

**UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA**

IN RE BED BATH & BEYOND  
CORPORATION SECURITIES  
LITIGATION

Case No. 1:22-cv-02541-TNM

CLASS ACTION

Jury Trial Demanded

**SECOND AMENDED CLASS ACTION COMPLAINT**

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Lead Plaintiff Bratya SPRL (hereafter “Lead Plaintiff”), individually and on behalf of all other persons similarly situated, by Lead Plaintiff’s undersigned attorneys, for the Second Amended Class Action Complaint (hereafter the “Complaint” or the “SAC”) in this Action against Defendants Ryan Cohen (“Cohen”), RC Ventures LLC (“RC Ventures”), Bed Bath & Beyond Inc. (“Bed Bath,” “BBBY” or the “Company”) and Sue E. Gove (“Gove”) (collectively the “Defendants”), alleges the following, based upon personal knowledge as to Lead Plaintiff and its own acts, and information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through Lead Plaintiff’s attorneys, which included a review of the Defendants’ public filings, conference calls the Defendants held with analysts and investors, any public announcements made by the Defendants, United States Securities and Exchange Commission (“SEC”) filings, wire and press releases published by and regarding the Company, analysts’ reports and advisories about the Company, articles about the Defendant(s) published in financial publications or other news outlets, interviews with former employees of the Company, a search and review of forums and social media where retail investors routinely discussed the Defendants’ statements and acts, a review of intraday trading activity in the Company’s securities, and other information readily obtainable on the Internet. Lead Plaintiff believes that additional substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

## **I. NATURE OF THE ACTION**

1. This is a federal securities class action on behalf of a class consisting of all persons who purchased or otherwise acquired Bed Bath’s common stock or options between August 12, 2022 and August 18, 2022, both dates inclusive (hereafter the “Class Period”), seeking to recover damages caused by Defendants’ violations of the federal securities laws and pursue remedies under

the Securities Exchange Act of 1934 (the “Exchange Act”) and SEC Rule 10b-5 promulgated thereunder. Lead Plaintiff asserts claims against Cohen and RC Ventures under Sections 9(a), 9(f), 10(b), 20(a) and 20(A) of the Exchange Act and Rule 10b-5, and against Bed Bath and Gove under Sections 10(b) and 20(a) of the Exchange Act and Rule 10b-5.

2. Bed Bath is a home goods retailer with a chain of big-box stores that sells products for the home such as bed linens, bath accessories, kitchen textiles, dinnerware and electric appliances. It also owns and operates a specialty retailer called buybuy BABY Inc. (“buybuy BABY”), which sells products meant for infants and children. Over the last few years, the Company has experienced a dramatic decline in sales and earnings, persistent losses, and a significant loss of market share to behemoths such as Amazon.com Inc. (“Amazon”), Walmart Inc. (“Walmart”) and Target Corporation (“Target”). The Company has effectively lost relevance with customers, and its poor financial performance has been accompanied by a lethal combination of sky-high debt and an endangered cash balance that has now left it days away from filing for bankruptcy.

3. However, the severity of these problems was known to the Defendants with a high degree of specificity before the market was able to fully understand their implications, and billionaire Cohen used his access to Company executives and his information advantage to exit his large position in the Company at a substantial profit. Along the way, Cohen manipulated the market for Bed Bath securities to create liquidity and secretly sold the entirety of his interests in the Company while abandoning ordinary investors, who looked to him for guidance.

4. A few years before the Class Period began, Cohen became one of the principal leaders of the “meme stock” movement. Meme stocks are stocks that gained viral popularity on discussion threads on Reddit and/or social media platforms like Twitter, where online communities

of retail investors dedicated their attention to particular stocks, sometimes for purposes of initiating a squeeze on short investors and hedge funds, and other times based on genuine beliefs about a company's prospects. Cohen publicly embraced these retail investors, affirmatively told them that he was in the best position to look out for their long-term interests and that his turnaround strategies would be far more effective than anything conjured by more experienced executives with management responsibilities because they earned undeserved, risk-free and excessive compensation detached from actual results. By the time Cohen purchased nearly 10% of the Company's outstanding shares in March 2022, he was one of the key leaders of the meme stock movement. By his own admission, the mere disclosure of his interest in a particular company would encourage retail investors to purchase that stock and lead to an exponential rise in its price. For years before the Class Period began, Cohen had also tweeted about his investments to hundreds of thousands of followers and saw evidence of dramatic stock price movements solely due to his words and actions.

5. In March 2022, after Cohen threatened to take control of Bed Bath's Board of Directors, the Company quickly entered into a cooperation agreement (hereafter the "Cooperation Agreement") with him that required him to stand down in exchange for influence and access. Key terms of the Cooperation Agreement allowed Cohen to obtain three new seats on the Board, and outsized influence over a new Board Strategy Committee charged with evaluating options for buybuy BABY's future. buybuy BABY was then considered the "crown jewel" of the Company, but the subsidiary's financial performance turned lackluster and its value greatly diminished right before Cohen formed a secret plan to dump all his holdings.

6. Cohen was initially fixated on buybuy BABY, stating that he believed it was worth at least several billion dollars, and that a sale or spinoff of this asset would be the solution to the

Company's longstanding struggles with soaring debt and a deteriorating balance sheet. Unbeknownst to investors, but known to Cohen weeks before the Class Period commenced, the Company had rejected Cohen's proposal to sell or spinoff buybuy BABY because a serious liquidity crisis threatened its ability to remain a going concern. Investors did not learn all of these facts until after the Class Period ended and Cohen had already cleaned out his account.

7. At the time he dumped his holdings, Cohen knew that the Company's liquidity and credit crises had worsened beyond repair and that buybuy BABY's sale or spinoff was off the table. This caused Cohen to sour on Bed Bath's securities and sell his holdings, but he did not disclose these facts as he was required to do by the federal securities laws. Cohen knew that the Board had rejected his proposal to sell or spinoff buybuy BABY weeks before he formed a plan to liquidate his entire position, as demonstrated by the following facts:

- Cohen controlled multiple Board seats and was an active participant in the Company's affairs and communicated with the Board and management about the Company's strategy. For instance, Cohen's communication with the Board precipitated the termination of the Company's previous Chief Executive Officer ("CEO") in June 2022;
- Also in June 2022, the Company hired a consultant to focus on cash and balance sheet optimization, demonstrating that the Board and management were aware that problems with liquidity had worsened. The Strategy Committee, dominated by Cohen's appointees, would not overlook whether a sale of buybuy BABY enhanced or undermined the goals of increasing cash and optimizing the balance sheet;
- On July 14, 2022, the Chairman of the Board of Directors told investors that the Strategy Committee, dominated by Cohen's Board nominees, had already studied the issue and "identified several options" for buybuy BABY. By that time, the value of buybuy BABY had already deteriorated to the point that its sale or spinoff would not resolve the Company's financial problems. Cohen's appointees on the Strategy Committee and his communications with management gave him access to and knowledge of these facts;
- Cohen communicated with the Company's Chief Financial Officer ("CFO") and other senior executives in conference calls;
- On the evening of August 16, 2022, after Cohen had already dumped most of his Bed Bath common stock, *The Wall Street Journal* (hereafter "*The WSJ*") reported that the Company was "hunting" for an extension of an existing credit line that would provide hundreds of

millions of dollars in relief and would be backed by an equity interest in buybuy BABY. This article was published in the print edition of the paper on the next day, when Cohen liquidated his remaining holdings in the Company;

- On August 31, 2022, within two weeks of Cohen’s sales, the Company executed a final version of an amended loan agreement that contained extremely onerous restrictions preventing asset sales in excess of an aggregate amount of \$10 million and locking up buybuy BABY as collateral to secure the obligations;
- The Company has admitted that it had worked on this loan agreement for “*several weeks*,” confirming that it was being finalized as Cohen was dumping shares and options on unsuspecting investors. News about the law firm hired by the Company to advise on the loan agreement emerged on the day Cohen revealed that he dumped his entire stake. The loan agreement involved negotiations between an administrative agent, sixteen different lenders, six different law firms, management, the Company’s Board (including Cohen’s Board nominees) and other counterparties. It is inconceivable that the substance of the contract, including the covenants prohibiting Cohen’s desired sale of buybuy BABY, was not known to Cohen at the time he sold his shares and options; and
- Subsequent reporting in the press in September 2022 confirmed that the expanded loan package was contingent on including buybuy BABY as collateral.

8. Armed with this information, Cohen formed a plan to sell all his shares and options.

But, knowing that this information would destroy retail investor interest in the Company, starting on August 12, 2022, Cohen began to manipulate the market for Bed Bath securities by publicly encouraging retail investors to buy while he planned to sell. With misleading statements, filings, and a false Twitter post with a moon-emoji suggesting he believed the Company’s stock price was going “to the moon,” he rallied hundreds of thousands of his followers to drive up its price.

9. Investors unambiguously understood Cohen’s moon-emoji tweet to mean that he expected the Company’s stock price to rise dramatically. As a result, trading volume and the Company’s stock price surged over the next few days. On August 15, 2022 after-market hours and on August 16, 2022, Cohen encouraged further buying by strategically filing delayed SEC Forms (which were due several months earlier and had nothing to do with any change in circumstances), both reminding investors that he was then a holder of more than 10% of the

Company's stock. Cohen subsequently admitted understanding (and on nine previous occasions confirmed to him) that the price of a company's stock dramatically rises when he files these Forms because of how retail investors perceive his moves. As such, Cohen deliberately filed these Forms when he did in order to stimulate retail activity and increase liquidity to sell his own securities. In one of these filings, Cohen further failed to disclose that he had already formed a plan to sell Bed Bath securities in violation of the Exchange Act.

10. After the market closed on August 16, 2022, Cohen submitted to the SEC a Form 144 regarding his intention to sell shares. While the SEC encourages filing these forms on its EDGAR system, which would immediately provide investors access, he instead submitted it by email, which the SEC publishes the following day or thereafter. Cohen's delay allowed him to surreptitiously liquidate his holdings at artificially high prices and volume, stoked by his encouragement that retail investors buy, not sell, Bed Bath shares. On August 17, 2022, after the market closed, Cohen's Form 144 was publicly released, and identified a "potential" plan to sell but was otherwise untruthful. In the Form 144, Cohen falsely stated that he had not sold any securities when the Form was submitted. However, Lead Plaintiff's review of intraday and aftermarket trade data demonstrates with certainty that Cohen had already sold massive amounts of Bed Bath securities at that time.

11. On August 17, 2022, CNBC specifically asked Bed Bath to comment on the information disclosed in Cohen's Form 144 and its implications. Bed Bath did not candidly disclose the truth about the Company's deteriorated relationship with Cohen, instead stating that it was "pleased to have reached a constructive agreement" with Cohen and his LLC, and had "been working expeditiously over the past several weeks with external financial advisors and lenders on strengthening our balance sheet." But the agreement with Cohen was anything but "constructive"

at the time, since he had sold all of his holdings, because of the strategic plans that Bed Bath had chosen with the very “financial advisors and lenders” the Company referenced.

12. On August 18, 2022, after the market closed, Cohen finally disclosed that he had sold his entire stake in Bed Bath. As a result, the Company’s stock price plunged over the next three trading days. It closed at \$11.03 on August 19, 2022 from its previous day’s closing price of \$18.55, on heavy trading volume, dropped further to close at \$9.24 on August 22, 2022, and again slid to close at \$8.78 on August 23, 2022.

13. Two former Chairmen of the SEC have stated that Cohen’s misconduct merits an investigation by the SEC. Cohen has not disclosed whether he has received notice of an investigation, and the SEC does not typically make that information public.

14. Due to the wrongful conduct detailed herein, Lead Plaintiff and other Class members suffered significant losses.

## **II. JURISDICTION AND VENUE**

15. The claims asserted herein arise under and pursuant to Sections 9(a), 9(f), 10(b), 20(a) and 20A of the Exchange Act (15 U.S.C. §§ 78(i), 78j(b), 78t(a) and 78t-1), and SEC Rule 10b-5 promulgated thereunder (17 C.F.R. § 240.10b-5).

16. This Court has jurisdiction over the subject matter of this Action pursuant to 28 U.S.C. § 1331 and Section 27 of the Exchange Act (15 U.S.C. § 78aa).

17. Venue is proper in this District pursuant to Section 27(a) of the Exchange Act (15 U.S.C. §78aa(a)), and 28 U.S.C. § 1391(b). Many of the acts and conduct that constitute the violations of law complained of herein occurred in substantial part in this District, including the dissemination of materially misleading information on the Internet that was accessible in this District.

18. In connection with the acts, conduct and other wrongs alleged in this Complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including but not limited to, the United States mail, interstate telephone communications and the facilities of the national securities markets.

### **III. PARTIES**

19. Lead Plaintiff, as set forth in its previously filed declaration (ECF No. 14-7), acquired the Company's securities at artificially inflated prices during the Class Period and was damaged as a result of the federal securities law violations alleged herein.

20. Defendant Cohen is the former CEO of Chewy, Inc. ("Chewy"), an online retailer of pet food and other pet-related products. Cohen currently serves as the Chairman of the Board of Directors of GameStop Corp. ("GameStop"). He also purports to be an activist investor with an alleged long-term interest in turning around troubled companies.

21. Defendant RC Ventures is a Delaware limited liability company founded and controlled by Cohen, with its principal place of business in Miami, Florida. Cohen used RC Ventures to purchase and sell Bed Bath's common stock and call options.

22. Defendant Bed Bath is a home goods retailer incorporated in New York with its principal place of business in Union, New Jersey.

23. Defendant Gove served as the interim CEO of Bed Bath from June 2022 to October 2022. Gove was appointed as the permanent CEO of Bed Bath in October 2022 and currently serves in that role. Since May 2019, Gove has also served as a member of the Company's Board of Directors, including as the Chair of the Strategy Committee of the Board of Directors from March 2022 to June 2022. The Strategy Committee was responsible for evaluating the Company's options for buybuy BABY's future.



#### **IV. BACKGROUND PRINCIPLES AND FACTS UNDERLYING COHEN'S MANIPULATION OF BED BATH'S STOCK PRICE**

##### **A. The Mechanics of a Squeeze**

24. Before Cohen pumped and dumped Bed Bath's securities, *Seeking Alpha* had already reported that a short squeeze was taking place. See Kevin P. Curran, *Bed Bath & Beyond shares soar 30%+ amid suspected short squeeze*, SEEKING ALPHA, (August 5, 2022, 11:02 AM), <https://seekingalpha.com/news/3868260-bed-bath-beyond-shares-soar-amid-suspected-short-squeeze>. Cohen, who had previously benefited from a GameStop short squeeze in 2021, again took advantage of a brewing short squeeze of Bed Bath's common stock that took place in early August 2022. Cohen's investments in GameStop have appreciated by over 1,400% as of today because of the squeeze.

25. A "short squeeze" targets short sellers or investors who borrow and then sell shares of a company in the belief that the price of the shares will fall when the short sellers are required to buy the shares at a later time. If prices decrease, short sellers buy shares at the lower price and return the shares to the lenders and profit from the difference between the price paid when the short was initiated and the price paid to buy the shares back when the short position is closed. If prices increase, short sellers are forced to buy shares at a higher price and pay the difference between the price set when the short position was opened and the price paid to buy the shares back on the market when the short position is closed. Because short sellers exit their positions by buying shares, the concurrent exit of many short sellers could have the effect of pushing the price of the shares even higher.

26. A short squeeze occurs when a security has a significant amount of short sellers who are betting that the price of a security will fall, but because of unexpectedly better financial results, a positive news story, or some other unexpected event, the stock price begins to rise as

investors purchase the security. At the same time, short sellers, seeing this unexpected rise in share price, rush to purchase the security in an attempt to exit their positions with minimal losses. This combination of new buyers and panicked short sellers creates a rapid rise in price that can be stunning and unprecedented. Often, short squeezes are temporary and the security's price decreases substantially within a short period of time. However, if it does not, short sellers can face runaway losses.

27. A "gamma squeeze" often occurs in conjunction with a short squeeze, when options dealers who have sold out-of-the-money call options are forced to hedge those positions by buying increasing numbers of shares at higher prices. A call option gives the purchaser of the option the right to buy the underlying security at a specified strike price before the option contract expires. If the buyer chooses to exercise the call option, then the seller must deliver the underlying shares to the buyer at the agreed-upon price, otherwise known as the strike price. Out-of-the-money call options move in the same direction as the underlying security.

28. As is widely known among investors, options dealers hedge the options they sell so that they are not vulnerable to movements in the underlying stock price. This practice, also called "dynamic hedging" or maintaining a "delta neutral" book, involves buying the underlying stock to hedge against option appreciation in proportion to the increase in a stock's "delta," a metric that ranges from near zero when an option is far out-of-the-money to one when an option is in-the-money. If the underlying stock moves up closer to the strike price, the options dealer needs to buy more shares to hedge, which can create massive buying pressure where many call options have been sold (especially if they were far out-of-the-money when sold). Where the buying pressure caused by this hedging is large enough to significantly push the stock price higher, it is called a gamma squeeze.

29. Evidence of a gamma squeeze also emerged after Cohen strategically filed a Form 3 on August 15, 2022, and an amended Schedule 13D on August 16, 2022, both showing that he held call options indicating that the price of Bed Bath's common stock would skyrocket by January 2023. Retail investors on Twitter, Reddit and other forums on the internet believed that Cohen was extremely bullish about Bed Bath's stock price since he held onto his call options, and began to buy out-of-the-money call options in size, forcing options dealers to dynamically hedge.

30. On August 16, 2022, trading in Bed Bath's call options rose to more than six times the 20-day average with 346,461 options traded by 10:00 AM on August 17, 2022, of which 237,029 were call options. On that day, Bed Bath's call options became one of the most traded options contracts on the stock market, with volume "right behind those tied to one of the biggest S&P 500 exchange-traded funds." Gunjan Banerji, *Bed Bath & Beyond Options Trading Heats Up*, THE WALL STREET JOURNAL, (August 16, 2022, 3:30 pm), <https://www.wsj.com/livecoverage/stock-market-news-today-08-16-2022/card/bed-bath-beyond-options-trading-heats-up-Y1YDqLVOFJPpmmw1lwhv>. Combined with a short squeeze, the exponential increase in the volume of call options because of Cohen's deliberate actions created the perfect conditions for a gamma squeeze, driving the price of the Company's common stock even higher. As one investment strategist commented at the time, Cohen "***created an option gamma squeeze to pump the stock to unload his position at temporary higher valuations.***" Adam Eckert, *EXCLUSIVE: Meme Stock Hero Ryan Cohen Used Retail Investors To Pump 'Extremely Underwater' Bed Bath & Beyond Position, Strategist Says*, BENZINGA, (August 18, 2022, 2:52 pm), <https://www.benzinga.com/news/22/08/28556701/exclusive-strategist-says-meme-stock-hero-ryan-cohen-used-retail-investors-to-pump-his-extremely-und> (emphasis added).

**B. Cohen’s Pump-and-Dump Scheme**

31. Cohen’s actions in August 2022 were a textbook example of a scheme to artificially inflate the price of Bed Bath’s common stock and stimulate trading activity to generate short-term profits for himself at the expense of other investors. This is otherwise known as a “pump-and-dump scheme.”

32. A pump-and-dump scheme works in two parts. First, a manipulator purchases a large amount of stock and then promotes the stock to boost prices, often by claiming to have information about an imminent development that will lead to a dramatic upswing in the share price. After the share price and trading volume substantially increase, the manipulator sells his or her shares on the market for an ample profit.

33. Once shares are dumped, the manipulator ceases to promote the stock, leaving the market to conclude that there is no real, long-term change in the company’s prospects, which results in a massive decline in the company’s stock price. When this occurs, retail investors who bought into the manipulator’s hype and purchased securities at high prices experience significant losses.

**C. Federal Law Requires Principal Shareholders to be Transparent About Transactions**

34. The securities laws require significant transparency to prevent manipulation of the stock market. Investors are required to be provided with timely, accurate information concerning the trading activity of persons or entities that own significant amounts of a company’s securities. These laws are intended to protect the integrity of the market and inform investors about the nature of their holdings as well as the holdings of insiders and shareholders who own either 5% or more or 10% or more of a company’s total shares outstanding. As such, Section 13(d) and Section 16(a) of the Exchange Act and SEC Rule 144 mandate that insiders and principal shareholders comply

with certain rules to provide prompt disclosure of their interests in a company's securities.

**1. Section 13(d) of the Exchange Act**

35. Section 13(d)(1) of the Exchange Act and its enabling regulation (17 C.F.R. § 240.13d-1) require any person who, directly or indirectly, acquires more than 5% of any voting class of a Section 12 registered equity to file, within 10 days of the acquisition, a statement containing the information required by Schedule 13D. This statement must be complete and accurate. When their holdings materially change, Section 13(d)(2) of the Exchange Act and Rule 13d-2(a), 17 C.F.R. § 240.13d-2, require filers to amend a previously filed Schedule 13D "promptly" and provide the necessary information. Any delay beyond the date on which the filing can reasonably be made may not be prompt.

36. Critically, Item 4(a) of Schedule 13D provides that a reporting person must disclose "any plans or proposals" relating to "the disposition of securities of the issuer." 17 C.F.R. § 240.13d-101. Disclosure of such plans is necessary even when the plans or proposals are expected to be executed at a future date. Generic, boilerplate disclosures that indicate the filer is reserving the right to sell securities must be amended promptly when a material change occurs in the facts previously reported.

**2. Section 16(a) of the Exchange Act**

37. Section 16(a) of the Exchange Act and its enabling regulation (17 C.F.R. § 240.16a-2) require "any person who is the beneficial owner, directly or indirectly, of more than ten percent (10%) of any class of any equity securities" to file statements reporting his or her ownership to the SEC by filing initial statements of beneficial ownership of the securities on Form 3 and a subsequent change in beneficial ownership filed on Form 4. New principal shareholders must file a Form 3 within 10 days of acquiring a company's securities. Notably, by dint of their significant

ownership stake, such persons are deemed to be company insiders.

38. Section 16(a) further requires insiders to file these disclosures when their existing ownership stake increases, even if they did not affirmatively engage in any transactions. For instance, the SEC has explained that “[f]ollowing a company’s buy-back of its stock, a person who previously owned less than 10 percent of the company’s stock may own more than 10 percent of the stock without having purchased additional shares.” Exchange Act Section 16 and Related Rules and Forms, U.S. SEC (Aug. 11, 2010), <https://www.sec.gov/divisions/corpfin/guidance/sec16interp.htm>. In such cases, unless the investor is unaware of the buy-back or its impact, the investor must file a Form 3 “within 10 days after the buy-back.” *Id.*

### **3. SEC Rule 144**

39. SEC Rule 144 (17 C.F.R. § 230.144) sets conditions under which restricted, unregistered, and control securities can be sold or resold. Rule 144 applies to “affiliates” of a company, which includes officers, directors, and 10% stockholders.

40. Importantly, pursuant to Rule 144(h), if the principal shareholder proposes to sell more than 5,000 shares or other units in any three-month period, or the contemplated sales have an aggregate sale price above \$50,000, he or she must *concurrently* with the placing of an order with the broker or the sale to the market maker transmit to the SEC three copies of a “Notice of Proposed Sale” on Form 144. This Form must be executed by the person who owns the securities to be sold.

## **V. COHEN LEARNS HOW TO MANIPULATE STOCKS**

### **A. Cohen Amasses a Trading Fortune by Selling Chewy**

41. Cohen is a Canadian entrepreneur currently residing in Florida who, at age 25, founded the pet electronic-commerce (“e-commerce”) company Chewy in 2011. By his own

admission, Chewy was the first “real job” Cohen ever held. Devon Pendleton, *A Tech Founder Cashed Out and Bet It All On Apple and Wells Fargo*, BLOOMBERG, (June 5, 2020, 4:00 am), <https://www.bloomberg.com/news/articles/2020-06-05/chewy-founder-cashes-out-bets-on-apple-wells-fargo#xj4y7vzkg>.

42. Chewy was not a revolutionary new idea but a recycled business plan of previous pet supply companies like Pets.com. Chewy, however, was created at a more opportune time than previous iterations of the idea, as Pets.com came of age when e-commerce was still new and the company was never able to amass the customer base necessary to cover its high fixed costs, namely shipping and warehouse infrastructure, which, in the end, caused it to overspend in a scramble for customers. Conversely, Chewy was founded both at a time when e-commerce was normalized among the populace and when zero interest rates were the norm which, by Cohen’s own admission, gave Chewy the freedom to focus more on expansion than on profitability. Joe Fonicello, *The Ryan Cohen Interview with Joe Fonicello of GMEdd.com* (November 20, 2022), <https://www.youtube.com/watch?v=uN2Dw8AOdMk>.

43. This perfect timing for a recycled Pets.com allowed Chewy to be acquired by PetSmart for \$3.35 billion in the then-largest e-commerce acquisition of all time. The acquisition hid several issues that existed at Chewy. For instance, the chief executive of PetSmart, J.K. Symancyk, told board members on multiple occasions that Chewy under Cohen was unprofitable and the company later required a full information-technology overhaul, even though Cohen had touted its e-commerce platform as world-class. In 2020, PetSmart announced that it planned to sell its interest in Chewy.

44. Shortly after the acquisition of Chewy, Cohen sold his entire stake, earning approximately \$1 billion. Since then, Cohen has been primarily focused on private investments

through his firm, RC Ventures, which he has admitted in interviews consists basically of himself. Cohen claims that he principally invests in companies for the long term. Cohen has repeatedly stated that he learned the value of this investment strategy from his father who “was never looking to make a quick buck” and “believed the real money was made through time.” Ryan Cohen, *The Secret Weapon Behind Chewy Founder Ryan Cohen’s Success*, ENTREPRENEUR, (May 4, 2020), <https://www.entrepreneur.com/leadership/the-secret-weapon-behind-chewy-founder-ryan-cohens-success/349890>.

45. After initially focusing on investing in large mainstream companies like Apple Inc. and Wells Fargo & Co., Cohen and RC Ventures moved into the meme stock arena by investing in GameStop and Bed Bath.

## **B. GameStop’s Rise and Fall**

### **1. The Meme Stock Movement**

46. In early 2020, a movement began among retail investors who focused their attention on stock trading to pass the time and make money. The emergence of the retail investor was spurred by the availability and popularity of stock trading apps like Robinhood, and a widespread move by brokers to eliminate commissions, thereby lowering the barriers to entry.

47. Many of these retail investors discussed their trades and theories on companies to invest in on social media websites, such as Twitter and Reddit, often creating communities with their own form of slang.

48. One popular Reddit discussion forum (known as a subreddit) is r/WallStreetBets, which, along with other subreddits popular with retail investors, such as r/Superstonk, is characterized by its unique subculture focused on real-time discussion of financial investments, frequent use of “memes” and emojis, and its own trading vocabulary. The term “diamond hands,”



often accompanied by emojis of human hands and a diamond (💎👉), means buying and holding onto a stock for the long term, rather than selling it for a quick profit. The phrase “to the moon” is a rallying cry on r/WallStreetBets, which its members use to express their confidence that a stock will rise significantly, often accompanied by emojis of a rocket ship or the moon, which can appear differently when originating on different browsers, as shown below, but all convey the same meaning (for example, the first moon emoji image below was generated on an iPhone and the second and third moon emojis were generated via internet browsers, despite using the exact same image input):



49. Meme stocks saw surges in trading activity from 2020 through 2022 fueled primarily by the trading of retail investors who frequented social-media communities like r/WallStreetBets.

50. A common characteristic of the retail investors who traded in meme stocks was antipathy towards institutional investors who were shorting these meme stocks. A popular theme in these social media communities was the goal of squeezing short sellers, a goal Cohen enthusiastically embraced in public.

51. One of the companies that retail investors targeted as a meme stock was GameStop.

## **2. Cohen’s Entry into GameStop**

52. Founded in 1984, GameStop is a predominantly brick-and-mortar business that sells video games and gaming consoles. By August 3, 2020, GameStop’s stock was trading at \$1.04 per share and the company faced serious challenges, including a move toward online

purchases, full game downloads, lower used game inventory levels, and reduced demand for used games driven by the growth of older game subscription services (e.g., Sony PlayStation Now, Xbox Game Pass).

53. In mid-August 2020, Cohen, through RC Ventures, purchased 5.8 million shares of GameStop stock for a 9% stake in the company. On August 28, 2020, RC Ventures filed a Schedule 13D with the SEC identifying these transactions. When investors learned about Cohen's acquisitions and interest in GameStop, the company's stock price rose by more than 41%, closing at \$1.91 per share on September 1, 2020, with trading volume spiking to 151.9 million shares on August 31, 2020, compared to 16.95 million shares traded on August 28, 2020. Moreover, retail investors expressed their excitement on online forums and social media in threads that Cohen occasionally addressed on his Twitter account.

54. A few months after the Class Period ended, Cohen participated in a one-on-one interview with Joe Fonicello ("Fonicello") of GMEdd.com, a website that claims to conduct research and high-quality due diligence on the investment thesis for GameStop. Fonicello asked Cohen: "[w]hat did you know about the enthusiasm from some retail investors over GameStop on digital communities like WallStreetBets?" Cohen expressly responded that he noticed the enthusiasm for his purchases after he filed a Schedule 13D in August 2020, describing the experience as a loss of his "13D virginity" and that he again observed enthusiasm from retail investors when he filed subsequent amendments to his Schedule 13D. Joe Fonicello, *The Ryan Cohen Interview with Joe Fonicello of GMEdd.com* (November 20, 2022), <https://www.youtube.com/watch?v=uN2Dw8AOdMk>. All of these filings were followed by increased interest in GameStop stock by retail investors and an increase in GameStop's stock price. This shows that Cohen was aware of the impact of his filings on retail investors well before the Class Period began.

55. No longer a “13D virgin,” to use his own term, Cohen filed another amended Schedule 13D/A to reflect purchases of 284,674 shares of GameStop stock on September 21, 2020, increasing his ownership stake to roughly 9.98%. When the market learned about Cohen’s filing, the price of GameStop’s stock spiked to a 52-week high the following day, rising by more than 20% from \$2.18 to \$2.64 per share, with trading volume rising to more than 139 million shares. In his Schedule 13D and 13D/A filings, Cohen stated that he had started “conversations and communications with senior management” and “several members of the Board of Directors” of GameStop concerning Cohen’s views about the company’s strategy and future, expressing his willingness to “become more involved” in GameStop. This again excited retail investors.

56. On November 16, 2020, Cohen disclosed a letter he sent to GameStop’s Board of Directors where he expressed the view that GameStop needed to evolve into a technology company and criticized GameStop’s CEO’s apparent commitment to the brick-and-mortar business model. The reaction from retail investors was profound, as over the next two weeks following Cohen’s letter, GameStop’s stock price rose from \$2.79 to close at \$4.14, with a high of \$4.85, and an average trading volume of 43.98 million shares, and a high of 127.93 million shares traded on November 30, 2020 – well above the 14.18 million shares traded the day before Cohen’s letter was disclosed.

57. The following month, in early December 2020, GameStop announced that it would sell at least \$100 million in new stock to raise capital. According to *The WSJ*, Cohen “erupted” at this news, worrying that “the plan would damage the company’s standing among investors by reducing the value of existing shares.” Sarah E. Needleman, *GameStop’s Power Player: How Outsider Ryan Cohen Wrested Control*, THE WALL STREET JOURNAL, (August 12, 2021, 10:03 am), <https://www.wsj.com/articles/gamestop-ryan-cohen-chewy-meme-stock-11628776861>.

Cohen subsequently e-mailed GameStop's then-chairwoman, Kathy Vrabeck, warning her that he would go public with his disapproval if the company proceeded with the sale. GameStop scuttled the planned stock sale shortly thereafter.

58. While Cohen's investment moves in the latter half of 2020 had an impact on GameStop's stock price and business, they would only be a prelude to the monumental influence that Cohen would achieve in 2021 and 2022.

### **3. Cohen's Transformation into "Papa Cohen" and GameStop's Rise**

59. When the meme stock movement began, it centered on online influencers like Keith Gill ("Gill"), who went by the username u/DeepFu\*\*ingValue ("DFV") on Reddit and "Roaring Kitty" on YouTube and Twitter.<sup>1</sup> His promotion of GameStop began in August 2020, when he promoted his analysis of GameStop's stock on his YouTube channel, convincing many retail investors on r/WallStreetBets that GameStop was primed for a coordinated short squeeze.

60. However, as GameStop's stock price increased throughout 2021, Cohen quickly took preeminence as the leader of retail investors in meme stocks.

61. As one analyst noted at the end of 2021, Cohen was the "share price catalyst" for GameStop's rapid stock price rise throughout the year, as opposed to anything connected to the company's revenue and business fundamentals. *See Edward Woo, GameStop Corp.: Q3 mixed and no FY21 guidance. Reddit trading may propel stock near term, but likely to fade in 2022 as digital threats increases and earnings outlook weak. Lowering P/T to \$23*, ASCENDIANT CAPITAL MARKETS, LLC, December 24, 2021, at 1.

62. This focus on Cohen escalated in early December 2020, when retail investors on Reddit forums like r/WallStreetBets began to increasingly rely on Cohen to guide their investment

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<sup>1</sup> Throughout the Complaint, expletives have been redacted in part with asterisks from the original text. Tweets and Reddit posts are otherwise unchanged.

decisions. For example, on December 10, 2020, one Reddit user known as u/CPTHubbard created a thread entitled “GME Tribe: A Story About How Ryan Cohen is About to Kick Down Sherman’s Door and Drink His Milkshake,” making the case that Cohen had the vision and resources needed to transform GameStop. Summarizing his lengthy post, u/CPTHubbard explained that he believed Cohen would trigger a MOASS or a “mother of all short squeezes,” adding that:

**So here’s the TL/DR:** I believe that Cohen is executing a plan to take out the GME Board. And I think that Sherman just walked right into Cohen’s trap because he’s a dumb, selfish Boomer with a huge ego and a Broken Brain. And Cohen is going to be a legend because of it after he executes this plan, triggers the MOASS, and takes control of GME to convert it to a tech-first gaming juggernaut.

The post received considerable attention, receiving hundreds of comments and more than 1,500 “upvotes,” reflecting the positive reaction to the post by other Reddit users.

63. On December 21, 2020, Cohen filed another amendment to his Schedule 13D, which showed that he had increased his stake in GameStop to 12.9%. That same day, in accordance with the requirements of Section 16(a) of the Exchange Act, Cohen filed an initial statement of beneficial ownership of securities on Form 3 and a statement of changes in beneficial ownership on Form 4 to reflect his ownership of more than 10% of GameStop’s total outstanding shares. Much like Cohen’s earlier 13D filings, retail investors responded positively to Cohen’s increased ownership stake and the price of GameStop’s stock surged by 32% from \$3.88 per share on December 21, 2020, to close at \$5.14 per share on December 23, 2020, with more than 100 million shares traded on each of the previous two days.

64. On January 11, 2021, GameStop announced that it had come to an agreement with RC Ventures and Cohen that provided three new directors, comprised of Cohen and two former Chewy executives, to GameStop’s Board of Directors. GameStop’s share price soared in the days following the news of the agreement as retail investors continued to react to Cohen’s machinations,

ultimately peaking at \$10.76 per share before closing at \$9.97 per share on January 14, 2021.

65. This enthusiasm by retail investors for GameStop and Cohen stood in stark contrast to the contempt they felt for hedge funds and other institutional investors who held large short positions in meme stock companies like GameStop. This confluence of emotions kicked into high gear in January 2021, as retail investors appeared to affirmatively target short sellers with coordinated attempts to orchestrate both a short and a gamma squeeze.

66. On January 13, 2021, *The WSJ* reported on Cohen's addition to the GameStop Board and noted that GameStop's announcement was part of the company's turnaround strategy and had fueled a short squeeze "according to some analysts." The article stated that "[a]s of the end of last year, short interest in the stock—expressed as a percentage of GameStop shares available for trading—exceeded 138%, making it the second-most shorted company by that metric with a market value of at least \$1 billion, according to data from FactSet." Micah Maidenberg, *GameStop Shares Surge After Traders Shift Bets, Board Gets Makeover*, THE WALL STREET JOURNAL, (January 13, 2021, 4:51 pm), <https://www.wsj.com/articles/gamestop-shares-surge-after-traders-shift-bets-board-gets-makeover-11610563910>. That day, GameStop's stock price rose by more than 57% to \$7.85 per share, with a trading volume of more than 578 million shares, compared to only 28.24 million shares traded the day before.

67. On January 14, 2021, *The WSJ* reported that trading in shares of GameStop had doubled in the past two days, noting the activity on the r/WallStreetBets subreddit and explaining that some retail investors on Reddit projected that the "stock might rapidly rise if short sellers had to cover their bets by buying back shares should the stock suddenly increase in value," while also quoting an analyst at Wedbush Securities, Michael Pachter, who said, "[t]he shorts are freaking out...[meanwhile] Robinhood message boards are bragging." Caitlin McCabe, *GameStop Stock*

*Soars, and Social-Media Traders Claim Victory*, THE WALL STREET JOURNAL, (January 14, 2021, 5:44 pm), <https://www.wsj.com/articles/gamestop-stock-soars-and-social-media-traders-claim-victory-11610653679>.

68. News stories by publications like *The WSJ* were only the tip of the iceberg as the analysis in those stories was dwarfed by the chatter among retail investors in online forums like Reddit. There, thousands of people discussed Cohen's actions related to GameStop, including his letter to the GameStop Board, his amended Schedule 13D filings and his tweets. Retail investors on these online forums concluded that they could (and should) buy up GameStop's stock, preferably in cash, and hold it, so as to short and gamma squeeze institutional short sellers, thereby driving up GameStop's stock price higher. As a result, subreddits like r/WallStreetBets and r/Superstonk became the laboratories where retail investors interpreted Cohen's public statements and traded securities based on those interpretations.

69. During the week of January 24, 2021, mentions of Cohen on Reddit and Twitter more than tripled from the week prior. Further, many r/WallStreetBets users began to refer to Cohen as "Papa Cohen" or the "meme lord," closely following every statement, social media post, public filing, and transaction to guide their own investment decisions.

70. Retail investors, goaded by Cohen, continued to purchase GameStop's stock, sending its stock price higher and higher, with trading volumes exceeding 700 million each day from January 22, 2021 to January 26, 2021.

71. On January 26, 2021, after previously closing at \$19.19, GameStop's share price shot up during after-hours trading to \$36.99 per share. The massive price increase exposed short sellers of GameStop to substantial losses, forcing them to buy the company's stock at high prices to cover their short positions, which resulted in only further increasing the market price of

GameStop's stock, and required options dealers to buy more and more stock to maintain their dynamic hedges. On January 27, 2021, GameStop's stock price closed at \$86.88 per share, representing a 1,914.55% increase from its price at the beginning of the month. The next day, on January 28, 2021, GameStop's stock price peaked at an intraday high of \$120.75 per share, before closing at \$48.40 per share.

72. Cohen remained a central figure in the rise of GameStop's share price in January 2021. According to one former board member of GameStop, at the time of these initial squeezes, "Ryan [Cohen] personified a hero against the hedge funds." Sarah E. Needleman, *GameStop's Power Player: How Outsider Ryan Cohen Wrested Control*, THE WALL STREET JOURNAL, (August 12, 2021, 10:03 am), <https://www.wsj.com/articles/gamestop-ryan-cohen-chewy-meme-stock-11628776861>.

#### **4. Cohen Exploits his Social Media Following to Fuel GameStop's Stock Rise**

73. Before 2021, Cohen had only minimally participated on Twitter, tweeting five original posts and retweeting six other posts, with a majority of tweets simply promoting articles written about himself. However, as Cohen's stature with retail investors rose, he began to tweet more and more, often with memes and at times that coincided with major events at GameStop, understanding that the social media-savvy retail investors would be able to decipher the meaning of his tweets and act in response.

74. Significantly, Cohen's Twitter account provided a connection between himself and retail investors, with him often liking or retweeting memes of himself made by his followers, and conceding in that same November 2022 interview with Fonicello that he views and encourages the posts made by retail investors. For example, at 7:48 am on April 8, 2020, a retail investor created and posted an image of Cohen's head on top of a chair on the subreddit r/Superstonk. At 12:36



pm the same day, Cohen posted this same image to his Twitter account, demonstrating to retail investors that Cohen monitored subreddits like r/WallStreetBets and r/Superstonk and read what is posted on these forums:



Retail investors who saw Cohen’s tweet were euphoric, with some proclaiming, “HE’S AMONG US” and “I honestly believe he’s on these threads all day just like us.” Cohen began to leverage these connections to retail investors for his own financial gain from 2021 through 2022.

75. Almost always, Cohen’s tweets – either explicitly or implicitly – referenced companies he invested in, like GameStop and Bed Bath.

76. One of Cohen’s most notable early tweets was that of a frog emoji and a picture of a McDonald’s ice cream cone:



This tweet coincided with an announcement that GameStop’s CFO, Jim Bell, was pushed out, with rumors that it was done at the behest of Cohen. Reddit users understood the tweet to mean that Cohen “wanted shares to leap like a frog,” and “would fix GameStop just as McDonald’s tried to fix its troubled ice cream machines.” On Twitter, the majority of retail investors similarly concluded that the tweet was a signal that GameStop’s stock price was about to “take off,” with many of those same investors tweeting that they purchased GameStop stock in response. In

response, over the next two days, GameStop’s stock price rose from \$11.17 to a high of \$46.17, before closing on February 25, 2021 at \$27.18, with a trading volume of 332.45 million shares on February 24, 2021, and 601.24 million shares on February 25, 2021, approximately 20 times the volume traded the day before the tweet. When writing about this tweet and its impact on GameStop’s stock, *The WSJ* summed up the situation succinctly: “[o]ne thing was clear: A meme lord now occupied the boardroom.” Caitlin McCabe, *The Meme Lords Who Are Taking Over the C-Suite*, THE WALL STREET JOURNAL, (August 27, 2021, 5:44 pm), <https://www.wsj.com/articles/the-meme-lords-who-are-taking-over-the-c-suite-11630056603>.

77. Cohen continued to use emojis and memes to communicate with retail investors who followed him. Those retail investors not only understand this, but expect it of him. Indeed, investors purchase stock promoted by Cohen based on a single emoji as exemplified below:



78. On April 16, 2021, after the market closed, Cohen tweeted a fist emoji to his followers:



Retail investors understood this tweet to signal a positive outlook for GameStop, and many responded with tweets of moon or rocket emojis to signal their agreement. The next trading day, GameStop’s stock price rose by \$2.42 with a trading volume of 42.08 million shares, more than double the number of shares that traded on the previous day. More significantly, three days after this tweet, GameStop announced that its CEO, George Sherman, would resign, a move that occurred at the encouragement of Cohen according to *The WSJ*. This episode again demonstrated Cohen’s proclivity to signal major events to the market through his Twitter account while also encouraging retail investors to continue to purchase GameStop’s securities.

79. In June 2021, Cohen officially became the Chairman of GameStop’s Board of Directors, while also overseeing the appointments of a new CEO, CFO, and Chief Customer Officer, which analysts described as “inexperienced lackey[s] hired for Chairman Cohen.” *See GameStop (GME): CEO Diligence Memo*, PARAGON INTEL, January 6, 2022, at p. 1; *see also*

Edward Woo, *GameStop Corp.: Reports Q2 about inline but no FY21 guidance. Reddit trading likely to propel stock near term, but likely to fade in one year as digital threats increases. Lowering P/T to \$24*, ASCENDIANT CAPITAL MARKETS, LLC, September 25, 2021, at p. 1.

80. Cohen continued to tweet about GameStop to his followers at times of significant events for the Company, stoking retail investor enthusiasm. On October 31, 2021, Cohen tweeted “MGGA,” short for “Make GameStop Great Again.” Cohen’s retail investor fans immediately interpreted this as a signal to buy GameStop stock. On Reddit, retail investors theorized that this was an indication that GameStop’s earnings would be good for the quarter. For example, u/Rexdale416 posted in response:



81. Similarly, on Twitter, retail investors responded with enthusiastic posts like “Bullish” and “Guess who is gonna buy more shares Monday?” On cue, GameStop’s stock price subsequently rose by 9% on the next trading day with a trading volume of 19.78 million shares or more than 10 million shares traded than the day before Cohen’s tweet.

82. Cohen continued to fuel retail investor optimism through his Twitter account and SEC filings. For example, on March 22, 2022, Cohen purchased an additional 100,000 GameStop Shares, raising his stake in GameStop to 11.9%, according to an amended Schedule 13D that he filed the same day. On this news alone, GameStop’s share price shot up 30.7%, registering the

highest one-day percentage gain for the company since March 25, 2021. *Reuters* reported that, apart from the news of Cohen’s purchase, “[t]here was no clear reason for the rally during normal trading hours, according to analysts.” Reuters Staff, *Ryan Cohen picks up 100,000 GameStop shares, stock jumps*, REUTERS (March 22, 2022, 5:55 PM), <https://www.reuters.com/article/gamestop-cohen-idCNL3N2VP4F7>.

83. On March 22, 2022, after-market hours, Cohen sent out a tweet to his retail investor fan base about the purchase, which was met with a jubilant reaction:



84. Over the next five trading days, GameStop’s stock price surged from a closing price of \$23.55 the day before Cohen’s tweet and Schedule 13D filing to a high of \$47.71 before closing on March 28, 2022, at \$47.40, with an average trading volume of 62.73 million shares and a high of 98.40 million shares traded on March 23, 2022, compared to 15.81 million shares traded the day before Cohen’s purchase and subsequent tweet.

85. From Cohen’s initial investment in GameStop in August 2020 through 2022, he was able to rally support among retail investors through his SEC filings and Twitter presence, which pushed GameStop’s stock price to previously unseen levels, and his influence on the market

eclipsed those of analysts, other investors, or market participants. He would later abuse this power to manipulate the market for Bed Bath's securities.

## **VI. SUBSTANTIVE ALLEGATIONS**

### **A. Bed Bath's Road to Bankruptcy**

#### **1. Background**

86. In 1971, Bed Bath was founded in Springfield, New Jersey, and it went public in 1992. The Company has a chain of big-box stores in the United States, Canada and Mexico that sell home goods such as bed linens, bath accessories, kitchen textiles, dinnerware and electric appliances used in the home. The Company quickly became known as a "category killer" because its large stores sold a wide variety of brands and products that drew more foot traffic than other departmental stores that limited themselves to specific categories or consumer demographics. Between 1992 and 2006, the Company's revenues grew from \$168 million to over \$5 billion. It acquired other retailers such as Christmas Tree Shops, Cost Plus World Market and buybuy BABY, a specialty retailer that sells items meant for infants and children such as strollers, car seats, clothing and furniture for nurseries.

87. However, the Company's growth began to decline significantly between 2006 and 2012 because cross-category competitors like Walmart, Target and Amazon, with more sophisticated platforms for e-commerce and more efficient distribution networks, started to rapidly erode Bed Bath's market share in the home goods industry. These companies not only sold a vast array of products, but they used other categories such as grocery to drive even more traffic to their stores. Bed Bath did not have similar vehicles to increase its sales or retain market share.

88. The Company's total annual revenue stagnated between 2012 and 2019. This resulted in the ouster of then-CEO Steven Temares in May 2019, and the appointment of four new

members to the Company's Board of Directors. Activist investors pushing for his ouster blamed him for the Company's outdated e-commerce platforms and deficient distribution network.

89. In November 2019, Mark Tritton ("Tritton") was appointed as the new CEO of Bed Bath. Tritton had previously been the Chief Merchandising Officer of Target from June 2016 to November 2019. There, Tritton successfully rolled out Target's private-label brands. Private-labeled products are sold under a company's own brand, but manufactured by a third party. At Bed Bath, Tritton attempted to replicate that strategy by replacing national brands available at other retailers, including products developed by Cuisinart, Dyson and UGG, with private-label cookware, appliances and home goods. Tritton told investors that a shift to private labels would boost margins and increase foot traffic to the Company's stores.

90. The move backfired. While the Company's competitors benefitted from the hot housing market and stimulus-induced consumer spending during the pandemic, Bed Bath could not capitalize on this boom because of weaknesses in the Company's supply chain and distribution network, inadequate investments in digital technology to adapt to the rise of online shopping, and a failure to implement curbside pickup that many retailers had already rolled out years earlier. For example, while Bed Bath reported a decline in net sales for the second quarter of 2020 that ended on August 29, 2022, Target's sales of home goods increased by over 24%.

91. By the third quarter of 2021, Bed Bath's financial situation worsened. On January 6, 2022, the Company announced its financial results for the third quarter that ended on November 27, 2021. Net sales declined by 28% year-over-year compared to the net sales of the third quarter that ended on November 28, 2020. Net losses over the same year-over-year period increased from \$75.4 million to \$276.4 million. A Loop Capital Markets ("Loop Capital") report from January 6, 2022, found the results "troubling given the extremely robust US housing market and strong F3Q



2021 showings by other home goods purveyors.” Anthony Chukumba, *Lowering Price Target As Things Go From Bad To Worse In F3Q 2021 “Miss And Lower,”* LOOP CAPITAL MARKETS, January 6, 2022, at p. 1. Similarly, Guggenheim noted in an analyst report on January 7, 2022 that the Company “has meaningfully underperformed the industry throughout the COVID-impact cycle.” Steven Forbes, John Heinbockel, Matt Norton, and Julio Marquez, *BBBY – Bridging the “Gap” to 2H 2022—Lowering Estimates on N-T Operating Challenges; NEUTRAL,* GUGGENHEIM, January 7, 2022, at p. 1. Loop Capital attributed the decline in sales to a loss of market share and a failure to retain customers or increase foot traffic to stores.

## 2. Cohen Exerts Influence While Liquidity and Credit Crises Loom at Bed Bath

92. Between January 2022 and February 2022, Cohen, through his personal investment entity RC Ventures, bought millions of shares of Bed Bath. He owned more than 5% of the Company’s total outstanding shares by February 24, 2022. On March 7, 2022, Cohen filed a Schedule 13D, stating that he purchased 9,450,100 shares of the Company for approximately \$119.37 million, and now owned 9.8% of the Company’s total outstanding shares. This percentage was based on 96.3 million shares of the Company that remained outstanding as of November 27, 2021, pursuant to the amounts reported in Bed Bath’s quarterly report for the third quarter of 2021 filed on January 6, 2022. Cohen bought 7,780,000 shares of common stock, and 1,670,100 shares of call options underlying the common stock as illustrated below:

<b>Nature of the Transaction</b>	<b>Amount of Securities Purchased</b>	<b>Price per Share (\$)</b>	<b>Date of the Purchase</b>
Purchase of Common Stock	1,000,000	14.7690	01/13/2022
Purchase of Common Stock	500,000	15.2860	01/14/2022
Purchase of Common Stock	300,717	14.3930	01/20/2022
Purchase of Common Stock	99,283	13.0760	01/21/2022
Purchase of Common Stock	50,000	14.9100	01/25/2022
Purchase of Common Stock	200,000	15.0480	01/26/2022
Purchase of Common Stock	251,336	13.8440	01/27/2022

Purchase of Common Stock	440,981	14.4890	01/28/2022
Purchase of Common Stock	44,333	16.5810	01/31/2022
Purchase of Common Stock	609,941	16.4710	01/31/2022
Purchase of Common Stock	187,962	16.9760	02/01/2022
Purchase of Common Stock	156,574	17.1020	02/02/2022
Purchase of Common Stock	75,000	16.0790	02/04/2022
Purchase of Common Stock	83,873	16.2780	02/07/2022
Purchase of Common Stock	70,000	15.8230	02/14/2022
Purchase of Common Stock	30,000	16.2280	02/16/2022
Purchase of Common Stock	75,000	14.0310	02/22/2022
Purchase of Common Stock	367,833	15.2060	02/24/2022
Purchase of Common Stock	500,000	13.6600	02/24/2022
Purchase of Common Stock	500,000	14.5770	02/24/2022
Purchase of Common Stock	300,000	13.4260	02/24/2022
Purchase of Common Stock	542,621	16.2230	02/25/2022
Purchase of Common Stock	115,000	16.1140	02/25/2022
Purchase of Common Stock	500,000	16.6010	02/28/2022
January 2023 Call Option (\$60 Exercise Price)	4,757	0.9324	02/28/2022
January 2023 Call Option (\$75 Exercise Price)	243	0.7603	02/28/2022
January 2023 Call Option (\$60 Exercise Price)	5,000	1.4693	03/01/2022
January 2023 Call Option (\$60 Exercise Price)	1,500	1.4115	03/01/2022
January 2023 Call Option (\$75 Exercise Price)	201	1.0803	03/01/2022
January 2023 Call Option (\$80 Exercise Price)	5,000	0.7103	03/01/2022
Purchase of Common Stock	307,341	16.9429	03/01/2022
Purchase of Common Stock	311,660	16.7564	03/01/2022
Purchase of Common Stock	70,545	16.6800	03/01/2022
Purchase of Common Stock	69,516	17.2540	03/02/2022
Purchase of Common Stock	20,484	16.8090	03/03/2022

93. Cohen bought the call options at strike prices that ranged between \$60 and \$80 or, at least, 370% of the closing price of Bed Bath’s common stock on the previous closing day.

94. In the March 7, 2022 Schedule 13D, Cohen stated that Bed Bath’s shares were “undervalued,” and attached, as an exhibit, a letter that he had sent to the Company’s Board of Directors on the previous day. In the letter, Cohen claimed that he was “maniacally focused on

the long-term,” and implored the Board to evaluate a sale or spinoff of buybuy BABY or a full sale of the Company to a private equity firm. The letter also criticized the compensation packages of the Company’s “named executive officers” as well as the Company’s “scattershot strategy” of attempting to “execute on dozens of initiatives at once” that led “to dozens of mediocre outcomes.”

95. Cohen’s letter stated that buybuy BABY’s historical performance, including double-digit growth in revenues and margins, justified “a valuation of several billion dollars” for that subsidiary alone. Cohen asserted further that a sale or spinoff of buybuy BABY could ease the Company’s burden of debt and increase its cash flow. As for a full sale of the Company to a private equity investor, Cohen claimed that such an investor could “unlock meaningful value by running the core business for cash and initiating a public offering for BABY at the optimal time. After stripping out the sizeable costs of being a public company and setting a more focused strategy, we suspect Bed Bath’s core business—excluding BABY—could generate attractive earnings.”

96. Retail investors on Reddit immediately reacted with enthusiasm. On the same day that he filed his Schedule 13D, Bed Bath became the second most mentioned stock on the r/WallStreetBets subreddit. In response to a thread about how Cohen had taken a large stake in the Company and was pushing for changes, which received more than 10,000 upvotes and over 1,000 responses, a user known as u/Rudyy1985 stated that “I suddenly Love Bed bath & beyond.” Similarly, user u/Haans wrote that he or she was “ALL IN on BBY.”

97. As a direct result of Cohen’s Schedule 13D filing, Bed Bath’s stock price experienced the largest intraday percentage increase since its IPO in June 1992. It opened at \$30 on March 7, 2022, after closing at \$16.18 on the previous trading day. Trading volume exceeded 105 million shares compared to 2.8 million shares on the previous trading day. This was the

seventh time that Cohen received a strong price and volume rise following the filing of his Schedule 13D forms, a cause-and-effect he admitted understanding.

98. On March 10, 2022, Reuters reported that Cohen had retained Harkins Kovler Leventhal & Co., LLC, a proxy solicitation firm. The Reuters article noted that the “hiring ... signals that Cohen is taking the next steps to prepare for a potential fight with” Bed Bath. Svea Herbst-Bayliss, *Ryan Cohen hires Icahn proxy solicitor Harkins Kovler for possible Bed Bath fight*, REUTERS (March 10, 2022, 5:55 PM), <https://www.reuters.com/business/retail-consumer/ryan-cohen-hires-icahn-proxy-solicitor-harkins-kovler-possible-bed-bath-fight-2022-03-10/>. “A source familiar with Cohen’s thinking” also informed reporters at Reuters that Cohen was open to a settlement with the Company if changes were made to the Board, including the formation of a committee led by independent directors that considered “strategic alternatives.” *Id.*

99. Two weeks later, on March 25, 2022, Cohen filed an amended Schedule 13D and the Company filed a Current Report on Form 8-K, both announcing that a Cooperation Agreement had been reached between the parties. Pursuant to the Cooperation Agreement, Cohen agreed that he would limit his ownership to less than 20% of Bed Bath’s outstanding shares, and also agreed to generally vote in favor of all directors nominated by the Board for election subject to certain conditions. In exchange, Bed Bath agreed to expand the Board’s size from 11 to 14 members for a period of time, to accommodate three new directors nominated by Cohen. Marjorie L. Bowen (“Bowen”), Shelly C. Lombard (“Lombard”) and Benjamin Rosenzweig (“Rosenzweig”) were the three new directors appointed to the Board at Cohen’s behest. Pursuant to the Cooperation Agreement, Bed Bath further agreed to create a four-member Strategy Committee of the Board that would oversee and review a strategic analysis of the buybuy BABY business. Bowen and Rosenzweig were appointed to serve on the Strategy Committee, and Gove became its chairperson.

100. The Cooperation Agreement also acknowledged that Cohen would receive material, nonpublic information as part of his activities with Bed Bath. In Section 1(f) of the Cooperation Agreement, Cohen and RC Ventures acknowledged that the federal securities laws prohibited them from using material, nonpublic information to purchase or sell Bed Bath's shares.

101. Notably, the Cooperation Agreement did not address any of the other issues that Cohen had identified in his initial proposal to the Board of Directors. This demonstrates that Cohen was principally fixated on a sale or spinoff of buybuy BABY. Cohen confirmed this in a March 25, 2022 press release about the Cooperation Agreement, in which he stated that Bed Bath was now well-positioned to evaluate alternatives for buybuy BABY because the Board had been "refresh[ed]" with "shareholder-designated individuals." In the press release, Cohen added that "I appreciate that management and the Board are willing to promptly embrace our ideas and look forward to supporting them in the year ahead."

102. When Cohen suggested that a sale or spinoff of buybuy BABY could pay the Company's debt and increase its cash position, Bed Bath's market cap was \$1.6 billion, and its total liabilities approached \$5 billion. Cohen claimed that buybuy BABY was worth "several billion dollars." Analysts did not generally accept this assessment, asserting instead that buybuy BABY was worth significantly less.

103. On April 13, 2022, Bed Bath announced its financial results for the fourth quarter of 2021 which ended on February 26, 2022. Net sales declined by double digits with a year-over-year decline of 22%. Net losses over the same year-over-year period increased from \$9 million to \$159 million. The Company also disclosed that its \$1 billion share repurchase program had been completed. While the Company blamed a lack of inventory, global supply chain issues and other macroeconomic factors for the poor financial results, analysts attributed the cause to the

Company's antiquated supply and distribution networks, weak e-commerce platforms and a failure to resonate with younger customers who drive store traffic.

104. Moreover, several analysts were now increasingly alarmed by the Company's dwindling cash balance. A Wells Fargo analyst report from April 13, 2022 stated that the Company's "waning cash balance" "appears increasingly troubling," because "assuming FY22 [Free Cash Flow] does not improve (vs. FY21), we anticipate BBBY's \$450M cash balance to run dry (via flat operating cash and \$400M in capex). All in we see few silver linings and don't subscribe to the buybuy BABY monetization hype." Zachary Fadem and David Lantz, *BBBY: As Trends Deteriorate, Fair To Assume \$1B in FY23 EBITDA Is Off the Table*, WELLS FARGO, April 13, 2022, at p. 1.

105. On April 20, 2022, Loop Capital released another report acknowledging Cohen's meme stock influence, entitled "Reiterate Sell Rating On buybuy BABY Spin-Off Credit Analysis As 'You Can't Meme Away Debt.'" The report concluded that Bed Bath's Board was "highly unlikely" to sell or spin off buybuy BABY. Anthony Chukumba, *Reiterate Sell Rating On buybuy BABY Spin-Off Credit Analysis As "You Can't Meme Away Debt,"* LOOP CAPITAL MARKETS, April 20, 2022, at p. 1.

106. On April 21, 2022, Bed Bath filed its Annual Report on Form 10-K for FY 2021, which ended on February 26, 2022 (hereafter the "2021 10-K"). On the second page of the 2021 10-K, before the table of contents, the Company disclosed that there were 79,845,789 outstanding shares of common stock as of March 26, 2022. The total decreased because the Company had completed its share repurchase program. This was no surprise to shareholders, because the Company had repeatedly disclosed that the program would be complete in the middle of 2022.

107. Since Cohen owned over 9.45 million shares, his beneficial ownership now

exceeded 11.8%, and he was required to disclose that he owned more than 10% of the Company's outstanding shares under the Exchange Act within ten days of April 21, 2022. Cohen failed to do so even though he knew about the share repurchase program and acknowledged his awareness publicly in his March 2022 letter to the Board of Directors.

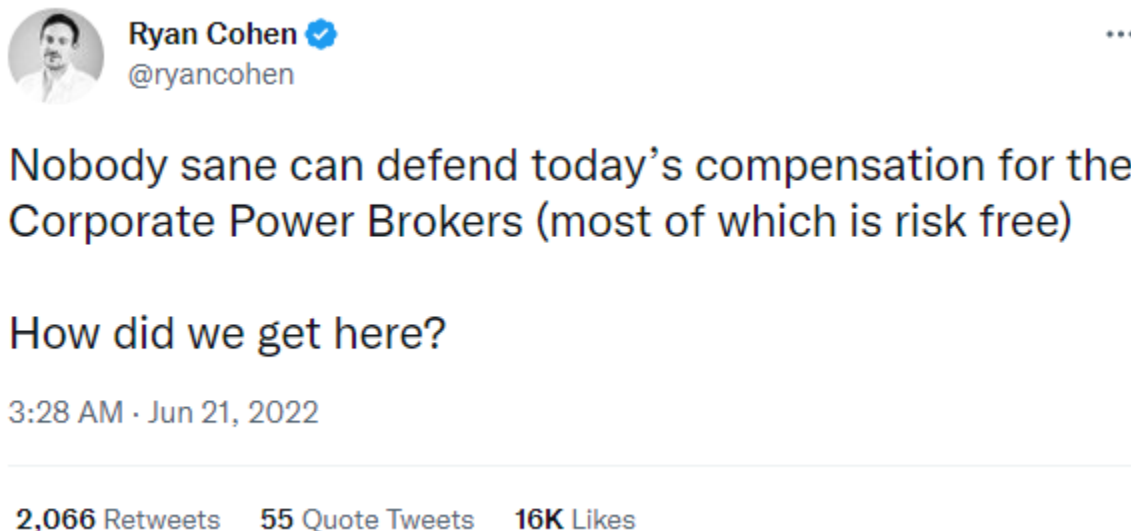
108. On May 12, 2022, Loop Capital published an analyst report entitled "Reiterate Sell Rating As It's Time To Start Seriously Thinking About the Endgame." In it, Loop Capital concluded that Cohen's investment thesis concerning buybuy BABY was not "even remotely plausible" given the damaging effect a sale would have on Bed Bath as a standalone company. Anthony Chukumba, *Reiterate Sell Rating As It's time To Start Seriously Thinking About The Endgame*, LOOP CAPITAL MARKETS, May 12, 2022, at p. 1.

109. On June 1, 2022, the Company filed a Proxy Statement with the SEC that concerned solicitation by the Board of Directors of proxies to be voted at an Annual Meeting of shareholders to be held in July 2022. In a section of the Proxy Statement entitled "our shareholders," RC Ventures was identified as the Company's fourth-largest shareholder with an ownership interest in 11.8% of the Company's outstanding shares. The first proposal in the Proxy Statement concerned the election of 11 directors consistent with the Company's Cooperation Agreement with Cohen that contemplated reducing the size of the Board from 14 to 11 at the next Annual Meeting of shareholders, but again appointing Bowen, Lombard and Rosenzweig, Cohen's chosen nominees, to permanent terms at the shareholders' Annual Meeting in the summer of 2022.

110. Despite the fact that the Proxy Statement specifically identified Cohen as the beneficial owner of over 10% of the Company's outstanding shares, after even doing basic arithmetic to put him on notice of the size of his ownership interest, Cohen again failed to disclose that he owned more than 10% of the Company's outstanding shares under the Exchange Act.



**3. Cohen Pushes out CEO Tritton as Liquidity and Credit Worsen**

111. On June 21, 2022, Cohen posted the following critical tweet about the nature of executive compensation “for the Corporate Power Brokers”:





112. Although the tweet did not reference Bed Bath or its CEO Tritton, the message was loud and clear. On June 29, 2022, the Company filed a Current Report on Form 8-K with the SEC to announce that Tritton had ceased serving as President and CEO of Bed Bath and as a member of the Company’s Board of Directors on June 23, 2022, and Gove had been appointed as the Interim CEO on the same date as Tritton’s replacement. Gove also stepped down as Chair of the Strategy Committee. Later that morning, at 10:56 AM, Cohen celebrated Tritton’s departure with the following tweet:




 **Ryan Cohen**  @ryancohen · Jun 29, 2022 ...  
 I'm sick of seeing failed executives make millions in risk free compensation while shareholders are left holding the bag

 2,177  5,136  28.6K  

 **Brian Sozzi**  @BrianSozzi · Jun 30, 2022 ...  
 Replying to @ryancohen  
 So how do you change it?

 24  8  266  

 **Ryan Cohen**  ...  
 @ryancohen

Replying to @BrianSozzi

**Directors should comprise of owners who bought shares with their own money**

3:32 PM · Jun 30, 2022

955 Retweets 47 Quote Tweets 6,761 Likes

113. On the same day, Bloomberg reported that Cohen continued to believe that buybuy BABY was a “great asset,” and that Cohen “had grown fed up with Tritton’s performance and pushed the Board to fire him[.]” Allison Nicole Smith and Olga Kharif, *‘Stick a Fork in Them’: Bed Bath & Beyond’s Recovery Hopes Fade*, (June 29, 2022, 5:48 PM), <https://www.bloomberg.com/news/articles/2022-06-29/bed-bath-beyond-recovery-prospects-look-bleak-as-ryan-cohen-hangs-in#xj4y7vzkg>. This illustrates that Cohen was not a passive investor who sat on the sidelines but was an active participant closely involved with the management of the Company and its strategic direction. It also demonstrates that he regularly communicated with the Board of Directors about the Company’s business and was privy to inside

information that was not available to other investors.

114. Also on June 29, 2022, Bed Bath announced its financial results for the first quarter of 2022 which ended on May 28, 2022. Net sales again declined by double digits with a year-over-year decline of 25%. buybuy BABY's year-over-year sales were also down in the mid-single digits. Inventory for failed private-label brands was marked down by over \$90 million. On June 30, 2022, analysts from Morgan Stanley estimated that buybuy BABY was now worth between \$500 million to \$600 million after tax. *See* Simeon Gutman, Michael Kessler, Hannah Pittock, and Jacquelyn Sussman, *Tough Times Ahead; Stay UW Lower PT to \$2*, MORGAN STANLEY, June 30, 2022, at p. 1. Net losses over the same year-over-year period ballooned from \$50.9 million to \$357.7 million.

115. The Company burnt through over \$330 million in cash in a single quarter, leaving \$138.9 million in cash after a \$200 million draw on its asset-based revolving credit facility (the "ABL Facility"). Its need for cash would only increase given the seasonality of the business in the second half of the year because of the holidays. Analysts modeled total free cash flow for FY 2022 within the range of negative \$400 million to negative \$800 million. Bonds issued by the Company with a \$300 million aggregate principal amount were due in 2024.

116. Businesses unable to obtain financing on the strength of their operating cashflow often do so through asset-based credit lines that collateralize a company's assets to secure loans. Retailers with inventory and volatile earnings can use asset-based credit lines to fund operations and access liquidity. Accounts receivable, inventory, equipment and real estate usually serve as collateral for asset-based credit lines. In August 2021, Bed Bath entered into an amended credit agreement (hereafter the "2021 Credit Agreement") for its ABL Facility with aggregate revolving commitments of \$1 billion. The 2021 Credit Agreement was expected to mature in August 2026.

117. The 2021 Credit Agreement had an expansion feature that allowed Bed Bath to request an increase in aggregate revolving commitments or choose to enter a first-in-last-out loan (“FILO”) facility, collectively, in a total amount of up to \$375 million under certain conditions. An ABL Facility is not a blank check; its borrowings are typically limited by specified covenant ratios and milestones. A FILO facility, however, allows a borrower to access additional funds beyond those otherwise available from senior lenders in the ABL Facility. For instance, if a senior lender agrees to advance 50% of the value of the company’s assets, then a FILO lender can provide an additional 10% of the assets, providing the borrower with additional funds. While often subordinate to the senior lenders, FILO lenders are considered part of the ABL Facility, and receive the benefits of a first lien creditor in bankruptcy.

118. Bed Bath’s ABL Facility was secured by the Company’s accounts receivable, inventory, deposit and securities accounts and certain assets of the Company and its subsidiaries, including buybuy BABY. The amount Bed Bath could draw under the ABL Facility was equal to the lesser of (a) the aggregate revolving commitments and (b) a borrowing base equal to the sum of 90% of credit card receivables and 90% of eligible inventory after reducing customary reserves subject to certain conditions. At the end of the first quarter of 2022, the Company had already borrowed \$400 million under the ABL Facility.

#### **4. Cohen Learns That a Sale of buybuy BABY is Doomed and Road Tests his Scheme**

119. On August 3, 2022, Bloomberg published an article entitled “Bed Bath and Beyond Is Said to Mull Private Loans for Liquidity.” It reported that the Company “is considering tapping the private credit market to boost liquidity as the struggling retailer burns through its cash.” Eliza Ronalds-Hannon and Rachel Butt, *Bed Bath and Beyond Is Said to Mull Private Loans for Liquidity*, BLOOMBERG, (August 3, 2022, 11:11 AM), <https://www.bloomberg.com/news/articles/2022-08-03/bed-bath->

and-beyond-is-said-to-mull-private-loans-for-liquidity#xj4y7vzkg. Specifically, the article stated that the Company had already talked to lenders about “a potential new asset-based credit line,” and suggested that Bed Bath “anticipates additional needs” that could not be met by the existing terms of the ABL Facility. *Id.* This article did not provide details and noted that the Company was “still weighing other options.” *Id.* Nor did the article inform investors that Cohen considered selling or was no longer “maniacally focused” on the long term.

120. Cohen knew about the Company’s desperate need for additional financing because of worsening financial performance and its growing cash crunch before he made the misleading statements and engaged in the manipulative conduct complained of herein.

121. On June 29, 2022, the Company disclosed that it had hired the Berkeley Research Group to focus on cash, inventory and balance sheet optimization, demonstrating that the consequences of a cash crunch and a looming liquidity crisis were at the forefront of management’s mind months before the Class Period began.

122. Next, at the Annual Meeting of shareholders held on July 14, 2022, Harriet Edelman (“Edelman”), the Chairman of the Company’s Board of Directors, told investors that the Strategy Committee had “done a great deal of work evaluating the potential of” buybuy BABY, and had already “identified several options for this business.” Edelman refused to divulge the details, but Cohen knew what ordinary investors did not. Two of Cohen’s handpicked appointees served on the Strategy Committee. In March 2022, Cohen dropped his threat to become a headache for the Company’s Board in exchange for a commitment to form a committee that would evaluate options for buybuy BABY. It is not conceivable that Cohen’s appointees hid from him the “several options” that the Strategy Committee identified in July 2022. After all, the identification and evaluation of these “options” was the centerpiece of Cohen’s proclaimed strategy to turn the

Company around, and the reason he contracted with the Company to form the Strategy Committee and appoint to it his director nominees.

123. In addition, Cohen regularly communicated with the Board of Directors and Bed Bath's management about strategic decisions facing the Company. In June 2022, Cohen's own sources told the press that Cohen pressured the Board to fire Tritton. Moreover, pursuant to the Company's Corporate Governance policy, members of the Board, on a quarterly basis, monitored, reviewed, analyzed and oversaw material changes to the Company's business and strategy, including the risks and benefits and any potential impact to the business or a particular strategy, as well as specific details about the Company's inventory and sales. Hence, Cohen's appointees had access to Company data on a granular level and it is not plausible that he did not have access to superior information given that the Cooperation Agreement already contemplated that Cohen would receive material, nonpublic information unavailable to other investors.

124. Subsequent reports in *The WSJ* also confirm that Cohen communicated with then-CFO Gustavo Arnal ("Arnal") and other executives at Bed Bath. For example, in an article concerning Arnal's suicide that was published in *The WSJ* on September 7, 2022, "people familiar with the matter" at the Company told reporters that Cohen and Arnal communicated with each other in conference calls that included other executives. See Cara Lombardo, Sharon Terlep, and Suzanne Kapner, *Inside Bed Bath & Beyond, Concerns Over Mounting Stress for CFO*, THE WALL STREET JOURNAL (September 7, 2022, 8:30 PM), <https://www.wsj.com/articles/inside-bed-bath-beyond-concerns-over-mounting-stress-for-cfo-11662589539>.

125. Strategy Committee deliberations about "several options" for buybuy BABY did not result in any progress towards a sale or spinoff, but rather the opposite—the Company began to discuss with lenders further locking down the subsidiary as nonsellable collateral for a new

financing package to cover its cash burn, which was then hundreds of millions of dollars each quarter.

126. The existing 2021 Credit Agreement identified buybuy BABY as both a borrower and guarantor. In Section VI.05 of the 2021 Credit Agreement, the Company was prohibited from selling any equity interest in buybuy BABY unless all “Obligations” were paid first. The term “Obligations” was broadly defined in the 2021 Credit Agreement to include all unpaid principal, accrued and unpaid interest, unpaid fees and expenses. The Company had already accessed \$400 million under the ABL Facility by the summer of 2022. Thus, under even the 2021 Credit Agreement, Bed Bath would have to pay hundreds of millions of dollars that were desperately needed to fund operations before the subsidiary could be sold. Even worse, a sale or spinoff of buybuy BABY would only intensify the Company’s liquidity problems if it received the low prices that many analysts were predicting, and would do nothing to alleviate its soaring burden of debt.

127. The Company was then running out of time. A \$300 million bond payment due in 2024 loomed large, and in July 2022, these bonds traded at distressed prices. A sale or spinoff of buybuy BABY could not alleviate these serious problems, causing the Strategy Committee to reject Cohen’s proposal when it evaluated “several options” at his direction. Subsequent events confirm these facts.

128. On August 16, 2022, the same day that Cohen started to sell his holdings in massive quantities, *The WSJ* reported that the Company was “hunting” for a \$375 million FILO loan “to build cash and help manage an existing asset-based debt facility, according to people with knowledge of the matter.” Jodi Xu Klein, Soma Biswas, and Andrew Scurria, *Bed Bath & Beyond Shares Surge Despite Liquidity Concerns*, *THE WALL STREET JOURNAL* (August 16, 2022, 6:25 PM), <https://www.wsj.com/articles/bed-bath-beyond-shares-surge-despite-liquidity-concerns->

11660677005. According to *The WSJ's* sources who were familiar with the Company's discussions with lenders, Bed Bath expected responses to its loan proposal during that same week, and the loan was expected to be collateralized by a security interest in buybuy BABY. Such discussions take weeks, and it would be absurd to assume that Cohen was not made aware of them during the course of negotiations given his nominee presence on the Strategy Committee, his conference calls with Arnal and other Bed Bath executives, the Cooperation Agreement contemplating that he would receive material information in advance of public shareholders, and Cohen's claim to be focused on buybuy BABY.

129. This is further corroborated by the Company's statements made in a Current Report filed with the SEC on Form 8-K on August 18, 2022, the next day after Cohen completed the sale of all his holdings at artificially inflated prices. In that filing, the Company admitted that it had been "working expeditiously *over the past several weeks* with external financial advisors and lenders on strengthening our balance sheet" (emphasis added).

130. On August 18, 2022, at around 3:35 PM, Bloomberg reported that Bed Bath had hired Kirkland & Ellis to provide advice on the Company's "unmanageable" "debt load," including options to "rais[e] new money" or "refinanc[e] existing debt, or both." Eliza Ronalds-Hannon, *Bed Bath & Beyond Taps Kirkland & Ellis for Help Addressing Debt Load*, BLOOMBERG, (August 18, 2022, 3:35 PM), <https://www.bloomberg.com/news/articles/2022-08-18/bed-bath-beyond-is-said-to-tap-kirkland-ellis-for-debt-help#xj4y7vzkg>. Then, on August 19, 2022, Bloomberg reported that suppliers had halted shipments because Bed Bath had failed to pay its bills. Reporters at Bloomberg saw a survey of vendors conducted by Pulse Ratings, a credit-rating and consulting firm. The survey found that Bed Bath "was in arrears with all respondents, with some saying that more than half of their accounts receivable with the company were past due." Eliza Ronalds-Hannon

and Lauren Coleman-Lochner, *Some Bed Bath & Beyond Suppliers Halt Shipments on Unpaid Bills*, BLOOMBERG, (August 19, 2022, 3:59 PM), <https://www.bloomberg.com/news/articles/2022-08-19/some-bed-bath-beyond-suppliers-halt-shipments-on-unpaid-bills#xj4y7vzkg>. Five days later, on August 22, 2022, S&P Global Ratings (“S&P”) downgraded Bed Bath’s credit rating to CCC or one notch away from an imminent default rating. The ratings agency’s downgraded the Company’s credit rating because of “poor sales performance, deteriorating liquidity, and looming maturities.”

131. Within two weeks from the date that Cohen sold all his shares, on August 31, 2022, the Company confirmed that it had secured \$500 million in additional funds. On that day, the Company executed an amendment to the 2021 Credit Agreement (hereafter the “2022 Credit Agreement”). Arnal, who communicated with Cohen in conference calls, signed the 2022 Agreement on behalf of Bed Bath and its subsidiaries, including buybuy BABY. The 2022 Credit Agreement increased the aggregate revolving commitments of the ABL Facility from \$1 billion to \$1.13 billion and added a new FILO facility for \$375 million. Sixth Street Specialty Lending, Inc., a specialist lender for troubled companies based in Dallas, Texas, served as the lender and agent of the FILO facility.

132. On September 1, 2022, in a Current Report filed with the SEC on Form 8-K, the Company disclosed that the ABL Facility and the FILO facility were secured on a first priority basis on *substantially all assets of the Company and its subsidiaries* that were borrowers and guarantors. buybuy BABY was identified as both a borrower and a guarantor. The Company did not disclose a full version of the 2022 Credit Agreement until October 18, 2022, when it announced the commencement of an offer to exchange the Company’s existing bonds maturing in 2024, 2034 and 2044 with new notes that pushed out the maturity dates. S&P called the exchange offer “tantamount to a default” because the existing bondholders would receive less than what they were



promised.

133. Bed Bath was required to disclose the full version of the 2022 Credit Agreement at that time because, while the new notes were secured unlike the old unsecured notes, buybuy BABY was not part of the collateral and the Company was forced to disclose this fact in a Registration Statement filed with the SEC. If the bondholders exchanged their existing notes for the new notes, their interests would be secured by a subordinate priority on the same collateral that secured the 2022 Credit Agreement. However, any new notes issued because of an exchange could not be secured by an equity interest in buybuy BABY because of the 2022 Credit Agreement. The specific terms of the 2022 Credit Agreement were first disclosed to investors on October 18, 2022, but Cohen knew in early August 2022 that it included a first priority lien on buybuy BABY and a guarantee from that subsidiary that would render a non-bankruptcy sale impossible.

134. Section 6.05 is a negative covenant in the 2022 Credit Agreement that prevents asset sales, including any equity interest in Bed Bath's subsidiaries with limited exceptions. While the 2021 Credit Agreement contained more flexible conditions on asset sales, in the 2022 Credit Agreement, the lenders tightened the screws. Except for certain limited sales of assets not applicable here, under Section 6.05(i), the 2022 Credit Agreement prohibited the disposition of any asset that exceeded an aggregate amount of \$10 million. It removed a much more flexible provision on the sale of subsidiaries that existed in the 2021 Credit Agreement, but allowed the sale of the Company's Canadian and Mexican subsidiaries. It did not allow the sale of U.S.-based buybuy BABY.

135. Media reports published shortly after the 2022 Credit Agreement was executed again confirmed that giving up a sale or spinoff of buybuy BABY was crucial to Bed Bath's efforts to secure the additional loans. On September 16, 2022, Reuters reported that "holding onto buybuy

BABY” “helped [Bed Bath] obtain its recent \$375 million loan [under the FILO facility], the maximum amount that it could borrow, a person familiar with the matter said.” Arriana McLymore, *Analysis-Why baby gear may not alleviate Bed Bath & Beyond's troubles*, REUTERS, (September 16, 2022, 5:07 AM), <https://www.reuters.com/article/bed-bath-strategy-buybuybaby-analysis-idTRNIKBN2QH0VO>.

136. All of this was known to Cohen when he filed his misleading SEC Schedule 13D/A, sold his Bed Bath securities on August 16-17, 2022, and emailed his Form 144 to the SEC. Given his multiple Board nominees, conference calls with management, and interest in the strategic direction of the Company (especially with regard to buybuy BABY), Cohen had access to, and on information and belief did receive, material nonpublic information about the Company's metastasizing liquidity and credit crises, and its inability to sell or spinoff of buybuy BABY.

137. That the 2022 Credit Agreement required several weeks to be negotiated and finalized as the Company itself admitted on August 17, 2022 further supports the inference that Company insiders, including Cohen, were informed of the financing and its resulting prohibition on selling buybuy BABY. The transaction—the most important strategic transaction during Cohen's ownership—involved negotiations between an administrative agent, 14 lenders, 2 entirely new lenders of the FILO facility, 6 different law firms, management, the Company's Board of Directors and other counterparties. As the Company concedes, negotiations took several weeks, meaning that the strategic path had been determined *before* Cohen dumped his interests on unsuspecting investors.

138. Armed with this inside information, Cohen first tested the waters in early August 2022 to evaluate whether he could stir sufficient retail investor interest to allow him to favorably exit his personal positions. In early August 2022, the short float for Bed Bath approached nearly

50%, making it one of the most widely shorted stocks on the NASDAQ. While Bed Bath's stock saw surges in trading activity and was previously the subject of a short squeeze in 2020 and January 2021, its price had declined from a high of \$27.23 on March 29, 2022, the day Cohen's Cooperation Agreement with the Company was disclosed, to close at \$4.84 on July 28, 2022, as the Company repeatedly reported poor financial results throughout the year.

139. On August 5, 2022, Cohen stoked Bed Bath retail investors with the following tweet:



**Ryan Cohen**   
@ryancohen



Ask not what your company can do for you – ask what you can do for your company

5:04 PM · Aug 5, 2022

---

**3,196** Retweets   **343** Quote Tweets   **21K** Likes

---

140. The tweet received over 21,000 likes and was retweeted over 3,000 times. The response was overwhelmingly positive, and to clear some initial confusion about which company's stock Cohen signaled his followers to buy, a Twitter follower clarified with the following reply directed at Cohen that Cohen did not contradict:



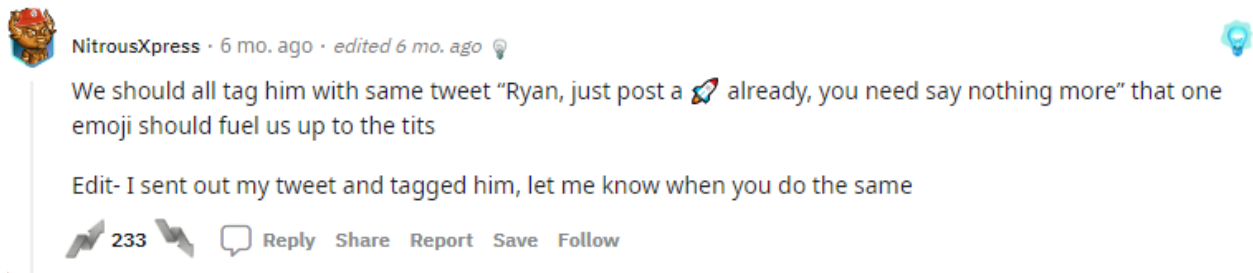
141. On August 5, 2022, Bed Bath's stock was the most mentioned stock on the r/WallStreetBets subreddit and remained so for most of that month. On that day, in response to Cohen's tweet on a thread that received over 1,000 upvotes, a Reddit user remarked: "Ask not what your bath can do for you, but what you can do for your bath company." On the same thread, another user said that "RC's hands are fu\*\*ing diamond bruh. Fu\*\*ing diamond."

142. Over the next few days, retail investors on r/WallStreetBets pointed to Cohen's investment in Bed Bath as the reason for their optimism in the Company's stock price. On August 7, 2022, user u/Conscious\_evening\_57 reminded other retail investors about Cohen's large stake

by posting screenshots from Cohen’s Schedule 13D filed in March 2022. A popular user named u/spicy\_chimp5 posted a response that received hundreds of upvotes, urging retail investors to continue buying Bed Bath’s stock because “[n]ow we have Ryan....” On August 8, 2022, user U/TheDude0007 posted a thread entitled “I am the guy who 10X’d a \$45K YOLO in BBBY. The following is my analysis on why I believe this run is just beginning... (The Ryan Cohen Effect).” The post received hundreds of replies and thousands of upvotes. u/TheDude0007 emphasized that Bed Bath’s stock had the “deepest value . . . [e]specially considering RC’s cost basis is \$15, in addition to the millions of dollars worth of \$60, \$65, \$70 and \$80 strike call options he holds, expiring January 23.”

143. On August 8, 2022, the next trading day after Cohen tweeted on August 5, 2022, Bed Bath’s stock price rose in reaction, from its prior day’s closing price of \$8.16 to close at \$11.41, on extremely heavy trading volume. On that day, investors purchased the Company’s shares for a total that was the highest amount since November 2021.

144. Over the next two days, users on various Reddit forums continued to tweet about the importance of Cohen’s holdings as the Company’s stock price continued its rise. On August 10, 2022, users like u/NitrousXpress posted responses like the following on a thread entitled “Ryan Cohen \$BBBY calls are literally calling on WSB to do the meme:”



145. Two days later, Cohen did just that.

**VII. COHEN’S FALSE AND MISLEADING STATEMENTS AND MANIPULATIVE ACTS**

146. At 7:04 AM on August 12, 2022, CNBC tweeted a link to a negative article about Bed Bath and Cohen. *See Carmen Reinicke, Loop Capital says Bed Bath & Beyond comeback doesn’t make fundamental sense, stock headed to \$1*, CNBC, (August 12, 2022, 7:01 AM), <https://www.cnbc.com/2022/08/12/bed-bath-beyond-comeback-doesnt-make-sense-stock-headed-to-1-loop-says.html>.

147. At 10:42 AM on August 12, 2022, Cohen replied to CNBC’s post with a tweet that said “At least her cart is full” accompanied by a smiley moon emoji:





148. Cohen’s tweet identified in Paragraph 147 was materially misleading and manipulative when made because it omitted to disclose that: (a) Cohen had already formed a plan or proposal to sell his holdings before he made these statements, (b) Cohen formed the plan or proposal based on material, nonpublic information he received about the severity of the Company’s liquidity crisis and its inability to sell or spinoff buybuy BABY long before other investors could be meaningfully informed about these developments, (c) the Company’s worsening liquidity and its inability to sell or spinoff buybuy BABY changed Cohen’s outlook about the Company and its prospects as well as his own views about the likelihood of whether the price of the Company’s common stock would increase or decrease, (d) Cohen posted this tweet to stimulate trading activity and increase the liquidity of Bed Bath securities to allow him to sell his own securities for a short term gain, and as a result, (e) Cohen was no longer “maniacally focused” on the Company’s long term interests, and did not believe that the price of Bed Bath’s securities would or was likely to increase or could be “taken to the moon.”

149. Cohen’s tweet received more than 14,100 likes and was retweeted more than 1,600 times. The response on Twitter was overwhelmingly positive, and Twitter users understood Cohen’s tweet as a rallying cry to buy Bed Bath’s stock and “take it to the moon.” For example, minutes after Cohen responded to CNBC’s tweet, Twitter user Gorrillaw replied with a rocket

emoji and wrote, “To da moon”:

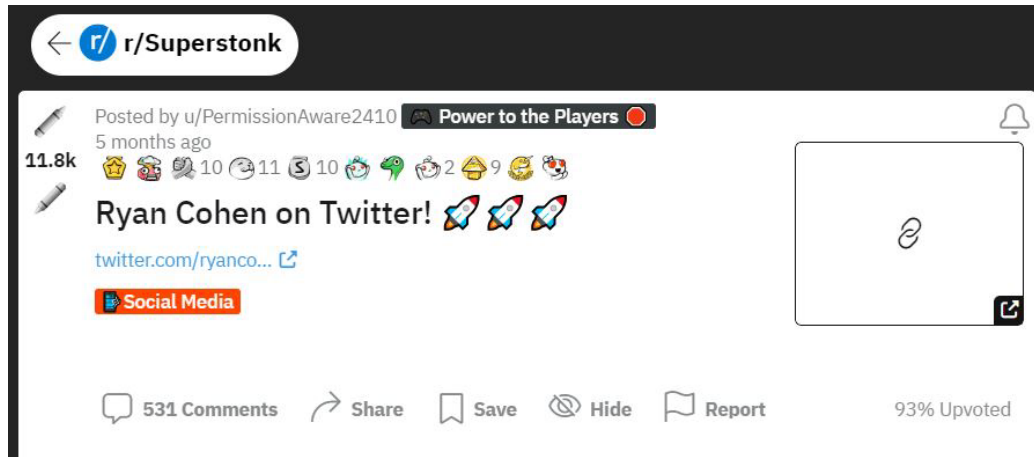


150. Another Twitter user replied to Cohen’s tweet and said “buy \$BBBY. Got it. Thanks”:





151. Cohen’s tweet on August 12, 2022 was also posted on Reddit forums within a minute after he tweeted. To investigate the claims asserted in this Action, Lead Plaintiff reviewed thousands of comments posted in forums on Reddit and other platforms on the internet. Based on Lead Plaintiff’s review, for the next several days after Cohen tweeted, an overwhelming majority of retail investors unambiguously understood his statements as a rallying cry to buy or hold (with diamond hands) Bed Bath’s securities. For example, Reddit user u/PermissionA-ware2410 immediately posted Cohen’s tweet to the r/Superstonk subreddit accompanied by three rocket emojis:



152. u/PermissionA-ware2410’s post received 11,000 upvotes and hundreds of replies. In the afternoon on August 12, 2022, user u/badmojo2021 started a thread on r/Superstonk that attached a screenshot of Cohen’s tweet. The thread was entitled “He LITERALLY tweeted a moon. That is all. Thanks for listening to my ted talk.” The post received more than 1,400 upvotes. On the r/BBBY forum that same day, on a thread entitled “RC coming in hot!,” which also attached a screenshot of Cohen’s tweet, multiple users responded with emojis of a rocket ship or a moon. For example, user u/Bartlett818 replied with a moon emoji and stated that “Look at the moon!! I’m bought to be all in.”


153. After Cohen’s tweet, Bed Bath’s stock price increased from its previous day’s closing price of \$10.63 to close at \$12.95 on August 12, 2022, on heavy trading volume.

154. Over the weekend on August 13, 2022, and August 14, 2022, users on Reddit continued to discuss Cohen’s tweet. Many believed that Cohen wanted them to buy the Company’s securities because the price would continue to rise. For example, on August 14, 2022, user u/OfficialBJones90 started a thread on r/BBBY entitled “Never been so confident in a play,” and wrote:

Posted by u/OfficialBJones90 5 months ago 



## Never been so confident in a play.

 Hype/ Fluff

I wasn't trading of the time of GME I started trading last August. Love me a good squeeze play and I am locked and loaded because you got me f\*cked up if you think I am missing this moonshot. I think RC has a plan. He obviously knows about the situation. The CNBC tweet kinda confirms this. A lot of pressure are on the shorts. Even if BBBY did a PR about up and coming PR could be the catalyst to send this.



48 Comments



Share



Save



Hide



Report

96% Upvoted

155. Other users agreed with the post. For instance, user u/tplaceboeffect replied and said: “The moon tweet is what did it for me. There’s no other explanation, he fu\*\*ing knows.”

156. On August 15, 2022, the next trading day, Bed Bath’s stock price opened at \$15.00 and closed at \$16.00 on a volume of over 164 million shares, or double the amount traded on the previous trading day. The price of the Company’s stock was now just above Cohen’s break-even. Later that night, at 9:01 PM, Cohen filed a delinquent Initial Statement of Beneficial Ownership on Form 3 to emphasize that, through RC Ventures, Cohen owned more than 10% of Bed Bath’s outstanding shares of common stock. But, as Cohen acknowledged, he was already an owner of more than 10% of the Company’s outstanding shares since at least April 21, 2022.

157. Nothing had changed about Cohen’s ownership except that the Company’s share repurchases increased the percentage he owned even further. Cohen was always aware of the buyback program and has repeatedly criticized it in public. Hence, Cohen knew or recklessly disregarded that he had not filed a Form 3 when required months earlier. Cohen’s admissions demonstrate that his August 15, 2022 filing was a strategic ploy to entice retail investors. Cohen publicly admitted that he knows retail investors react enthusiastically when he discloses his ownership in SEC filings, and as a result, the price of a company’s stock increases substantially.

*See e.g.*, Paragraphs 54 through 55 and Paragraphs 63 through 97.

158. Cohen's filing had its intended effect. Users on r/WallStreetBets responded later that night: "If he's still in, then I'm still in," a phrase meme stock enthusiasts frequently use to emphasize holding on to a company's shares. User u/ssaxamaphone similarly observed that "the point is he HELD all his positions. BULLISH." Other users honed in on the disclosure of Cohen's American-Style call options in the Form 3, viewing them as another signal from Cohen that Bed Bath's stock price would continue to rise. For example, a user wrote that: "He's still in with an increased position. \$80 strikes for January. Let's not let him down."

159. On August 16, 2022, at 9:16 AM, almost fifteen minutes before the market opened, Cohen and RC Ventures filed an amendment to the Schedule 13D filed earlier in March 2022. In this amended Schedule 13D, Cohen reiterated the share ownership information disclosed in Form 3 on the night before. This was another strategic act to stimulate investor interest in Bed Bath's securities, so that he could offload his personal position at favorable prices. Cohen admitted understanding that investors react positively when he discloses substantial interests in companies and the price of the securities increase significantly for no other reason than his filing a Schedule 13D. *See* Paragraphs 54 through 55 and Paragraphs 63 through 97.

160. In the amended Schedule 13D filed on August 16, 2022, Cohen misleadingly affirmed that "[t]here have been no transactions in securities of the Issuer by the Reporting Persons during the past sixty days nor since the filing of Amendment No. 1 to the Schedule 13D." Cohen also signed the amended Schedule 13D on behalf of RC Ventures and himself, falsely certifying that "[a]fter reasonable inquiry and to the best of his knowledge and belief, each of the undersigned certifies that the information set forth in this statement is true, complete and correct."

161. The statements identified in Paragraph 160 were materially false and misleading

when made because, in violation of the Exchange Act, Cohen failed to disclose the following information necessary to make his affirmation not misleading under the circumstances in which it was made: (a) that he had already formed a “plan or proposal” to sell Bed Bath’s securities before these statements were made, (b) that he intended to, and did, sell Bed Bath securities the very day he filed this amendment to Schedule 13D, and as a result, (c) that he had falsely certified that the information set forth in his amended Schedule 13D was true, *complete* and correct.

162. Cohen’s scheme had its intended effect. As Cohen expected, users on Reddit and other forums on the internet reacted positively to his filing and believed that Cohen expected Bed Bath’s stock price to rise exponentially. On August 16, 2022, Bed Bath’s stock was mentioned on r/WallStreetBets *over 2,900 times*. On August 16, 2022, a user inquired on the subreddit r/BBBY why Cohen had filed an amended Schedule 13D, and a user named u/Mohiss123 replied: “[t]o show people and investor[s] that he is still holding.” Another user on r/BBBY named u/jfl\_cmmnts explained: “Dude RC bought \$80 calls for Jan 2023. Also \$40 and \$60 IIRC [if I recall correctly]. That cool cat has an idea about business, I’m in with him.” That sentiment continued through August 17, 2022, when on r/BBBY, in a thread entitled “BBBY is on the threshold !!! Reg sho,” user u/ApesNoFightApes said “If RC Holds, I will hold. He’s chosen to save this company and I’m here for it. I’m not an investor, I am an Activist Investor. Just like my GME: No cell. No sell.”

163. After Cohen filed his amended Schedule 13D on the morning of August 16, 2022, Bed Bath’s stock price increased by over 70% and peaked at an intraday high of \$28.60 per share. Trading was halted several times during the day due to volatility. Trading in the Company’s options rose to three times the 20-day average within hours of when Cohen filed his amended Schedule 13D. By 10:05 AM, options trading totaled 164,944 contracts versus an average of

53,075, evidencing an apparent gamma squeeze that increased the price of the underlying stock. More than 120,000 call options were traded by 10:05 AM.

164. The price of the Company's common stock increased from its previous day's closing price of \$16 on August 15, 2022, to close at \$20.65 with 395.32 million shares traded. Data compiled by Vanda Research showed that retail investors bought an all-time high of \$73.2 million of the Company's common stock on August 16, 2022.

165. Cohen, however, concealed from investors that he had sold five million shares of the Company's common stock on August 16, 2022, for total proceeds of over \$105 million as shown in the chart below:

<b>Nature of the Transaction</b>	<b>Securities Sold</b>	<b>Price Range per Security (\$)</b>	<b>Date of the Sale</b>
Sale of Common Stock	446,399	18.06 to 19.05	08/16/2022
Sale of Common Stock	812,448	19.06 to 20.01	08/16/2022
Sale of Common Stock	1,443,818	20.12 to 21.11	08/16/2022
Sale of Common Stock	1,059,021	21.12 to 22.11	08/16/2022
Sale of Common Stock	795,559	22.13 to 23.12	08/16/2022
Sale of Common Stock	169,335	23.13 to 23.84	08/16/2022
Sale of Common Stock	103,901	24.15 to 25.14	08/16/2022
Sale of Common Stock	104,077	25.15 to 26.06	08/16/2022
Sale of Common Stock	65,442	26.15 to 26.45	08/16/2022

166. On August 17, 2022, while investors were unaware of Cohen's massive dump, Bed Bath's stock price opened at \$26.94. It closed that day at \$23.08, increasing by nearly 12% from the previous day's closing price of \$20.65, with 261.7 million shares traded. Trading in options again rose to more than six times the 20-day average with 346,461 options traded by 10:00 AM on August 17, 2022. The majority, 237,029, were call options, increasing the chance for a further gamma squeeze that would increase the price of the underlying stock. Bloomberg reported that Bed Bath's common stock was the most purchased asset on Fidelity that day, with net purchases double the size of Tesla, the second most bought stock.

167. Before the market closed, however, Cohen had secretly sold the rest of his holdings, disposing of 2.78 million shares of Bed Bath for a total amount of over \$72 million as illustrated below:

<b>Nature of the Transaction</b>	<b>Securities Sold</b>	<b>Price Range per Security (\$)</b>	<b>Date of the Sale</b>
Sale of Common Stock	189,689	23.06 to 24.05	08/17/2022
Sale of Common Stock	512,185	24.06 to 25.05	08/17/2022
Sale of Common Stock	896,238	25.06 to 26.05	08/17/2022
Sale of Common Stock	610,828	26.06 to 27.05	08/17/2022
Sale of Common Stock	323,483	27.06 to 28.05	08/17/2022
Sale of Common Stock	140,788	28.06 to 29.05	08/17/2022
Sale of Common Stock	106,789	29.06 to 29.99	08/17/2022

168. Also on August 17, 2022, Cohen sold all his call options for total proceeds of \$11,273,329.82. In total, Cohen earned a profit of over \$68 million based on the purchase prices of his holdings in March 2022.

169. Later that day, Cohen's Form 144 was released after the market had closed. Pursuant to SEC Rule 144, Cohen was required to submit this Form before or concurrently with the placing of his orders with a broker or sale to a market maker. Cohen violated this rule because he did not submit the Form 144 until after he had placed and at least partially executed sell orders with J.P. Morgan Chase. To make matters worse, while the "date of notice" on the Form 144 is identified as August 16, 2022, next to Cohen's wet signature, Cohen purposely delayed the release of this Form by emailing it to the SEC instead of contemporaneously filing it on EDGAR, a system of electronic filing maintained by the SEC that Cohen is familiar with and has repeatedly used for years.

170. According to the metadata of the pdf version of Cohen's Form 144 publicly released by the SEC, Cohen scanned the Form 144 with a Fujitsu ScanSnap device and converted it into a pdf on an Apple computer after the market had closed on August 16, 2022. In the Form 144,

Cohen identified nothing at all in the table which required identification of “SECURITIES SOLD DURING THE PAST 3 MONTHS.” In fact, Cohen had sold millions of shares of the Company’s stock earlier that day.

171. The historical market data collected by Tick Data, LLC for August 16, 2022, confirms that Cohen made false statements in the Form 144. For example, Cohen later admitted in an amended Schedule 13D filed on August 18, 2022 that he sold 446,399 shares of Bed Bath’s common stock at a weighted average price of \$18.6848 on August 16, 2022. However, not a single share of Bed Bath’s common stock was sold within the range of \$18.00 and \$18.99 after the time that the Form 144 metadata indicates it was created. In addition, between the hours of 3:45 PM and 8:00 PM (when aftermarket trading closed), there were no trades of a round lot of 100 units or higher that were below the price of \$19.17, showing that the volume of shares Cohen sold within that range could not be sold after Cohen created his Form 144. Rather, Bed Bath shares traded in that range only earlier in the trading day, confirming that Cohen lied on the Form 144 when he claimed that he did not sell any of Bed Bath’s shares at the time he created the Form 144.

172. As another example, Cohen claimed, on the amended Schedule 13D filed on August 18, 2022, that he sold 812,448 shares on August 16, 2022, within the range of \$19.06 and \$20.01. There were only 519,535 shares sold in aftermarket trading that exceeded \$19.06 but were below \$20.01. It is thus mathematically impossible that more than 800,000 shares were sold in aftermarket trading for shares priced within that range, again showing that Cohen lied on the Form 144 when he claimed that he did not sell any shares at the time the Form 144 was created.

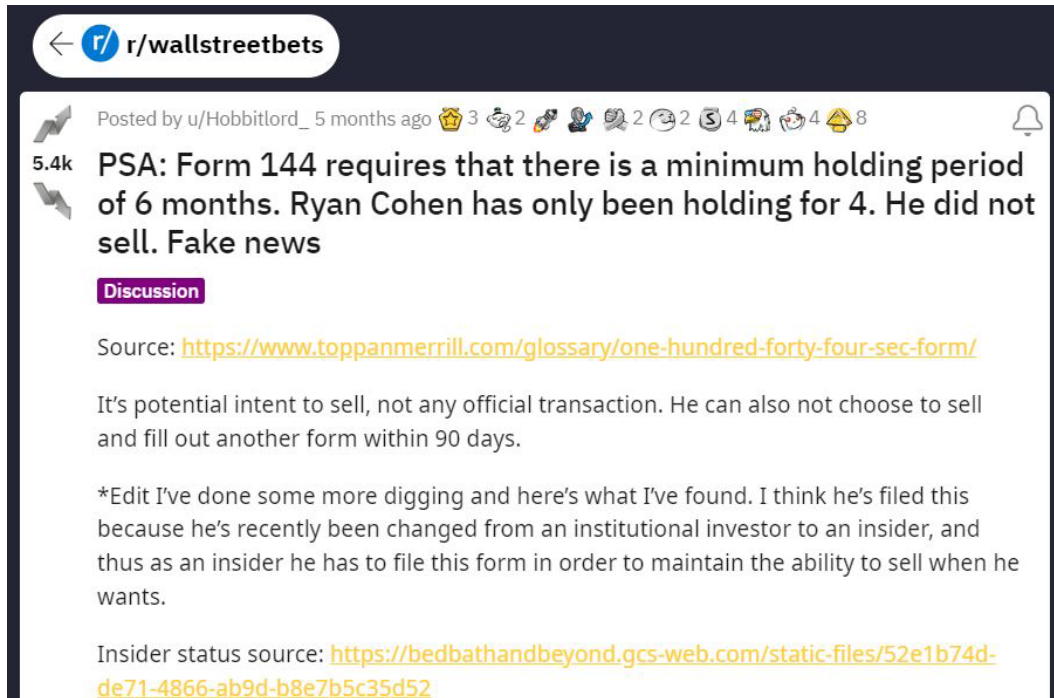
173. In the Form 144, Cohen claimed that “[t]his filing represents the *potential* sale of up to 7,780,000 [shares of] common stock and the following call options: 11,257 BBBY CALLS 01/20/23 @ \$60, 5,000 BBBY CALLS 01/20/23 @ \$80, 444 BBBY Calls 01/20/23 @ \$75.”



Cohen further affirmed the statement right above his wet signature that he did “not know any material adverse information in regard to the current and prospective operations of the Issuer of the securities to be sold which has not been publicly disclosed.”

174. The statements identified in Paragraph 173 were materially false and misleading when made because: (a) Cohen had already sold Bed Bath’s securities in substantial quantities on August 16, 2022, before he created the Form 144 and emailed it to the SEC, (b) Cohen submitted the Form 144 *after* placing a sell order with his broker in violation of SEC Rule 144, (c) the referenced sales were not potential but had already occurred in large part, (d) Cohen formed his sales plan based on material, nonpublic information received from Bed Bath insiders, and as a result (e) Cohen falsely certified that he did not know material, adverse information about Bed Bath’s current and prospective operations that was not otherwise publicly disclosed.

175. Cohen’s scheme to file his Form 144 late and in an unfavored but delayed publication manner had its intended effect. While Cohen secretly cleaned out his holdings of Bed Bath’s securities on August 16, 2022, and August 17, 2022, the price on both those days remained artificially high because of his scheme. Cohen’s representations in the Form 144 designed to mislead investors and the public about whether and when he had sold his holdings also succeeded to the extent that it limited the stock’s price drop, as the price of the Company’s stock closed at \$18.55 from its previous day’s closing price of \$23.08. On r/WallStreetBets, a thread that received over 5,400 upvotes doubted that any sales were imminent under those circumstances:



176. Another thread entitled “RYAN COHEN DID NOT SELL HIS SHARES” on r/WallStreetBets received over 3,000 upvotes. Some users there responded in agreement and concluded based on the language Cohen used that the Form 144 merely referenced a potential sale at some undetermined future date, not the massive, actual sales he had already made on August 16, 2022, and August 17, 2022.

177. After the market closed on August 18, 2022, Cohen finally filed another amendment to his Schedule 13D and a Form 4, both of which disclosed that he had sold his entire stake in the Company between August 16, 2022, and August 17, 2022, and now had a 0% interest in it.

178. Upon this final disclosure, the Company’s stock price plunged over the next three days. It closed at \$11.03 on August 19, 2022, from its previous day’s closing price of \$18.55, on heavy trading volume, dropped further to close at \$9.24 on August 22, 2022, and again slid to close at \$8.78 on August 23, 2022.

### VIII. BED BATH'S AND GOVE'S RECKLESSLY MISLEADING STATEMENTS

179. On August 17, 2022, CNBC published a story entitled “Bed Bath & Beyond shares fall after investor Ryan Cohen reveals intent to sell entire stake.” The centerpiece of the story was a report on Cohen’s Form 144, describing its contents, and speculating that “[i]f Cohen hypothetically managed to sell all of his Bed Bath common stock at Wednesday’s closing price of \$23.08, he’d net about \$60 million, according to a CNBC calculation. Cohen’s hypothetical profits could [sic] [be] larger if he also sold the options contracts.” Lauren Thomas and Jesse Pound, *Bed Bath & Beyond shares fall after investor Ryan Cohen reveals intent to sell entire stake*, CNBC, (August 17, 2022, 4:41 PM), <https://www.cnbc.com/2022/08/17/bed-bath-beyond-shares-fall-more-than-10percent-after-investor-ryan-cohen-reveals-intent-to-sell-entire-stake.html>. CNBC directly reached out to Bed Bath for comment on Cohen’s Form 144. In response, an emailed statement attributed to a woman with authority to speak on behalf of Bed Bath said that the Company was “pleased to have reached a constructive agreement with RC Ventures in March and are committed to maximizing value for all shareholders. Specifically, we have been working expeditiously over the past several weeks with external financial advisors on strengthening our balance sheet.”

180. On August 18, 2022, before the market opened, Bed Bath filed a Current Report on Form 8-K, in which it disclosed that the Company had made the following statements in response to media inquiries on August 17, 2022:

We were pleased to have reached a constructive agreement with RC Ventures in March and are committed to maximizing value for all shareholders. We are continuing to execute on our priorities to enhance liquidity, make strategic changes and improve operations to win back customers, and drive cost efficiencies; all to restore our company to its heritage as the best destination for the home, for all stakeholders. Specifically, we have been working expeditiously over the past several weeks with external financial advisors and lenders on strengthening our

balance sheet, and the Company will provide more information in an update at the end of this month.

181. As the Interim CEO of Bed Bath in August 2022, Gove had ultimate authority over the statements identified in Paragraphs 179 and 180, and authorized their release and dissemination. In June 2022, just before her appointment as Interim CEO, Bed Bath entered into a settlement agreement for past improper practices acknowledging its CEO's "responsibility to oversee the accuracy, completeness and timeliness" of "material public disclosures made by the Company to its security holders or the investment community." The settlement agreement, which Bed Bath posts on the corporate governance portion of its website, also requires the CEO and CFO to comply with policies and procedures set by a Disclosure Committee "to ensure that information required to be disclosed by the Company in its filings with the SEC and other material information that the Company discloses to the investment community is reported accurately and timely." Thus, Gove's specific responsibilities required her to oversee the contents of the August 17, 2022 emailed statement to CNBC and the August 18, 2022 Form 8-K. In addition, Gove, as Chairman of the Strategy Committee until July 2022, knew that material, nonpublic information about the Company was shared with Cohen.

182. The statements identified in Paragraphs 179 and 180 were materially misleading when made because the Company omitted to disclose that Cohen and RC Ventures had already formed a plan to liquidate all their holdings and, in fact, had already liquidated the vast majority if not all of their holdings before these statements were made. In addition, by speaking about the Company's attempt to "enhance liquidity" and seek additional financing to "strengthen" its balance sheet, the Company put these issues at play but failed to disclose that the 2022 Credit Agreement eliminated the strategic plan vigorously advanced by Cohen, undermining any incentive for him to remain a holder of Bed Bath securities. As a result, the Company's

relationship with Cohen was no longer “constructive,” and Cohen’s decision to exit from his positions undermined the Company’s stated goal of “maximizing value for all shareholders.”

183. Indeed, reactions from retail investors confirm the materially misleading nature of Bed Bath’s statements identified in Paragraphs 179 and 180. At 8:01 PM on August 17, 2022, a user posted a thread on r/WallStreetBets entitled “\$BBBY AND RYAN COHEN UPDATE!” that posted a link to an article published by Reuters regarding the Company’s statements identified in Paragraphs 179 and 180. The thread received over 1,800 upvotes. A comment on the thread stated: “Very nice. Actual bullish news right after to counter that pathetic misleading headline earlier about RC liquidating. Next two days should be interesting after this dip.” Another user named u/Glass\_Cellist\_345 interpreted Bed Bath’s statements to mean that “they’ve agreed to leverage buy buy baby to bring in Capitol. BULLISH AF!” Another user commented: “To the moon baby[.]” And user u/Jfri33ss asked whether “[t]his means buy BBBY... Right?”

184. The statements identified in Paragraphs 179 and 180 were recklessly misleading when made for, at least, the following reasons:

- (A) Gove and other senior executives knew or recklessly disregarded that Cohen had lost interest in Bed Bath securities because the 2022 Credit Agreement effectively destroyed Cohen’s turnaround strategy and his ultimate interest in retaining his holdings;
- (B) Gove and other senior executives knew or recklessly disregarded the facts described in Paragraph 184 (A) because the Strategy Committee of the Board of Directors, which Gove chaired, and other senior executives at Bed Bath informed Cohen about the options considered for buybuy BABY’s future before Cohen liquidated the entirety of his interests in Bed Bath securities; and
- (C) Even if the Company or Gove did not know that Cohen had already formed a plan

to sell the entirety of his holdings, their failure to check whether Cohen had done so or otherwise investigate or question whether he rendered the Company's statements recklessly misleading when made.

#### **IX. ADDITIONAL ALLEGATIONS OF SCIENTER**

185. As fully described in Paragraphs 119 through 137 and Paragraphs 146 through 174, Cohen knew material, nonpublic information about the Company's deteriorating liquidity and crushing debt burden that prevented a sale or spinoff of buybuy BABY before investors could fully understand the ramifications of what Cohen had learned from insiders at Bed Bath. Cohen knew about this information before he made misleading statements on Twitter on August 12, 2022, and before he filed false filings with the SEC on August 16, 2022. As such, Cohen formed a plan or proposal to sell his holdings in Bed Bath before the Class Period began. Cohen knew that it violated the law to misuse material, nonpublic information when he formed a plan to sell Bed Bath's securities because he acknowledged that fact in his Cooperation Agreement with the Company. Importantly, Cohen also concealed that he had planned to dispose of Bed Bath's securities before he commenced his scheme to defraud and manipulate the market for the Company's stock on August 12, 2022.

186. Similarly, Bed Bath either knew or recklessly disregarded that Cohen had already started to sell his shares, and that the Company's rejection of his strategy changed his intention to remain "maniacally focused" on the Company's long-term prospects, when it made misleading statements to CNBC in direct response to questions about Cohen's trading on August 17, 2022, for the reasons explained in Paragraphs 179 through 184. If Bed Bath did not know that Cohen had already sold his holdings in large amounts, then it recklessly made misleading statements in response to direct questions about Cohen's sales from the media when Bed Bath and Gove could

have easily checked with Cohen and ascertained the truth. In addition, if Bed Bath and Gove did not know about Cohen's sales, then their decision to overlook such a significant event with negative consequences for the Company's investors without further questioning or investigation is also reckless.

187. Cohen was also motivated to sell his holdings because, in August 2022, Bed Bath was preparing for an at-the-market offering of 12 million shares, or 15% of the outstanding shares at that time, to shore up its balance sheet. This would dilute Cohen's holdings and depress the stock price further when Cohen's holdings were already underwater. Before the Class Period, in December 2020, Cohen expressed anger at GameStop's decision to raise additional capital because he believed that it would dilute existing shareholders, including himself. Indeed, on October 28, 2022, Bed Bath extended its equity offering up to an aggregate amount of \$150 million, which then represented nearly 40% of the Company's market capitalization. In addition to the Company's rejection of his desired spinoff strategy, this dilution would further render Cohen irrelevant if he continued to hold on to his shares.

188. In addition, Cohen and Bed Bath CFO Arnal had a powerful motive to commit fraud. Just before the Class Period began, Cohen's investment in Bed Bath had lost 82% of its value, falling from a high of \$211.84 million on March 29, 2022 to \$35.78 million on July 26, 2022. Cohen had lost over \$83.58 million, and his call options were on track to be worthless. Between August 16, 2022, and August 17, 2022, Cohen earned over \$188 million from his sales of Bed Bath's securities for an approximate profit of over \$68 million compared to the prices he paid to purchase his holdings at the beginning of 2022. These sales were dramatically out of line with his prior trading history because he did not sell any shares of the Company before the Class Period. They were also unusual in amount and suspiciously timed to take advantage of the

Company's artificially inflated stock price, which was inflated because of Cohen's deceptive, manipulative acts and false and misleading statements.

189. Cohen's sales also appear to be coordinated with Arnal's sales. From August 16, 2022, through August 17, 2022, on the same days that Cohen dumped the majority of his shares, Arnal also sold over 55,000 shares of the Company's common stock for proceeds of \$1.404 million as shown in the chart below:

<b>Date of the Sale</b>	<b>Securities Sold</b>	<b>Price per Security (\$)</b>	<b>Proceeds</b>
08/16/2022	10,000	24.95	\$249,500.00
08/16/2022	10,000	27.45	\$274,500.00
08/16/2022	7,500	20	\$150,000.00
08/16/2022	7,500	22.45	\$168,375.00
08/16/2022	7,513	24.95	\$187,449.35
08/17/2022	12,500	29.95	\$374,375.00
		<b>Total:</b>	<b>\$1,404,199.35</b>

190. Arnal's sales were unusual in both timing and volume. Between January 2022 and August 11, 2022, Arnal did not sell any stock. He only surrendered shares to the Company for total proceeds slightly over \$302,000 to satisfy his tax withholding obligations. These transactions do not figure into an insider trading analysis.

191. Arnal signed both the 2021 Credit Agreement and the 2022 Credit Agreement. As the CFO of Bed Bath at that time, Arnal was the senior executive with the most hands-on experience in managing the Company's precarious finances and negotiating with its lenders. Arnal also spoke with Cohen on conference calls as confirmed by *The WSJ's* reporting. See Paragraph 124. As CFO, acting within the course of his responsibilities to Bed Bath, Arnal's knowledge is imputed to Bed Bath.

192. On September 2, 2022, two days after the 2022 Credit Agreement was executed, Arnal jumped to his death from his apartment building in New York City. The New York City



Medical Examiner's Office ruled his death a suicide. On September 7, 2022, *The WSJ* published an article entitled "Inside Bed Bath & Beyond, Concerns Over Mounting Stress for CFO." It reported that, shortly before his untimely death, Arnal had told colleagues that "he was stressed from the attention that his stock sales generated, saying that people and some media outlets misinterpreted it and didn't acknowledge that it was preplanned, [according to] the people familiar with the matter." Cara Lombardo, Sharon Terlep, and Suzanne Kapner, *Inside Bed Bath & Beyond, Concerns Over Mounting Stress for CFO*, THE WALL STREET JOURNAL (September 7, 2022, 8:30 PM), <https://www.wsj.com/articles/inside-bed-bath-beyond-concerns-over-mounting-stress-for-cfo-11662589539>. However, Arnal's Form 4, filed on August 18, 2022, does not provide any details about the specific terms of this alleged Rule 10b5-1 trading plan that could substantiate his assertion, and academic research shows that such plans are abused to trade on inside information. Upon Arnal's death, his remaining shares worth almost \$5 million vested in full, and the proceeds are expected to pass to his heirs under the Company's compensation policy.

193. Finally, Cohen's own post-Class Period admissions are indicative of scienter. On December 7, 2022, Cohen spoke at length with Fonicello of GMEdd.com. Fonicello asked Cohen: "What did you know about the enthusiasm from some retail investors over GameStop on digital communities like WallStreetBets?" Cohen responded that he noticed the attention when he "lost [his] 13D virginity in August of 2020, so I was a late bloomer, and that's when I noticed retail activity. And then when I filed subsequent amendments, I noticed it." Joe Fonicello, *The Ryan Cohen Interview with Joe Fonicello of GMEdd.com* (November 20, 2022), <https://www.youtube.com/watch?v=uN2Dw8AOdMk>. Between August 2020 and August 2022, Cohen filed Schedule 13D and Schedule 13D/A nine times. Each time he filed these forms with the SEC, the stock price was buoyed by retail investors and increased significantly upon their filing. By his own admission, Cohen knew the consequences

of filing a delayed Schedule 13D/A on August 16, 2022, and omitting material information from it. Cohen's admission of knowledge about the effect and consequences of his Schedule 13D filings renders implausible any assumptions of innocence or mistake concerning why he failed to file these Forms when he was required to do so or why they were filed after Cohen formed an intent to sell all his holdings, but did not disclose that he had made a plan to sell shares before he filed them.

194. In his one-on-one with Fonicello, Cohen was also asked to explain why he sold his positions in Bed Bath. Cohen claimed that “[m]y views of the business clearly changed, and I was highly critical of the strategy and the strategy in the letter that I put out. In general, it’s rare to see a company go from aggressively repurchasing shares to losing a lot of money. And so when I saw that and I saw the results, my views changed of the business, and ultimately I sold.” Joe Fonicello, *The Ryan Cohen Interview with Joe Fonicello of GMEdd.com* (November 20, 2022), <https://www.youtube.com/watch?v=uN2Dw8AOdMk>. These excuses only bolster an inference of fraud. The Company had lost money quarter after quarter before Cohen purchased his shares and quarter after quarter when he held his shares. Nothing changed between August 12, 2022, and August 16, 2022, when he manipulated the market and made false and misleading statements. There was no new information about the Company’s losses publicly disclosed in those five days.

195. Even assuming that Cohen learned new information about the Company’s losses from the second quarter of 2022, then that was material, nonpublic information that he could not use to sell his shares because the Company had not yet publicly announced its financial results for that quarter. The same applies to Cohen’s reference to the Company’s “results” in his later interview with Fonicello, since those results had not been released when he pumped and dumped Bed Bath’s shares and call options. Of course, Cohen did not bother to explain why he told retail

investors to take the Company's stock to the moon days before he dumped his entire stake. As such, Cohen's excuses ring hollow and enhance an inference of scienter.

**X. SUBSEQUENT EVENTS ENHANCE AN INFERENCE OF SCIENTER**

196. After the Class Period ended, news about the Company's deteriorating performance and the intensity of the problems that existed as far back as late 2021 and existed throughout 2022 began to emerge. These later emerging facts further support that Company insiders like Cohen and Gove knew facts or had access to information unavailable to other investors, including the Company's dire need for additional financing and the unlikelihood of a sale or spinoff of buybuy BABY as a result.

197. Two days after Cohen sold his entire stake in the Company, on August 19, 2022, Bloomberg reported that suppliers had restricted or halted shipments because Bed Bath had failed to make payments, and firms that provided credit insurance or short-term loans to vendors had revoked coverage of Bed Bath. The Bloomberg story also reported additional facts about the magnitude of the liquidity crisis that existed before the Class Period, and that Cohen knew about, and Bed Bath had concealed. Bed Bath was in arrears with all respondents according to a survey conducted by Pulse Ratings seen by Bloomberg.

198. On August 22, 2022, analysts at Wedbush Securities discerned that the restrictions on shipments placed by suppliers combined with Bed Bath's aggressive markdowns earlier would constrain the Company's access to the ABL Facility because the ability to tap additional funds from the revolver was based on the market value of Bed Bath's inventory balance. *See* Seth Basham, Nathan Friedman, and Matthew McCartney, *Shares Still Overvalued as Challenges Rise*, WEDBUSH SECURITIES, August 22, 2022, at 1.

199. To contain its cash burn, on August 31, 2022, Bed Bath announced that it would

slash its workforce by approximately 20%, close 150 stores, and cut capital expenditures by \$150 million. On the same day, the Company finally disclosed that it would not sell or spinoff buybuy BABY and filed a Prospectus Supplement for an at-the-market offering for \$12 million in another attempt to boost cash even though, by then, the stock price plummeted over 60% from its high of \$23.08 on August 17, 2022.

200. On September 1, 2022, analysts from Raymond James downgraded Bed Bath, concluding that the new financing under the 2022 Credit Agreement “only kicks the can down the road” because the Company’s business trends remained “abysmal” with no improvement in sales and a “sizeable” cash burn. Samantha Subin, *Raymond James downgrades Bed Bath & Beyond, says turnaround plan ‘only kicks the can down the road’*, CNBC, (September 1, 2022, 7:19 AM), <https://www.cnbc.com/2022/09/01/raymond-james-downgrades-bed-bath-beyond-says-turnaround-plan-only-kicks-the-can-down-the-road.html>. They further concluded that Bed Bath’s need to preserve cash would limit its ability to remodel stores and increase store traffic. *Id.*

201. Over the next few days, news about the broad consequences of the Company’s cash crunch continued to leak. On September 6, 2022, a vendor interviewed by the Sourcing Journal said that his business refused to approve orders at the beginning of 2022 because Bed Bath’s “cash crunch was too serious to ignore” even then. Vicki M. Young, *Unpacking Bed Bath & Beyond’s ‘Self-Inflicted’ Crisis*, SOURCING JOURNAL, (September 6, 2022, 7:32 pm), <https://sourcingjournal.com/home/home-news/bed-bath-beyond-cfo-suicide-gustavo-arnal-securities-fraud-lawsuit-ryan-cohen-369901/>. The Sourcing Journal’s check in credit circles confirmed that insurers had for some time and were still refusing to issue credit insurance for shipments to Bed Bath. On September 29, 2022, *The WSJ* reported that Bed Bath employees with personal knowledge confirmed that the Company had not paid some suppliers since September

2021. See Suzanne Kapner, *Bed Bath & Beyond's Losses Widen as Sales Drop 28%*, THE WALL STREET JOURNAL, (September 29, 2022, 9:52 PM), <https://www.wsj.com/articles/bed-bath-beyonds-losses-widen-as-sales-drop-28-11664452190>.

202. Also on September 29, 2022, Bed Bath reported its financial results for the second quarter of 2022 ending August 27, 2022, only 9 days after the end of the Class Period. Net sales continued to decline by double digits with a year-over-year decline of 28%. Net losses over the same year-over-year period increased from \$73 million to \$366 million. Gross margins fell because the Company was unable to sell inventory at full price. The Company burned through \$300 million in cash in the quarter, ending with a \$166.7 million balance compared to over \$1 billion a year earlier.

203. In a quarterly report filed with the SEC on Form 10-Q on the same day, Bed Bath admitted that vendors and suppliers had demanded more stringent payment terms, standby letters of credit and/or advanced payment of invoices since August 2022. In that same 10-Q, the Company stated that it had borrowed an additional \$175 million under the ABL Facility with the total amount of borrowings now equal to \$725 million.

204. On September 30, 2022, analysts at Wedbush Securities opined that the Company may not have sufficient liquidity for the rest of the year if its vendors and suppliers continued to demand stricter terms and that only a bankruptcy filing could alleviate the cash burden. See Seth Basham, Nathan Friedman, and Matthew McCartney, *F2Q22 Review: No Signs of Stabilization*, WEDBUSH SECURITIES, September 30, 2022, at pp. 1-2.

205. On October 18, 2022, Bed Bath announced that it commenced an offer to exchange its bonds due in 2024, 2034 and 2044 with new notes that extended the maturity dates. See also Paragraphs 132 through 133. The Company commenced this exchange offer because the maturity

date on the ABL Facility would accelerate from August 2026 to May 2024 if the bonds due in August 2024 remained outstanding in excess of an aggregate amount of \$50 million.

206. On January 5, 2023, the Company filed with the SEC a Current Report on Form 8-K, announcing the termination of the exchange offer “as a result of the conditions applicable thereto not being satisfied.” As a result, bondholders who tendered their notes would receive no consideration. In a press release attached to the Form 8-K, the Company stated that it would delay the filing of its quarterly report for the third quarter of 2022. The press release also disclosed that there was substantial doubt about the Company’s ability to continue as a going concern, and management continued to consider all strategic alternatives, including seeking relief under the U.S. Bankruptcy Code. In response, analysts and financial publications widely expected the Company to declare bankruptcy within weeks.

207. On January 10, 2023, the Company announced its financial results for the third quarter of 2022. The year-over-year decline in net sales was 33% and buybuy BABY’s sales declined in the low-twenties percent range. Net losses increased to \$392.9 million. The Company burned through another \$300 million in cash in the third quarter of 2022. In a conference call held to announce the quarterly results on the same day, Gove admitted that vendors had demanded stricter payment terms, which negatively impacted the Company’s ability to improve sales as shelves remained empty during the quarter.

208. On January 26, 2022, the Company filed with the SEC a delayed quarterly report on Form 10-Q for the third quarter of 2022. In it, the Company disclosed that, on January 13, 2023, default events were triggered under the 2022 Credit Agreement, and as a result, on January 25, 2023, the administrative agent of the ABL Facility notified the Company that all outstanding principal, accrued interest and fees were due and payable immediately. The default occurred, in

part, because Bed Bath overdrew on the ABL Facility. By the end of January 2023, the Company had borrowed over \$1.1 billion pursuant to the revolver and had more than \$1 billion in senior notes outstanding.

209. In the 10-Q, the Company also disclosed that it did not have sufficient funds to pay the amounts due under the 2022 Credit Agreement, and as a result, Bed Bath would continue to consider restructuring its debts under the U.S. Bankruptcy Code.

### **LEAD PLAINTIFF'S CLASS ACTION ALLEGATIONS**

210. Lead Plaintiff brings this Action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of all persons or entities that purchased or otherwise acquired the Company's common stock (including those who bought to cover a short position) or call options or sold the Company's put options, between August 12, 2022, and August 18, 2022, seeking to pursue remedies under Sections 9(a), 9(f), 10(b), 20(a) and 20A of the Exchange Act. Excluded are Defendants herein, the officers and directors of the Company or RC Ventures, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

211. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, the Company's securities were actively traded on the NASDAQ. As of the Company's last report of this figure in its 2021 10-K, Bed Bath had 1,600 record shareholders, which represent a far greater number of beneficial owners, as retail investors who purchase through brokers generally hold shares in street name and thus are not individually counted as shareholders of record. While the exact number of Class members is unknown to Lead Plaintiff at this time and can be ascertained only through appropriate discovery, Lead Plaintiff believes that there are thousands of members in the proposed Class. During the Class Period, the

average weekly trading volume averaged 215.34 million shares, with over 80 million shares currently outstanding. Owners and other members of the Class may be identified from records maintained by the Company or its transfer agent and may be notified of the pendency of this Action by mail, using the form of notice similar to that customarily used in securities class actions.

212. Lead Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

213. Lead Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation. Lead Plaintiff has no interests antagonistic to or in conflict with those of the Class.

214. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class include but are not limited to:

- whether any statement(s) made by any Defendant to the investing public created a misleading impression of Bed Bath's business, operations, management or prospects;
- whether Gove caused Bed Bath to issue misleading statements during the Class Period;
- whether Cohen and RC Ventures manipulated the price and/or trading of Bed Bath's securities;
- whether the Defendants acted knowingly or recklessly in issuing any misleading statements;
- whether the prices of the Company's securities during the Class Period were artificially inflated because of the Defendants' misconduct complained of herein;
- whether Cohen and Gove are control persons of RC Ventures and Bed Bath, respectively; and



- whether the members of the Class have sustained damages and, if so, what is the proper measure of damages.

215. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this Action as a class action.

216. Lead Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-on-the-market doctrine in that:

- Defendants made misleading statements in public or failed to disclose material facts during the Class Period when they spoke in public;
- the omissions and misleading statements were material;
- the Company's securities traded in an efficient market;
- the Company's securities were liquid and traded with sufficient volume during the Class Period to create a presumption of efficiency;
- the Company traded on the NASDAQ and was covered by numerous analysts, and information about the Company was widely and rapidly disseminated by investors via news outlets, discussion forums, and social media;
- the misleading statements and omissions alleged would tend to induce a reasonable investor to misjudge the value of the Company's securities; and
- Lead Plaintiff and members of the Class purchased, acquired and/or sold the Company's securities between the time the Defendants failed to disclose or misrepresented material facts and the time the true facts were disclosed, without knowledge of the omitted or misrepresented facts.

217. Based upon the foregoing, Lead Plaintiff and the members of the Class are entitled to a presumption of reliance upon the integrity of the market.

218. Alternatively, Lead Plaintiff and the members of the Class are entitled to the presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens of the State of Utah v. United States*, 406 U.S. 128 (1972), as the Exchange Act claims herein are based primarily on Defendants' omission of material information in their Class Period statements in violation of a duty to disclose such information, as detailed above.

**COUNT I**  
**(Violations of Section 10(b) of the Exchange Act and Rule 10b-5(b) Promulgated Thereunder Against Defendants Cohen, RC Ventures, Bed Bath and Gove)**

219. Lead Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

220. This Count is asserted against Cohen, RC Ventures, Bed Bath and Gove for violations of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5(b) promulgated thereunder by the SEC.

221. During the Class Period, these Defendants made various misleading statements of material fact and omitted to state material facts necessary to make the statements, in light of the circumstances under which they were made, not misleading. Defendants' misleading statements were designed to, and, throughout the Class Period, did: (i) deceive the investing public, including Lead Plaintiff and other Class members, as alleged herein; (ii) artificially inflate and maintain the market price of Bed Bath's securities; and (iii) cause Lead Plaintiff and other members of the Class to purchase or otherwise acquire Bed Bath's shares and options at artificially inflated prices.

222. Specifically, Cohen made misleading statements on Twitter and filed documents with the SEC that contained false and misleading statements as particularized in Paragraphs 146 through 148, Paragraphs 160 through 161, and Paragraphs 169 through 174.

223. Bed Bath made misleading statements on August 17, 2022, and August 18, 2022, as particularized in Paragraphs 179 through 182.

224. Cohen, RC Ventures, Bed Bath and Gove either had actual knowledge of the materially misleading statements and material omissions alleged herein and intended thereby to deceive Lead Plaintiff and the other members of the Class, or, in the alternative, acted with reckless disregard for the truth in that they failed or refused to ascertain and disclose such facts as would reveal the materially misleading nature of the statements made, although such facts were readily available to them. In addition to the facts alleged herein demonstrating a strong inference of scienter, certain information showing that Defendants acted knowingly or with reckless disregard for the truth is peculiarly within these Defendants' knowledge and control. As the senior managers and/or directors of Bed Bath and/or RC Ventures, these Defendants had knowledge of the details of Bed Bath's internal affairs that virtually all investors did not.

225. Defendants had a duty to disseminate timely, accurate, and truthful information regarding Bed Bath's business, operations, management and prospects when they made positive representations in public. As a result of the dissemination of the aforementioned misleading statements and material omissions, the market price of Bed Bath's securities was artificially inflated throughout the Class Period.

226. In ignorance of the adverse facts concerning Bed Bath's operations, management and prospects, which were concealed by the misrepresentations and omissions alleged herein, Lead Plaintiff and the other members of the Class purchased or otherwise acquired Bed Bath's securities at artificially inflated prices and relied upon the price of the securities, the integrity of the market for the securities and/or upon statements disseminated by Defendants, and were damaged thereby.

227. During the Class Period, Bed Bath's securities were traded on an active and efficient market. Lead Plaintiff and the other members of the Class, directly relying on the materially misleading statements described herein, and/or relying upon the integrity of the market, purchased or otherwise acquired shares of Bed Bath's securities at prices artificially inflated by Defendants' wrongful misconduct. Had Lead Plaintiff and the other members of the Class known the truth, they would not have purchased or otherwise acquired said securities or would not have purchased or otherwise acquired them at the inflated prices that were paid. At the time of the purchases and/or acquisitions by Lead Plaintiff and the Class, the true value of Bed Bath's securities was substantially lower than the prices paid by Lead Plaintiff and the other members of the Class. The market price of Bed Bath's securities declined sharply upon public disclosure of the facts alleged herein to the injury of Lead Plaintiff and the other Class members.

228. By reason of the conduct alleged herein, Cohen, RC Ventures, Bed Bath and Gove either knowingly or recklessly violated Section 10(b) of the Exchange Act and Rule 10b-5(b) promulgated thereunder.

229. As a direct and proximate result of these Defendants' wrongful conduct, Lead Plaintiff and the other Class members suffered damages in connection with their respective purchases, acquisitions and sales of the Company's securities during the Class Period. Cohen, RC Ventures, Bed Bath and Gove are thus liable for damages in connection with these losses under Section 10(b) of the Exchange Act and Rule 10b-5(b) promulgated thereunder.

**COUNT II**  
**(Violations of Section 10(b) of the Exchange Act and Rule 10b-5(a) & (c) Promulgated Thereunder Against Defendants Cohen and RC Ventures)**

230. Lead Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

231. During the Class Period, Cohen and RC Ventures employed devices and artifices to defraud, and carried out a plan, scheme and course of conduct which was intended to, and throughout the Class Period, did: (a) deceive the investing public, including Lead Plaintiff and other Class members, as alleged herein; and (b) caused Lead Plaintiff and the other members of the Class to purchase Bed Bath's securities at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, Cohen and RC Ventures made the misleading statements alleged in Paragraphs 146 through 148, Paragraphs 160 through 161, and Paragraphs 169 through 174, and engaged in additional unlawful acts as alleged herein.

232. Cohen and RC Ventures, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal a plan to sell Bed Bath's common stock and call options based on material, nonpublic information that was known to Cohen and RC Ventures before it was known, or could be known, to other investors.

233. Specifically, Cohen and RC Ventures employed the following devices, schemes and artifices to defraud while in possession of material adverse non-public information and engaged in the following acts, practices and a course of conduct in an effort to secretly sell Bed Bath's securities and conceal their sales from other investors and the market:

- Cohen and RC Ventures secretly instigated and coordinated a campaign to promote Bed Bath securities while they had already planned to sell Bed Bath securities, knowing that retail investors would understand Cohen's statements and conduct as an encouragement to purchase Bed Bath securities;
- Cohen and RC Ventures leveraged Cohen's Twitter account and used Cohen's notoriety amongst retail investors as devices or artifices to defraud in furtherance of their scheme;
- On August 15, 2022, and August 16, 2022, Cohen used Form 3 and an amendment to Schedule 13D as artifices to deceive and trick investors. Cohen purposely filed Form 3 and an amendment to Schedule 13D to stimulate demand in Bed Bath's securities knowing that the mere act of filing these documents with the SEC would increase trading activity

and cause the price of Bed Bath's securities to rise. Cohen delayed the filing of these Forms and failed to timely file them when he was required to do so in violation of the Exchange Act even though he knew or recklessly disregarded that he was required to file them no later than 10 days after Bed Bath's Annual Report was filed with the SEC on Form 10-K in April 2022;

- Cohen formed a plan to sell his holdings before he promoted the purchase of Bed Bath's securities after using material, nonpublic information about Bed Bath's desperate need for financing and its deteriorating liquidity before the market was aware of the severity of these issues. Cohen learned this inside information from his direct communications with the Strategy Committee of the Company's Board of Directors and senior executives of the Company, including the CFO who oversaw the negotiations with lenders and signed the 2022 Credit Agreement in August 2022. Cohen used this material, nonpublic information to his advantage and to the detriment of other investors to manipulate the market of Bed Bath's securities and create liquidity that would allow him to sell his own shares;
- Cohen purposely sent his Form 144 to the SEC after the market had closed and in a manner designed to ensure that its release would be delayed, so that he could secretly sell his entire stake before the market learned about his sales. On the Form 144, Cohen falsely represented that he had not yet sold any Bed Bath securities even though he had engaged in the act of ordering his broker to sell all or most of his holdings before he sent Form 144 to the SEC on the evening of August 16, 2022; and
- Cohen engaged in insider trading and earned over \$188 million from his sales of Bed Bath's securities for an approximate profit of over \$68 million. Cohen's insider sales also appear to be coordinated with Arnal's insider sales on the same day.

234. As a result of Cohen's and RC Ventures' fraudulent scheme and failure to disclose material facts, as set forth above, the market price for Bed Bath's securities was artificially inflated during the Class Period.

235. In ignorance of the fact that market prices of Bed Bath's publicly traded securities were artificially inflated, and relying upon the integrity of the market in which the Company's securities trade, and/or on the absence of material adverse information concealed from them as detailed herein, Lead Plaintiff and the other members of the Class acquired Bed Bath's common stock and options during the Class Period at artificially high prices and were damaged thereby.

236. At the time Cohen and RC Ventures orchestrated this fraudulent scheme, Lead Plaintiff and other members of the Class were ignorant of its nature or existence. Had Lead

Plaintiff and the other members of the Class and the marketplace known the truth about this unlawful scheme, Lead Plaintiff and the other members of the Class would not have purchased or otherwise acquired Bed Bath's securities, or, if they had acquired such securities during the Class Period, they would not have done so at the artificially inflated prices at which they did.

237. As a direct and proximate result of Cohen's and RC Ventures' wrongful scheme, Lead Plaintiff and the other members of the Class suffered damages in connection with their respective purchases and sales of the Company's securities during the Class Period.

238. By virtue of the foregoing, Cohen and RC Ventures violated Section 10(b) of the Exchange Act, and Rule 10b-5(a) & (c) promulgated thereunder and are liable to Lead Plaintiff and the Class members who have been damaged as a result of such violations.

**COUNT III**  
**(Violations of Section 20(a) of the Exchange Act  
Against Defendants Cohen and Gove)**

239. Lead Plaintiff repeats and realleges each and every allegation contained in the paragraphs above as if fully set forth herein.

240. During the Class Period, Cohen participated in the operation and management of RC Ventures. Cohen conducted and participated, directly and indirectly, in the conduct of the business affairs of RC Ventures. Because of his senior position, Cohen knew or recklessly disregarded the adverse non-public information that RC Ventures concealed from investors.

241. During the Class Period, Gove participated in the operation and management of Bed Bath. Gove conducted and participated, directly and indirectly, in the conduct of the business affairs of Bed Bath. Because Gove served as Bed Bath's CEO during the Class Period, Gove knew or recklessly disregarded the adverse non-public information that Bed Bath concealed from investors.

242. As officers and/or directors of RC Ventures and Bed Bath respectively, Cohen and Gove had a duty to disseminate accurate and truthful information, and to correct promptly any public statements, which had become materially misleading.

243. Because of their positions of control and authority as senior officers, Cohen and Gove were able to, and did, control the contents of their direct communications with investors, which Cohen and the Company disseminated in the marketplace during the Class Period concerning RC Ventures' and the Company's operations, management, financial condition and prospects. Throughout the Class Period, Cohen and Gove exercised their power and authority to cause RC Ventures and the Company respectively to engage in the wrongful acts complained of herein. Cohen and Gove, therefore, were "controlling persons" of RC Ventures and the Company respectively within the meaning of Section 20(a) of the Exchange Act. In this capacity, they participated in the unlawful conduct alleged which artificially inflated the market price of the Company's securities.

244. By reason of their senior management positions and/or being controlling persons of RC Ventures or Bed Bath, Cohen and Gove had the power to direct the actions of, and exercised the same to cause, RC Ventures and the Company to engage in the unlawful acts and conduct complained of herein. Each of these Defendants exercised control over the general operations of RC Ventures or the Company and possessed the power to control the specific activities which comprise the primary violations about which Lead Plaintiff and the other members of the Class complain.

245. By reason of the above conduct, Cohen and Gove are liable pursuant to Section 20(a) of the Exchange Act for the violations committed by RC Ventures and the Company, respectively.



**COUNT IV**  
**(Violations of Section 9(a)(2) and 9(f) of the Exchange Act  
Against Defendants Cohen and RC Ventures)**

246. Lead Plaintiff incorporates by reference and realleges the allegations above, as if fully set forth herein.

247. During the Class Period, Defendants Cohen and RC Ventures, directly or indirectly, alone or with one or more other persons, effected a series of transactions in Bed Bath securities, as outlined above, creating actual or apparent active trading activity in such securities, raising the price of such securities, for the purpose of inducing the purchase of Bed Bath securities by others.

248. Defendants Cohen and RC Ventures willfully engaged in these transactions for the purpose of inducing Lead Plaintiff and the Class to purchase Bed Bath securities.

249. As a direct and proximate result of Defendants Cohen's and RC Ventures' wrongful conduct, Lead Plaintiff and the Class have suffered damages in that, in reliance on the integrity of the market, they paid artificially inflated prices for Bed Bath securities.

250. Had Lead Plaintiff and the Class known that the prices for Bed Bath securities were artificially and falsely inflated due to Defendants Cohen's and RC Ventures' conduct, they would not have purchased the securities at the prices they paid, or at all.

**COUNT V**  
**(Violations of Section 9(a)(3) and 9(f) of the Exchange Act  
Against Defendants Cohen and RC Ventures)**

251. Lead Plaintiff incorporates by reference and realleges the allegations above, as if fully set forth herein.

252. During the Class Period, Defendants Cohen and RC Ventures circulated and disseminated materially false and misleading statements as alleged in this Complaint, which they knew or deliberately disregarded were misleading in that they contained misrepresentations or

failed to disclose material facts necessary in order to make the statements, in light of the circumstances under which they were made, not misleading.

253. Defendants Cohen and RC Ventures circulated and disseminated the false and misleading statements with the purpose and to the effect that the price of Bed Bath securities would or was likely to rise.

254. Defendants Cohen and RC Ventures willfully made false and misleading statements for the purpose of inducing Lead Plaintiff and the Class to purchase Bed Bath securities.

255. As a direct and proximate result of Defendants Cohen's and RC Ventures' wrongful conduct, Lead Plaintiff and the Class have suffered damages in that, in reliance on the integrity of the market, they paid artificially inflated prices for Bed Bath securities.

256. Had Lead Plaintiff and the Class known that the prices for Bed Bath securities were artificially and falsely inflated due to Defendants Cohen's and RC Ventures' conduct, they would not have purchased the securities at the prices they paid, or at all.

**COUNT VI**  
**(Violations of Section 9(a)(4) and 9(f) of the Exchange Act**  
**Against Defendants Cohen and RC Ventures)**

257. Lead Plaintiff incorporates by reference and realleges the allegations above, as if fully set forth herein.

258. During the Class Period, Defendants Cohen and RC Ventures had authority over or controlled the materially false and misleading statements specified above, which they knew or deliberately disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements, in light of the circumstances under which they were made, not misleading.

259. Defendant Cohen's and RC Ventures' materially false and misleading statements had the purpose and effect of inflating the price of Bed Bath securities.

260. Defendants Cohen and RC Ventures also made materially false and misleading statements for the purpose of inducing Lead Plaintiff and the Class to purchase Bed Bath securities.

261. Defendants Cohen and RC Ventures willfully made false and misleading statements for the purpose of inducing Lead Plaintiff and the Class to purchase Bed Bath securities.

262. In reliance on Defendants Cohen's and RC Ventures' materially false and misleading statements, Lead Plaintiff and the Class purchased Bed Bath securities at artificially inflated prices.

263. As a direct and proximate result of Defendants Cohen's and RC Ventures' wrongful conduct, Lead Plaintiff and the Class were damaged thereby. Had Lead Plaintiff and the Class known that Defendants Cohen's and RC Ventures' statements were materially false and misleading, they would not have purchased the securities at the prices they paid, or at all.

**COUNT VII**  
**(Violations of Section 20A of the Exchange Act  
Against Defendants Cohen and RC Ventures)**

264. Lead Plaintiff incorporates by reference and realleges the allegations above, as if fully set forth herein.

265. This Count is asserted for violations of Section 20A of the Exchange Act, 15 U.S.C. §78t-1, by Defendants Cohen and RC Ventures, who sold Bed Bath securities while in possession of material, non-public information, as alleged herein, including specific facts about the Company's exponential liquidity crisis that resulted in a desperate attempt to seek additional loans after pledging its interests in buybuy BABY, which destroyed Cohen's interest in the Company.

These specific facts were known to Cohen before they were known to other investors and the market and before Cohen engaged in a scheme to pump and dump the Company's securities.

266. Section 20A(a) of the Exchange Act provides that:

Any person who violates any provision of [the Exchange Act] or the rules or regulations thereunder by purchasing or selling a security while in possession of material, nonpublic information shall be liable in an action in any court of competent jurisdiction to any person who, contemporaneously with the purchase or sale of securities that is the subject of such violation, has purchased (where such violation is based on a sale of securities) or sold (where such violation is based on a purchase of securities) securities of the same class.

267. As set forth herein, Cohen and RC Ventures violated Section 10(b), Section 9(a) and Section 9(f) of the Exchange Act for the reasons stated in Counts I through VI above. Additionally, Cohen and RC Ventures violated multiple provisions of the Exchange Act while in possession of material, non-public adverse information concerning Bed Bath.

268. Cohen's and RC Ventures' sales of Bed Bath securities made between August 16, 2022, and August 17, 2022, were made contemporaneously with Lead Plaintiff's purchases of Bed Bath securities during the Class Period, which were made on August 8, 2022, August 17, 2022, and August 18, 2022. Lead Plaintiff and all other members of the Class who purchased Bed Bath securities contemporaneously with Defendants Cohen and RC Ventures have suffered damages.

269. By reasons of the violations of the Exchange Act alleged herein, Defendants Cohen and RC Ventures are liable to Lead Plaintiff and other Class members who purchased shares of Bed Bath contemporaneously with Defendants Cohen's and RC Ventures' sales of Bed Bath securities during the Class Period.

270. Lead Plaintiff and the other Class members, who purchased contemporaneously with Defendants Cohen's and RC Ventures' insider sales of Bed Bath securities, seek

disgorgement by Defendants Cohen and RC Ventures of profits and gains from Defendants Cohen's and RC Ventures' transactions.

271. This Action was brought within five years after the date of the last transaction which is the subject of Defendants Cohen's and RC Ventures' violations of Section 20A.

**PRAYER FOR RELIEF**

**WHEREFORE**, Lead Plaintiff demands judgment against Defendants as follows:

- A. Determining that the instant Action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, and certifying Lead Plaintiff as the Class representative;
- B. Requiring Defendants to pay damages sustained by Lead Plaintiff and the Class by reason of the acts and transactions alleged herein;
- C. Awarding Lead Plaintiff and the other members of the Class prejudgment and post-judgment interest, as well as their reasonable attorneys' fees, expert fees and other costs; and
- D. Awarding such other and further relief as this Court may deem just and proper.

**DEMAND FOR TRIAL BY JURY**

Lead Plaintiff hereby demands a trial by jury.

Dated: January 30, 2023

Respectfully submitted,

/s/ Omar Jafri  
Omar Jafri

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