

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

\_\_\_\_\_, Individually and On Behalf  
of All Others Similarly Situated,

Plaintiff,

v.

BED BATH & BEYOND INC., MARK J.  
TRITTON, MARY A. WINSTON, and  
ROBYN M. D'ELIA,

Defendants.

Case No.:

**CLASS ACTION COMPLAINT FOR  
VIOLATIONS OF THE FEDERAL  
SECURITIES LAWS**

**JURY TRIAL DEMANDED**

Plaintiffs \_\_\_\_\_ (“Plaintiffs”), individually and on behalf of all others similarly situated, by and through their attorneys, allege the following upon information and belief, except as to those allegations concerning Plaintiffs, which are alleged upon personal knowledge. Plaintiffs’ information and belief is based upon, among other things, their counsel’s investigation, which includes without limitation: (a) review and analysis of regulatory filings made by Bed Bath & Beyond Inc. (“Bed Bath & Beyond” or the “Company”) with the United States (“U.S.”) Securities and Exchange Commission (“SEC”); (b) review and analysis of press releases and media reports issued by and disseminated by Bed Bath & Beyond; and (c) review of other publicly available information concerning Bed Bath & Beyond.

### **NATURE OF THE ACTION AND OVERVIEW**

1. This is a class action on behalf of persons and entities that purchased or otherwise acquired Bed Bath & Beyond securities between October 2, 2019 and February 11, 2020, inclusive (the “Class Period”). Plaintiff pursues claims against the Defendants under the Securities Exchange Act of 1934 (the “Exchange Act”).

2. Bed Bath & Beyond is a retailer that sells a wide variety of domestics merchandise and home furnishings. It operates under many brand names including Christmas Tree Shops, Harmon, buybuy BABY, and Cost Plus World Market.

3. On January 8, 2020, Bed Bath & Beyond withdrew its fiscal 2019 guidance, purportedly due to pressures on sales and profitability, as well as a new strategic plan for the Company’s operations.

4. On this news, the Company’s share price fell \$3.20, or over 19%, to close at \$13.4 per share on January 9, 2020, thereby injuring investors.

5. On February 11, 2020, Bed Bath & Beyond issued a press release announcing preliminary fourth-quarter 2019 financial results. Therein, the Company disclosed “a 5.4% decline in comparable sales driven primarily by store traffic declines combined with inventory management issues,” including that “inventory within certain key categories in the Bed Bath & Beyond assortment was too low or out-of-stock during the period.”

6. On this news, the Company's share price fell \$3.06 per share, or over 20%, to close at \$11.79 per share on February 12, 2020, on unusually heavy trading volume.

7. Throughout the Class Period, Defendants made materially false and/or misleading statements, as well as failed to disclose material adverse facts about the Company's business, operations, and prospects. Specifically, Defendants failed to disclose to investors: (1) that, due to "aggressive disposition of inventory," the Company lacked sufficient inventory in key categories to support holiday sales; (2) that the Company's internal control over inventory levels and financial reporting was not effective; (3) that, as a result of the foregoing, the Company was likely to experience reduced sales; and (4) that, as a result of the foregoing, Defendants' positive statements about the Company's business, operations, and prospects, were materially misleading and/or lacked a reasonable basis.

8. As a result of Defendants' wrongful acts and omissions, and the precipitous decline in the market value of the Company's securities, Plaintiff and other Class members have suffered significant losses and damages.

### **JURISDICTION AND VENUE**

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

10. 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).

11. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b) and Section 27 of the Exchange Act (15 U.S.C. § 78aa(c)). Substantial acts in furtherance of the alleged fraud or the effects of the fraud have occurred in this Judicial District. Many of the acts charged herein, including the dissemination of materially false and/or misleading information, occurred in substantial part in this Judicial District. In addition, the Company's principal executive offices are located in this District.

12. In connection with the acts, transactions, and conduct alleged herein, Defendants

directly and indirectly used the means and instrumentalities of interstate commerce, including the United States mail, interstate telephone communications, and the facilities of a national securities exchange.

### **PARTIES**

13. Plaintiff, as set forth in the accompanying certification, incorporated by reference herein, purchased Bed Bath & Beyond securities during the Class Period, and suffered damages as a result of the federal securities law violations and false and/or misleading statements and/or material omissions alleged herein.

14. Defendant Bed Bath & Beyond is incorporated under the laws of Delaware with its principal executive offices located in Union, New Jersey. Bed Bath & Beyond's common stock trades on the NASDAQ exchange under the symbol "BBBY."

15. Defendant Mark J. Tritton ("Tritton") has been the Company's Chief Executive Officer ("CEO") since November 2019.

16. Defendant Mary A. Winston ("Winston") was the Company's Interim CEO from May 2019 to November 2019.

17. Defendant Robyn M. D'Elia ("D'Elia") was the Company's Chief Financial Officer ("CFO") at all relevant times.

18. Defendants Tritton, Winston, and D'Elia (collectively the "Individual Defendants"), because of their positions with the Company, possessed the power and authority to control the contents of the Company's reports to the SEC, press releases and presentations to securities analysts, money and portfolio managers and institutional investors, *i.e.*, the market. The Individual Defendants were provided with copies of the Company's reports and press releases alleged herein to be misleading prior to, or shortly after, their issuance and had the ability and

opportunity to prevent their issuance or cause them to be corrected. Because of their positions and access to material non-public information available to them, the Individual Defendants knew that the adverse facts specified herein had not been disclosed to, and were being concealed from, the public, and that the positive representations which were being made were then materially false and/or misleading. The Individual Defendants are liable for the false statements pleaded herein.

## **SUBSTANTIVE ALLEGATIONS**

### **Background**

19. Bed Bath & Beyond is a retailer that sells a wide variety of domestics merchandise and home furnishings. It operates under many brand names including Christmas Tree Shops, Harmon, buybuy BABY, and Cost Plus World Market.

### **Materially False and Misleading Statements Issued During the Class Period**

20. The Class Period begins on October 2, 2019. On that day, Bed Bath & Beyond announced its second quarter 2019 financial results in a press release, stating in relevant part:

For the fiscal 2019 second quarter, the Company reported a net loss of \$(1.12) per diluted share (\$138.8 million), which included an unfavorable impact of approximately \$1.46 per diluted share from charges related to the first wave of transformation initiatives including, severance costs associated with the corporate workforce reduction and decision to outsource certain functions, and an inventory write down. . . . Net sales for the fiscal 2019 second quarter were approximately \$2.7 billion, a decrease of approximately 7.3% compared to the prior year period. Comparable sales in the fiscal 2019 second quarter declined approximately 6.7%.

\* \* \*

### **Fiscal 2019 Updated Financial Outlook**

Fiscal 2019 full-year results continue to be in line with the Company's most recent guidance and assumes current investment plans to drive top-line performance in the back half, as well as its comp sales trends year to date, and excludes goodwill and other impairments, severance costs, shareholder activity costs, the inventory write down, and any incremental impact from tariffs. Fiscal 2019 full-year net sales are estimated to be around \$11.4 billion and net earnings per diluted share are estimated to be between \$2.08 and \$2.13.

21. During a conference call held the same day to discuss these results, defendant

Winston stated that “[t]o further drive holiday sales, we are adding marketing and promotional support for Bed Bath & Beyond in the back half of the year.” Moreover, regarding the inventory writedown disclosed in the press release, defendant Winston stated:

As we mentioned in the recent shareholder letter, we have plans to aggressively reduce up to \$1 billion of inventory at retail over the next 18 months. As a result of the decision, we took \$194 million inventory writedown in the second quarter.

We believe this aggressive disposition of inventory will enable us to more quickly reset inventory levels in both our Bed Bath & Beyond stores and distribution centers to allow for a faster refresh of our assortment, as well as to enable us to refocus store labor activity to better support our customers and drive sales. In the short term, more than approximately \$350 million of inventory at retail will be removed from our stores before the 2019 holiday season. This will be accomplished through a series of markdowns and clearance events, as well as with the assistance of the independent liquidator, all to be managed thoughtfully to prevent cannibalization of sales.

22. On October 9, 2019, Bed Bath & Beyond filed its quarterly report for the period ended August 31, 2019, affirming the previously reported financial results. Regarding inventory levels, the report stated, in relevant part:

Retail inventory, which includes inventory in the Company’s distribution facilities for direct to customer shipments, was approximately \$2.3 billion at August 31, 2019, a decrease of 17.8% compared to retail inventory at September 1, 2018. The Company continues to focus on its inventory optimization strategies.

23. In the same report, Bed Bath & Beyond stated that its CEO and CFO had “concluded that the Company’s current disclosure controls and procedures are effective.”

24. The above statements identified in ¶¶ 20-23 were materially false and/or misleading, and failed to disclose material adverse facts about the Company’s business, operations, and prospects. Specifically, Defendants failed to disclose to investors: (1) that, due to “aggressive disposition of inventory,” the Company lacked sufficient inventory in key categories to support holiday sales; (2) that the Company’s internal control over inventory levels and financial reporting was not effective; (3) that, as a result of the foregoing, the Company was likely to experience reduced sales; and (4) that, as a result of the foregoing, Defendants’ positive statements about the Company’s business, operations, and prospects, were materially misleading and/or lacked a

reasonable basis.

25. The truth began to emerge on January 8, 2020 when Bed Bath & Beyond withdrew its fiscal 2019 guidance. In a press release announcing its third quarter 2019 financial results and withdrawing its fiscal 2019 guidance, the Company stated, in relevant part:

**Fiscal 2019 Third Quarter Results**

For the fiscal 2019 third quarter, the Company reported a net loss of \$(0.31) per diluted share (\$38.6 million), which included a net benefit of \$0.07 from the favorable impact from an adjustment to the incremental inventory reserve for future markdowns associated with its inventory initiative, that was partially offset by a non-cash charge for the impairment of certain store-level assets. This compares to net earnings of \$0.18 per diluted share (\$24.4 million) for the fiscal 2018 third quarter, which included the favorable impact of \$0.16 per diluted share from the gain on the sale of a building. Excluding these net favorable impacts in both periods, the Company reported an adjusted net loss of \$(0.38) per diluted share (\$46.9 million) for the fiscal 2019 third quarter, compared to adjusted net earnings of \$0.02 per diluted share (\$2.7 million) for the fiscal 2018 third quarter. Net sales for the fiscal 2019 third quarter were \$2.8 billion, a decrease of 9.0% compared to the prior year period. Comparable sales in the fiscal 2019 third quarter declined 8.3%.

The Company's fiscal 2019 third quarter was significantly impacted by the calendar shift of the Thanksgiving holiday this year resulting in one less week of holiday sales compared to the prior year period. Adjusting for this calendar shift to include Thanksgiving and Cyber Monday weeks in both periods, comparable sales for the fiscal 2019 third quarter declined 3.6%. During the key five-day shopping period from Thanksgiving to Cyber Monday for both this year and last year, comparable sales on a shifted basis increased 7.1%.

\* \* \*

**Outlook**

The Company expects its sales and profitability to remain pressured during the fiscal 2019 fourth quarter. Considering these headwinds reflected in the Company's results to date, and the ongoing work by recently appointed President & CEO Mark Tritton to assess the business and finalize the details of the Company's go-forward strategic plan as well as the extensive senior leadership changes within the past month, the Company believes it is appropriate to withdraw its fiscal 2019 full year financial guidance.

26. On this news, the Company's share price fell \$3.20, or over 19%, to close at \$13.4 per share on January 9, 2020, on unusually heavy trading volume.

27. On January 9, 2020, Bed Bath & Beyond filed its quarterly report on Form 10-Q for the period ended November 30, 2019, affirming the previously reported financial results. Regarding inventory levels, the Company stated:

Retail inventory, which includes inventory in the Company's distribution facilities for direct to customer shipments, was approximately \$2.5 billion at November 30, 2019, a decrease of 15.6% compared to retail inventory at December 1, 2018. The Company continues to focus on its inventory optimization strategies.

28. In the same report, Bed Bath & Beyond stated that its CEO and CFO had "concluded that the Company's current disclosure controls and procedures are effective."

29. The above statements identified in ¶¶ 25-28 were materially false and/or misleading, and failed to disclose material adverse facts about the Company's business, operations, and prospects. Specifically, Defendants failed to disclose to investors: (1) that, due to "aggressive disposition of inventory," the Company lacked sufficient inventory in key categories to support holiday sales; (2) that the Company's internal control over inventory levels and financial reporting was not effective; (3) that, as a result of the foregoing, the Company was likely to experience reduced sales; and (4) that, as a result of the foregoing, Defendants' positive statements about the Company's business, operations, and prospects, were materially misleading and/or lacked a reasonable basis.

#### **Disclosures at the End of the Class Period**

30. On February 11, 2020, Bed Bath & Beyond issued a press release announcing preliminary fourth-quarter 2019 financial results. Therein, the Company disclosed "a 5.4% decline in comparable sales driven primarily by store traffic declines combined with inventory management issues," including that "inventory within certain key categories in the Bed Bath & Beyond assortment was too low or out-of-stock during the period." Specifically, Bed Bath & Beyond stated, in relevant part:

Bed Bath & Beyond Inc. (Nasdaq: BBBY) today reported preliminary, unaudited financial performance data for the first two months of the fiscal 2019 fourth quarter (December 2019 and January 2020), including *a 5.4% decline in comparable sales driven primarily by store traffic declines combined with inventory management issues, and increased promotional activity and markdowns.* The Company is

providing this update today to provide visibility into the current pressures on the business, which the Company's new management has been reviewing to ascertain insights and key learnings.

Mark J. Tritton, President and CEO of Bed Bath & Beyond, said, "We are experiencing short-term pain in our efforts to stabilize the business, including the pressures of store traffic trends *coupled with our own executional challenges*. However, we did achieve a notable positive shift in sales in our digital channels during this period, with growth of approximately 20%. I believe we can solidify this growth, while also addressing the broader stabilization of our business."

\* \* \*

#### Fiscal December 2019/January 2020 Comparable Sales

For the first two months of the fiscal 2019 fourth quarter (December 2019 and January 2020), the Company's comparable sales declined 5.4%, reflecting a low-double-digit percentage decrease in transactions in stores, partially offset by a mid-single-digit percentage increase in the average transaction amount. On a directional basis, comparable sales from stores declined nearly 11%, while comparable sales from digital channels grew approximately 20%.

Comparable sales include the shift of the Cyber Monday holiday week, which is in the Company's fiscal fourth quarter this year versus the fiscal third quarter of last year. Adjusting for the calendar shift to exclude Cyber Monday week in both periods, comparable sales for the first two months of the fiscal 2019 fourth quarter declined 13%.

*Product availability leading into the holiday period was also a contributing factor, as inventory within certain key categories in the Bed Bath & Beyond assortment was too low or out-of-stock during the period.* The Company is immediately reforming its internal planning and inventory management procedures to master the fundamentals.

(Emphases added.)

31. On this news, the Company's share price fell \$3.06 per share, or over 20%, to close at \$11.79 per share on February 12, 2020, on unusually heavy trading volume.

#### **CLASS ACTION ALLEGATIONS**

32. Plaintiffs bring this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a class, consisting of all persons and entities that purchased or otherwise acquired Bed Bath & Beyond securities between October 2, 2019 and February 11,

2020, inclusive, and who were damaged thereby (the “Class”). Excluded from the Class are Defendants, the officers and directors of the Company, 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.

33. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Bed Bath & Beyond’s common shares actively traded on the NASDAQ. While the exact number of Class members is unknown to Plaintiffs at this time and can only be ascertained through appropriate discovery, Plaintiffs believe that there are at least hundreds or thousands of members in the proposed Class. Millions of Bed Bath & Beyond common stock were traded publicly during the Class Period on the NASDAQ. Record owners and other members of the Class may be identified from records maintained by Bed Bath & Beyond 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.

34. Plaintiffs’ 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.

35. Plaintiffs 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.

36. 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 are:

(a) whether the federal securities laws were violated by Defendants’ acts as alleged herein;

(b) whether statements made by Defendants to the investing public during the Class Period omitted and/or misrepresented material facts about the business, operations, and prospects of Bed Bath & Beyond; and

(c) to what extent the members of the Class have sustained damages and the proper measure of damages.

37. 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 makes 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.

### **UNDISCLOSED ADVERSE FACTS**

38. The market for Bed Bath & Beyond's securities was open, well-developed and efficient at all relevant times. As a result of these materially false and/or misleading statements, and/or failures to disclose, Bed Bath & Beyond's securities traded at artificially inflated prices during the Class Period. Plaintiffs and other members of the Class purchased or otherwise acquired Bed Bath & Beyond's securities relying upon the integrity of the market price of the Company's securities and market information relating to Bed Bath & Beyond, and have been damaged thereby.

39. During the Class Period, Defendants materially misled the investing public, thereby inflating the price of Bed Bath & Beyond's securities, by publicly issuing false and/or misleading statements and/or omitting to disclose material facts necessary to make Defendants' statements, as set forth herein, not false and/or misleading. The statements and omissions were materially false and/or misleading because they failed to disclose material adverse information and/or misrepresented the truth about Bed Bath & Beyond's business, operations, and prospects as alleged herein.

40. At all relevant times, the material misrepresentations and omissions particularized in this Complaint directly or proximately caused or were a substantial contributing cause of the damages sustained by Plaintiffs and other members of the Class. As described herein, during the Class Period, Defendants made or caused to be made a series of materially false and/or misleading statements about Bed Bath & Beyond's financial well-being and prospects. These material misstatements and/or omissions had the cause and effect of creating in the market an unrealistically

positive assessment of the Company and its financial well-being and prospects, thus causing the Company's securities to be overvalued and artificially inflated at all relevant times. Defendants' materially false and/or misleading statements during the Class Period resulted in Plaintiffs and other members of the Class purchasing the Company's securities at artificially inflated prices, thus causing the damages complained of herein when the truth was revealed.

### **LOSS CAUSATION**

41. Defendants' wrongful conduct, as alleged herein, directly and proximately caused the economic loss suffered by Plaintiffs and the Class.

42. During the Class Period, Plaintiffs and the Class purchased Bed Bath & Beyond's securities at artificially inflated prices and were damaged thereby. The price of the Company's securities significantly declined when the misrepresentations made to the market, and/or the information alleged herein to have been concealed from the market, and/or the effects thereof, were revealed, causing investors' losses.

### **SCIENTER ALLEGATIONS**

43. As alleged herein, Defendants acted with scienter since Defendants knew that the public documents and statements issued or disseminated in the name of the Company were materially false and/or misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth elsewhere herein in detail, the Individual Defendants, by virtue of their receipt of information reflecting the true facts regarding Bed Bath & Beyond, their control over, and/or receipt and/or modification of Bed Bath & Beyond's allegedly materially misleading misstatements and/or their associations with the Company which made them privy to confidential proprietary information concerning Bed Bath & Beyond, participated in the fraudulent scheme alleged herein.

### **APPLICABILITY OF PRESUMPTION OF RELIANCE (FRAUD-ON-THE-MARKET DOCTRINE)**

44. The market for Bed Bath & Beyond's securities was open, well-developed and efficient at all relevant times. As a result of the materially false and/or misleading statements and/or failures to disclose, Bed Bath & Beyond's securities traded at artificially inflated prices during the Class Period. On December 18, 2019, the Company's share price closed at a Class Period high of \$17.72 per share. Plaintiffs and other members of the Class purchased or otherwise acquired the Company's securities relying upon the integrity of the market price of Bed Bath & Beyond's securities and market information relating to Bed Bath & Beyond, and have been damaged thereby.

45. During the Class Period, the artificial inflation of Bed Bath & Beyond's shares was caused by the material misrepresentations and/or omissions particularized in this Complaint causing the damages sustained by Plaintiffs and other members of the Class. As described herein, during the Class Period, Defendants made or caused to be made a series of materially false and/or misleading statements about Bed Bath & Beyond's business, prospects, and operations. These material misstatements and/or omissions created an unrealistically positive assessment of Bed Bath & Beyond and its business, operations, and prospects, thus causing the price of the Company's securities to be artificially inflated at all relevant times, and when disclosed, negatively affected the value of the Company shares. Defendants' materially false and/or misleading statements during the Class Period resulted in Plaintiffs and other members of the Class purchasing the Company's securities at such artificially inflated prices, and each of them has been damaged as a result.

46. At all relevant times, the market for Bed Bath & Beyond's securities was an efficient market for the following reasons, among others:

(a) Bed Bath & Beyond shares met the requirements for listing, and was listed and actively traded on the NASDAQ, a highly efficient and automated market;

(b) As a regulated issuer, Bed Bath & Beyond filed periodic public reports with the SEC and/or the NASDAQ;

(c) Bed Bath & Beyond regularly communicated with public investors via established market communication mechanisms, including through regular dissemination of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and/or

(d) Bed Bath & Beyond was followed by securities analysts employed by brokerage firms who wrote reports about the Company, and these reports were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

47. As a result of the foregoing, the market for Bed Bath & Beyond's securities promptly digested current information regarding Bed Bath & Beyond from all publicly available sources and reflected such information in Bed Bath & Beyond's share price. Under these circumstances, all purchasers of Bed Bath & Beyond's securities during the Class Period suffered similar injury through their purchase of Bed Bath & Beyond's securities at artificially inflated prices and a presumption of reliance applies.

48. A Class-wide presumption of reliance is also appropriate in this action under the Supreme Court's holding in *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128 (1972), because the Class's claims are, in large part, grounded on Defendants' material misstatements and/or omissions. Because this action involves Defendants' failure to disclose material adverse information regarding the Company's business operations and financial prospects—information that Defendants were obligated to disclose—positive proof of reliance is not a prerequisite to recovery. All that is necessary is that the facts withheld be material in the sense that a reasonable investor might have considered them important in making investment decisions. Given the importance of the Class Period material misstatements and omissions set forth above, that requirement is satisfied here.

## **NO SAFE HARBOR**

49. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this Complaint. The statements alleged to be false and misleading herein all relate to then-existing facts and conditions. In addition, to the extent certain of the statements alleged to be false may be characterized as forward looking, they were not identified as “forward-looking statements” when made and there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. In the alternative, to the extent that the statutory safe harbor is determined to apply to any forward-looking statements pleaded herein, Defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the speaker had actual knowledge that the forward-looking statement was materially false or misleading, and/or the forward-looking statement was authorized or approved by an executive officer of Bed Bath & Beyond who knew that the statement was false when made.

### **FIRST CLAIM** **Violation of Section 10(b) of The Exchange Act and** **Rule 10b-5 Promulgated Thereunder** **Against All Defendants**

50. Plaintiffs repeat and re-allege each and every allegation contained above as if fully set forth herein.

51. During the Class Period, Defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing public, including Plaintiffs and other Class members, as alleged herein; and (ii) cause Plaintiffs and other members of the Class to purchase Bed Bath & Beyond’s securities at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, Defendants, and each defendant, took the actions set forth herein.

52. Defendants (i) employed devices, schemes, and artifices to defraud; (ii) made untrue statements of material fact and/or omitted to state material facts necessary to make the

statements not misleading; and (iii) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of the Company's securities in an effort to maintain artificially high market prices for Bed Bath & Beyond's securities in violation of Section 10(b) of the Exchange Act and Rule 10b-5. All Defendants are sued either as primary participants in the wrongful and illegal conduct charged herein or as controlling persons as alleged below.

53. Defendants, individually and in concert, 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 adverse material information about Bed Bath & Beyond's financial well-being and prospects, as specified herein.

54. Defendants employed devices, schemes and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of Bed Bath & Beyond's value and performance and continued substantial growth, which included the making of, or the participation in the making of, untrue statements of material facts and/or omitting to state material facts necessary in order to make the statements made about Bed Bath & Beyond and its business operations and future prospects in light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business which operated as a fraud and deceit upon the purchasers of the Company's securities during the Class Period.

55. Each of the Individual Defendants' primary liability and controlling person liability arises from the following facts: (i) the Individual Defendants were high-level executives and/or directors at the Company during the Class Period and members of the Company's management team or had control thereof; (ii) each of these defendants, by virtue of their responsibilities and activities as a senior officer and/or director of the Company, was privy to and participated in the creation, development and reporting of the Company's internal budgets, plans, projections and/or reports; (iii) each of these defendants enjoyed significant personal contact and familiarity with the other defendants and was advised of, and had access to, other members of the Company's

management team, internal reports and other data and information about the Company's finances, operations, and sales at all relevant times; and (iv) each of these defendants was aware of the Company's dissemination of information to the investing public which they knew and/or recklessly disregarded was materially false and misleading.

56. Defendants had actual knowledge of the misrepresentations and/or omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Such defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing Bed Bath & Beyond's financial well-being and prospects from the investing public and supporting the artificially inflated price of its securities. As demonstrated by Defendants' overstatements and/or misstatements of the Company's business, operations, financial well-being, and prospects throughout the Class Period, Defendants, if they did not have actual knowledge of the misrepresentations and/or omissions alleged, were reckless in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether those statements were false or misleading.

57. As a result of the dissemination of the materially false and/or misleading information and/or failure to disclose material facts, as set forth above, the market price of Bed Bath & Beyond's securities was artificially inflated during the Class Period. In ignorance of the fact that market prices of the Company's securities were artificially inflated, and relying directly or indirectly on the false and misleading statements made by Defendants, or upon the integrity of the market in which the securities trades, and/or in the absence of material adverse information that was known to or recklessly disregarded by Defendants, but not disclosed in public statements by Defendants during the Class Period, Plaintiffs and the other members of the Class acquired Bed Bath & Beyond's securities during the Class Period at artificially high prices and were damaged thereby.

58. At the time of said misrepresentations and/or omissions, Plaintiffs and other members of the Class were ignorant of their falsity, and believed them to be true. Had Plaintiffs

and the other members of the Class and the marketplace known the truth regarding the problems that Bed Bath & Beyond was experiencing, which were not disclosed by Defendants, Plaintiffs and other members of the Class would not have purchased or otherwise acquired their Bed Bath & Beyond securities, or, if they had acquired such securities during the Class Period, they would not have done so at the artificially inflated prices which they paid.

59. By virtue of the foregoing, Defendants violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

60. As a direct and proximate result of Defendants' wrongful conduct, Plaintiffs 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.

**SECOND CLAIM**  
**Violation of Section 20(a) of The Exchange Act**  
**Against the Individual Defendants**

61. Plaintiffs repeat and re-allege each and every allegation contained above as if fully set forth herein.

62. Individual Defendants acted as controlling persons of Bed Bath & Beyond within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions and their ownership and contractual rights, participation in, and/or awareness of the Company's operations and intimate knowledge of the false financial statements filed by the Company with the SEC and disseminated to the investing public, Individual Defendants had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements which Plaintiffs contend are false and misleading. Individual Defendants were provided with or had unlimited access to copies of the Company's reports, press releases, public filings, and other statements alleged by Plaintiffs to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

63. In particular, Individual Defendants had direct and supervisory involvement in the

day-to-day operations of the Company and, therefore, had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

64. As set forth above, Bed Bath & Beyond and Individual Defendants each violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their position as controlling persons, Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of Defendants' wrongful conduct, Plaintiffs and other members of the Class suffered damages in connection with their purchases of the Company's securities during the Class Period.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for relief and judgment, as follows:

- (a) Determining that this action is a proper class action under Rule 23 of the Federal Rules of Civil Procedure;
- (b) Awarding compensatory damages in favor of Plaintiffs and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;
- (c) Awarding Plaintiffs and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and
- (d) Such other and further relief as the Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiffs hereby demand a trial by jury.