UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 15
Ted Baker Canada Inc., *et al.*,[1]	Case No. 24-10699 (MEW)
Debtors in a Foreign Proceeding.	Jointly Administration Requested

SUPPLEMENTAL DECLARATION OF ANTOINE ADAMS IN SUPPORT OF VERIFIED PETITION FOR ENTRY OF AN ORDER RECOGNIZING FOREIGN MAIN PROCEEDINGS AND GRANTING ADDITIONAL RELIEF AND REALIZATION PROCESS MOTION

I, Antoine Adams, hereby declare:

1. I am a director and Corporate Secretary of each of Ted Baker Canada Inc. ("Ted Baker Canada"), Ted Baker Limited, OSL Fashion Services Canada Inc. ("Fashion Canada"), and OSL Fashion Services, Inc. ("Fashion Services," and together, with Ted Baker Canada, Ted Baker Limited, and Fashion Canada, the "Company" or the "Debtors"), residing in Toronto, Canada. I am also the Chief Operating Officer of OSL Retail Services Inc., an affiliate of the Debtors.

2. I previously submitted a declaration dated April 24, 2024 (the "First Adams Declaration")[2] in support of the Foreign Representative's *Verified Petition for Entry of Order Recognizing Foreign Main Proceedings and Granting Additional Relief* [Docket No. 6] (the "Verified Petition"), which is incorporated herein by reference, and *Motion of Ted Baker Canada*

[1] The Debtors in these Chapter 15 cases, along with the last four digits of each Debtor's U.S. Federal Employer Identification Number ("FEIN") or Canada Revenue Agency Business Number ("BN"), are: Ted Baker Canada Inc. (BN 3889); Ted Baker Limited (FEIN 3341); OSL Fashion Services, Inc. (FEIN 1225); and OSL Fashion Services Canada (BN 7745).

[2] Unless otherwise noted, capitalized terms used but not defined herein have the meanings assigned to them in the First Adams Declaration (including by cross reference) and, if not defined therein, the ARIO (defined below) and the Realization Process Motion (defined below) as applicable.

Inc. as Foreign Representative of Ted Baker Canada Inc. and Certain of its Affiliates for an Order Granting Provisional Relief [Docket No. 7] (the "Provisional Relief Motion").

3. On May 2, 2024, the Foreign Representative filed a *Supplement to Verified Petition for Entry of Order Recognizing Foreign Main Proceedings and Granting Additional Relief* [Docket No. 24] (the "Supplement to Verified Petition," and together with the Verified Petition, the Petition for Recognition") and the *Motion of the Foreign Representative for Entry of an Order (I) Recognizing and Enforcing the Realization Process Approval Order and (II) Granting Related Relief* [Docket No. 27] (the "Realization Process Motion").

4. I submit this declaration as a supplement to the First Adams Declaration, in further support of the Petition for Recognition, and in support of the Realization Process Motion. As I previously stated in the First Adams Declaration, in my role as Corporate Secretary and a director of the Debtors, I am involved in all operational and organizational aspects of the Debtors' business, including approving all the strategic decisions of the Debtors, and am the primary strategic contact with the licensor of the merchandise sold by them, Authentic Brands Group ("ABG"). Therefore, I am familiar with the business and have personal knowledge of the matters set forth herein.

5. Except as otherwise indicated, all statements in this declaration are based upon (a) my personal knowledge, (b) my review of the Debtors' books and records, relevant documents and other information prepared or filed in connection with the Canadian Proceedings and the Chapter 15 Cases, (c) information supplied to me by the other members of the senior management teams of the Debtors and the Debtors' legal advisors, or (d) my experience and knowledge of the Debtors' operations and financial condition.

6. If called to testify as a witness, I could and would competently testify to each of the facts set forth herein based upon my personal knowledge, review of documents or opinion.

BACKGROUND

7. On the Petition Date, the Debtors commenced the Canadian Proceedings and, on that same day, the Canadian Court entered the Initial CCAA Order (as defined in the DIP Term Sheet), which was attached to the First Adams Declaration.

8. The Initial CCAA Order, among other things: (i) appointed Alvarez & Marsal Canada Inc. as monitor in the Canadian Proceedings (in such capacity, the "Monitor"); (ii) granted a stay of proceedings against the Debtors (and their Property), the Monitor, and their respective employees, directors, advisors, officers and representatives acting in such capacities for an initial Stay Period (as defined therein); (iii) authorized Ted Baker Canada and Ted Baker Limited to continue to borrow from the Interim Lender, Canadian Imperial Bank of Commerce ("CIBC"), under the Debtors' Existing Credit Facility (as defined therein) in a principal amount not to exceed USD $7 million, subject to the requirements in the Initial CCAA Order; (iv) authorized the Debtors to pay certain pre-filing amounts, with the consent of the Monitor and the Interim Lender, to key participants in the Debtors' distribution network and to other critical suppliers if required; (v) granted the following Charges (as defined in the Initial CCAA Order), in order of priority: (a) an Administration Charge in the maximum amount of USD $750,000; (b) an Interim Lender's Charge; and (c) a Directors' Charge in the maximum amount of USD $2.5 million; and (vi) authorized Ted Baker Canada (a) to act as the foreign representative of the Debtors for purposes of having the Canadian Proceedings recognized and approved in a jurisdiction outside of Canada, and (b) to apply in this Court for recognition of the Canadian Proceeding in the United States, including enforcement of the Initial CCAA Order and seeking provisional relief, as necessary.

9. Promptly after the Canadian Court entered the Initial CCAA Order, on the Petition Date, the Foreign Representative commenced the Chapter 15 Cases. On that date, the Foreign Representative filed certain motions, including, among others:

(i) the Verified Petition, seeking, *inter alia*: (a) recognition of the Canadian Proceedings, pursuant to Bankruptcy Code section 1517, as foreign main proceedings or, in the alternative, as foreign nonmain proceedings, (b) recognition of and giving full force and effect in the United States to the Initial CCAA Order, including any and all extensions, amendments, restatements, and/or supplements thereto authorized by the Canadian Court, and (c) grant to the Debtors all relief afforded pursuant to Bankruptcy Code section 1520 and certain additional and further relief pursuant to Bankruptcy Code sections 1521 and 1507, including granting on a final basis the provisional relief sought in the Provisional Relief Motion; and

(ii) the Provisional Relief Motion, seeking, *inter alia*, (a) recognition and enforcement of the Initial CCAA Order, including all relief provided therein, in the United States on a provisional basis, (b) grant, on a provisional basis, to and for the benefit of CIBC, as the Debtors' Interim Lender certain protections afforded by the Bankruptcy Code, including, among other protections and findings, those protections provided by Bankruptcy Code sections 363(m), 364(c), 364(d), and 364(e); (c) provision to CIBC (as the Interim Lender) that CIBC shall not be subject in any way to the equitable doctrine of "marshaling" or any similar doctrine, claims under Bankruptcy Code section 506(c), and the "equities of the case" exception found in Bankruptcy Code section 552(b); and (d) application of Bankruptcy Code sections 362 and 365(e) on a provisional basis, all as more fully and particularly set forth in the Provisional Relief Motion.

10. Following the "first day hearing" held on April 25, 2024, this Court entered the *Revised Order Granting Provisional Relief Pursuant to Section 1519 of the Bankruptcy Code* [Docket No. 22] (the "Provisional Relief Order")[3] granting the Debtors certain provisional relief. The Court also ordered the joint administration of the Chapter 15 Cases for procedural purposes only and scheduled the hearing to consider the relief sought in the Verified Petition for May 8, 2024 (the "Recognition Hearing").

THE DEBTORS' RESTRUCTURING EFFORTS SINCE THE PETITION DATE

11. Since the Petition Date, the Debtors have worked in good faith, and with due diligence, to accomplish the following critical objectives:

[3] On April 25, 2024, this Court initially entered the *Order Granting Provisional Relief Pursuant to Section 1519 of the Bankruptcy Code* [Docket No. 17], which was subsequently amended and replaced by the Provisional Relief Order.

(i) stabilize their business and operations;

(ii) advise their stakeholders, including landlords, employees, logistics suppliers, license partners, and others, wherever located, of the issuance of the Initial CCAA Order, ARIO (defined below), the commencement of the realization process and the other orders of this Court;

(iii) develop a key employee retention plan (the "KERP");

(iv) negotiate a DIP Term Sheet to establish more fulsome and appropriate financing for the Debtors' restructuring efforts which permits the Debtors, among other things, to repay the Interim Borrowings that mature on May 8, 2024;

(v) engage with their critical stakeholders including ABG, landlords, employees, logistics suppliers, license partners and others and respond to numerous creditor and stakeholder inquiries regarding the restructuring proceedings; and

(vi) reach out to various stakeholders and other third parties to communicate the Debtors' receptiveness to potential going concern transactions.

12. The Debtors, with the advice and counsel of their advisors, and in consultation with the Monitor and CIBC, have continued to engage in discussions regarding the future of the Debtors and the best way to maximize constituent value. In light of the present circumstances, the Debtors have determined that the best way to maximize value for the benefit of all stakeholders is to commence an orderly realization process, while remaining receptive and flexible as to potential going concern transactions.

13. To that end, subject to approval of the Canadian Court (which has been granted) and this Court, the Debtors have negotiated and executed a Consulting Agreement dated as of April 30, 2024 (as may be amended, revised, and/or restated, the "Consulting Agreement") with Gordon Brothers Canada ULC and Gordon Brothers Retail Partners, LLC (together, the "Consultant") and developed proposed sale guidelines for use in Canada and in the United States (collectively the "Sale Guidelines") for the orderly realization of their assets with the assistance of the Consultant pursuant to the Consultant Agreement.

14. On May 1, 2024, the Debtors filed a motion in the Canadian Court seeking approval and entry of (a) an Amended and Restated Initial CCAA Order (the "ARIO"), and (b) a Realization Process Approval Order (the "Realization Process Approval Order"). That motion was scheduled to be heard before the Canadian Court on May 3, 2024 (the "Comeback Hearing").

15. As indicated above, on May 2, 2024, the Foreign Representative filed in this Court the Supplement to Verified Petition (which attached the proposed ARIO submitted to the Canadian Court) and the Realization Process Motion (which attached the Realization Process Approval Order submitted to the Canadian Court). The Realization Process Motion seeks, *inter alia*, recognition and enforcement of the Realization Process Approval Order and authorization for the Debtors to perform thereunder as relates to assets and Stores located in the territorial jurisdiction of the United States.

16. On May 3, 2024, the Canadian Court held the Comeback Hearing and approved and entered the ARIO and Realization Process Approval Order. On that same day, Justice Black of the Canadian Court issued his Endorsement, which is attached hereto as **Exhibit A**.

THE ARIO

17. Through the Petition for Recognition, the Foreign Representative seeks this Court's recognition and enforcement of the ARIO in the United States. The ARIO extends and supplements the relief provided in the Initial CCAA Order (summarized in the First Adams Declaration) and also provides certain additional relief, including, among other things:

(i) approval of the KERP and granting a Court-ordered charge in the maximum amount of USD $250,000 (the "KERP Charge") as security for payments under the KERP, and granting a sealing order in relation to the KERP;

(ii) authorization for the Debtors to enter into the DIP Term Sheet, borrow under the DIP Facility (defined below) in the maximum principal amount of USD $28 million, and granting the DIP Lender's Charge (as defined in the ARIO); and

(iii) approval of an increase to the Administration Charge (as defined in the ARIO) from USD $750,000 to USD $1.5 million and the Directors' Charge (as defined in the ARIO) from USD $2.5 million to USD $5 million.

I. The KERP and the Related Charge

18. The Debtors seek approval of the KERP for, at present, eight employees[4] and the granting of the KERP Charge (as defined in the ARIO) up to a maximum aggregate amount of USD $250,000 as security for payments under the KERP.

19. The KERP was developed by the Debtors, in consultation with the Monitor, to incentivize certain key employees to remain in their positions through these proceedings to facilitate the maximization of value and efficient and orderly implementation of the Debtors' proceedings. The KERP provides for a one-time, lump sum payment to eligible Canadian and United States employees who have been identified as critical to the success of the Debtors' proceedings. Each of those employees is required to guide the business through the contemplated Sale (as defined in the Sale Guidelines) or a going concern transaction, in each case, to preserve value for the Debtors' stakeholders.

20. The KERP is structured so that each of the individuals will receive a retention bonus equal to 10% of their current annualized base salary, payable on the earliest of (a) the completion of the Sale (as defined in the Consulting Agreement), (b) the closing of a potential going-concern transaction for all or part of the Debtors' business, or (c) the date on which the KERP participants' services are no longer required. Any payments under the KERP are conditional upon each

[4] With one exception, none of the employees are directors or officers of the Debtors and, thus, I am advised that they are not "insiders" of the Debtors within the meaning of the Bankruptcy Code. One of the proposed KERP participants has the title of Vice President Finance / Logistics of Ted Baker Canada and Ted Baker Limited. Based on my consultation with Canadian counsel, it is my understanding that the KERP meets all of the requirements of applicable Canadian law and has the support of the Monitor.

employee continuing to provide services to the Debtors until such time as they are advised that they are no longer required to assist in the Sale or other matters in these proceedings.

21. Assuming the Debtors are able to retain these key employees, the total amount payable under the KERP will be a maximum of USD $250,000. The Debtors are seeking the KERP Charge to secure amounts payable under the KERP. The KERP Charge is proposed to rank behind the Administration Charge, the Interim Lender's Charge (to the extent applicable), the DIP Lender's Charge, the security granted by the Debtors with respect to the Existing Credit Facility (excluding the Interim Borrowings), and the Directors' Charge, but in priority to all other security interests, trusts, liens, charges and encumbrances, and claims of secured creditors, statutory or otherwise.

22. The KERP schedule contains the names of the proposed KERP recipients, their positions, their current compensation, and the proposed amount to be received by each recipient. This is highly sensitive, personal, and confidential information relating to a select group of the Debtors' employees. For this reason, the Monitor has attached the proposed KERP schedule as a confidential supplement to its first report prepared for the Comeback Hearing, and the Canadian Court approved that the KERP schedule be filed under seal pursuant to the ARIO.

II. The Interim Facility and the DIP Facility

A. The Interim Facility

23. As I discussed in the First Adams Declaration, to prevent an abrupt shutdown of and irreparable harm to the Debtors' business, CIBC, as the Debtors' Senior Lender, agreed to permit Ted Baker Canada and Ted Baker Limited to incur Interim Borrowings under the Existing Credit Agreement (the "Interim Facility") provided, among other things, that:

(i) such Interim Borrowings are to fund obligations which the Debtors, with the consent of the Monitor and the Interim Lender, deem to be necessary for the preservation of the Property or their business,

(ii) such principal amount of Interim Borrowings do not, individually or in the aggregate, exceed USD $7 million,

(iii) such Interim Borrowings accrue interest at the rates set out in the Existing Credit Agreement,

(iv) Fashion Canada and Fashion Services are deemed to guarantee the Interim Borrowings together with all interest accrued thereon and costs and expenses incurred in connection therewith in the same manner as the other Obligations (as defined in the Existing Credit Agreement) that they have guaranteed under the Existing Credit Agreement and the loan and security documents provided by them in connection therewith, without the need for any further documentation or guarantee from Fashion Canada or Fashion Services, and

(v) such Interim Borrowings mature on May 8, 2024.

24. Pursuant to the Initial CCAA Order and this Court's Provisional Relief Order, Ted Baker Canada and Ted Baker Limited were authorized to procure the Interim Facility. The Interim Borrowings are secured by a Court-ordered charge (the "Interim Lender's Charge," as defined in the Initial CCAA Order) on all the present and future assets, property and undertaking of the Debtors. As noted, the Interim Borrowings mature on May 8, 2024, *i.e.*, the date of the Recognition Hearing.

25. The Interim Facility was the product of arms-length and good-faith negotiations with CIBC. As I discussed in the First Adams Declaration, the Debtors commenced the Canadian Proceedings and these Chapter 15 Cases under dire and urgent circumstances, (*see* First Adams Declaration at ¶¶ 99-108), including (but not limited to) the imminent expiration of the cure period following default notices issued under the Debtors' License Agreements with ABG. While the Debtors were significantly over-drawn under their Existing Credit Facility with CIBC at that time, CIBC negotiated in good faith with the Debtors and agreed to fund the Interim Facility.

26. As demonstrated by the 2-week cash flow prepared by the then-proposed Monitor (which was annexed to the proposed Monitor's Pre-Filing Report (the "Pre-Filing Report") that

was attached as Exhibit B to my first declaration), the Debtors required immediate access to liquidity and given the exigent circumstances, CIBC was the only viable option to provide the Debtors with requisite interim financing. With the assistance and analysis of the proposed Monitor and the Debtors' financial and legal advisors, the Interim Facility was sized and designed to provide the Debtors with emergency interim funding to provide stability and fund operations for a limited period of time.

27. Furthermore, I agree with the Monitor's conclusions in the Pre-Filing Report that the Interim Lender's Charge under the Interim Facility was fair, reasonable and appropriate because, among other things:

(i) in the absence of the Interim Lender's Charge, a condition to accessing the interim financing, the Debtors would have had no ability to draw under the Interim Facility, and therefore would have had no liquidity to fund operations or the insolvency proceedings;

(ii) as confirmed by the Monitor's counsel in the Pre-Filing Report, CIBC has valid registered security against each of the Debtors and all of their Property, and we are unaware of any creditor ranking in priority to CIBC;

(iii) the terms of the Interim Borrowings are not materially different than under the Existing Credit Facility; and

(iv) we are not aware of any creditor that will be prejudiced by the Interim Lender's Charge.

B. The DIP Facility

28. Subsequent to the granting of the Initial CCAA Order and this Court's Provisional Relief Order, CIBC (as the "DIP Lender") engaged in productive, arms-length, and good faith, discussions with the Debtors and the Monitor regarding additional funding for the restructuring proceedings.

29. The DIP Lender agreed to provide additional funding to Ted Baker Canada and Ted Baker Limited, as Borrowers, under a senior secured, super priority, debtor-in-possession,

revolving credit facility (the "DIP Facility"), up to a maximum principal amount of USD $28 million (the "DIP Facility Amount"), on the terms set out in the DIP Term Sheet agreed to among the Debtors, as Borrower, the DIP Lender, and Fashion Canada and Fashion Services, as Guarantors, and ultimately approved by the Canadian Court.[5]

30. Among other things, the DIP Facility will pay in full the Interim Borrowings Obligations (as defined in the DIP Term Sheet) which, as of the date of this declaration is estimated to be approximately USD $4.3 million. Upon payment in full of the Interim Borrowings Obligations, the Interim Facility and Interim Lender's Charge will each be terminated without any further step or action. At the time of this declaration, the Debtors are projected to have approximately USD $21.1 million outstanding under the Existing Credit Facility and approximately USD $4.3 million outstanding under the Interim Facility. Accordingly, after repayment of the Interim Borrowings Obligations, the Debtors project that they will have approximately USD $19.7 million available under the DIP Facility (after reducing availability for approximately USD $4 million in letters of credit exposure) which advance remains subject to the terms and conditions set out in the DIP Term Sheet.

31. Based on the cash flow projections prepared by the Monitor (the "Cash Flow Forecast"), which are attached hereto as **Exhibit B**, the DIP Facility is expected to provide the Debtors with sufficient liquidity to continue their business operations during these proceedings while completing the contemplated sale process approved by the Canadian Court pursuant to the Realization Process Approval Order and keeping open optionality for a potential going concern transaction, discussed below.

[5] A copy of the DIP Term Sheet is attached as Exhibit B to the Supplement to Verified Petition.

32. The DIP Term Sheet includes the following key commercial terms. All defined terms in the summary table below are as defined in the DIP Term Sheet:

Borrowers	TB Canada and TB US
Guarantors	Fashion Canada and Fashion US
DIP Facility Size	Up to a maximum principal amount of USD $28,000,000
Outside Date	August 2, 2024
Conditions Precedent	(i) each DIP Party executing and delivering the DIP Term Sheet and any other documents required by the DIP Lender; (ii) all representations and warranties of the DIP Parties under the DIP Term Sheet being true and correct in all material respects; (iii) the Court issuing and entering the ARIO and Realization Process Approval Order; (iv) the DIP Parties' cash management arrangement being approved by the ARIO; (v) the US Court issuing the Final Recognition Order; (vi) no Liens ranking *pari passu* with or in priority to the DIP Lender's Charge over the Collateral other than the Permitted Priority Liens; (vii) the DIP Parties making all necessary or advisable registrations and taking all other steps in applicable jurisdictions to evidence the DIP Lender's Charge; (viii) no Default or Event of Default having occurred other than the Existing Events of Default; (ix) the DIP Parties having delivered an Advance Request in respect of such Advance and a Variance Report in respect of the Variance Period in accordance with the DIP Term Sheet; and (x) beginning on the week commencing on May 13, 2024, cumulative actual receipts of the DIP Parties for the period commencing on May 6, 2024 and ending the week prior to such Advance Request shall be equal to or greater than the "Minimum Cumulative Receipts" line item in the DIP Budget for such week, and cumulative actual disbursements of the DIP Parties for the period commencing on May 6, 2024 and ending the week prior to such Advance Request shall be equal to or less than the "Maximum Cumulative Disbursements" line item in the DIP Budget for such week.
Mandatory Payments	Provided the Monitor is satisfied that the DIP Parties have sufficient cash reserves to satisfy (i) amounts secured by any Permitted Priority Liens senior to the DIP Lender's Charge, and (ii) obligations they have incurred from and after the filing date in accordance with the DIP Term Sheet and the DIP Budget, for which payment has not been made, the DIP Parties shall use all excess cash on hand at the end of each Business Day (which for greater certainty does not include any of the proceeds of an Advance) to indefeasibly repay the following in the following order: (A) first, the Obligations until the remaining

	principal balance thereof is $5,000,000, (B) second, the DIP Financing Obligations, until repaid in full, and (C) lastly, the remaining balance of the Obligations until paid in full. If at any time the total amount of Advances exceeds the Facility Amount (any such excess being referred to as a "Currency Excess Amount"), then the Borrowers shall immediately pay the DIP Lender an amount equal to the Currency Excess Amount, and, for greater certainty, the obligation to make such payment shall form part of the DIP Financing Obligations secured by the DIP Lender's Charge. If at any time, any account of the DIP Parties is in an overdraft position (any such amount in overdraft being the "Overdraft Amount"), then the Borrowers shall immediately pay the DIP Lender an amount equal to the Overdraft Amount and, for greater certainty, the obligation to make such payment shall form part of the DIP Financing Obligations secured by the DIP Lender's Charge.
Commitment Fee	USD $300,000 payable to the DIP Lender and deemed to have been fully earned by the DIP Lender on the date that the CCAA Court issues the ARIO (the "Commitment Fee"). The Borrowers irrevocably direct the DIP Lender to deduct the Commitment Fee from Advances as follows: (i) USD $150,000 before May 31, 2024, and (ii) USD $150,000 before July 1, 2024.
Interest	9.95% *per annum* for Advances denominated in Canadian Dollars and 11.75% *per annum* for Advances denominated in US Dollars, in each case, compounded monthly and payable monthly in arrears in cash on the last Business Day of each month, with the first such payment being made on May 31, 2024. Upon the occurrence and during the continuation of an Event of Default (other than the Existing Events of Default), all overdue amounts shall bear interest at the applicable interest rate plus 2% *per annum* payable on demand in arrears in cash.
Events of Default	Among other things, (i) failure of the Borrowers to pay principal, interest or other amounts when due pursuant to the DIP Term Sheet; (ii) failure of the DIP Parties to deliver, by no later than May 8, 2024, the Initial DIP Budget; (iii) failure of the DIP Parties to perform or comply with any term pursuant to the DIP Term Sheet; (iv) any representation or warranty by the DIP Parties made in the DIP Term Sheet proving to be incorrect or misleading; (v) issuance of any court order dismissing these CCAA proceedings or the Chapter 15 Case, or lifting the stay of proceedings in these CCAA proceedings or the Chapter 15 Case; (vi) the expiry without further extension of the stay of proceedings provided for in the ARIO, or orders granted in the

	Chapter 15 Case; (vii) the termination of the Sale prior to its completion; (viii) a Borrowing Base Report, Variance Report or Updated DIP Budget not being delivered when due under the DIP Term Sheet; (ix) (A) cumulative actual receipts of the DIP Parties for the period commencing on May 6, 2024 and ending at the end of any week are less than the "Minimum Cumulative Receipts" line item in the DIP Budget for such week, or (B) cumulative actual disbursements for the DIP Parties for the period commencing on May 6, 2024 and ending at the end of any week are more than the "Maximum Cumulative Disbursements" line item in the DIP Budget for such week; (x) filing by any DIP Party of any motion or proceeding that, among other things, is not consistent with any provision of the DIP Term Sheet; (xi) the making by the DIP Parties of a payment of any kind that is not permitted by the DIP Term Sheet; (xii) a default under or a revocation, termination or cancellation of, any Material Contract; (xiii) denial or repudiation by the DIP Parties of the legality, validity, binding nature or enforceability of the DIP Term Sheet; (xiv) any Person seizing or levying upon any Collateral or exercising any right of distress, execution, foreclosure or similar enforcement process against any Collateral; (xv) the entry of one or more final judgements, writs of execution, garnishment or attachment representing a claim in excess of USD $250,000 in the aggregate, against any Collateral; (xvi) occurrence of any "Default" or "Event of Default" as defined in the Existing Credit Agreement; or (xvii) any Milestone set forth on Schedule "D" of the DIP Term Sheet not being satisfied.

33. As set forth in the DIP Term Sheet and the ARIO, the DIP Facility is secured by a Court-ordered charge (the "DIP Lender's Charge"). Under the ARIO, the DIP Lender's Charge (a) will not secure any obligation that exists before the Petition Date, (b) will have priority over all other security interests, charges and liens (including unasserted tax liens, to the extent there are any), except the Administration Charge and Permitted Priority Liens (as defined in the DIP Term Sheet), and (c) will remain in place until the DIP Facility and all obligations incurred in connection therewith are indefeasibly repaid in full to the satisfaction of the DIP Lender.

34. As set forth in the DIP Term Sheet, the DIP Facility is expressly subject to and conditioned upon, among other things, this Court's entry of an order, by no later than the

Recognition Hearing which, among other things, (i) recognizes (a) the Canadian Proceedings in respect of each of the Debtors as a "foreign main proceeding," (b) the ARIO, in its entirety, and (c) the Realization Process Approval Order; (ii) approves and recognizes the DIP Facility; and (iii) grants certain protections under the Bankruptcy Code to and for the benefit of CIBC, as DIP Lender, Interim Lender, and the Debtors' prepetition secured lender under the Existing Credit Facility. That requested relief includes the following:

(i) Granting the Interim Lender, in connection with the Interim Borrowings, the protections of section 364(e) of the Bankruptcy Code and finding that any loans made by the Interim Lender in accordance with the Interim Borrowings were extended in "good faith" as contemplated by section 364(e) such that the validity of the loans made pursuant to the Initial CCAA Order, and the priority of the Interim Lender's Charge in respect of the Debtors' property located within the territorial jurisdiction of the United States, shall not be affected by any reversal or modification of the Provisional Relief Order on appeal, until such time as the Interim Borrowings Obligations are indefeasibly paid in full to the satisfaction of the Interim Lender consistent with the ARIO, as well as other relief under Section 364 of the Bankruptcy Code similar to the relief described in (ii) below with respect to the DIP Lender;

(ii) Granting (a) the DIP Lender, in connection with the DIP Facility, the protections provided by section 364 of the Bankruptcy Code, including, without limitation, the grant of liens and security interests in the Debtors' property located within the territorial jurisdiction of the United States pursuant to section 364(d)(1), applying the DIP Lender's Charge to the Debtors' property located in the territorial jurisdiction of the United States and the grant of protections under the Bankruptcy Code necessary to give effect to the ARIO as it relates to the Debtors and their property in the United States, and finding that any loans made by the DIP Lender in accordance with the DIP Facility will be extended in "good faith" as contemplated by section 364(e), such that the validity of the loans made pursuant to the ARIO, and the priority of the DIP Lender's Charge in respect of the Debtors' Property located within the territorial jurisdiction of the United States shall not be affected by any reversal or modification of the Recognition Order on appeal and (b) CIBC, adequate protection of its interest in its prepetition collateral from any diminution in value resulting from the use, sale, or lease of the collateral, including, without limitation, (i) granting valid, binding, enforceable and perfected liens in all Property of the Debtors to secure CIBC's indebtedness under the Existing Credit Facility and allowed administrative claims against the Debtors to secure their claims, equal to any diminution in value of their interest in the

collateral, consistent with the rank and priorities set forth in the ARIO and (iii) payment for reasonable and documented fees and expenses incurred by CIBC's Canadian and United States counsel (and their respective advisors) and other advisors; and

(iii) providing that CIBC (in its respective capacities as prepetition secured lender, Interim Lender and DIP Lender) shall not be subject in any way to (a) the equitable doctrine of "marshaling" or any similar doctrine with respect to the collateral, (b) 506(c), which the Debtors waive, and (c) the "equities of the case" exception found within Bankruptcy Code Section 552(b).

35. Given the current financial circumstances of the Debtors, the DIP Lender has indicated that it is not prepared to advance funds without these protections, including the security of the DIP Lender's Charge and the requested priority thereof and the indefeasible payment in full of the Interim Borrowings that mature on May 8, 2024 from the first advance under the DIP Facility. Absent the DIP Facility, the Debtors have no way to repay the Interim Borrowings or to continue operating their business during the Canadian Proceedings and these proceedings.

36. Importantly, CIBC already holds senior secured first priority liens on all of the Debtors' assets in connection with the Existing Credit Facility. CIBC will not agree to be primed by a third party lender. The Debtors, in consultation with their advisors, and as acknowledged by the Monitor, concluded that it was highly unlikely that any other party would be willing to provide requisite financing to the Debtors on a junior basis given the lack of unencumbered assets and the current value of CIBC's collateral, as well as the limited time available to negotiate and consummate any such arrangements. Consequently, it is my belief that there was no viable, alternative provider for the DIP Facility.

37. Under the circumstances, I believe the DIP Facility contains reasonable terms and conditions. As discussed, the terms of the DIP Facility are the product of good faith and arms-length, and at times hard-fought negotiations among the parties. In negotiating the DIP Facility, the Debtors consulted with the Monitor, a prominent cross-border financial advisory firm, which

as set out in its First Report also supports the DIP Facility. And the Debtors themselves were represented by sophisticated counsel with extensive experience in the restructuring industry in Canada and the United States. It is also important to note that no party objected to the DIP Facility in the Canadian Proceeding.

38. The Debtors' decision to move forward with the DIP Facility following the negotiation process is well within the Debtors' sound business judgment. I believe the DIP Facility represents the most favorable terms available to the Debtors and enables the Debtors to continue to operate pending completion of the realization process.

39. Accordingly, I submit that it is appropriate for the Court to recognize and give effect to the DIP Facility, and all of its terms, in the United States, find that the DIP Facility was extended by the DIP Lender in good faith, and approve the requested protections to and for the benefit of the DIP Lender (including the DIP Lender's Charge), the Interim Lender and CIBC as secured lender under the Existing Credit Facility, under the Bankruptcy Code.

III. Increase to Other Charges.

40. The Initial CCAA Order approved the Administration Charge in the amount of USD $750,000, which was sized only to reflect fees and disbursements expected to be incurred by the Debtors' counsel, the Monitor and Monitor's counsel during the initial Stay Period, plus the substantial accrued and unpaid fees outstanding when the Initial CCAA Order was granted. With the concurrence of the Monitor, the Debtors are now seeking to increase the Administration Charge to USD $1.5 million. I understand that the DIP Lender does not object to the increase to the Administration Charge.

41. The Initial CCAA Order also approved the Directors' Charge for the initial Stay Period in the amount of USD $2.5 million. With the concurrence of the Monitor, the Debtors are now seeking to increase the Directors' Charge to USD $5 million. As the Directors' Charge ranks

subordinate to the DIP Lender's Charge, Interim Lender's Charge and the security granted with respect to the Existing Credit Facility and Interim Borrowings, the DIP Lender does not object to the proposed increase to the Directors' Charge.

THE REALIZATION PROCESS APPROVAL ORDER

42. In order to maximize the value of the Debtors' assets for the benefit of all their stakeholders, through the Realization Process Motion, the Foreign Representative seeks this Court's recognition and enforcement of the Realization Process Approval Order, including the authorization and approval of: (i) the Consulting Agreement executed by Ted Baker Canada and Ted Baker Limited (which together are defined in the Consulting Agreement as the "Merchant"); and (ii) the Sale Guidelines, copies of which are attached as Exhibits "B-1" and "B-2" to the Consulting Agreement, respectively. The proposed Realization Process Approval Order includes a mechanism whereby the Debtors can add or remove retail stores as part of the realization process, including to capitalize upon any alternative going concern third-party transaction for some or all of the Debtors' business or assets that may arise.

I. Process for Identifying the Consultant

43. Pursuant to the authority set out in the Initial CCAA Order, the Monitor contacted three potential third-party liquidators well known in the industry in Canada and the United States seeking bids in connection with the realization of the Debtors' Merchandise and FF&E (each as defined below), and asking that if each third-party liquidator was interested in participating in the Request for Proposals process, they execute and return a nondisclosure agreement ("NDA").

44. Upon receipt of an executed NDA by the Monitor, each third-party liquidator was given access to a populated data room including financial and operational details about the Debtors and their inventory and FF&E. Each of the three potential liquidators signed the NDA. The third-party liquidators were then asked to provide their bids in the form of a markup to a template form

of consultant agreement prepared by the Debtors' counsel and provided by the Monitor by no later than April 28, 2024. The bids were reviewed and discussed among the Debtors, the Monitor, and the Interim Lender. On April 29, 2024, Gordon Brothers Canada ULC and Gordon Brothers Retail Partners, LLC (together, "Gordon Brothers") was selected as the third-party liquidator.

45. Gordon Brothers was selected by the Debtors based, among other things, on its in-depth expertise and its extensive experience conducting retail liquidations (including *Target Canada, Sears Canada, American Apparel Canada, BCBG Canada, Express Fashion Apparel, Forever 21*, *Bed Bath & Beyond*, *Mastermind Toys* and *Nordstrom Canada* in Canada and *David's Bridal, Soft Surroundings/Triad*, *Esco* and *Party City* in the US) and other value-maximizing retail store realization processes.

46. The Debtors concluded that: (i) the Consultant's services are necessary for a seamless and efficient large-scale store closing process and to maximize the value of the saleable Merchandise; and (ii) the Consultant is qualified and capable of performing the required tasks in a value-maximizing manner.

II. Realization Process

47. Given the Debtors' limited liquidity, ongoing carrying costs and the seasonal nature of a significant portion of their inventory, the realization process must be commenced as soon as possible to maximize recoveries and limit operating costs, ensuring that the Debtors can exit from the Stores as soon as practicable and avoid further rent, employee costs, critical supplier/service provider payments, interest expense, and other ongoing amounts, in particular if no third-party transaction is achieved. Any delay in commencing this realization process would negatively impact the net recoveries generated from the sale of the Merchandise and FF&E.

48. The proposed realization of the Merchandise is currently contemplated to run for no longer than 12 weeks following the Sale Commencement Date (as defined in the Consulting

Agreement), which date can be extended or abridged by the Merchant and the Consultant, in consultation with the Monitor and the DIP Lender. The Sale Commencement Date does not commence with respect to any of the Debtors' stores in the United States (the "U.S. Stores") until this Court's recognition of the Realization Process Approval Order. Key terms of the Consulting Agreement include:

(i) the Consultant is appointed as exclusive liquidator for purposes of conducting the Sale (as defined in the Consulting Agreement);

(ii) the Sale will commence on a date agreed to by the Merchant and the Consultant following the Sale Commencement Date and conclude no later than 12 weeks following such Sale Commencement Date (the "Sale Termination Date" and the period between the Sale Commencement Date and the Sale Termination Date, the "Sale Term");

(iii) initially, the Debtors intend to conduct the Sale at the Stores included at Exhibits "A-1" and "A-2" to the Consulting Agreement, but have the right under the Consulting Agreement to amend the list of Stores (by adding or removing Stores) at any time during the Sale Term (as amended, the "Store List");

(iv) all sales during the Sale Term will be final with no returns accepted or allowed following the Sale Commencement Date;

(v) the Stores will accept cash, and credit and debit cards, during the Sale, and will accept active gift cards and gift certificates issued by the Merchant until the Merchant provides notice that acceptance of gift cards has stopped. The Merchant and the Consultant will not sell gift cards or gift certificates during the Sale Term and the Merchant will have caused all third-party vendors of gift cards, if any, to cease the sale of gift cards or gift certificates prior to execution of the Consulting Agreement;

(vi) as consideration for its services in accordance with the Consulting Agreement, the Consultant shall be entitled to the fees set forth in paragraph 5 of the Consulting Agreement;

(vii) the Merchant is responsible for all expenses of the Sale, including (without limitation) all Store operating expenses, and all of the Consultant's reasonable and documented out-of-pocket expenses incurred pursuant to an aggregate budget established in connection with the transactions contemplated under the Consulting Agreement (the "Expense Budget"), which is attached as Exhibit "C" to the Consulting Agreement (the "Sale Costs");

(viii) concurrently with the execution of, and as a condition to the Consultant's obligations under the Consulting Agreement, the Merchant is required to fund USD $300,000 to the Consultant on account of any final amounts owing by the Merchant until the Final Reconciliation (defined below);

(ix) the Consultant also undertakes to sell during the Sale Term, on an "as is where is" basis, the FF&E located at the Stores. The Consultant is entitled to a commission from the sale of all such FF&E equal to 15% of the gross proceeds of the sale of such FF&E, net of applicable sales taxes (the "FF&E Fee") and the Merchant is responsible for all reasonable and documented out-of-pocket costs and expenses incurred by the Consultant in connection with the sale of FF&E (the "FF&E Costs");

(x) the Merchant and the Consultant, in consultation with the Monitor and the DIP Lender, will complete a final reconciliation and settlement of all amounts payable pursuant to the Consulting Agreement, including, without limitation, the determination of the Merchandise Fee, Bulk Sale Fee, Sale Costs, FF&E Fee, FF&E Costs and all other fees, expenses, or other amounts reimbursable or payable under the Consulting Agreement (the "Final Reconciliation"), no later than twenty (20) days following the earlier of: (a) the Sale Termination Date for the last Store; or (b) the date upon which the Consulting Agreement is terminated in accordance with its terms; and

(xi) to the extent there is any Merchandise remaining on the Sale Termination Date (the "Remaining Merchandise"), if requested by the Merchant, such Remaining Merchandise will be sold on behalf of the Merchant or otherwise disposed of by the Consultant as directed by the Merchant, in consultation with the Monitor.

49. In connection with sales in U.S. Stores, the Consultant has the right under the Consulting Agreement to supplement the Merchandise at the U.S. Stores with additional goods which are of like kind and quality to the Merchandise (the "Additional Consultant Goods") purchased by the Consultant and delivered to the Stores. The Consultant must pay the Merchant an amount equal to 5% of the gross proceeds (excluding sales taxes) from the sale of all Additional Consultant Goods completed during the Sale Term. The Debtors are of the view that augmentation of the Merchandise with the Additional Consultant Goods will contribute to the success of the proposed realization sale by encouraging increased foot traffic and ensuring that consumers find the mix and quality of goods they expect, thereby benefitting the Debtors' stakeholders by

maximizing recoveries. It will also directly enhance recoveries for the Debtors because the Consultant will pay 5% of the gross proceeds from all sales of Additional Consultant Goods to the Merchant.

50. As of the date of this Declaration, the Debtors intend to conduct the Sale at all the Stores. However, the parties to the Consulting Agreement have agreed that in the event of a going concern third-party transaction for some or all of the Debtors' business or assets, the parties will work cooperatively to modify the transaction contemplated in the Consulting Agreement to, among other things, ensure that any Stores subject to a going concern third-party transaction are removed from the Store List until and including May 17, 2024.

51. The realization process set out in the Consulting Agreement and the Sale Guidelines were designed by the Debtors and the Consultant, in consultation with the Monitor. I expect that the proposed realization process will maximize the value realized from the sale of the Merchandise and FF&E for the benefit of stakeholders. I also am of the view that engaging the Consultant to assist with the Sale will produce better results than attempting to realize on the Merchandise and FF&E without the assistance of the Consultant.

52. The Consulting Agreement is subject to the Sale Guidelines attached as Exhibits "B-1" (for the U.S. Stores) and "B-2" (for the Canadian Stores) to the Realization Process Approval Order.

53. Similarly, I am advised by the Foreign Representative's restructuring counsel that the US Sale Guidelines are substantially similar to those which have been granted in other Canadian and United States retail insolvencies, including *Nordstrom, Forever 21, David's Bridal* and *Bed Bath & Beyond*.

III. Realization Process Approval Order

54. In the Realization Process Approval Order, the Canadian Court granted, among other things, the following relief:

(i) approved, authorized and ratified the Consulting Agreement, the Sale Guidelines and the transactions contemplated thereunder;

(ii) authorized the Merchant, with the assistance of the Consultant, to conduct the Sale in accordance with the terms of the Realization Process Approval Order, the Consulting Agreement and the Sale Guidelines, and to advertise the Sale within the Stores in accordance with the Sale Guidelines;

(iii) authorized the Merchant, with the assistance of the Consultant, to market and sell the Merchandise, FF&E and Additional Consultant Goods in accordance with the Sale Guidelines and the Consulting Agreement, free and clear of all liens, claims, encumbrances, security interests, mortgages, charges, trusts, deemed trusts, executions, levies, financial, monetary or other claims; and

(iv) granted certain protections from liability in favor of the Consultant, including that:

(A) the Consultant shall not be deemed to be an owner or in possession, care, control or management of the Stores or the Warehouses, of the assets located therein or associated therewith or of the Merchant's employees located at the Stores, the Warehouses or any other property of the Merchant;

(B) the Consultant shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payor within the meaning of any legislation; and

(C) the Consultant shall bear no responsibility for any liability whatsoever relating to Claims (as defined in the Realization Process Approval Order) of customers, employees and any other persons arising from events occurring at the Stores during and after the Sale Term or at the Warehouses, or otherwise in connection with the Sale, except to the extent that such Claims are the result of events or circumstances caused or contributed to by the gross negligence or wilful misconduct of the Consultant, its employees, supervisors, independent contractors, agents or other representatives, or otherwise in accordance with the Consulting Agreement.

55. Based on all the foregoing, I submit that the Debtors' performance and consummation of the sale process contemplated by the Realization Process Approval Order, Consulting Agreement, and Sale Guidelines, as well the Debtors' execution of the Consulting Agreement and the terms thereof, represent a reasonable and sound exercise of the Debtors' business judgment. Indeed, I believe the orderly realization process contemplated by the Realization Process Approval Order, while at the same time maintaining flexibility to remove Stores from the Sale should a going concern transaction with a third party emerge, is the best way for the Debtors to maximize value for the benefit of all their stakeholders.

RECOGNITION OF THE CANADIAN PROCEEDINGS

I. The Debtors are Eligible for Chapter 15 Relief

56. It is my understanding, based on discussions with the Foreign Representative's U.S. counsel, that in order to be eligible for chapter 15 relief in the Second Circuit the Debtors must satisfy Bankruptcy Code section 109(a), which requires that the Debtors have either (a) a domicile, (b) a place of business, or (iii) property in the United States.

57. I believe that the Debtors satisfy this requirement. Ted Baker Limited and Fashion Services (together, the "Non-Canadian Debtors") are incorporated in New York and Michigan, respectively, and have assets in the United States as set forth at length in the First Adams Declaration. Ted Baker Canada and Fashion Canada (together, the "Canadian Debtors") are incorporated in Nova Scotia and Ontario, respectively, but they have assets in the United States. Ted Baker Canada's inventory, for instance, is principally routed through Ted Baker NA's primary distribution center in Atlanta (the "Distribution Center"). As of the Petition Date, approximately 20% of the inventory in the Distribution Center was designated to Ted Baker Canada.

58. Fashion Canada was one of the purchasers (with Fashion Services being the other purchaser) under that certain Purchase Agreement dated March 6, 2023 (the "Ted Baker Purchase

Agreement") with No Ordinary Designer Label Limited ("NODL") (ABG's affiliate), pursuant to which Fashion Canada and Fashion Services acquired the equity the interests in Ted Baker Canada and Ted Baker Limited, respectively, from NODL. The Ted Baker Purchase Agreement is governed by New York law and contains a New York forum selection clause.[6] Under the Ted Baker Purchase Agreement, Fashion Canada has extant and continuing contract rights and obligations, including with respect to confidentiality, certain covenants and representations, and indemnification rights and obligations. Thus, Fashion Canada has property in the form New York state based contract rights, which constitutes property in the United States.

II. The Canadian Proceeding is a "Foreign Main Proceeding"

59. Furthermore, I am advised that the Foreign Representative must establish that the Canadian Proceeding is either a "foreign main proceeding" or a "foreign nonmain proceeding" within the meaning of Bankruptcy Code section 1502 in order for the Canadian Proceeding to be "recognized" under Bankruptcy Code section 1517(a).

60. I understand that under Bankruptcy Code section 1502, a "foreign main proceeding" means a foreign proceeding pending in the country where the debtor has its "center of main interests," also referred to as "COMI." I am advised that courts consider various factors when determining COMI (with no one factor being dispositive), including (a) the debtor's "nerve

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[6] Specifically, the Ted Baker Purchase Agreement states, in pertinent part:

> Each of the Parties irrevocably agrees that any Proceeding arising out of or relating to this Agreement or any dispute or controversy arising out of this Agreement or the Transactions brought by any Party or its successors or assigns shall be brought and determined in the Courts of the State of New York sitting in New York County, the courts of the United States of America for the Southern District of New York, and appellate courts thereof, and each of the Parties hereby irrevocably submits to the exclusive jurisdiction of the aforesaid courts for itself and with respect to its property, generally and unconditionally, with regard to any such Proceeding arising out of or relating to this Agreement and the Transactions.

(Ted Baker Purchase Agreement § 9.8).

center," including the location of those who actually manage the debtor, and where the debtor's activities are directed and controlled; (b) the location of the debtor's headquarters, primary assets, and creditors, and the expectation of creditors; and (c) the jurisdiction whose law would apply to most disputes.

61. I submit that my First Adams Declaration together with the facts set forth herein support the conclusion that the Debtors' COMI is Canada. With respect to the Canadian Debtors, I understand that their COMI is presumed to be in Canada. In any event, the Canadian Debtors' operating and strategic mind, management, primary secured creditors and activities are in Canada. Given that Ted Baker Canada's and Ted Baker Limited's operations are integrated, Ted Baker Limited's executive leadership team (led by Ari Hoffman) also manage Ted Baker Canada, but as set forth in my First Adams Declaration and below, Mr. Hoffman and his team ultimately report to me. Thus, the Canadian Debtors' COMI is in Canada.

62. With respect to the Non-Canadian Debtors, as demonstrated below, consideration of the factors overwhelmingly weighs in support of the conclusion that their COMI is also in Canada.

A. The Non-Canadian Debtors' "Nerve Center"

63. While the Debtors run a consolidated business, with operations in both Canada and the United States, those operations are functionally and operationally integrated such that the US business is entirely dependent on the Canadian business and key personnel in Canada. All the key operational and strategic and corporate decision-making relating to the Non-Canadian Debtors' business is made in Canada. Thus, the Non-Canadian Debtors' "nerve center" is in Canada.

64. Fashion Services is a holding company, whose principal asset is its 100% ownership interest in Ted Baker Limited. Brett Farren and I are the sole directors and officers of

Fashion Services. Mr. Farren is President, and I am Secretary and Treasurer. Together, Mr. Farren and I own 96.5% of Fashion Services. We both reside in Canada. The other 3.5% is owned by Gary MacAskill, who also resides in Canada. Mr. Farren and I make all the decisions for Fashion Services.

65. Ted Baker Limited has three directors: me, Brett Farren, and Ari Hoffman. Mr. Farren is President, I am Secretary, and Mr. Hoffman is CEO. Ted Baker Limited has one other employee who has an officer title, Rebecca Singh, Vice President/Finance. Mr. Hoffman and Ms. Singh reside in New York. As CEO, Mr. Hoffman runs the day-to-day operations of Ted Baker Limited, but ultimately reports to me and Mr. Farren. Mr. Farren and I make all or substantially all the key operational and strategic and corporate decision-making relating to Ted Baker Limited's business. We conduct all major stakeholder negotiations, including, for instance, all negotiations with CIBC (the Debtors' senior secured prepetition lender, Interim Lender and DIP Lender), and ABG (the Debtors' main licensor) and its affiliates, and the decisions that were made in connection the Debtors' insolvency proceedings.

66. Furthermore, Ted Baker Limited relies on employees of OSL Retail Services Inc. ("Retail") for certain executive and operational leadership, strategy, M&A, financial decision approvals and IT services; these employees are based out of Retail's head office in Mississauga, Ontario (the "Management Services"). The Management Services are integral to Ted Baker Limited's operations. As I explain in the First Adams Declaration, amounts are invoiced annually to Ted Baker Limited by Retail on account of the Management Services provided by such employees to Ted Baker Limited. The Debtors cannot operate or function, and a restructuring within these proceedings could not occur, without the provision of the Management Services. Ted Baker Limited's business cannot function without key Retail personnel based in Canada.

67. Furthermore, Retail provides critical IT services to Ted Baker Limited, including its "Tech Stack," pursuant to an Enterprise Resource Planning ("ERP") License Agreement (the "ERP License Agreement"). The Tech Stack, which was integral to the operation of Ted Baker Limited's business, was developed and is maintained by Retail in Canada. Ted Baker Limited cannot function without these IT services.

68. For all these reasons, the Non-Canadian Debtors' "nerve center" is in Canada.

B. The location of the Non-Canadian Debtors' Headquarters, Assets, Creditors, and the Expectation of Creditors

69. While the Non-Canadian Debtors have offices, creditors, and assets in the United States, these factors are either neutral or weigh in favor of finding that their COMI is Canada when considering, among other things, which creditors are most affected by these proceedings, the extent of CIBC's liens on the Debtors' assets, the Debtors' cash management system, and the fact that no creditors (including those most affected) have objected to the Petition for Recognition despite receiving the required notice and, in some cases, being in regular communication with the Debtors since the Petition Date.

70. Fashion Services, a holding company, was incorporated in Michigan, and Ted Baker Limited has its head office in New York; however, as discussed above, the corporate-level executive decision-making for the Non-Canadian Debtors is in Canada.

71. With respect to the Non-Canadian Debtors' creditors and assets, for Fashion Services, which is a holding company, its principal creditor is CIBC, given that Fashion Services is a guarantor of the Existing Credit Facility. CIBC is based in Canada. Fashion Service's principal asset is its ownership interests in Ted Baker Limited, which is pledged to CIBC.

72. Ted Baker Limited's largest and most substantial creditor also is CIBC. As discussed above, CIBC is owed over USD $22.7 million under the Existing Credit Facility, which

is governed by Canadian law. And although Ted Baker Limited's assets are principally located in the United States, substantially all its assets are encumbered by CIBC's first-priority liens. Furthermore, with respect to the Debtors' cash (all of which constitutes CIBC's cash collateral), as explained in the First Adams Declaration, the Debtors have a centralized Cash Management System for the collection, transfer and disbursement of funds, which is maintained and administered by treasury and finance personal based in Fashion Canada's head office in Canada and Ted Baker Limited's office in New York. The Company has 45 bank accounts, 41 of which are held in Canada at CIBC, with only four held in the US. The balance outstanding under the Existing Credit Facility is paid down on a daily basis through the automatic sweeping of certain Canadian Bank Accounts.

73. Thus, CIBC is the most affected creditor by these proceedings. CIBC not only expects Ted Baker Limited's main insolvency proceeding to take place in Canada, but, in fact, required it as a condition to its agreement to provide Ted Baker Limited with critical funding to allow the Debtors to stay in business and finance these proceedings through the Interim Facility and the DIP Facility for the benefit of all Ted Baker Limited's stakeholders. Indeed, approval of recognition is a condition to the Debtors' continued receipt of funding under the DIP Facility.

74. Another significant creditor of Ted Baker Limited is ABG-TB IPCO (UK) Limited ("ABG-TB"), the assignee of the NODL License Agreement, which asserts claims against Ted Baker Limited for royalties allegedly due under the NODL License Agreement in excess of USD $1.82 million. Although ABG-TB is based in New York, Ted Baker Limited's notice address in the License Agreement is 5090 Orbiter Drive, Mississauga, Ontario, Canada, and Mr. Farren is listed as the main contact. As stated above, all contact and negotiations with ABG are done through me and take place in Canada. Thus, it is fair to infer that ABG would expect Ted Baker

Limited's main insolvency proceeding to take place in Canada. Indeed, neither ABG nor its affiliates have objected to the Petition for Recognition, despite receiving the required notice and having been in consistent contact with the Debtors and their advisors since the Petition Date.

75. Another significant creditor of Ted Baker Limited is Retail, which is owed in excess of USD $5 million on account unpaid compensation ERP License Agreement and executive management fees. As previously stated, Retail is located in Canada.

76. Another significant creditor of Ted Baker Limited is Future Forwarding Company ("Future Forwarding") (Ted Baker Limited's primary warehouse distribution provider), which is located in Atlanta, Georgia and, as of the Petition Date, was owed approximately USD $2.3 million. Future Forwarding also has not objected to the Petition for Recognition, despite receiving notice.

77. Ted Baker Limited also has certain creditors located in the U.K. and abroad and vendors and landlords in the United States. With respect to the landlords, however, Ted Baker Limited is current on its rent. Ted Baker Limited owes approximately USD $20 million on an unsecured basis to over 100 vendors, roughly USD $8 million of which is owed to vendors located outside the United States. Thus, CIBC, ABG, Future Forwarding, and Retail are the significant known creditors of Ted Baker Limited affected by these proceedings, and these creditors either support the Canadian venue for Ted Baker Limited's main insolvency proceeding or have not objected to the relief sought in the Petition for Recognition.

C. The Jurisdiction Governing Most Disputes

78. While Ted Baker Limited clearly has leases governed by New York law, and the License Agreement with ABG-TB is governed by New York law, two of Ted Baker Limited's most important agreements, which are the lifeblood of its business, are governed by Canadian law,

to wit, its Existing Credit Agreement and the ERP License Agreement. Furthermore, I would note that, as of the Petition Date, Ted Baker Limited is not party to any litigation in the United States.

79. Thus, I believe that relevant factors pertaining to the Non-Canadian Debtors' COMI weigh strongly in favor of the conclusion that their COMI is in Canada.

III. Alternatively, the Canadian Proceeding is a "Foreign Non-main Proceeding"

80. In the event the Court is not inclined to grant recognition of the Canadian Proceeding as "foreign main proceeding", I have been advised that a "foreign nonmain proceeding" means a foreign proceeding pending in a country where the debtor has an "establishment," which means "any place of operations where the debtor carries out a nontransitory economic activity."

81. As demonstrated above, the Non-Canadian Debtors carry out substantial economic activity in Canada, which is "nontransitory." All of Fashion Service's directors and two out of Ted Baker Limited's three directors sit in Canada. The Non-Canadian Debtors' ultimate shareholders are in Canada and they have significant contracts with Canadian entities, which are governed by Canadian law. Their prepetition secured credit facility, Interim Facility, and the proposed DIP Facility are all with a Canadian bank. The balance outstanding under the Existing Credit Facility, under which the Non-Canadian Debtors are jointly and several liable, is paid down on a daily basis through the automatic sweeping of certain Canadian Bank Accounts. The Company's IT support services, including its critical "Tech Stack," is deployed and maintained in Canada.

82. Therefore, to the extent the Court determines that the Non-Canadian Debtors' COMI is not in Canada, I submit that the Non-Canadian Debtors have an "establishment" in Canada.

[*signature page to follow*]

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Dated: May 6, 2024

/s/ Antoine Adams
Antoine Adams
Corporate Secretary

EXHIBIT A

Justice Black's Endorsement

SUPERIOR COURT OF JUSTICE

COUNSEL SLIP

COURT FILE NO.: CV-24-00718993-00CL **DATE:** **May 3, 2024**

NO. ON LIST: **1**

TITLE OF PROCEEDING: **TED BAKER CANADA INC. ET AL v YORKDALE SHOPPING CENTRE HOLDINGS INC.**

BEFORE JUSTICE: **BLACK, J**

PARTICIPANT INFORMATION

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ENDORSEMENT OF JUSTICE BLACK

Overview

1. On April 24, 2024 I made an initial order in this matter granting CCAA protection for the Applicants (in this endorsement I will continue to use terms as defined in my initial endorsement and in the materials filed).

2. This morning's hearing was the "comeback" contemplated in the CCAA and in my initial order.

3. It is evident that since the initial attendance the Applicants, the Monitor, CIBC and various other interested parties and stakeholders have been working diligently and cooperatively to determine the next steps with a view to maximizing value for all concerned.

4. The plan proposed by the Applicants this morning, with the support of the Monitor and other stakeholders, contemplates a realization process to sell the Applicants' remaining Merchandise and FF&E (fixtures, furnishings and equipment) over the course of 12 weeks (the "Sale").

5. The hope is that viable third party going concern transactions will be identified for some or all of the Applicants' business or assets, and the proposed realization procees is sufficiently flexible to allow the Sale to be modified to allow for such third party going concern transaction(s).

Realization Process Approval Order

6. Among other features, the proposed Realization Process Approval Order will:

    a. approve a consulting agreement between Ted Baker NA and Gordon Brothers Canada ULC and Gordon Brothers Retail Partners, LLC (together, the "Consultant") dated April 30, 2024;

    b. approve Canadian and U.S. sale guidelines for the orderly realization of the Merchandise and FF&E at Canadian and U.S. locations, stores and warehouses; and,
    c. authorize the Applicants, with the assistance of the Consultant, to undertake a realization procee in accordance with the Realization Process Approval Order, the Consulting Agreement and the Sale Guidelines.

ARIO

7. In addition, the proposed amended and restated initial order ("ARIO") will, among other things:
    a. extend the Stay Period until August 2, 2024;

    b. approve a key employee retention plan (the "KERP"), grant a court-ordered charge as security for payments under the KERP, and grant a sealing order in respect of the KERP;

    c. authorize the Applicants to enter into the DIP Term Sheet and borrow under the DIP Facility in the maximum (principal) amount of USD $28 million, secured by the DIP Lender's Charge; and

    d. increase the Administration Charge to USD $1.5 million and the Directors' Charge to USD $5 million.

The U.S. Proceedings

8. In terms of the parallel proceedings in the United States Bankruptcy Court for the Southern District of New York seeking an order to recognize and enforce these CCAA proceedings, the Applicants were granted provisional relief in the Chapter 15 Case, including a temporary restraining order to obtain the benefits of a stay of proceedings, on April 26, 2024. The final recognition hearing is scheduled for May 8, 2024, and I am advised that the Foreign Representative intends to seek recognition by the US Court at that time of the ARIO and the Reliazation Process Approval Order.

Activities Since the Initial Order

9. The Applicants and the Monitor report that, since the granting of the Initial Order, they have been working to stabilize the Applicants' business and operations, advising stakeholders including landlords, employees, suppliers, license partners and others of the Initial Order, as well as commencing and pursuing the Chapter 15 Case, developing the KERP, negotiating the DIP Term Sheet, developing the Sale Guidelines and working with the Consultant in that regard, and responding to inquiries from numerous creditors and stakeholders.

10. In addition, the Applicants advise that since the Initial Order, they have contacted various stakeholders to communicate their receptiveness to potential going concern transactions, and that they have fielded a number of inquiries, and entered into non-disclosure agreements in that regard.

11. The Applicants and the Monitor also provide details about the process undergone to select the Consultant, and details about the Sale, which is to commence in the near term on a date to be agreed by the Applicants and the Consultant, and to conclude within 12 weeks. The Applicants and Monitor also provide details about the Consultant's fee for this work.

Items for Which Approval Sought

12. Having regard to the evidence about these various steps and activities since the Initial Order, and with the concurrence of the Monitor and without opposition at this stage from any stakeholders, the Applicants ask that the court approve:

    a. The Consulting Agreement and Sale Guidelines;

    b. The KERP and the KERP Charge;

    c. A Sealing Order in respect of the KERP;

    d. The DIP Term Sheet and the DIP Lender's Charge;

    e. Proposed increases to the Administration Charge and the Directors' Charge; and

    f. An extension of the Stay Period until August 2, 2024.

Discussion and Approvals Granted

13. Based on all of the evidence before me, I am prepared to grant the relief sought.

14. I am satisfied that the steps proposed by the Applicants and endorsed by the Monitor meet the criteria set out in Nortel Networks Corp (Re), 2009 CanLII 39492 (ONSC) (the so-called "Nortel Factors") and the criteria enumerated in s. 36(3) of the CCAA.

15. More particularly, it appears that the the Sale is warranted at this time, and is a critical and urgent part of the realization process (the urgency comes in part from the seasonal nature of the Applicants' business and their current liquidity challenges). I am satisfied that the process undertaken to select the Consultant was reasonable and appropriate, and that the assistance of the Consultant is an important element to ensure that the realization process will maximize recoveries. The Consulting Agreement nonetheless affords the Applicants the flexibility to pursue a going concern transaction(s) if any emerge.

16. The terms of the Consulting Agreement, the Sale Guidelines and Sale Approval Order are similar to and consistent with such agreements and orders that have been approved in a number of other retail insolvencies, including Nordstrom, Mastermind Toys, and Bed Bath & Beyond Canada.

17. As noted, the Monitor has been consulted closely with respect to all aspects of the proposed process, and supports the relief sought.

18. The KERP is intended to incentivize the retention of eight key Canadian and U.S. employees who have been identified as critical to a successful realization process. The KERP Charge is proposed in order to secure amounts payable under the KERP up to a maximum of USD $250,000.00.

19. The court's discretion under the CCAA to approve a KERP and KERP Charge is well established, and the jurisdiction for these elements is found in s. 11 of the CCAA (and the court's broad power thereunder to make such orders as are appropriate in a CCAA proceeding. As the Applicants note, KERPs are often seen in the context of retail insolvencies.

20. Inasmuch as the KERP schedule contains commercially sensitive and personal information about the employees involved, I am satisfied that the sealing order sought for the KERP schedule is reasonable and appropriate in the circumstances.

21. As discussed in my initial endorsement in this matter, CIBC's willingness to continue to provide funding has been indispensable to the continued activities of the Applicants. Since the Initial Order, CIBC has agreed to provide, in the capacity as DIP Lender, additional funding to Ted Baker Canada and Ted Baker Limited as Borrowers, and Fashion Canada and Fashion US, as guarantors under a senior secured, super priority, debtor-in-possession, revolving credit facility (the "DIP Facility"). The DIP Lender's Charge is a necessary precondition to the DIP Facility being available, and the DIP Facility is critical to the steps contemplated in the relief sought.

22. Under s.11.2(1) of the CCAA, the court has authority to grant an interim financing charge in an amount the court considers appropriate, and which is consistent with the pre-filing status quo, upholding the relative priority of each secured creditor. I am satisfied, based on the evidence in the record, that the proposed DIP Facility and DIP Lender's Charge meet these conditions and that the amount (up to a maximum principal amount of USD $28 million) is appropriate.

23. It was contemplated at the time of the Initial Order that the Administration Charge and the Directors' Charge would have to be increased at the time of the comeback hearing. I am advised that the DIP Lender does not object to the proposed increases, and accordingly I grant them.

24. Given that it is evident to me that the Applicants have been acting diligently and in good faith, and given the concurrence of the Monitor, I extend the Stay Period until August 2, 2024 as requested. This will allow the Applicants, with the assistance of the Consultant and the Monitor, to conduct and complete the Sale. It will also give the Applicants and the Monitor the time and space to continue to explore a potential going concern transaction or transactions.

Conclusion

25. For these reasons, I grant the orders sought by the Applicants, and direct that this matter come back before the court on or about August 2, 2024 (or sooner if additional direction from the court is required).

EXHIBIT B

Cash Flow Forecast

Ted Baker Retail
Cash Flow Forecast (Consolidated)

Unaudited, in USD $ 000's	Notes	*Week 1* Apr 28	*Week 2* May 05	*Week 3* May 12	*Week 4* May 19	*Week 5* May 26	*Week 6* Jun 02	*Week 7* Jun 09	*Week 8* Jun 16	*Week 9* Jun 23	*Week 10* Jun 30	*Week 11* Jul 07	*Week 12* Jul 14	*Week 13* Jul 21	*Week 14* Jul 28	*Week 15* Aug 04	*15 Week* TOTAL
Receipts																	
Collections	1	456	1,507	1,507	2,680	4,461	6,859	6,330	8,771	7,974	8,772	9,131	7,398	4,079	-	-	69,923
Sales tax collected		32	135	135	404	258	398	421	418	563	640	527	322	294	-	-	4,546
Total Receipts		**488**	**1,642**	**1,642**	**3,084**	**4,719**	**7,257**	**6,750**	**9,188**	**8,537**	**9,412**	**9,658**	**7,719**	**4,373**	**-**	**-**	**74,469**
Disbursements																	
Duties, Freight & Warehousing	2	-	2,120	1,600	384	960	814	843	859	1,125	2,377	-	-	-	-	-	11,082
Rent & Occupancy	3	3	2,799	163	241	18	1,226	22	1,547	20	-	1,223	711	1,083	16	142	9,213
Payroll & Benefits	4	745	176	1,203	207	998	198	968	184	970	184	968	184	1,147	184	-	8,314
Sales tax remittances		71	450	-	-	-	932	-	-	-	-	2,957	-	-	-	1,250	5,661
Licensing Fees	5	-	-	-	227	-	869	-	760	-	839	-	798	-	326	-	3,818
Liquidation Fees & Expenses	6	-	-	345	121	343	190	425	181	546	253	512	210	222	-	-	3,349
Bank Fees, IT & Other	7	-	-	123	476	160	188	194	193	556	251	210	166	458	-	-	2,974
Restructuring Professional Fees	8	63	-	1,003	1,380	-	601	-	426	-	484	-	358	-	358	-	4,674
DIP Financing Fee	9	-	-	-	-	-	150	-	-	-	-	150	-	-	-	-	300
Total Disbursements		**882**	**5,545**	**4,438**	**3,036**	**2,479**	**5,167**	**2,452**	**4,149**	**3,217**	**4,387**	**6,019**	**2,427**	**2,910**	**883**	**1,392**	**49,385**
Net Cash Flow		**(394)**	**(3,904)**	**(2,796)**	**48**	**2,240**	**2,090**	**4,299**	**5,039**	**5,320**	**5,025**	**3,638**	**5,292**	**1,463**	**(883)**	**(1,392)**	**25,084**
Cash & Borrowings																	
Cash on hand																	
Opening Cash Balance		1,498	289	-	2,137	2,128	2,098	1,152	1,154	4,111	4,109	4,109	1,081	2,331	2,837	1,953	1,498
Interim Borrowings		123	5,257	-	-	-	-	-	-	-	-	-	-	-	-	-	5,379
Minimum cash maintenance		-	-	2,137	(9)	(30)	(946)	2	2,957	(2)	-	(3,028)	1,250	(897)	(184)	-	1,250
Cash Receipts (Disbursements)		(882)	(5,545)	-	-	-	-	-	-	-	-	-	-	1,403	(700)	(1,392)	(7,117)
Debt Repayment		(450)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(450)
Ending Cash Balance		**289**	**-**	**2,137**	**2,128**	**2,098**	**1,152**	**1,154**	**4,111**	**4,109**	**4,109**	**1,081**	**2,331**	**2,837**	**1,953**	**561**	**561**
Pre-filing Revolver																	
Opening balance (excl. LCs)		25,246	24,308	22,667	23,410	20,316	15,567	7,585	5,000	5,000	5,000	5,000	4,999	957	-	-	25,246
Repayments		(938)	(1,642)	496	(3,093)	(4,749)	(8,204)	(2,585)	-	-	-	(76)	(4,042)	(957)	-	-	(25,790)
Interest Expense		-	-	247	-	-	222	-	-	-	-	75	-	-	-	-	544
Ending Pre-filing Revolver		**24,309**	**22,667**	**23,410**	**20,316**	**15,567**	**7,585**	**5,000**	**5,000**	**5,000**	**5,000**	**4,999**	**957**	**-**	**-**	**-**	**-**
DIP Financing																	
Opening balance		-	123	5,379	9,817	12,853	15,332	20,568	18,857	16,775	11,453	6,428	-	-	-	-	-
Add: Interim Borrowings		123	5,257	-	-	-	-	-	-	-	-	-	-	-	-	-	5,379
Draws		-	-	4,438	3,036	2,479	5,167	2,452	4,149	3,217	4,387	6,019	-	-	-	-	35,344
Repayments		-	-	-	-	-	-	(4,163)	(6,231)	(8,539)	(9,412)	(12,610)	-	-	-	-	(40,955)
Interest Expense		-	-	-	-	-	69	-	-	-	-	163	-	-	-	-	231
Ending DIP Financing		**123**	**5,379**	**9,817**	**12,853**	**15,332**	**20,568**	**18,857**	**16,775**	**11,453**	**6,428**	**-**	**-**	**-**	**-**	**-**	**-**

Ted Baker Retail
Cash Flow Forecast
Notes and Summary of Assumptions

Disclaimer

*In preparing this illustrative forecast (the "**Forecast**"), the Company has relied upon unaudited financial information and has not attempted to further verify the accuracy or completeness of such information. The Forecast reflects assumptions including those discussed below with respect to the requirements and impact of a filing in Canada under the Companies' Creditors Arrangement Act ("**CCAA**"). Since the Forecast is based on assumptions about future events and conditions that are not ascertainable, the actual results achieved will vary from the Forecast, even if the assumptions materialize, and such variations may be material. There is no representation, warranty or other assurance that any of the estimates, forecasts or projections will be realized. The Forecast is presented in thousands of US dollars.*

1) **Collections**
   Includes receipts from (a) the sale of goods through retail and concession stores, and from certain wholesale customers, and (b) the collection of existing accounts receivable. The Realization Process is forecast to commence on May 9, 2024, subject to Court approval of the Consulting Agreement and Sale Guidelines.

2) **Duties, Freight & Warehousing**
   Includes costs to import, package, and ship merchandise to the retail stores.

3) **Rent & Occupancy**
   Includes payments required to operate the stores during the Sale Term through July 31, 2024, including rents, property taxes, utilities, security, cleaning and supplies. Starting June 1, rent is forecast to be paid in equal instalments on the first and fifteenth of each month.

4) **Payroll & Benefits**
   Includes payroll, benefits and taxes. The Forecast includes $250,000 of KERP payments during the week ending July 21, 2024.

5) **Licensing Fees**
   Includes fees payable to the Ted Baker brand licensor, calculated as a percentage of sales.

6) **Liquidation Fees & Expenses**
   Includes estimated fees to the Consultant pursuant to the Consulting Agreement.

7) **Bank Fees, IT & Other**
   Includes credit card processing fees, IT costs and other miscellaneous expenses, including certain fees paid to OSL Retail.

8) **Restructuring Professional Fees**
   Includes payments to the Applicants' Canadian and US legal counsel, the Monitor, Monitor's legal counsel, the Secured Lender's counsel and financial advisor.

9) **DIP Financing Fee**
   Includes the DIP Financing fee of $300,000, payable in two equal instalments on May 31, 2024, and July 1, 2024.