 of the United States Bankruptcy Code;

3 On January 24, 2019, at Gymboree Canada’s request, the Honourable Justice Hainey granted an Order (approving an Intercompany Charge, an Administration Charge, a D&O Charge, an Agency Agreement and Sales Guidelines, and Granting Ancillary Relief) (the “**Sale Order**”);

4 Following the granting of the Sale Order, Gymboree Canada began the liquidation of all its inventory located in the Stores (the “**Sale**”);

5 The Sale is currently ongoing and is anticipated to be completed by no later than April 8, 2019.

6 On February 12, 2019, at Gymboree Canada’s request, the Honourable Justice Hainey granted an Order extending the time for Gymboree Canada to file a proposal under the BIA to March 14, 2019.

A. Extension of Time

7 Gymboree Canada is requesting a further extension of the time to file a proposal up to April 12, 2019 (the “**Extension Date**”);

8 Gymboree Canada requires additional time to, amongst other things, complete the Sale at the Stores and reconcile post-filing amounts owed to and by it;

9 Gymboree Canada’s cash flow is sufficient to continue operations through the Extension Date;

10 No creditor will be materially prejudiced by the requested extension;

11 Gymboree Canada has acted and continues to act in good faith and with due diligence in these proceedings;

B. General

12 The provisions of the BIA;

13 The inherent and equitable jurisdiction of this Court;

14 Rules 1.04, 1.05, 2.03, 3.02, 16, 37 and 39 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and

15 Such further and other grounds as counsel may advise and this Court may permit.

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

- 1 The affidavit of Jon W. Kimmins sworn March 8, 2019;
- 2 The third report of the Trustee in these proceedings, to be filed; and
- 3 Such further and other material as counsel may advise and this Court may permit.

March 8, 2019

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

Proceeding commenced at Toronto

**NOTICE OF MOTION
(Returnable March 13, 2019)**

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

THE HONOURABLE MR.)	WEDNESDAY, THE 13 th
)	
JUSTICE HAINEY)	DAY OF MARCH, 2019

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF GYMBOREE, INC.

**ORDER
(EXTENDING THE TIME TO FILE A PROPOSAL)**

THIS MOTION made by Gymboree, Inc. ("**Gymboree Canada**") pursuant to Section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the motion record of Gymboree Canada and the third report of KPMG Inc. in its capacity as proposal trustee (the "**Trustee**") dated March ●, 2019, filed, and on hearing submissions of counsel for Gymboree Canada, the Trustee, and counsel for other parties in attendance, no one else appearing although duly served as appears from the affidavit of service of ● sworn March ●, 2019.

SERVICE

1. **THIS COURT ORDERS** that the time for service of each of the notice of motion and motion record of Gymboree Canada is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

EXTENSION OF TIME

2. **THIS COURT ORDERS** that the time for Gymboree Canada to file a proposal is extended in accordance with section 50.4(9) of the BIA up to and including April 12, 2019.

3. **THIS COURT REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States of America, including the United States Bankruptcy Court for the Eastern District of Virginia, to give effect to this Order and to assist Gymboree Canada, the Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to Gymboree Canada, and the Trustee as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist Gymboree Canada, the Trustee and their respective agents in carrying out this Order.

4. **THIS COURT ORDERS** that each of Gymboree Canada and the Trustee be at liberty and is 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, and that the Trustee is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside of Canada.

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF GYMBOREE, INC.

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SUPERIOR COURT OF JUSTICE
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IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
GYMBOREE, INC.

AFFIDAVIT OF JON W. KIMMINS
(Sworn March 8, 2019)

I, Jon W. Kimmins of the City of San Francisco, in the State of California, MAKE OATH
AND SAY:

1. I am the Chief Financial Officer of Gymboree, Inc. ("**Gymboree Canada**"). As such, I have personal knowledge of the matters deposed to in this Affidavit. Where I have relied on other sources for information, I have specifically referred to such sources and believe them to be true. In preparing this Affidavit, I have consulted with legal, financial and other advisors to Gymboree Canada and other members of the senior management team of Gymboree Canada and the Gymboree Group (as defined in my Affidavit sworn January 21, 2019 in these proceedings, a copy of which (without exhibits) is attached hereto as **Exhibit "A"**).
2. This affidavit is sworn in support of a motion by Gymboree Canada seeking an Order extending the time to file a proposal under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**") to April 12, 2019.

Background

3. Gymboree Canada is a corporation governed by the *Business Corporations Act* (New Brunswick), SNB 1981, c. B-9., and an indirect wholly-owned subsidiary of Gymboree Holding Corporation, a Delaware corporation.

4. Gymboree Canada operates the Canadian retail business of the Gymboree Group from a total of 49 retail stores in Alberta, British Columbia, Manitoba, Ontario and Nova Scotia (collectively, the “**Stores**”).

5. On January 17, 2019, a Notice of Intention to Make a Proposal (the “**NOI**”) was filed for Gymboree Canada pursuant to the BIA. KPMG Inc. was appointed as proposal trustee under the NOI (the “**Trustee**”). Concurrent with the filing of the NOI, other entities in the Gymboree Group (collectively, the “**US Debtors**”) commenced proceedings under Chapter 11 of the United States Bankruptcy Code.

6. On January 24, 2019, at Gymboree Canada’s request, the Honourable Justice Hainey granted an Order (Approving an Intercompany Charge, an Administration Charge, a D&O Charge, an Agency Agreement and Sales Guidelines, and Granting Ancillary Relief) (the “**Sale Order**”).

7. Following the granting of the Sale Order, Gymboree Canada, with the assistance of GA Retail, Inc., Tiger Capital Group, LLC, Gordon Brothers Retail Partners, LLC, and Hilco Merchant Resources, LLC (collectively with their respective Canadian affiliate assignees, the “**Agent**”), began the sale of all of Gymboree Canada’s inventory located in the Stores (the “**Sale**”). The Agent has been engaged pursuant to an Agency Agreement dated January 17, 2019 (the “**Agency Agreement**”) that was previously approved by the Court in the Sale Order.

8. On February 12, 2019, at Gymboree Canada's request, the Honourable Justice Hainey granted an Order (the "**First Extension Order**") extending the time for Gymboree Canada to file a proposal under the BIA to March 14, 2019.

Events Since the First Extension Order

9. Since the First Extension Order, Gymboree Canada has continued to focus its efforts on the Sale.

10. The Agent has advised Gymboree Canada that the Sale is anticipated to be completed at all Stores by no later than April 8, 2019, with some Stores closing as early as March 17, 2019.

11. As a result, Gymboree Canada is in the process of issuing notices of disclaimer in respect of the leases for all of its Stores.

12. Gymboree Canada has also begun issuing termination notices to its employees advising them of an outside employment date of no later than March 31, 2019 in the case of employees at 36 of the Stores, and no later than April 9, 2019 in the case of employees at another 13 locations.

13. On March 4, 2019, the United States Bankruptcy Court for the Eastern District of Virginia approved (i) a sale transaction (the "**IP Sale Transaction**") in respect of certain assets of the US Debtors including certain intellectual property of the US Debtors (the "**Gymboree US IP**"), and (ii) a going concern transaction for the US Debtors' Janie & Jack business (the "**J&J Sale**", and collectively with the IP Sale Transaction, the "**US Sale Transactions**").

14. The US Sale Transaction does not include any assets of Gymboree Canada and does not impact Gymboree Canada's right to use the Gymboree US IP to complete the Sale.

Gymboree Canada is not a party to any of the transaction documents in respect of the US Sale Transactions.

Further Extension of Time to File Proposal

15. Gymboree Canada has complied during these proceedings with the Sale Order and the Agency Agreement in all material respects. I am not aware of any concerns regarding the compliance of the Agent or Gymboree Canada with the Sale Guidelines previously approved by the Court in the Sale Order.

16. Gymboree Canada continues to pay landlords, employees and other creditors for goods and services rendered from and after the date of the NOI in the ordinary course of business and intends to continue doing so. In particular, in accordance with the Sale Order, Gymboree Canada paid rent for the month of February on February 1, 2019 and for the month of March on March 1, 2019.

17. The Sale is anticipated to be completed on or about April 8, 2019.

18. Pursuant to the First Extension Order, the time limit for the filing of a proposal is currently set to expire on March 14, 2019.

19. Gymboree Canada requires additional time to accomplish, *inter alia*, the following steps:

- (a) continue and complete the Sale at the Stores; and
- (b) work with the Agent, the Gymboree Group and the Trustee to reconcile post-filing amounts owed to and by Gymboree Canada, including from and to the Agent and the Gymboree Group, amongst others.

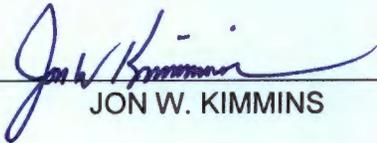
20. Gymboree Canada requires additional time to consider appropriate next steps in the context of these proceedings.

21. Accordingly, Gymboree Canada hereby respectfully requests that this Court extend the time period to make a proposal to April 12, 2019 (the "Extension Date").

22. I understand that an updated cash flow forecast (the "Forecast") for Gymboree Canada for the period up to and including the Extension Date will be appended to the report of the Trustee, to be filed in connection with this motion. Subject to the assumptions contained therein, the Forecast will demonstrate that Gymboree Canada has sufficient liquidity to continue operations through the Extension Date.

23. I am not aware of any creditor who will be materially prejudiced by the requested extension of time to file a proposal.

24. Gymboree Canada has acted and continues to act in good faith and with due diligence in these proceedings.



JON W. KIMMINS

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

State of California
County of San Francisco

Subscribed and sworn to (or affirmed) before me on this 8th day of March, 2019 by Jon W. Kimmins, proved to me on the basis of satisfactory evidence to be the person who appeared before me.

Signature Cressida Simpson (Seal)



This is Exhibit "A" referred to in the
Affidavit of Jon W. Kimmins Sworn/ Affirmed
before me in San Francisco, California
on March 8, 2019.

Cressida Simpson

Notary Public

Court File No. 31-2464088
Estate File No. 31-2464088

Ontario
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
COMMERCIAL LIST

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF GYMBOREE, INC.

AFFIDAVIT OF JON W. KIMMINS
(Sworn January 21, 2019)

I, Jon W. Kimmins of the City of San Francisco, in the State of California, MAKE
OATH AND SAY:

1. I am the Chief Financial Officer of Gymboree, Inc. ("**Gymboree Canada**"). As such, I have personal knowledge of the matters deposed to in this Affidavit. Where I have relied on other sources for information, I have specifically referred to such sources and believe them to be true. In preparing this Affidavit, I have consulted with legal, financial and other advisors to Gymboree Canada and other members of the senior management team of Gymboree Canada and the Gymboree Group (as defined below). Unless otherwise indicated, all amounts in this Affidavit are in Canadian dollars.

2. On January 17, 2019, a Notice of Intention to Make a Proposal (the "**NOI**") was filed for Gymboree Canada pursuant to Section 50.4 of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"). KPMG Inc. acts as proposal trustee (in such capacity, the "**Trustee**") in connection with the NOI. I understand the Trustee will serve and file a report in connection with this motion.

3. Concurrent with the commencement of these proceedings, other entities in the Gymboree Group commenced proceedings under Chapter 11 of the United States Bankruptcy Code (the “**Chapter 11 Proceedings**”). This Affidavit should be read in conjunction with the First Day Declaration of Stephen Coulombe, filed in connection with the Chapter 11 Proceedings. A copy of the First Day Declaration is attached hereto as **Exhibit “A”**.

4. This Affidavit is made in support of a motion by Gymboree Canada for an Order, among other things: (i) approving and ratifying the Agency Agreement (as defined below); (ii) authorizing Gymboree Canada, with the assistance of the Agent (as defined below), to conduct the Sale (as defined below) in the Stores (as defined below); (iii) granting an Administration Charge and a D&O Charge (as such terms are defined below); (iv) authorizing and approving certain post-filing intercompany support arrangements and a court-ordered charge to secure the obligations of Gymboree Canada under such arrangements; (v) authorizing Gymboree Canada to continue using its current Cash Management System (as defined below); and (vi) granting certain ancillary relief with the goal of facilitating the present proceedings.

Background

5. Gymboree Canada is a corporation formed under the *Business Corporations Act* (New Brunswick), SNB 1981, c. B-9., in 2005. Its registered office is located in Saint John, New Brunswick.

6. Gymboree Canada is an indirect wholly owned subsidiary of Gymboree Holding Corporation, a Delaware corporation.

7. Gymboree Canada is the Canadian operating entity of the Gymboree group of companies, of which Gymboree Holding Corporation is the ultimate parent entity (the “**Gymboree Group**”). The Gymboree Group operates a chain of specialty retail stores for

children's apparel headquartered in San Francisco, California. The Gymboree Group has operations across the United States, Canada and Australia. A corporate chart for the Gymboree Group is attached hereto as **Exhibit "B"**.

8. Gymboree Canada operates the Canadian retail business of the Gymboree Group from a total of 49 retail stores in Alberta, British Columbia, Manitoba, Ontario and Nova Scotia (the "**Stores**"), which are generally located in large shopping centers. A list of Gymboree Canada's leased store locations is attached hereto as **Exhibit "C"**.

9. Gymboree Canada does not own any immovable property. All premises occupied by Gymboree Canada are leased from third party landlords (the "**Landlords**"). No other entities in the Gymboree Group have any obligations under any of Gymboree Canada's leases.

10. Gymboree Canada's merchandise is sold and marketed from Stores that use the "Gymboree" brand name. All intellectual property rights in connection with the "Gymboree" brand name are owned by Gym-Mark Inc., an affiliate of Gymboree Canada, and a debtor in the Chapter 11 Proceedings.

11. As of the date hereof, Gymboree Canada has approximately 596 full-time and part-time employees. Gymboree Canada does not maintain a pension plan. The employees of Gymboree Canada are primarily store level employees. With the exception of five employees who are paid by salary, the rest of the employees of Gymboree Canada are paid on an hourly wage basis.

Purpose of these Proceedings

12. These proceedings have been commenced in conjunction with the Chapter 11 Proceedings of other entities in the Gymboree Group for the purpose of completing the orderly

wind down of the Gymboree Group's business, with the possible exception of certain business lines that do not operate in Canada.

13. In the past 18 months, the business of the Gymboree Group has been hampered by an unanticipated degree of decline of the brick-and-mortar retail industry, declining profitability and general market uncertainty, which have made it increasingly difficult for the Gymboree Group to support its cost and capital structure.

14. Prior to the commencement of these proceedings, the Gymboree Group, with the assistance of its advisors, engaged in an extensive review of its business and evaluated whether there were improvements it could make to bring its retail stores to profitability. This process resulted in the Gymboree Group deciding to wind down its Gymboree business and close all of its Gymboree stores through the commencement of immediate liquidation sales.

15. The proposed wind down process includes, subject to Court approval, a liquidation of inventory pursuant to an Agency Agreement entered into with GA Retail, Inc., Tiger Capital Group, LLC, Gordon Brothers Retail Partners, LLC, and Hilco Merchant Resources, LLC (together with their respective Canadian affiliate assignees, the "**Agent**"), which is described in greater detail below.

16. Gymboree Canada also proposes to consider opportunities to monetize other assets and to determine the appropriate next steps for Gymboree Canada in the context of these proceedings. Gymboree Canada intends to return to Court not later than February 15, 2019 to update the Court on the liquidation process and any other developments since the date of this affidavit, including any proposed process to maximize other assets of Gymboree Canada.

17. Gymboree Canada believes proceeding with this wind down through a Court-supervised process under the BIA will maintain stability, minimize disruption to all stakeholders, and provide an orderly and seamless means for Gymboree Canada to monetize its assets.

Assets and Liabilities of Gymboree Canada

18. The primary assets of Gymboree Canada are: (i) inventory; (ii) cash on hand at the retail locations and in Gymboree Canada's bank accounts, and (iii) Gymboree Canada's leasehold interests. Substantially all of the non-working capital assets used by Gymboree Canada are owned by other affiliates of the Gymboree Group based in the United States. The amount of inventory on hand in Canada is quite limited (at approximately US\$4.3 million or approximately US\$88,000 per Store at book value). This represents approximately 2.5% of the aggregate inventory of the Gymboree Group at book value.

19. The majority of the stores of Gymboree Canada and, as a result, the majority of the assets of Gymboree Canada are located in Ontario.

20. As Gymboree Canada is entirely dependent upon other members of the Gymboree Group for its central management functions, overhead functions, and inventory supply, the largest creditors of Gymboree Canada are other members of the Gymboree Group, who were owed approximately US\$8.9 million (accounting for approximately 95% of the aggregate liabilities of Gymboree Canada) as of January 16, 2019. Other trade creditors are very limited, totaling approximately 70 creditors and accounting for less than US\$500,000 in aggregate liabilities based upon Gymboree Canada's books and records as at January 16, 2019. The wind-down to be undertaken by Gymboree Canada during these proceedings may result in additional claims from contract counterparties, such as Landlords, as a result of the disclaimer or other termination of their contracts or leases.

21. Gymboree Canada is not an obligor under the Gymboree Group's existing funded debt facilities and no security is registered against the assets of Gymboree Canada.

Gymboree Canada's Relationship With The Gymboree Group

22. Gymboree Canada is financially and operationally entirely dependent on other entities in the Gymboree Group.

23. The stores operated by Gymboree Canada account for only approximately 4.4% of the overall sales of the Gymboree Group's business globally.

24. Gymboree Canada does not have a management and administrative structure or assets to operate as a stand-alone entity. In particular, aside from funding requirements, Gymboree Canada depends upon its US affiliates for the following services, without which it would immediately cease operations:

- (a) inventory supply management;
- (b) logistics management;
- (c) marketing;
- (d) payroll administration;
- (e) rent payment administration;
- (f) accounting and tax administration;
- (g) general management oversight; and

(h) access to the Gymboree brand name.

25. Five management level employees are based in Canada, being four district managers and one regional manager.

26. All executive management of the Gymboree Group, and thus Gymboree Canada, is based in the United States, and all of Gymboree Canada's directors and officers are directors or officers of the other members of the Gymboree Group.

27. Gymboree Canada also depends upon other members of the Gymboree Group not only for management and centralized administrative functions but also to support Gymboree Canada with operating funding as a result of persistent cash flow shortfalls at Gymboree Canada. During 2018, Gymboree Canada operated on a cash flow negative basis and has received financial support from other entities in the Gymboree Group, including in the form of the supply of inventory on credit and the payment of various operating expenses (for example, insurance, bank fees, rent and professional fees) to ensure that it had sufficient cash to continue to operate.¹

28. In order for the wind down of Gymboree Canada's operations to proceed in an orderly fashion and seamlessly, that wind down must be undertaken in coordination with the wind down of the Gymboree Group's operations in the United States and with the continued support of the Gymboree Group's general administrative structure and funding. The proposed Orders sought by Gymboree Canada seek to preserve arrangements with the Gymboree Group to allow the continuation of critical supply, back-office, business and administrative functions and continued access to necessary intellectual property.

¹ The financial statements of Gymboree Canada do not fully reflect the past financial performance of Gymboree Canada as these financial statements include various intercompany adjustments.

Gymboree Group's Cash Management

29. Gymboree Canada maintains six bank accounts in Canada (not including the store level accounts described below) related to the Canadian operations. Each of the 49 Canadian Stores has its own store level account where all store-level cash sale proceeds are deposited by the store manager daily. Each day, funds in these store level accounts are swept or transferred into a store depository account. Cash from that account, as well as credit card collections at the Stores, are transferred to a main concentration account in Canada (the "**Canadian Concentration Account**"). On a periodic basis, these funds are then transferred to the main operating account of the Gymboree Group held by Gymboree Group Inc. ("**Gymboree US**") in the United States (the "**Main Operating Account**") as a reimbursement to the Gymboree Group of amounts incurred and paid on behalf of Gymboree Canada.

30. With the exception of cash on hand at Gymboree Canada at the time of the commencement of these proceedings, the Gymboree Group intends to continue to move funds from the Canadian Concentration Account to the Main Operating Account and participate in the Gymboree Group's centralized cash management system going forward in the ordinary course (the "**Cash Management System**"), subject to the terms of the Agency Agreement, which, if approved, will largely supersede the existing Cash Management System, and subject to the Post-Filing Intercompany Arrangements.

31. I believe that the Cash Management System is typical for multi-store retail operations and comparable to the centralized cash management systems used by other similarly sized retail companies. The Gymboree Group's treasury department maintains daily oversight of the Cash Management System and maintains controls for collecting, processing, and releasing funds. Additionally, the Gymboree Group's corporate accounting and cash

forecasting departments regularly reconcile the Gymboree Group's books and records to ensure that all transfers are accounted for properly.

Financial Difficulties And Restructuring Efforts

32. The First Day Declaration provides a comprehensive overview of:
- (a) the prior insolvency proceedings of the Gymboree Group (excluding Gymboree Canada) in the United States in 2017;
 - (b) the circumstances that compelled the commencement of the Chapter 11 Proceedings as well as the filing of the NOI;
 - (c) the corporate history and ownership structure, operations, financial affairs and restructuring initiatives of the Gymboree Group; and
 - (d) the restructuring objectives and immediate relief sought by the Gymboree Group in the Chapter 11 Proceedings.
33. Over the course of the past four months, the Gymboree Group, including Gymboree Canada, engaged in significant efforts to pursue a restructuring outside of a formal insolvency proceeding. These efforts included:
- (a) attempts to raise new financing for the Gymboree Group;
 - (b) solicitation of offers to purchase some or all of the assets or businesses of the Gymboree Group, on a going concern basis; and
 - (c) solicitation of offers to recapitalize the Gymboree Group as a whole.

34. Unfortunately, the Gymboree Group was unable to obtain any firm offers to finance, purchase, or recapitalize the Gymboree Group as a whole, or the Gymboree and Crazy 8 brands on a going concern. Viable going concern options may exist for the Janie and Jack business line however there are no Janie and Jack stores in Canada. These going concern options are being explored in the context of the Chapter 11 Proceedings.

35. Despite its recent out-of-court restructuring efforts and following extensive analysis and consideration, the Gymboree Group, including Gymboree Canada, concluded that the best alternative for the remainder of the Gymboree Group business was to engage in an orderly liquidation of the retail stores operating under the Gymboree brand, including all locations in Canada operated by Gymboree Canada. This conclusion was reached with the assistance of the restructuring advisors to the Gymboree Group, including Berkeley Research Group (as financial advisor to the Gymboree Group) (“BRG”).

Orders Sought On This Motion

36. In order to achieve its objectives, Gymboree Canada is seeking the orders described herein which are required to implement this wind down as further described below.

A. Store Liquidation

37. As indicated above, the Gymboree Group, in consultation with its advisors, conducted an analysis of the performance of the Gymboree branded stores, including those located in Canada and operated by Gymboree Canada and has determined that it would be in the best interest of all of its stakeholders to proceed with the liquidation of its inventory with the assistance and expertise of the Agent (the “Sale”).

38. This determination was made on a consolidated basis for all Gymboree branded stores located in Canada and the United States. The number of stores and inventory value

located in the United States far exceeds the stores and inventory value located in Canada. Canadian inventory at an aggregate cost value of not more than US\$4.3 million accounts for only approximately 2.5% of the aggregate inventory value of the Gymboree Group and the Stores account for only approximately 4.4% of the aggregate sales of the Gymboree Group.

39. Accordingly, the most efficient way to proceed with a liquidation process is through a single consolidated process operated by a single agent for all Gymboree branded stores, whether located in Canada and owned by Gymboree Canada or located in the US and owned by a US affiliate of the Gymboree Group. Through this consolidated process, Gymboree Canada will benefit from the Agent's significant experience with large-scale liquidations, and the use of the Agent's logistical capabilities, skills and resources to effectively and efficiently conduct a liquidation sale of this magnitude.

40. In order to maximize the value of its inventory and furniture, fixtures and equipment located in the Stores and distribution centres (collectively, the "FF&E"), the Gymboree Group, including Gymboree Canada, has negotiated and executed an Agency Agreement dated January 17, 2019 (the "**Agency Agreement**") with the Agent, pursuant to which the Agent will serve as Gymboree Canada's exclusive agent to advise with respect to the liquidation of Gymboree Canada's inventory and FF&E (if elected for inclusion) at the Stores. The Sale is to be conducted in accordance with the Sales Guidelines (defined below). A copy of the Agency Agreement is attached hereto as **Exhibit "D"**.

41. The Agent has extensive experience in conducting retail liquidations and the members of the contractual joint venture forming the Agent have led numerous significant inventory dispositions for Canadian retailers, including, most recently, Sears Canada Inc.

42. A summary of terms of the Agency Agreement follows:²

Stores Included	<ul style="list-style-type: none"> All stores operated by the Gymboree Group, including all stores operated by Gymboree Canada
Duration	<ul style="list-style-type: none"> The outside date for completion of the liquidation sale is April 30, 2019 (the “Sale Termination Date”), or such later date as the parties may agree. Individual stores may be subject to earlier completion dates, provided that the Agent gives the Gymboree Group not less than seven days’ notice of such earlier completion.
Assets Included	<ul style="list-style-type: none"> Inventory in stores and inventory in Distribution Centres as well as certain in-transit inventory delivered to Stores (as defined in the Agency Agreement) on or before March 22, 2019 will be included in the Sale; Additional Agent Merchandise may be included in the Sale. The Agent shall pay a fee of 5% of the aggregate gross proceeds of the sale of such Additional Agent Merchandise during the sale (net of sales taxes). The Agent has guaranteed that this fee payable to the Gymboree Group shall not be less than \$2,000,000 in aggregate.
Excluded Items	<ul style="list-style-type: none"> Goods that belong to third parties, such as licensees and concessionaires, and goods held by Gymboree Group as bailee; Certain defective merchandise; Furniture fixtures and equipment, if not elected for inclusion; Merchandise in distribution centres and in-transit that is not received in stores by prescribed deadlines; <p>The Agency Agreement permits the Gymboree Group to designate items that would otherwise be excluded items as items to be included in the sale at prices and through channels mutually agreed by the parties. Such goods are sold based upon a split of proceeds (net of taxes) between the Agent and the Gymboree Group of 20% and 80%, respectively.</p>
Sale Terms	<ul style="list-style-type: none"> Inventory and FF&E (if any) will be sold free and clear of encumbrances and all sales will be final.

² Capitalized terms used in this Affidavit and not otherwise defined have the meanings given to them in the Agency Agreement. This summary is for information purposes only. In the case of any conflict between this summary and the Agency Agreement, the Agency Agreement governs.

Proceeds Account	<ul style="list-style-type: none">• Unless, the Agent establishes separate Agency Accounts, sale proceeds shall be collected in Canada through the Gymboree Canada point of sale system and shall be deposited in segregated depository accounts designated by and in the name of Gymboree Canada or another member of the Gymboree Group (the "Designated Deposit Accounts") to be dealt with in accordance with the terms of the Agency Agreement.• The Agent is granted a first priority senior security interest over the amounts in the Designated Deposit Accounts that constitute Proceeds of the sale.
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<p>Payments by Agent</p>	<p>Payments to be received on account of Canadian assets include:</p> <ul style="list-style-type: none"> • a guaranteed minimum recovery of 89% (subject to the J&J Option adjustment, as described below) of the cost value of the inventory included in the Sale, subject to certain exceptions. The guaranteed minimum recovery will be paid in two tranches: <ul style="list-style-type: none"> (i) 80% of the estimated guaranteed amount, based upon an estimated cost value of inventory of US\$4,000,000; (ii) the balance of the guaranteed amount to be paid on the second business day following the final inventory report, subject to resolution of any disputes with respect to the inventory reconciliation process, provided that if the final inventory report is not mutually verified by the parties by the date that is thirty days after the Sale Termination Date, the Agent shall pay the undisputed portion of the balance of the guaranteed amount; • After payment of the guaranteed minimum amount and all expenses payable by the Agent, the remaining proceeds of merchandise sold shall be split as follows: <ul style="list-style-type: none"> a) first, to the Agent until the Agent receives 9% of the cost value of the inventory; b) second, split equally between the Agent and the Gymboree Group. • The sale of the FF&E of Gymboree Canada (if included in the Sale) will be effected on a fee basis to be agreed upon between the parties to the Agency Agreement; • If Additional Agent Merchandise is sold in the Stores, a fee of 5% of the proceeds of such sale, subject to the minimum fee described above; and • If the Gymboree Group designates additional items that would otherwise be excluded items to be sold, an amount of 80% of the proceeds from such sales. <p>Letters of credit are to be posted by the Agent to cover its obligations under the Agency Agreement for the balance of the Guaranteed Amount and any Expenses. A separate letter of credit (the "Agent L/C") shall be posted in favour of Gymboree Canada. The Agent L/C will be in an amount equal to 20% of the estimated guaranteed amount plus two weeks estimated Expenses. Net proceeds not paid to the Gymboree Group will be received by the Agent.</p>
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Returns and Credits	<ul style="list-style-type: none"> • Gift certificates, gift cards, return credits (collectively, “Gift Certificates”) will be honoured during the first 30 days of the Sale. The Gymboree Group will reimburse the Agent in cash for the amount of the Gift Certificates used. No Gift Certificates shall be sold as and from the Sale Commencement Date. Returns will not be permitted in the case of any merchandise sold during the Sale. Returns will be accepted for goods sold in other circumstances for a period of 14 days following the Sale Commencement Date in compliance with the Gymboree Group’s return policy in effect at the time of purchase. • “Gymboree Rewards”, “Gym Bucks”, and similar merchandise credits shall not be accepted during the Sale unless the Agent agrees to cover such items.
Expenses ³	<ul style="list-style-type: none"> • Store level operating expenses and other amounts listed in the Agency Agreement as “Expenses” will be paid (or reimbursed) out of Sale proceeds, subject to the limitations on quantum set out in the Agency Agreement. To the extent such proceeds are insufficient to pay these expenses, these expenses are to be paid by the Agent. • The Agent shall fund six weeks of Canadian store-level occupancy expenses at the commencement of the Sale (calculated to be US\$912,000).
Intellectual Property	<ul style="list-style-type: none"> • The Agent shall have the right to use all logos, trademarks, brand names and other intellectual property (collectively, “IP”) utilized by the Gymboree Group in connection with the business; provided that Agent shall not be entitled to use IP related to “Janie and Jack” (i) if the J&J Option (described below) is exercised; and (ii) for purposes of selling non-Janie and Jack Merchandise or for any cross-marketing or advertising for the Gymboree and Crazy 8 brands.
J&J Option	<ul style="list-style-type: none"> • As described above, viable going concern options may exist for the Janie and Jack business line however there are no Janie and Jack stores in Canada. <p>The Gymboree Group shall have the option, to be exercised no later than 28 days after the date of the Agency Agreement, as may be extended to 35 days after the date of the Agency Agreement, to elect to exclude from the Sale the Janie and Jack Stores.</p> <p>If this option is exercised, among other things, the guarantee percentage described above will be reduced from 89% to 80%, including for merchandise owned by Gymboree Canada. In addition, if the option period is extended as described above, the guarantee percentage shall be reduced by an additional 1%.</p>

43. The Agency Agreement is conditional upon approval of the United States Bankruptcy Court in the Chapter 11 Proceedings, which was obtained on January 17, 2019, and the approval of this Court in these proceedings on or before January 24, 2019.

44. The Agency Agreement also requires that the Agent be granted a first ranking charge (the “**Agent’s Charge**”) on the inventory of Gymboree Canada, the FF&E of Gymboree Canada (if included in the Sale), the proceeds of the inventory included in the Sale, and the Agent’s commission on goods sold on a commission basis in the Sale (the “**Agent Collateral**”). The Agent’s Charge is to secure the obligations of Gymboree Canada to the Agent under the Agency Agreement. The Agent’s Charge is proposed to rank in priority to all other encumbrances on the Agent Collateral.

45. It is in Gymboree Canada’s stakeholders’ best interest that the liquidation and wind down of its operations proceed in an orderly manner. The Agency Agreement provides for such an orderly wind down on an expedited basis.

46. Pursuant to the Agency Agreement, the amounts to be received on account of the Canadian assets are as follows:

- (a) an upfront payment in an amount of 80% of the estimated guaranteed amount to be paid under the Agency Agreement;
- (b) a subsequent payment of the remainder of the guaranteed amount under the Agency Agreement following the completion of final inventory reconciliation steps; and

³ “Expenses” will not include Central Services Expenses and Excluded Payroll Benefits, as defined in the Agency Agreement.

- (c) the applicable portion of the proceeds of any FF&E, Additional Agent Merchandise, and Gymboree Group designated goods sold.

47. The Guaranteed Amounts and any Merchant Sharing Amounts payable by the Agent under the Agency Agreement for Gymboree Canada's merchandise, as well as any other amounts retained by Gymboree Canada from the sale of its ancillary assets and its cash on hand at the date of the NOI (collectively, the "**Canadian Funds**") will be used to:

- (a) pay the direct expenses of Gymboree Canada during the post-filing period that are not otherwise paid by the Agent as Expenses under the Agency Agreement; and
- (b) pay Gymboree Canada's allocated share of the shared overhead costs of the Gymboree Group for the post-filing period in accordance with the Post-Filing Intercompany Arrangements described below.

48. It is not yet clear whether amounts will be available for distribution to Gymboree Canada's unsecured creditors, after accounting for Gymboree Canada's direct expenses and allocation of shared costs relative to the value of inventory available in the Canadian stores, and after accounting for any sharing of merchandise proceeds above the guaranteed amount provided by the Agent or any other ancillary asset proceeds.

49. The Agency Agreement is the result of a competitive process in which the Gymboree Group and its advisors conducted an extensive evaluation process for selecting an agent to serve as the Gymboree Group's exclusive independent liquidation service provider. The selection process included, among other things, a formal request for proposals from potential agents, provision of equal access to diligence information through a virtual dataroom,

reference calls, and standard requirements for the submission of recovery assumptions, forecasts and analysis.

50. Given prevailing market dynamics, several candidates who might normally submit a stand-alone proposal are already engaged to conduct liquidation of other retailers, such as Sears US and Toys “R” Us. As a result, there were very few agents with the experience and expertise to execute liquidation sales within the short timeframe envisioned in these proceedings who elected to submit a proposal.

51. Under the circumstances, based on its extensive evaluation, the Gymboree Group, in consultation with its advisors, determined that the proposal put forward by the Agent provided the best and most competitive proposal, and that the Agent was the best agent to assist with the Store closings and Sale.

52. The Sale cannot proceed without Court approval or outside of the context of an insolvency proceeding as: (i) Gymboree Canada may not otherwise be in compliance with the terms of its leases as a result of the commencement of the Sale; and (ii) at the completion of the liquidation, Gymboree Canada will require the mechanisms available under the BIA to disclaim leases and other contractual arrangements and to deal with claims arising therefrom in an orderly manner.

B. Sales Guidelines

53. The Sale shall be subject to the sales guidelines applicable to Canadian locations found at **Exhibit “E”** hereto (the "**Sales Guidelines**"). I am advised by Virginie Gauthier of Norton Rose Fulbright Canada LLP ("**NRF**"), Canadian counsel to Gymboree Canada, that guidelines substantially similar to these have been approved in other Court-approved store closing sales in Canada. In particular, NRF has provided a comparison version

of the Sales Guidelines against similar guidelines from the Sears Canada Inc. insolvency proceedings, a copy of which is attached hereto as **Exhibit "F"**. Pursuant to the Agency Agreement, Gymboree Canada is seeking Court approval of the Sales Guidelines.

54. The primary aspects of the Sales Guidelines include:⁴
- (a) except as otherwise expressly set out in the Sales Guidelines and the orders of the Court, the Sale is to be conducted in accordance with the applicable lease;
 - (b) Stores will remain open during their normal hours of operation until the applicable vacate date from each location;
 - (c) the Sale is to be conducted in accordance with applicable federal, provincial and municipal laws unless otherwise ordered by the Court;
 - (d) all display and hanging signs used by the Agent in the Sale will be professionally produced and installed in a professional manner. The Agent may advertise the Sale at the Stores as a 'everything on sale', 'everything must go', 'store closing' or similar themed sale at the Stores (provided no signs shall advertise the Sale as a 'bankruptcy', 'liquidation' or 'going out of business sale' (it being understood that the French equivalent of 'clearance' is 'liquidation' and is permitted to be used));
 - (e) conspicuous signs are to be posted in the cash register areas of each Store to the effect that all sales are 'final';

⁴ This summary is for information purposes only. In the case of any conflict between this summary and the Sale Guidelines, the Sale Guidelines govern.

- (f) at the conclusion of the Sale in each Store, the Agent and Gymboree Canada shall arrange that the premises are in 'broom swept' condition. The Agent is not required to remove any remaining FF&E from the Stores at the completion of the Sale. Any property left in a Store after the effective date of disclaimer of the applicable lease shall be deemed abandoned by Gymboree Canada with the applicable landlord having the right to dispose of same as the landlord chooses and without liability on the part of the landlord;
- (g) the FF&E that may be sold as part of the Sale does not include any portion of the Stores' HVAC system or sprinkler or fire suppression systems or fire alarm system. Purchasers of FF&E shall only be permitted to remove FF&E either through back shipping areas designated by the applicable Landlord or through other areas after regular Store business hours or through the front door of the Store during regular Store business hours if the FF&E can fit in a shopping bag;
- (h) the Agent and its representatives shall have the same access rights to the Stores as Gymboree Canada has under the terms of the applicable lease; and
- (i) if a notice of disclaimer is delivered to a Landlord while the Sale is ongoing, then, during the notice period prior to the effective date of the disclaimer, the Landlord may show the affected leased premises to prospective tenants during normal business hours on giving Gymboree Canada, the Agent and the Trustee twenty-four hours' prior written notice.

C. Intercompany Support

55. Gymboree Canada's cash flow forecast (the "**Cash Flow Forecast**") indicates that it will have sufficient funding, through the Canadian Funds, to operate and pay the direct

expenses it incurs during the forecast period in accordance with the Cash Flow Forecast, provided that it retains its existing cash on hand at the commencement of these proceedings and the Initial Canadian Guaranty Payment from the Agent, which would otherwise be swept in the ordinary course to the Main Operating Account as a reimbursement of costs incurred by the Gymboree Group on an ongoing basis for the benefit of Gymboree Canada, including inventory purchases and overhead costs, and provided that funding of shared overhead costs by other members of the Gymboree Group continues as contemplated in the cash flow forecast. A copy of the Cash Flow Forecast is attached hereto as Exhibit "G".

56. Gymboree Canada will have sufficient liquidity and operational support to continue operations during these proceedings in part because: (i) substantially all overhead operating services are provided by other members of the Gymboree Group; and (ii) other members of the Gymboree Group have incurred and continue to incur out-of-pocket costs on behalf of Gymboree Canada.

57. The Gymboree Group believes that Gymboree Canada should bear its reasonable and proportional share of overhead costs incurred in the post-filing period and should be obligated to reimburse the other members of the Gymboree Group. Gymboree Canada has no other available source of funds for these costs and cannot continue on a stand-alone basis due to its dependence on the Gymboree Group's administrative structure and intellectual property.

58. The Gymboree Group proposes to allocate shared overhead costs of the Gymboree Group to Gymboree Canada based upon a number of factors including: Gymboree Canada's share of the global sales of the Gymboree Group, Gymboree Canada's share of the aggregate number of stores of the Gymboree Group, Gymboree Canada's share of the aggregate inventory value of the Gymboree Group and the expected duration of the liquidation

process in Canada, and Gymboree Canada will reimburse the Gymboree Group periodically for these allocated shared overhead costs from the Canadian Funds (the “**Post-Filing Intercompany Arrangements**”). The Gymboree Group will only agree to continue to incur these costs for the benefit of Gymboree Canada if the Post-Filing Intercompany Arrangements are implemented. As part of the Post-Filing Intercompany Arrangements, the Gymboree Group will provide reconciliation reports to the Trustee for any amounts proposed to be reimbursed to other members of the Gymboree Group out of the Canadian Funds on account of allocated shared overhead costs for the Trustee’s review and confirmation prior to the proposed reimbursement being paid or the exercise of any potential set off.

59. Gymboree Canada proposes that the Court grant an order approving the Post-Filing Intercompany Arrangements and grant a charge in favour of Gymboree US, for itself and on behalf of its affiliates providing financial and operational support to Gymboree Canada after the commencement of these proceedings (collectively, the “**Gymboree Affiliates**”), to secure the obligation of Gymboree Canada to satisfy its share of the overhead costs and to satisfy its reimbursement obligations for the post-filing period (the “**Intercompany Charge**”). This obligation is non-interest bearing. The Intercompany Charge would rank behind only the Administration Charge, the D&O Charge (each as defined below) and the Agent’s Charge in connection with the Agent Collateral.

D. Administration Charge

60. It is proposed that the Trustee and its counsel and counsel to Gymboree Canada be granted a Court-ordered charge on all of the present and future assets, property and undertaking of Gymboree Canada, including the Canadian Funds, as security for their respective fees and disbursements relating to services rendered in respect of Gymboree Canada up to a maximum amount of \$750,000 (the “**Administration Charge**”). The

Administration Charge is proposed to have first priority over all other charges (other than the Agent's Charge in connection with the Agent Collateral).

E. D&O Charge

61. Gymboree Canada continues to require the participation of its directors and officers to implement the proposed liquidation efficiently through a debtor in possession process.

62. The directors and officers of Gymboree Canada are covered by the director and officer insurance policies available to the Gymboree Group as a whole. However, there is no certainty that this coverage will be responsive or sufficient to satisfy contingent claims that may be asserted against the directors and officers of Gymboree Canada, such as amounts for unpaid wages or unremitted taxes, particularly as such policies must be sufficient for the Gymboree Group as a whole, including in the context of its Chapter 11 proceedings. As well, the cost of securing any additional insurance would be prohibitive, to the extent that additional insurance would be in fact available.

63. As such, the directors' and officers' continued service and involvement in this restructuring is conditional upon the granting of a charge in favour of the directors and officers of Gymboree Canada in the amount of \$1,130,000 (the "**D&O Charge**"). The D&O Charge would stand in priority to all other security, charges, and liens other than the Administration Charge and the Agent's Charge in connection with the Agent Collateral. The amount of the D&O Charge takes into account payroll obligations, vacation pay obligations, employee source deduction obligations and sales tax obligations that may arise during these proceedings. It is expected that all these amounts will be paid by or on behalf of Gymboree Canada in the normal course.

Conclusion

1. Granting the Order approving the Post-Filing Intercompany Arrangements, the Intercompany Charge, the Administration Charge, the D&O Charge, the Agency Agreement and Sales Guidelines, sought by Gymboree Canada is in the best interests of Gymboree Canada and its stakeholders. The Trustee has indicated that it will be filing a report which shall contain information in respect of the matters addressed in the proposed Order.

SWORN BEFORE ME at the City of San Francisco, in the State of California on January 21, 2019.

Notary Public

Jon W. Kimmins
JON W. KIMMINS

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Francisco

Subscribed and sworn to (or affirmed) before me on this 21 day of January, 2019, by Jon W. Kimmins

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.



(Seal)

Signature *Elizabeth Terry*

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF GYMBOREE,
INC.

Court File No.: 31-2464088
Estate File No.: 31-2464088

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

Proceeding commenced at Toronto

**AFFIDAVIT OF JON W. KIMMINS
(Sworn March 8, 2019)**

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IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF GYMBOREE, INC.

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

Proceeding commenced at Toronto

**MOTION RECORD
(Re: Order Extending Time to File Proposal)
(returnable March 13, 2019)**

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