

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF **TED BAKER CANADA INC., TED
BAKER LIMITED, OSL FASHION SERVICES CANADA
INC. and OSL FASHION SERVICES, INC.**

APPLICANTS

FACTUM OF THE APPLICANTS

April 24, 2024

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PART I - NATURE OF THE APPLICATION

1. This Factum is filed in support of an application by Ted Baker Canada Inc. (“**Ted Baker Canada**”), Ted Baker Limited (together with Ted Baker Canada, “**Ted Baker NA**”), OSL Fashion Services Canada Inc. (“**Fashion Canada**”), and OSL Fashion Services, Inc. (“**Fashion Services**”, together with Fashion Canada, “**Fashion**,” and collectively, the “**Applicants**”), seeking an initial order (the “**Initial Order**”) and related relief under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”).¹

2. The Applicants operate a fashion clothing retail, wholesale, and e-commerce business under the TED BAKER banner in Canada and the US and under the BROOKS BROTHERS and LUCKY BRAND banners in Canada.

3. The Applicants entered the North America fashion retail industry in March 2023, when Fashion Canada and Fashion Services acquired the equity interests of Ted Baker Canada and Ted Baker Limited from No Ordinary Design Label (“**NODL**”), a subsidiary of Authentic Brands Group (“**ABG**”). Concurrently, Ted Baker Canada and Ted Baker Limited entered into a license agreement with NODL, whereby NODL granted Ted Baker Canada and Ted Baker Limited an exclusive license to, among other things, use TED BAKER marks and sell TED BAKER branded merchandise in Canada and the US. This was followed by two further acquisitions in August 2023 whereby Ted Baker Canada acquired certain assets in Canada relating to the LUCKY BRAND brand and BROOKS BROTHERS brand, including licensed inventory, and separately an exclusive

¹ R.S.C. 1985, c. C-36, as amended.

license to use the LUCKY BRAND and BROOKS BROTHERS marks and to sell licensed merchandise in Canada.

4. Unfortunately, since commencing operations, the Applicants' financial and operational performance has struggled, and the consolidated business has failed to achieve positive cash flow. These struggles have been primarily caused by (i) the failure of certain of ABG's operating partners to make payments in respect of the global Ted Baker supply chain, which has caused substantial disruptions in Ted Baker NA's supply chain and impacting Ted Baker NA's merchandise levels and product mix; (ii) suppliers of Ted Baker NA accelerating payment terms as a result of NODL's insolvency in the UK; (iii) issues surrounding the technological transition of the Ted Baker NA business from NODL to the Applicants, which has further disrupted the Applicants' operations and exacerbated the existing supply chain issues; and (iv) transitioning the Ted Baker website URL to tedbaker.us which has significantly impeded sales from, and disrupted relationships with, the Applicants' online customer base.

5. Efforts to reduce costs and improve sales have been unsuccessful, and the Applicants' financial position has continued to decline. At present, the Applicants are in an over advance position on the borrowing base under their Existing Credit Agreement (as defined below) and in significant arrears with a number of critical vendors. The Senior Lender (as defined below) has recently informed the Applicants that it will not permit further draws under the Existing Credit Facility outside of a CCAA proceeding. Recently, the Applicants received notices of default under certain license agreements as a result of missed royalty payments which, if not cured within 5 days, may entitle ABG to terminate such agreements. Efforts to resolve issues with ABG have been unsuccessful.

6. Without CCAA protection, the Applicants risk critical vendors taking potentially damaging enforcement steps, including the potential termination of agreements which are vital to the Applicants' continued operations. As a result, and after considering all available options and alternatives, the Applicants have determined that commencing these CCAA proceedings is their best path forward to maximize shareholder value.

7. The Applicants seek an urgent stay of proceedings (the "**Stay of Proceedings**") for the permitted initial ten-day period (the "**Initial Stay Period**") under s. 11.02(2) of the CCAA, together with related relief necessary to preserve the Applicants' business and stakeholder value during the Initial Stay Period, including the appointment of Alvarez & Marsal Canada Inc. as monitor in these proceedings (the "**Proposed Monitor**"). The Applicants also seek authorization for Ted Baker Canada to act as the foreign representative of the Applicants for the purpose of having these CCAA proceedings recognized and approved in a jurisdiction outside of Canada, and authorization for Ted Baker Canada to apply for foreign recognition and approval of these CCAA proceedings, as necessary, in the United States Bankruptcy Court for the Southern District of New York.

PART II - SUMMARY OF FACTS

8. The facts are more fully set out in the Affidavit of Antoine Adams.²

A. The Applicants

9. Ted Baker Canada is a limited company incorporated pursuant to the laws of Nova Scotia, continued pursuant to the laws of Ontario, and is headquartered in Mississauga, Ontario. Ted Baker

² Affidavit of Antoine Adams, sworn April 24, 2024 [Adams Affidavit]. Capitalized terms not otherwise defined have the same meaning as in the Adams Affidavit. Dollar amounts are given in Canadian dollars unless otherwise specified.

Canada is a wholly-owned subsidiary of Fashion Canada, a company incorporated pursuant to the laws of Ontario, and headquartered in Mississauga, Ontario.³

10. Ted Baker Limited is a limited company incorporated pursuant to the laws of New York, and is headquartered in New York, NY. Ted Baker Limited is a wholly-owned subsidiary of Fashion Services, a company incorporated pursuant to the laws of Michigan, and headquartered in Mississauga, Ontario.⁴

B. Business of the Applicants

(a) Overview

11. The Applicants operate a fashion clothing retail, wholesale, and e-commerce business under the TED BAKER banner in Canada and the US. Canadian business operations are conducted through the Applicant Ted Baker Canada, while US business operations are conducted through the Applicant Ted Baker Limited. Ted Baker Canada also conducts retail, wholesale, and e-commerce operations under the BROOKS BROTHERS and LUCKY BRAND banners, solely in Canada.⁵

12. All or substantially all of the key operational and strategic corporate decision-making relating to the Applicants' business is performed by and through Fashion's head office in Mississauga, Ontario. These functions include, among other things, executive, M&A and strategic corporate, and the approval of material financial decisions for all of the Applicants, including Ted Baker Limited. While Ted Baker Limited has its own executive leadership team based in New York, this team ultimately reports to Canadian employees based in Mississauga. Key financial

³ Adams Affidavit at para. 20. For a corporate chart showing the corporate structure of the Applicants, see Adams Affidavit at paras. 19-23.

⁴ Adams Affidavit at para. 21-23.

⁵ Adams Affidavit at para. 7.

advisory services for all the Applicants are performed by an independent contractor based in Toronto. Moreover, IT leadership for the Applicants, including strategy, development implementation, and people management, is performed by employees of Retail, an affiliate of the Applicants, that is also based out of the head office in Mississauga.⁶

13. As April 19, 2024, Ted Baker Canada employed 58 full-time and 72 part-time employees in Canada, and Ted Baker Limited employed 251 full-time and 97 part-time employees in the US. In addition, 19 full-time and 43 part-time employees currently service the Lucky Brand business and 32 full-time and 52 part-time employees service the Brooks Brothers business, all of whom are based in Canada and employed by Ted Baker Canada.⁷

(b) Retail Segments

14. The Applicants operate their business in Canada and the US through four main retail segments: (i) retail stores; (ii) wholesale; (iii) concession locations within other retail stores; and (iv) e-commerce, as follows:

(a) The Applicants operate 14 full-line and 11 outlet stores in Canada, along with 24 full-line and 10 outlet stores in the US.⁸

(b) Ted Baker Canada and Ted Baker Limited are parties to agreements with certain wholesale customers, including major department stores, pursuant to which Ted Baker NA sells TED BAKER branded products to these customers in bulk.⁹

⁶ Adams Affidavit at para. 24.

⁷ Adams Affidavit at paras. 34-35.

⁸ Adams Affidavit at para. 26 for a full list of the Applicants full-line and outlet locations.

⁹ Adams Affidavit at paras. 27-28.

- (c) Ted Baker Canada operates 6 concession locations located inside *Hudson's Bay* in Canada, and Ted Baker Limited operates 31 concession locations located inside *Bloomingdales* and one concession location located inside *Macy's* in the US.¹⁰
- (d) The Ted Baker e-commerce business is conducted through the tedbaker.ca URL in Canada, and the tedbaker.us URL in the US.¹¹

15. All of the Applicants' full-line and outlet retail operations are conducted in leased facilities, in respect of which various third parties serve as landlords.¹² The Applicants' concession locations are subject to specific agreements with *Hudson's Bay*, *Macy's*, and *Bloomingdales*.¹³

(c) Merchandising and Sourcing

16. The sourcing and purchasing of merchandise for both Ted Baker Canada and Ted Baker Limited is conducted by the Ted Baker NA team based in the New York office. All purchase orders are submitted to PDS Limited ("**PDS**"), an operating partner of the Applicants which is globally responsible for design, procurement, and maintaining relationships with suppliers and manufacturers for the Ted Baker brand. PDS designs and sources the merchandise from manufacturers, who then send purchase orders to Ted Baker NA.¹⁴

17. Following manufacture, the goods are delivered to Ted Baker NA's primary distribution centre in Atlanta (the "**Distribution Centre**"). The Distribution Centre is managed and operated by Future Forwarding Company ("**Future Forwarding**") pursuant to a Warehousing, Storage and Logistics Agreement dated October 19, 2017 (the "**Future Agreement**"). For the Brooks Brothers

¹⁰ Adams Affidavit at para. 29.

¹¹ Adams Affidavit at para. 31.

¹² See Adams Affidavit at para. 32 for a full list of Landlords.

¹³ Adams Affidavit at paras. 29-30.

¹⁴ Adams Affidavit at paras. 39-40. For a description of the merchandising and sourcing process in respect of wholesale customers and e-commerce orders, see Adams Affidavit at paras. 41-42.

business, all merchandise is sourced from SPARC Group, LLC (“**SPARC**”), while for the Lucky Brand business, 90% of merchandise is sourced from SPARC, and 10% is directly sourced by Ted Baker Canada. SDR Distribution Inc. (“**SDR**”) provides third-party logistics services to Ted Baker Canada in respect of the Brooks Brothers and Lucky Brand businesses.¹⁵

(d) Management Services and Other Shared Services

18. The Applicants rely on certain employees of OSL Retail Services Inc. (“**Retail**”) for certain executive, operational leadership, strategy, and IT services, which are primarily delivered from the Mississauga head office (together, the “**Management Services**”). The Management Services are integral to the Applicants’ operations, and the Applicants cannot operate or function without the provision of the Management Services.¹⁶

(e) License Agreements

19. The entirety of the Applicants’ inventory is licensed pursuant to the following license agreements:

- (a) a license agreement, effective March 13, 2023, between Ted Baker Canada and Ted Baker Limited, as licensee, and NODL, as licensor, whereby the licensee is licensed the rights in and to the Ted Baker trademarks in Canada and the United States in respect of certain specified product categories (as amended, the “**NODL License Agreement**”);¹⁷

¹⁵ Adams Affidavit at paras. 40, 43-44.

¹⁶ Adams Affidavit at para. 46.

¹⁷ Adams Affidavit at paras. 48-49.

- (b) a license agreement effective January 1, 2024, between Ted Baker Canada and Ted Baker Limited, as licensee, and ABG-TB IPCO (UK) Limited, as licensor, whereby the licensee was granted the right to sell additional categories of Ted Baker branded products in Canada and the United States (as amended, the “**Ted by Ted Baker License Agreement**”);¹⁸ and
- (c) two license agreements, effective April 1, 2023, whereby Ted Baker Canada, as licensee, licensed the LUCKY BRANDS and BROOKS BROTHERS Licensed Property (as defined in each agreement) from ABG Lucky, LLC and BB IPCO, LLC, respectively, and received the limited, non-exclusive right to use the Licensed Property in connection with the initial design, development, production and manufacture of the Licensed Products (as defined in each agreement) to be produced by or on behalf of Ted Baker Canada and sold in Canada (the “**Lucky Brand License Agreement**” and the “**Brooks Brothers License Agreement**”).¹⁹

20. Under each of these license agreements, the licensees are required to make periodic payments in respect of the Guaranteed Minimum Royalties (“**GMR**”) owed to the respective licensor. As is discussed in greater detail below, the licensees have not made the GMR payments which were due on April 1, 2024, in respect of the NODL License Agreement, the Lucky Brand License Agreement, and the Brooks Brothers License Agreement (collectively, “**the License Agreements**”).²⁰

¹⁸ Adams Affidavit at para. 54.

¹⁹ Adams Affidavit at paras. 56-57.

²⁰ Adams Affidavit at paras. 51, 62.

C. Indebtedness

21. Ted Baker Canada (the “**Canadian Borrower**”) and Ted Baker Limited (the “**US Borrower**”), as borrowers (in such capacity the “**Borrowers**”), Fashion Canada (the “**Canadian Guarantor**”) and Fashion Services (the “**US Guarantor**”), as guarantors (in such capacity, the “**Guarantors**” and together with the Borrowers, the “**Credit Parties**”), and CIBC (the “**Senior Lender**” or the “**Agent**”) are parties to a credit agreement dated March 14, 2023 (as amended, the “**Existing Credit Agreement**”). Pursuant to the Existing Credit Agreement, the Senior Lender provided revolving loans to the Borrowers of up to USD \$36.5 million (the “**Existing Credit Facility**”).²¹ As of April 23, 2024, the total balance under the Existing Credit Facility is approximately USD \$31.6 million.²²

22. Pursuant to the terms of the Existing Credit Agreement, a number of security documents were executed in favour of the Senior Lender (the “**Security Documents**”). Pursuant to the Security Documents, the Canadian Borrower and the Canadian Guarantor guaranteed their respective obligations under the Existing Credit Agreement, and the US Borrower and US Guarantor guaranteed their respective obligations under the Existing Credit Agreement, in each case secured against a continuing security interest in all their present and after acquired personal property. In addition, the Borrowers and the Guarantors executed a number of unconditional guarantees regarding punctual payment and due performance under the Existing Credit Agreement.²³

23. Fashion Canada is also indebted to Retail under a secured promissory note, pursuant to which Fashion Canada had promised to pay to Retail a principal amount of USD \$10 million on

²¹ Adams Affidavit at para. 86.

²² Adams Affidavit at para. 89.

²³ See Adams Affidavit at para. 88 for a full description of the Security Documents.

demand, secured by a security interest in all of Fashion Canada's present and after acquired undertakings and property.²⁴ Pursuant to a subordination agreement dated March 14, 2023, all debts, obligations and liabilities owing by Fashion Canada to Retail were subordinated and postponed to the debts, obligations and liabilities owed by the Borrowers to the Senior Lenders and the Agent under the Existing Credit Agreement.²⁵

D. Events Leading up to the CCAA Filing

24. The Applicants' financial and operational performance has struggled following the commencement of retail fashion operations, and has deteriorated to the point of no longer being sustainable. The Applicants have failed to deliver free cash flow since June 2023, and over the last year Ted Baker NA has underperformed relative to budget, and revenues have significantly declined.²⁶

25. These struggles have been principally caused by the following issues, which collectively have created significant operational and liquidity challenges for the Applicants:

- (a) **Supplier Delays:** Until December 31, 2023, NODL and AARC, a retail and e-commerce operating partner for the Ted Baker brand in the UK and Europe, were responsible for the payment of all suppliers in the Ted Baker supply chain, including in respect of merchandise ordered by Ted Baker NA. Over the course of summer and fall of 2023, payment delays on the part of NODL and AARC resulted in suppliers holding shipments and/or short shipping, creating costly delays and impacting Ted Baker NA's merchandise levels and product mix. While Ted Baker

²⁴ Adams Affidavit at para. 90.

²⁵ Adams Affidavit at para. 92.

²⁶ Adams Affidavit at para. 95.

NA, in agreement with ABG, sought to address these issues by transitioning payments from AARC to PDS, product delays due to the outstanding payments persisted, and permanently impacted the ability to have Ted Baker products delivered to stores in time for the upcoming selling season.²⁷

- (b) **Acceleration of Payment Terms:** In the lead up to and following NODL being placed into administration in the UK in March 2024, suppliers and manufacturers began demanding upfront payment, directly impacting the Applicants' available working capital.²⁸
- (c) **Delays in the Development of New Tech Stack:** Shortly after commencing operations, Ted Baker Canada and Ted Baker Limited were required to develop and migrate to their own technology platform (i.e., a Tech Stack) on an accelerated timeline as a result of being told the existing Tech Stack was to be decommissioned within 60 days. As a result, the Applicants were required to retain Retail to build a new Tech Stack on a compressed timeline. While this ultimately turned out to be a false timeline (as the existing Tech Stack was not in fact decommissioned), the transition to the new Tech Stack during the busiest selling season exacerbated the existing supply delays described above.²⁹
- (d) **E-Commerce Issues:** In June 2023, ABG informed the Applicants that, notwithstanding the fact that the Applicants had purchased the rights to the tedbaker.com URL as part of the Ted Baker Acquisition, ABG believed that AARC was in greater need for the tedbaker.com URL, given that current sales in Europe

²⁷ Adam Affidavit at paras. 96-97.

²⁸ Adams Affidavit at para. 98.

²⁹ Adams Affidavit at paras. 99-100.

were greater than North American sales, and because uncoupling the tedbaker.com URL from the existing global platform would be challenging. Instead, it was proposed that Ted Baker Limited would be given the right to use the tedbaker.us URL. While ABG ultimately provided USD \$1.875 million in compensation, this payment did not address the full extent of the losses incurred by the Applicants, or the disruption caused to relationships with the Applicants' customer base.³⁰

- (e) **Poor Sales Performance:** The Ted Baker NA business has also suffered poor sales performance. For the 11 months ended December 31, 2023, Ted Baker NA significantly underperformed expectations, generating sales and EBITDA of USD \$145 million and (\$5.3) million, respectively, and a net loss of over USD \$11.3 million. During January through April YTD 2024, Ted Baker NA has generated negative cash flow in excess of \$5 million.³¹

26. In February 2024, the Applicants requested funding from ABG in order to address the mounting liquidity challenges. ABG refused. In April 2024, the Applicants again requested that ABG fund the Ted Baker NA business; however, all the Applicants' proposals were rejected.³²

E. The Urgent Need for Relief Under the CCAA

27. As a result of the events described above, the Applicants face significant liquidity challenges which threaten their ability to continue as a going concern. Over the last several months, the Applicants have reduced spending, offered more aggressive consumer trade offers at their retail

³⁰ Adams Affidavit at paras. 101-102.

³¹ Adams Affidavit at paras. 103-104.

³² Adams Affidavit at paras. 105-106.

stores, and have attempted to negotiate solutions with ABG. Unfortunately, these efforts have been unsuccessful, and Ted Baker NA has continued to struggle.³³

28. The Applicants are currently in an over advance position on their borrowing base under the Existing Credit Facility, such that at present they are unable to make any additional draws. The inability to make additional draws has prevented the Applicants from meeting their obligations as they come due,³⁴ including as follows:

- (a) On April 1, 2024, Ted Baker NA failed to make approximately USD \$2 million in payments to ABG under the License Agreements (the “**Missed April Payments**”). The Applicants received Notices of Breach from ABG in respect of the Missed April Payments on April 17, 2024, which, if not cured within five business days, may give ABG the right to terminate the License Agreements.³⁵
- (b) The Applicants are currently three months in arrears on amounts owing to Future Forwarding, totalling approximately USD \$2.4 million, and have received notice that Future Forwarding will cease shipping Ted Baker products if these payments are not received.³⁶
- (c) The Applicants recently discovered that certain sales taxes are owing to the Canada Revenue Agency (“**CRA**”);³⁷
- (d) The Applicants owe approximately USD \$1 million in property taxes to the landlord of Ted Baker’s 5th Avenue location; and

³³ Adams Affidavit at para. 14.

³⁴ Adams Affidavit at para. 104.

³⁵ Adams Affidavit at paras. 108-109.

³⁶ Adams Affidavit at para. 110.

³⁷ Adams Affidavit at paras. 111-112.

- (e) In excess of USD \$14 million is owing by the Applicants to merchandise vendors and critical logistics and IT vendors.³⁸

29. The Senior Lender has recently informed the Applicants that it will not permit further draws under the Existing Credit Agreement outside of a CCAA proceeding, and without the relief provided for in the proposed initial order.³⁹ As discussed in more detail below, the Senior Lender has agreed to permit, subject to certain conditions, furthering borrowings under the Existing Credit Agreement during the Initial Stay Period.

30. After considering available options, and in light of the imminent expiry of the cure period under the License Agreements and the risk of non-shipment of inventory from the Distribution Centre, the Applicants have determined that commencing these CCAA proceedings is in the best interests of both the Applicants and their stakeholders. The Applicants intend to use the breathing room afforded by the CCAA and the funding that will only be available to them within a CCAA proceeding to engage with their principal stakeholders and to consider the best manner in which to monetize their assets, including potentially a liquidation and orderly wind-down of their operations, or other value-maximizing alternatives.⁴⁰

PART III - THE ISSUES AND THE LAW

31. This Factum addresses the following issues:

- (a) The Applicants are entitled to seek protection under the CCAA, as the Applicants are insolvent, have obligations exceeding \$5 million, and have their chief place of business in Ontario;

³⁸ Adams Affidavit at para. 113-114.

³⁹ Adams Affidavit at para. 115.

⁴⁰ Adams Affidavit at para. 17.

- (b) This Court should grant the Stay of Proceedings;
- (c) This Court should authorize payment of certain pre-filing claims to critical third parties;
- (d) This Court should authorize the Interim Borrowings and the Interim Lender's Charge (each as defined below);
- (e) This Court should authorize Ted Baker Canada to act as the foreign representative for the purpose of having these CCAA proceedings recognized and approved in a jurisdiction outside of Canada, and to apply for foreign recognition and approval of these CCAA proceedings in any jurisdiction outside of Canada; and
- (f) This Court should approve the Administration Charge and Directors' Charge (both as defined below).

A. The Applicants are Entitled to Seek Protection under the CCAA

(a) The Applicants are Insolvent

32. The CCAA applies to a “debtor company” or affiliated debtor companies where the total of claims against the debtor or its affiliates exceeds five million dollars. The Applicants are each a “company” for the purposes of s. 2 of the CCAA because they do business in or have assets in Canada.⁴¹ A “debtor company” means, *inter alia*, a company that is insolvent.⁴² Whether a company is insolvent for the purposes of this definition is evaluated by reference to the definition

⁴¹ *Lydian International Limited (Re)*, [2019 ONSC 7473](#) [*Lydian*], at para. 35 and 36, citing *Cinram International (Re)*, [2012 ONSC 3767](#).

⁴² CCAA, ss. 2 and 3(1).

of “insolvent person” in the *Bankruptcy and Insolvency Act* (“BIA”), and the expanded concept of insolvency adopted by this court in *Stelco*.⁴³

33. The Applicants are either currently insolvent under the BIA test for solvency, or facing the kind of imminent liquidity crisis that clearly satisfies the expanded *Stelco* test. As discussed above, the Applicants have been unable to meet their obligations as they come due,⁴⁴ including their obligations under the License Agreements and the Future Agreement. The Applicants currently have approximately USD \$1.2 million in their bank accounts, against approximately USD \$4 million in payments required to be made in the next several days, including payroll.⁴⁵

34. This reasoning applies to each of the Applicants. Further, when CCAA applicants are part of a significantly intertwined group of affiliated debtor companies, it may not be necessary to find that each and every applicant is insolvent on a stand-alone basis.⁴⁶ As is discussed in greater detail below, the Applicants are all affiliated entities, and the businesses of the Applicants in Canada and the US are inextricably intertwined.

(b) The Ontario Court Has Jurisdiction Over the Proceeding

35. Subsection 9(1) of the CCAA provides that an application for a stay of proceedings under the CCAA may be made to the court that has jurisdiction in the province in which the head office or chief place of business of the company in Canada is situated, or, if the company has no place of

⁴³ *Stelco Inc. (Re)*, [2004 CarswellOnt 1211](#) at para. 26. This approach to the insolvency criterion has been applied on countless occasions, including *Target Canada Co. (Re)*, [2015 ONSC 303](#) at para. 26 [*Target*]; *Just Energy Corp. (Re)*, [2021 ONSC 1793](#) [*Just Energy*] at paras. 48 to 51; *Nordstrom Canada Retail, Inc. (Re)*, [2023 ONSC 1422](#) at para. 26 [*Nordstrom*].

⁴⁴ Adams Affidavit at para. 107.

⁴⁵ Adams Affidavit at para. 12.

⁴⁶ *First Leaside Wealth Management Inc. (Re)*, [2012 ONSC 1299](#) (S.C.J.) [*First Leaside*] at paras. 28 to 30; see also *Dondeb Inc. (Re)*, [2012 ONSC 6087](#) at para. 16.

business in Canada, in any province within which any assets of the company of the company are situated.⁴⁷

36. Each of the Applicants fulfils these requirements. Fashion Canada and Ted Baker Canada are both incorporated in Canada and headquartered in Mississauga, while Fashion Services, though incorporated in Michigan, is headquartered in Mississauga.⁴⁸ Ted Baker Limited and Fashion Services each have assets in Canada in the form of funds on deposit in Canadian bank accounts, and funds currently being held on retainer in Canada by counsel.⁴⁹ A number of courts have held that funds deposited in bank accounts or held on retainer in this manner are sufficient to satisfy the CCAA jurisdiction requirements, and have cautioned that the court must not engage in “a qualitative or quantitative analysis of the Canadian assets.”⁵⁰

37. Further, Ontario is the proper forum for the restructuring, as Ontario is the chief place of business of the Applicants as a whole. The Applicants’ business operations are functionally and operationally integrated, and all of the Applicants’ major strategic decisions are made in Canada. Substantially all of the Applicants’ personnel ultimately report to key management figures located in Mississauga, including the Corporate Secretary and President, and all or substantially all of the key operational and strategic corporate decision-making relating to the Applicants’ business and major stakeholder negotiations, including all negotiations with ABG and its affiliates, are conducted in Canada. As discussed above, the Applicants rely on employees of Retail located in the Mississauga head office for the provision of the Management Services, without which they

⁴⁷ *Target*, paras. 29 to 30; *Bed Bath & Beyond Canada Limited (Re)*, [2023 ONSC 1014](#) at para. 25.

⁴⁸ Adams Affidavit at paras. 20, 22-23.

⁴⁹ Adams Affidavit at para. 75.

⁵⁰ *Global Light Telecommunications Inc., (Re)*, [2004 BCSC 745](#) at para. 17; see also *Canwest Global Communications Corp. (Re)*, [2009 CanLII 55114 \(ON SC\)](#) at para. 30. In reference to funds held on retainer by counsel, see *Syncreon Group B.V. (Re)*, [2019 ONSC 5774](#) at para. 27; *LTL Management LLC (Re)*, [2021 ONSC 8357](#) at para. 13.

cannot operate or function independently. These proceedings could not occur without the provision of the Management Services.⁵¹

38. Canadian courts have accepted that a multinational enterprise such as the Applicants' business must be restructured as a global unit, even where operating units are located in foreign jurisdictions. For example, in *Chalice Brands*, this court held that the requirements of s. 9(1) of the CCAA were satisfied on the basis that the applicant, the ultimate parent and controlling mind of a number of US operating entities, was incorporated in Ontario and had assets in Ontario.⁵² Similarly, in *Ghana Gold*, this court refused the request of two Ghanaian subsidiaries of a CCAA debtor for an order that the CCAA proceeding not apply to their Ghanaian property. Central to the Court's reasoning were the facts that: (i) the applicants were closely operationally integrated; (ii) the applicants primary secured creditor and potential interim financing source was located in Ontario; and (iii) that it was critical to the restructuring that the entire group of applicants be included in the CCAA proceedings.⁵³

39. As discussed in more detail below, if the proposed Initial Order and related relief is granted, Ted Baker Canada intends to commence a recognition proceeding under chapter 15 of the US Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York.⁵⁴ This relief will ensure that actions taken in relation to US entities and US property will be overseen by the US courts.

⁵¹ Adams Affidavit at paras. 24, 46, 133.

⁵² *Chalice Brands Ltd. (Re)*, [2023 ONSC 3174](#) at paras. 6, 26-30.

⁵³ *Ghana Gold Corp (Re)*, [2013 ONSC 3284](#) at paras. 55 to 56.

⁵⁴ Adams Affidavit at paras. 131-132.

B. The Stay of Proceedings Should be Granted

40. Section 11.02(1) of the CCAA permits the Court to grant an initial stay of up to 10 days on an application for an initial order, provided such a stay is appropriate and the Applicants have acted with due diligence and in good faith. Under s. 11.001, other relief granted pursuant to this Court's powers under s. 11 of the CCAA at the same time as an order under s. 11.02(1) must be limited "to relief that is reasonably necessary for the continued operation of the debtor company in the ordinary course of business during that period."

41. In *Lydian*, one of the first cases to interpret this provision, Morawetz C.J. stated that the Initial Stay Period preserves the *status quo* and allows for operations to be stabilized and negotiations to occur, followed by requests for expanded relief on proper notice to affected parties at the full comeback hearing.⁵⁵ Whether particular relief is necessary to stabilize a debtor company's operations during the Initial Stay Period is an inherently factual determination, based on all of the circumstances of the particular debtor.⁵⁶

42. All of the relief requested in this first-day application meets these criteria. Each aspect of the relief sought by the Applicants in the Initial Stay Period is interdependent, and collectively the relief is critical to allow the Applicants to properly respond to the circumstances in which they find themselves. All of the requested relief – as submitted further below – consists of exactly the type of essential "keep the lights on" measures contemplated by s. 11.001 of the CCAA.

⁵⁵ *Lydian*, at para. 26 and 30; see also *Just Energy*, at para. 56.

⁵⁶ See for example *Laurentian University of Sudbury (Re)*, [2021 ONSC 659](#), in which the CCAA Court granted a variety of relief during the Initial Stay Period that was particular to the debtor company's factual circumstances. See also *Just Energy; Boreal Capital Partners Ltd et al. (Re)*, [2021 ONSC 7802](#) at para. 16 [*Boreal Capital*].

C. The Interim Borrowings and Interim Lender's Charge Should be Approved

43. As set out above, the Applicants currently do not have access to further draws under the Existing Credit Facility. In order to avoid an abrupt shutdown of the Applicants' business, CIBC (in which capacity, the "**Interim Lender**") is prepared to permit Ted Baker Canada and Ted Baker Limited to continue to borrow under the Existing Credit Facility during the Initial Stay Period, pursuant to the Existing Credit Agreement (the "**Interim Borrowings**"). The Interim Borrowings will not exceed USD \$7 million, and draw requests made as part of the Interim Borrowings can only be made with the consent of the Interim Lender.⁵⁷

44. Pursuant to s 11.2 of the CCAA, the Applicants seek an interim financing charge to secure the Interim Borrowings (the "**Interim Lender's Charge**"). The Interim Lender's Charge is proposed to be secured by all of the present and future assets, property, and undertaking of the Applicants (the "**Property**"), and to rank behind the Administration Charge and ahead of all other security interests, charges and liens.⁵⁸ Under the terms of the agreement permitting the Interim Borrowings, the Applicants' post-filings receipts will be applied to pay down the Applicants' pre-filing indebtedness under the Existing Credit Facility.⁵⁹

45. Section 11.2(1) of the CCAA provides the court with the authority to grant an interim financing charge "in an amount the court considers appropriate," subject to the limitation that the security or charge may not secure an obligation that exists before the order is made. The emphasis under s. 11.2(1) is on ensuring that the proposed financing is consistent with the pre-filing status quo, such that it upholds the relative priority of each secured creditor.⁶⁰ The proposed Interim

⁵⁷ See Adams Affidavit at paras. 124-125 for a full description of the Interim Borrowings.

⁵⁸ Adams Affidavit para. 127.

⁵⁹ Adams Affidavit at para. 125.

⁶⁰ *BZAM Ltd. (Re)*, (February 28, 2024), Ont S.C.J. [Commercial List], Court File No. CV- 24-00715773-00CL ([Endorsement of Justice Osborne](#)) at para. 56 [*BZAM*].

Lender's Charge satisfies these conditions, as it is sized appropriately to the Applicants' needs, does not operate to secure any of the Interim Lender's pre-filing obligations, and is consistent with pre-filing priorities. Numerous CCAA courts have approved interim financing arrangements in which post-filing receipts are applied to pre-filing debts of the interim lender (so called "creeping roll-ups"), and have found that arrangements of this type are in accordance with the Court's jurisdiction under s. 11.2(1).⁶¹

46. Section 11.2(4) of the CCAA lists the factors to be considered by the court in deciding whether to approve interim financing and grant an interim financing charge. When an application for interim financing is made at the same time as an initial application, the applicant must additionally satisfy the court that the terms of the loan are "limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period [i.e. the initial stay period]." This additional requirement does not preclude interim financing and a related charge from being approved during the initial stay period, and a number of CCAA courts have granted interim financing at the time of the initial order,⁶² including interim financing which incorporates a creeping roll-up.⁶³

47. These factors favour the requested relief. The Applicants' cash flow projections demonstrate that interim financing is needed to provide stability and fund operations during the Initial Stay Period,⁶⁴ and the Interim Borrowings are expected to provide the Applicants' with sufficient liquidity to continue their business operations for the Initial Stay Period.⁶⁵ The Interim

⁶¹ See, i.e., *Mountain Equipment Co-Operative (Re)*, [2020 BCSC 1586](#), at paras. 47-51 [MEC], in which the court approved amendments to an existing credit facility, whereby the debtor was permitted to make further draws, and which contained an express term requiring post-filing receipts to be used to pay down pre-filings debts under the existing facility; see also *Performance Sports Group Ltd. (Re)*, [2016 ONSC 6800](#) at para. 22; *Comark Inc. (Re)*, [2015 ONSC 2010](#) at paras. 17-29; *BZAM*, at paras. 56, 61-63.

⁶² See, i.e., *Just Energy*, at paras. 7, 71; *MEC*, at para. 2.

⁶³ *BZAM*, at paras. 56, 61-63.

⁶⁴ Adams Affidavit at para. 122.

⁶⁵ Adams Affidavit at para. 127.

Lender has indicated that it is not prepared to advance funds without the security of the Interim Lender's Charge, including the proposed priority thereof.⁶⁶

D. Authority to Permit Pre-Filing Payments to Critical Third Parties

48. The Applicants seek authorization, with the consent of the Monitor and the Interim Lender, to make payments of pre-filing amounts to certain critical third parties. In particular, the preservation of the Applicants' relationships with Future Forwarding and SDR is essential to preserving the value of the Applicants, as it ensures that merchandise will continue to flow to Ted Baker NA's wholesale customers and retail locations. Any disruptions of their services could jeopardize the continued operation of the Applicants' business during these CCAA proceedings, to the detriment of creditors and stakeholders generally⁶⁷

49. The Court has exercised its jurisdiction on multiple occasions to grant similar relief.⁶⁸ The court in *Index Energy Mills Road Corporation* outlined the factors that courts have considered in determining whether to grant such authorization, including (a) whether the goods and services are integral to the business of the applicants; (b) the applicants' dependency on the uninterrupted supply of the goods or services; (c) the fact that no payments will be made without the consent of the Monitor (which is a requirement under the proposed Initial Order); and (d) the effect on the debtors' operations and ability to restructure if it could not make such payments.⁶⁹ These factors are fulfilled in this case.

⁶⁶ Adams Affidavit at para. 128.

⁶⁷ Adams Affidavit at para. 45.

⁶⁸ See, for example, *Target*, at para. 62 to 65; *Nordstrom*, at paras. 50-53; *Just Energy*, at para. 99; *Original Traders Energy Ltd. and 2496750 Ontario Inc. (Re)*, [2023 ONSC 753](#) at paras. 72-74; *Boreal Capital* at paras. 20-22.

⁶⁹ *Index Energy Mills Road Corporation (Re)*, [2017 ONSC 4944](#) at para. 31.

E. Foreign Recognition

50. Because: (i) the Applicants have operations, assets and valuable business and trade relationships in the US; and (ii) the CIBC is unwilling to permit further draws under the Existing Credit Facility in the face of the over advance position on the borrowing base, absent the relief contemplated by the Initial Order and recognition of the same in the US, contemporaneously with commencement of these CCAA proceedings, Ted Baker Canada intends to initiate a case under Chapter 15 of Title 11 of the Bankruptcy Code seeking an order to recognize and enforce these CCAA proceedings in the US and protect against any potential adverse action taken by US-based creditors (the “**Chapter 15 Case**”).⁷⁰

51. Pursuant to s. 56 of the CCAA, the Applicants therefore seek an order allowing Ted Baker Canada to act as a foreign representative in respect of this proceeding for the purpose of having orders issued in the course of this proceeding recognized in jurisdictions outside of Canada, including in the anticipated Chapter 15 Case. The operations of the Applicants are functionally and operationally integrated, such that the US business cannot operate independently of the Canadian business.⁷¹ As such, authorizing Ted Baker Canada to seek recognition of the orders of this Court in the United States is appropriate and in the best interests of stakeholders.⁷²

F. The Administration Charge Should be Granted

52. Pursuant to s. 11.52 of the CCAA, the Applicants are requesting an Administration Charge in favour of the Proposed Monitor, its Canadian and US counsel, and Canadian and US counsel to

⁷⁰ Adams Affidavit at paras. 18, 131.

⁷¹ Adams Affidavit at paras. 24, 46, 133.

⁷² For examples of authorization to act as a foreign representative being granted under similar circumstances, see *BioSteel Sports Nutrition Inc. (Re)*, (September 14, 2023), Ont S.C.J. [Commercial List], Court File No. CV-23-00706033-00CL ([Endorsement of Justice Cavanaugh](#)) at paras. 30-32; *Black Press Ltd. et al. (Re)*, (January 15, 2024), Supreme Court of British Columbia, Court File No. S-240259 ([Initial Order](#)) at para. 55; *Canadian Overseas Petroleum Limited (Re)*, (March 8, 2024), A.B.K.B., 2401-03404 ([CCAA Initial Order](#)) at para. 53.

the Applicant, as security for their respective fees and disbursements up to a maximum of USD \$750,000 (the “**Administration Charge**”), which amount covers the time period until the Comeback Hearing. The quantum of the Administration Charge was developed in consultation with the Proposed Monitor and is proposed to be secured by the Property and to have first priority over all other charges and security interests.⁷³

53. The requested Charge satisfies the well-accepted factors originally established by Pepall J. in *Canwest Publishing*. Among other factors, the requested amount is fair and reasonable, and appropriate to the size and complexity of the businesses being restructured.⁷⁴ In addition, the initial amount requested is tailored only to the needs within the Initial Stay Period.

G. The Directors’ Charge Should be Granted

54. In accordance with s. 11.51 of the CCAA, the Applicants also seek a directors and officers charge in the amount of USD \$2.5 million until the Comeback Hearing (the “**Directors’ Charge**”). The Director’s Charge is proposed to be secured by the Property and to rank behind the Administration Charge, the Interim Lender’s Charge and the Existing Credit Facility.⁷⁵

55. The Applicants’ present and former directors and officers are among the potential beneficiaries under liability insurance policies that cover an aggregate annual limit of approximately \$5 million, plus \$1 million in a side policy. This policy will likely not provide sufficient coverage for the potential liability that the director and officers could incur in relation to these CCAA proceedings.⁷⁶

⁷³ Adams Affidavit at para. 134.

⁷⁴ See, for example, *Target*, at para. 74, citing *Canwest Publishing Inc. / Publications Canwest Inc. (Re)*, [2010 ONSC 222](#) at para. 39; *Just Energy* at paras. 112 to 113; *Nordstrom*, at para. 54.

⁷⁵ Adams Affidavit at para. 139.

⁷⁶ Adams Affidavit at para. 138.

56. In light of the potential liabilities and the insufficiency of available insurance, the continued service and involvement of the director and officers in this proceeding is conditional upon the granting of an Order which includes the Directors' Charge. A successful restructuring of the Applicants will only be possible with the continued participation of its directors, officers, management, and employees. These personnel are essential to the viability of the Applicants' continuing business and the preservation of enterprise value.⁷⁷

PART IV - NATURE OF THE ORDER SOUGHT

57. The Applicants therefore request an Initial Order substantially in the form of the draft Order attached as Schedule "A" to the Notice of Application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 24th day of April, 2024:



OSLER, HOSKIN & HARCOURT, LLP per Marleigh Dick
P.O. Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Lawyers for the Applicants

TO: THE ATTACHED SERVICE LIST

⁷⁷ Adams Affidavit at paras. 135, 139.

SCHEDULE “A”: LIST OF AUTHORITIES

1. *BioSteel Sports Nutrition Inc. (Re)*, (September 14, 2023), Ont S.C.J. [Commercial List], Court File No. CV-23-00706033-00CL ([Endorsement of Justice Cavanaugh](#))
2. *Black Press Ltd. et al. (Re)*, (January 15, 2024), Supreme Court of British Columbia, Court File No. S-240259 ([Initial Order](#))
3. *Boreal Capital Partners Ltd et al. (Re)*, [2021 ONSC 7802](#)
4. *BZAM Ltd. (Re)*, (February 28, 2024), Ont S.C.J. [Commercial List], Court File No. CV-24-00715773-00CL ([Endorsement of Justice Osborne](#))
5. *Canadian Overseas Petroleum Limited (Re)*, (March 8, 2024), A.B.K.B., 2401-03404 ([CCAA Initial Order](#))
6. *Canwest Global Communications Corp. (Re)*, [2009 CanLII 55114 \(ON SC\)](#)
7. *Canwest Publishing Inc./Publications Canwest Inc. (Re)*, [2010 ONSC 222](#)
8. *Comark Inc. (Re)*, [2015 ONSC 2010](#)
9. *Cinram International (Re)*, [2012 ONSC 3767](#)
10. *Chalice Brands Ltd. (Re)*, [2023 ONSC 3174](#)
11. *Dondeb Inc. (Re)*, [2012 ONSC 6087](#)
12. *First Leaside Wealth Management Inc. (Re)*, [2012 ONSC 1299](#)
13. *Index Energy Mills Road Corporation (Re)*, [2017 ONSC 4944](#)
14. *Just Energy Corp. (Re)*, [2021 ONSC 1793](#)
15. *Ghana Gold Corp (Re)*, [2013 ONSC 3284](#)
16. *Global Light Telecommunications Inc. (Re)*, [2004 BCSC 745](#)
17. *Laurentian University of Sudbury (Re)*, [2021 ONSC 659](#)
18. *LTL Management LLC (Re)*, [2021 ONSC 8357](#)
19. *Lydian International Limited (Re)*, [2019 ONSC 7473](#)
20. *Mountain Equipment Co-Operative (Re)*, [2020 BCSC 1586](#)
21. *Nordstrom Canada Retail, Inc. (Re)*, [2023 ONSC 1422](#)
22. *Original Traders Energy Ltd. and 2496750 Ontario Inc. (Re)*, [2023 ONSC 753](#)
23. *Performance Sports Group Ltd. (Re)*, [2016 ONSC 6800](#)

24. *Stelco Inc. (Re)*, [2004 CanLII 24933](#)
25. *Syncreon Group B.V. (Re)*, [2019 ONSC 5774](#)
26. *Target Canada Co. (Re)*, [2015 ONSC 303](#)

SCHEDULE “B”
TEXT OF STATUTES, REGULATIONS & BY-LAWS

COMPANIES’ CREDITORS ARRANGEMENT ACT

R.S.C., 1985, c. C-36, as amended

2. (1) [...]

debtor company means any company that

- (a) is bankrupt or insolvent,
- (b) has committed an act of bankruptcy within the meaning of the Bankruptcy and Insolvency Act or is deemed insolvent within the meaning of the Winding-up and Restructuring Act, whether or not proceedings in respect of the company have been taken under either of those Acts,
- (c) has made an authorized assignment or against which a bankruptcy order has been made under the Bankruptcy and Insolvency Act, or
- (d) is in the course of being wound up under the Winding-up and Restructuring Act because the company is insolvent; (*compagnie débitrice*)

[...]

Application

3 (1) This Act applies in respect of a debtor company or affiliated debtor companies if the total of claims against the debtor company or affiliated debtor companies, determined in accordance with section 20, is more than \$5,000,000 or any other amount that is prescribed.

[...]

Jurisdiction of court to receive applications

9 (1) Any application under this Act may be made to the court that has jurisdiction in the province within which the head office or chief place of business of the company in Canada is situated, or, if the company has no place of business in Canada, in any province within which any assets of the company are situated.

[...]

General power of court

11 Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

[...]

Relief reasonably necessary

11.001 An order made under section 11 at the same time as an order made under subsection 11.02(1) or during the period referred to in an order made under that subsection with respect to an initial application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

Rights of suppliers

11.01 No order made under section 11 or 11.02 has the effect of

- (a) prohibiting a person from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided after the order is made; or
- (b) requiring the further advance of money or credit.

Stays, etc. — initial application

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 30 days,

- (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act;
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

[...]

Burden of proof on application

11.02 (3) The court shall not make the order unless

- (a) the applicant satisfies the court that circumstances exist that make the order appropriate; and
- (b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

[...]

Stays — directors

11.03 (1) An order made under section 11.02 may provide that no person may commence or continue any action against a director of the company on any claim against directors that arose before the commencement of proceedings under this Act and that relates to obligations of the company if directors are under any law liable in their capacity as directors for the payment of those obligations, until a compromise or an arrangement in respect of the company, if one is filed, is sanctioned by the court or is refused by the creditors or the court.

[...]

Interim financing

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Priority — secured creditors

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Priority — other orders

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

Factors to be considered

(4) In deciding whether to make an order, the court is to consider, among other things,

- (a) the period during which the company is expected to be subject to proceedings under this Act;

- (b) how the company's business and financial affairs are to be managed during the proceedings;
- (c) whether the company's management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
- (e) the nature and value of the company's property;
- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) the monitor's report referred to in paragraph 23(1)(b), if any.

Additional factor — initial application

(5) When an application is made under subsection (1) at the same time as an initial application referred to in subsection 11.02(1) or during the period referred to in an order made under that subsection, no order shall be made under subsection (1) unless the court is also satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

[...]

Security or charge relating to director's indemnification

11.51 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of the company is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the company to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer of the company after the commencement of proceedings under this Act.

Priority

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

[...]

Court may order security or charge to cover certain costs

11.52 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor

company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

- (a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;
- (b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and
- (c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

Priority

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

[...]

Authorization to act as representative of proceeding under this Act

56 The court may authorize any person or body to act as a representative in respect of any proceeding under this Act for the purpose of having them recognized in a jurisdiction outside Canada.

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985,
C. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
TED BAKER CANADA INC., TED BAKER LIMITED, OSL FASHION SERVICES CANADA
INC., AND OSL FASHION SERVICES, INC.**

Court File No:

ONTARIO
SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

PROCEEDING COMMENCED AT TORONTO

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