

Court File No. CV-24-00718993-00CL

**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

**MOTION RECORD
(Comeback Hearing returnable May 3, 2024)**

May 1, 2024

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TO: **SERVICE LIST**

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B E T W E E N:

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

APPLICANTS

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(as of May 1, 2024)**

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APPLICANTS

TABLE OF CONTENTS

Tab No.	Description	Page No.
1.	Notice of Motion, dated May 1, 2024	7
2.	Affidavit of Antoine Adams, sworn May 1, 2024	20
A.	Exhibit "A" – Initial Order issued April 24, 2024	50
B.	Exhibit "B" - Endorsement of Justice Black dated April 29, 2024	73
C.	Exhibit "C" - Initial Order Affidavit of Antoine Adams sworn April 24, 2024 (without exhibits)	80
D.	Exhibit "D" - Order Granting Provisional Relief dated April 25, 2024	132
E.	Exhibit "E" - Consulting Agreement dated as of April 30, 2024	140
F.	Exhibit "F" - Final DIP Term Sheet dated as of May 1, 2024	180
3.	Draft Amended and Restated Initial Order	219
4.	Blackline of Amended and Restated Initial Order	244
5.	Draft Realization Process Approval Order	271

TAB 1

Court File No. CV-24-00718993-00CL

**ONTARIO
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IN THE MATTER OF THE *COMPANIES' CREDITORS
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and OSL FASHION SERVICES, INC.

APPLICANTS

**NOTICE OF MOTION
(Comeback Hearing)**

The Applicants will make a Motion to a Judge presiding over the Commercial List on
Friday, May 3, 2024 at 9:30 a.m., or as soon after that time as the Motion can be heard.

PROPOSED METHOD OF HEARING: The Motion is to be heard

- ☐ In writing under subrule 37.12.1(1);
- ☐ In writing as an opposed motion under subrule 37.12.1(4);
- ☐ In person;
- ☐ By telephone conference;
- ☒ By video conference.

at the following location

<https://ca01web.zoom.us/j/68763445471?pwd=c212MHFNenltVXZrS0NYTkZXWUdQQT09#success>

THE MOTION IS FOR

1. an Amended and Restated Initial Order substantially in the form included at Tab 3 of the Motion Record (“**ARIO**”), among other things:

- (a) extending the Stay Period (defined below) to August 2, 2024;
- (b) approving a key employee retention plan (the “**KERP**”) and granting a Court-ordered charge (the “**KERP Charge**”) as security for payments under the KERP, and granting a sealing order in relation to the KERP;
- (c) authorizing the Applicants to enter into the DIP Term Sheet (defined below) and 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 below);
- (d) increasing the Administration Charge from USD \$750,000 to USD \$1.5 million and the Directors’ Charge from USD \$2.5 million to USD \$5 million; and

2. a Realization Process Approval Order substantially in the form included at Tab 5 of the Motion Record (the “**Realization Process Approval Order**”), among other things:

- (a) approving a consulting agreement between Ted Baker Canada Inc. and Ted Baker Limited (together, the “**Merchant**”) and Gordon Brothers Canada ULC and Gordon Brothers Retail Partners, LLC (the “**Consultant**”) dated as of April 30, 2024 (as may be amended and restated in accordance with the terms of the Realization Process Approval Order, the “**Consulting Agreement**”);

- (b) approving the proposed Canadian sale guidelines (the “**Canadian Sale Guidelines**”) and the US sale guidelines (the “**US Sale Guidelines**” and together with the Canadian Sale Guidelines, the “**Sale Guidelines**”) for the orderly realization of the Merchandise and FF&E (both as defined below) at Canadian and US concession locations (if any are added) or at the Merchant’s stores (as listed on Exhibits “A-1” and “A-2” to the Consulting Agreement, or as may be later added pursuant to the terms thereof, the “**Stores**”) and as located at the Warehouses (as listed on Exhibit “A-3” to the Consulting Agreement, the “**Warehouses**”) through sales in accordance with the terms of the Canadian and US Sale Guidelines (the “**Sale**”); and
- (c) authorizing the Merchant, with the assistance of the Consultant, to undertake a realization process in accordance with the terms of the Realization Process Approval Order, the Consulting Agreement and the Sale Guidelines; and
3. such further and other Relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE¹

Background

1. On April 24, 2024, the Applicants were granted protection under the *Companies’ Creditors Arrangement Act*, RSC 1985 c C-36 (the “**CCAA**”) pursuant to an Initial Order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”);

¹ All capitalized terms not otherwise defined have the meanings given to them in the Affidavit of Antoine Adams sworn May 1, 2024 (the “**Second Adams Affidavit**”).

2. The Initial Order, among other things: (i) appointed Alvarez & Marsal Canada Inc. as monitor within these CCAA proceedings (the “**Monitor**”); (ii) granted a stay of proceedings against the Applicants, the Monitor, and their respective employees, directors, advisors, officers and representatives acting in such capacities for an initial Stay Period; (iii) authorized Ted Baker Canada and Ted Baker Limited to continue to borrow from the Interim Lender, being Canadian Imperial Bank of Commerce (“**CIBC**”), under the Applicants’ Existing Credit Facility in an amount not to exceed USD \$7 million, subject to the requirements in the Initial Order; (iv) authorized the Applicants to pay certain pre-filing amounts with the consent of the Monitor and the Interim Lender to key participants in the Applicants’ distribution network, and to other critical suppliers, if required; (v) granted the following Charges (as defined in the Initial Order), in order of priority: an Administration Charge in the maximum amount of USD \$750,000; an Interim Lender’s Charge (defined below); security granted with respect to the Existing Credit Facility (excluding the Interim Borrowings, defined below); and 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 Applicants for the purpose of having these CCAA proceedings recognized and approved in a jurisdiction outside of Canada, and (b) to apply for foreign recognition and approval of these CCAA proceedings and related relief, including provisional relief, as necessary, in the United States Bankruptcy Court for the Southern District of New York (the “**US Court**”) pursuant to Chapter 15 of Title 11 of the United States Bankruptcy Code (the “**Bankruptcy Code**”), 11 U.S.C. §§ 101-1532;

3. Immediately following the granting of the Initial Order, the Applicants initiated a case under Chapter 15 of the Bankruptcy Code seeking an order to recognize and enforce these CCAA proceedings in the US, including seeking a temporary restraining order to obtain the benefits of a

stay of proceedings pending the US Court's consideration of the petition to recognize these CCAA proceedings in the US (the "**Chapter 15 Case**"). On April 26, 2024, the Applicants were granted provisional relief in the form of a temporary restraining order in the Chapter 15 Case, including, among other things, a stay of proceedings against the Applicants in the US and authorization to continue to borrow from the Interim Lender under the Existing Credit Facility subject to and secured by the Interim Lender's Charge and apply the Initial Lender's Charge to the Applicants' assets in the United States. The final recognition hearing in the US is scheduled for May 8, 2024;

ARIO

(a) KERP and KERP Charge

4. The Applicants are seeking approval of the KERP for, at present, eight (8) employees and the granting of the KERP Charge up to a maximum aggregate amount of USD \$250,000 as security for payments under the KERP;

5. The KERP was developed by the Applicants, in consultation with the Monitor, to incentivize these key active employees to remain in their positions through these CCAA proceedings. The proposed KERP provides for a one-time lump sum payment, equal to 10% of their current annualized base salary, to eligible Canadian and US employees who have been identified as critical for a successful CCAA proceeding, the majority of whom are non-executives. Each of these employees is required to guide the business through the contemplated Sale in order to preserve value for the Applicants' stakeholders;

6. The KERP Charge is proposed to rank behind the Administration Charge, the Interim Lender's Charge and the DIP Lender's Charge, the security granted by the Applicants with respect

to the Existing Credit Facility 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;

7. The Applicants understand that the Monitor intends to file the proposed KERP schedule under seal, as it contains highly sensitive, personal, and confidential information relating to a select group of the Applicants' employees;

(b) DIP Financing

8. Pursuant to the Initial Order, Ted Baker Canada and Ted Baker Limited were granted interim funding from the Interim Lender under the Existing Credit Facility during the initial Stay Period (the "**Interim Borrowings**"). The Interim Borrowings are secured by a Court-ordered charge (the "**Interim Lender's Charge**") on all of the present and future assets, property and undertaking of the Applicants (the "**Property**"). The Interim Borrowings mature on May 8, 2024;

9. Since the granting of the Initial Order, CIBC (the "**DIP Lender**") has agreed to provide additional funding to Ted Baker Canada and Ted Baker Limited, as Borrowers, during these CCAA proceedings under a senior secured, super priority, debtor-in-possession, revolving credit facility (the "**DIP Facility**") on the terms set out in a term sheet agreed to between the Borrowers, Fashion Canada and Fashion Services as Guarantors, and the DIP Lender (the "**DIP Term Sheet**");

10. Based on the Cash Flow Forecast, the DIP Facility is expected to provide the Applicants with sufficient liquidity to continue their business operations during these CCAA proceedings while completing the Sale for the benefit of the Applicants and their stakeholders;

11. The DIP Facility is proposed to be secured by a Court-ordered charge (the “**DIP Lenders’ Charge**”) on the Property. The DIP Lenders’ Charge will not secure any obligation that exists before the ARIO is made. The DIP Lenders’ Charge will have priority over all other security interests, charges and liens, except the Administration Charge and Permitted Priority Liens as defined in the ARIO. The Interim Lender’s Charge will remain in place until the Interim Borrowings are repaid in full. Given the current financial circumstances of the Applicants, the DIP Lender has indicated that it is not prepared to advance funds without the security of the DIP Lenders’ Charge, including the proposed priority thereof;

12. The Monitor is supportive of the approval of the DIP Term Sheet and the granting of the DIP Lender’s Charge;

(c) Increase to the Charges

13. The Initial 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 Applicants’ counsel, the Monitor and Monitor’s counsel during the initial Stay Period, plus the substantial accrued and unpaid fees outstanding when the Initial Order was granted. With the concurrence of the Monitor, the Applicants are now seeking to increase the Administration Charge to USD \$1.5 million. The DIP Lender does not object to the proposed increase to the Administration Charge;

14. The Initial Order approved the Directors’ Charge for the initial Stay Period in the amount of USD \$2.5 million. With the concurrence of the Monitor, the Applicants are now seeking to increase the Directors’ Charge to USD \$5 million. As the Directors’ Charge ranks subordinate to the DIP Lender’s Charge and the security granted with respect to the Existing Credit Facility, the DIP Lender does not object to the proposed increase to the Directors’ Charge;

(d) Extension of Stay Period

15. The Applicants are seeking to extend the stay of proceedings granted in the Initial Order (the “**Stay Period**”) up to and including August 2, 2024. The extension of the Stay Period is necessary and appropriate in the circumstances to allow for the proposed Sale to be undertaken;

16. The Applicants have acted, and continue to act, in good faith and with due diligence in these CCAA proceedings. The Applicants have given notice of these CCAA proceedings to stakeholders including, most significantly, their landlords and employees. In consultation with the Monitor, the Applicants have engaged, and will continue engaging, in discussions with their stakeholders as these CCAA proceedings progress;

17. The Cash Flow Forecast demonstrates that, subject to this Court’s approval of the DIP Facility and DIP Lender’s Charge in the form requested in the proposed ARIO, the Applicants will have access to sufficient liquidity to fund operations during the requested extension of the Stay Period;

18. The Monitor has expressed its support for the extension of the Stay Period to August 2, 2024;

Realization Process Approval Order

19. In order to maximize the value of its assets for the benefit of its stakeholders, the Applicants are seeking the Court’s approval of:

- (a) the Consulting Agreement regarding the realization of (i) all merchandise that is located at the Stores or sold in bulk to wholesale customers during the Sale Term,

which includes goods saleable in the ordinary course, located at or in transit to the Stores on the Sale Commencement Date (as defined below) and/or located in or in transit to the Warehouses on the Sale Commencement Date and thereafter delivered to the Stores (the “**Merchandise**”), and (ii) owned furnishings, trade fixtures, equipment and/or improvements to real property that are located in the Stores (“**FF&E**”); and

- (b) the US and Canadian Sale Guidelines for the orderly realization of the Merchandise and FF&E, copies of which are attached as Exhibits “B-1” and “B-2” to the Consulting Agreement, respectively.

20. After receiving bids from three third-party liquidators, Gordon Brothers was selected by the Applicants to assist in the realization of the Applicants’ Merchandise & FF&E based, among other things, on its in-depth expertise and knowledge of the Applicants’ business, merchandise, and store operations, and its extensive experience conducting retail liquidations and other value-maximizing retail store realization processes. The Applicants 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;

21. Given the Applicants’ limited liquidity and ongoing carrying costs and the seasonal nature of a significant portion of the inventory, this realization process must be commenced as soon as possible to maximize recoveries and limit operating costs, ensuring that the Merchant 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 the

circumstances, any delay in commencing this realization process would negatively impact the net recoveries generated from the sale of the Merchant's Merchandise and FF&E;

22. The proposed realization of the Merchandise is currently contemplated to run for no longer than 12 weeks following the granting of the Realization Process Approval Order and, with respect to Stores located in the US, following the granting of the Realization Process Recognition Order (the "**Sale Commencement Date**"), which date can be extended or abridged by the Merchant and the Consultant, in consultation with the Monitor and the DIP Lender;

23. The Applicants intend to conduct the Sale at all of 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 Applicants' 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;

24. The Consulting Agreement is expressly subject to, among other things, approval of this Court. The realization process set out in the Consulting Agreement and the Sale Guidelines were designed by the Applicants and the Consultant, in consultation with the Monitor. The Applicants expect that the proposed realization process will maximize the value realized from the sale of the Merchant's Merchandise and FF&E for the benefit of stakeholders and that engaging the Consultant to assist with the sale of the Merchandise will produce better results than attempting to realize on the Merchandise and FF&E without the assistance of the Consultant;

25. The Monitor supports the proposed Consulting Agreement, the Sale Guidelines, including the proposed timeline, and the Applicants' request for the Realization Process Approval Order;

Other Grounds

26. The provisions of the CCAA, including section 11.02, and the inherent and equitable jurisdiction of this Honourable Court;

27. Rules 1.04, 1.05, 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended, and section 106 and 137 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended; and

28. Such further and other grounds as the lawyers may advise.

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

1. The Affidavit of Antoine Adams, sworn May 1, 2024;

2. The First Report of the Monitor, to be filed; and

3. Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

May 1, 2024

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Lawyers for the Applicants

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Court File No: CV-24-00718993-00CL

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FASHION SERVICES, INC.

APPLICANTS

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION

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Lawyers for the Applicants

TAB 2

Court File No. CV-24-00718993-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

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APPLICANTS

**AFFIDAVIT OF ANTOINE ADAMS
(sworn May 1, 2024)**

I, Antoine Adams, of the City of Toronto, in the Province of Ontario MAKE OATH AND
SAY:

1. I am a director and Corporate Secretary 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 collectively with Fashion Canada, "**Fashion**") (together, the "**Applicants**"). I am also the Chief Operating Officer of OSL Retail Services Inc. ("**Retail**"), an affiliate of the Applicants that, among other things, provides certain executive and operational leadership, strategy, M&A, financial decision approvals, and IT services to the Applicants. As such, I have knowledge of the matters contained in this Affidavit. Where I have relied on other sources of information, I have so stated and I believe them to be true.

2. In my role as Corporate Secretary and director of the Applicants, I am involved in all operational and organizational aspects of the Applicants' business, including approving all the strategic decisions of the Applicants, and am the primary strategic contact with Authentic Brands Group ("**ABG**"). Therefore, I am familiar with the business and have relied upon the books and records of the Applicants. In preparing this affidavit, I have also consulted with other members of the senior management teams of the Applicants and the Applicants' legal advisors. The Applicants do not waive or intend to waive any applicable privilege by any statement herein.

3. I swear this affidavit in support of a motion by the Applicants for:

- (a) an Amended and Restated Initial Order ("**ARIO**"), among other things:
 - (i) extending the Stay Period (defined below) to August 2, 2024;
 - (ii) approving a key employee retention plan (the "**KERP**") and granting a Court-ordered charge (the "**KERP Charge**") as security for payments under the KERP, and granting a sealing order in relation to the KERP;
 - (iii) authorizing the Applicants to enter into the DIP Term Sheet (defined below) and 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 below);
 - (iv) increasing the Administration Charge from USD \$750,000 to USD \$1.5 million and the Directors' Charge from USD \$2.5 million to USD \$5 million; and

- (b) a Realization Process Approval Order (the “**Realization Process Approval Order**”), among other things:
- (i) approving a consulting agreement between Ted Baker Canada Inc. and Ted Baker Limited (together, “**Ted Baker NA**” or the “**Merchant**”) and Gordon Brothers Canada ULC and Gordon Brothers Retail Partners, LLC (together, the “**Consultant**”) dated as of April 30, 2024 (as may be amended and restated in accordance with the terms of the Realization Process Approval Order, the “**Consulting Agreement**”);
 - (ii) approving the proposed Canadian sale guidelines (the “**Canadian Sale Guidelines**”) and the US sale guidelines (the “**US Sale Guidelines**” and, together with the Canadian Sale Guidelines, the “**Sale Guidelines**”) for the orderly realization of the Merchandise and FF&E (both as defined below) at Canadian and US concession locations (if any are added) or at the Merchant’s stores (as listed on Exhibits “A-1” and “A-2” to the Consulting Agreement, or as may be later added pursuant to the terms thereof, the “**Stores**”) and as located at the Warehouses (as listed on Exhibit “A-3” to the Consulting Agreement, the “**Warehouses**”) through sales in accordance with the terms of the Canadian and US Sale Guidelines, respectively (the “**Sale**”); and
 - (iii) authorizing the Merchant, with the assistance of the Consultant, to undertake a realization process in accordance with the terms of the

Realization Process Approval Order, the Consulting Agreement and the Sale Guidelines.

4. The Foreign Representative intends to seek recognition of (i) the ARIO and (ii) the Realization Process Approval Order by the US Court (defined below) (the “**Realization Process Recognition Order**”).

5. All references to monetary amounts in this Affidavit are in Canadian dollars unless noted otherwise.

6. This affidavit is organized into the following sections:

A. Overview of the Applicants’ Activities since the Initial Order	4
(a) Communication with Key Stakeholders	8
(i) Landlords	8
(ii) Employees.....	9
(iii) Other Stakeholders.....	10
B. Realization Process Approval Order.....	11
(a) Process for Identifying the Consultant.....	12
(b) Realization Process	13
(c) Realization Process Approval Order.....	21
C. Amended and Restated Initial Order.....	22
(a) KERP and KERP Charge.....	22
(b) DIP Financing	24
(c) Increase to the Charges	28
(d) Extension of Stay Period.....	28

A. Overview of the Applicants’ Activities since the Initial Order

7. On April 24, 2024, the Applicants were granted protection under the *Companies’ Creditors Arrangement Act*, RSC 1985 c C-36 (the “**CCAA**”) pursuant to an Initial Order (the “**Initial**

Order”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). A copy of the Initial Order is attached hereto as **Exhibit “A”**. A copy of the Endorsement of Justice Black issued in connection with the Initial Order is attached hereto as **Exhibit “B”**.

8. In support of the application for the Initial Order, I swore an affidavit dated April 24, 2024 (the “**Initial Order Affidavit**”), which described, among other things, the events leading to the Applicants’ insolvency and their urgent need for relief under the CCAA. A copy of my Initial Order Affidavit (without exhibits) is attached hereto as **Exhibit “C”**. Capitalized terms not otherwise defined herein have the meanings given to them in the Initial Order Affidavit.

9. The Initial Order, among other things: (i) appointed Alvarez & Marsal Canada Inc. as monitor within these CCAA proceedings (the “**Monitor**”); (ii) granted a stay of proceedings against the Applicants, the Monitor, and their respective employees, directors, advisors, officers and representatives acting in such capacities for an initial Stay Period; (iii) authorized Ted Baker Canada and Ted Baker Limited to continue to borrow from the Interim Lender, being Canadian Imperial Bank of Commerce (“**CIBC**”), under the Applicants’ Existing Credit Facility in an amount not to exceed USD \$7 million, subject to the requirements in the Initial Order; (iv) authorized the Applicants to pay certain pre-filing amounts with the consent of the Monitor and the Interim Lender to key participants in the Applicants’ distribution network, and to other critical suppliers, if required; (v) granted the following Charges (as defined in the Initial Order), in order of priority: an Administration Charge in the maximum amount of USD \$750,000; an Interim Lender’s Charge; security granted with respect to the Existing Credit Facility (excluding the Interim Borrowings, as defined below); and 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 Applicants for the purpose of having these CCAA proceedings recognized and approved in a

jurisdiction outside of Canada, and (b) to apply for foreign recognition and approval of these CCAA proceedings and related relief, including provisional relief, as necessary, in the United States Bankruptcy Court for the Southern District of New York (the “**US Court**”) pursuant to Chapter 15 of Title 11 of the United States Bankruptcy Code (the “**Bankruptcy Code**”), 11 U.S.C. §§ 101-1532.

10. Immediately following the granting of the Initial Order, the Applicants initiated a case under Chapter 15 of the Bankruptcy Code seeking an order to recognize and enforce these CCAA proceedings in the US, including seeking a temporary restraining order to obtain the benefits of a stay of proceedings pending the US Court’s consideration of the petition to recognize these CCAA proceedings in the US (the “**Chapter 15 Case**”). On April 26, 2024, the Applicants were granted provisional relief in the form of a temporary restraining order in the Chapter 15 Case, including, among other things, a stay of proceedings against the Applicants in the US and authorization to continue to borrow from the Interim Lender under the Existing Credit Facility subject to and secured by the Interim Lender’s Charge and apply the Initial Lender’s Charge to the Applicants’ assets in the United States. The final recognition hearing in the US is scheduled for May 8, 2024. A copy of the Amended Order Granting Provisional Relief is attached hereto as **Exhibit “D”**

11. Since the granting of the Initial Order, the Applicants, in close consultation and with the assistance of the Monitor, have been working in good faith and with due diligence to, among other things:

- (a) stabilize their business and operations as part of these CCAA proceedings;
- (b) advise their stakeholders, including landlords, employees, logistics suppliers, license partners, and others, of the granting of the Initial Order;

- (c) commence and pursue the Chapter 15 Case;
 - (d) develop the KERP;
 - (e) negotiate the DIP Term Sheet;
 - (f) develop the Sale Guidelines and finalize arrangements with the Consultant for the orderly realization of (i) all merchandise that is located at the Stores or sold in bulk to wholesale customers during the Sale Term (defined below), which includes goods saleable in the ordinary course, located at or in transit to the Stores on the Sale Commencement Date (as defined below) and/or located in or in transit to the Warehouses on the Sale Commencement Date and thereafter delivered to the Stores (the “**Merchandise**”), and (ii) owned furnishings, trade fixtures, equipment and/or improvements to real property that are located in the Stores (“**FF&E**”);
 - (g) engage with their critical stakeholders; and
 - (h) respond to numerous creditor and stakeholder inquiries regarding these CCAA proceedings.
12. In accordance with the Initial Order:
- (a) on April 24, 2024, the Monitor posted the Initial Order and related application materials on the Monitor’s website (the “**Monitor’s Website**”) at <https://www.alvarezandmarsal.com/TBRetail>;

- (b) the Monitor arranged for publication of a notice in *The Globe and Mail* (Nation Edition) containing the information prescribed under the CCAA on May 1, 2024; and
- (c) on April 26, 2024, the Monitor sent a notice to, among others, all of the Applicants' known creditors who had claims over \$1,000, including all known US creditors. Additionally, on April 29, 2024, the Monitor made publicly available on the Monitor's Website a list containing the names and addresses of those creditors and the estimated amounts of their claims (subject to the exclusions required by the Initial Order).

13. On April 24, 2024, a CaseLines database was established for these CCAA proceedings and all persons currently on the Service List (as defined in the Initial Order) have been granted access thereto. A copy of the Initial Order and the Applicants' application materials were uploaded to the CaseLines database that same day.

(a) Communication with Key Stakeholders

(i) Landlords

14. I am advised by A&M, and believe that, on April 30, 2024, the Monitor sent letters to all landlords of the Applicants' retail locations (the "**Landlords**") advising that the Applicants had applied for and been granted an Initial Order under the CCAA, providing a link to the Monitor's Website and directing the recipient to the Initial Order. The letters further advised that:

- (a) concurrently, the Applicants had initiated the Chapter 15 Case seeking an order to recognize and enforce these CCAA proceedings in the US, including seeking a temporary restraining order to obtain the benefits of a stay of proceedings;
- (b) payments on rent and other amounts outstanding under leases immediately prior to the effective time of the Initial Order have been stayed pursuant to the Initial Order and, as applicable, the Chapter 15 Case, and amounts payable in respect of rent after the effective time of the Initial Order will be paid by the Applicants in accordance with the Initial Order; and
- (c) all vendors, including landlords, must continue honoring existing contractual obligations.

15. The Applicants, through their counsel, also circulated draft Canadian sale guidelines for the proposed realization process to certain Canadian counsel who represent a significant number of the Landlords for their review and engaged in discussions with such counsel, along with counsel to the Monitor.

(ii) Employees

16. In addition to the Landlords, the Applicants completed the following employee outreach promptly after obtaining the Initial Order:

- (a) on April 24, 2024, meetings were conducted with the Ted Baker Canada, Ted Baker Limited, Brooks Brothers and Lucky Brand leadership teams to advise of the Applicants' decision to file for CCAA protection, the issuance of the Initial Order,

the commencement of the Chapter 15 Case, and the expected impact of the Initial Order and Chapter 15 Case on Ted Baker NA employees;

- (b) on April 25, 2024, a memo was issued to Ted Baker NA, Lucky Brand and Brooks Brothers' corporate teams, also advising of Ted Baker NA's decision to file for CCAA protection, the issuance of the Initial Order, the commencement of the Chapter 15 Case, and the expected impact of the Initial Order and Chapter 15 Case on Ted Baker NA's business;
- (c) shortly thereafter, live employee town halls were held for Ted Baker NA, Lucky Brand and Brooks Brothers' corporate employees; and
- (d) following that, store team meetings were conducted with Ted Baker NA, Lucky Brand and Brooks Brothers' store employees.

(iii) Other Stakeholders

17. On April 25, 2024, the Applicants, together with the Monitor, had a telephone conversation with representatives of ABG regarding the granting of the Initial Order and the commencement of the Chapter 15 Case. The Applicants advised ABG of their decision to file for CCAA protection and provided information about their intended path forward, including the additional funding required and the potential realization process.

18. The Applicants and the Monitor subsequently had discussions with representatives of YM Inc. (Sales) and Jaytex Group (Sales), the former owners of the Lucky Brand and Brooks Brothers business acquired by Ted Baker in 2023, who provide services in support of the Applicants' Lucky

Brand and Brooks Brothers businesses pursuant to transition services arrangements with Ted Baker Canada.

19. The Applicants, with the assistance of the Monitor, have worked to ensure the continuation of certain intercompany licenses and services, including with respect to a license for the ongoing use of enterprise resource planning software through the Software Agreement provided by Retail to Ted Baker NA.

20. The Applicants, with the assistance of the Monitor, have also entered into discussions with Future Forwarding, the Applicants' third-party logistics provider that manages the Distribution Centre, to ensure continuation of services to the Applicants during the course of these CCAA proceedings.

21. The Applicants have reached out to various stakeholders to let them know that they would be receptive to pursuing potential going concern transactions. They have entertained a number of inquiries and have executed non-disclosure agreements with several parties in this regard. To date, no proposals for a going-concern transaction for some or all of the business have been received.

B. Realization Process Approval Order

22. In order to maximize the value of its assets for the benefit of its stakeholders, the Applicants are seeking the Court's approval of:

- (a) the Consulting Agreement regarding the realization of the Merchandise and FF&E, a copy of which is attached hereto as **Exhibit "E"**; and

- (b) the US and Canadian Sale Guidelines for the orderly realization of the Merchandise and FF&E, copies of which are attached as Exhibits “B-1” and “B-2” to the Consulting Agreement, respectively.

(a) Process for Identifying the Consultant

23. Pursuant to the authority set out in the Initial Order, the Monitor reached out to three potential third-party liquidators well known in the industry in Canada and the US, indicating that the Monitor, on behalf of the Applicants, was seeking bids in connection with the realization of the Applicants’ Merchandise and FF&E, 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**”). Upon receipt of an executed NDA by the Monitor, each third-party liquidator would be given access to a populated data room including financial and operational details about the Applicants and their inventory. 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 provided by the Monitor by no later than April 28, 2024. The bids were reviewed and discussed among the Applicants, 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.

24. Gordon Brothers was selected by the Applicants to assist in the realization of the Applicants’ Merchandise and FF&E based, among other things, on its in-depth expertise and knowledge of the Applicants’ business, merchandise, and store operations, 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. The Applicants 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.

(b) Realization Process

25. Given the Applicants' limited liquidity and ongoing carrying costs and the seasonal nature of a significant portion of the inventory, this realization process must be commenced as soon as possible to maximize recoveries and limit operating costs, ensuring that the Merchant 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 the circumstances, any delay in commencing this realization process would negatively impact the net recoveries generated from the sale of the Merchant's Merchandise and FF&E.

26. The proposed realization of the Merchandise is currently contemplated to run for no longer than 12 weeks following the Sale Commencement Date, which date can be extended or abridged by the Merchant and the Consultant, in consultation with the Monitor and the DIP Lender. Key terms of the Consulting Agreement include:

- (a) the Consultant is appointed as exclusive liquidator for purposes of conducting the Sale;

- (b) the Sale will commence on a date agreed to by the Merchant and the Consultant following the granting of the Realization Process Approval Order and, with respect to Stores located in the US, following the granting of the Realization Process Recognition Order (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**”);
- (c) initially, the Applicants 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**”);
- (d) all sales during the Sale Term will be final with no returns accepted or allowed following the Sale Commencement Date;
- (e) 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;
- (f) as consideration for its services in accordance with the Consulting Agreement, the Consultant is entitled to the following fees:

- (i) With respect to Merchandise sold at the Stores during the Sale Term, (i) 2.0% of the Gross Proceeds¹ of such Merchandise (the “**Merchandise Base Fee**”) plus (ii) an additional fee based upon the following thresholds of Gross Recovery Percentage ² (calculated back to first dollar) (the “**Merchandise Incentive Fee**” and together with the Merchandise Base Fee, the “**Merchandise Fee**”):

<u>Gross Recovery Percentage</u>	<u>Additional Incentive Compensation</u>
Between 144.50% and 153.50%	0.25% of Gross Proceeds
Between 153.51% to 160.50%	0.50% of Gross Proceeds
Between 160.51% and 168.50%	0.75% of Gross Proceeds
Above 168.51%	1.00% of Gross Proceeds

- (ii) With respect to Merchandise sold in bulk to wholesale customers from the Warehouse during the Sale Term, (i) 5.0% of the Gross Proceeds of such Merchandise (the “**Bulk Sale Base Fee**”) plus (ii) an additional fee equal to 10% of all savings obtained from avoiding US import duties on Merchandise located in a “foreign trade zone” (the “**FTZ Savings Fee**” and together with the Bulk Sale Base Fee, the “**Bulk Sale Fee**”);

The Consultant agrees that (i) no fees will be earned by the Consultant on any sale of any Merchandise or FF&E to ABG; and (ii) no Merchandise Fee will be paid on merchandise that is located at any concession store location, unless and until such

¹ “**Gross Proceeds**” means gross receipts (including, without limitation, gift card or gift certificates issued by the Merchant) from sales of Merchandise during the Sale Term, net of applicable sales taxes.

² “**Gross Recovery Percentage**” means the Gross Proceeds divided by the sum of the aggregate Cost Value of all of the Merchandise.

concession store location becomes an Added Concession Store,³ on and after which date a Merchandise Fee will be payable only on Additional Concession Goods⁴ sold therefrom;

- (g) 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**");
- (h) 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);
- (i) 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

³ Pursuant to the Consulting Agreement, a concession store location at Bloomingdales or Hudson Bay Company shall be automatically deemed added to the list of Stores, without further act of the parties to the Consulting Agreement, the Monitor or the Court, on and as of the date on which the Merchant resumes its distribution of goods to such concession store location for sale therefrom (such locations, "**Added Concession Stores**").

⁴ "**Additional Concession Goods**" are additional inventory that is shipped to an Added Concession Store by or on behalf of the Merchant following the effective date under the Consulting Agreement.

incurred by the Consultant in connection with the sale of FF&E (the “**FF&E Costs**”);

- (j) 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
- (k) 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.

27. The Consultant has the right under the Consulting Agreement to supplement the Merchandise in the Sale at the 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 Applicants 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 Applicants' stakeholders by maximizing recoveries. It will also directly enhance recoveries for the Applicants since the Consultant will pay 5% of the gross proceeds from all sales of Additional Consultant Goods to the Merchant.

28. As of the date of the swearing of this Affidavit, the Applicants intend to conduct the Sale at all of 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 Applicants' 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.

29. The Consulting Agreement is expressly subject to, among other things, approval of this Court. The realization process set out in the Consulting Agreement and the Sale Guidelines were designed by the Applicants 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 Merchant's 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.

30. The Consulting Agreement is subject to the Sale Guidelines attached as Exhibits "B-1" (for the US Stores) and "B-2" (for the Canadian Stores) to the Consulting Agreement. The Canadian Sale Guidelines stipulate, among other things, that except as set out in the Canadian Sale Guidelines, the Sale will be conducted in accordance with the terms of the leases for the Stores (the "**Leases**") during each Store's normal hours of operation. The Canadian Sale Guidelines may

be amended on a Store-by-Store basis with the consent of the parties and the applicable Landlord, in consultation with the Monitor. The Canadian Sale Guidelines also contain the following key terms:

- (a) the Sale shall be conducted so that each Store remains open during its normal hours of operation provided for in its respective Lease, until the respective Sale Termination Date of each such Store;
- (b) all display and hanging signs used by the Consultant in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner;
- (c) notwithstanding anything to the contrary contained in the Leases, the Consultant may advertise the Sale at the Stores as an “everything on sale”, “everything must go”, “store closing” and/or similar theme sale at the Stores;
- (d) the Consultant shall be entitled to include additional merchandise of the Merchant in the Sale; provided that: (i) the additional merchandise is currently in the possession or control of the Merchant (including in any Warehouse used by the Merchant) or has previously been ordered by or on behalf of the Merchant and is currently in transit to the Merchant (including any Warehouse used by the Merchant) or a Store; and (ii) the additional merchandise is of the type and quality typically sold in the Stores and consistent with any restriction on usage of the Stores set out in the applicable Leases;

- (e) with the prior written consent of the Merchant, the Consultant shall be entitled to include Additional Consultant Goods in the Sale, provided that the Additional Consultant Goods are of like kind and category and no lesser quality to the Merchandise;
- (f) at the conclusion of the Sale and the FF&E Removal Period in each Store, the Consultant shall arrange that the premises for each Store are in “broom-swept” and clean condition, and shall arrange that the Stores are in the same condition as on the commencement of the Sale, ordinary wear and tear excepted;
- (g) the Merchant provides notice, including for purposes of the ARIO, to the Landlords of the Merchant’s and the Consultant’s intention to sell and remove FF&E from the Stores; and
- (h) The Merchant and the Consultant shall not conduct any auctions of Merchandise or FF&E at any of the Stores.

31. I am advised by Ms. Tracy C. Sandler of Osler, Hoskin and Harcourt LLP, Canadian counsel to the Applicants, that the Canadian Sale Guidelines are substantially similar to those which have been granted in respect of Canadian stores in other Canadian retail insolvencies, including *Nordstrom Canada* and *Mastermind Toys*.

32. Similarly, I am advised by Ms. Felice Yudkin of Cole Schotz P.C., US counsel to the Applicants, that the US Sale Guidelines are substantially similar to those which have been granted in respect of US stores in other Canadian and US retail insolvencies, including *David’s Bridal* and *Bed Bath & Beyond*.

(c) Realization Process Approval Order

33. The proposed Realization Process Approval Order requested by the Applicants, among other things:

- (a) approves, authorizes and ratifies the Consulting Agreement, the Sale Guidelines and the transactions contemplated thereunder;
- (b) authorizes 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;
- (c) authorizes 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
- (d) grants certain protections from liability in favour of the Consultant, including that:
 - (i) 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;

- (ii) 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
- (iii) 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.

34. I am advised by the Monitor and believe that the Monitor supports the proposed Consulting Agreement, the Sale Guidelines, including the proposed timeline, and the Applicants' request for the Realization Process Approval Order.

C. Amended and Restated Initial Order

(a) KERP and KERP Charge

35. The Applicants are seeking approval of the KERP for, at present, eight (8) employees and the granting of the KERP Charge up to a maximum aggregate amount of USD \$250,000 as security for payments under the KERP.

36. The KERP was developed by the Applicants, in consultation with the Monitor, to incentivize these key active employees to remain in their positions through these CCAA proceedings. The proposed KERP provides for a one-time lump sum payment to eligible Canadian and US employees who have been identified as critical for a successful CCAA proceeding, the majority of whom are non-executives. Each of these employees is required to guide the business through the contemplated Sale in order to preserve value for the Applicants' stakeholders.

37. The Applicants propose that the KERP be structured so that each of the individuals will receive a retention bonus equal to 10% of their current annualized base salary, payable on the earlier of (a) the completion of the Sale, (b) the closing of a potential going-concern transaction for all or part of the Applicants' business, or (c) the date on which the KERP participants' services are no longer required.

38. Any payments under the KERP are conditional upon each employee continuing to provide services to the Applicants until such time as they are advised that they are no longer required to assist in the Sale or other matters in these CCAA proceedings.

39. Assuming the Applicants are able to retain these key employees, the total amount payable under the KERP will be a maximum of USD \$250,000. As previously noted, the Applicants 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 and the DIP Lender's Charge, the security granted by the Applicants 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.

40. 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 Applicants' employees. For this reason, I understand the Monitor intends to file the proposed KERP schedule under seal as a confidential supplement to its first report, to be filed with the Court in advance of the comeback hearing.

(b) DIP Financing

41. Pursuant to the Initial Order, Ted Baker Canada and Ted Baker Limited were granted interim funding from the Interim Lender under the Existing Credit Facility during the initial Stay Period (the "**Interim Borrowings**"). The Interim Borrowings are secured by a Court-ordered charge (the "**Interim Lender's Charge**") on all of the present and future assets, property and undertaking of the Applicants (the "**Property**"). The Interim Borrowings mature on May 8, 2024.

42. Since the granting of the Initial Order, CIBC (the "**DIP Lender**") has agreed to provide additional funding to Ted Baker Canada and Ted Baker Limited, as Borrowers, during these CCAA proceedings under a senior secured, super priority, debtor-in-possession, revolving credit facility (the "**DIP Facility**") on the terms set out in a term sheet agreed to between the Borrowers, Fashion Canada and Fashion Services as Guarantors, and the DIP Lender (the "**DIP Term Sheet**"). A copy of the final executed DIP Term Sheet is attached hereto as **Exhibit "F"**.

43. Based on the Cash Flow Forecast (defined below), the DIP Facility is expected to provide the Applicants with sufficient liquidity to continue their business operations during these CCAA proceedings while completing the Sale described above for the benefit of the Applicants and their stakeholders.

44. 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 <i>pari passu</i> 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

	<p>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.</p> <p>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.</p> <p>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.</p>
Commitment Fee	<p>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.</p>
Interest	<p>9.95% <i>per annum</i> for Advances denominated in Canadian Dollars and 11.75% <i>per annum</i> 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.</p> <p>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% <i>per annum</i> payable on demand in arrears in cash.</p>
Events of Default	<p>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</p>

	<p>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.</p>
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45. The DIP Facility is proposed to be secured by a Court-ordered charge (the “**DIP Lender’s Charge**”) on the Property. The DIP Lender’s Charge will not secure any obligation that exists before the ARIO is made. The DIP Lender’s Charge will have priority over all other security interests, charges and liens, except the Administration Charge and Permitted Priority Liens as defined in the ARIO. The Interim Lender’s Charge will remain in place until the Interim Borrowings are repaid in full. Given the current financial circumstances of the Applicants, the DIP Lender has indicated that it is not prepared to advance funds without the security of the DIP Lender’s Charge, including the proposed priority thereof.

46. I understand that the Monitor is supportive of the approval of the DIP Term Sheet and the granting of the DIP Lender's Charge.

(c) Increase to the Charges

47. The Administration Charge is described at paragraph 134 of my Initial Order Affidavit. The Initial 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 Applicants' counsel, the Monitor and Monitor's counsel during the initial Stay Period, plus the substantial accrued and unpaid fees outstanding when the Initial Order was granted. With the concurrence of the Monitor, the Applicants are now seeking to increase the Administration Charge to USD \$1.5 million. I understand that the DIP Lender does not object to the proposed increase to the Administration Charge.

48. The Directors' Charge is described at paragraphs 135 to 139 of my Initial Order Affidavit. The Initial Order approved the Directors' Charge for the initial Stay Period in the amount of USD \$2.5 million. With the concurrence of the Monitor, the Applicants are now seeking to increase the Directors' Charge to USD \$5 million. As the Directors' Charge ranks subordinate to the DIP Lender's Charge and the security granted with respect to the Existing Credit Facility, the DIP Lender does not object to the proposed increase to the Directors' Charge.

(d) Extension of Stay Period

49. The Applicants are seeking to extend the stay of proceedings granted in the Initial Order (the "**Stay Period**") up to and including August 2, 2024. The extension of the Stay Period is necessary and appropriate in the circumstances to allow for the proposed Sale to be undertaken.

50. I believe that the Applicants have acted, and continue to act, in good faith and with due diligence in these CCAA proceedings. As described above, the Applicants have given notice of these CCAA proceedings to stakeholders including, most significantly, their Landlords and employees. In consultation with the Monitor, the Applicants have engaged, and will continue engaging, in discussions with their stakeholders as these CCAA proceedings progress.

51. The cash flow projections prepared by the Monitor (the “**Cash Flow Forecast**”) demonstrate that, subject to this Court’s approval of the DIP Facility and DIP Lender’s Charge in the form requested in the proposed ARIO, the Applicants will have access to sufficient liquidity to fund operations during the requested extension of the Stay Period. The Monitor has expressed its support for the extension of the Stay Period to August 2, 2024.

SWORN BEFORE ME over videoconference
this 1st day of May, 2024 in accordance with
O. Reg. 431/20, Administering Oath or
Declaration Remotely. The affiant is located in
the City of Toronto, in the Province of Ontario
and the commissioner is located in the City of
Toronto, in the Province of Ontario.



Commissioner for Taking Affidavits
(or as may be)

MARLEIGH ERYN DICK
LSO# 79390S



ANTOINE ADAMS

This is Exhibit "A" referred to in the Affidavit of ANTOINE ADAMS sworn by ANTOINE ADAMS at the City of Toronto, in the Province of Ontario, before me on May 1, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

MARLEIGH ERYN DICK

(LSO# 79390S)



Court File No. CV-24-00718993-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)	WEDNESDAY, THE 24 th
)	
MR. JUSTICE BLACK)	DAY OF APRIL, 2024

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.

INITIAL ORDER

THIS APPLICATION, made by Ted Baker Canada Inc. ("**Ted Baker Canada**"), Ted Baker Limited, OSL Fashion Services Canada Inc. ("**Fashion Canada**"), and OSL Fashion Services, Inc. ("**Fashion US**" and collectively with Ted Baker Canada, Ted Baker Limited, and Fashion Canada, the "**Applicants**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day by judicial videoconference via Zoom at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Antoine Adams sworn April 24, 2024, and the Exhibits thereto (the "**Adams Affidavit**"), and the pre-filing report dated April 24, 2024, of Alvarez & Marsal Canada Inc. ("**A&M**"), in its capacity as proposed monitor of the Applicants, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel to the Applicants, A&M, and such other counsel present, and on reading the consent of A&M to act as monitor (in such capacity, the "**Monitor**").

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

DEFINITIONS

2. **THIS COURT ORDERS** that unless otherwise indicated or defined herein, capitalized terms have the meanings given to them in the Adams Affidavit.

APPLICATION

3. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies.

POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of their respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the “**Business**”) and Property. The Applicants shall each be authorized and empowered to continue to retain and employ the employees, independent contractors, advisors, consultants, agents, experts, appraisers, valuers, brokers, accountants, counsel and such other persons (collectively, “**Assistants**”) currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. **THIS COURT ORDERS** that the Applicants shall be entitled to continue to use the central cash management systems currently in place as described in the Adams Affidavit, including, without limitation, the Blocked Accounts Arrangement, or, with the consent of the Monitor and the Interim Lender, replace them with other substantially similar central cash management systems (together, the “**Cash Management System**”) and that any present or future bank providing the Cash Management System, including the Canadian Imperial Bank of Commerce, HSBC Bank

USA, National Association, and American Savings Bank, shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under any plan of compromise or arrangement (“**Plan**”) with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. **THIS COURT ORDERS** that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the date of this Order to the extent that such expenses are incurred and payable by the Applicants:

- (a) all outstanding and future wages, salaries, employee benefits (including, without limitation, employee medical, dental, registered retirement savings plan contributions and similar benefit plans or arrangements), vacation pay and expenses, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements, and all other payroll and benefits processing and servicing expenses;
- (b) all outstanding and future amounts invoiced to any of the Applicants from any independent contractors retained by any of the Applicants, payable prior to, on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing payment arrangements;
- (c) all outstanding or future amounts related to honouring customer obligations, including customer pre-payments, deposits, gift cards, programs and other customer loyalty programs, offers and benefits, in each case incurred in the ordinary course of business and consistent with existing policies and procedures;
- (d) the fees and disbursements of any Assistants retained or employed by the Applicants at their standard rates and charges;

- (e) with the consent of the Monitor, and the Interim Lender, amounts owing for goods or services supplied to the Applicants prior to the date of this Order by:
- (i) warehouse providers, logistics or supply chain providers, including transportation providers, customs brokers, freight forwarders and security and armoured truck carriers, and including amounts payable in respect of customs and duties for goods;
 - (ii) providers of information, internet, telecommunications and other technology, including e-commerce providers and related services;
 - (iii) providers of payment, credit, debit and gift card processing related services; and
 - (iv) other third-party suppliers or service providers if, in the opinion of the Applicants following consultation with the Monitor, such supplier or service provider is critical to the Business and ongoing operations of the Applicants and the Property (as hereinafter defined).

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by them in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order and any other Order of this Court, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicants following the date of this Order.

8. **THIS COURT ORDERS** that the Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from the Applicants' employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services taxes, harmonized sales taxes or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business, workers' compensation or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

9. **THIS COURT ORDERS** that, until a real property lease, including a sublease and related documentation (each, a "**Lease**") to which any Applicant is a party is disclaimed or resiliated in accordance with the CCAA or otherwise consensually terminated, such Applicant shall pay, without duplication, all amounts constituting rent or payable as rent under such Lease (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the applicable landlord (each, a "**Landlord**") under such Lease, but for greater certainty, excluding accelerated rent or penalties, fees or other charges arising as a result of the insolvency of the Applicants or the making of this Order) or as otherwise may be negotiated between such Applicant and the Landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such

payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

10. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by any one of the Applicants to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of the Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business or pursuant to this Order or any other Order of the Court.

RESTRUCTURING

11. **THIS COURT ORDERS** that the Applicants shall, subject to such requirements as are imposed by the CCAA, have the right to:

- (a) terminate the employment of such of its employees or temporarily lay off such of its employees as the applicable Applicant deems appropriate;
- (b) disclaim or resiliate, in whole or in part, with the prior consent of the Monitor and the Interim Lender or further Order of the Court, any of their arrangements or agreements of any nature whatsoever and with whomsoever, whether oral or written, as the Applicants deem appropriate, in accordance with section 32 of the CCAA; and
- (c) in consultation with, and with the oversight of the Monitor and in consultation with the Interim Lender, (i) engage in discussions with, and solicit proposals and agreements from, third parties in respect of the liquidation of the inventory, furniture, equipment and fixtures and other property located in and/or forming part of the Property (the “**Liquidation Solicitation Process**”), and return to Court for the approval of any such agreement, and (ii) with the assistance of any real estate advisor or other Assistants as may be desirable, pursue all avenues and offers for the sale, transfer or assignment of the Leases to third parties, in whole or in part, and return to Court for approval of any such sale, transfer or assignment,

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the “**Restructuring**”).

12. **THIS COURT ORDERS** that each Applicant shall provide each of the relevant landlords with notice of such Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes an Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the applicable Applicant, or by further Order of this Court upon application by such Applicant on at least two (2) days notice to such landlord and any such secured creditors. If an Applicant disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to such Applicant's claim to the fixtures in dispute.

13. **THIS COURT ORDERS** that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the applicable Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

STAY OF PROCEEDINGS

14. **THIS COURT ORDERS** that until and including May 3, 2024, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicants or the Monitor, or any of their respective employees, directors, advisors, officers and representatives acting in such capacities, or affecting the Business or the Property, except with the prior written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants, or their employees,

directors, officers or representatives acting in such capacities, or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

15. **THIS COURT ORDERS** that, to the extent any prescription, time or limitation period relating to any Proceeding against or in respect of any Applicant that is stayed pursuant to this Order may expire, the term of such prescription, time or limitation period shall hereby be deemed to be extended by a period equal to the Stay Period.

NO EXERCISE OF RIGHTS OR REMEDIES

16. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Applicants or the Monitor, or their respective employees, directors, officers, advisors and representatives acting in such capacities, or affecting the Business or the Property, are hereby stayed and suspended except with the prior written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (a) empower the Applicants to carry on any business which they are not lawfully entitled to carry on; (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (c) prevent the filing of any registration to preserve or perfect a security interest; or (d) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

17. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, concession arrangement, licence or permit in favour of or held by the Applicants, except with the prior written consent of the Applicants and the Monitor, or leave of this Court. Without limiting the foregoing, no right, option, remedy, and/or exemption in favour of the relevant Applicants shall be or shall be deemed to be negated, suspended, waived and/or terminated as a result of the insolvency of the Applicants, the commencement of the within proceedings or any related recognition proceedings or this Order.

NO PRE-FILING VS POST-FILING SET-OFF

18. **THIS COURT ORDERS** that, no Person shall be entitled to set off any amounts that: (a) are or may become due to the Applicants in respect of obligations arising prior to the date hereof with any amounts that are or may become due from the Applicants in respect of obligations arising on or after the date of this Order; or (b) are or may become due from the Applicants in respect of obligations arising prior to the date hereof with any amounts that are or may become due to the Applicants in respect of obligations arising on or after the date of this Order, in each case without the consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall prejudice any arguments any Person may want to make in seeking leave of the Court or following the granting of such leave.

CONTINUATION OF SERVICES

19. **THIS COURT ORDERS** that during the Stay Period,

- (a) all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply or license of goods, intellectual property and/or services, including without limitation all computer software, trademarks, communication and other data services, centralized banking services, cash management services, payment processing services, payroll and benefit services, insurance, freight services, transportation services, customs clearing, warehouse and logistics services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply or license of such goods or services as may be required by the Applicants;
- (b) that all Persons who receive or collect proceeds from the sale of the Applicants' inventory for or on behalf of the Applicants, shall promptly remit such proceeds to the Applicants monthly, in accordance with existing arrangements without any additional set-off or deduction whatsoever; and
- (c) that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case, that the normal prices or charges for all such goods or services received

after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and the applicable Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

20. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration, in each case, provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

21. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

22. **THIS COURT ORDERS** that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

23. **THIS COURT ORDERS** that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of USD \$2,500,000, as security for the indemnity

provided in paragraph 22 of this Order. The Directors' Charge shall have the priority set out in paragraphs 40 and 42 herein.

24. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge; and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 22 of this Order.

APPOINTMENT OF MONITOR

25. **THIS COURT ORDERS** that A&M is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, partners, members, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

26. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements;
- (b) assist the Applicants with the Restructuring;
- (c) assist the Applicants, to the extent required by the Applicants or the Interim Lender, in their dissemination to the Interim Lender and its counsel and financial advisor of financial and other information as agreed to between the Applicants and the Interim Lender, which may be used in these proceedings, including reporting on a basis to be agreed with the Interim Lender;

- (d) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (e) advise the Applicants in their preparation of the Applicants' cash flow statements and the dissemination of other financial information;
- (f) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;
- (g) liaise and consult with any Assistants and any liquidator selected through the Liquidation Selection Process, to the extent required, with respect to all matters relating to the Property, the Business and such other matters as may be relevant to the proceedings herein;
- (h) be at liberty to engage independent legal counsel, advisors or such other persons, or utilize the services of employees of its affiliates, as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (i) assist the Applicants, to the extent required by the Applicants, with any matters relating to any foreign proceeding commenced in relation to any of the Applicants; and
- (j) perform such other duties as are required by this Order or by this Court from time to time.

27. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

28. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively,

“**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, the *Ontario Occupational Health and Safety Act*, the *British Columbia Environmental Management Act*, the *British Columbia Riparian Areas Protection Act*, the *British Columbia Workers Compensation Act*, the *Alberta Environmental Protection and Enhancement Act*, the *Alberta Water Act*, the *Alberta Occupational Health and Safety Act*, the *Manitoba Environment Act*, the *Manitoba Contaminated Sites Remediation Act*, the *Manitoba Workplace Safety and Health Act*, the *Quebec Environmental Quality Act*, and the *Quebec Act Respecting Occupation Health and Safety*, and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

29. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicants with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

30. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

31. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, counsel to the Applicants, counsel to the Interim Lender and financial advisor thereto, shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to, on or subsequent to the date of this Order, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor and, counsel to the Applicants, counsel to the Interim Lender and financial advisor thereto, on such terms as such parties may agree and are hereby authorized to pay to the Monitor, counsel to the Monitor and counsel to the Applicants, retainers, *nunc pro tunc*, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

32. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

ADMINISTRATION CHARGE

33. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount of USD \$750,000, as security for their professional fees and disbursements incurred at their standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 40 and 42 hereof.

INTERIM FINANCING

34. **THIS COURT ORDERS** that on or after the date of this Order and until May 8, 2024, Ted Baker Canada and Ted Baker Limited are hereby authorized and empowered to continue to borrow from Canadian Imperial Bank of Commerce (the “**Interim Lender**”) under the existing credit facility (the “**Existing Credit Facility**”) pursuant to the Credit Agreement dated as of March 14, 2023 (as amended by a consent and first amendment agreement dated as of August 3, 2023, and as further amended by a second amendment agreement dated as of April 23, 2024, the “**Existing Credit Agreement**”) in order to finance the Applicants' working capital requirements

and other general corporate purposes, capital expenditures and costs of these proceedings (each, an “**Interim Borrowing**” and collectively, the “**Interim Borrowings**”), provided that (i) such Interim Borrowings are to fund obligations which the Applicants, with the consent of the Monitor and the Interim Lender, deem to be necessary for the preservation of the Property or the Business, (ii) such Interim Borrowings shall not, individually or in the aggregate, exceed USD \$7,000,000, (iii) such Interim Borrowings under the Existing Credit Facility shall accrue interest at the default rates set out in the Existing Credit Agreement, (iv) Fashion Canada and Fashion US shall be deemed to (a) guarantee and secure 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 and secured under the Existing Credit Agreement and the loan and security documents provided by them in connection therewith, and (b) ratify and acknowledge the guarantees and security they have provided in connection with the Existing Credit Agreement and the loan and security documents provided by them in connection therewith, in each case, without the need for any further guarantee, security or documentation from Fashion Canada or Fashion US, and (v) unless the Interim Lender provides its written waiver, the United States Bankruptcy Court shall have granted an Order pursuant to the *United States Bankruptcy Code*, 11 U.S.C., §§ 101 – 1532, as amended (the “**Bankruptcy Code**”): (a) provisionally recognizing, ordering and giving effect to this Order and the Interim Lender’s Charge in the United States, and (b) granting such other provisional relief that is sought by the Applicants, at the request of the Interim Lender.

35. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver such amendments to the Existing Credit Agreement or other documents, if any, as may be reasonably required by the Interim Lender to facilitate any Interim Borrowings, provided that failure to execute any such documentation does not invalidate any Interim Borrowings or the validity or priority of the Interim Lender’s Charge.

36. **THIS COURT ORDERS** that the Interim Borrowings shall mature on May 8, 2024 and be payable in full by the Applicants on such date, together with all interest accrued thereon and costs or expenses incurred in connection therewith.

37. **THIS COURT ORDERS** that the Interim Lender shall be entitled to the benefit of and is hereby granted a charge (the “**Interim Lender’s Charge**”) on the Property of each of the

Applicants, which Interim Lender's Charge shall, for greater certainty, not secure any obligation that exists before this Order is made. The Interim Lender's Charge shall have the priority set out in paragraphs 40 and 42 hereof.

38. **THIS COURT ORDERS** in the event the Applicants fail to make the payment to the Interim Lender required by paragraph 36 herein, then upon three (3) business days' notice to the Applicants and the Monitor, the Interim Lender may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the Existing Credit Agreement and the Interim Lender's Charge, including without limitation, to cease making advances to the Applicants and, subject to further Order of the Court, set off and/or consolidate any amounts owing by the Interim Lender to any of the Applicants against the obligations of the Applicants to the Interim Lender under the Existing Credit Agreement, this Order or the Interim Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants or the Property and for the appointment of a trustee in bankruptcy of the Applicants.

39. **THIS COURT ORDERS** that the Interim Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada with respect to any Interim Borrowings.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

40. **THIS COURT ORDERS** that the priorities of the security interests granted by the Administration Charge, Interim Lender's Charge and the Directors' Charge (collectively, the "**Charges**"), and the Applicants to CIBC, as among them, shall be as follows:

- (a) First – Administration Charge (to the maximum amount of USD \$750,000);
- (b) Second – Interim Lender's Charge;
- (c) Third – Security granted with respect to the Existing Credit Facility (excluding the Interim Borrowings); and
- (d) Fourth - Directors' Charge (to the maximum amount of USD \$2,500,000).

41. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

42. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts (including deemed or constructive trusts), liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any Person, except for any Person who is a “secured creditor” as defined in the CCAA that has not been served with the Notice of Application for this Order. The Applicants shall be entitled, at the Comeback Hearing (as hereinafter defined), on notice to those Persons likely to be affected thereby, to seek priority of the Charges ahead of any Encumbrance over which the Charges may not have obtained priority pursuant to this Order.

43. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or pari passu with, any of the Charges unless the Applicants also obtain the prior written consent of the Monitor, the Interim Lender and the other beneficiaries of the Charges (collectively, the “**Chargees**”), or further Order of this Court.

44. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) or receivership order(s) issued pursuant to the BIA or otherwise, or any bankruptcy order or receivership order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution or delivery of any amendment or document pursuant to paragraph 35 hereof shall create or be deemed to constitute a breach by the Applicants of any Agreement to which they are a party;
- (b) None of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges, the Interim Borrowings or the execution or delivery of any amendment or document pursuant to paragraph 35 hereof; and
- (c) the payments made by the Applicants pursuant to this Order, including with respect to the Existing Credit Facility or in respect of the Interim Borrowings and the granting of the Charges do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

45. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interests in such real property leases.

SERVICE AND NOTICE

46. **THIS COURT ORDERS** that the Monitor shall (a) without delay, publish in the Globe & Mail a notice containing the information prescribed under the CCAA; and (b) within five (5) days after the date of this Order, (i) make this Order publicly available in the manner prescribed under the CCAA, (ii) send, or cause to be sent, in the prescribed manner (including by electronic message to the e-mail addresses as last shown in the Applicants' books and records), a notice to all known creditors having a claim against the Applicants of more than \$1,000, and (iii) prepare a list showing the names and addresses of such creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of individuals who are creditors publicly available, unless otherwise ordered by the Court.

47. **THIS COURT ORDERS** that any employee of any of the Applicants who is sent a notice of termination of employment or any other communication by the Applicants after the date hereof shall be deemed to have received such communication by no later than 8:00 a.m. Eastern

Standard/Daylight Time on the fourth (4th) day following the date any such notice is sent, if such notice is sent by ordinary mail, expedited parcel or registered mail to the individual's address as reflected in the Applicants' books and records; provided, however, that any communication that is sent to an employee of the Applicants by electronic message to the individual's corporate email address and/or the individual's personal email address as last shown in the Applicants' books and records shall be deemed to have been received twenty-four (24) hours after the time such electronic message was sent, notwithstanding that any such notices of termination of employment or other employee communication was sent pursuant to any other means.

48. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca//scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a case website shall be established in accordance with the Protocol with the following URL: www.alvarezandmarsal.com/TBRetail (the "**Monitor's Website**").

49. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol or the CCAA and the regulations thereunder is not practicable, the Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile transmission or electronic message to the Applicants' creditors or other interested parties at their respective addresses (including e-mail addresses) as last shown in the books and records of the Applicants and that any such service or distribution shall be deemed to be received on the earlier of (a) the date of forwarding thereof, if sent by electronic message on or prior to 5:00 p.m. Eastern Standard/Daylight Time (or on the next business day following the date of forwarding thereof if sent on a non-business day); (b) the next business day following the date of forwarding thereof, if sent by courier, personal delivery, facsimile transmission or electronic message sent after 5:00 p.m. Eastern Standard/Daylight Time;

or (c) on the third (3rd) business day following the date of forwarding thereof, if sent by ordinary mail.

50. **THIS COURT ORDERS** that the Applicants and the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding copies thereof by electronic message to the Applicants' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS).

COMEBACK HEARING

51. **THIS COURT ORDERS** that the comeback motion in these CCAA proceedings shall be heard on May 3, 2024 (the "**Comeback Hearing**").

GENERAL

52. **THIS COURT ORDERS** that the Applicants or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their respective powers and duties hereunder.

53. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Foreign Representative (as defined below), the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants, to the Foreign Representative and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants, the Foreign Representative and the Monitor and their respective agents in carrying out the terms of this Order.

54. **THIS COURT ORDERS** that the Applicants and the Monitor be at liberty and are hereby authorized and empowered to seek any relief deemed appropriate by them from the United States

Bankruptcy Court and apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that Ted Baker Canada is hereby authorized and empowered to act as the foreign representative (the “**Foreign Representative**”) in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada, including acting as a foreign representative of the Applicants to apply to the United States Bankruptcy Court for relief pursuant to chapter 15 of the Bankruptcy Code.

55. **THIS COURT ORDERS** that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order at the Comeback Hearing on not less than five (5) calendar days’ notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

56. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

A handwritten signature in blue ink, appearing to read 'J. Black', is written over a horizontal line.

Black J.

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

Ontario
**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

INITIAL ORDER

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Lawyers for the Applicants

This is Exhibit “B” referred to in the Affidavit of ANTOINE ADAMS sworn by ANTOINE ADAMS at the City of Toronto, in the Province of Ontario, before me on May 1, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

MARLEIGH ERYN DICK

(LSO# 79390S)



SUPERIOR COURT OF JUSTICE

COUNSEL SLIPCOURT FILE NO.: CV-24-718993-00CL DATE: April 26, 2024NO. ON LIST: 3TITLE OF PROCEEDING: **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.**

BEFORE JUSTICE: **W.D. BLACK****PARTICIPANT INFORMATION****For Plaintiff, Applicant, Moving Party, Crown:**

Name of Person Appearing	Name of Party	Contact Info
Shawn Irving	Lawyer for the Applicant	sirving@osler.com
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For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
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Aryo Shalviri	Lawyer for the CIBC	Aryo.shalviri@blakes.com
Milly Chow	Lawyer for the CIBC	Milly.chow@blakes.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info

ENDORSEMENT OF JUSTICE BLACK:**Overview**

- [1] This is 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”, and 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”). The factual references in this endorsement come from the materials filed in support of the application, and I will at times use defined terms from those materials.
- [2] The Applicants operate a clothing business, with retail, wholesale and e-commerce components, under the name Ted Baker in Canada and the U.S., and under the Brooks Brothers and Lucky Brand banners in Canada.
- [3] In March of 2023, Fashion Canada and Fashion Services acquired from No Ordinary Design Label (“NODL”), a subsidiary of Authentic Brands Group (“ABG”), the equity interests of Ted Baker Canada and Ted Baker Limited.
- [4] Concurrently, Ted Baker Canada and Ted Baker Limited entered into a license agreement with NODL in which NODL granted to them an exclusive license to use Ted Baker marks and sell Ted Baker branded merchandise in Canada and the U.S.
- [5] In August of 2023, Ted Baker Canada acquired certain assets in Canada relating to the Lucky Brand and Brooks Brothers brands, including licensed inventory and an exclusive license to use the Lucky Brand and Brooks Brothers marks and to sell licensed merchandise in Canada.

Summary of Financial Difficulties

- [6] Since commencing operations in March of 2023, the Applicants have experienced operational and financial difficulties, and their consolidated business has failed to generate positive cash flows.
- [7] The Applicants attribute these difficulties to a combination of factors. Their evidence is that these include a failure of certain of ABG’s operating partners to make timely payments in respect of Ted Baker NA’s supply chain, impacting Ted Baker NA’s inventory of merchandise, and, as a result of NODL’s insolvency in the UK, suppliers of Ted Baker NA accelerating payment terms.
- [8] The Applicants also explain that they have experienced problems and delays resulting from the tech transition of the Ted Baker NA business from NODL to the Applicants, which have further disrupted the Applicants’ operations and exacerbated the supply chain issues. In addition, the transition of the Ted Baker website URL to “tedbaker.us” is said to have significantly disrupted sales, and relationships with the Applicants’ online customer base.
- [9] The Applicants have made efforts to reduce costs and improve sales performance, but in recent months the Applicants’ financial position has continued to decline. The Applicants are currently in an over advance position on the borrowing base under their Existing Credit Agreement (as defined in the Applicants’ materials), and in significant arrears with a number of key vendors.

- [10] The CIBC, the Applicants' Senior Lender, has recently advised the Applicants that it will not permit any further draws under the Existing Credit Facility outside of a CCAA proceeding.
- [11] The Applicants have also recently received notices of default under certain license agreements as a result of missed royalty payments which, if not cured within five days, may entitle ABG to terminate those agreements. Efforts to negotiate a resolution of these issues with ABG have not been successful.

Relevant Details of the Applicants' Operation

- [12] All or substantially all of the Applicants' key operational and strategic corporate decision-making is performed by and through Fashion's head office in Mississauga, Ontario. This includes executive, M&A and strategic corporate functions, and the approval of material financial decisions for all of the Applicants (while Ted Baker Limited has its own executive leadership team in New York, this team ultimately reports to Canadian employees based in Mississauga).
- [13] Leadership for IT functions are also performed in Mississauga (by an affiliate based out of the head office in Mississauga ("Retail")).
- [14] As of 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 U.S. In addition, 19 full-time and 43 part-time employees service the Lucky Brand business, and 32 full-time and 52 part-time employees work for the Brooks Brothers business (all of whom are based in Canada and employed by Ted Baker Canada).
- [15] With respect to their retail operations, the Applicants operate 14 full-line, and 11 outlet stores in Canada, along with 24 full-line and 10 outlet stores in the U.S.
- [16] In terms of wholesale, Ted Baker Canada and Ted Baker Limited are parties to agreements with certain wholesale customers, including major department stores (such as Hudson's Bay, Bloomingdales and Nordstroms), pursuant to which Ted Baker NA sells branded products in bulk.
- [17] In addition, Ted Baker Canada operates six concession locations inside Hudson's Bay in Canada, and Ted Baker Limited operates 31 concession locations inside Bloomingdales stores, and one concession inside a Macy's store in the U.S., subject, respectively, to specific agreements with the relevant department store companies.
- [18] The Ted Baker e-commerce business is conducted through the tedbaker.ca URL in Canada, and the tedbaker.us URL in the U.S.
- [19] All of the Applicants' full-line and outlet retail operations are conducted in leased facilities, with various third-party landlords.
- [20] Sourcing and purchasing of merchandise for both Ted Baker Canada and Ted Baker Limited is centralized, and conducted through Ted Baker NA's team in the New York office. All purchase orders are submitted to PDS Limited ("PDS"), an operating partner of the Applicants that is globally responsible for design, procurement and maintaining relationships with suppliers and manufacturers for the Ted Baker brand.

- [21] Ted Baker NA also has a centralized distribution system. Once manufactured, goods are delivered to Ted Baker NA's primary distribution center in Atlanta, which is managed and operated by Future Forwarding Company, ("Future Forwarding") pursuant to a Warehousing, Storage and Logistics Agreement.
- [22] For the Brooks Brothers and Lucky Brand businesses, all or most of the merchandise is sourced from SPARC Group LLC, and distributed through a third-party logistics provider.

Details of Indebtedness

- [23] Ted Baker Canada and Ted Baker Limited, as borrowers, and Fashion Canada and Fashion Services as guarantors are parties to the Existing Credit Agreement with CIBC. Pursuant to the Existing Credit Agreement, CIBC has provided revolving loans to the borrowers of up to U.S. \$36.5 million. As of April 23, 2024, the outstanding balance under the Existing Credit Facility is \$28,789,728.37.
- [24] Under the terms of the Existing Credit Agreement, the borrowers and guarantors executed a number of security instruments in favour of CIBC, such that the relevant obligations are secured against a continuing security interest in all their present and after-acquired personal property.
- [25] Fashion Canada is also indebted to Retail under a secured promissory note, pursuant to which, on demand, Fashion Canada has promised to pay U.S. \$10 million, secured by a security interest in all of Fashion Canada's present and after-acquired undertakings and property. This debt is, by agreement, subordinated and postponed to the indebtedness of the Ted Baker borrowers to CIBC.

Decision to Seek CCAA Protection

- [26] In the circumstances summarized above, absent CCAA protection, the Applicants risk critical vendors taking potentially damaging enforcement steps, including possible termination of agreements that are critical to the Applicants' continued operation. As a result, after consulting with experts (including KPMG as financial advisor, and Alvarez & Marsal Canada Inc. ("A&M")), the proposed monitor, and in light of the imminent expiry of the cure period under the License Agreements and the word from CIBC that it will not permit further draws under the Existing Credit Facility outside of a CCAA proceeding, the Applicants have determined that commencing these CCAA proceedings is in the best interests of the Applicants and their stakeholders, and that the stay of proceedings is the only practical means of providing the breathing room required to determine appropriate next steps, including potentially a liquidation and orderly wind-down of their operations, or other alternatives to maximize value.

Consideration of Factors Relative to an Initial Order

- [27] The CCAA applies to a "debtor company" if the total claims against it exceed \$5 million. The Applicants are insolvent, and the claims against them, collectively, substantially exceed the \$5 million statutory threshold. As such, the Applicants meet the debtor company definition (including under the expanded concept of insolvency adopted by this Court in *Stelco Inc. (Re)* 2004 CarswellOnt 1211).
- [28] Under section 9 of the CCAA, a debtor company may bring an application under the CCAA in the province within which its head office or chief place of business is situated. The Applicants maintain their head office and much of their business activities in Ontario. I am satisfied that this court is the appropriate forum. 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 (see *Chalice Brands Ltd. (Re)*, 2023 ONSC 3174).

- [29] The court may grant a stay of proceedings of up to 10 days on an initial application, provided that a stay is appropriate and that the Applicant has acted in good faith and with due diligence. This threshold for an initial stay is relatively low, and a debtor company need only satisfy the court that a stay would “usefully further” its efforts to reorganize (*Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60).
- [30] I am satisfied that the stay of proceedings sought by the Applicants is necessary for the Applicants to determine appropriate next steps. As noted by Morawetz C.J. in *Lydian International Limited (Re)*, 2019 ONSC 7473, the initial stay period preserves the status quo and allows for operations to be stabilized and for negotiations to occur, followed by requests for expanded relief on proper notice to affected parties at the full comeback hearing.
- [31] CIBC, counsel for which attended at this hearing, 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, up to a maximum of \$7 million, subject to the proviso that draw requests must have the consent of CIBC.
- [32] The Applicants seek and I approve an interim financing charge to secure the interim borrowings, to be secured by all of the present and future assets, property and undertaking of the Applicants, to rank behind the Administrative Charge and ahead of all other security interests, charges and liens.
- [33] The Applicants’ cash flow projections demonstrate the clear need for the interim financing, in order to provide a measure of stability and to fund operations during the initial stay period, and the evidence before me is that the interim borrowings are expected to provide sufficient liquidity to allow the Applicants to continue their business operations during this initial stay. The Interim Lender’s Charge, in turn is required as a condition of CIBC advancing the interim funding.

Authorization for Payment of Pre-Filing Obligations

- [34] The Applicants also seek authorization, with the consent of the Monitor A&M and CIBC, to make payments of pre-filing debts to certain critical third parties, including, critically, Future Forwarding and SDR (the entity that provides third-party logistics services to Ted Baker Canada in respect of the Brooks Brothers and Lucky Brand businesses). The circumstances in which this authorization is sought here meet the factors outlined in *Index Energy Mills Road Corporation (Re)*, 2017 ONSC 4944, and I grant the authorization sought to make these payments.
- [35] Given that the Applicants have operations, assets and important relationships in the U.S., CIBC requires, as another pre-condition to permitting interim draws, that the relief contemplated under the initial order here be sought and recognized contemporaneously in the U.S. I was advised that, assuming I issue the order sought, Ted Baker Canada intends to initiate a proceeding under Chapter 15 of Title 11 of the Bankruptcy Code to seek an order to recognize and enforce the CCAA proceedings in the U.S.
- [36] The Applicants therefore seek, under s. 56 of the CCAA, 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 particular in the Chapter 15 proceedings. I find this to be appropriate, and I grant this relief.
- [37] I also grant, pursuant to s. 11.52 of the CCAA, the Administrative Charge in favour of the Monitor in the amount of \$750,000.00. This charge was developed in consultation with the Monitor and is to be secured

by the Property (as defined) and to have first priority over all other charges and security interests. The Administrative Charge satisfies the factors originally established by *Pepall J. in Canwest Publishing (Re)* 2010 ONSC 222.

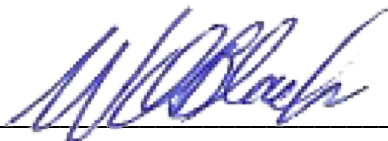
- [38] The Applicants also seek, and I grant, a directors and officers charge of \$2.5 million for the initial stay period. This charge is also to be secured by the Property, and to rank behind the Administrative Charge, the interim lender's charge and the Existing Facility. I am satisfied that the continued involvement of the directors and officers in this proceeding requires the directors and officers charge, and that a successful restructuring of the Applicants will only be possible with the continued participation of their directors, officers, management and employees.

Conclusion: Initial Order Granted

- [39] Accordingly, I grant the Order sought.

Comeback Hearing on May 3, 2024

- [40] The comeback hearing is scheduled before me on May 3, 2024 at 9:30 a.m., for 90 minutes.



W.D. BLACK J.

DATE: April 29, 2024

This is Exhibit “C” referred to in the Affidavit of ANTOINE ADAMS sworn by ANTOINE ADAMS at the City of Toronto, in the Province of Ontario, before me on May 1, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

MARLEIGH ERYN DICK

(LSO# 79390S)

Court File No. CV-24-00718993-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

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

**AFFIDAVIT OF ANTOINE ADAMS
(sworn April 24, 2024)**

I, Antoine Adams, of the City of Toronto, in the Province of Ontario MAKE OATH AND
SAY:

1. This affidavit is made in support of an application by 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 collectively with Fashion Canada, “**Fashion**”) (together, the “**Applicants**”) for 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**”).

2. I am a director and Corporate Secretary of each of the Applicants, residing in Toronto, Canada. I am also the Chief Operating Officer of Retail (defined below), an affiliate of the Applicants that, among other things, provides Management Services (defined below) to the

Applicants. As such, I have knowledge of the matters contained in this Affidavit. Where I have relied on other sources of information, I have so stated and I believe them to be true.

3. In my role as Corporate Secretary and director of the Applicants, I am involved in all operational and organizational aspects of the Applicants' business, including approving all the strategic decisions of the Applicants, and am the primary strategic contact with ABG (defined below). Therefore, I am familiar with the business and have relied upon the books and records of the Applicants. In preparing this affidavit, I have also consulted with other members of the senior management teams of the Applicants and the Applicants' financial and legal advisors. The Applicants do not waive or intend to waive any applicable privilege by any statement herein.

4. As described in greater detail below, the Applicants are seeking, among other relief, the following as part of the proposed Initial Order:

- (a) a stay of proceedings against the Applicants, the Monitor (defined below), and their respective employees, directors, advisors, officers and representatives acting in such capacities for an initial 10-day period (the **"Initial Stay Period"**);
- (b) authorization of Ted Baker Canada and Ted Baker Limited to continue to borrow from the Interim Lender (defined below) under the Existing Credit Facility in an amount not to exceed USD \$7 million, subject to the requirements set out in the Initial Order;
- (c) authorization (but not the requirement) to pay certain pre-filing amounts with the consent of the Monitor and the Interim Lender to key participants in the Applicants' distribution network, and to other critical suppliers, if required;

- (d) the granting of the following priority charges (collectively, the “**Charges**”) over the Property (as defined in the Initial Order), listed in order of priority:
 - (i) an Administration Charge (defined below) in the maximum amount of USD \$750,000;
 - (ii) an Interim Lender’s Charge (defined below);
 - (iii) security granted with respect to the Existing Credit Facility (defined below) (excluding the Interim Borrowings, defined below); and
 - (iv) a Directors’ Charge (defined below) in the maximum amount of USD \$2.5 million; and
- (e) authorization for Ted Baker Canada to act as the foreign representative of the Applicants in respect of the within proceeding for the purpose of having these CCAA proceedings recognized and approved in a jurisdiction outside of Canada and authorizing Ted Baker Canada to apply for foreign recognition and approval of these CCAA proceedings and related relief, including provisional relief, as necessary, in the United States Bankruptcy Court for the Southern District of New York pursuant to Chapter 15 of Title 11 of the United States Bankruptcy Code (the “**Bankruptcy Code**”), 11 U.S.C. §§ 101-1532.

5. All references to monetary amounts in this affidavit are in Canadian dollars unless noted otherwise, and do not represent amounts or measures prepared in accordance with ASPE or US GAAP.

6. This affidavit is organized into the following sections:

A. Introduction.....	5
B. Corporate Structure.....	10
(a) Ted Baker Canada Inc.....	10
(b) Ted Baker Limited	10
(c) OSL Fashion Services Canada Inc.....	11
(d) OSL Fashion Services, Inc.....	11
C. The Business of the Applicants.....	11
(a) Overview	11
(i) Retail Stores	12
(ii) Wholesale.....	13
(iii) Concession Locations	13
(iv) E-Commerce Operations.....	14
(b) Leases and Landlords.....	14
(c) Employees and Employee Benefits	15
(i) Employee Retirement and Benefit Plans	16
(d) Merchandising and Sourcing	17
(e) Management Services and Other Shared Services.....	18
(f) License Agreements.....	19
(i) NODL License Agreement	19
(ii) Ted by Ted Baker License Agreement	21
(iii) Lucky Brand and Brooks Brothers License Agreements.....	21
(iv) Retail Software Agreement.....	24
(v) Transition Services Agreements	24
(g) Gift Cards.....	25
(h) Banking and Cash Management System.....	26
D. Financial Position of the Applicants.....	28
(a) Assets	29
(b) Liabilities	29
(c) Owner's Equity	30
E. Applicants' Capital Structure.....	30
(a) Existing Credit Agreement	30
(b) Retail Loan.....	34

(c)	The Subordination Agreement.....	35
(d)	Letter Agreement	36
F.	Events Leading Up to the CCAA Filing	36
(a)	Supplier Delays	36
(b)	Acceleration of Payment Terms.....	37
(c)	Delays in the Development of New Tech Stack	37
(d)	E-Commerce Issues	38
(e)	Poor Sales Performance	39
(f)	Funding Discussions with ABG.....	39
G.	Urgent Need for Relief.....	40
H.	Relief Sought	42
(a)	Stay of Proceedings.....	42
(b)	Appointment of Monitor	43
(c)	Cash Flow Forecast.....	43
(d)	Interim Financing.....	44
(e)	Payments During these CCAA Proceedings.....	46
(f)	Chapter 15 Case	46
(g)	Administration Charge.....	48
(h)	Directors' Charge.....	48
I.	Conclusion	50

A. Introduction

7. The Applicants operate a fashion clothing retail, wholesale and e-commerce business under the TED BAKER banner in Canada and the US. In Canada, business operations are conducted through the Applicant, Ted Baker Canada and in the 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.

8. The Applicants first entered the North American retail fashion clothing industry in early 2023. This was accomplished initially through the acquisition of all of the issued and outstanding

equity interests of Ted Baker Canada and Ted Baker Limited by the Applicants Fashion Canada and Fashion Services, respectively, from No Ordinary Designer Label Limited (“**NODL**”), a subsidiary of Authentic Brands Group (“**ABG**”), pursuant to the Purchase Agreement (defined below) (the “**Ted Baker Acquisition**”). ABG is a global brand management company that, among other things, owns and licenses over 50 different consumer brands. Concurrently, Ted Baker Canada and Ted Baker Limited, as licensees, entered into a license agreement with NODL, as licensor, whereby NODL granted Ted Baker Canada and Ted Baker Limited an exclusive license to, among other things, use the TED BAKER marks and sell TED BAKER branded merchandise in Canada and the US.¹

9. The Ted Baker Acquisition 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 certain assets in Canada relating to the BROOKS BROTHERS brand, including licensed inventory and the exclusive license to, among other things, use the LUCKY BRAND and BROOKS BROTHERS marks and sell LUCKY BRAND and BROOKS BROTHERS branded merchandise in Canada (the “**Lucky Brand and Brooks Brothers Acquisition**” and, together with the Ted Baker Acquisition, the “**Acquisitions**”).

10. Unfortunately, since the Acquisitions and the commencement of retail fashion operations, the Applicants’ financial and operational performance has struggled, and the consolidated business has failed to achieve positive cash flow. Over the last year, Ted Baker Canada and Ted Baker Limited (together, “**Ted Baker NA**”) have underperformed relative to budget and revenues have

¹ Effective June 8, 2023, an affiliate of ABG, ABG-TB IPCO (UK) Limited (“**ABG UK**”), acquired the TED BAKER brand from NODL. As of that date, ABG UK became the Licensor under the Applicants’ license agreement with NODL (described below).

significantly declined. This has been caused principally by (i) failures by ABG's operating partners in Europe and elsewhere to make payments to suppliers in the Ted Baker supply chain, including payments on behalf of Ted Baker NA, which led to these suppliers holding shipments and/or short shipping to Ted Baker NA, creating delays in receiving merchandise for the critical winter season, cancellation of orders by some of Ted Baker NA's wholesale partners, and causing Ted Baker NA to lack the appropriate merchandise levels and product mix; (ii) suppliers of Ted Baker NA accelerating payment terms in the lead up to and as a result of NODL's administration process in the UK (set out in greater detail below); (iii) the transition from the existing technology platform (referred to as a "**Tech Stack**") used by Ted Baker NA to a new Tech Stack during the busiest selling season, which exacerbated the supply delays experienced by Ted Baker NA; (iv) certain requirements imposed by ABG to change the Ted Baker website URL from tedbaker.com to tedbaker.us, which significantly impeded sales from, and disrupted relationships with, the Applicants' online customer base; and (v) generally poor sales performance at Ted Baker NA.

11. For the 11 months ended December 31, 2023, Ted Baker NA significantly underperformed expectations, generating sales and EBITDA of USD \$145 million and USD (\$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 of over USD \$5 million.

12. The negative cash flow and working capital issues have caused a strain on the borrowing base under the Applicants' Existing Credit Agreement (defined below), resulting in an over advance position on the borrowing base, such that at present there is no availability to make any additional draws under such facility, with the Applicants being unable to pay their obligations in the ordinary course. Further, the Senior Lender (defined below) under the Existing Credit Agreement currently has full sweep rights under the Canadian Bank Accounts (each, defined

below) and has established or is establishing DACA (defined below) in respect of the US Bank Accounts (defined below). As of the date of this affidavit, the Applicants have approximately USD \$1.2 million in their bank accounts and approximately USD \$4 million in payments that are required to be made in the next several days, including payroll.

13. The Applicants' liquidity constraints have also resulted in significant arrears owing to critical vendors, including: (i) in excess of USD \$2 million owing to ABG as of April 1, 2024 pursuant to the License Agreements (defined below) (the "**Missed April Payments**"); (ii) in excess of three months' arrears (USD \$2.3 million) owing to Future Forwarding (defined below), the Applicants' primary third-party warehouse distribution provider, who is in possession of more than USD \$20 million in Ted Baker NA inventory; (iii) certain sales tax arrears owing to the CRA (defined below); and (iv) in excess of USD \$14 million owing to merchandise vendors and critical logistics and IT vendors.

14. Over the past several months, the Applicants have reduced spending, offered more aggressive consumer trade offers at their retail stores, and attempted to negotiate with ABG to address some of these unexpected transition-related issues, preserve capital and address their dwindling liquidity position. Unfortunately, these efforts have been unsuccessful, and Ted Baker NA has continued to struggle to revive their sale performance following the supply delays and other issues noted above.

15. On April 17, 2024, Ted Baker Limited and Ted Baker Canada received Notices of Breach from ABG as a result of the Missed April Payments. Under the terms of the License Agreements, ABG may have the right to terminate the License Agreements if the Applicants' failure to make payments under the License Agreements is not cured within five business days.

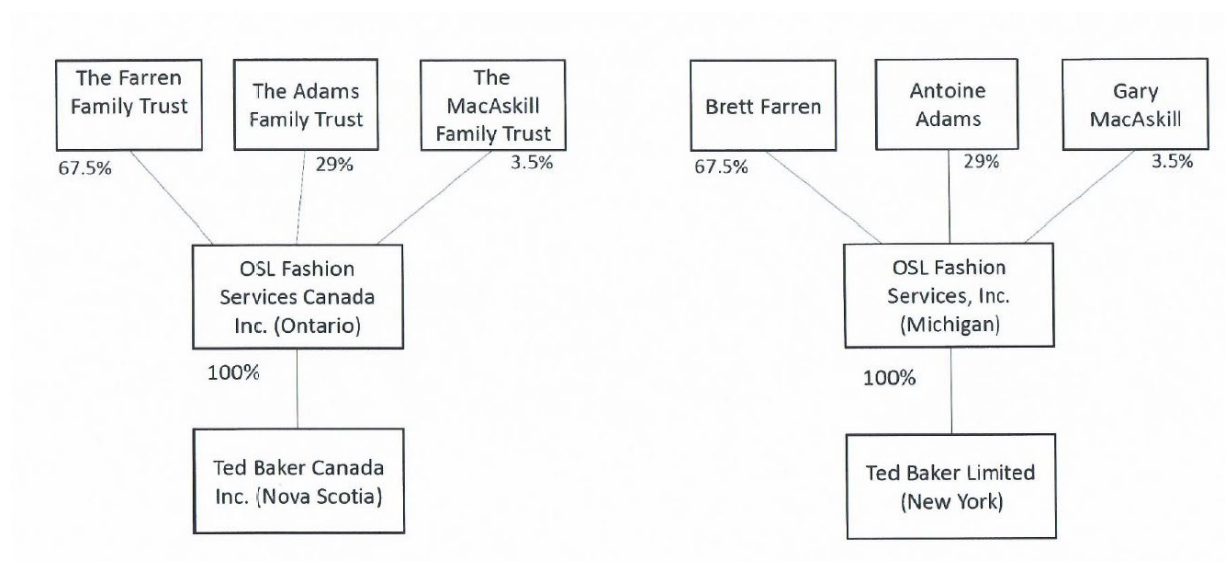
16. In light of their current financial crisis, including the liquidity constraints that have resulted in significant arrears owing to critical vendors, the potential termination of the License Agreements, and the potential cessation of shipments by the Applicants' third-party warehouse distribution provider as a result of the arrears, the Applicants urgently require a stay of proceedings granted under the CCAA and related relief. In addition, the Senior Lender has advised that it will only permit further draws under the Existing Credit Facility (defined below) within a CCAA proceeding and subject to the proposed Initial Order.

17. 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 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.

18. Because (i) the Applicants have operations, assets and valuable business relationships in the US, and (ii) because 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 same in the US, contemporaneously with commencement of these CCAA proceedings, Ted Baker Canada, as proposed Foreign Representative of the Applicants, intends to initiate cases under Chapter 15 of Title 11 of the Bankruptcy Code seeking an order to recognize and enforce these CCAA proceedings in the US, including seeking provisional relief and a temporary restraining order to obtain the benefits of a stay of proceedings, to protect against any potential adverse action against the Applicants, as well as certain related relief, including recognition of the Interim Lender's Charge.

B. Corporate Structure

19. A corporate chart depicting the structure of the Applicants following the Acquisitions is set out below.



(a) Ted Baker Canada Inc.

20. Ted Baker Canada is a limited company incorporated pursuant to the laws of Nova Scotia, and continued pursuant to the laws of Ontario. Ted Baker Canada is a wholly-owned subsidiary of Fashion Canada. Its head office is located at 5090 Orbitor Drive, Unit 1, Mississauga, Ontario.

(b) Ted Baker Limited

21. Ted Baker Limited is a limited company incorporated pursuant to the laws of New York. Its head office is located at 54 West 21st Street, 11th floor, in New York. Ted Baker Limited is a wholly-owned subsidiary of Fashion Services.

(c) OSL Fashion Services Canada Inc.

22. Fashion Canada is a company incorporated pursuant to the laws of Ontario. Its head office is located at 5090 Orbitor Drive, Unit 1, Mississauga, Ontario. Fashion Canada owns 100% of the shares of Ted Baker Canada.

(d) OSL Fashion Services, Inc.

23. Fashion Services is a company incorporated pursuant to the laws of Michigan. Its head office is located at 5090 Orbitor Drive, Unit 1, Mississauga, Ontario. Fashion Services owns 100% of the shares of Ted Baker Limited.

C. The Business of the Applicants

(a) Overview

24. As described in greater detail below, all or substantially all of the key operational and strategic and corporate decision-making relating to the Applicants' business is performed by and through Fashion's head office in Mississauga, Ontario, principally through myself (as Corporate Secretary) and Mr. Brett Farren (as President). These functions include, among other things, executive, M&A and strategic corporate, and approval of material financial decisions for all of the Applicants, including Ted Baker Limited (which, for clarity, has its own executive leadership team based in New York led by CEO Ari Hoffman, but which ultimately reports to me and Mr. Farren). In addition, Mr. Domenic Ieraci, an independent contractor based in Toronto, performs key financial advisory services for all the Applicants. Moreover, IT leadership for the Applicants, including strategy, development, implementation, and people management, is performed by employees of Retail that are based out of Fashion's head office in Mississauga.

25. 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.

(i) Retail Stores

26. As more fully described below, the Applicants conduct their business through 25 retail store locations in Canada and 34 retail store locations in the US. The following chart sets out the current store locations by store type and geographical region:

Province/State	Full-Line	Outlet
<i>Canada</i>		
<i>Ontario</i>	4 (Ted Baker) 1 (Lucky Brand) 3 (Brooks Brothers)	1 (Ted Baker) 2 (Lucky Brand) 3 (Brooks Brothers)
<i>Quebec</i>	1 (Ted Baker)	
<i>Alberta</i>	1 (Ted Baker) 2 (Brooks Brothers)	1 (Lucky Brand)
<i>British Columbia</i>	1 (Ted Baker) 1 (Lucky Brand)	1 (Ted Baker) 1 (Lucky Brand) 1 (Brooks Brothers)
<i>Manitoba</i>		1 (Lucky Brand)
<i>Subtotal</i>	14	11
<i>United States (all Ted Baker stores)</i>		
<i>New York</i>	4	1
<i>Michigan</i>	1	
<i>California</i>	6	3
<i>Florida</i>	4	3
<i>Texas</i>	3	
<i>Georgia</i>	1	
<i>Washington</i>	1	

Province/State	Full-Line	Outlet
<i>Nevada</i>	2	1
<i>Pennsylvania</i>	1	
<i>Hawaii</i>	1	
<i>Illinois</i>		1
<i>Massachusetts</i>		1
<i>Subtotal</i>	24	10
<i>Total</i>	38	21

(ii) Wholesale

27. Ted Baker Canada and Ted Baker Limited are party to agreements with certain wholesale customers pursuant to which Ted Baker NA sells TED BAKER branded products in bulk to these wholesale customers, who then sell the licensed products to their retail customers through their own employees and websites (the “**Wholesale Customers**”).

28. At present, Ted Baker Limited’s Wholesale Customers include *Nordstrom*, *Dillard’s*, *Macy’s*, and *Bloomingdale’s*, among others, and Ted Baker Canada’s primary Wholesale Customer is *Hudson’s Bay*.

(iii) Concession Locations

29. Ted Baker Canada and Ted Baker Limited are also party to license agreements with *Hudson’s Bay* in Canada, and *Bloomingdale’s* and *Macy’s* in the US (collectively, the “**Concession Parties**”), pursuant to which Ted Baker Canada or Ted Baker Limited, respectively, is granted a non-exclusive license to operate concession locations at applicable retail stores of the Concession Parties and sell certain TED BAKER merchandise to customers of the Concession Parties. Ted Baker Canada operates six concession locations at *Hudson’s Bay* in Canada and Ted Baker Limited

operates 31 concession locations in *Bloomingdales* and one (1) in *Macy's* in the US. The Applicants own the inventory that is sold at the concession locations.

30. The Applicants either directly supply employees to the Concession Parties, or pay to the Concession Parties an amount for employee compensation, to sell the licensed inventory at the concession locations. There are certain offsets charged by the Concession Parties, including for commission, e-commerce, and other marketing programs, and the Applicants utilize the POS systems of the Concession Parties at each concession location.

(iv) E-Commerce Operations

31. The Ted Baker e-commerce business is conducted through tedbaker.us in the US and tedbaker.ca in Canada.

(b) Leases and Landlords

32. All of the Applicants' retail store operations are conducted in leased facilities with various third-party landlords (the "**Landlords**"), as follows:

Landlord Group	Number of Store Locations
<i>Canada</i>	
Oxford Properties	2 Full-Line
Cadillac Fairview	7 Full-Line
Central Walk	2 Full-Line
Ivanhoe Cambridge	1 Full-Line
JLL	1 Full-Line, 4 Outlet
Cushman & Wakefield	1 Full-Line
Cameron Dev. Corp	1 Full-Line
Simon Properties	3 Outlet

Landlord Group	Number of Store Locations
Templeton DOC Limited Partnership	1 Outlet
Tanger	1 Outlet
<i>United States</i>	
Two Trees Management Co	1 Full-Line
Forbes Taubman	1 Full-Line
Westfield	1 Full-Line
Simon Properties	6 Full-Line, 9 Outlet
Schur Management	1 Full-Line
Bellevue Square, LLC	1 Full-Line
A/R Retail LLC	1 Full-Line
FRIT	1 Full-Line
Northpark Partners LP	1 Full-Line
South Coast Plaza	1 Full-Line
Aventura Mall Venture	1 Full-Line
595 Fifth Ave. Corp	1 Full-Line
Brookfield Properties	3 Full-Line
CBRE Asset Services	1 Full-Line
Macerich	1 Outlet

33. The Applicants also maintain two warehouse locations, one in Ontario and one in Georgia.

(c) Employees and Employee Benefits

34. As of April 19, 2024, Ted Baker Canada employs 58 full-time and 72 part-time employees who service the Ted Baker business in Canada. Ted Baker Limited employs 251 full-time and 97 part-time employees who service the Ted Baker business in the US. None of the employees are unionized.

35. As of the same date, 19 full-time and 43 part-time employees 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. None of the employees are unionized.

36. In addition, certain employees of OSL Retail Services Inc. (“**Retail**”), an affiliate of the Applicants, which are based out of Ontario, Canada, provide executive management and IT services to Ted Baker Limited. Retail is not an Applicant in these proceedings. Approximately USD \$1.3 million is invoiced annually to Ted Baker Limited by Retail on account of the executive services provided by such employees to Ted Baker Limited and approximately USD \$1.1 million is invoiced to Ted Baker Limited by Retail in respect of the IT employees who provide services to Ted Baker Limited.

(i) Employee Retirement and Benefit Plans

37. Ted Baker Canada provides the following benefits to its employees (including employees who service the Brooks Brothers and Lucky Brand businesses): (i) Vacation Day Pay (all employees based on province); (ii) Sick Day Pay (full time only unless required by province); (iii) Personal Day (full time only); (iv) RRSP/DDSP up to 5% match; (v) Clothing discount; (vi) Healthcare – Medical, Dental, Vision, FSA, Commuter benefits, LTD, life insurance & AD&D, EAP.

38. Ted Baker Limited provides the following benefits to its employees: (i) Vacation Day Pay (full time only); (ii) Sick Day Pay (full time only unless required by applicable state law); (iii) Personal Day (full time only); (iv) 401k match up to 5% full vested; (v) Clothing discount; (vi) Healthcare – Medical, Dental, Vision, FSA -Healthcare & Dependent, Commuter benefits, LTD, life insurance & AD&D, EAP; and (vii) Voluntary benefits – Pet insurance, Metlaw, Critical Illness, Accident Insurance, Voluntary Life & AD&D.

(d) **Merchandising and Sourcing**

39. 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 made by the Ted Baker NA team are submitted to PDS Limited (“**PDS**”), one of the Applicants’ operating partners.

40. Pursuant to a buying agency agreement between the Applicants and PDS, PDS is responsible globally for design, procurement and maintaining relationships with suppliers and manufacturers for the TED BAKER brand. PDS designs and sources the merchandise from the manufacturers, who then send purchase orders to Ted Baker NA, who approve those purchase orders and submit them back to the applicable manufacturers for production. The manufacturers then process the orders. The Applicants pay PDS a 10% fee for their services. Once the merchandise has been delivered to the freight forwarder, title passes to Ted Baker Limited. Ted Baker Limited is responsible for bringing the goods to Ted Baker NA’s primary distribution centre in Atlanta (the “**Distribution Centre**”), and distributing the goods to the retail stores, concession locations and Wholesale Customers. As of the date of this affidavit, there is approximately USD \$2.6 million in inventory in transit (inclusive of unpaid duties).

41. Wholesale Customers place orders for TED BAKER merchandise on a sales portal called Nu Order, following which orders are routed to the Distribution Centre and Ted Baker NA processes these orders on behalf of each store.

42. E-commerce orders are placed through tedbaker.us and tedbaker.ca, which are fulfilled directly through the Distribution Centre.

43. 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**”). Future Forwarding is responsible for, among other things, receipt of inbound deliveries, put away and storage, dispatch of orders, order returns/cancellations, and consumables. As of the date of this affidavit, approximately 20% of the inventory in the Distribution Centre is designated to Ted Baker Canada with the remainder designated to Ted Baker Limited.

44. For the BROOKS BROTHERS brand, all merchandise is sourced from SPARC Group, LLC (“**SPARC**”) and for LUCKY BRAND, 90% of the merchandise is sourced from SPARC and 10% is sourced by Ted Baker Canada from various manufacturers. SDR Distribution Services Inc. (“**SDR**”) provides third-party logistics services to Ted Baker Canada for the BROOKS BROTHERS and LUCKY BRAND businesses.

45. It is vital to the preservation of the value of the estate that the Applicants continue their relationship with Future Forwarding and SDR without disruption to ensure that merchandise continues to flow to Ted Baker NA’s retail stores and Wholesale Customers during these CCAA proceedings and the Chapter 15 Case (defined below).

(e) Management Services and Other Shared Services

46. Although there is no formal agreement in place related to shared services, as noted above, the Applicants rely on employees of Retail for certain executive and operational leadership, strategy, M&A, financial decision approvals and IT services, primarily from Retail’s head office in Mississauga (together, the “**Management Services**”). The Management Services are integral to the Applicants’ operations. As noted above, 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 Applicants cannot operate or function, and a restructuring within these proceedings could not occur, without the provision of the Management Services.

(f) License Agreements

47. All of the Applicants' inventory is licensed pursuant to various license agreements, as described below. These license agreements are confidential and may contain commercially sensitive information and therefore, are not attached as exhibits to this affidavit.

(i) NODL License Agreement

48. Ted Baker Canada and Ted Baker Limited, as Licensee, are parties to a License Agreement, effective March 13, 2023 (the "**Effective Date**", being the date of the closing of the Purchase Transaction whereby Fashion Canada and Fashion Services acquired the equity interests of Ted Baker Canada and Ted Baker Limited, respectively), with NODL, a private limited corporation organized in England and Wales and a subsidiary of ABG, as Licensor (as amended, the "**NODL License Agreement**"). The NODL License Agreement has an Initial Term beginning on the Effective Date and ending on December 31, 2033.

49. The Licensee is required to sell the Ted Baker inventory, being Licensed Products, in Canada and the US in accordance with the terms of the License Agreement. The "**Licensed Property**" is defined as the rights in and to the TED BAKER trademarks for Canada and the US, which are supported by the registered trademarks at Schedule A to the NODL License Agreement. The "**Licensed Products**" include the following product categories that are manufactured by or on behalf of the Licensor and/or its designated third-party licensees and/or suppliers: sportswear

apparel, outerwear apparel, men's dress shirts, women's dresses, fashion handbags, footwear, casual bags and backpacks, small leather goods, belts, cold weather accessories, hats and swimwear.

50. On the Effective Date, the Licensee was required to pay USD \$8 million to NODL, which represented 50% of the Guaranteed Minimum Royalties (“**GMR**”) payable to NODL for the first year of the NODL License Agreement. Pursuant to Amendment No. 1 to the NODL License Agreement, effective March 21, 2023, the remaining balance for the period from January 1, 2024 to December 31, 2024 is to be paid as follows:

- (a) USD \$1,818,085 million on or before January 1, 2024;
- (b) USD \$1,818,085 million on or before April 1, 2024;
- (c) USD \$1,818,085 million on or before July 1, 2024; and
- (d) USD \$1,818,085 million on or before October 1, 2024.

51. As described in further detail below, the Licensee failed to make the payment of USD \$1,818,085 million that was due to the Licenser on April 1, 2024.

52. The NODL License Agreement contemplates Retail providing an absolute, irrevocable and unconditional guarantee (the “**Retail Guarantee**”) to NODL of all of the financial, indemnity and payment obligations of the Licensee; provided, however, solely and specifically with respect to the Royalty & GMR Obligations (as defined therein), Retail would not be required to guarantee and otherwise pay Royalty & GMR Obligations in excess of USD \$8 million. An unsigned copy of the Retail Guarantee is attached as Schedule H to the NODL License Agreement.

53. Effective January 1, 2024, Ted Baker Canada, Ted Baker Limited, and ABG UK (as successor in interest to NODL) entered into Amendment No. 3 to the NODL License Agreement, which provided that the e-commerce websites for Ted Baker inventory specified in the NODL License Agreement would be located at: (A) www.tedbaker.us in the US and (B) www.tedbaker.ca in Canada.

(ii) Ted by Ted Baker License Agreement

54. Ted Baker Canada and Ted Baker Limited are also parties to another License Agreement, effective January 1, 2024, as Licensee, with ABG UK, a private limited corporation organized in England and Wales and affiliate of ABG, as Licensor (as amended, the “**Ted by Ted Baker License Agreement**”). Pursuant to the Ted by Ted Baker License Agreement, the Licensee is permitted to sell additional Licensed Products, including the following product categories: sportswear apparel products and denim apparel products, for an Initial Term starting on the Effective Date and ending on December 31, 2029, in Canada and the US.

55. The Licensee is required to pay a GMR of USD \$500,000 to the Licensor as follows:

- (a) USD \$250,000 on or before July 1, 2024; and
- (b) USD \$250,000 on or before July 1, 2025.

(iii) Lucky Brand and Brooks Brothers License Agreements

56. Effective April 1, 2023, in anticipation of the acquisition of all of the assets of the Lucky Brand and Brooks Brothers retail business in Canada (described above), Ted Baker Canada entered into two separate License Agreements for the LUCKY BRAND and BROOKS BROTHERS

Licensed Property with ABG-Lucky, LLC and BB IPCO, LLC, respectively (the “**Lucky Brand License Agreement**” and the “**Brooks Brothers License Agreement**” and, together with the NODL License Agreement, the “**License Agreements**”).

57. The Lucky Brand License Agreement and the Brooks Brothers License Agreement each provide Ted Baker Canada with the limited, non-exclusive right to use the Licensed Property (as defined in each of those Agreements) in connection with the initial design, development, production and manufacture of the Licensed Products (as defined in each of those Agreements) to be produced by or on behalf of Ted Baker Canada and ultimately sold and shipped in Canada in accordance with these License Agreements, after January 1, 2024.

58. Pursuant to the Lucky Brand License Agreement, Ted Baker Canada was required to pay the Licensor USD \$137,500 within five business days of signing the License Agreement, representing 25% of the GMR payable for the first year of the Lucky Brand License Agreement. The remaining balance of the GMR payments for the period December 1, 2023 to December 31, 2024 is due and payable as follows:

- (a) USD \$103,125 on or before December 1, 2023;
- (b) USD \$103,125 on or before April 1, 2024;
- (c) USD \$103,125 on or before July 1, 2024; and
- (d) USD \$103,125 on or before October 1, 2024.

59. In connection with the Lucky Brand License Agreement, Retail has given an absolute, irrevocable and unconditional guarantee (the “**Retail Guarantee to ABG-Lucky**”) to ABG-

Lucky, LLC of all of the financial, indemnity and payment obligations (e.g., Royalty, CMF, CMR, Minimum CMF) of the Licensee specifically for Contract Year 1 (2023/2024). An unsigned copy of the Retail Guarantee to ABG-Lucky is attached as Schedule C to the Lucky Brand License Agreement.

60. Pursuant to the Brooks Brothers License Agreement, Ted Baker Canada was required to pay the Licensor USD \$125,000 within five business days of signing the License Agreement, representing a portion of the GMRs payable for the first year of the Brooks Brothers License Agreement. The remaining balance of the GMR payments for the period December 1, 2023 to December 31, 2024 is due and payable as follows:

- (a) USD \$93,750 on or before December 1, 2023;
- (b) USD \$93,750 on or before April 1, 2024;
- (c) USD \$93,750 on or before July 1, 2024; and
- (d) USD \$93,750 on or before October 1, 2024.

61. In connection with the Brooks Brothers License Agreement, Retail has given an absolute, irrevocable and unconditional guarantee (the “**Retail Guarantee to BB IPCO, LLC**”) to BB IPCO, LLC of all of the financial, indemnity and payment obligations (e.g., Royalty, CMF, CMR, Minimum CMF) of the Licensee specifically for Contract Year 1 (2023/2024). An unsigned copy of the Retail Guarantee to BB IPCO, LLC is attached as Schedule C to the Brooks Brothers License Agreement.

62. Ted Baker Canada has not made the payments of USD \$103,125 and USD \$93,750 that were due to each of the Licensors on April 1, 2024.

(iv) Retail Software Agreement

63. Ted Baker Canada and Ted Baker Limited are parties to a license agreement with Retail, effective March 14, 2023, whereby Retail licenses certain Software, as described in Exhibit A to the agreement, including Retail's Tech Stack (which is currently in development), to Ted Baker NA for the Ted Baker business (the "**Software Agreement**").

(v) Transition Services Agreements

64. On March 14, 2023, in connection with the Ted Baker Acquisition, Ted Baker Limited and Ted Baker Canada, as the Acquired Companies, and Fashion Services and Fashion Canada, as Buyer, entered into a Transition Services Agreement with NODL, as Seller (the "**Ted Baker TSA**"). Pursuant to the Ted Baker TSA, the Seller agreed to provide the Acquired Companies with certain services to assist with an orderly transition of the Ted Baker business in exchange for the fees set forth on the Service Exhibit to the Ted Baker TSA, paid pursuant to monthly invoices delivered by the Seller to the Buyer, on behalf of the Acquired Companies. The services provided by the Seller are set out in Exhibit A to the Ted Baker TSA, as follows: merchandising, finance, sales channel: E-Comm, WHS, CRM, supply chain / warehousing, and IT. The Ted Baker TSA has effectively expired and payments have not been made under the Ted Baker TSA since September 2023.

65. On July 29, 2023, Ted Baker Canada entered into Transition Services Agreements with each of the sellers in the Lucky Brand and Brooks Brothers transactions, YM Inc. (Sales) ("**YM**")

and Jaytex Group (Sales) (“**Jaytex**”), respectively (the “**Lucky Brand TSA**” and the “**Brooks Brothers TSA**”). Pursuant to the Lucky Brand TSA and Brooks Brothers TSA, each of YM and Jaytex has agreed to provide Ted Baker Canada with certain services to assist with an orderly transition of the Lucky Brand and Brooks Brothers businesses to Ted Baker Canada in exchange for a 3.5% Service Fee of the monthly Net Sales of the Licensed Products sold by Ted Baker Canada (which was subsequently increased to 5% for April and May 2024). The services provided by YM and Jaytex are set out in Exhibit A to each of the Lucky Brand TSA and Brooks Brothers TSA, as follows: merchandising / buying, finance, sales channel (ecommerce), supply chain / warehousing, IT, and reporting.

66. Pursuant to the Lucky Brand and Brooks Brothers TSAs, each of YM and Jaytex controls the cash management and the merchandise purchasing for each business. Each Seller controls all sales collections and remits payments on behalf of Ted Baker Canada for rent, logistics, merchandise and other miscellaneous costs (excluding payroll). The Lucky Brand and Brooks Brothers TSAs expire on May 31, 2024, at which point all cash management and other responsibilities will be transferred to Ted Baker Canada.

(g) Gift Cards

67. Ted Baker customers in Canada and the US can purchase gift cards to be redeemed for merchandise in Ted Baker stores or on the Ted Baker websites. The gift cards are sold in Ted Baker retail stores. The Applicants intend on continuing to honour gift cards sold prior to the filing date but will not be selling any further gift cards on or after the filing date.

68. As of April 19, 2024, Ted Baker customers had outstanding gift cards worth a total value of approximately CAD \$174,000 in Canada USD \$277,000 in the US.

(h) Banking and Cash Management System

69. The Applicants have a centralized cash management system for the collection, transfer and disbursement of funds (the “**Cash Management System**”), which is maintained and administered by treasury and finance personnel based in Fashion’s head office in Mississauga, Ontario and Ted Baker Limited’s head office in New York.

70. The Cash Management System has several functions, comprised of: (a) collection of funds generated by the store network and e-commerce websites; (b) collection of accounts receivable from third parties, including net receivables pursuant to the Lucky Brand and Brooks Brothers TSAs; (c) disbursements to fund payroll and benefits, inventory purchases, capital expenditures and other goods and services providers; (d) payments under the License Agreements; (e) intercompany cash transfers between Ted Baker Canada and Ted Baker Limited to fund operating disbursements and to settle open balances as among the parties; and (f) drawings and repayments under the Existing Credit Facility.

71. As described above, certain cash management activities are undertaken by the Sellers in the Lucky Brand and Brooks Brothers transactions pursuant to the respective TSAs. Prior to the commencement of these CCAA proceedings, these cash management activities were intended to be transferred to the Applicants on or around May 31, 2024.

72. The Applicants maintain and administer 45 bank accounts. Forty-one (41) bank accounts are held in Canada at Canadian Imperial Bank of Commerce (“**CIBC**”) and four are held in the US, comprising three at HSBC and one at American Savings Bank. The balance outstanding under the Existing Credit Facility is paid down on a daily basis through the automatic sweeping of certain

Canadian Bank Accounts. CIBC has established or is in the process of establishing a deposit account control agreement (“**DACA**”) in respect of the US Bank Accounts.

73. The 41 bank accounts maintained and administered in Canada by the Applicants (the “**Canadian Bank Accounts**”) consist of the following accounts at CIBC:

- (a) 21150707 Ted Baker Canada Disbursements
- (b) 21150804 Ted Baker Canada Collections
- (c) 21150502 Ted Baker Canada Ecommerce
- (d) 21150901 Ted Baker Canada Operating
- (e) 21150405 Ted Baker Canada Receipts
- (f) 20481815 Ted Baker Canada USD FX Account
- (g) 22321300 Ted Baker Limited
- (h) 22362201 OSL Fashion Services, Inc.
- (i) 21981803 Brooks Brothers Ecommerce
- (j) 21981900 Brooks Brothers Merchant
- (k) 21982001 Brooks Brothers Wholesale Collections
- (l) 21982109 Lucky Brand Ecommerce
- (m) 21982206 Lucky Brand Merchant
- (n) 21982303 Lucky Brand Wholesale
- (o) Store Accounts: 20960306; 20972207; 20998117; 20998516; 20995711; 20989118; 20984612; 20988812; 20997102; 20996602; 20981605; 20982601; 20982709; 20982903; 20983101; 20983403; 20985201; 20985805; 20986909; 20989312; 20989517; 20990108; 20991600; 20994812; 20995010; 20995118; 20995819.

74. The four bank accounts maintained and administered in the US by the Applicants (the “**US Bank Accounts**”) consist of the following accounts:

- (a) 8104136151 – American Savings Bank – Ted Hawaii Account (“**Hawaii Account**”)
- (b) 914025775 – HSBC Bank USA – Ted US Credit Card Collateral Account
- (c) 914025651 – HSBC Bank USA – Ted US Payroll
- (d) 914025660 – HSBC Bank USA – Ted US Main Concentration (“**Main HSBC Account**”)

75. Ted Baker Limited and Fashion Services have assets in Canada in the form of funds held in the trust account of their Canadian counsel and in certain of the Canadian Bank Accounts, listed above.

76. Ted Baker Limited periodically transfers funds in the Hawaii Account to the Main HSBC Account.

77. The Main HSBC Account is subject to a blocked account control agreement in favour of CIBC pursuant to which funds that are concentrated therein are automatically remitted by HSBC Bank USA to CIBC at the end of each business day and applied against the obligations owing to CIBC under the Existing Credit Facility (the “**Blocked Account Arrangement**”).

78. In connection with these CCAA proceedings, the Applicants are seeking the authority to continue the cash management system described above (the “**Cash Management System**”) in order to maintain the funding and banking arrangements already in place for the Applicants. Any disruption to the Cash Management System would be extremely detrimental to the Applicants’ operations in Canada and the US.

D. Financial Position of the Applicants

79. As a private company, the Applicants maintain internal, unaudited consolidated and standalone balance sheets for Ted Baker NA. At this time, the Applicants have not prepared formal

financial statements, as they do not yet have a full year of financial information available. A copy of the Applicants' internal balance sheets for the period ended December 31, 2023 are attached as **Exhibit "A"** to this affidavit. The equity balance reflected in the attached balance sheets has largely deteriorated as of the date of this affidavit, as a result of, among other things, borrowings under the Existing Credit Facility having increased by over USD \$5 million, uncertainty around the realization of deferred taxes, and the negative cash flow of over USD \$5 million generated by the Applicants since December 31, 2023.

(a) Assets

80. As of December 31, 2023, Ted Baker Canada had combined total assets of \$19,441,019, consisting of \$16,388,734 in total current assets, \$2,903,668 in total fixed assets and \$148,618 in total other assets.

81. As of December 31, 2023, Ted Baker Limited had combined total assets of USD \$88,205,318, consisting of USD \$49,046,494 in total current assets, USD \$6,792,321 in total fixed assets and USD \$32,366,503 in total other assets.

(b) Liabilities

82. As of December 31, 2023, Ted Baker Canada had total liabilities of \$21,072,232, consisting of \$17,912,104 in total current liabilities and \$3,160,128 in total long-term liabilities.

83. As of December 31, 2023, Ted Baker Limited had total liabilities of USD \$47,648,768, consisting of USD \$23,465,107 in total current liabilities and USD \$24,183,661 in total long-term liabilities.

(c) **Owner's Equity**

84. As of December 31, 2023, Ted Baker Canada's owner's equity totaled negative \$1,631,212.

85. As of December 31, 2023, Ted Baker Limited's owner's equity totaled USD \$40,556,551.

E. Applicants' Capital Structure

(a) **Existing Credit Agreement**

86. Pursuant to a credit agreement dated March 14, 2023 and as amended on August 3, 2023 and on April 23, 2024 (the "**Existing Credit Agreement**") between and among Ted Baker Canada, as borrower (in such capacity, the "**Canadian Borrower**"), and Ted Baker Limited, as borrower (in such capacity, the "**US Borrower**" and, together with the Canadian Borrower, the "**Borrowers**") as borrowers, and Fashion Canada, as guarantor (in such capacity, the "**Canadian Guarantor**"), and Fashion Services (in such capacity, the "**US Guarantor**" and, together with the Canadian Guarantor, the "**Guarantors**" and together with the Borrowers, the "**Credit Parties**") and CIBC (the "**Senior Lender**" or the "**Agent**"), the Senior Lender provides revolving loans to the Borrowers of up to USD \$36.5 million (the "**Existing Credit Facility**").² The Existing Credit Agreement matures on March 14, 2027. Attached to my affidavit as **Exhibit "B"** is a copy of the Existing Credit Agreement without schedules and exhibits.

² Pursuant to the terms of the Existing Credit Agreement, the maximum availability was USD \$45 million for six (6) months following the effective date of the First Amendment (as defined below) and has since been reduced to USD \$36.5 million (as described below).

87. The Credit Parties entered into the Existing Credit Agreement on March 14, 2023 to fund, in part, the purchase of the equity interests of Ted Baker Canada and Ted Baker Limited. On August 3, 2023, the Senior Lender and the Credit Parties entered into a consent and first amendment to the Existing Credit Agreement (the “**Consent and First Amendment**”) which, *inter alia*, increased the maximum availability to fund the Canadian Borrower’s acquisition of the assets, property and undertakings of the Lucky Brand and Brooks Brothers retail businesses in Canada. On April 24, 2024, the Credit Parties entered into a second amendment to the Existing Credit Agreement (the “**Second Amendment**”), which reduces the maximum availability under the Existing Credit Facility to \$36.5 million. Attached to my affidavit as **Exhibit “C”** is a copy of the Consent and First Amendment to the Existing Credit Agreement, without schedules and exhibits.

88. As security for the payment and performance of their respective obligations (the “**Obligations**”) under the Existing Credit Agreement and other Loan Documents (as defined in the Existing Credit Agreement), the Borrowers, the Guarantors and Personal Guarantor (as defined below) entered into certain security and/or guarantee documents (collectively, the “**Security Documents**”), including, but not limited to, the following:

- (a) Pursuant to a security agreement dated as of March 14, 2023 (the “**Canadian GSA**”) granted by the Canadian Borrower and the Canadian Guarantor in favour of the Agent, the Canadian Borrower and the Canadian Guarantor granted a continuing security interest in all of its present and after-acquired personal property to the Agent. Attached to my affidavit as **Exhibit “D”** is a copy of the Canadian GSA.

- (b) Pursuant to a security agreement dated as of March 14, 2023 (the “**US GSA**”) granted by the US Borrower and the US Guarantor in favour of the Agent, the US Borrower and the US Guarantor granted a continuing security interest in all of their present and after-acquired personal property to the Agent. Attached to my affidavit as **Exhibit “E”** is a copy of the US GSA.
- (c) Pursuant to a guarantee agreement dated March 14, 2023 (the “**Canadian Borrower Guarantee**”) by the Canadian Borrower in favour of the Agent, the Canadian Borrower irrevocably and unconditionally guaranteed the due and punctual payment and the due performance of the Obligations (as such term is defined in the Existing Credit Agreement) of the US Borrower. Attached to my affidavit as **Exhibit “F”** is a copy of the Canadian Borrower Guarantee.
- (d) Pursuant to a guaranty agreement dated March 14, 2023 (the “**US Borrower Guaranty**”) by the US Borrower in favour of the Agent, the US Borrower irrevocably and unconditionally guaranteed the due and punctual payment of the Guaranteed Obligations (as such term is defined in the US Borrower Guaranty) of the Canadian Borrower. Attached to my affidavit as **Exhibit “G”** is a copy of the US Borrower Guaranty.
- (e) Pursuant to a guarantee agreement dated March 14, 2023 (the “**Canadian Guarantee**”) by the Canadian Guarantor in favour of the Agent, the Canadian Guarantor irrevocably and unconditionally guaranteed the due and punctual payment and the due performance of the Obligations (as such term is defined in the

Existing Credit Agreement) of the Borrowers. Attached to my affidavit as **Exhibit “H”** is a copy of the Canadian Guarantee.

- (f) Pursuant to a guaranty agreement dated March 14, 2023 (the “**US Guaranty**”) between the US Guarantor and the Agent, the US Guarantor irrevocably and unconditionally guaranteed the due and punctual payment of the Guaranteed Obligations (as such term is defined in the US Guaranty) of the Borrowers. Attached to my affidavit as **Exhibit “I”** is a copy of the US Guaranty.
- (g) Pursuant to a limited recourse guarantee dated March 14, 2023 (the “**Limited Recourse Guarantee**”) between Brett Farren (the “**Personal Guarantor**”) and the Agent, the Personal Guarantor irrevocably and unconditionally guaranteed the due and punctual payment and the due performance of the Obligations (as such term is defined in the Existing Credit Agreement) of the Borrowers, limited to a maximum amount of USD \$5 million. Attached to my affidavit as **Exhibit “J”** is a copy of the Limited Recourse Guarantee.
- (h) Pursuant to a notice of intention dated March 1, 2023 and a special security in respect of specified property or classes of property described in Section 427 of the Bank Act (Canada) (the “**Bank Act**”) dated March 14, 2023 (collectively, the “**Bank Act Security**”), the Canadian Borrower gave the Agent security under Section 427 of the Bank Act. Bank Act searches against the Canadian Borrower dated April 22, 2024 (the “**Bank Act Searches**”) in Ontario and Nova Scotia showed no registrations against the Canadian Borrower other than those in favour

of the Agent. Attached hereto as **Exhibits “K”** and **“L”** are a copy of the documents in connection with the Bank Act Security and the Bank Act Searches, respectively.

- (i) Pursuant to a deed of movable hypothec dated as of March 15, 2023 and registered at the Register of Personal and Movable Real Rights (Quebec) under number 23-0296530-0001 (the **“Movable Hypothec”**) granted by the Canadian Borrower in favour of the Agent, the Canadian Borrower granted a movable hypothec without delivery over the French language description of Hypothecated Property (*Biens hypothéqués*) as security for the obligations purported to be secured thereby and for the sum of \$60,000,000, with interest thereon from the date thereof at the rate of 25% per annum in favour of the Agent. Attached to my affidavit as **Exhibit “M”** is a copy of the Movable Hypothec.

89. As of April 24, 2024, the total balance under the Existing Credit Facility is approximately USD \$31.6 million.

(b) Retail Loan

90. In addition, Fashion Canada is indebted to Retail under a secured promissory note dated March 14, 2023 (the **“Promissory Note”**), pursuant to which Fashion Canada has promised to pay on demand to Retail a principal amount of USD \$10 million, subject to the Subordination Agreement (as defined below). The Promissory Note is secured by a general security agreement, dated March 14, 2023 (the **“Fashion GSA”**), whereby Fashion Canada granted a security interest to Retail in all of its present and after-acquired undertaking and property as security for the Obligations (as such term is defined in the Fashion GSA) under the Promissory Note. Attached to

my affidavit as **Exhibits “N”** and **“O”** are copies of the Promissory Note and the Fashion GSA, respectively.

91. The Promissory Note evidences a loan in the amount of USD \$10 million from Retail to Fashion Canada to fund the purchase of the equity interests of Ted Baker Canada and Ted Baker Limited.

(c) The Subordination Agreement

92. Pursuant to a postponement, subordination and standstill agreement dated March 14, 2023 (the **“Subordination Agreement”**) by Retail to the Senior Lenders and the Agent, and acknowledged by Fashion Canada, *inter alia*, all debts, liabilities and obligations owing by Fashion Canada to Retail were subordinated and postponed to all debts, obligations and liabilities owed by the Borrowers to the Senior Lenders and the Agent under the Existing Credit Agreement. Attached to my affidavit as **Exhibit “P”** is a copy of the Subordination Agreement.

93. Other than the Agent and Retail, there are no other creditors in Canada or the US that hold general security over the assets of the Applicants. Copies of the search results conducted under the *Personal Property Security Act* in Ontario, British Columbia, Manitoba and Nova Scotia dated as of April 19 and 22, 2024 are attached as **Exhibit “Q”**. Copies of the RPMRR search results for Quebec dated as of April 19, 2024 are attached as **Exhibit “R”**. Copies of the UCC search results for Fashion Services and Ted Baker Limited dated as of April 22, 2024 are attached as **Exhibit “S”**.

(d) Letter Agreement

94. On March 13, 2023, in connection with the NODL License Agreement, Ted Baker Canada and Ted Baker Limited and NODL entered into a Letter Agreement with CIBC (the “**Letter Agreement**”), in its capacity as the Senior Lender, which provides for certain rights to CIBC in the event that Ted Baker Canada and Ted Baker Limited receive a notice of default pursuant to the Existing Credit Agreement. Attached to my affidavit as **Exhibit “T”** is a copy of the Letter Agreement.

F. Events Leading Up to the CCAA Filing

95. Following the Acquisitions, the Applicants commenced operations with a goal to achieve profitability within the year. Since that time, however, the Applicants’ financial and operation performance has struggled and deteriorated to the point of no longer being sustainable. The Applicants have failed to deliver free cash flow since June 2023. Over the last year, Ted Baker NA has underperformed relative to budget and revenues have significantly declined. The following summarizes some of the main causes of the financial and operational struggles.

(a) Supplier Delays

96. Until December 31, 2023, NODL (succeeded by ABG UK) 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 the payment of merchandise ordered by Ted Baker NA. Over the course of the summer of 2023, Ted Baker NA would advance funds to NODL (or ABG UK) and AARC in order to purchase merchandise; however, these operating partners were not paying the suppliers on time as a result of their own financial

difficulties. This led directly to suppliers holding shipments of merchandise and/or short shipping to Ted Baker NA (and others), creating both costly delays in the receipt of merchandise but also impacting the right merchandise levels and product mix.

97. In August 2023, Ted Baker NA, in agreement with ABG, transitioned merchandise payments away from AARC to PDS until AARC would confirm that it would pay the suppliers promptly. Unfortunately, by the fall of 2023, these product delays persisted due to outstanding payments by AARC to the manufacturers, resulting in mounting financial losses. Although the Applicants eventually began to work out arrangements to pay suppliers and manufacturers directly, the delays permanently impacted their ability to have merchandise delivered to the Ted Baker NA retail stores in time for the upcoming season. The Applicants communicated with ABG consistently about these issues, but no resolution was reached.

(b) Acceleration of Payment Terms

98. In addition, in the lead up to and following NODL being placed into administration in the UK in March 2024, key suppliers and manufacturers (e.g., Pandora Prod SRL) began demanding upfront payments. This reduction in ordinary course trade terms has had a material direct negative impact on the Applicants' available working capital.

(c) Delays in the Development of New Tech Stack

99. Following the closing of the Ted Baker Acquisition, Ted Baker Canada and Ted Baker Limited were required to develop and migrate to their own technology platform (i.e., a new Tech Stack).

100. While the Applicants always understood that a new Tech Stack would eventually need to be developed, the timeline was accelerated as a result of AARC signing a license agreement with ABG and indicating that it would be decommissioning the existing Tech Stack within 60 days. The Applicants were required to engage a developer (Retail) to design and build a new Tech Stack on a very compressed timeline. This ultimately turned out to be a false timeline, as AARC did not ultimately decommission the existing Tech Stack platform. However, the transition from the existing Tech Stack to the new Tech Stack during the busiest selling season exacerbated the supply delays experienced by Ted Baker NA described above.

(d) E-Commerce Issues

101. In late June 2023, ABG informed the Applicants that, notwithstanding that the Applicants had purchased the right to use the tedbaker.com URL and the tedbaker.ca URL for its e-commerce business 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 were greater than North American sales, and because uncoupling the tedbaker.com URL from the existing global platform would be challenging. ABG proposed, instead, that Ted Baker Limited be given the right to use tedbaker.us URL. The Applicants conducted an analysis which forecasted that the change to tedbaker.us would result in at least USD \$3 million in lost revenue, given that all existing Ted Baker advertisements were linked to tedbaker.com.

102. Ultimately, after a series of negotiations, Ted Baker Limited agreed to relinquish the right to use the tedbaker.com URL in consideration for a USD \$1.875 million payment that was made in December 2023. However, the Applicants are now of the view that ABG has not compensated the Applicants for the full extent of the losses incurred, including the disruption to relationships

with the Applicants' online customer base as a result of moving the rights to use the tedbaker.com URL to AARC.

(e) Poor Sales Performance

103. In addition to the above, the Ted Baker NA business has been plagued by poor sales performance over the past year. For the 11 months ended December 31, 2023, Ted Baker NA significantly underperformed expectations, generating sales and EBITDA of USD \$145 million and USD (\$5.3) million, respectively, and a net loss of over USD \$11.3 million.

104. During January through April YTD 2024, Ted Baker NA experienced negative cash flow in excess of USD \$5 million due to a combination of poor sales performance (trending 30% below the prior year), and the supply chain and other issues described above.

(f) Funding Discussions with ABG

105. In February 2024, the Applicants requested funding from ABG in Ted Baker NA in order to address their mounting liquidity challenges. ABG advised that it was not interested in any of the proposals advanced by the Applicants. At the time, ABG was experiencing financial issues with NODL, and subsequently, NODL was placed into Administration in the UK.

106. In April 2024, in light of the mounting liquidity challenges, the Applicants reiterated their request that ABG fund the Ted Baker NA business. Several solutions were presented by the Applicants; however, all such proposals were rejected.

G. Urgent Need for Relief

107. As a result of the events described above, the Applicants face significant liquidity challenges which threaten their ability to continue as a going concern. Overall, their negative cash flow and working capital issues have caused a strain on their borrowing base, resulting in an over advance position on the borrowing base, which is a default under the Existing Credit Agreement. Without access to further funding, the Applicants cannot pay their obligations (including payroll) in the ordinary course. The Applicants are therefore insolvent and cannot meet their liabilities and obligations as they come due.

108. The Applicants' liquidity constraints have resulted in significant arrears owing to ABG pursuant to the License Agreements. As described above, Ted Baker Limited and Ted Baker Canada were required to pay amounts totaling USD \$2,014,960 (\$1,818,085 in respect of Ted Baker, \$93,750 in respect of Brooks Brothers, and \$103,125 in respect of Lucky Brand) to ABG under the License Agreements by April 1, 2024. The Applicants reached out to ABG to inquire whether any accommodations could be made in respect of the Missed April Payments, which attempts were unsuccessful. To date, these payments have not been made.

109. As a result of the Missed April Payments, on or about April 17, 2024, Ted Baker Limited and Ted Baker Canada received Notices of Breach from ABG for the amounts owing under its three License Agreements with ABG. Copies of the Notices of Breach are attached as **Exhibits "U", "V", and "W"**. ABG has the right to terminate the License Agreements if the Applicants' failure to make payments under the License Agreements is not cured within five business days.

110. The Applicants are also three months in arrears on amounts owing to Future Forwarding pursuant to the Future Agreement, totaling USD \$2.4 million. The Applicants have received notice

from Future Forwarding that it will cease shipping Ted Baker product if these outstanding payments are not received.

111. In addition, the Applicants recently discovered that certain sales taxes are owing to the Canada Revenue Agency (“CRA”). More specifically, pursuant to the Lucky Brand and Brooks Brothers TSAs, during the period October 2023 to March 2024, each of the respective Sellers collected all sales and sales tax on behalf of Ted Baker Canada, and then flowed the funds to Ted Baker Canada, net of all costs paid on their behalf. During this period, sales tax was collected by the Sellers and flowed to Ted Baker Canada; however, through inadvertence, neither party remitted the net sales tax to the CRA.

112. Ted Baker Canada has been in discussions with the CRA regarding a 6-month payment plan, but nothing has been documented as yet and no payments have been made to the CRA on account of the sales tax arrears. Starting in March, 2024, the Applicants began remitting HST in the ordinary course.

113. The Applicants also owe approximately USD \$1 million in property taxes to the landlord of Ted Baker’s 5th Avenue location in New York. The landlord for that location has a letter of credit with NODL. The lease expires on July 31, 2024.

114. Furthermore, there is also approximately USD \$2.6 million of inventory in transit (inclusive of unpaid duties), and in excess of USD \$14 million owing by the Applicants to merchandise vendors and critical logistics and IT vendors.

115. The Senior Lender has advised that, in light of the over advance position on the borrowing base, 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.

116. Following consideration of available options and alternatives, 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 (among other things), the Applicants have determined with the assistance of their legal and financial advisors that the best path to maximize value is to commence these CCAA proceedings, in order to, among other things, obtain the breathing room afforded by a stay of proceedings and access to urgently needed interim financing.

H. Relief Sought

117. The Applicants will be seeking various forms of relief upon commencing these CCAA proceedings, including the following:

(a) Stay of Proceedings

118. The Applicants are insolvent and urgently require a broad stay of proceedings and other protections provided by the CCAA so that they will have the breathing space and emergency funding required to determine next steps, including potentially an orderly wind-down of their operations or other value-maximizing alternatives. It would be detrimental to the Applicants and their stakeholders if proceedings were commenced or rights or remedies executed against the Applicants.

(b) Appointment of Monitor

119. It is proposed that Alvarez & Marsal Canada Inc. (“**A&M**”) will act as monitor (in such capacity, the “**Monitor**”) in respect of the Applicants in these CCAA proceedings if the proposed Initial Order is issued. I am advised by Mr. Joshua Nevsky of A&M that A&M is a “trustee” within the meaning of section 2 of the *Bankruptcy and Insolvency Act*, and is not subject to any of the restrictions on who may be appointed as monitor set out in section 11.7(2) of the CCAA. I understand that A&M has extensive experience acting as monitor or financial advisor to debtor companies under the CCAA.

120. The proposed Monitor has consented to act as the Monitor of the Applicants under the CCAA. A copy of the proposed Monitor’s consent to act as Monitor is attached to my affidavit as **Exhibit “X”**.

121. I understand that the proposed Monitor will file a pre-filing report with the Court in conjunction with the Applicants’ request for relief under the CCAA.

(c) Cash Flow Forecast

122. The Applicants have prepared 13-week cash flow projections and the underlying assumptions as required by the CCAA. A copy of the cash flow projections is attached to my affidavit as **Exhibit “Y”**. The projections demonstrate that the Applicants require access to additional funding during these proceedings. The Applicants’ principal use of cash during these CCAA proceedings will be the costs associated with the ongoing operation of the Applicants’ business including, among other things, employee compensation, supplier payments, lease payments and general administrative expenses. In addition to these normal course operating

expenditures, the Applicants will also incur professional fees and disbursements with these CCAA proceedings.

(d) Interim Financing

123. Interim financing is needed on an urgent basis during the Initial Stay Period to provide stability and fund operations for a limited period of time and preserve the Applicants' business while they consider next steps in these proceedings, which could include pursuing an orderly wind down. This interim financing is necessary and designed explicitly to preserve value to the benefit of the Applicants' stakeholders.

124. As set out above, Ted Baker Canada and Ted Baker Limited currently do not have access to the Existing Credit Facility. In order to avoid an abrupt shutdown of their business, CIBC, as interim lender (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, (each, an "**Interim Borrowing**" and collectively, the "**Interim Borrowings**"), provided that (i) such Interim Borrowings are to fund obligations which the Applicants, 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 Interim Borrowings do not, individually or in the aggregate, exceed USD \$7 million, (iii) such Interim Borrowings under the Existing Credit Facility 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, (v) such Interim Borrowings mature on May 8, 2024, and (vi) unless the Interim Lender provides its written waiver, the United States Bankruptcy Court shall have granted an Order pursuant to the Bankruptcy Code: (a) provisionally recognizing, ordering and giving effect to this Order and the Interim Lender's Charge in the US, and (b) granting such other provisional relief that is sought by the Applicants, at the request of the Interim Lender.

125. Given the existence of the Blocked Account Arrangement and defaults under the Existing Credit Agreement, the Applicants will need to submit draw requests for each expenditure that they intend to make during the Initial Stay Period and the Interim Lender will need to consider each such draw request and agree to fund on a case-by-case basis. As described above, CIBC has full sweep rights under the Canadian Bank Accounts and has established or is establishing DACA in respect of the US Bank Accounts. Funds swept through these mechanisms during these CCAA proceedings will be used to partially repay the pre-filing balance owing under the Existing Credit Facility, as required pursuant to the Interim Borrowing arrangement.

126. Based on the Cash Flow Forecast, this Interim Borrowing arrangement is expected to provide the Applicants with sufficient liquidity to continue their business operating during the Initial Stay Period for the benefit of the Applicants and their stakeholders.

127. This Interim Borrowing arrangement is proposed to be secured by a Court-ordered charge (the “**Interim Lender’s Charge**”) on all of the present and future assets, property and undertaking of the Applicants (the “**Property**”). The Interim Lender’s Charge will not secure any obligation that exists before the Initial Order is made. The Interim Lender’s Charge will have priority over all other security interests, charges and liens, except the Administration Charge. Given the current

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

(e) Payments During these CCAA Proceedings

128. During the course of these CCAA proceedings, the Applicants intend to make payments for goods and services supplied post-filing in the ordinary course as set out in the Cash Flow Forecast described above and as permitted by the Initial Order.

129. Moreover, in the Initial Order, the Applicants are proposing that they be authorized, with the consent of the Monitor and the Interim Lender, to make certain payments, including payments owing in arrears, to certain third parties that are critical to the Applicants' business and ongoing operations.

130. I am advised by Ms. Tracy Sandler of Osler, Hoskin & Harcourt LLP ("**Osler**"), Canadian counsel to the Applicants, and believe that the nonpayment of certain taxes (including, without limitation, sales, use, withholding, unemployment, and excise) could result in a Director or Officer of the Applicants being held personally liable in certain circumstances for such nonpayment as well as for taxes related to income or operations incurred or collected by any of the Applicants in the ordinary course of business.

(f) Chapter 15 Case

131. Because the Applicants have operations, assets and valuable business and trade relationships in the US, including the business of Ted Baker Limited, and because of the conditions to the Interim Lender permitting further draws under the Existing Credit Facility,

contemporaneously with commencement of these CCAA proceedings, the Applicants intend to initiate a case under Chapter 15 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 the Applicants' US-based creditors (the "**Chapter 15 Case**").

132. The Applicants intend to file the Chapter 15 Case in the United States Bankruptcy Court for the Southern District of New York and, *inter alia*, seek provisional relief, including, without limitation, (i) a temporary restraining order to obtain the benefits of a stay of proceedings, prevent the enforcement of rights and remedies against the Applicants, including under or in connection with any License Agreements and to protect the Applicants and their Property from any potential action, and (ii) recognition of the Interim Lender's Charge and other relief afforded to lenders pursuant to the Bankruptcy Code.

133. As noted above, the Applicants run a consolidated business, with operations in both Canada and the US. Those operations, however, are functionally and operationally integrated such that the US business cannot operate independently of the Canadian business and the key services provided by the Applicants are for the benefit of all the Applicants, including Fashion Services and Ted Baker Limited. The Applicants' centre of main interest is in Canada and all major strategic decision making for the Applicants is made, and decided, in Canada. Additionally, the following factors further support that the centre of main interest is in Canada:

- (a) All or substantially all of the key operational and strategic and corporate decision-making relating to the Applicants' business and all major stakeholder negotiations, including all negotiations with ABG and its affiliates were and are primarily conducted in Canada;

- (b) All other members of the Applicants' management report to either myself or Mr. Farren, both of whom reside in Canada; and
- (c) IT leadership for the Applicants, including strategy, development, implementation, and people management, is performed by employees of Retail that are based out of the head office in Mississauga.

(g) Administration Charge

134. The Applicants propose that the proposed Monitor, its Canadian and US counsel, and Canadian and US counsel to the Applicants, be granted a court-ordered charge on the Property as security for their respective fees and disbursements relating to services rendered in respect of the Applicants (the “**Administration Charge**”). The Applicants are proposing that the Administration Charge for the first ten days be limited to USD \$750,000 and will be seeking to increase the charge at the comeback hearing. The Administration Charge is proposed to rank in priority to all other charges. The quantum of the Administration Charge was developed in consultation with the proposed Monitor.

(h) Directors' Charge

135. 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.

136. I am advised by Ms. Sandler of Osler and believe that, in certain circumstances, directors of Canadian companies can be held liable for certain obligations of a company owing to employees

and government entities, which may include unpaid accrued wages, unpaid accrued vacation pay, and unremitted sales, goods and services, and harmonized sales taxes.

137. I am also advised by Warren A. Usatine of Cole Schotz P.C., US counsel to the Applicants, and believe that, in certain circumstances, directors of US companies may be held liable for certain obligations of a company owing to employees and government entities, which may include sales and use taxes, employee withholding and certain payroll taxes, state income taxes in a few states, 401(k) and other obligations withheld from employees, unpaid wages (including paid vacation), ERISA fiduciary obligations, and nonpayment of contractual obligations owed to certain suppliers.

138. It is my understanding that the Applicants' present directors and officers are insureds under the CNA Directors and Officers Policy (the "**D&O Insurance**") which covers an aggregate annual limit of approximately \$5,000,000, plus \$1,000,000 in a side policy. I understand that any amounts paid under the D&O Insurance, defined as Losses therein, reduces the amount of the aggregate limit available for any other payment and that the policy has various exceptions, exclusions and carve outs where coverage may not be available. Therefore, I do not believe that the D&O Insurance provides sufficient coverage against the potential liability that the directors and officers of the Applicants could incur in relation to these CCAA proceedings.

139. In light of the complexity and scope of the overall enterprise and potential liabilities and the uncertainty surrounding available indemnities and insurance, the directors and officers have indicated to the Applicants that their continued service to the company and involvement in this proceeding is conditional upon the granting of an order under the CCAA which grants a charge in favour of the directors and officers of the Applicants in the amount of USD \$2.5 million on the Property (the "**Directors' Charge**"). The Applicants will be seeking to increase the charge at the

comeback hearing. The Directors' Charge is proposed to be subordinate to the Administration Charge, Interim Lender's Charge and the security granted with respect to the Existing Credit Facility. The Directors' Charge is necessary so that the Applicants may benefit from their directors' and officers' experience with the Applicants' business during these CCAA proceedings.

I. Conclusion

140. The Applicants, with the assistance of their advisors, have reviewed and considered the potential options and alternatives available to them in the circumstances, taking into account, among other things, the potential for the License Agreements to be imminently terminated, their limited remaining liquidity, and their current inability to repay significant arrears owing to critical vendors. The Applicants have determined that it is in their best interests and those of their stakeholders to commence these CCAA proceedings and the Chapter 15 Case.

141. Without the relief requested, including the stay of proceedings, the Applicants face a sudden and abrupt shutdown of their business, potential termination of the License Agreements and other enforcement action taken by creditors, which would significantly harm the Applicants' business and significantly impair the realizable value of their assets.

SWORN BEFORE ME this 24th day of April,
2024 in the City of Toronto, in the Province of
Ontario.



Commissioner for Taking Affidavits
(or as may be)

MARLEIGH ERYN DICK
LSO# 79390S



ANTOINE ADAMS

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

Court File No: CV-24-00718993-00CL

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.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

INITIAL AFFIDAVIT

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Lawyers for the Applicants

This is Exhibit “D” referred to in the Affidavit of ANTOINE ADAMS sworn by ANTOINE ADAMS at the City of Toronto, in the Province of Ontario, before me on May 1, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

MARLEIGH ERYN DICK

(LSO# 79390S)

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

Ted Baker Canada Inc., *et al.*,¹

Debtors in a foreign proceeding.

Chapter 15

Case No. 24-10699 (MEW)

(Joint Administration Requested)

Re: Docket No. 7

**ORDER GRANTING PROVISIONAL RELIEF PURSUANT
TO SECTION 1519 OF THE BANKRUPTCY CODE**

Upon the motion for certain provisional and injunctive relief (the “Motion”)² filed by Ted Baker Canada Inc. as the foreign representative (the “Foreign Representative”) of the above-captioned debtors (collectively, the “Debtors”) seeking entry of an order granting provisional relief (the “Order”) pursuant to sections 105(a), 362, 363, 364, 365(a), 365(e), 1517, 1519, 1521, and 1522 of the Bankruptcy Code to protect the Debtors and their property within the territorial jurisdiction of the United States pending recognition of the Debtors’ proceedings currently pending in Canada pursuant to the CCAA (the “Canadian Proceedings”); and upon this Court’s review and consideration of the Motion, Verified Petition, and the Adams Declaration; and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and 11 U.S.C. §§ 109 and 1501, and the *Amended Standing Order of Reference to Bankruptcy Judges of the District Court for the Southern District of New York*, dated January 31, 2012 (Preska, C.J.); and consideration of the Motion and the relief requested therein being a core

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: (i) Ted Baker Canada Inc. (BN 3889), (ii) OSL Fashion Service Canada Inc. (“Fashion Canada”) (BN 7745), (iii), OSL Fashion Services, Inc., a Michigan Corporation (“Fashion Services”) (FEIN 1225), and Ted Baker Limited, a New York Corporation (FEIN 3341).

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion, if not defined therein, the Initial CCAA Order.

proceeding pursuant to 28 U.S.C. § 157(b)(2)(P); and venue being proper before this Court pursuant to 28 U.S.C. § 1410(1) and (3); and appropriate, sufficient and timely notice of the Motion and the hearing thereon having been given; and upon the record established at such hearing, it appearing that the relief set forth herein is necessary and appropriate to avoid immediate and irreparable harm to the Debtors; and no objections or other responses having been filed; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED THAT:

A. The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such.

B. The statutory bases for the relief set forth herein are sections 1519, 1521(a)(7), 105, 362 and 365 of the Bankruptcy Code.

C. The Foreign Representative has demonstrated a substantial likelihood of success on the merits that (a) the Canadian Proceedings are "foreign main proceedings" as that term is defined in section 1502(4) of the Bankruptcy Code or, alternatively, with respect to certain Debtors, the Canadian Proceedings are "foreign nonmain proceedings" as defined in section 1502(5) of the Bankruptcy Code, (b) the Foreign Representative is a "foreign representative" as that term is defined in section 101(24) of the Bankruptcy Code, (c) all statutory elements for recognition of the Canadian Proceedings will be satisfied in accordance with section 1517 of the Bankruptcy Code.

D. The provisional relief set forth herein is appropriate to protect the assets of the Debtors and the interests of their creditors pending the Court's consideration of the petition to recognize the Canadian Proceedings.

E. Irreparable harm could and likely would result in the absence of the application of the automatic stay. In the absence of such relief, creditors could take action in the United States that would interfere with the conduct of the Canadian Proceedings to the detriment of the Debtors and of the creditor body as a whole.

F. Irreparable harm could and likely would result if section 365(e) of the Bankruptcy Code were not immediately made applicable, as parties in the United States could and likely would purport to terminate important contracts.

G. Application of the automatic stay, and of section 365(e) of the Bankruptcy Code, on an interim and provisional basis will preserve the status quo and will not result in any significant harm or prejudice to other parties. Any harm that conceivably could result to other parties as a result of such relief is less than the irreparable harm to the Debtors that would likely result if such relief were not granted.

H. Application of the automatic stay, and of section 365(e) of the Bankruptcy Code, will serve the public interest in that, among other things, such relief is necessary to realize the intent and objectives of chapter 15 in this case.

I. The Initial CCAA Order, among other things, authorizes the Debtors to borrow from the Interim Lender an additional amount up to USD\$7,000,000 under its Existing Credit Facility on the terms and condition set forth in paragraph 34 to 38 of the Initial CCAA Order and provides that the Property of the Debtors is subject to the Interim Lender's Charge as security for the Interim Facility as set forth in paragraph 38 of the Initial CCAA Order.

J. The Interim Lender has asked that this Court approve the financing terms that are set forth in paragraphs 34 to 38 of the Initial CCAA Order. As stated on the record at the hearing today, it is not clear that the approval of this Court is required at this stage of these proceedings,

as no recognition order has been entered. However, the Foreign Representative has shown that the businesses of the Debtors would suffer immediate and irreparable harm if the Interim funding authorized in the Initial CCAA Order is not available, and the Lender has indicated that it is unwilling to take the risk that loans secured by US assets might be treated later as having not been authorized by appropriate judicial action in the United States.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is granted to the extent set forth herein.
2. Beginning immediately upon the entry of this Order, and continuing through a ruling by the Court on the petition for recognition of the Canadian Proceedings, section 362 of the Bankruptcy Code shall apply to the Debtors and their property within the territorial jurisdiction of the United States, subject to such exceptions to the automatic stay as are set forth in the Bankruptcy Code. For the avoidance of doubt, the application of the automatic stay prohibits the termination or alteration of contracts or leases to which the Debtors are parties, or the enforcement of remedies under such contracts or leases, in the absence of an Order of this Court granting relief from the stay.
3. Notwithstanding anything to the contrary contained herein, this Order shall not be construed as (a) enjoining the police or regulatory act of a governmental unit, including a criminal action or proceeding, to the extent not stayed pursuant to section 362 of the Bankruptcy Code, (b) staying the exercise of any rights that section 362(o) of the Bankruptcy Code does not allow to be stayed or (c) enjoining any rights or remedies provided to the Interim Lender pursuant to the Initial CCAA Order.
4. In addition, the application of the automatic stay pursuant to this Order shall not bar or enjoin the performance of any act authorized by the Canadian court in the Canadian

Proceedings, including without limitation the borrowing of funds and the grant and confirmation of liens and security interests as specified in paragraphs 34 through 38 of the Initial CCAA Order.

5. Beginning immediately upon the entry of this Order, and continuing through a ruling by the Court on the petition for recognition of the Canadian Proceedings, section 365(e) of the Bankruptcy Code shall apply to all US contracts to which the Debtors are parties.

6. Any party in interest may make a motion seeking relief from or modifying this Order by motion or application to this Court, which may be heard on shortened notice if the circumstances so warrant.

7. No security shall be required pursuant to Rule 7065 of the Federal Rules of Bankruptcy Procedure.

8. To the extent that this Court's approval is required, the Debtors are authorized to obtain funding under the Interim Facility, to grant the Interim Lender's Charge, to apply the Initial Lender's Charge to the Debtors' assets located in the United States, and to confirm that the Interim Lender's existing liens and security interests shall apply with respect to the funding obtained under the Interim Facility, in each case in accordance with the terms set forth in paragraphs 34 to 38 of the Initial CCAA Order. To the extent that this Court's approval is required, the Debtors are authorized to execute, and the Interim Lender may file or record, any financing statements, mortgages, other instruments or any other document to further evidence the liens authorized, granted, and perfected hereby and by the Initial CCAA Order. In addition, to the extent this Court's approval is required, the Debtors are authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees, and other definitive documents as are contemplated by the Interim Facility or as may be reasonably required by the Interim Lender pursuant to the terms thereof, provided that the failure to execute any such

documentation does not invalidate any loans under the Interim Facility or the validity or priority of the Interim Lender's Charge, and the Debtors are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities, and obligations to the Interim Lender under and pursuant to the Interim Facility and Initial CCAA Order (and in accordance with the cash flow forecast filed in connection with the Initial CCAA Order) including, but not limited to, the fees and expenses of the Interim Lender's Canadian and United States counsel, and other advisors, as and when the same become due and are to be performed. If and when recognition of the Canadian Proceedings is granted, and if and when the Initial CCAA Order is made enforceable in the United States, the Lender shall be entitled to the protections of section 364(e) of the Bankruptcy Code.

9. Notwithstanding any provision in the Bankruptcy Rules to the contrary, including, but not limited to, Bankruptcy Rules 7062 and 1018, (i) this Order shall be effective immediately and enforceable upon its entry; (ii) the Foreign Representative and the Interim Lender are not subject to any stay in the implementation, enforcement or realization of the relief granted in this Order; and (iii) the Foreign Representative and the Debtors are authorized and empowered, and may in their discretion and without further delay, take any action and perform any act necessary to implement and effectuate the terms of this Order.

10. Nothing in this Order shall be deemed to waive, release, extinguish or estop the Foreign Representative or the Debtors from asserting, or otherwise impair or diminish, any right, claim, cause of action, defense, offset or counterclaim in respect of any asset or interest with respect to, among other things, the License Agreements with ABG, any lease for real property and the warehousing of any property of Debtors or Prepetition Collateral.

11. This Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order.

Dated: New York, New York
April 25, 2024

s/Michael E. Wiles
UNITED STATES BANKRUPTCY JUDGE

This is Exhibit “E” referred to in the Affidavit of ANTOINE ADAMS sworn by ANTOINE ADAMS at the City of Toronto, in the Province of Ontario, before me on May 1, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

MARLEIGH ERYN DICK

(LSO# 79390S)

CONSULTING AGREEMENT

This Consulting Agreement (the “**Agreement**”), dated as of April 30, 2024 (the “**Effective Date**”), is made by and between Ted Baker Canada Inc. and Ted Baker Limited (together, the “**Merchant**”) and Gordon Brothers Canada ULC and Gordon Brothers Retail Partners, LLC (together, the “**Consultant**”, and together with the Merchant, the “**Parties**”), under which the Consultant shall act as the exclusive consultant for the purpose of conducting a sale of Merchandise and FF&E (each as defined below) at Merchant’s stores set forth on Exhibit “A-1” (each, a “**US Store**” and collectively, the “**US Stores**”) and Exhibit “A-2” (each, a “**Canada Store**”, collectively, the “**Canada Stores**”) or at Added Concession Stores (if any)¹ (collectively, with the US Stores and Canada Stores, the “**Stores**”), as such Exhibits may be amended by the Merchant to add or remove Stores (as amended, the “**Updated Store Lists**”) and as located at the Warehouse(s) set forth on Exhibit “A-3” annexed hereto (the “**Warehouses**”) through sales (the “**Sale**”) in accordance with the terms of the applicable sale guidelines for the US Stores substantially in the form attached hereto as Exhibit “B-1” (the “**US Sale Guidelines**”) and for the Canada Stores substantially in the form attached hereto as Exhibit “B-2” (the “**Canada Sale Guidelines**”) and together with the US Sale Guidelines, the “**Sale Guidelines**”). Only Merchant approved Sale terminology, as set out in the Sale Guidelines, will be utilized at each Store. For the avoidance of doubt, Gordon Brothers Canada ULC shall be the Consultant for purposes of all services contemplated hereunder in Canada and Gordon Brothers Retail Partners, LLC shall be the Consultant for purposes of all services contemplated to be provided hereunder in the United States.

RECITALS:

WHEREAS:

- A. On April 24, 2024, Ted Baker Canada Inc., Ted Baker Limited, OSL Fashion Services Canada Inc. and OSL Fashion Services, Inc. (collectively, the “**Applicants**”) commenced proceedings (the “**CCAA Proceedings**”) pursuant to the *Companies’ Creditors Arrangement Act* and obtained an initial order (as may be amended and restated from time to time, the “**Initial Order**”) from the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). Pursuant to the Initial Order, Alvarez & Marsal Canada Inc. was appointed monitor (in such capacity, the “**Monitor**”) in the CCAA Proceedings.
- B. Ted Baker Canada Inc. was appointed by the Court as the foreign representative of the Applicants and, in such capacity, caused to be filed petitions for recognition of the CCAA Proceedings under chapter 15 of Title 11 of the United States *Bankruptcy Code* (the “**Bankruptcy Code**”), and certain other related relief, in the United States Bankruptcy Court for the Southern District of New York (the “**US Court**”), thus commencing the Applicants’ chapter 15 case (the “**Chapter 15 Cases**”).

¹ A concession store location at Bloomingdales or Hudson Bay Company shall be automatically deemed added to the list of Stores, without further act of the Parties, the Monitor or the Court, on and as of the date on which Merchant resumes its distribution of goods to such concession store location for sale therefrom (such locations, “**Added Concession Stores**”).

- C. Pursuant to a Revised Order Granting Provisional Relief Pursuant to Section 1519 of the Bankruptcy Code entered by the US Court, Case No. 24-10699 (MEW) (jointly administered) (Docket No. 21), on April 26, 2024, the US Court, among other things, granted a temporary restraining order in the Chapter 15 Cases which, among other things, granted a stay of proceedings against the Applicants and their property in the United States on a provisional basis.
- D. The Merchant intends to seek an order in the CCAA Proceedings approving, among other things, this Agreement and the conduct of the Sale, in accordance with the terms hereof and the Sale Guidelines (the “**Realization Process Approval Order**”), and to seek US Court recognition of the CCAA Proceedings (the “**Realization Process Recognition Order**”). Both the Realization Process Approval Order and the Realization Process Recognition Order shall be in form and substance acceptable to the Consultant. The Realization Process Approval Order shall provide, among other things, for: (a) the payment of all fees and reimbursement of expenses hereunder to Consultant is approved without further order of the Court and shall be free and clear of all liens, claims and encumbrances; (b) all such payments of fees and reimbursement of expenses shall be made on a weekly basis without further order of the Court and otherwise in accordance with this Agreement; (c) authorizing the Sale in accordance with the terms hereof and the applicable Sale Guidelines, without the necessity of otherwise complying with state and local rules, laws, ordinances and regulations, including, without limitation, permitting and licensing requirements, that could otherwise govern the Sale; (d) authorizing the Sale in accordance with the terms hereof notwithstanding restrictions in leases, concession agreements, reciprocal easement agreements or other contracts that purport to restrict the Sale or the necessity of obtaining any third party consents; (e) authorizing the sale of Additional Consultant Goods and granting Consultant a first priority senior security interest and lien upon the Additional Consultant Goods and proceeds thereof as provided herein; (f) take all further actions as are necessary or appropriate to carry out the terms and conditions of this Agreement; and (g) including protection of Consultant’s fees and expenses as part of any “carve out” in any financing order, which protection shall provide that all such fees and expenses shall be paid to Consultant from Gross Proceeds and without adherence to any debtor-in-possession financing or cash collateral budget associated therewith, and further including additional protections with respect to proceeds of Additional Consultant Goods. The Realization Process Recognition Order shall approve and make applicable to all US assets and locations the relief granted by the Realization Process Approval Order.
- E. The Applicants intend to seek an Amended and Restated Initial Order in the CCAA Proceedings approving, among other things, a debtor-in-possession facility pursuant to a term sheet among the Applicants, as borrowers and Canadian Imperial Bank of Commerce, as lender (the “**DIP Lender**”) and to seek, among other things, recognition of such DIP Facility by the US Court.
- F. The Consultant is willing to serve as the Merchant’s exclusive consultant for the purpose of providing such consulting services, upon the terms and conditions and in the manner set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Merchandise

For purposes hereof, “**Merchandise**” shall mean all inventory that is owned by any Merchant and actually sold in the Stores (including, for greater certainty, Added Concession Stores on and after the date such concession store locations become Added Concession Stores pursuant to the terms hereof), or sold in bulk to wholesale customers during the Sale Term (as defined below), the aggregate amount of which shall be determined using the gross rings inventory taking method, which includes goods saleable in the ordinary course, located at or in transit to the Stores on the Sale Commencement Date (as defined below) and/or located in or in transit to the Warehouses on the Sale Commencement Date and thereafter delivered to the Stores, as mutually agreed by the Merchant and the Consultant, “Merchandise” does not mean and shall not include: (a) goods that belong to sublessees, licensees or concessionaires of the Merchant; (b) goods already located at one of the Merchant’s concession locations at Bloomingdales or Hudson Bay Company, provided, however, that Merchandise shall include additional inventory that is shipped to an Added Concession Store by or on behalf of the Merchant following the Effective Date (such goods, the “**Additional Concession Goods**”); (c) owned, partially owned, third party owned and/or leased furnishings, trade fixtures, equipment and/or improvements to real property that are located in the Stores, (collectively, “**FF&E**”); (d) damaged or defective goods that cannot be sold; (e) goods held by the Merchant on memo or on consignment with third parties, unless otherwise agreed by the Merchant, the Consultant and the applicable third party (which, for certainty, shall, with such agreement, constitute “Merchandise” hereunder); (f) gift cards (third party and Merchant branded) or gift certificates issued by the Merchant; and (g) Additional Consultant Goods (as defined below).

2. Sale Term

- (a) For each Store, the Sale shall commence on a date agreed to by the Merchant and the Consultant following the granting of the Realization Process Approval Order and, with respect to Stores located in the United States, following the granting of the Realization Process Recognition Order (each, a “**Sale Commencement Date**”), and conclude no later than 12 weeks following such Sale Commencement Date (the “**Sale Termination Date**”); provided, however, that the Parties may, in consultation with the Monitor and the DIP Lender, mutually agree in writing to extend the Sale Termination Date or to terminate the Sale at any Store prior to the Sale Termination Date. The period between the Sale Commencement Date and the Sale Termination Date shall be referred to as the “**Sale Term**”.
- (b) At the conclusion of the Sale Term, the Consultant shall surrender the premises for each Store to Merchant (i) in “broom swept” and clean condition subject to the Consultant’s right pursuant to Section 6(e) below to abandon in a neat and orderly manner all unsold FF&E; and (ii) if requested by the Merchant, in accordance with the lease or, in the case of any Added Concession Stores, the concession agreement requirements for such premises unless otherwise agreed with the landlord, or in the

case of a concession agreement, the licensor for such Store;² provided, however, that, if the Merchant requests that the Consultant surrender any premises in accordance with the lease or concession agreement requirements, except for costs in respect of damage caused by the Consultant (including by its employees, agents or representatives) for which the Consultant is in law responsible, the Merchant shall bear all other costs and expenses associated with surrendering the premises in accordance with the lease or concession agreement requirements for such premises to the extent such expenses were incurred by the Consultant in accordance with a budget mutually agreed to in writing between the Consultant and the Merchant prior to surrender of the premises. At the conclusion of the Sale at each Store, the Consultant shall assist the Merchant's employees with photographically documenting the condition of each Store, which photographs shall reference with specificity each Store by number, name and/or location.

- (c) At the conclusion of the Sale Term, to the extent there is any Merchandise remaining on the Sale Termination Date (the “**Remaining Merchandise**”), if requested by the Merchant, such Remaining Merchandise shall, subject to the terms hereof, be sold on behalf of Merchant or otherwise disposed of by the Consultant as directed by the Merchant, in consultation with the Monitor. The costs and expenses of removing and disposing of the Remaining Merchandise shall be incurred pursuant to a written budget or budgets (in addition to the Expense Budget (as defined below)), to be established from time to time by mutual agreement of the Parties with the consent of the Monitor (the “**Remaining Merchandise Costs**”). Any associated expenses shall be paid by the Merchant as Remaining Merchandise Costs and in accordance with the budget referred to herein, and the gross receipts thereof (net of sales taxes) shall be included in the calculation of the Merchandise Fee (as defined below) due to the Consultant. To the extent any proceeds from any sale or disposition of any Remaining Merchandise is received by the Consultant after the Sale Termination Date, such proceeds shall be treated in accordance with Section 5. For certainty, in the event of the sale of any Remaining Merchandise subsequent to the Sale Termination Date, the Merchandise Fee or the Bulk Sale Fee, as applicable, shall apply.
- (d) Notwithstanding anything contained herein, the Merchant shall be entitled at any time to sell any or all of the then-remaining Merchandise (including Remaining Merchandise) and/or FF&E in one or more bulk sales to a third party acquirer (each, a “**Bulk Sale**”). The gross receipts of any Bulk Sale (net of sales taxes) other than a Bulk Sale to Authentic Brands Group, No Ordinary Designer Label Limited, ABG-TB IPCO (UK) Limited, ABG-LUCKY, LLC, ABG-BB IPCO, LLC, Simon Properties, Teneo Financial Advisory Limited (as Joint Administrators of No Ordinary Designer Label Limited) or any affiliates thereof or any person acting in concert with any of the foregoing (collectively, “**ABG**”) shall be included in the calculation of the Bulk Sale Fee (as defined below) due to the Consultant. The

² Merchant shall be responsible for directing Consultant with respect to any applicable lease or concession agreement requirements.

Consultant agrees that no Bulk Sale Fee shall be earned on any sale of Merchandise and/or FF&E to ABG.

3. Project Management

(a) Consulting Services

The Merchant will seek the Realization Process Approval Order and the Realization Process Recognition Order from the Court and the US Court respectively. Subject to the entry of and the terms of the Realization Process Approval Order and the Realization Process Recognition Order, the Merchant hereby retains the Consultant and the Consultant hereby agrees to serve as an independent consultant to the Merchant in connection with the conduct of the Sale as set forth herein. With respect to the Sale, the Consultant shall serve as the sole and exclusive consultant to the Merchant relative thereto throughout the Sale Term and may not be compensated by any other party, except as provided for herein.

(b) Consultant's Undertakings

During the Sale Term, the Consultant shall, in collaboration with the Merchant, (i) develop marketing strategies for both the retail and wholesale channels, including optimal advertising channels for retail sales and plans for targeting tier I, II and III wholesale customers; (ii) provide qualified supervisors (the “**Supervisors**”) engaged by the Consultant and approved in advance by Merchant to oversee the management of the Stores and the Sale; (iii) recommend appropriate point-of-sale and external advertising (including signage) for the Stores, approved in advance by the Merchant; (iv) recommend appropriate discounts of Merchandise, staffing levels for the Stores, and appropriate bonus and incentive programs, if any, for the Stores’ employees, in each case approved in advance by the Merchant in consultation with the Monitor and the DIP Lender; (v) maintain focused and continuous communication with Store-level employees and corporate and supply chain management teams to keep them abreast of strategy and timing; (vi) oversee display of Merchandise for the Stores, subject to the terms hereof; (vii) maintain the confidentiality of all proprietary or non-public information regarding the Merchant, the Stores and underlying leases or concession agreements in accordance with the provisions of any confidentiality agreements signed by the Parties (the “**Confidentiality Agreements**”); (viii) to the extent that information is available, evaluate sales of Merchandise by category and sales reporting and monitor expenses; (ix) assist the Merchant in connection with managing and controlling loss prevention and employee relations matters; (x) to the extent necessary, assist the Merchant in obtaining all required permits and governmental consents required to conduct the Sale, except as otherwise provided in the Realization Process Approval Order and the Realization Process Recognition Order; and (xi) provide such other related services deemed necessary or appropriate by the Merchant and the Consultant, in consultation with the Monitor and the DIP Lender.

The Consultant shall provide qualified supervision to oversee the conduct of the Sale in the Stores as may be required to maximize sales, the expense for which is included in the Expense Budget (as defined below). In connection with the Sale, the Consultant shall indirectly retain and engage the Supervisors. The Supervisors shall not be deemed to be employees or consultants of the Merchant in any manner whatsoever; nor do the Supervisors have any relationship with the Merchant by virtue of this Agreement or otherwise which creates any liability or responsibility on behalf of the Merchant for the Supervisors. During the Sale Term, the Supervisors shall perform

the services provided for herein during normal Store operating hours and for the period of time prior to the Stores opening and subsequent to the Stores closing, as required in connection with the Sale, in the Consultant's discretion and direction. In consideration of the Consultant's engagement of the Supervisors, the Merchant agrees to pay the Consultant, as a Sale Cost (as defined below), the amount of the reasonable and documented Supervisor-related wages, fees paid to arm's length third parties, travel, expenses, deferred compensation and third-party payroll costs and expenses, in accordance with and subject to the Expense Budget (collectively, the "**Supervisor Costs**"). The Supervisor Costs set forth in the Expense Budget include, among other things, industry standard deferred compensation. The Merchant shall reimburse the Consultant for all Supervisor Costs weekly, based upon invoices or other documentation reasonably satisfactory to Merchant and the Monitor.

All right, title and interest of the Merchant in and to its Merchandise, FF&E and Remaining FF&E (as defined below) shall remain with Merchant at all times during the Sale Term until such Merchandise, FF&E and Remaining FF&E, as applicable, is sold. For the avoidance of doubt, Consultant shall not have any right, title or interest in the Merchandise, FF&E or Remaining FF&E at any time during or after the Sale Term. Although the Consultant shall undertake its obligations under this Agreement in a manner designed to achieve the desired results of the Sale and to maximize the benefits to the Merchant, the Merchant expressly acknowledges that the Consultant is not guaranteeing the results of the Sale. All sales of Merchandise and FF&E in the Stores shall be made in the name and on behalf of the Merchant, and all sales during the Sale Term shall be "as is, where is" and final with no returns accepted or allowed following the Sale Commencement Date (including with respect to any items purchased prior to the commencement of the Sale).

Without limiting the generality of the foregoing or the terms of the Confidentiality Agreements, all information of a business nature relating to the pricing, sales, promotions, marketing, assets, liabilities or other business affairs of the Merchant, its customers, employees, or affiliated entities constitutes the Merchant's confidential, trade secret information (the "**Merchant's Confidential Information**"), which is and shall remain the exclusive intellectual property of the Merchant and shall be treated as strictly confidential by the Consultant in accordance with and subject to the Confidentiality Agreements. The Consultant agrees to maintain strict confidentiality in accordance with the Confidentiality Agreements and agrees that it may use the Merchant's Confidential Information only as reasonably necessary to the performance of its obligations related to the Sale. If and to the extent the use or other handling of any Personal Information (as defined below) is necessary for the Consultant to perform its obligations hereunder, the Consultant shall comply with all Data Security Requirements (as defined below) and such other reasonable restrictions requested by the Merchant. For purposes of this Agreement, "**Personal Information**") means any natural person's name, street address, telephone number, e-mail address, social insurance number, driver's license number, passport number, credit card number, or user or account number, or any other piece of information that, individually or when combined with other information, allows the identification of a natural person or is otherwise considered personally identifiable information or personal data protected under any applicable Data Security Requirement. For purposes of this Agreement, "**Data Security Requirements**" means, collectively, all of the following to the extent relating to privacy, security, or security breach notification requirements: (i) the Merchant's own rules, policies and procedures; (ii) all applicable statutes and regulations; (iii) industry standards applicable to the industry in which the Merchant's business is conducted; and (iv) contracts into which the Merchant has entered or by which it is otherwise bound, provided such contracts (or the requirements of such contracts) are provided to the Consultant.

The Parties expressly acknowledge and agree that the Merchant shall have no liability to the Supervisors for debts, wages, bonuses, benefits, severance pay, termination pay, vacation pay, pay in lieu of notice of termination or any other liability arising from the hiring or engagement of the Supervisors, and the Supervisors shall not be considered employees of the Merchant.

(c) Merchant's Undertakings

During the Sale Term, the Merchant shall: (i) be the employer of the Stores' employees, which for greater certainty does not include the Supervisors; (ii) be responsible for all taxes, costs, expenses, accounts payable, and other liabilities relating to the Stores, the Stores' employees and other representatives of the Merchant (excluding, for greater certainty, the Supervisors); (iii) prepare and process all tax forms and other documentation with respect thereto; (iv) collect all sales taxes and other applicable taxes assessed on the sale of the Merchandise, Additional Consultant Goods, and FF&E and pay them to the appropriate taxing authorities for the Stores; (v) use reasonable efforts to cause the Merchant's employees to cooperate with the Consultant and the Supervisors; (vi) execute all agreements mutually determined by the Merchant and the Consultant, in consultation with the Monitor, to be necessary or desirable for the operation of the Stores during the Sale; (vii) arrange for the ordinary maintenance of all point-of-sale equipment required for the Stores; (viii) use commercially reasonable efforts to ensure that the Consultant may access and use the Stores for the Sale Term in order to perform its obligations under this Agreement; and (ix) maintain its customs number active throughout the Sale Term and provide resources necessary to remove Merchandise from the "foreign trade zone" for distribution to the Stores or for sale to third parties from the Warehouses.

The Merchant shall provide throughout the Sale Term central administrative services necessary for the Sale, including (without limitation) customary point-of-sale administration, sales audit, cash reconciliation, accounting, and payroll processing, as currently available through the Merchant's existing accounting and IT systems, all at no cost to the Consultant.

The Parties expressly acknowledge and agree that the Consultant shall have no liability to the Merchant's employees for wages, bonuses, benefits, severance pay, termination pay, vacation pay, pay in lieu of notice of termination or any other liability arising from the Merchant's employment, hiring or retention of its employees, and such employees shall not be considered employees of the Consultant, nor shall the Consultant be or be deemed to be a successor employer in respect of the Merchant's employees.

4. The Sale

All sales of Merchandise shall be made on behalf of the Merchant. The Consultant does not have, nor shall it have, any right, title or interest in the Merchandise. All sales of Merchandise shall be by cash, active gift card or gift certificate issued by the Merchant, or credit or debit card, in accordance with the Merchant's policies, and shall be "final" with no returns accepted or allowed, unless otherwise directed by the Merchant. The Parties acknowledge and agree that the Stores shall 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 such forms of payment have stopped. The Merchant and the Consultant shall not sell gift cards or gift certificates during the Sale Term and the Merchant shall 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 this Agreement.

5. Consultant Fee and Expenses in Connection with the Sale

In consideration of its services hereunder, the Consultant shall earn the following fees:

- (a) With respect to Merchandise sold at the Stores during the Sale Term, (i) **2.0%** of the Gross Proceeds (as defined below) of such Merchandise (the "**Merchandise Base Fee**") plus (ii) an additional fee based upon the following thresholds of Gross Recovery Percentage (calculated back to first dollar) (the "**Merchandise Incentive Fee**") and together with the Merchandise Base Fee, the "**Merchandise Fee**");

<u>Gross Recovery Percentage</u>	<u>Additional Incentive Compensation</u>
Between 144.50% and 153.50%	0.25% of Gross Proceeds
Between 153.51% to 160.50%	0.50% of Gross Proceeds
Between 160.51% and 168.50%	0.75% of Gross Proceeds
Above 168.51%	1.00% of Gross Proceeds

- (b) With respect to Merchandise sold in bulk to wholesale customers from the Warehouse during the Sale Term, (i) **5.0%** of the Gross Proceeds of such Merchandise and FF&E (the "**Bulk Sale Base Fee**") plus (ii) an additional fee equal to 10% of all savings obtained from avoiding US import duties on Merchandise located in a "foreign trade zone" (the "**FTZ Savings Fee**") and together with the Bulk Sale Base Fee, the "**Bulk Sale Fee**").

For purposes of this Agreement, the following definitions shall apply:

"**Cost Value**" with respect to each item of Merchandise sold shall mean the lower of (a) the lowest per unit vendor cost in the File or in the Merchant's books and records (including deferred duty costs, as reflected in the File), maintained in the ordinary course consistent with historic practices; or (b) the Retail Price.

"**File**" shall mean the following file provided to the Consultant: "*P4 - Inventory Report - Apr 20, 2024*" with specific reference to the amounts accumulating in column C of the 'Summary tab'.

“**Gross Proceeds**” means gross receipts (including without limitation gift card or gift certificates issued by the Merchant) from sales of Merchandise during the Sale Term, net of applicable sales taxes.

“**Gross Recovery Percentage**” shall mean the Gross Proceeds divided by the sum of the aggregate Cost Value of all of the Merchandise.

“**Retail Price**” shall mean with respect to each item of Merchandise sold, the retail price reflected at the register for such item (i.e., the original ticketed retail price), excluding the discount granted in connection with such sale.

For the avoidance of doubt, Consultant agrees that: (a) no fees (including any Merchandise Fee, Bulk Sale Fee, and/or FF&E Fee) shall be earned on any sale of Merchandise or FF&E to ABG; and (b) no Merchandise Fee shall be paid on merchandise that is located at any concession store location, unless and until such concession store location becomes an Added Concession Store, on and after which date a Merchandise Fee shall be payable only on Additional Concession Goods sold therefrom.

The Merchant shall be 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 the Expense Budget (the “**Sale Costs**”). To control Sale Costs, the Merchant and the Consultant, in consultation with the Monitor and the DIP Lender, have established an aggregate budget in connection with the transactions contemplated hereunder (the “**Expense Budget**”) of certain delineated expenses, including, without limitation, payment of the costs of supervision (including Supervisor Costs), advertising and signage costs, and other miscellaneous expenses expected to be incurred by the Consultant, including reasonable legal fees. The Expense Budget for the Sale is attached hereto as Exhibit “C”. Without the written consent of the Merchant, in consultation with the Monitor and the DIP Lender, the Expense Budget shall not exceed \$1,410,671. The Expense Budget may only be modified by mutual written (including email) agreement of the Consultant and the Merchant with the consent of the Monitor. Notwithstanding anything to the contrary herein, unless otherwise agreed to by the Merchant in writing with the consent of the Monitor, the Merchant shall not be obligated to pay any Sale Costs that are not included or provided for in the Expense Budget, as it may be amended in accordance with this Agreement. The Merchant shall reimburse the Consultant for all Sale Costs actually incurred by the Consultant up to the aggregate budgeted amount set forth in the Expense Budget.

Concurrently with the execution of, and as a condition to the Consultant’s obligations under, this Agreement, the Merchant shall fund to the Consultant \$300,000 (the “**Special Purpose Payment**”), which shall be held by the Consultant on account of any final amounts owing to the Consultant hereunder until the Final Reconciliation (as defined below), and the Merchant shall not apply the Special Purpose Payment to, or otherwise offset any portion of the Special Purpose Payment against, any weekly reimbursement, payment of fees, or other amount owing to the Consultant under this Agreement prior to the Final Reconciliation; provided, however, in the event the Realization Process Approval Order and the Realization Process Recognition Order are not granted by the Court and the US Court on or before May 8, 2024, the Consultant shall be entitled to apply the Special Purpose Payment to the payment of any Sale Costs incurred on or before such date. Without limiting any of the Consultant’s other rights, the Consultant may apply the Special Purpose Payment to any unpaid obligation owing by the Merchant to the Consultant under this

Agreement following the completion of the Final Reconciliation on prior written notice to the Monitor or upon the Court and US Court's respective failure to grant the Realization Process Approval Order and the Realization Process Recognition Order by May 8, 2024. Any portion of the Special Purpose Payment not so applied shall be returned to the Merchant within five (5) business days following the Final Reconciliation.

6. Furniture, Fixtures and Equipment

- (a) The Consultant shall also undertake to sell during the Sale Term, on an "as is where is" basis, the FF&E located at the Stores. The Consultant shall advertise in the context of advertising for the Sale that such FF&E is available for sale, and shall contact and solicit known purchasers and dealers of furniture, fixtures and equipment. The Consultant shall have the right to abandon at the Stores any unsold FF&E on the expiry of the Sale Term.
- (b) The Merchant shall be responsible for all reasonable and documented costs and expenses incurred by the Consultant in connection with the sale of FF&E, which costs and expenses shall be incurred pursuant to a written budget or budgets (in addition to the Expense Budget) to be established from time to time by mutual agreement of the Parties with the consent of the Monitor (such costs and expenses, not including the Sale Costs, shall be referred to as the "**FF&E Costs**").
- (c) In consideration for providing the services set forth in this Section 6, the Consultant shall be 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**"); provided, however, that the Consultant shall provide the Merchant with an equity guarantee proposal with respect to the FF&E, the economics of which, if accepted by the Merchant, shall eliminate and replace the FF&E Fee.
- (d) During the Sale Term, the Merchant shall, at each Store provide the Consultant and its invitees with access to such Store solely for purposes of selling, disposing, and/or removing the FF&E.
- (e) Any FF&E that is owned, in whole or in part, by the Merchant that is not sold by the Consultant at each Store by the Sale Termination Date (the "**Remaining FF&E**") shall not be removed but such Remaining FF&E shall be abandoned by the Consultant in place, in a neat and orderly manner and title thereto shall remain with the Merchant.
- (f) Notwithstanding anything in this Agreement to the contrary, the Consultant shall not have any obligation whatsoever to cap any electrical or plumbing outlets or purchase, sell, make, store, handle, treat, dispose, or remove any hazardous materials from the Stores or otherwise. The Consultant shall have no liability to any party for any environmental action brought: (i) that is related to the storage, handling, treatment, disposition, generation, or transportation of hazardous materials, or (ii) in connection with any remedial actions associated therewith or the Stores each case, save and except for any gross negligence or wilful misconduct on its part.

7. Payments & Accounting

All proceeds of sales of Merchandise and FF&E through the Sale shall be collected by Merchant's Store management personnel and deposited into Merchant's existing deposit accounts. During the Sale Term, all accounting matters (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 hereunder) shall be reconciled by the Parties, in consultation with the Monitor, on every Wednesday for the prior calendar week and the amounts determined to be owing for such prior calendar week pursuant to such reconciliation shall be paid as soon as reasonably practicable after each such weekly reconciliation.

The Parties shall, in consultation with the Monitor and the DIP Lender, complete a final reconciliation and settlement of all amounts payable pursuant to this 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 hereunder (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 this Agreement is terminated in accordance with its terms. Within three (3) days after the completion of the Final Reconciliation, (i) any amounts that are determined to be owing by the Merchant to the Consultant shall be paid by the Merchant to the Consultant pursuant to this Agreement, and (ii) any amounts that are determined to be owing by the Consultant to the Merchant pursuant to this Agreement (including any full or partial refund of the Special Purpose Payment) shall be paid by the Consultant to the Merchant.

8. Additional Consultant Goods.

Subject to the Realization Process Approval Order and the Realization Process Recognition Order and only with the prior written consent of the Merchant, Consultant shall have the right to supplement the Merchandise in the Sale at the Stores with additional goods procured by Consultant which are of like kind and no lesser quality to the Merchandise in the Sale at the Stores ("**Additional Consultant Goods**"). The Additional Consultant Goods shall be purchased by Consultant as part of the Sale, and delivered to the Stores. Sales of Additional Consultant Goods shall be run through Merchant's point of sale system; provided, however, that Merchant shall assist with marking, and Consultant shall mark the Additional Consultant Goods, using either a "dummy" SKU or department number, or in such other manner so as to distinguish the sale of Additional Consultant Goods from the sale of Merchandise. For the avoidance of doubt, if Additional Consultant Goods are to be utilized, Merchant shall provide Consultant with "dummy" SKUs. Consultant and Merchant shall also cooperate so as to ensure that the Additional Consultant Goods are marked in such a way that a reasonable consumer could identify the Additional Consultant Goods as non-Merchant goods. Additionally, Consultant shall provide signage in the Stores notifying customers that the Additional Consultant Goods have been included in the Sale.

Consultant shall pay to Merchant an amount equal to 5% of the gross proceeds (excluding sales taxes) from the sale of Additional Consultant Goods completed during the Sale Term (the "**Additional Consultant Goods Fee**"), and Consultant shall retain all remaining amounts from the sale of the Additional Consultant Goods. Any amount due from Consultant to Merchant in respect of the sale of Additional Consultant Goods in accordance with this Section 8 shall be paid in connection with each weekly reconciliation with respect to sales of Additional Consultant Goods

sold during the prior week and any remaining amounts owed shall be paid in connection with the Final Reconciliation.

Consultant and Merchant intend that the transactions relating to the Additional Consultant Goods are, and shall be construed as, a true consignment from Consultant to Merchant in all respects and not a consignment for security purposes. Subject solely to Consultant's obligations to pay to Merchant the Additional Consultant Goods Fee, at all times and for all purposes the Additional Consultant Goods and their proceeds shall be the exclusive property of Consultant, and no other person or entity shall have any claim against any of the Additional Consultant Goods or their proceeds. Merchant shall, at Consultant's sole cost and expense, insure the Additional Consultant Goods and, if required, promptly file any proofs of loss with regard to same with Merchant's insurers. Consultant shall be responsible for payment of any deductible under any such insurance in the event of any casualty affecting the Additional Consultant Goods.

Merchant acknowledges, and the Realization Process Approval Order and the Realization Process Recognition Order shall provide, that the Additional Consultant Goods shall be consigned to Merchant as a true consignment under applicable law. Subject to the Court's issuance of the Realization Process Approval Order, the Consultant is hereby granted a first priority security interest in and lien upon (i) the Additional Consultant Goods and (ii) the Additional Consultant Goods proceeds (less any Additional Consultant Goods Fees), and Consultant is hereby authorized to make any filings and provide notifications to any prior secured parties and which security interest shall be deemed perfected pursuant to the Realization Process Approval Order and the Realization Process Recognition Order without the requirement of any such filings or providing notifications to any prior secured parties (provided that Consultant is hereby authorized to deliver all required notices and file all necessary financing statements and amendments thereof under applicable law identifying Consultant's interest in the Additional Consultant Goods as consigned goods thereunder and the Merchant as the consignee therefor, and Consultant's security interest in and lien upon such Additional Consultant Goods and Additional Consultant Goods proceeds).

9. Indemnification

(a) Merchant's Indemnification

The Merchant shall indemnify, defend, and hold the Consultant and its consultants, members, managers, partners, officers, directors, employees, attorneys, advisors, representatives, principals, affiliates, and Supervisors (collectively, "**Consultant Indemnified Parties**" and each a "**Consultant Indemnified Party**") harmless from and against all liabilities, claims, demands, damages, costs and expenses (including reasonable attorneys' fees) arising from or related to: (i) the willful or negligent acts or omissions of or by the Merchant Indemnified Parties (as defined below); (ii) the material breach of any provision of this Agreement by the Merchant, or the failure to perform any obligation under, this Agreement by Merchant; (iii) any liability or other claims, including, without limitation, product liability claims, asserted by customers, any Store employees (under a collective bargaining agreement or otherwise), any lessor of a Store, licensor under a concession agreement with respect to any of the Added Concession Stores or any other person (excluding the Consultant Indemnified Parties) against the Consultant or a Consultant Indemnified Party, except claims arising from the negligence, willful misconduct, gross negligence, or unlawful behavior of the Consultant or the Consultant Indemnified Party; (iv) any harassment, discrimination or violation of any laws or regulations or any other unlawful, tortious or otherwise

actionable treatment of the Consultant Indemnified Parties or the Merchant's customers by the Merchant Indemnified Parties; and (v) the Merchant's failure to pay over to the appropriate taxing authority any taxes required to be paid by the Merchant during the Sale Term in accordance with applicable law.

(b) Consultant's Indemnification

The Consultant shall indemnify, defend and hold the Merchant and its consultants, members, managers, partners, officers, directors, employees, attorneys, advisors, representatives, principals, and affiliates (other than the Consultant or the Consultant Indemnified Parties) (collectively, "**Merchant Indemnified Parties**" and each a "**Merchant Indemnified Party**") harmless from and against all liabilities, claims, demands, damages, costs and expenses (including reasonable attorneys' fees) arising from or related to (i) the willful or negligent acts or omissions of the Consultant Indemnified Parties; (ii) the material breach of any provision of, or the failure to perform any obligation under, this Agreement by the Consultant; (iii) any harassment, discrimination or violation of any laws or regulations or any other unlawful, tortious or otherwise actionable treatment of Merchant Indemnified Parties, or Merchant's customers by the Consultant or any of the Consultant Indemnified Parties; and (iv) any claims made by any party engaged by the Consultant as an employee, agent, representative or independent contractor arising out of such engagement, including, without limitation, the Supervisors.

10. Insurance

(a) Merchant's Insurance Obligations

The Merchant shall maintain throughout the Sale Term all liability insurance policies (including, without limitation, products liability, comprehensive public liability and auto liability insurance) covering injuries to persons and property in or in connection with the Stores that are maintained by the Merchant and in effect as of the date of this Agreement, and shall cause the Consultant to be named an additional insured with respect to all such policies, and such policies shall be primary and non-contributory with waiver of subrogation in favor of the Consultant. At the Consultant's request, the Merchant shall provide the Consultant with a certificate or certificates evidencing the insurance coverage required hereunder. In addition, the Merchant shall maintain throughout the Sale Term, in such amounts as it currently has in effect, workers compensation insurance in compliance with all statutory requirements.

(b) Consultant's Insurance Obligations

The Consultant shall maintain (at its sole cost and expense) throughout the Sale Term, commercial general liability insurance, in such amounts as are reasonable and consistent with its ordinary practices, covering injuries to persons and property in connection with the Consultant's provision of services hereunder, and shall cause the Merchant to be named as an additional insured with respect to all such policies. At the Merchant's request, the Consultant shall provide the Merchant with a certificate evidencing the insurance coverage required hereunder. In addition, the Consultant shall maintain throughout the Sale Term, workers' compensation insurance in compliance with all statutory requirements. Further, should the Consultant employ or engage third parties to perform any of the Consultant's undertakings with regard to this Agreement, the Consultant will ensure that such third parties are covered by the Consultant's insurance or maintain

all of the same insurance as the Consultant is required to maintain pursuant to this paragraph and name the Merchant as an additional insured under the policy for each such insurance.

11. Going Concern Sale and Website Sales

- (a) The Parties acknowledge and agree that in the event of a going concern third party transaction for the business or a certain portion thereof, the Parties shall work cooperatively and in good faith to modify the transaction contemplated hereunder appropriately and the Parties shall:
 - (i) ensure that the only Stores subject to the Sale are the Stores included on the Updated Store List, as the same may be amended by the Merchant to add or remove Stores until and including May 17, 2024, or to add Stores any time thereafter;
 - (ii) agree to a revised Expense Budget to reflect the costs of running the Sale at the Stores included on the Updated Store List;
 - (iii) agree on appropriate advertising regarding the Sale to be included on the Website, including, without limitation, with respect to store locator and a headline banner promoting the Sale; and
 - (iv) Merchant shall not, and shall use commercially reasonable efforts to ensure that any going concern buyer does not, offer for sale through the Website or other e-commerce platform, any goods included among the Merchandise at an effective price, determined on an item-by-item and SKU basis (after accounting for all applicable discounts, promotions, coupons, programs), less than the price offered in the Stores for such items as part of the Sale.
- (b) The Merchant does not intend to continue the sale of goods via its webstores (including its dropship channels) (collectively, the “**Websites**”) during the Sale Term. If the Merchant does continue to sell goods via any of its Websites during the Sale Term, such goods shall either (a) be deemed included in the definition of Merchandise herein and subject to the Merchandise Fee herein; or (b) not sell or advertise any goods at prices lower than the price at which such goods are being sold or advertised in the Stores at such time.

12. Representations, Warranties, Covenants and Agreements

- (a) Representations and Covenants of Merchant

The Merchant represents, warrants, covenants and agrees that, subject to the issuance of the Realization Process Approval Order and the Realization Process Recognition Order: (i) it is duly organized, validly existing and in good standing under the local laws of organization, with full power and authority to execute and deliver this Agreement and to perform its obligations hereunder; (ii) the execution, delivery and performance of this Agreement has been duly authorized by all necessary actions of it and this Agreement constitutes a valid and binding obligation of it enforceable against it in accordance with its terms and conditions, and the consent

of no other entity or person is required for it to fully perform all of its obligations herein; (iii) all ticketing of Merchandise at the Stores has been and will be done in accordance with the Merchant's customary ticketing practices; (iv) all normal course hard markdowns on the Merchandise have been, and will be, taken consistent with Merchant's customary practices; and (v) subject to the Initial Order and any other Order of the Court or the US Court (as applicable), the Sale Guidelines and this Agreement, the Stores will be operated in the ordinary course of business in all respects, except as otherwise expressly agreed to by the Merchant and the Consultant, in consultation with the Monitor.

(b) Representations and Covenants of the Consultant

The Consultant represents, warrants, covenants and agrees that: (i) the Consultant is a company duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, with full power and authority to execute and deliver this Agreement and to perform the Consultant's obligations hereunder; (ii) the execution, delivery and performance of this Agreement has been duly authorized by all necessary actions of the Consultant and this Agreement constitutes a valid and binding obligation of the Consultant enforceable against the Consultant in accordance with its terms and conditions, and the consent of no other entity or person is required for the Consultant to fully perform all of its obligations herein; (iii) the Consultant shall comply with and act in accordance with any and all applicable federal, provincial and local laws, rules, and regulations, and other legal obligations of all governmental authorities; (iv) no non-emergency repairs or maintenance in the Stores will be conducted without the Merchant's prior written consent; (v) the Consultant will not take any disciplinary action against any employee of Merchant; and (vi) for the purposes of the Sale in Canada, the Consultant is not a non-resident of Canada pursuant to the *Income Tax Act* (Canada) and shall provide Merchant with its relevant sales tax numbers prior to the Sale.

(c) Confirmations of the Parties

- (i) Except as may be provided otherwise in the Realization Process Approval Order, the Realization Process Recognition Order or any order of the Court or the US Court (as applicable), the Consultant shall assist the Merchant with respect to the legal requirements of effecting the Sale as a "store closing", "everything must go", "everything on sale", "going out of business" or other mutually agreed upon theme in compliance, if required with applicable provincial and local "going out of business" laws and assist in obtaining all permits and governmental consents required in order to conduct the Sale under such laws.
- (ii) Merchant shall seek Court approval of this Agreement and the Canada Sale Guidelines pursuant to the Realization Process Approval Order. The Parties expressly acknowledge and agree that the entering into of this Agreement by the Merchant is subject to the issuance of the Realization Process Approval Order approving, among other things, this Agreement, the Canada Sale Guidelines and the conduct of the Sale and that should the Realization Process Approval Order not be obtained, this Agreement shall be deemed terminated as of the date the Court denies the request for entry of the Realization Process Approval Order.

- (iii) Should the Realization Process Recognition Order not be obtained, this Agreement shall be deemed terminated, solely with respect to the US Stores, as of the date the Court denies the request for entry of the Realization Process Recognition Order.
- (iv) The Consultant shall conduct the Sale in accordance with the terms of this Agreement, the Realization Process Approval Order, the Realization Process Recognition Order and the Sale Guidelines.

13. Termination

The following shall constitute “**Termination Events**” hereunder:

- (a) The Merchant’s or the Consultant’s failure to perform any of their respective material obligations hereunder, which failure shall continue uncured seven (7) days after receipt of written notice thereof to the defaulting Party;
- (b) Any representation or warranty made by the Merchant or the Consultant is untrue in any material respect as of the date made or at any time and throughout the Sale Term; or
- (c) The Sale is terminated or materially interrupted or impaired for any reason, including but not limited to an order of the Court, other than as a result of an Event of Default (as defined below) by the Consultant or the Merchant.

If a Termination Event occurs, (i) the non-defaulting Party in the event of a Termination Event arising under subparagraphs (a) or (b) above (an “**Event of Default**”), or (ii) either Party in the event of a Termination Event arising under subparagraph (c) above, may, in its discretion, elect to terminate this Agreement by providing seven (7) business days’ written notice thereof to the other Party and, in the case of an Event of Default, in addition to terminating this Agreement, pursue any and all rights and remedies and damages resulting from such Event of Default. If this Agreement is terminated, the Merchant shall be obligated to pay the Consultant all amounts due and owing by the Merchant to the Consultant under this Agreement through and including the termination date of the Agreement, subject to the rights of the Merchant in the event of an Event of Default by the Consultant.

14. Notices

All notices, certificates, approvals, and payments provided for herein shall be sent by electronic mail or by recognized overnight delivery service as follows: (a) to the Merchant, c/o Osler, Hoskin and Harcourt LLP, 100 King Street West, 1 First Canadian Place, Suite 6200, Toronto, ON M5X 1B8, Attn: Tracy C. Sandler, Email: tsandler@osler.com and Blair McRadu, Email: bmcradu@osler.com; (b) to the Consultant: Gordon Brothers Retail Partners, LLC, 101 Huntington Street, Boston MA 02199, Attn: Durien Sanchez, Email: dsanchez@gordonbrothers.com and David Braun, Email: dbraun@gordonbrothers.com; (c) counsel to the Consultant: Cassels, Brock & Blackwell LLP, Bay Adelaide Centre, North Tower, 40 Temperance St. Suite 3200, Toronto ON M5H 0B4, Attn: Jane Dietrich, Email: jdietrich@cassels.com and Monique Sassi, Email: msassi@cassels.com; or (d) such other address

as may be designated in writing by the Merchant or the Consultant, and in either case, with a copy to the Monitor at: Alvarez and Marsal Canada Inc., Royal Bank Plaza, South Tower, Suite 3500 – 200 Bay Street, Toronto, ON M5J 2J1, Attn: Joshua Nevsky, Email: jnevsky@alvarezandmarsal.com and Greg Karpel, Email: gkarpel@alvarezandmarsal.com with a copy to Bennett Jones LLP, 100 King Street West, 1 First Canadian Place, Suite 3400, Toronto, ON M5X 1A4, Attn: Sean Zweig, Email: zweigs@bennettjones.com and Jesse Mighton, Email: mightonj@bennettjones.com.

15. Independent Consultant

The Consultant's relationship to the Merchant is that of an independent contractor without the capacity to bind the Merchant in any respect. No employer/employee, principal/agent, joint venture or other such relationship is created by this Agreement. The Merchant shall have no control over the hours that the Consultant or its employees or assistants or the Supervisors work or the means or manner in which the services that will be provided are performed and the Consultant is not authorized to enter into any contracts or agreements on behalf of the Merchant or to otherwise create any obligations of the Merchant to third parties, unless authorized in writing to do so by the Merchant. Nothing herein constitutes any form of landlord and tenant relationship between the Merchant and the Consultant or grants the Consultant any interest in the Stores or the underlying leases or concession agreements.

16. Non-Assignment

Subject to Section 17 below, neither this Agreement nor any of the rights hereunder may be transferred or assigned by either Party without the prior written consent of the other Party and the Monitor. No modification, amendment or waiver of any of the provisions contained in this Agreement, or any future representation, promise or condition in connection with the subject matter of this Agreement, shall be binding upon any Party to this Agreement unless made in writing and signed by a duly authorized representative or agent of such Party. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective legal representatives, successors and permitted assigns.

17. Syndication of Transaction

Consultant shall have the right, but not the obligation, to syndicate the transaction contemplated by this Agreement subject to the prior written consent of Merchant and the Monitor, and if syndicated, this Agreement shall be deemed amended and restated to expressly name such parties as parties hereto and such parties shall thereafter be deemed to be included in references to "Consultant" hereunder for all purposes.

18. Severability

If any term or provision of this Agreement, as applied to either Party or any circumstance, for any reason shall be declared by a court of competent jurisdiction to be invalid, illegal, unenforceable, inoperative or otherwise ineffective, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and

effect and enforceable. If the surviving portions of the Agreement fail to retain the essential understanding of the Parties, the Agreement may be terminated by mutual consent of the Parties.

19. Governing Law, Venue, Jurisdiction and Jury Waiver

This Agreement, and its validity, construction and effect, shall be governed by and enforced in accordance with the laws of the Province of Ontario (without reference to the conflicts of laws provisions therein) and the laws of Canada applicable therein. The Merchant and the Consultant waive their respective rights to trial by jury of any cause of action, claim, counterclaim or cross-complaint in any action, proceeding and/or hearing brought by either the Consultant against the Merchant or the Merchant against the Consultant on any matter whatsoever arising out of, or in any way connected with, this Agreement, the relationship between the Merchant and the Consultant, any claim of injury or damage or the enforcement of any remedy under any law, statute or regulation, emergency or otherwise, now or hereafter in effect (an “**Agreement Related Dispute**”). The Parties hereby attorn to the exclusive jurisdiction of the Court to determine any Agreement Related Dispute.

20. Entire Agreement

Other than with respect to the Confidentiality Agreements, this Agreement, together with all additional schedules and exhibits attached hereto, constitutes a single, integrated written contract expressing the entire agreement of the Parties concerning the subject matter hereof. No covenants, agreements, representations or warranties of any kind whatsoever have been made by any Party except as specifically set forth in this Agreement. All prior agreements, discussions and negotiations are entirely superseded by this Agreement.

21. Execution

This Agreement may be executed simultaneously in counterparts (including by means of electronic mail or portable document format (pdf) signature pages), any one of which need not contain the signatures of more than one party, but all such counterparts taken together shall constitute one and the same instrument. This Agreement, and any amendments hereto, to the extent signed and delivered by means of electronic mail or electronic transmission in portable document format (pdf), shall be treated in all manner and respects as an original thereof and shall be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person.

22. U.S. Dollars

The Expense Budget expresses amounts in U.S. dollars. All references to monetary amounts in this Agreement are in U.S. dollars.

[Remainder of page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the date first written above.

TED BAKER CANADA INC.

DocuSigned by:
By: Antoine Adams
E97046E4CF1145B...
Name: Antoine Adams
Title: COO

TED BAKER LIMITED

DocuSigned by:
By: Antoine Adams
E97046E4CF1145B...
Name: Antoine Adams
Title: COO

GORDON BROTHERS CANADA ULC

By: _____
Name:
Title:

**GORDON BROTHERS RETAIL
PARTNERS, LLC**

By: _____
Name:
Title:

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the date first written above.

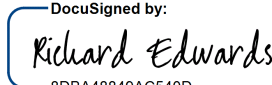
TED BAKER CANADA INC.

By: _____
Name:
Title:

TED BAKER LIMITED

By: _____
Name:
Title:

GORDON BROTHERS CANADA ULC

By:  _____
Name: Richard Edwards
Title: Head of North America Retail

**GORDON BROTHERS RETAIL
PARTNERS, LLC**

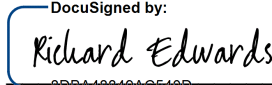
By:  _____
Name: Richard Edwards
Title: Head of North America Retail

Exhibit “A-1”

US Stores

[Exhibit to be provided separately]

Project Patriot
Exhibit A-1 (US Stores)
Store List

161

Store No.	Store No. Short	Store	Banner	Concept	Address	City	State	Zip Code	Square Ft
US678	678	Dumbo	Ted Baker	Full Price	76 Front St	Brooklyn	NY	11201	2,442
US681	681	Detroit Somerset	Ted Baker	Full Price	2800 West Big Beaver Road	Troy	MI	48084	2,049
US684	684	San Francisco Westfield	Ted Baker	Full Price	865 Market Street	San Francisco	CA	4103	2,423
US686	686	Orlando Mall at Millenia	Ted Baker	Full Price	4200 Conroy Rd	Orlando	FL	2839	2,131
US689	689	Lenox	Ted Baker	Full Price	3393 Peachtree Rd. NE. Space 3086F	Atlanta	GA	30326	2,070
US691	691	Houston	Ted Baker	Full Price	5085 Westheimer Road	Houston	TX	77056	2,312
US692	692	Wooster	Ted Baker	Full Price	117 Wooster Street Soho	New York	NY	10012	3,800
US693	693	Seattle	Ted Baker	Full Price	141 Bellevue Square	Bellevue	WA	98004	1,886
US694	694	Miami Brickell	Ted Baker	Full Price	701 S Miami Ave	Miami	FL	33131	1,970
US695	695	Columbus Circle	Ted Baker	Full Price	10 Columbus Circle	New York	NY	10019	1,925
US701	701	San Jose (Santana Row New)	Ted Baker	Full Price	378 Santana Row	San Jose	CA	95128	1,990
US703	703	Las Vegas (Forum)	Ted Baker	Full Price	3500 South Las Vegas Blvd	Las Vegas	NV	89109	3,589
US706	706	Dallas	Ted Baker	Full Price	8687 N Central Expressway	Dallas	TX	75225	1,752
US707	707	South Coast Plaza	Ted Baker	Full Price	3333 Bristol St	Costa Mesa	CA	92626	1,914
US709	709	Miami Aventura	Ted Baker	Full Price	19575 Biscayne Blvd	Aventura	FL	33180	3,143
US720	720	595 Fith Ave	Ted Baker	Full Price	595 5th Ave	New York	NY	10017	4,715
US723	723	Las Vegas Fashion Show	Ted Baker	Full Price	3200 S. Las Vegas Blvd	Las Vegas	NV	89109	1,724
US724	724	King of Prussia	Ted Baker	Full Price	160 North Gulph Road	King of Prussia	PA	19406	1,817
US725	725	Lincoln Road	Ted Baker	Full Price	1111 Lincoln Road	Miami Beach	FL	33139	1,743
US728	728	Ala Moana	Ted Baker	Full Price	1450 Ala Moana Blvd	Honolulu	HI	96814	2,077
US729	729	Glendale	Ted Baker	Full Price	2222 Glendale Galleria	Glendale	CA	91210	1,894
US685	685	Chicago Outlet	Ted Baker	Outlet	5220 Fashion Outlet Way	Rosemont	IL	60018	2,444
US696	696	Sawgrass Mills Outlet	Ted Baker	Outlet	1840 Sawgrass Mills Circle	Sunrise	FL	33323	1,644
US697	697	Orlando Vineland Outlet	Ted Baker	Outlet	8200 Vineland Avenue	Orlando	FL	32821	1,572
US698	698	Livermore SF Outlet	Ted Baker	Outlet	3660 Livermore Outlet Dr. Suite 1360	Livermore	CA	94551	1,335
US699	699	Camarillo Outlet	Ted Baker	Outlet	740 Ventura Blvd	Camarillo	CA	93010	1,506
US708	708	Las Vegas Outlet	Ted Baker	Outlet	775 Grand Central Parkway	Las Vegas	NV	89106	2,007
US713	713	Orlando Outlet	Ted Baker	Outlet	4959 International Dr #1F	Orlando	FL	32819	1,895
US718	718	Wrentham	Ted Baker	Outlet	1 Premium Outlet Blvd	Wrentham	MA	02093	1,750
US721	721	Woodbury Outlet	Ted Baker	Outlet	873 Adirondack Way	Central Valley	NY	10917	1,410
US722	722	Desert Hills Outlet	Ted Baker	Outlet	48650 Seminole Drive	Cabazon	CA	92230	1,500

Exhibit “A-2”**Canada Stores**

[Exhibit to be provided separately]

Project Patriot
Exhibit A-2 (Canada Stores)
Store List

163

Store No.	Store No. Short	Store	Banner	Concept	Address	City	State	Zip Code	Square Ft
CA001	1	Yorkdale Canada	Ted Baker	Full Price	3401 Dufferin St	Toronto	ON	M6A 2T9	3,123
CA003	3	Eaton Center	Ted Baker	Full Price	220 Yonge St	Toronto	ON	M5B 2H1	2,584
CA004	4	Sherway Gardens	Ted Baker	Full Price	25 The West Mall	Toronto	ON	M9C 1B8	1,660
CA005	5	Pacific Center	Ted Baker	Full Price	Pacific Centre	Vancouver	BC	V7Y1G5	1,922
CA007	7	Ottawa Rideau	Ted Baker	Full Price	50 Rideau Street	Ottawa	ON	K1N 9J7	2,232
CA008	8	Calgary Chinook	Ted Baker	Full Price	6455 Macleod Trail SW	Calgary	AB	T2H 0K8	2,333
CA009	9	Montreal	Ted Baker	Full Price	3035 le Carrefour Blvd	Laval	QC	H7T 1C7	3,680
9372	9372	Tsawwassen Mills	Lucky Brand	Full Price	5000 Canoe Pass Wy	Tsawwassen	BC	V4M 0B3	5,842
9375	9375	Metropolis at Metrotown	Lucky Brand	Full Price	4700 Kingsway	Burnaby	BC	V5H 4J2	1,730
9376	9376	Vaughan Mills	Lucky Brand	Full Price	1 Bass Pro Mills Dr#640	Toronto	ON	L4K 5W4	5,759
BB002	2	Royal Bank Plaza	Brooks Brother	Full Price	200 Bay St. Suite UR1	Toronto	ON	M5J 2J1	18,265
BB007	7	Tsawwassen Mills	Brooks Brother	Outlet	500 Canoe Pass Wy Space 180	Tsawwassen	BC	V4M 0B3	4,804
BB008	8	157 Bloor Street West	Brooks Brother	Full Price	157 Bloor St W	Toronto	ON	M5S 1P7	0
BB009	9	CF Shops at Don Mills	Brooks Brother	Full Price	1090 Don Mills Rd, Unit N0006	North York	ON	M3C 3R6	3,913
BB010	10	Calgary Eaton Centre	Brooks Brother	Full Price	751 3rd Street, SW	Calgary	AB	T2P 4K8	13,482
BB011	11	South Edmonton Common	Brooks Brother	Outlet	1430 Parsons Rd, NW	Edmonton	AB	T6N 0A9	4,881
CA002	2	Halton Hills/Toronto Outlet	Ted Baker	Outlet	13850 Steeles Avenue West	Halton Hills	ON	L7G 0J1	1,950
CA006	6	BC/McArthur Glen Outlet	Ted Baker	Outlet	7899 Templeton Station Rd	Richmond	BC	V7B0B7	1,973
9377	9378	Outlet Collection Edmonton	Lucky Brand	Outlet	1 Outlet Collection Way	Edmonton	AB	T9E 1J5	4,786
9800	9800	Outlet Collection Niagra	Lucky Brand	Outlet	300 Taylor Road	Niagara	ON	L0S 1J0	3,877
9378	9378	Outlet Collection Winnipeg	Lucky Brand	Outlet	555 Sterling Pkwy	Winnipeg	MB	R3P 2T3	5,455
9373	9373	Tanger Ottawa	Lucky Brand	Outlet	8555 Campeau Drive	Ottawa	ON	K2T 0K5	3,161
BB005	5	Outlet Collection Niagara	Brooks Brother	Outlet	300 Taylor Road	Niagara	ON	L0S 1J0	7,560
BB006	6	Vaughan Mills	Brooks Brother	Outlet	1 Bass Pro Mills Dr	Toronto	ON	L4K 5W4	7,751
BB004	4	Toronto Premium Outlets	Brooks Brother	Outlet	13850 Steeles Ave W Space 712	Halton Hills	ON	L7G 0J1	8,400

Exhibit “A-3”

List of Warehouses

[Exhibit to be provided separately]

Project Patriot
Exhibit A-3 (Warehouses)
Store List

165

Store No.	Store	Concept	Address	City	State	Zip Code
CA DC	LB and BB Warehouse	DC	30 Pedigree Court, Unit 2	Brampton	ON	L6T 5T8
US DC	TB Warehouse	DC	6180 Buffington Road	Atlanta	GA	30349

Exhibit “B-1”**US Sale Guidelines**

[Exhibit to be provided separately]

Sale Procedures¹
(US Store Locations)

1. The Sale will be conducted during normal business hours or such hours as otherwise permitted by the applicable unexpired lease.
2. The Sale will be conducted in accordance with applicable state and local “Blue Laws,” and thus, where such a law is applicable, no Sale will be conducted on Sunday unless the Debtors have been operating such stores on Sundays.
3. On “shopping center” property, neither the Debtors nor the Consultant shall distribute handbills, leaflets, or other written materials to customers outside of any stores’ premises, unless permitted by the applicable lease or if distribution is customary in the “shopping center” in which such store is located; *provided* that the Debtors and the Consultant may solicit customers in the stores themselves. On “shopping center” property, neither the Debtors nor the Consultant shall use any flashing lights or amplified sound to advertise the Sale or solicit customers, except as permitted under the applicable lease or agreed in writing by the landlord.
4. The Debtors and the Consultant shall have the right to use and sell the FF&E. The Debtors and the Consultant may advertise the sale of the FF&E in a manner consistent with these Sale Procedures. The purchasers of any FF&E sold during the Sale shall be permitted to remove the FF&E either through the back or alternative shipping areas at any time, or through other areas after Store business hours; *provided*, however, that the foregoing shall not apply to *de minimis* FF&E sales made whereby the item can be carried out of a Store in a shopping bag.
5. At the conclusion of the Sale, Consultant shall vacate the Stores in broom clean condition; provided that Consultant may abandon any FF&E not sold in the Sale at the conclusion of the Sale, without cost or liability of any kind to Consultant. Any abandoned FF&E left in a Store after a lease is rejected shall be deemed abandoned to the landlord having a right to dispose of the same as the landlord chooses without any liability whatsoever on the part of the landlord to any party and without waiver of any damage claims against the Merchant. For the avoidance of doubt, as of the Sale Termination Date or vacate date, as applicable, Consultant may abandon, in place and without further responsibility or liability of any kind, any FF&E.
6. The Debtors and the Consultant may, but are not required to, advertise the Sale as “store closing,” “sale on everything/everything on sale,” “everything must go,” or similarly themed Sale (provided however that no signs shall advertise the Sale as a “bankruptcy”, a “liquidation” or a “going out of business” sale). The Debtors and the Consultant may also have a “countdown to closing” sign prominently displayed in a manner consistent with these Sale Procedures.

¹ Capitalized terms used but not defined in these Sale Procedures have the meanings given to them in the Interim Order to which these Sale Procedures are attached as Exhibit ●, or the Motion to which the Interim Order is attached, as applicable.

7. The Debtors and the Consultant shall be permitted to utilize sign walkers, displays, hanging signs, and interior banners in connection with the Sale; *provided* that such sign walkers, displays, hanging signs, and interior banners shall be professionally produced and hung in a professional manner. Neither the Debtors nor the Consultant shall use neon or day-glo on its sign walkers, displays, hanging signs, or interior banners if prohibited by the applicable lease or applicable law. Furthermore, with respect to enclosed mall locations, no exterior signs or signs in common areas of a mall shall be used unless otherwise expressly permitted in these Sale Procedures. In addition, the Debtors and the Consultant shall be permitted to utilize exterior banners at (a) non-enclosed mall stores and (b) enclosed mall stores to the extent the entrance to the applicable Store does not require entry into the enclosed mall common area; *provided*, that such banners shall be located or hung so as to make clear that the Sale is being conducted only at the affected Store, shall not be wider than the storefront of the Store and shall not be larger than 4 x 40 feet. In addition, the Debtors shall be permitted to utilize sign walkers in a safe and professional manner. Nothing contained in these Sale Procedures shall be construed to create or impose upon the Debtors or the Consultant any additional restrictions not contained in the applicable lease agreement.
8. Neither the Debtors nor the Consultant shall make any alterations to the storefront, roof, or exterior walls of any stores or shopping centers, or to interior or exterior store lighting, except as authorized by the applicable lease. The hanging of in-Store signage or exterior banners shall not constitute an alteration to a Store.
9. Affected landlords will have the ability to negotiate with the Debtors, or at the Debtors' direction, the Consultant, modifications to the Sale Procedures. The Debtors and the landlord of any Store are authorized to enter into agreements ("Side Letters") without further order of the Court, provided that Side Letters do not have a material adverse effect on the Debtors or their estates.
10. To the extent relevant, and as set forth in more detail in the Consulting Agreement, conspicuous signs will be posted in each of the affected stores to the effect that all sales are "final."
11. The Debtors will keep store premises and surrounding areas clear and orderly, consistent with past practices.
12. An unexpired nonresidential real property lease will not be deemed rejected by reason of a Sale or the adoption of these Sale Procedures.
13. The rights of landlords against the Debtors for any damages to a store shall be reserved in accordance with the provisions of the applicable lease.
14. If and to the extent that the landlord of any Store contends that the Debtors or the Consultant are in breach of or default under these Sale Procedures, such landlord shall provide at least five days' written notice, served by email or overnight delivery, on:

If to the Debtors:

c/o Osler, Hoskin and Harcourt LLP
100 King Street West
1 First Canadian Place, Suite 6200
Toronto, ON M5X 1B8
Attn: Tracy C. Sandler and Shawn Irving
Email: tsandler@osler.com and sirving@osler.com

and

Cole Schotz P.C.
Court Plaza North
25 Main Street
Hackensack, NJ 07601
Attn: Warren A. Usatine, Esq. and Felice Yudkin, Esq.
Email: wusatine@coleschotz.com and fyudkin@coleschotz.com

If to the Consultant:

Gordon Brothers Retail Partners, LLC
101 Huntington Avenue, 11th Floor
Boston, MA 02199
Attn: Durien Sanchez and David Braun
E-mail: dsanchez@gordonbrothers.com and dbraun@gordonbrothers.com

with copies to:

Cassels, Brock & Blackwell LLP
Bay Adelaide Centre, North Tower
40 Temperance St. Suite 3200
Toronto ON M5H 0B4
Attn: Jane Dietrich and Monique Sassi
Email: jdietrich@cassels.com and msassi@cassels.com

And in either case, with copies to:

Alvarez and Marsal Canada Inc.
Royal Bank Plaza, South Tower
Suite 3500 – 200 Bay Street
Toronto, ON M5J 2J1
Attn: Joshua Nevsky and Greg Karpel
Email: jnevsky@alvarezandmarsal.com and gkarpel@alvarezandmarsal.com

with copies to:

Bennett Jones LLP
100 King Street West

1 First Canadian Place, Suite 3400
Toronto, ON M5X 1A4
Attn: Sean Zweig, and Jesse Mighton
Email: zweigs@bennettjones.com and mightonj@bennettjones.com

15. If the parties are unable to resolve the dispute, either the landlord or the Debtors shall have the right to schedule a hearing before the Court on no less than five days' written notice to the other party, served by email or overnight delivery.

Exhibit “B-2”**Canada Sale Guidelines**

[Exhibit to be provided separately]

SALE GUIDELINES (CANADIAN STORE LOCATIONS)

Capitalized terms used but not defined in these Sale Guidelines shall have the meanings ascribed to them in the Amended and Restated Initial Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated May 3, 2024 (as amended and restated from time to time, the “**ARIO**”) made in the proceedings involving, *inter alia*, Ted Baker Canada Inc. and Ted Baker Limited (collectively, the “**Merchant**”) under the *Companies’ Creditors Arrangement Act* (“**CCAA**”) and the Realization Process Approval Order (as defined below), as applicable.

The following procedures shall apply to the sale (the “**Sale**”) of merchandise, inventory, furniture, fixtures and equipment at the Merchant’s Canadian stores or at Canadian concession locations as set forth in the Updated Store list attached as Schedule “1A” to the Consulting Agreement (as defined below) (individually, a “**Store**” and, collectively, the “**Stores**”).

1. Except as otherwise expressly set out herein, and subject to: (i) the Order of the Court dated May 3rd, approving, *inter alia*, the consulting agreement between the Merchant and Gordon Brothers Canada ULC and Gordon Brothers Retail Partners, LLC (collectively, the “**Consultant**”) dated as of April 30, 2024 (as amended and restated from time to time in accordance with the Realization Process Approval Order (as defined below), the “**Consulting Agreement**”) and the transactions contemplated thereunder (the “**Realization Process Approval Order**”); (ii) any further Order of the Court; and/or (iii) any subsequent written agreement between the Merchant and its Landlord(s) and approved by the Consultant, the Sale shall be conducted in accordance with the terms of the applicable Leases. However, nothing contained herein shall be construed to create or impose upon the Merchant or the Consultant any additional restrictions not contained in the applicable Lease.
2. The Sale shall be conducted so that each Store remains open during its normal hours of operation provided for in its respective Lease, until the respective Sale Termination Date (as defined below) of each such Store. The Sale at the Stores shall end by no later than August 2, 2024 (such date, or such other date as determined in accordance with the Realization Process Approval Order, the “**Sale Termination Date**”). Rent payable under the Leases shall be paid up to and including the effective date of an applicable Lease Disclaimer as provided in the ARIO (which, for greater certainty, may be up to seven (7) days following the applicable Sale Termination Date (the “**FF&E Removal Period**”).
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws and regulations, unless otherwise authorized under the CCAA, the ARIO, or otherwise ordered by the Court.
4. All display and hanging signs used by the Consultant in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Notwithstanding anything to the contrary contained in the Leases, the Consultant may advertise the Sale at the Stores as a “everything on sale”, “everything must go”, “store closing” and/or similar theme sale at the Stores (provided however that no signs shall advertise the Sale as a “bankruptcy”, a “liquidation” or a “going out of business” sale, it being understood that the French equivalent of “clearance” is “liquidation” and is permitted to be used). Forthwith upon request from a Landlord, the Landlord’s counsel, the Merchant or the Monitor, the Consultant shall provide the proposed signage packages along with proposed dimensions by e-mail to the applicable Landlords or to their counsel of record and the applicable Landlord

shall notify the Consultant of any requirement for such signage to otherwise comply with the terms of the Lease and/or these Sale Guidelines and where the provisions of the Lease conflict with these Sale Guidelines, these Sale Guidelines shall govern. The Consultant shall not use neon or day-glow signs or any handwritten signage (save that handwritten “you pay” or “topper” signs may be used). If a Landlord is concerned with “Store Closing” signs being placed in the front window of a Store or with the number or size of the signs in the front window, the Merchant, the Consultant and the Landlord will work together to resolve the dispute. Furthermore, with respect to enclosed mall Store locations without a separate entrance from the exterior of the enclosed mall, no exterior signs or signs in common areas of a mall shall be used unless explicitly permitted by the applicable Lease and shall otherwise be subject to all applicable laws. In addition, the Consultant shall be permitted to utilize exterior banners/signs at stand alone, strip mall or enclosed mall Store locations with a separate entrance from the exterior of the enclosed mall; provided, however, that: (i) no signage in any other common areas of a mall shall be used; and (ii) where such banners are not explicitly permitted by the applicable Lease and the applicable Landlord requests in writing that banners are not to be used, no banners shall be used absent further Order of the Court, which may be sought on an expedited basis on notice to the recipients listed in the service list in respect of these CCAA proceedings (the “**Service List**”). Any banners used shall be located or hung so as to make clear that the Sale is being conducted only at the affected Store and shall not be wider than the premises occupied by the affected Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the facade of the premises of a Store as a result of the hanging or removal of the exterior banner, such damage shall be professionally repaired at the expense of the Consultant.

5. The Consultant shall be permitted to utilize sign-walkers and street signage; provided, however, such sign-walkers and street signage shall not be located on the shopping centre or mall premises.
6. The Consultant shall be entitled to include additional merchandise of the Merchant in the Sale; provided that: (i) the additional merchandise is currently in the possession or control of the Merchant (including in any Warehouse (as defined in the Consulting Agreement) used by the Merchant) or has previously been ordered by or on behalf of the Merchant and is currently in transit to the Merchant (including any Warehouse used by the Merchant) or a Store; and (ii) the additional merchandise is of the type and quality typically sold in the Stores and consistent with any restriction on usage of the Stores set out in the applicable Leases.
7. Subject to the Realization Process Approval Order and only with the prior written consent of the Merchant, the Consultant shall be entitled to include Additional Consultant Goods in the Sale, provided that the Additional Consultant Goods are of like kind and category and no lesser quality to the Merchandise (as defined in the Consulting Agreement).
8. Conspicuous signs shall be posted in the cash register areas of each of the Stores to the effect that all sales are “final” and customers with any questions or complaints are to call the Merchant’s customer care number.
9. The Consultant shall not distribute handbills, leaflets or other written materials to customers outside of any of the Stores on Landlord’s property, unless explicitly permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Store is located. Otherwise, the Consultant may solicit customers in the Stores themselves. The Consultant shall not use any giant balloons, flashing lights or amplified sound to advertise the

Sale or solicit customers, except as explicitly permitted under the applicable Lease or agreed to by the Landlord, and no advertising trucks shall be used on Landlord property or mall ring roads, except as explicitly permitted under the applicable Lease or otherwise agreed to by the Landlord.

10. At the conclusion of the Sale and the FF&E Removal Period in each Store, the Consultant shall arrange that the premises for each Store are in “broom-swept” and clean condition, and shall arrange that the Stores are in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any Landlord of a Store shall be removed or sold during the Sale. No permanent fixtures (other than the FF&E (as defined below)) may be removed without the applicable Landlord’s written consent unless otherwise provided by the applicable Lease and in accordance with the Initial Order and the Realization Process Approval Order. Any trade fixtures or personal property left in a Store after the applicable FF&E Removal Period in respect of which the applicable Lease has been disclaimed or resiliated by the Merchant shall be deemed abandoned, with the applicable Landlord having the right to dispose of the same as the Landlord chooses, without any liability whatsoever on the part of the Landlord. Nothing in this paragraph shall derogate from or expand upon the Consultant’s obligations under the Consulting Agreement.
11. Subject to the terms of paragraph 10 above, the Consultant may also sell existing furniture, fixtures and equipment and/or improvements to real property located in the Stores during the Sale and the FF&E Removal Period that are owned by the Merchant, partially owned, third party owned and/or leased (collectively, the “FF&E”). For greater certainty, FF&E does not include any portion of a Store’s mechanical, electrical, plumbing, security, HVAC, sprinkler, fire suppression, or fire alarm systems (including related fixtures and affixed equipment). The Merchant and the Consultant may advertise the sale of the FF&E consistent with these Sale Guidelines on the understanding that the Landlord may require such signs to be placed in discreet locations within the Stores reasonably acceptable to the Landlord. Additionally, the purchasers of any FF&E sold during the Sale shall only be permitted to remove the FF&E either through the back shipping areas designated by the Landlord or through other areas after regular Store business hours or, through the front door of the Store during Store business hours if the FF&E can fit in a shopping bag, with Landlord’s supervision if required by the Landlord and in accordance with the Initial Order and the Realization Process Approval Order. The Consultant shall repair any damage to the Stores resulting from the removal of any FF&E by the Consultant or by third party purchasers of FF&E.
12. The Consultant shall not make any alterations to interior or exterior Store lighting, except as authorized pursuant to the affected Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these Sale Guidelines, shall not constitute an alteration to a Store.
13. The Merchant hereby provides notice, including for purposes of the ARIO, to the Landlords of the Merchant’s and the Consultant’s intention to sell and remove FF&E from the Stores. The Consultant shall make commercially reasonable efforts to arrange with each Landlord represented by counsel on the Service List and with any other Landlord that so requests, a walk-through with the Consultant to identify any FF&E that is subject to the Sale. The relevant Landlord shall be entitled to have a representative present in the applicable Stores to observe such removal. If the Landlord disputes the Consultant’s entitlement to sell or remove any FF&E under the provisions of the Lease, such FF&E shall remain on the premises and shall be dealt with as agreed between the Merchant, the Consultant and such Landlord, or by further

Order of the Court upon motion by the Merchant on at least two (2) business days' notice to such Landlord and the Monitor. If the Merchant has disclaimed or resiliated the Lease governing such Store in accordance with the CCAA and the Initial Order, it shall not be required to pay rent under such Lease pending resolution of any such dispute (other than rent payable for the notice period provided for in the CCAA and the Initial Order), and the disclaimer or resiliation of the Lease shall be without prejudice to the Merchant's or the Consultant's claim to the FF&E in dispute.

14. If a notice of disclaimer or resiliation of Lease is delivered pursuant to the CCAA and the ARIO to a Landlord while the Sale is ongoing and the Store in question has not yet been vacated, then: (i) during the notice period prior to the effective date of the disclaimer or resiliation, the Landlord may show the affected Store to prospective tenants during normal business hours, on giving the Merchant, the Monitor and the Consultant at least twenty-four (24) hours' prior written notice; and (ii) at the effective date of the disclaimer or resiliation, the relevant Landlord shall be entitled to take possession of any such Store without waiver of or prejudice to any claims or rights such Landlord may have against the Merchant or any of its affiliates in respect of such Lease or Store; provided that, nothing herein shall relieve such Landlord of any obligation to mitigate any damages claimed in connection therewith.
15. The Consultant and its agents and representatives shall have the same access rights to each Store as the Merchant under the terms of the applicable Lease, and the Landlords shall have access rights to the applicable Store as provided for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings and the terms of the ARIO).
16. The Merchant and the Consultant shall not conduct any auctions of Merchandise or FF&E at any of the Stores.
17. The Consultant shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact persons for the Consultant shall be Monique Sassi, 40 King Street West, Toronto, Ontario, M5H3C2, who may be reached by phone at 416-860-6886 or email at msassi@cassels.com. If the parties are unable to resolve the dispute between themselves, the Landlord or the Merchant shall have the right to schedule a "status hearing" before the Court on no less than two (2) days written notice to the other party or parties and the Monitor, during which time the Consultant shall suspend all activity in dispute other than activities expressly permitted herein, pending determination of the matter by the Court; provided, however, subject to paragraph 4 of these Sale Guidelines, if a banner has been hung in accordance with these Sale Guidelines and is the subject of a dispute, the Consultant shall not be required to take any such banner down pending determination of any dispute.
18. Nothing herein or in the Consulting Agreement is, or shall be deemed to be, a sale, assignment or transfer of any Lease to the Consultant nor a consent by any Landlord to the sale, assignment or transfer of any Lease, or shall, or shall be deemed to, or grant to the Landlord any greater rights in relation to the sale, assignment or transfer of any Lease than already exist under the terms of any such Lease.
19. These Sale Guidelines may be amended on a Store-by-Store basis, by written agreement between the Merchant, the Consultant, and the applicable Landlord, with the consent of the Monitor; provided however, that such amended Sale Guidelines shall not affect or bind any

other Landlord not privy thereto without further Order of the Court approving such amended Sale Guidelines.

Exhibit “C”**Expense Budget**

[Exhibit to be provided separately]

Project Patriot
GBRP's Controlled Expenses
Exhibit C

Stores : 56
Sale Term : 5/2/24 - 7/28/24
Weeks : 12.6

	RETAIL	WHOLESALE
	\$	\$
Advertising	730,800	10,000
Supervision	569,871	35,000
Miscellaneous	50,000	15,000
Total Expenses	1,350,671	60,000

This expense budget is based upon the above start and end dates.
Any changes in these dates may result in adjustments to the expense budget, which will be agreed upon by Consultant and Merchant.

Any legal expenses incurred by Consultant will be in addition to and not part of the above budget.

This is Exhibit “F” referred to in the Affidavit of ANTOINE ADAMS sworn by ANTOINE ADAMS at the City of Toronto, in the Province of Ontario, before me on May 1, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

MARLEIGH ERYN DICK

(LSO# 79390S)

DIP TERM SHEET**Dated as of May 1, 2024**

WHEREAS on April 24, 2024 (the “**Filing Date**”), the Borrowers and Guarantors (each as defined below) commenced proceedings before the Ontario Superior Court of Justice (Commercial List) (the “**CCAA Court**”) and obtained an Initial CCAA Order (the “**Initial CCAA Order**”) pursuant to the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA**”) and such proceedings, being the “**CCAA Proceedings**”) and Alvarez & Marsal Canada Inc. was appointed as monitor in the CCAA Proceedings (the “**Monitor**”).

AND WHEREAS, the Borrowers and Guarantors are seeking to have the CCAA Proceedings recognized by the United States Bankruptcy Court for the Southern District of New York (the “**US Court**”) under Chapter 15 of Title 11 of the United States Bankruptcy Code, 11 U.S.C. §101 *et al.* (the “**Recognition Proceedings**”) and together with the CCAA Proceedings, the “**Insolvency Proceedings**”).

AND WHEREAS, Ted Baker Canada Inc. (“**TB Canada**”) and Ted Baker Limited (“**TB US**”), as borrowers, OSL Fashion Services Canada Inc. (“**Fashion Canada**”) and OSL Fashion Services, Inc. (“**Fashion US**”), as guarantors, and Canadian Imperial Bank of Commerce, as lender (the “**Secured Lender**”), are parties to a Credit Agreement dated as of March 14, 2023 (as amended by a consent and first amendment agreement dated as of August 3, 2023, and as further amended by a second amendment agreement dated as of April 23, 2024, the “**Existing Credit Agreement**”).

AND WHEREAS, pursuant to the Initial CCAA Order, the CCAA Court, among other things, (i) authorized and directed the Borrowers and Guarantors to continue their existing cash management arrangements, including the Blocked Accounts Arrangement (as defined by way of reference in the Initial CCAA Order), (ii) authorized and empowered TB Canada and TB US to continue to borrow from Canadian Imperial Bank of Commerce (the “**Interim Lender**”) under the existing credit facility pursuant to the Existing Credit Agreement in order to finance the DIP Parties’ working capital requirements and other general corporate purposes and costs of the Insolvency Proceedings (each, an “**Interim Borrowing**” and collectively, the “**Interim Borrowings**”), provided that (a) such Interim Borrowings are to fund obligations which the DIP Parties, with the consent of the Monitor (as defined below) and the Interim Lender, deem to be necessary for the preservation of the Property or the Business (each as defined in the Initial CCAA Order), (b) such Interim Borrowings do not, individually or in the aggregate, exceed U.S.\$7,000,000, (c) such Interim Borrowings accrue interest at the default rates set out in the Existing Credit Agreement, (d) Fashion Canada and Fashion US are deemed to guarantee and secure 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 and secured under the Existing Credit Agreement and the loan and security documents provided by them in connection therewith, and (iii) ordered that the Interim Borrowings mature on May 8, 2024 (the “**Interim Borrowing Maturity Date**”), and (iv) granted a first-ranking super priority charge on the Collateral (as defined below) as security for all such Interim Borrowings (the “**Interim Lender’s Charge**”).

AND WHEREAS, pursuant to a Revised Order Granting Provisional Relief Pursuant to Section 1519 of the Bankruptcy Code entered by the US Court, Case No. 24-10699 (MEW) (jointly administered) (Docket No. 21), on April 26, 2024 (the “**Provisional Order**”), the US Court, among other things, (i) authorized the Borrowers and Guarantors to obtain funding under the Interim Borrowings facility subject to and secured by the Interim Lender’s Charge, to apply the Interim Lender’s Charge to the assets of the Borrowers and Guarantors located in the United States, and to confirm that the Interim Lender’s existing liens and security interests shall apply with respect to the funding obtained under the Interim Borrowings facility, in each case in accordance with the terms set forth in paragraphs 34 to 38 of the Initial CCAA Order, and (ii) authorized and directed the Borrowers and Guarantors to pay and perform all of their indebtedness, interest, fees, liabilities, and obligations to the Interim Lender under and pursuant to the Interim Borrowings facility and Initial CCAA Order (and in accordance with the cash flow forecast filed in connection with the Initial CCAA Order), as and when the same become due and are to be performed.

AND WHEREAS, the Borrowers require additional funding to, among other things, fund the repayment of the Interim Borrowings by the Interim Borrowing Maturity Date, working capital requirements and other general corporate purposes, and costs of the Insolvency Proceedings during the pendency of the Insolvency Proceedings, and the DIP Parties have concluded that the DIP Lender (as defined below) is the most cost effective and timely source of such funding that is available to the Borrowers and appropriate in the circumstances.

AND WHEREAS, the DIP Lender has agreed to provide additional funding to the Borrowers during the Insolvency Proceedings on the terms set out herein.

NOW THEREFORE, the parties, in consideration of the foregoing and the mutual agreements contained herein (the receipt and sufficiency of which are hereby acknowledged), agree as follows:

1. **BORROWERS:** TB Canada and TB US (each, a “**Borrower**”, and collectively, the “**Borrowers**”).
2. **GUARANTORS:** Fashion Canada and Fashion US (each, a “**Guarantor**”, and together, the “**Guarantors**” and the Guarantors, together with the Borrowers, the “**DIP Parties**”).
3. **DIP LENDER:** Canadian Imperial Bank of Commerce (the “**DIP Lender**”).
4. **DEFINED TERMS:** Unless otherwise defined herein, capitalized words and phrases used in this Term Sheet have the meanings given thereto in **Schedule “A”**.
5. **DIP FACILITY:** A senior secured, super priority, debtor-in-possession, revolving credit facility (the “**DIP Facility**”) up to a maximum principal amount of U.S.\$28,000,000 (the “**Facility Amount**”). Subject to the terms and conditions set forth herein, the Borrowers may, provided that no Default or Event of Default (as defined below),

other than Existing Events of Default, has occurred, at any time and from time to time prior to the Maturity Date (as defined below) borrow, prepay and reborrow loans from the DIP Lender under the DIP Facility.

The DIP Facility shall be made available to the Borrowers by way of advances in Canadian Dollars (Cdn.\$) or U.S. Dollars (U.S.\$) (each, an “**Advance**”) which in aggregate (after taking into consideration the Currency Exchange Rate for Advances denominated in Canadian Dollars) shall not exceed the Facility Amount. Each Advance, other than in connection with the repayment of the Interim Borrowings Obligations (as defined below), shall be made upon the Borrowers’ written request to the DIP Lender (an “**Advance Request**”), executed by each Borrower. Notwithstanding the foregoing, the First Advance, at a minimum, shall be in U.S. Dollars in an amount sufficient to repay in full the Interim Borrowings.

Each Advance Request shall (i) be in the form of **Schedule “B”**, (ii) specify the currency of the Advance, (iii) specify the aggregate amount of the requested Advance (which shall be a minimum of Cdn\$25,000 or U.S.\$25,000, as applicable), and the date such Advance is requested to be made by the DIP Lender (which shall be a Business Day), (iv) be made no more frequently than three (3) times a week, and (v) certify that (A) all representations and warranties of the DIP Parties contained in this Term Sheet remain true and correct in all respects, both before and after giving effect to the use of such proceeds, and (B) no Default or Event of Default then exists or would result following such Advance, other than the Existing Events of Default.

Each Advance Request shall be deemed to be acceptable and shall be honoured by the DIP Lender unless the DIP Lender has objected thereto in writing setting out why the Advance Request is not in compliance with this Term Sheet and/or the DIP Budget, by no later than 1:00 p.m. Eastern Time on the second Business Day following the delivery of such Advance Request.

A copy of each Advance Request shall be concurrently provided by the Borrowers to the DIP Lender and the Monitor.

From the first Advance under the DIP Facility (the “**First Advance**”), the Borrowers shall indefeasibly pay, in full, (i) all Interim Borrowings, together with interest accrued thereon, from the proceeds of the First Advance, which shall be repaid in U.S. Dollars, (ii) all reasonable and documented costs and expenses incurred by the Interim Lender in connection with the Interim

Borrowings (including the reasonable and documented fees and expenses of its counsel and financial advisor thereto) (the amounts set out clause (i) and (ii), together, being the “**Interim Borrowings Obligations**”), (iii) all costs and expenses of the DIP Lender incurred by the DIP Lender in connection with the negotiation and establishment of the DIP Facility, and (iv) the Commitment Fee (as defined below).

6. **EXISTING CREDIT AGREEMENT:**

Except as expressly provided for herein, nothing in this Term Sheet shall amend or affect the rights, remedies and entitlements of the DIP Parties or the DIP Lender under or in respect of the Existing Credit Agreement, the Credit Documents, the Obligations, the Interim Borrowings or, subject to the Court Orders, restrict the enforcement by the DIP Lender or Secured Lender of any such rights, remedies or entitlements.

7. **PURPOSE AND PERMITTED PAYMENTS:**

To provide for (i) the repayment of the Interim Borrowing Obligations, (ii) payment of DIP Lender Expenses, (iii) payment of the Commitment Fee, and (iv) liquidity needs of the DIP Parties pursuant to the DIP Budget (as defined below), in each case during the pendency of the Insolvency Proceedings.

For greater certainty, except to pay the Interim Borrowings Obligations (including amounts incurred in respect of fees of the Monitor and its counsel and counsel to the DIP Parties) or as expressly set forth herein, the DIP Parties may not use the proceeds of the DIP Facility to pay any obligation of the DIP Parties arising or relating to the period prior to the Filing Date (each, a “**Pre-Filing Obligation**”) unless (i) the Monitor has approved such payment; (ii) the DIP Lender has provided its prior written consent (which may be provided by email), in its sole and absolute discretion, and (iii) the payment of such Pre-Filing Obligation is authorized pursuant to the ARIO or any subsequent Court Order.

8. **CONDITIONS PRECEDENT:**

The DIP Lender’s agreement to make the Facility Amount available to the Borrowers and to make any Advance to the Borrowers is subject to the satisfaction, as determined by the DIP Lender, in its sole and absolute discretion, of each of the following conditions precedent, each of which is for the benefit of the DIP Lender and may be waived by the DIP Lender, in its sole and absolute discretion:

- (a) Each DIP Party shall have executed and delivered this Term Sheet and such other Credit Documents as the DIP Lender may request, in its sole and absolute discretion.

- (b) All representations and warranties of the DIP Parties under this Term Sheet shall be true and correct in all respects.
- (c) The CCAA Court shall have issued and entered the ARIO and the Realization Process Approval Order by no later than 6:00 pm Eastern Time on May 3, 2024, and the ARIO and the Realization Process Approval Order shall not have been amended, restated, modified, varied, vacated, stayed or set aside, and there shall have been no motion served or filed seeking leave to appeal or to amend, vary or set aside the ARIO or the Realization Process Approval Order.
- (d) The DIP Parties' cash management arrangement, including the Blocked Accounts Arrangement, shall have been approved by the ARIO.
- (e) The US Court shall have issued an order by no later than 6:00 pm Eastern Time on May 8, 2024, in form and substance satisfactory to the DIP Lender, in its sole and absolute discretion (as acceptable to the DIP Lender, in its sole and absolute discretion, the "**Final Recognition Order**"), that among other things, (i) recognizes (a) the CCAA Proceedings in respect of each of the DIP Parties as a "foreign main proceeding", (b) the ARIO, in its entirety, and (c) the Realization Process Approval Order, in each case, on a final basis, (ii) approves, and recognizes, the DIP Facility on a final basis, (iii) grants such other relief, including under Section 364 of the United States Bankruptcy Code, 11 U.S.C. §101 *et al.*, as required by the DIP Lender, in its sole and absolute discretion and (iv) the Final Recognition Order shall not have been amended, restated, modified, varied, vacated, stayed, or set aside, and there shall have been no motion served or filed seeking leave to appeal or amend, vary or set aside the Final Recognition Order.
- (f) There shall be no Liens ranking *pari passu* with or in priority to the DIP Lender's Charge over the Collateral other than the Permitted Priority Liens.
- (g) The DIP Parties shall have made all necessary or advisable registrations and taken all other steps in applicable jurisdictions to evidence the DIP Lender's Charge, in each case, as requested by the DIP Lender, in its sole and absolute discretion.

- (h) No Default or Event of Default shall have occurred or shall occur as a result of the requested Advance or otherwise other than the Existing Events of Default.
- (i) The Borrowers shall have delivered (a) an Advance Request in respect of such Advance, and (b) a Variance Report in respect of the Variance Period, in each case, in accordance with this Term Sheet.
- (j) Beginning on the week commencing on May 13, 2024: (i) 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 (ii) 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.

9. **COSTS AND EXPENSES:**

The Borrowers shall reimburse the DIP Lender for all reasonable and documented costs and expenses incurred by the DIP Lender (including the reasonable and documented fees and expenses of its counsel and financial advisor thereto) (collectively, the “**DIP Lender Expenses**”) in connection with the negotiation, development, and implementation of DIP Facility (including the administration of the DIP Facility). The DIP Lender Expenses shall form part of the DIP Financing Obligations secured by the DIP Lender’s Charge.

All accrued and unpaid DIP Lender Expenses as at the date of any Advance shall be paid in full through deduction from the proceeds of such Advance and the Borrowers shall be deemed to have irrevocably authorized and directed the DIP Lender to pay such DIP Lender Expenses from the proceeds of such Advance.

10. **DIP FACILITY SECURITY:**

All DIP Financing Obligations shall be secured by the DIP Lender’s Charge. The DIP Lender may, in its reasonable discretion (i) require the execution, filing or recording of any security agreements, hypothecs, pledge agreements, control agreements, financing statements, acknowledgments, confirmations or other documents or instruments, or (ii) take possession or control of any Collateral of the DIP Parties, to the extent it is necessary to do so, to preserve or evidence its senior secured, super-priority Lien on such Collateral.

11. PERMITTED LIENS AND PRIORITY: All of the Collateral will be free and clear of all Liens except for Permitted Liens.

The DIP Lender's Charge shall rank in priority to any and all Liens on the Collateral other than Permitted Priority Liens. As among the DIP Lender's Charge, the Administration Charge, the Directors' Charge, the KERP Charge and the security interests granted by the DIP Parties to the Secured Lender with respect to the Obligations under the Existing Credit Agreement, the relative priority shall be as follows:

- (a) the Administration Charge up to U.S.\$1,500,000;
- (b) the DIP Lender's Charge;
- (c) the security granted by the DIP Parties with respect to the Obligations under the Existing Credit Agreement (other than the Interim Lender's Charge);
- (d) the Directors' Charge up to U.S.\$5,000,000; and
- (e) the KERP Charge of up to U.S. \$250,000.

12. REPAYMENT: The DIP Facility shall mature and the DIP Financing Obligations shall be due and repayable in full on the earlier of: (i) the occurrence of any Event of Default (other than the Existing Events of Default); (ii) the implementation of any CCAA plan of compromise and arrangement which is proposed and filed with the Court in the CCAA Proceedings (a "**Plan**"); (iii) the sale of all or substantially all of the Collateral; and (iv) the Outside Date (the earliest of such dates being the "**Maturity Date**"). The Maturity Date may be extended from time to time at the request of the Borrowers and with the prior written consent of the DIP Lender for such period and on such terms and conditions as the DIP Lender may agree, in its sole and absolute discretion.

Without the prior written consent of the DIP Lender, in its sole and absolute discretion, no Court Order sanctioning a Plan shall discharge or otherwise affect in any way the DIP Financing Obligations other than after the permanent and indefeasible full repayment of the DIP Financing Obligations on or before the date such Plan is implemented.

All repayments of Advances denominated in Canadian Dollars shall be made in Canadian Dollars and all repayments of Advances denominated in U.S. Dollars shall be made in U.S. Dollars.

13. **DIP BUDGET AND
VARIANCE
REPORTING:**

By no later than May 8, 2024, the DIP Parties, in consultation with the Monitor, shall deliver a DIP Budget, in the form of **Schedule “C”** and which shall be in form and substance satisfactory to the DIP Lender, in its sole and absolute discretion (the “**Initial DIP Budget**”). Such Initial DIP Budget shall be the DIP Budget referenced in this Term Sheet unless and until such time as a revised DIP Budget has been approved by the DIP Lender in accordance with this Section 13.

(i) At the written request of the DIP Lender (including by email), or (ii) upon a material change, or a material change reasonably anticipated by the DIP Parties, to any item set forth in the DIP Budget, the DIP Parties shall update and propose a revised 13-week DIP Budget to the DIP Lender (the “**Updated DIP Budget**”). The DIP Lender may make such request up to once every week, and if such request is made, the DIP Parties shall submit the Updated DIP Budget no later than three (3) Business Days following receipt of the request. Such Updated DIP Budget shall have been reviewed and approved by the Monitor, prior to submission to the DIP Lender. If the DIP Lender, in its sole and absolute discretion, determines that the Updated DIP Budget is not acceptable, it shall, within two (2) Business Days of receipt thereof, provide written notice (which may be provided by email) to the DIP Parties and the Monitor stating that the Updated DIP Budget is not acceptable and setting out the reasons why such Updated DIP Budget is not acceptable, and until the DIP Parties have delivered a revised Updated DIP Budget acceptable to the DIP Lender, in its sole and absolute discretion, the prior DIP Budget shall remain in effect and be the DIP Budget for the purpose of this Term Sheet.

Upon an Updated DIP Budget being accepted by the DIP Lender, such Updated DIP Budget shall be the DIP Budget for the purpose of this Term Sheet.

No later than the Wednesday of every week (provided that such day is a Business Day and, if not, on the next Business Day), the DIP Parties shall deliver to the Monitor and the DIP Lender and their legal and financial advisors (i) an updated borrowing base report, in form and substance satisfactory to the DIP Lender, in its sole and absolute discretion, which borrowing base report includes, without limitation, a breakdown of accounts receivable, collections, inventory sales and remaining inventory (the “**Borrowing Base Report**”), and (ii) a variance calculation (the “**Variance Report**”) setting forth actual receipts and disbursements of the DIP Parties for (a) the preceding week, and

(b) the period of May 6, 2024 to the end of the preceding week (each, a “**Variance Period**”), in each case, as against the DIP Budget, and setting forth all the variances, on a line-item and aggregate basis in comparison to the amounts set forth in respect thereof for such Variance Period in the DIP Budget; each such Variance Report to be promptly discussed with the DIP Lender and its advisors, if so requested. Each Variance Report shall include reasonably detailed explanations for any material variances during the relevant Variance Period.

14. **EVIDENCE OF INDEBTEDNESS:**

The DIP Lender’s accounts and records constitute, in the absence of manifest error, *prima facie* evidence of the DIP Financing Obligations.

15. **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 this 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 U.S.\$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 in this Section 15 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 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.

16. **COMMITMENT FEE:** U.S.\$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 hereby irrevocably direct the DIP Lender to deduct the Commitment Fee from Advances as follows: (i) U.S.\$150,000 before May 31, 2024, and (ii) U.S.\$150,000 before July 1, 2024.
17. **INTEREST RATE:** Interest shall be payable on the aggregate outstanding amount of the Facility Amount that has been advanced to the Borrowers from the date of the funding thereof at a rate equal to (i) 9.95% *per annum* for Advances denominated in Canadian Dollars; and (ii) 11.75 % *per annum* for Advances denominated in U.S. 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. All interest payments on outstanding Advances denominated in Canadian Dollars shall be made in Canadian Dollars and all interest payments on outstanding Advances denominated in U.S. Dollars shall be made in U.S. Dollars. 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. All interest shall be computed on the basis of a 360-day year of twelve 30-day months, provided that, whenever any interest is calculated on the basis of a period of time other than a calendar year, the annual rate of interest to which each rate of interest determined pursuant to such calculation is equivalent for the purposes of the *Interest Act* (Canada) is such rate as so determined multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by the number of days used in the basis for such determination.

The parties shall comply with the following provisions to ensure that the receipt by the DIP Lender of any payments under this Term Sheet does not result in a breach of section 347 of the *Criminal Code* (Canada):

If any provision of this Term Sheet would obligate the Borrowers to make any payment to the DIP Lender of an amount that constitutes “interest”, as such term is defined in the *Criminal Code* (Canada) and referred to in this section as “**Criminal Code Interest**”, during any one-year period after the date of the funding of the Facility Amount in an amount or calculated at a rate which would result in the receipt by the DIP Lender of Criminal Code Interest at a criminal rate (as defined in the *Criminal Code* (Canada) and referred to in this section as a

“**Criminal Rate**”), then, notwithstanding such provision, that amount or rate during such one-year period shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not result in the receipt by the DIP Lender during such one-year period of Criminal Code Interest at a Criminal Rate, and the adjustment shall be effected, to the extent necessary, as follows:

- (a) *first*, by reducing the amount or rate of interest required to be paid to the DIP Lender during such one-year period; and
- (b) *thereafter*, by reducing any other amounts (other than costs and expenses) (if any) required to be paid to the DIP Lender during such one-year period which would constitute Criminal Code Interest.

Any amount or rate of Criminal Code Interest referred to in this section shall be calculated and determined in accordance with generally accepted actuarial practices and principles as an effective annual rate of interest over the term that any portion of the DIP Facility remains outstanding on the assumption that any charges, fees or expenses that constitute Criminal Code Interest shall be *pro-rated* over the period commencing on the date of the advance of the Facility Amount and ending on the relevant Maturity Date (as may be extended by the DIP Lender from time to time under this Term Sheet) and, in the event of a dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by the DIP Lender shall be conclusive for the purposes of such calculation and determination.

18. **JUDGEMENT
CURRENCY:**

If for the purposes of obtaining judgment in any court it is necessary to convert a sum due hereunder in any currency (the “**Original Currency**”) into another currency (the “**Other Currency**”), the parties hereby agree, to the fullest extent permitted by Applicable Law, that the rate of exchange used shall be the rate at which the DIP Lender is able to purchase the Original Currency with the Other Currency after any premium and costs of exchange on the Business Day preceding that on which such payment is made or final judgment is given.

19. **REPRESENTATIONS
AND WARRANTIES:**

Each DIP Party represents and warrants to the DIP Lender upon which the DIP Lender is relying in entering into this Term Sheet and the other Credit Documents, that:

- (a) Upon the granting of the ARIO and the Final Recognition Order, the transactions contemplated by this Term Sheet and the other Credit Documents:

- (i) are within the powers of the DIP Parties;
 - (ii) have been duly executed and delivered by or on behalf of the DIP Parties;
 - (iii) constitute legal, valid and binding obligations of the DIP Parties, enforceable against the DIP Parties in accordance with their terms;
 - (iv) do not require any authorization from, the consent or approval of, registration or filing with, or any other action by, any governmental authority or any third party; and
 - (v) will not violate the charter documents, articles by-laws or other constating documents of any DIP Party or any Applicable Law relating to any DIP Party;
- (b) The business operations of each DIP Party have been and will continue to be conducted in material compliance with all laws of each jurisdiction in which the business has been or is carried out;
- (c) The DIP Parties own their respective assets and undertaking free and clear of all Liens other than the Permitted Liens;
- (d) Each DIP Party has been duly formed and is validly existing under the laws of its jurisdiction of incorporation;
- (e) All Material Contracts are in full force and effect and are valid, binding and enforceable in accordance with their terms and the DIP Parties have no knowledge of any material default that has occurred and is continuing thereunder, other than (i) those defaults arising as a result of the commencement of the CCAA Proceedings, or (ii) otherwise disclosed to the DIP Lender in writing prior to the date hereof, in each case of foregoing clause (i) and (ii), which are stayed by Court Orders, and no proceedings have been commenced or threatened to revoke or amend any Material Contracts; and
- (f) No Default or Event of Default has occurred and is continuing, other than the Existing Events of Default.

**20. AFFIRMATIVE
COVENANTS:**

Each DIP Party agrees to do, or cause to be done, the following:

- (a) (i) Allow representatives or advisors of the DIP Lender reasonable access to the books, records, financial information and electronic data rooms of or maintained by the DIP Parties, and (ii) cause management, any financial advisor and/or legal counsel of the DIP Parties to cooperate with reasonable requests for information by the DIP Lender and its advisors, in each case subject to solicitor-client privilege, all Court Orders and applicable privacy laws, in connection with matters reasonably related to the DIP Facility, the Collateral, the Realization Process, the Insolvency Proceedings and/or compliance of the DIP Parties with their obligations pursuant to this Term Sheet;
- (b) Deliver to the DIP Lender the reporting and other information from time to time reasonably requested by it and as set out in this Term Sheet, including, without limitation, updated DIP Budgets, Borrowing Base Reports and Variance Reports at the times set out herein;
- (c) Use the proceeds of the DIP Facility only in accordance with the restrictions set out in this Term Sheet and pursuant to the DIP Budget and Court Orders;
- (d) Comply with the provisions of the ARIO, Realization Process Approval Order, the Provisional Order, the Final Recognition Order and all other Court Orders;
- (e) Preserve, renew and keep in full force their corporate existence;
- (f) Conduct their business in accordance with and otherwise comply with the DIP Budget, subject to the Court Orders;
- (g) Promptly notify the DIP Lender of the occurrence of any Default or Event of Default (other than the Existing Events of Default) or any event or circumstance that may materially affect the DIP Budget, the Collateral or the Realization Process, including, without limitation, any material changes in their contractual arrangements or relationships with third parties;
- (h) Provide the DIP Lender and its counsel draft copies of all motions, applications, pleadings, proposed Court Orders and other materials or documents that the DIP Parties intend to

file in the Insolvency Proceedings at least two (2) Business Days prior to any such filing or, where it is not practically possible to do so within such time, as soon as possible and in any event not less than one (1) day prior to the date on which such petition, motion, application, proposed order or other materials or documents are served on the service list in respect of the applicable Insolvency Proceedings, and any motion, petition and/or application materials and similar pleadings that affect the DIP Lender or the Collateral shall be reasonably satisfactory to the DIP Lender;

- (i) Take all actions necessary or available to defend the Court Orders that affect the DIP Lender and the Collateral, from any appeal, reversal, modifications, amendment, stay or vacating, unless expressly agreed to in writing in advance by the DIP Lender, in its sole and absolute discretion;
- (j) Promptly provide notice to the DIP Lender and its counsel, and keep them otherwise apprised, of any material developments in respect of any Material Contract or the Collateral, and of any material notices, orders, decisions, letters, or other documents, materials, information or correspondence received from any regulatory authority having jurisdiction over any of the DIP Parties;
- (k) Provide the DIP Lender and its counsel with draft copies of all material letters, submissions, notices, or other materials or correspondence that any DIP Party intends to file with or submit to any regulatory authority having jurisdiction over such DIP Party (other than in each case, routine or administrative materials or correspondence), at least three (3) Business Days prior to such submission or filing or, where it is not practically possible to do so within such time, as soon as possible;
- (l) Execute and deliver collateral security documentation including, without limitation, such security agreements, financing statements, discharges, opinions or other documents and information, in form and substance satisfactory to the DIP Lender and its counsel, in its sole and absolute discretion;
- (m) At all times maintain adequate insurance coverage of such kind and in such amounts and against such risks as is customary for the business of the DIP Parties with financially sound and reputable insurers in coverage and scope acceptable to the DIP Lender, in its sole and absolute

discretion, and cause the DIP Lender to be listed as the loss payee or additional insured (as applicable) on such insurance policies;

- (n) Pay all DIP Lender Expenses no less frequently than every four (4) weeks;
- (o) Pursuant to Section 15, at the end of each Business Day, cause any and all funds in any account of the DIP Parties that is not with the DIP Lender (excluding any payroll and cash collateral accounts) to be remitted to an account with the DIP Lender and applied as against the following in the following order: (A) first, the Obligations until the remaining principal balance thereof is U.S.\$5,000,000, (B) second, the DIP Financing Obligations in accordance with this Term Sheet, until repaid in full, and (C) lastly, the remaining balance of the Obligations until paid in full;
- (p) Consult with the DIP Lender with respect to any proposed termination or disclaimer of any Real Property Lease;
- (q) Promptly upon becoming aware thereof, provide details of the following to the DIP Lender:
 - (a) any pending, or threatened claims, potential claims, litigation, actions, suits, arbitrations, other proceedings or notices received in respect of same, against any DIP Party, by or before any court, tribunal, Governmental Authority or regulatory body, which are not stayed by Court Orders and would be reasonably likely to result, (i) individually or in the aggregate, in a judgment in excess of U.S. \$250,000, and/or (ii) the termination of any Material Contract; and
 - (b) any existing (or threatened in writing) default or dispute with respect to any of the Material Contracts which are not stayed by Court Orders.

**21. NEGATIVE
COVENANTS:**

Each DIP Party covenants and agrees not to do, or cause not to be done, the following, other than with the prior written consent of the DIP Lender, in its sole and absolute discretion:

- (a) Transfer, lease or otherwise dispose of all or any part of the Collateral outside of the ordinary course of business, except in accordance with the Realization Process Approval Order, or any subsequent Court Order and this Term Sheet;
- (b) Transfer any cash or receipts of the DIP Parties into any

account held by any Person other than the DIP Lender (excluding (i) any payroll account, and then only to the extent necessary to fund the applicable DIP Party's payroll obligations, (ii) any proceeds from the sale of the Collateral located in the United States in the ordinary course or pursuant to the Realization Process, which are deposited into existing accounts of the DIP Parties and subsequently transferred to an account held by the DIP Lender pursuant to Section 15 and Section 20(o)), and (iii) proceeds collected by YM Inc. (or any of its affiliates), and Jaytex Group (Sales) (or any of its affiliates) on behalf of the DIP Parties in the ordinary course of business.

- (c) Except to pay the Interim Borrowings Obligations or as expressly set forth in this Term Sheet, make any payment, including, without limitation, any payment of principal, interest or fees, in respect of Pre Filing Date Obligations, including payments with respect to pre Filing Date trade or unsecured liabilities of the DIP Parties, other than with the prior written consent of the DIP Lender, in its sole and absolute discretion, and in accordance with the ARIO or any subsequent Court Order;
- (d) (i) Create or permit to exist any indebtedness other than (A) the indebtedness existing as of the Filing Date, (B) the DIP Financing Obligations, (C) post Filing Date trade payables or other unsecured obligations incurred in the ordinary course of business on or following the Filing Date in accordance with the DIP Budget and the ARIO, and (ii) other than exists as at the Filing Date, make or give any financial assurances, in the form of bonds, letter of credit, financial guarantees or otherwise to any Person or Governmental Authority other than with the prior written consent of the DIP Lender, in its sole and absolute discretion;
- (e) Make (i) any distribution, dividend, return of capital or other distribution in respect of equity securities (in cash, securities or other property or otherwise); or (ii) a retirement, redemption, purchase or repayment or other acquisition of equity securities or indebtedness (including any payment of principal, interest, fees or any other payments thereon), other than with the prior written consent of the DIP Lender, in its sole and absolute discretion;
- (f) Make any investments or acquisitions of any kind, direct or indirect, in any business or otherwise other than in

accordance with the DIP Budget or with the prior written consent of the DIP Lender, in its sole and absolute discretion;

- (g) Pay, incur any obligation to pay, or establish any retainer with respect to the fees, expenses or disbursements of a legal, financial or other advisor of any party, other than (i) the Monitor and its legal counsel, (ii) the respective legal and financial advisors of the DIP Parties and the DIP Lender, in each case engaged as of Filing Date, and (iii) the prepayment to the liquidator in connection with the Realization Process, unless such fees, expenses, disbursements or retainers are reviewed and approved in writing advance by the DIP Lender, in its sole and absolute discretion;
- (h) Create or permit to exist any Liens on any of the Collateral other than the Permitted Liens;
- (i) Challenge or fail to support the Liens and claims of the DIP Lender;
- (j) Create or establish any employee retention plan, employee incentive plan or similar benefit plan for any employees of the DIP Parties after the Filing Date other than the KERP as included in the DIP Budget, except with the prior written consent of the DIP Lender, in its sole and absolute discretion;
- (k) Make any payments or expenditures (including capital expenditures) other than in accordance with the DIP Budget;
- (l) Terminate or disclaim any Material Contract (other than a Real Property Lease) or amend any Material Contract in any material manner, except with the prior consent of the DIP Lender, in its sole and absolute discretion;
- (m) Amalgamate, consolidate with or merge into or sell all or substantially all of its assets to another entity, or change its corporate or capital structure (including its organizational documents) or enter into any agreement committing to such actions except pursuant to the Realization Process Approval Order or with the prior written consent of the DIP Lender, in its sole and absolute discretion;
- (n) Make an announcement in respect of, enter into any agreement or letter of intent with respect to, or attempt to consummate, or support an attempt to consummate by

another party, any transaction or agreement outside the ordinary course of business, except pursuant to the Realization Process Approval Order or with the prior written consent of the DIP Lender, in its sole and absolute discretion;

- (o) Seek, obtain, support, make or permit to be made any Court Order or any change, amendment or modification to any Court Order in respect of any amendment relating to the DIP Facility, the Realization Process Approval Order or any other matter that affects the DIP Lender, except with the prior written consent of the DIP Lender, in its sole and absolute discretion;
- (p) Enter into any settlement agreement or agree to any settlement arrangements with any Governmental Authority or regulatory authority in connection with any claims, liabilities, litigation, arbitration, other investigations, proceedings or disputes or other similar proceedings which are threatened or pending against any one of them without the prior written consent of the DIP Lender, in its sole and absolute discretion;
- (q) Without the approval of the Court or the prior written consent of the DIP Lender, in its sole and absolute discretion, cease to carry on its business or activities or any component thereof as currently being conducted or modify or alter in any manner the nature and type of its operations or business, except pursuant to the Realization Process Approval Order; or
- (r) Seek, or consent to the appointment of an interim receiver, receiver, receiver manager, licensed insolvency trustee or any similar official in any jurisdiction.

22. **EVENTS OF DEFAULT:**

The occurrence of any one or more of the following events shall constitute an event of default (each an “**Event of Default**”) under this Term Sheet:

- (a) Failure of the Borrowers to pay principal, interest or other amounts when due pursuant to this Term Sheet or any other Credit Document;
- (b) Failure of the Borrowers to deliver, by no later than May 8, 2024, the Initial DIP Budget, in form and substance satisfactory to the DIP Lender, in its sole and absolute discretion;

- (c) Failure of the DIP Parties to perform or comply with any term, condition, covenant or obligation pursuant to this Term Sheet or any other Credit Document;
- (d) Any representation or warranty by the DIP Parties made or deemed to be made in this Term Sheet or any other Credit Document is or proves to be incorrect or misleading in any respect as of the date made or deemed to be made;
- (e) Issuance of any Court Order (i) dismissing the CCAA Proceedings or the Recognition Proceedings, (ii) lifting the stay of proceedings in the CCAA Proceedings or the Recognition Proceedings to permit the enforcement of any security against any DIP Party or in respect of the Collateral (including, without limitation, any Material Contract), the appointment of an interim receiver, receiver, receiver and manager, licensed insolvency trustee or similar official, an assignment in bankruptcy, or the making of a bankruptcy order or receivership order against or in respect of any DIP Party, in each case which order is not stayed pending appeal thereof; (iii) granting any other Lien in respect of the Collateral that is in priority to or *pari passu* with the DIP Lender's Charge other than as expressly permitted pursuant to this Term Sheet, (iv) modifying this Term Sheet or any other Credit Document without the prior written consent of the DIP Lender, in its sole and absolute discretion; (v) commencing any proceedings in respect of any DIP Party pursuant to Chapter 7 or Chapter 11 of the Bankruptcy Code; (vi) terminating the Realization Process or (vii) staying, reversing, vacating or otherwise modifying any Court Order relating to the DIP Facility, the Realization Process or any other matter that affects the DIP Lender without the prior written consent of the DIP Lender, in its sole and absolute discretion;
- (f) Unless consented to in writing by the DIP Lender, in its sole and absolute discretion, the expiry without further extension of the stay of proceedings provided for in the ARIO, the Provisional Order or the Final Recognition Order;
- (g) Unless consented to in writing by the DIP Lender, in its sole and absolute discretion, the termination of the Realization Process prior to its completion;
- (h) (i) a Borrowing Base Report, Variance Report or Updated DIP Budget is not delivered when due under this Term Sheet, (ii) 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 (iii) cumulative actual disbursements of 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;

- (i) Unless the DIP Lender has consented thereto in writing, in its sole and absolute discretion the filing by any DIP Party of any motion or proceeding that (i) is not consistent with any provision of this Term Sheet or any other Credit Document, the ARIO, the Realization Process Approval Order or the Final Recognition Order, as applicable, (ii) could otherwise be expected to have a material adverse effect on the interests of the DIP Lender or the Collateral (including, without limitation, any Material Contract), or (iii) seeks to continue any of the Insolvency Proceedings under the jurisdiction of a court other than the CCAA Court with respect to the CCAA Proceedings or the US Court with respect to the Recognition Proceedings;
- (j) The making by the DIP Parties of a payment of any kind that is not permitted by this Term Sheet or any other Credit Document or is not in accordance with the DIP Budget;
- (k) Except as stayed by Court Orders or consented to by the DIP Lender in writing, in its sole and absolute discretion, a default under or a revocation, termination or cancellation of, any Material Contract (other than in connection with a termination or disclaimer or resiliation of a Real Property Lease by a DIP Party);
- (l) The denial or repudiation by the DIP Parties of the legality, validity, binding nature or enforceability of this Term Sheet or any other Credit Documents;
- (m) Any creditor, encumbrancer or other Person seizes or levies upon any Collateral or exercises any right of distress, execution, foreclosure or similar enforcement process against any Collateral;
- (n) The entry of one or more final judgements, writs of execution, garnishment or attachment representing a claim in excess of U.S.\$250,000 in the aggregate, against any Collateral, or the DIP Parties;

- (o) The occurrence of any “Default” or “Event of Default” as defined in the Existing Credit Agreement, other than the Existing Events of Default; or
- (p) Any Milestone set forth on **Schedule “D”** hereof is not satisfied as determined by the DIP Lender, in its sole and absolute discretion.

23. **UNAFFECTED CREDITOR STATUS:** The DIP Lender shall at all times be treated as an “unaffected creditor” and “unimpaired” in the CCAA Proceedings and the Recognition Proceedings, including in any plan of compromise or arrangement filed pursuant thereto and/or in any other insolvency, restructuring, reorganization and/or arrangement proceeding with respect to any DIP Party thereafter, including, without limitation, proceedings under the CCAA, the *Bankruptcy and Insolvency Act* (Canada), United States Bankruptcy Code or any other legislation of any jurisdiction pertaining to insolvency or creditors’ rights.

24. **REMEDIES:** Upon the occurrence of an Event of Default (other than the Existing Events of Default), the DIP Lender may, in its sole and absolute discretion, elect to terminate the commitments hereunder and declare the DIP Financing Obligations to be immediately due and payable and refuse to permit further Advances. In addition, upon the occurrence of an Event of Default, the DIP Lender may, in its sole and absolute discretion, subject to the Court Orders:

- (a) apply to a court for the appointment of a receiver, an interim receiver or a receiver and manager over the DIP Parties or the Collateral, or for the appointment of a trustee in bankruptcy of the DIP Parties;
- (b) on application to Court, set-off or combine any amounts then owing by the DIP Lender to the DIP Parties against the DIP Financing Obligations;
- (c) upon application to Court, exercise the powers and rights of a secured party under the *Personal Property Security Act* (Ontario), the *Uniform Commercial Code* or any other federal, provincial, state or territorial legislation of similar effect; and
- (d) exercise all such other rights and remedies under this Term Sheet, any other Credit Document, the Court Orders and Applicable Law.

25. **INDEMNITY AND
RELEASE:**

The DIP Parties agree to indemnify and hold harmless the DIP Lender and its respective directors, officers, employees, agents, advisors, attorneys, counsel and their respective advisors (all such Persons and entities being referred to hereafter as “**Indemnified Persons**”) from and against any and all actions, suits, proceedings, claims, losses, damages, liabilities or expenses of any kind or nature whatsoever (excluding indirect or consequential damages and claims for lost profits) which may be incurred by or asserted against any Indemnified Person (collectively, “**Claims**”) as a result of or arising out of or in any way related to the Interim Borrowings, the Existing Credit Agreement, the DIP Facility, this Term Sheet and any other Credit Document and, upon demand, to pay and reimburse any Indemnified Person for any reasonable legal or other expenses incurred in connection with investigating, defending or preparing to defend any such action, suit, proceeding or claim, which payment or reimbursement obligation shall form part of the DIP Financing Obligations; *provided, however*, the DIP Parties shall not be obligated to indemnify pursuant to this paragraph any Indemnified Person against any loss, claim, damage, expense or liability (x) to the extent it resulted from the gross negligence or wilful misconduct of any Indemnified Person as finally determined by a court of competent jurisdiction, or (y) to the extent arising from any dispute solely among Indemnified Persons other than any Claims arising out of any act or omission on the part of the DIP Parties.

Notwithstanding anything to the contrary herein, the indemnities granted under this Term Sheet shall survive any termination of the DIP Facility.

26. **TAXES:**

All payments by the DIP Parties to the DIP Lender, including the payment of any Obligations under the DIP Financing Obligations and any payments required to be made from and after the exercise of any remedies available to the DIP Lender upon an Event of Default (other than the Existing Events of Default), shall be made free and clear of, and without reduction for or on account of, any present or future taxes, levies, imposts, duties, charges, fees, deductions or withholdings of any kind or nature whatsoever or any interest or penalties payable with respect thereto now or in the future imposed, levied, collected, withheld or assessed by any Governmental Authority country or any political subdivision of any country (collectively “**Taxes**”); *provided, however*, that if any Taxes are required by Applicable Law to be withheld (“**Withholding Taxes**”) from any amount payable to the DIP Lender under this Term Sheet, the amount so payable to such DIP

Lender shall be increased by an amount necessary to yield to such DIP Lender on a net basis after payment of all Withholding Taxes, the amount payable under this Term Sheet at the rate or in the amount specified herein and the Borrowers shall provide evidence satisfactory to such DIP Lender that the Taxes have been so withheld and remitted.

If any DIP Party pays an additional amount to the DIP Lender to account for any deduction or withholding, the DIP Lender shall, at the sole cost and expense of the applicable DIP Party, reasonably cooperate with such DIP Party to obtain a refund of the amounts so withheld and paid to the DIP Lender. Any refund of an additional amount so received by the DIP Lender, without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund which the DIP Lender determines, in its sole and absolute discretion, will leave it, after such payment, in no better or worse position than it would have been if no additional amounts had been paid to it), net of all out of pocket expenses of the DIP Lender, shall be paid over by the DIP Lender to the applicable DIP Party promptly. If reasonably requested by such DIP Party, the DIP Lender shall apply to the relevant Governmental Authority to obtain a waiver from such withholding requirement, and the DIP Lender shall reasonably cooperate, at the sole cost and expense of the applicable DIP Party, with the applicable DIP Party and assist such DIP Party to minimize the amount of deductions or withholdings required. The applicable DIP Party, upon the request of the DIP Lender, shall repay any portion of the amount repaid by the DIP Lender pursuant to this Section 26 (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that the DIP Lender is required to repay such portion of the refund to such Governmental Authority. This Section 26 shall not be construed to require the DIP Lender to make available its tax returns (or any other information relating to its Taxes that it deems confidential) to the Borrowers or any other Person. The DIP Lender shall not by virtue of anything in this Term Sheet or any other Credit Document be under any obligation to arrange its tax affairs in any particular manner so as to claim any refund on behalf of the DIP Parties.

27. **FURTHER ASSURANCES:** The DIP Parties shall, at their expense, from time to time do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents (including, without limitation, certificates, declarations, affidavits, reports and opinions) and things as the DIP Lender may request, in its sole and absolute discretion, for the purpose of giving effect to this Term Sheet.
28. **ENTIRE AGREEMENT; CONFLICT:** This Term Sheet, including the schedules hereto and any other Credit Documents delivered in connection with this Term Sheet, constitute the entire agreement between the parties relating to the subject matter hereof.
29. **AMENDMENTS, WAIVERS, ETC.:** No waiver or delay on the part of the DIP Lender in exercising any right or privilege hereunder will operate as a waiver hereof or thereof unless made in writing (including by e-mail) by the DIP Lender and delivered in accordance with the terms of this Term Sheet, and then such waiver shall be effective only in the specific instance and for the specific purpose given.
30. **ASSIGNMENT:** The DIP Lender may assign this Term Sheet and its rights and obligations hereunder, in whole or in part, subject in all cases to (i) providing the Monitor with reasonable evidence that such assignee has the financial capacity to fulfill the obligations of the DIP Lender hereunder, and (ii) the assignee providing written notice to the DIP Parties to confirm such assignment. Neither this Term Sheet nor any right or obligation hereunder may be assigned by any of the DIP Parties.
31. **NO THIRD-PARTY BENEFICIARY:** No Person, other than the DIP Parties, the DIP Lender, the Indemnified Persons or the Monitor, is entitled to rely upon this Term Sheet and the parties expressly agree that this Term Sheet does not confer rights upon any other party.
32. **COUNTERPARTS AND SIGNATURES:** This Term Sheet may be executed in any number of counterparts and delivered by electronic transmission including "pdf email", each of which when executed and delivered shall be deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

33. NOTICES:

Any notice, request or other communication hereunder to any of the parties shall be in writing and be well and sufficiently given if delivered by email to such Person at its email address as set out below in this Section 33. Any such notice, request or other communication hereunder shall be concurrently sent to the Monitor and its counsel.

(a) If to the DIP Lender, to: Canadian Imperial Bank of Commerce, c/o Aryo Shalviri (aryo.shalviri@blakes.com), & Milly Chow (milly.chow@blakes.com),

(b) If to the DIP Parties, to: Ted Baker Canada Inc. and Ted Baker Limited, c/o Tracy C Sandler (tsandler@osler.com) and Shawn Irving (sirving@osler.com),

and in each case, with a copy to the Monitor c/o Greg Karpel (gkarpel@alvarezandmarsal.com) and Josh Nevsky (jnevsky@alvarezandmarsal.com) and its counsel, Sean Zweig (zweigs@bennettjones.com) and Jesse Mighton (mightonj@bennettjones.com).

Any such notice shall be deemed to be given and received when received, unless received after 5:00 p.m. Eastern Time or on a day other than a Business Day, in which case the notice shall be deemed to be received the next Business Day.

34. ENGLISH LANGUAGE:

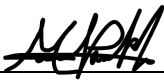
The parties hereto confirm that this Term Sheet and all related documents have been drawn up in the English language at their request. *Les parties aux présentes confirment que le présent acte et tous les documents y relatifs furent rédigés en anglais à leur demande.*

35. GOVERNING LAW AND JURISDICTION:


This Term Sheet shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein. Without prejudice to the ability of the DIP Lender to enforce this Term Sheet in any other proper jurisdiction, each of the DIP Parties irrevocably submits and attorns to the non-exclusive jurisdiction of the CCAA Court.

IN WITNESS HEREOF, the parties hereby execute this Term Sheet as at the date first above mentioned.


CANADIAN IMPERIAL BANK OF COMMERCE

Per: 
Name: **Manan Parikh**
Title: **Authorized Signatory**


TED BAKER LIMITED

Per: 
Name: **Antoine Adams**
Title: **Director**


TED BAKER CANADA INC.

Per: 
Name: **Antoine Adams**
Title: **Director**

OSL FASHION SERVICES CANADA INC.

Per: 
Name: **Antoine Adams**
Title: **Director**

OSL FASHION SERVICES, INC.

Per: 
Name: **Antoine Adams**
Title: **Director**

SCHEDULE "A"

DEFINED TERMS

"Administration Charge" means a priority charge over the Collateral granted by the CCAA Court pursuant to the ARIO with the priority and the amount as set out in Section 10, to secure the fees and expenses of (i) the legal and financial advisors of the DIP Parties, and (ii) the Monitor and its counsel, in each case, in connection with the Insolvency Proceedings.

"Advance" means an amount of the DIP Facility advanced to the Borrowers pursuant to the terms hereof from time to time.

"Advance Request" has the meaning given thereto in Section 5.

"Applicable Law" means, in respect of any Person, property, transaction or event, all applicable laws, statutes, rules, by-laws and regulations and all applicable official directives, orders, judgments and decrees of any Governmental Authority having the force of law.

"ARIO" means an Amended and Restated Initial CCAA Order to be issued by the CCAA Court in the CCAA Proceedings, which shall be in the form set out at **Schedule "E"**, with such changes as the DIP Lender may approve, in its sole and absolute discretion.

"Borrower" and **"Borrowers"** has the meanings given thereto in Section 1.

"Borrowing Base Report" has the meaning thereto in Section 13 .

"Business Day" means any day other than a Saturday, Sunday or any other day on which banks in Toronto, Ontario are not open for business.

"Canadian Dollars" and **"Cdn.\$"** refer to the lawful money of Canada.

"CCAA" has the meaning given thereto in the Recitals.

"CCAA Proceedings" has the meaning given thereto in the Recitals.

"Claims" has the meaning given thereto in Section 25.

"Collateral" means all present or future assets, undertakings and properties, of any kind, of the DIP Parties, real and personal, tangible or intangible, including all proceeds thereof, wherever situated.

"Commitment Fee" has the meaning given thereto in Section 16.

"Court" means the CCAA Court or the US Court.

"Court Orders" means the orders, judgments, directions, endorsements or opinions issued by any Court in the CCAA Proceedings or the Recognition Proceedings (including, for greater certainty, the Provisional Order), and **"Court Order"** means any one of them.

“**Credit Documents**” means this Term Sheet and any other document delivered in connection with or relating to this Term Sheet from time to time.

“**Criminal Code Interest**” has meaning given thereto in Section 17 .

“**Criminal Rate**” has meaning given thereto in Section 17.

“**Current Excess Amount**” has the meaning given thereto in Section 15.

“**Currency Exchange Rate**” means the U.S.\$/Cdn.\$ exchange rate applicable on the Business Day immediately prior to the date of an Advance denominated in Canadian Dollars, as such rate is determined by the Bank of Canada Noon Foreign Exchange Rate.

“**Default**” means an event or circumstance which, after the giving of notice or the passage of time, or both, will result in an Event of Default.

“**DIP Budget**” means the weekly financial projections prepared by the Borrowers covering the period commencing on the week ended May 12, 2024, and ending on the week ending August 4, 2024, on a weekly basis, which shall be in form and substance acceptable to the DIP Lender, in its sole and absolute discretion, which financial projections may be amended from time to time in accordance with Section 13. For greater certainty, for purposes of this Term Sheet, the DIP Budget shall include all supporting documentation provided in respect thereof to the DIP Lender.

“**DIP Facility**” has the meaning given thereto in Section 5.

“**DIP Financing Obligations**” means, collectively, all obligations owing by the DIP Parties pursuant to this Term Sheet and the other Credit Documents, including, without limitation, all principal, interest, fees, costs, expenses, disbursements and DIP Lender Expenses.

“**DIP Lender**” has the meaning given thereto in Section 3.

“**DIP Lender’s Charge**” means a first-ranking super priority charge on the Collateral as security for all DIP Financing Obligations, which shall have priority over all Liens on the Collateral other than the Administration Charge and the Permitted Priority Liens.

“**DIP Lender Expenses**” has the meaning given thereto in Section 9.

“**DIP Parties**” has the meaning given thereto in Section 2.

“**Directors’ Charge**” means a priority charge over the Collateral granted by the CCAA Court pursuant to the ARIO in favour of the directors and officers of the DIP Parties, with the priority and the amount as set out in Section 10.

“**Event of Default**” has the meaning given thereto in Section 22.

“**Existing Credit Agreement**” has the meaning given to it in the Recitals.

“**Existing Events of Default**” means the Events of Default (as defined in the Existing Credit Agreement) that to the knowledge of the DIP Lender existed as of the date of Filing Date, with

“knowledge” for the purposes of this definition to mean the knowledge of the DIP Lender, without having conducted any diligence.

“**Facility Amount**” has the meaning given thereto in Section 5.

“**Fashion Canada**” has the meaning given thereto in the Recitals.

“**Fashion US**” has the meaning given thereto in the Recitals.

“**Filing Date**” has the meaning given thereto in the Recitals.

“**Final Recognition Order**” has the meaning given thereto in 8(c).

“**First Advance**” has the meaning given thereto in Section 5.

“**Governmental Authority**” means any federal, provincial, state, municipal, local or other government, governmental or public department, commission, board, bureau, agency or instrumentality, domestic or foreign and any subdivision, agent, commission, board or authority of any of the foregoing.

“**Guarantor**” and “**Guarantors**” have the meaning given thereto in Section 2.

“**Indemnified Persons**” has the meaning given thereto in Section 25.

“**Initial DIP Budget**” has the meaning given thereto in Section 13.

“**Initial CCAA Order**” has the meaning given thereto in the Recitals.

“**Interim Borrowing**” and “**Interim Borrowings**” have the meaning given thereto in the Recitals.

“**Interim Borrowing Maturing Date**” has the meaning given thereto in the Recitals.

“**Interim Borrowings Obligations**” has the meaning given to it in Section 5.

“**Interim Lender**” has the meaning given thereto in the Recitals.

“**Interim Lender’s Charge**” has the meaning given thereto in the Recitals.

“**KERP**” means the key employee retention program in the amount set out in the DIP Budget and approved by the Court in the ARIO.

“**KERP Charge**” means a priority charge over the Collateral granted by the CCAA Court pursuant to the ARIO to secure payment of the KERP, with the priority and the amount as set out in Section 10.

“**Liens**” means (i) all liens, hypothecs, charges, mortgages, deeds of trusts, trusts, deemed trusts (statutory or otherwise), constructive trusts, encumbrances, security interests, and statutory preferences of every kind and nature whatsoever, (ii) the interest of a vendor or a lessor under

any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset, and (iii) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

“Realization Process” means an orderly process for the liquidation of the inventory forming part of the Collateral, in form and substance satisfactory to the DIP Lender, in its sole and absolute discretion, and authorized pursuant to the Realization Process Approval Order.

“Realization Process Approval Order” means an order of the CCAA Court approving a Requisition Procedure which is in the form set out at **Schedule "F"**, with such changes as the DIP Lender may approve, in its sole and absolute discretion.

“Material Contract” means any contract, license or agreement: (i) to which a DIP Party is a party or is bound; (ii) which is material to, or necessary in, the operation of the business of the DIP Parties; and (iii) which a DIP Party cannot within a commercially reasonable timeframe replace by an alternative and comparable contract with comparable commercial terms, including, without limitation, the following:

- (a) License Agreement dated as of March 13, 2023, among Ted Baker Canada and Ted Baker US, as licensees, and No Ordinary Designer Label Limited, as licensor;
- (b) License Agreement dated as of January 1, 2024, among Ted Baker Canada and Ted Baker US, as licensees, and ABG-TB IPCO (UK) Limited, as licensor;
- (c) License Agreement dated as of April 1, 2023, among Ted Baker Canada, as licensee, and ABG-Lucky, LLC, as licensor;
- (d) License Agreement dated as of April 1, 2023, among Ted Baker Canada, as licensee, and ABG-BB IPCO, LLC, as licensor; and
- (e) Warehousing, Storage and Logistics Agreement dated as of October 19, 2017, among Ted Baker Limited and Future Forwarding Company.

“Maturity Date” has the meaning given thereto in Section 12.

“Monitor” has the meaning given thereto in the recitals.

“Obligations” has the meaning given thereto in the Existing Credit Agreement.

“Original Currency” has the meaning given thereto in Section 18.

“Other Currency” has the meaning given thereto in Section 18.

“Outside Date” means August 2, 2024.

“Overdraft Amount” has the meaning given thereto in Section 15.

“Permitted Liens” means (i) the DIP Lender’s Charge; (ii) the Administration Charge, (iii) the Directors’ Charge, (iv) the KERP Charge, (v) any other charges created under the ARIO, the Provisional Order, the Final Recognition Order, or other Court Order which ranks behind the DIP Lender’s Charge and is approved in writing by the DIP Lender, in its sole and absolute discretion; (vi) validly perfected Liens existing prior to the Filing Date including the OSL Retail Loan; (vii) inchoate statutory Liens arising after the Filing Date in respect of any accounts payable arising after the Filing Date in the ordinary course of business, subject to the obligation to pay all such amounts as and when due; and (viii) the Permitted Priority Liens.

“Permitted Priority Liens” means (i) the Administration Charge; and (ii) any amounts payable by the Borrowers for wages, vacation pay, employee deductions, sales tax, excise tax, tax payable pursuant to Part IX of the *Excise Tax Act* (Canada) (net of input credits), income tax and workers compensation claims, in each case solely to the extent such amounts are (a) accrued or collected by the Borrowers after the Filing Date, and (b) given priority by Applicable Law and only to the extent that the priority of such amounts has not been primed by the DIP Lender’s Charge.

“Person” means an individual, partnership, corporation, business trust, joint stock company, limited liability company, trust, unincorporated association, joint venture, Governmental Authority or other entity of whatever nature.

“Plan” has the meaning given thereto in Section 12.

“Pre-Filing Obligations” has the meaning given thereto in Section 7.

“Provisional Order” has the meaning given thereto in the Recitals.

“Real Property Lease” means a lease of real property of any DIP Party.

“Secured Lender” has the meaning given thereto in the Recitals.

“Taxes” has the meaning given thereto in Section 26.

“TB Canada” has the meaning given thereto in the Recitals.

“TB US” has the meaning given thereto in the Recitals.

“Updated DIP Budget” has the meaning given thereto in Section 13.

“U.S. Dollars” and **“U.S.\$”** refer to the lawful money of the United States of America.

“US Court” has the meaning given thereto in the recitals.

“Variance Period” has the meaning given thereto in Section 13.

“Variance Report” has the meaning given thereto in Section 13.

“Withholding Taxes” has the meaning given thereto in Section 26.

SCHEDULE "B"
FORM OF ADVANCE REQUEST

TO: Canadian Imperial Bank of Commerce, as DIP Lender

FROM: Ted Baker Canada Inc.
 Ted Baker Limited
 as Borrowers

DATE: ●, 2024

1. This request is delivered to you, as DIP Lender, in connection with a request for an Advance pursuant to the Term Sheet made as of ●, 2024 between the Borrowers and the DIP Lender, as amended, supplemented, restated or replaced from time to time (the “**Term Sheet**”). All defined terms used, but not otherwise defined in this certificate shall have the respective meanings set forth in the Term Sheet, unless the context requires otherwise.

2. The Borrowers hereby request an Advance as follows in respect of the week commencing on ●, 2024:

Aggregate amount of Advance: (a) Cdn.\$●¹

(b) [U.S.\$●²

Description of intended use of the proceeds of Advance: ●

3. All of the representations and warranties of the DIP Parties set forth in the Term Sheet are true and accurate in all respects as at the date hereof, as though made on and as of the date hereof.

4. All of the covenants of the DIP Parties contained in the Term Sheet and all other terms and conditions contained in the Term Sheet to be complied with by the DIP Parties, not properly waived in writing by the DIP Lender, have been fully complied with.

5. No Default or Event of Default, other than Existing Events of Default, has occurred nor will any such event occur as a result of the Advance hereby requested.

TED BAKER CANADA INC.

TED BAKER LIMITED

Per:

Per:

 Name:
 Title:

 Name:
 Title

¹ Minimum of Cdn.\$25,000 and subject at all times to the aggregate Facility Amount.

² Minimum of U.S.\$25,000 and subject at all times to the aggregate Facility Amount.

SCHEDULE "C"
FORM OF DIP BUDGET

[illegible]

Week ended

<i>Week 1</i>	<i>Week 2</i>	<i>Week 3</i>	<i>Week 4</i>	<i>Week 5</i>	<i>Week 6</i>	<i>Week 7</i>	<i>Week 8</i>	<i>Week 9</i>	<i>Week 10</i>	<i>Week 11</i>	<i>Week 12</i>	<i>Week 13</i>	<i>13-wk</i>
12-May-24	19-May-24	26-May-24	02-Jun-24	09-Jun-24	16-Jun-24	23-Jun-24	30-Jun-24	07-Jul-24	14-Jul-24	21-Jul-24	28-Jul-24	04-Aug-24	TOTAL

Minimum Cumulative Receipts

[illegible]

Maximum Cumulative Disbursements

[illegible]

SCHEDULE "D"
MILESTONES

Milestone Date*	Event/Item**
May 3, 2024	Issuance and Entry of the Amended and Restated Initial Order
May 8, 2024	Issuance and Entry of the Final Recognition Order for each DIP Party
On or before May 13, 2024	Commencement of the Realization Process
May 15, 2024	Execution of any applicable Credit Documents by the DIP Parties
June 14, 2024	Outstanding principal balance of Obligations to be no more than U.S.\$5,000,000
July 31, 2024	Completion of the Realization Process

* Notwithstanding the above, a specific Milestone may be extended or waived with the express prior written consent of the DIP Lender, in its sole and absolute discretion.

** Each to be in form and substance satisfactory to the DIP Lender, in its sole and absolute discretion.

SCHEDULE "E"
FORM OF AMENDED AND RESTATED INITIAL ORDER

SCHEDULE "F"
FORM OF REALIZATION PROCESS ORDER

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

Court File No: CV-24-00718993-00CL

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.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

AFFIDAVIT

OSLER, HOSKIN & HARCOURT LLP

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1 First Canadian Place
Suite 6200, P.O. Box 50
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Marleigh Dick (LSO# 79390S)

Tel: 416.862.4725
Email: mdick@osler.com

Lawyers for the Applicants

TAB 3

Court File No. CV-24-00718993-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	FRIDAY, THE 3 rd
)	
JUSTICE BLACK)	DAY OF MAY, 2024

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.

**AMENDED AND RESTATED INITIAL ORDER
(amending the Initial Order dated April 24, 2024)**

THIS APPLICATION, made by Ted Baker Canada Inc. ("**Ted Baker Canada**"), Ted Baker Limited, OSL Fashion Services Canada Inc. ("**Fashion Canada**"), and OSL Fashion Services, Inc. ("**Fashion US**" and collectively with Ted Baker Canada, Ted Baker Limited, and Fashion Canada, the "**Applicants**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day by judicial videoconference via Zoom at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the affidavit of Antoine Adams sworn April 24, 2024, and the Exhibits thereto (the "**Initial Adams Affidavit**"), the affidavit of Antoine Adams sworn May 1, 2024 and the Exhibits thereto (the "**Second Adams Affidavit**"), the pre-filing report dated April 24, 2024, of Alvarez & Marsal Canada Inc. ("**A&M**"), in its capacity as proposed monitor of the Applicants, and the first report dated May 1, 2024 (the "**First Report**"), of A&M, in its capacity as monitor of the Applicants (in such capacity, the "**Monitor**"), and the confidential supplement to the First Report, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the

submissions of counsel to the Applicants, the Monitor, the Interim Lender (as defined below), the DIP Lender (as defined below), and such other counsel present, and on reading the consent of A&M to act as Monitor.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

DEFINITIONS

2. **THIS COURT ORDERS** that unless otherwise indicated or defined herein, capitalized terms have the meanings given to them in the Initial Adams Affidavit and the Second Adams Affidavit, as applicable.

APPLICATION

3. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies.

POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of their respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the “**Business**”) and Property. The Applicants shall each be authorized and empowered to continue to retain and employ the employees, independent contractors, advisors, consultants, agents, experts, appraisers, valuers, brokers, accountants, counsel and such other persons (collectively, “**Assistants**”) currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. **THIS COURT ORDERS** that the Applicants shall be entitled to continue to use the central cash management systems currently in place as described in the Initial Adams Affidavit, including,

without limitation, the Blocked Accounts Arrangement, or, with the consent of the Monitor and the DIP Lender, replace them with other substantially similar central cash management systems (together, the “**Cash Management System**”) and that any present or future bank providing the Cash Management System, including the Canadian Imperial Bank of Commerce, HSBC Bank USA, National Association, and American Savings Bank, shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under any plan of compromise or arrangement (“**Plan**”) with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. **THIS COURT ORDERS** that, in accordance with the DIP Term Sheet (as defined below), the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to, on or after April 24, 2024 (the “**Filing Date**”) to the extent that such expenses are incurred and payable by the Applicants:

- (a) all outstanding and future wages, salaries, employee benefits (including, without limitation, employee medical, dental, registered retirement savings plan contributions and similar benefit plans or arrangements), vacation pay and expenses, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements, and all other payroll and benefits processing and servicing expenses;
- (b) all outstanding and future amounts invoiced to any of the Applicants from any independent contractors retained by any of the Applicants, payable prior to, on or after the Filing Date, in each case incurred in the ordinary course of business and consistent with existing payment arrangements;
- (c) all outstanding or future amounts related to honouring customer obligations, including customer pre-payments, deposits, gift cards, programs and other customer loyalty

- programs, offers and benefits, in each case incurred in the ordinary course of business and consistent with existing policies and procedures;
- (d) the fees and disbursements of any Assistants retained or employed by the Applicants at their standard rates and charges;
 - (e) with the consent of the Monitor, and the DIP Lender, amounts owing for goods or services supplied to the Applicants prior to the Filing Date by:
 - (i) warehouse providers, logistics or supply chain providers, including transportation providers, customs brokers, freight forwarders and security and armoured truck carriers, and including amounts payable in respect of customs and duties for goods;
 - (ii) providers of information, internet, telecommunications and other technology, including e-commerce providers and related services;
 - (iii) providers of payment, credit, debit and gift card processing related services; and
 - (iv) other third-party suppliers or service providers if, in the opinion of the Applicants following consultation with the Monitor, such supplier or service provider is critical to the Business and ongoing operations of the Applicants and the Property (as hereinafter defined).

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by them in carrying on the Business in the ordinary course after the Filing Date, and in carrying out the provisions of this Order and any other Order of this Court, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and

- (b) payment for goods or services actually supplied to the Applicants following the Filing Date.

8. **THIS COURT ORDERS** that the Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from the Applicants' employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services taxes, harmonized sales taxes or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the Filing Date, or where such Sales Taxes were accrued or collected prior to the Filing Date but not required to be remitted until on or after the Filing Date; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business, workers' compensation or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

9. **THIS COURT ORDERS** that, until a real property lease, including a sublease and related documentation (each, a "**Lease**") to which any Applicant is a party is disclaimed or resiliated in accordance with the CCAA or otherwise consensually terminated, such Applicant shall pay, without duplication, all amounts constituting rent or payable as rent under such Lease (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the applicable landlord (each, a "**Landlord**") under such Lease, but for greater certainty, excluding accelerated rent or penalties, fees or other charges arising as a result of the insolvency of the Applicants or the making of the Initial Order or this Order) or as otherwise may

be negotiated between such Applicant and the Landlord from time to time (“**Rent**”), for the period commencing from and including the Filing Date, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the Filing Date shall also be paid.

10. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by any one of the Applicants to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of the Property; and (c) to not grant credit or incur liabilities except in accordance with the DIP Term Sheet or the ordinary course of the Business or pursuant to this Order or any other Order of the Court.

RESTRUCTURING

11. **THIS COURT ORDERS** that the Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the DIP Term Sheet and the Definitive Documents (each as defined below), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of the Business or operations, and to dispose of redundant or non-material assets not exceeding \$50,000 in any one transaction or \$250,000 in the aggregate in any series of related transactions; provided that, with respect to leased premises, the Applicants may, subject to the requirements of the CCAA and paragraphs 12 and 13 herein, vacate, abandon or quit the whole (but not part of) and may permanently (but not temporarily) cease, downsize or shut down any of the Business or operations in respect of any leased premises;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as the applicable Applicant deems appropriate;
- (c) pursue all offers for sales of material parts of the Business or Property, in whole or in part, subject to prior approval of this Court obtained before any sale (except as

permitted by paragraph 11(a) above or the Realization Process Order granted by this Court on May 3, 2024);

- (d) disclaim or resiliate, in whole or in part, with the prior consent of the Monitor and the DIP Lender or further Order of the Court, any of their arrangements or agreements of any nature whatsoever and with whomsoever, whether oral or written, as the Applicants deem appropriate, in accordance with section 32 of the CCAA; and
- (e) in consultation with, and with the oversight of the Monitor and in consultation with the DIP Lender, (i) engage in discussions with, and solicit proposals and agreements from, third parties in respect of the liquidation of the inventory, furniture, equipment and fixtures and other property located in and/or forming part of the Property (the "**Realization Solicitation Process**"), and return to Court for the approval of any such agreement, and (ii) with the assistance of any real estate advisor or other Assistants as may be desirable, pursue all avenues and offers for the sale, transfer or assignment of the Leases to third parties, in whole or in part, and return to Court for approval of any such sale, transfer or assignment,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the "**Restructuring**").

12. **THIS COURT ORDERS** that each Applicant shall provide each of the relevant landlords with notice of such Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes an Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the applicable Applicant, or by further Order of this Court upon application by such Applicant on at least two (2) days notice to such landlord and any such secured creditors. If an Applicant disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to such Applicant's claim to the fixtures in dispute.

13. **THIS COURT ORDERS** that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the applicable Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

STAY OF PROCEEDINGS

14. **THIS COURT ORDERS** that until and including August 2, 2024, or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Applicants or the Monitor, or any of their respective employees, directors, advisors, officers and representatives acting in such capacities, or affecting the Business or the Property, except with the prior written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants, or their employees, directors, officers or representatives acting in such capacities, or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

15. **THIS COURT ORDERS** that, to the extent any prescription, time or limitation period relating to any Proceeding against or in respect of any Applicant that is stayed pursuant to this Order may expire, the term of such prescription, time or limitation period shall hereby be deemed to be extended by a period equal to the Stay Period.

NO EXERCISE OF RIGHTS OR REMEDIES

16. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Applicants or the Monitor, or their respective employees, directors, officers, advisors and representatives acting in such capacities, or affecting the Business or the Property, are hereby

stayed and suspended except with the prior written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (a) empower the Applicants to carry on any business which they are not lawfully entitled to carry on; (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (c) prevent the filing of any registration to preserve or perfect a security interest; or (d) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

17. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, concession arrangement, licence or permit in favour of or held by the Applicants, except with the prior written consent of the Applicants and the Monitor, or leave of this Court. Without limiting the foregoing, no right, option, remedy, and/or exemption in favour of the relevant Applicants shall be or shall be deemed to be negated, suspended, waived and/or terminated as a result of the insolvency of the Applicants, the commencement of the within proceedings or any related recognition proceedings or this Order.

NO PRE-FILING VS POST-FILING SET-OFF

18. **THIS COURT ORDERS** that, other than as expressly provided for pursuant to the DIP Term Sheet, no Person shall be entitled to set off any amounts that: (a) are or may become due to the Applicants in respect of obligations arising prior to the Filing Date with any amounts that are or may become due from the Applicants in respect of obligations arising on or after the Filing Date; or (b) are or may become due from the Applicants in respect of obligations arising prior to the Filing Date with any amounts that are or may become due to the Applicants in respect of obligations arising on or after the Filing Date, in each case without the consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall prejudice any arguments any Person may want to make in seeking leave of the Court or following the granting of such leave.

CONTINUATION OF SERVICES

19. **THIS COURT ORDERS** that during the Stay Period,

- (a) all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply or license of goods, intellectual property and/or services, including without limitation all computer software, trademarks, communication and other data services, centralized banking services, cash management services, payment processing services, payroll and benefit services, insurance, freight services, transportation services, customs clearing, warehouse and logistics services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply or license of such goods or services as may be required by the Applicants;
- (b) that all Persons who receive or collect proceeds from the sale of the Applicants' inventory for or on behalf of the Applicants, shall promptly remit such proceeds to the Applicants monthly, in accordance with existing arrangements without any additional set-off or deduction whatsoever; and
- (c) that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case, that the normal prices or charges for all such goods or services received after the the Filing Date are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and the applicable Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

20. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration, in each case, provided on or after the Filing Date, nor shall any Person be under any obligation on or after the Filing Date to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

KEY EMPLOYEE RETENTION PLAN

21. **THIS COURT ORDERS** that the Key Employee Retention Plan (the “**KERP**”), as described in the Second Adams Affidavit, is hereby approved and the Applicants are authorized to make payments contemplated thereunder in accordance with the terms and conditions of the KERP.

22. **THIS COURT ORDERS** that the key employees referred to in the KERP (the “**Key Employees**”) shall be entitled to the benefit of and are hereby granted a charge on the Property, which charge shall not exceed an aggregate amount of USD \$250,000 (the “**KERP Charge**”), as security for amounts payable to the Key Employees pursuant to the KERP. The KERP Charge shall have the priority set out in paragraphs 48 and 50 hereof.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

23. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations.

DIRECTORS’ AND OFFICERS’ INDEMNIFICATION AND CHARGE

24. **THIS COURT ORDERS** that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director’s or officer’s gross negligence or wilful misconduct.

25. **THIS COURT ORDERS** that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the “**Directors’ Charge**”) on the Property, which charge shall not exceed an aggregate amount of USD \$5,000,000, as security for the indemnity provided in paragraph 24 of this Order. The Directors’ Charge shall have the priority set out in paragraphs 48 and 50 herein.

26. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge; and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 24 of this Order.

APPOINTMENT OF MONITOR

27. **THIS COURT ORDERS** that A&M is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, partners, members, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

28. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements;
- (b) assist the Applicants with the Restructuring;
- (c) assist the Applicants, to the extent required by the Applicants or the DIP Lender, in their dissemination to the DIP Lender and its counsel and financial advisor of financial and other information as agreed to between the Applicants and the DIP Lender, which may be used in these proceedings, including reporting on a basis to be agreed with the DIP Lender;
- (d) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

- (e) advise the Applicants in their preparation of the Applicants' cash flow statements and the dissemination of other financial information;
- (f) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;
- (g) liaise and consult with any Assistants and any liquidator selected through the Realization Solicitation Process, to the extent required, with respect to all matters relating to the Property, the Business and such other matters as may be relevant to the proceedings herein;
- (h) be at liberty to engage independent legal counsel, advisors or such other persons, or utilize the services of employees of its affiliates, as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (i) assist the Applicants, to the extent required by the Applicants, with any matters relating to any foreign proceeding commenced in relation to any of the Applicants; and
- (j) perform such other duties as are required by this Order or by this Court from time to time.

29. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

30. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste

or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, the *Ontario Occupational Health and Safety Act*, the *British Columbia Environmental Management Act*, the *British Columbia Riparian Areas Protection Act*, the *British Columbia Workers Compensation Act*, the *Alberta Environmental Protection and Enhancement Act*, the *Alberta Water Act*, the *Alberta Occupational Health and Safety Act*, the *Manitoba Environment Act*, the *Manitoba Contaminated Sites Remediation Act*, the *Manitoba Workplace Safety and Health Act*, the *Quebec Environmental Quality Act*, and the *Quebec Act Respecting Occupation Health and Safety*, and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

31. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicants with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

32. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

33. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, counsel to the Applicants, counsel to the Interim Lender and the DIP Lender and financial advisor thereto, shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to, on or subsequent to the Filing Date, by the Applicants as part of the

costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor and, counsel to the Applicants, counsel to the Interim Lender and the DIP Lender and financial advisor thereto, in each case, on such terms as such parties may agree and are hereby authorized to pay to the Monitor, counsel to the Monitor and counsel to the Applicants, retainers, *nunc pro tunc*, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

34. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

ADMINISTRATION CHARGE

35. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount of USD \$1,500,000, as security for their professional fees and disbursements incurred at their standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 48 and 50 hereof.

INTERIM FINANCING

36. **THIS COURT ORDERS** that on or after the Filing Date and until May 8, 2024, Ted Baker Canada and Ted Baker Limited are hereby authorized and empowered to continue to borrow from Canadian Imperial Bank of Commerce (in such capacity, the “**Interim Lender**”) under the existing credit facility (the “**Existing Credit Facility**”) pursuant to the Credit Agreement dated as of March 14, 2023 (as amended by a consent and first amendment agreement dated as of August 3, 2023, and as further amended by a second amendment agreement dated as of April 23, 2024, the “**Existing Credit Agreement**”) in order to finance the Applicants' working capital requirements and other general corporate purposes, capital expenditures and costs of these proceedings (each, an “**Interim Borrowing**” and collectively, the “**Interim Borrowings**”), provided that (i) such Interim Borrowings are to fund obligations which the Applicants, with the consent of the Monitor and the Interim Lender, deem to be necessary for the preservation of the Property or the Business,

(ii) such Interim Borrowings shall not, individually or in the aggregate, exceed USD \$7,000,000, (iii) such Interim Borrowings under the Existing Credit Facility shall accrue interest at the default rates set out in the Existing Credit Agreement, (iv) Fashion Canada and Fashion US shall be deemed to (a) guarantee and secure the Interim Borrowings, together with all interest accrued thereon and costs and expenses incurred in connection therewith (collectively, the “**Interim Borrowing Obligations**”), in the same manner as the other Obligations (as defined in the Existing Credit Agreement) that they have guaranteed and secured under the Existing Credit Agreement and the loan and security documents provided by them in connection therewith, and (b) ratify and acknowledge the guarantees and security they have provided in connection with the Existing Credit Agreement and the loan and security documents provided by them in connection therewith, in each case, without the need for any further guarantee, security or documentation from Fashion Canada or Fashion US, and (v) unless the Interim Lender provides its written waiver, the United States Bankruptcy Court shall have granted an Order pursuant to the *United States Bankruptcy Code*, 11 U.S.C., §§ 101 – 1532, as amended (the “**Bankruptcy Code**”): (a) provisionally recognizing, ordering and giving effect to this Order and the Interim Lender’s Charge in the United States, and (b) granting such other provisional relief that is sought by the Applicants, at the request of the Interim Lender.

37. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver such amendments to the Existing Credit Agreement or other documents, if any, as may be reasonably required by the Interim Lender to facilitate any Interim Borrowings, provided that failure to execute any such documentation does not invalidate any Interim Borrowings or the validity or priority of the Interim Lender’s Charge.

38. **THIS COURT ORDERS** that the Interim Borrowings shall mature on May 8, 2024 and the Interim Borrowing Obligations shall be payable in full by the Applicants on such date.

39. **THIS COURT ORDERS** that (i) the Interim Lender shall be entitled to the benefit of and is hereby granted a charge (the “**Interim Lender’s Charge**”) on the Property of each of the Applicants, which Interim Lender’s Charge shall, for greater certainty, not secure any obligation that exists before this Order is made, (ii) the Interim Lender’s Charge shall have the priority set out in paragraphs 48 and 50 hereof, (iii) the Interim Lender’s Charge shall be terminated, released and discharged upon indefeasible payment in full of the Interim Borrowing Obligations from the

proceeds of the First Advance (as defined in the DIP Term Sheet), without any other act or formality; and (iv) until indefeasible payment in full of the Interim Borrowings Obligations, all consents required of the DIP Lender in this Order and all rights afforded to the DIP Lender under paragraph 28(c), 46 and 47 of this Order shall also apply to the Interim Lender *mutatis mutandis*.

40. **THIS COURT ORDERS** in the event the Applicants fail to make the payment to the Interim Lender required by paragraph 38 herein, then upon three (3) business days' notice to the Applicants and the Monitor, the Interim Lender may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the Existing Credit Agreement and the Interim Lender's Charge, including without limitation, to cease making advances to the Applicants and, subject to further Order of the Court, set off and/or consolidate any amounts owing by the Interim Lender to any of the Applicants against the obligations of the Applicants to the Interim Lender under the Existing Credit Agreement, this Order or the Interim Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants or the Property and for the appointment of a trustee in bankruptcy of the Applicants.

41. **THIS COURT ORDERS** that the Interim Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada with respect to any Interim Borrowings.

DIP FINANCING

42. **THIS COURT ORDERS** that Ted Baker Canada and Ted Baker Limited are hereby authorized and empowered to obtain and borrow under a credit facility from the Canadian Imperial Bank of Commerce (the "**DIP Lender**") in order to finance the Applicants' working capital requirements and other general corporate purposes and costs of these proceedings, provided that borrowings under such credit facility shall not, individually or in the aggregate, exceed USD \$28,000,000 unless permitted by further Order of this Court.

43. **THIS COURT ORDERS THAT** such credit facility shall be on the terms and subject to the conditions set forth in the term sheet between the Applicants and the DIP Lender dated as of May 1, 2024 (the "**DIP Term Sheet**"), filed.

44. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the DIP Term Sheet or as may be required by the DIP Lender, and the Applicants are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Term Sheet and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

45. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property, which DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs 48 and 50 hereof.

46. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge, the DIP Term Sheet or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the DIP Term Sheet or the Definitive Documents, the DIP Lender may cease making advances to the DIP Borrowers pursuant to the DIP Term Sheet and, upon approval of the Court, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the DIP Term Sheet, Definitive Documents and the DIP Lender's Charge, including without limitation, to set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of the Applicants to the DIP Lender under the DIP Term Sheet, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants or the Property and for the appointment of a trustee in bankruptcy of the Applicants; and

- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

47. **THIS COURT ORDERS** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada with respect to any advances made under the DIP Term Sheet or the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

48. **THIS COURT ORDERS** that the priorities of the security interests granted by the Administration Charge, Interim Lender's Charge, the DIP Lender's Charge, the Directors' Charge and the KERP Charge (collectively, the "**Charges**"), and the Applicants to CIBC, as among them, shall be as follows:

- (a) First – Administration Charge (to the maximum amount of USD \$1,500,000);
- (b) Second – Interim Lender's Charge, until such Charge is terminated pursuant to paragraph 39;
- (c) Third - DIP Lender's Charge;
- (d) Fourth – Security granted with respect to the Existing Credit Facility (excluding the Interim Borrowings);
- (e) Fifth - Directors' Charge (to the maximum amount of USD \$5,000,000); and
- (f) Sixth – KERP Charge (to the maximum amount of USD \$250,000).

49. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

50. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts (including

deemed or constructive trusts), liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any Person.

51. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or pari passu with, any of the Charges unless the Applicants also obtain the prior written consent of the Monitor, the DIP Lender and the other beneficiaries of the Charges (collectively, the “**Chargees**”), or further Order of this Court.

52. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) or receivership order(s) issued pursuant to the BIA or otherwise, or any bankruptcy order or receivership order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Interim Borrowings or any amendment or document pursuant to paragraph 37, the DIP Term Sheet or the Definitive Documents shall create or be deemed to constitute a breach by the Applicants of any Agreement to which they are a party;
- (b) None of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant entering into the DIP Term Sheet, the Interim Borrowings, the creation of the Charges, the Interim Borrowings or the execution, delivery or performance of any amendment or document pursuant to paragraph 37, the DIP Term Sheet or the Definitive Documents; and

- (c) the payments made by the Applicants pursuant to this Order, including with respect to the Existing Credit Facility or in respect of the Interim Borrowings and/or the DIP Term Sheet or the Definitive Documents, and the granting of the Charges do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

53. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interests in such real property leases.

SEALING

54. **THIS COURT ORDERS** that the KERP and related payment information attached as confidential supplement to the First Report are hereby sealed and shall not form part of the Court record, subject to further order of this Court.

SERVICE AND NOTICE

55. **THIS COURT ORDERS** that the Monitor shall (a) without delay, publish in the Globe & Mail a notice containing the information prescribed under the CCAA; and (b) within five (5) days after the date of this Order, (i) make this Order publicly available in the manner prescribed under the CCAA, (ii) send, or cause to be sent, in the prescribed manner (including by electronic message to the e-mail addresses as last shown in the Applicants' books and records), a notice to all known creditors having a claim against the Applicants of more than \$1,000, and (iii) prepare a list showing the names and addresses of such creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of individuals who are creditors publicly available, unless otherwise ordered by the Court.

56. **THIS COURT ORDERS** that any employee of any of the Applicants who is sent a notice of termination of employment or any other communication by the Applicants after the date hereof shall be deemed to have received such communication by no later than 8:00 a.m. Eastern Standard/Daylight Time on the fourth (4th) day following the date any such notice is sent, if such notice is sent by ordinary mail, expedited parcel or registered mail to the individual's address as

reflected in the Applicants' books and records; provided, however, that any communication that is sent to an employee of the Applicants by electronic message to the individual's corporate email address and/or the individual's personal email address as last shown in the Applicants' books and records shall be deemed to have been received twenty-four (24) hours after the time such electronic message was sent, notwithstanding that any such notices of termination of employment or other employee communication was sent pursuant to any other means.

57. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca//scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a case website shall be established in accordance with the Protocol with the following URL: www.alvarezandmarsal.com/TBRetail (the "**Monitor's Website**").

58. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol or the CCAA and the regulations thereunder is not practicable, the Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile transmission or electronic message to the Applicants' creditors or other interested parties at their respective addresses (including e-mail addresses) as last shown in the books and records of the Applicants and that any such service or distribution shall be deemed to be received on the earlier of (a) the date of forwarding thereof, if sent by electronic message on or prior to 5:00 p.m. Eastern Standard/Daylight Time (or on the next business day following the date of forwarding thereof if sent on a non-business day); (b) the next business day following the date of forwarding thereof, if sent by courier, personal delivery, facsimile transmission or electronic message sent after 5:00 p.m. Eastern Standard/Daylight Time; or (c) on the third (3rd) business day following the date of forwarding thereof, if sent by ordinary mail.

59. **THIS COURT ORDERS** that the Applicants and the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding copies thereof by electronic message to the Applicants' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS).

GENERAL

60. **THIS COURT ORDERS** that the Applicants or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their respective powers and duties hereunder.

61. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of any or all of the Applicants, the Business or the Property.

62. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Foreign Representative (as defined below), the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants, to the Foreign Representative and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants, the Foreign Representative and the Monitor and their respective agents in carrying out the terms of this Order.

63. **THIS COURT ORDERS** that the Applicants and the Monitor be at liberty and are hereby authorized and empowered to seek any relief deemed appropriate by them from the United States Bankruptcy Court and apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that Ted Baker Canada is hereby authorized and empowered to act as the foreign representative

(the “**Foreign Representative**”) in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada, including acting as a foreign representative of the Applicants to apply to the United States Bankruptcy Court for relief pursuant to chapter 15 of the Bankruptcy Code.

64. **THIS COURT ORDERS** that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) calendar days’ notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

65. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

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

Court File No: CV-24-00718993-00CL

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

Ontario
**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**AMENDED AND RESTATED INITIAL ORDER
(amending the Initial Order dated April 24, 2024)**

OSLER, HOSKIN & HARCOURT LLP

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Lawyers for the Applicants

TAB 4

Court File No. CV-24-00718993-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	WEDNESDAY <u>FRIDAY</u> , THE 24 th <u>3rd</u>
)	
JUSTICE BLACK)	DAY OF APRIL <u>MAY</u> , 2024

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.

AMENDED AND RESTATED INITIAL ORDER
(amending the Initial Order dated April 24, 2024)

THIS APPLICATION, made by Ted Baker Canada Inc. ("**Ted Baker Canada**"), Ted Baker Limited, OSL Fashion Services Canada Inc. ("**Fashion Canada**"), and OSL Fashion Services, Inc. ("**Fashion US**" and collectively with Ted Baker Canada, Ted Baker Limited, and Fashion Canada, the "**Applicants**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day by judicial videoconference via Zoom at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the affidavit of Antoine Adams sworn April 24, 2024, and the Exhibits thereto (the "**Initial Adams Affidavit**"), ~~and~~ the affidavit of Antoine Adams sworn May 1, 2024 and the Exhibits thereto (the "**Second Adams Affidavit**"), the pre-filing report dated April 24, 2024, of Alvarez & Marsal Canada Inc. ("**A&M**"), in its capacity as proposed monitor of the Applicants, and ~~on~~ the first report dated May 1, 2024 (the "**First Report**"), of A&M, in its capacity as monitor of the Applicants (in such capacity, the "**Monitor**"), and the confidential supplement to the First Report, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel to the Applicants, A&M the

Monitor, the Interim Lender (as defined below), the DIP Lender (as defined below), and such other counsel present, and on reading the consent of A&M to act as ~~monitor (in such capacity, the “Monitor”)~~.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

DEFINITIONS

2. **THIS COURT ORDERS** that unless otherwise indicated or defined herein, capitalized terms have the meanings given to them in the Initial Adams Affidavit and the Second Adams Affidavit, as applicable.

APPLICATION

3. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies.

POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of their respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the “**Business**”) and Property. The Applicants shall each be authorized and empowered to continue to retain and employ the employees, independent contractors, advisors, consultants, agents, experts, appraisers, valuers, brokers, accountants, counsel and such other persons (collectively, “**Assistants**”) currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. **THIS COURT ORDERS** that the Applicants shall be entitled to continue to use the central cash management systems currently in place as described in the Initial Adams Affidavit, including, without limitation, the Blocked Accounts Arrangement, or, with the consent of the Monitor and the ~~Interim~~DIP Lender, replace them with other substantially similar central cash management systems (together, the “**Cash Management System**”) and that any present or future bank providing the Cash Management System, including the Canadian Imperial Bank of Commerce, HSBC Bank USA, National Association, and American Savings Bank, shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under any plan of compromise or arrangement (“**Plan**”) with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. **THIS COURT ORDERS** that, in accordance with the DIP Term Sheet (as defined below), the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to, on or after April 24, 2024 (the ~~date of this Order~~ “Filing Date”) to the extent that such expenses are incurred and payable by the Applicants:

- (a) all outstanding and future wages, salaries, employee benefits (including, without limitation, employee medical, dental, registered retirement savings plan contributions and similar benefit plans or arrangements), vacation pay and expenses, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements, and all other payroll and benefits processing and servicing expenses;
- (b) all outstanding and future amounts invoiced to any of the Applicants from any independent contractors retained by any of the Applicants, payable prior to, on or

- after the ~~date of this Order~~Filing Date, in each case incurred in the ordinary course of business and consistent with existing payment arrangements;
- (c) all outstanding or future amounts related to honouring customer obligations, including customer pre-payments, deposits, gift cards, programs and other customer loyalty programs, offers and benefits, in each case incurred in the ordinary course of business and consistent with existing policies and procedures;
 - (d) the fees and disbursements of any Assistants retained or employed by the Applicants at their standard rates and charges;
 - (e) with the consent of the Monitor, and the ~~Interim~~DIP Lender, amounts owing for goods or services supplied to the Applicants prior to the ~~date of this Order~~Filing Date by:
 - (i) warehouse providers, logistics or supply chain providers, including transportation providers, customs brokers, freight forwarders and security and armoured truck carriers, and including amounts payable in respect of customs and duties for goods;
 - (ii) providers of information, internet, telecommunications and other technology, including e-commerce providers and related services;
 - (iii) providers of payment, credit, debit and gift card processing related services; and
 - (iv) other third-party suppliers or service providers if, in the opinion of the Applicants following consultation with the Monitor, such supplier or service provider is critical to the Business and ongoing operations of the Applicants and the Property (as hereinafter defined).

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by them in carrying on the Business in the ordinary course after ~~this Order~~the Filing Date, and in carrying

out the provisions of this Order and any other Order of this Court, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicants following the ~~date of this Order~~Filing Date.

8. **THIS COURT ORDERS** that the Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from the Applicants' employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services taxes, harmonized sales taxes or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the ~~date of this Order~~Filing Date, or where such Sales Taxes were accrued or collected prior to the ~~date of this Order~~Filing Date but not required to be remitted until on or after the ~~date of this Order~~Filing Date; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business, workers' compensation or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

9. **THIS COURT ORDERS** that, until a real property lease, including a sublease and related documentation (each, a “**Lease**”) to which any Applicant is a party is disclaimed or resiliated in accordance with the CCAA or otherwise consensually terminated, such Applicant shall pay, without duplication, all amounts constituting rent or payable as rent under such Lease (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the applicable landlord (each, a “**Landlord**”) under such Lease, but for greater certainty, excluding accelerated rent or penalties, fees or other charges arising as a result of the insolvency of the Applicants or the making of [the Initial Order or this Order](#)) or as otherwise may be negotiated between such Applicant and the Landlord from time to time (“**Rent**”), for the period commencing from and including the ~~date of this Order~~ [Filing Date](#), twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the ~~date of this Order~~ [Filing Date](#) shall also be paid.

10. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by any one of the Applicants to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of the Property; and (c) to not grant credit or incur liabilities except in [accordance with the DIP Term Sheet or](#) the ordinary course of the Business or pursuant to this Order or any other Order of the Court.

RESTRUCTURING

11. **THIS COURT ORDERS** that the Applicants shall, subject to such requirements as are imposed by the CCAA [and such covenants as may be contained in the DIP Term Sheet and the Definitive Documents \(each as defined below\)](#), have the right to:

- (a) [permanently or temporarily cease, downsize or shut down any of the Business or operations, and to dispose of redundant or non-material assets not exceeding \\$50,000 in any one transaction or \\$250,000 in the aggregate in any series of related transactions; provided that, with respect to leased premises, the Applicants may, subject to the requirements of the CCAA and paragraphs 12 and 13 herein, vacate,](#)

- abandon or quit the whole (but not part of) and may permanently (but not temporarily) cease, downsize or shut down any of the Business or operations in respect of any leased premises;
- (b) ~~(a)~~ terminate the employment of such of its employees or temporarily lay off such of its employees as the applicable Applicant deems appropriate;
- (c) pursue all offers for sales of material parts of the Business or Property, in whole or in part, subject to prior approval of this Court obtained before any sale (except as permitted by paragraph 11(a) above or the Realization Process Order granted by this Court on May 3, 2024);
- (d) ~~(b)~~ disclaim or resiliate, in whole or in part, with the prior consent of the Monitor and the InterimDIP Lender or further Order of the Court, any of their arrangements or agreements of any nature whatsoever and with whomsoever, whether oral or written, as the Applicants deem appropriate, in accordance with section 32 of the CCAA; and
- (e) ~~(e)~~ in consultation with, and with the oversight of the Monitor and in consultation with the InterimDIP Lender, (i) engage in discussions with, and solicit proposals and agreements from, third parties in respect of the liquidation of the inventory, furniture, equipment and fixtures and other property located in and/or forming part of the Property (the “LiquidationRealization Solicitation Process”), and return to Court for the approval of any such agreement, and (ii) with the assistance of any real estate advisor or other Assistants as may be desirable, pursue all avenues and offers for the sale, transfer or assignment of the Leases to third parties, in whole or in part, and return to Court for approval of any such sale, transfer or assignment,

all of the foregoing to permit the ~~Applicant~~Applicants to proceed with an orderly restructuring of the Business (the “**Restructuring**”).

12. **THIS COURT ORDERS** that each Applicant shall provide each of the relevant landlords with notice of such Applicant’s intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal

and, if the landlord disputes an Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the applicable Applicant, or by further Order of this Court upon application by such Applicant on at least two (2) days notice to such landlord and any such secured creditors. If an Applicant disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to such Applicant's claim to the fixtures in dispute.

13. **THIS COURT ORDERS** that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the applicable Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

STAY OF PROCEEDINGS

14. **THIS COURT ORDERS** that until and including ~~May 3~~August 2, 2024, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicants or the Monitor, or any of their respective employees, directors, advisors, officers and representatives acting in such capacities, or affecting the Business or the Property, except with the prior written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants, or their employees, directors, officers or representatives acting in such capacities, or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

15. **THIS COURT ORDERS** that, to the extent any prescription, time or limitation period relating to any Proceeding against or in respect of any Applicant that is stayed pursuant to this Order may expire, the term of such prescription, time or limitation period shall hereby be deemed to be extended by a period equal to the Stay Period.

NO EXERCISE OF RIGHTS OR REMEDIES

16. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Applicants or the Monitor, or their respective employees, directors, officers, advisors and representatives acting in such capacities, or affecting the Business or the Property, are hereby stayed and suspended except with the prior written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (a) empower the Applicants to carry on any business which they are not lawfully entitled to carry on; (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (c) prevent the filing of any registration to preserve or perfect a security interest; or (d) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

17. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, concession arrangement, licence or permit in favour of or held by the Applicants, except with the prior written consent of the Applicants and the Monitor, or leave of this Court. Without limiting the foregoing, no right, option, remedy, and/or exemption in favour of the relevant Applicants shall be or shall be deemed to be negated, suspended, waived and/or terminated as a result of the insolvency of the Applicants, the commencement of the within proceedings or any related recognition proceedings or this Order.

NO PRE-FILING VS POST-FILING SET-OFF

18. **THIS COURT ORDERS** that, [other than as expressly provided for pursuant to the DIP Term Sheet](#), no Person shall be entitled to set off any amounts that: (a) are or may become due to

the Applicants in respect of obligations arising prior to the ~~date hereof~~Filing Date with any amounts that are or may become due from the Applicants in respect of obligations arising on or after the ~~date of this Order~~Filing Date; or (b) are or may become due from the Applicants in respect of obligations arising prior to the ~~date hereof~~Filing Date with any amounts that are or may become due to the Applicants in respect of obligations arising on or after the ~~date of this Order~~Filing Date, in each case without the consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall prejudice any arguments any Person may want to make in seeking leave of the Court or following the granting of such leave.

CONTINUATION OF SERVICES

19. **THIS COURT ORDERS** that during the Stay Period,

- (a) all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply or license of goods, intellectual property and/or services, including without limitation all computer software, trademarks, communication and other data services, centralized banking services, cash management services, payment processing services, payroll and benefit services, insurance, freight services, transportation services, customs clearing, warehouse and logistics services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply or license of such goods or services as may be required by the Applicants;
- (b) that all Persons who receive or collect proceeds from the sale of the Applicants' inventory for or on behalf of the Applicants, shall promptly remit such proceeds to the Applicants monthly, in accordance with existing arrangements without any additional set-off or deduction whatsoever; and
- (c) that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case, that the normal prices or charges for all such goods or services received after the ~~date of this Order~~the Filing Date are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices

as may be agreed upon by the supplier or service provider and the applicable Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

20. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration, in each case, provided on or after the ~~date of this Order~~Filing Date, nor shall any Person be under any obligation on or after the ~~date of this Order~~Filing Date to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

KEY EMPLOYEE RETENTION PLAN

21. **THIS COURT ORDERS** that the Key Employee Retention Plan (the “KERP”), as described in the Second Adams Affidavit, is hereby approved and the Applicants are authorized to make payments contemplated thereunder in accordance with the terms and conditions of the KERP.

22. **THIS COURT ORDERS** that the key employees referred to in the KERP (the “Key Employees”) ~~shall be entitled~~ to the benefit of and are hereby granted a charge on the Property, which charge shall not exceed an aggregate amount of USD \$250,000 (the “KERP Charge”), as security for amounts payable to the Key Employees ~~pursuant to~~ the KERP. The KERP Charge shall have the priority set out in paragraphs 48 and 50 hereof.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

23. ~~21.~~ **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be

liable in their capacity as directors or officers for the payment or performance of such obligations.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

24. ~~22.~~ **THIS COURT ORDERS** that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

25. ~~23.~~ **THIS COURT ORDERS** that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of USD \$~~2,500,000~~5,000,000, as security for the indemnity provided in paragraph ~~22~~24 of this Order. The Directors' Charge shall have the priority set out in paragraphs ~~40~~48 and ~~42~~50 herein.

26. ~~24.~~ **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge; and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph ~~22~~24 of this Order.

APPOINTMENT OF MONITOR

27. ~~25.~~ **THIS COURT ORDERS** that A&M is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, partners, members, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

28. ~~26.~~ **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements;
- (b) assist the Applicants with the Restructuring;
- (c) assist the Applicants, to the extent required by the Applicants or the ~~Interim~~DIP Lender, in their dissemination to the ~~Interim~~DIP Lender and its counsel and financial advisor of financial and other information as agreed to between the Applicants and the ~~Interim~~DIP Lender, which may be used in these proceedings, including reporting on a basis to be agreed with the ~~Interim~~DIP Lender;
- (d) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (e) advise the Applicants in their preparation of the Applicants' cash flow statements and the dissemination of other financial information;
- (f) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;
- (g) liaise and consult with any Assistants and any liquidator selected through the ~~Liquidation-Selection~~Realization Solicitation Process, to the extent required, with respect to all matters relating to the Property, the Business and such other matters as may be relevant to the proceedings herein;
- (h) be at liberty to engage independent legal counsel, advisors or such other persons, or utilize the services of employees of its affiliates, as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

- (i) assist the Applicants, to the extent required by the Applicants, with any matters relating to any foreign proceeding commenced in relation to any of the Applicants; and
- (j) perform such other duties as are required by this Order or by this Court from time to time.

29. ~~27.~~ **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

30. ~~28.~~ **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, the *Ontario Occupational Health and Safety Act*, the *British Columbia Environmental Management Act*, the *British Columbia Riparian Areas Protection Act*, the *British Columbia Workers Compensation Act*, the *Alberta Environmental Protection and Enhancement Act*, the *Alberta Water Act*, the *Alberta Occupational Health and Safety Act*, the *Manitoba Environment Act*, the *Manitoba Contaminated Sites ~~Remediation~~ Remediation Act*, the *Manitoba Workplace Safety and Health Act*, the *Quebec Environmental Quality Act*, and the *Quebec Act Respecting Occupation Health and Safety*, and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

31. ~~29.~~ **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicants with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

32. ~~30.~~ **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

33. ~~31.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, counsel to the Applicants, counsel to the Interim Lender and the DIP Lender and financial advisor thereto, shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to, on or subsequent to the ~~date of this Order~~ Filing Date, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor and, counsel to the Applicants, counsel to the Interim Lender and the DIP Lender and financial advisor thereto, in each case, on such terms as such parties may agree and are hereby authorized to pay to the Monitor, counsel to the Monitor and counsel to the Applicants, retainers, *nunc pro tunc*, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

34. ~~32.~~ **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

ADMINISTRATION CHARGE

35. ~~33.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants shall be entitled to the benefit of and are hereby granted a charge (the

“**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount of USD \$~~750,000~~1,500,000, as security for their professional fees and disbursements incurred at their standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs ~~40~~48 and ~~42~~50 hereof.

INTERIM FINANCING

36. ~~34.~~ **THIS COURT ORDERS** that on or after the ~~date of this Order~~Filing Date and until May 8, 2024, Ted Baker Canada and Ted Baker Limited are hereby authorized and empowered to continue to borrow from Canadian Imperial Bank of Commerce (in such capacity, the “**Interim Lender**”) under the existing credit facility (the “**Existing Credit Facility**”) pursuant to the Credit Agreement dated as of March 14, 2023 (as amended by a consent and first amendment agreement dated as of August 3, 2023, and as further amended by a second amendment agreement dated as of April 23, 2024, the “**Existing Credit Agreement**”) in order to finance the Applicants' working capital requirements and other general corporate purposes, capital expenditures and costs of these proceedings (each, an “**Interim Borrowing**” and collectively, the “**Interim Borrowings**”), provided that (i) such Interim Borrowings are to fund obligations which the Applicants, with the consent of the Monitor and the Interim Lender, deem to be necessary for the preservation of the Property or the Business, (ii) such Interim Borrowings shall not, individually or in the aggregate, exceed USD \$7,000,000, (iii) such Interim Borrowings under the Existing Credit Facility shall accrue interest at the default rates set out in the Existing Credit Agreement, (iv) Fashion Canada and Fashion US shall be deemed to (a) guarantee and secure the Interim Borrowings, together with all interest accrued thereon and costs and expenses incurred in connection therewith (collectively, the “Interim Borrowing Obligations”), in the same manner as the other Obligations (as defined in the Existing Credit Agreement) that they have guaranteed and secured under the Existing Credit Agreement and the loan and security documents provided by them in connection therewith, and (b) ratify and acknowledge the guarantees and security they have provided in connection with the Existing Credit Agreement and the loan and security documents provided by them in connection therewith, in each case, without the need for any further guarantee, security or documentation from Fashion Canada or Fashion US, and (v) unless the Interim Lender provides its written waiver, the United States

Bankruptcy Court shall have granted an Order pursuant to the *United States Bankruptcy Code*, 11 U.S.C., §§ 101 – 1532, as amended (the “**Bankruptcy Code**”): (a) provisionally recognizing, ordering and giving effect to this Order and the Interim Lender’s Charge in the United States, and (b) granting such other provisional relief that is sought by the Applicants, at the request of the Interim Lender.

37. ~~35.~~ **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver such amendments to the Existing Credit Agreement or other documents, if any, as may be reasonably required by the Interim Lender to facilitate any Interim Borrowings, provided that failure to execute any such documentation does not invalidate any Interim Borrowings or the validity or priority of the Interim Lender’s Charge.

38. ~~36.~~ **THIS COURT ORDERS** that the Interim Borrowings shall mature on May 8, 2024 and the Interim Borrowing Obligations shall be payable in full by the Applicants on such date, ~~together with all interest accrued thereon and costs or expenses incurred in connection therewith.~~

39. ~~37.~~ **THIS COURT ORDERS** that (i) the Interim Lender shall be entitled to the benefit of and is hereby granted a charge (the “**Interim Lender’s Charge**”) on the Property of each of the Applicants, which Interim Lender’s Charge shall, for greater certainty, not secure any obligation that exists before this Order is made. ~~The, (ii) the~~ Interim Lender’s Charge shall have the priority set out in paragraphs ~~40 and 42 hereof.~~ 48 and 50 hereof, (iii) the Interim Lender’s Charge shall be terminated, released and discharged upon indefeasible payment in full of the Interim Borrowing Obligations from the proceeds of the First Advance (as defined in the DIP Term Sheet), without any other act or formality; and (iv) until indefeasible payment in full of the Interim Borrowings Obligations, all consents required of the DIP Lender in this Order and all rights afforded to the DIP Lender under paragraph 28(c), 46 and 47 of this Order shall also apply to the Interim Lender mutatis mutandis.

40. ~~38.~~ **THIS COURT ORDERS** in the event the Applicants fail to make the payment to the Interim Lender required by paragraph ~~36~~38 herein, then upon three (3) business days’ notice to the Applicants and the Monitor, the Interim Lender may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the Existing Credit Agreement and the Interim Lender’s Charge, including without limitation, to cease making

advances to the Applicants and, subject to further Order of the Court, set off and/or consolidate any amounts owing by the Interim Lender to any of the Applicants against the obligations of the Applicants to the Interim Lender under the Existing Credit Agreement, this Order or the Interim Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants or the Property and for the appointment of a trustee in bankruptcy of the Applicants.

41. ~~39.~~ **THIS COURT ORDERS** that the Interim Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada with respect to any Interim Borrowings.

DIP FINANCING

42. **THIS COURT ORDERS** that Ted Baker Canada and Ted Baker Limited are hereby authorized and empowered to obtain and borrow under a credit facility from the Canadian Imperial Bank of Commerce (the "**DIP Lender**") in order to finance the Applicants' working capital requirements and other general corporate purposes and costs of these proceedings, provided that borrowings under such credit facility shall not, individually or in the aggregate, exceed USD \$28,000,000 unless permitted by further Order of this Court.

43. **THIS COURT ORDERS THAT** such credit facility shall be on the terms and subject to the conditions set forth in the term sheet between the Applicants and the DIP Lender dated as of May 1, 2024 (the "**DIP Term Sheet**"), filed.

44. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the DIP Term Sheet or as may be required by the DIP Lender, and the Applicants are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to

the DIP Term Sheet and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

45. THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "DIP Lender's Charge") on the Property, which DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs 48 and 50 hereof.

46. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge, the DIP Term Sheet or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the DIP Term Sheet or the Definitive Documents, the DIP Lender may cease making advances to the DIP Borrowers pursuant to the DIP Term Sheet and, upon approval of the Court, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the DIP Term Sheet, Definitive Documents and the DIP Lender's Charge, including without limitation, to set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of the Applicants to the DIP Lender under the DIP Term Sheet, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants or the Property and for the appointment of a trustee in bankruptcy of the Applicants; and
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

47. THIS COURT ORDERS that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by

the Applicants under the *Bankruptcy and Insolvency Act* of Canada with respect to any advances made under the DIP Term Sheet or the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

48. ~~40.~~ **THIS COURT ORDERS** that the priorities of the security interests granted by the Administration Charge, Interim Lender's Charge ~~and~~, the DIP Lender's Charge, the Directors' Charge and the KERP Charge (collectively, the "**Charges**"), and the Applicants to CIBC, as among them, shall be as follows:

- (a) First – Administration Charge (to the maximum amount of USD \$~~750,000~~1,500,000);
- (b) Second – Interim Lender's Charge, until such Charge is terminated pursuant to paragraph 39;
- (c) Third - DIP Lender's Charge;
- (d) ~~(e) - Third~~Fourth – Security granted with respect to the Existing Credit Facility (excluding the Interim Borrowings); ~~and~~
- (e) ~~(d) - Fourth~~Fifth - Directors' Charge (to the maximum amount of USD \$~~2,500,000~~5,000,000); ~~and~~
- (f) Sixth – KERP Charge (to the maximum amount of USD \$250,000).

49. ~~41.~~ **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

50. ~~42.~~ **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts (including deemed or constructive trusts), liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any Person, ~~except for any Person who is a “secured creditor” as defined in the CCAA that has not been served with the Notice of Application for this Order. The Applicants shall be entitled, at the Comeback Hearing (as hereinafter defined), on notice to those Persons likely to be affected thereby, to seek priority of the Charges ahead of any Encumbrance over which the Charges may not have obtained priority pursuant to this Order.~~

51. ~~43.~~ **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or pari passu with, any of the Charges unless the Applicants also obtain the prior written consent of the Monitor, the Interim DIP Lender and the other beneficiaries of the Charges (collectively, the “**Chargees**”), or further Order of this Court.

52. ~~44.~~ **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) or receivership order(s) issued pursuant to the BIA or otherwise, or any bankruptcy order or receivership order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution ~~or~~ delivery ~~of~~, perfection, registration or performance of the Interim Borrowings or any amendment or document pursuant to paragraph ~~35 hereof~~ 37, the DIP Term Sheet or the Definitive

- Documents shall create or be deemed to constitute a breach by the Applicants of any Agreement to which they are a party;
- (b) None of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant entering into the DIP Term Sheet, the Interim Borrowings, the creation of the Charges, the Interim Borrowings or the execution ~~or~~, delivery or performance of any amendment or document pursuant to paragraph ~~35 hereof~~37, the DIP Term Sheet or the Definitive Documents; and
- (c) the payments made by the Applicants pursuant to this Order, including with respect to the Existing Credit Facility or in respect of the Interim Borrowings and /or the DIP Term Sheet or the Definitive Documents, and the granting of the Charges do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

53. ~~45.~~ **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interests in such real property leases.

SEALING

54. **THIS COURT ORDERS** that the KERP and related payment information attached as confidential supplement to the First Report are hereby sealed and shall not form part of the Court record, subject to further order of this Court.

SERVICE AND NOTICE

55. ~~46.~~ **THIS COURT ORDERS** that the Monitor shall (a) without delay, publish in the Globe & Mail a notice containing the information prescribed under the CCAA; and (b) within five (5) days after the date of this Order, (i) make this Order publicly available in the manner prescribed under the CCAA, (ii) send, or cause to be sent, in the prescribed manner (including by electronic message to the e-mail addresses as last shown in the Applicants' books and records), a notice to all known creditors having a claim against the Applicants of more than \$1,000, and (iii)

prepare a list showing the names and addresses of such creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of individuals who are creditors publicly available, unless otherwise ordered by the Court.

56. ~~47.~~ **THIS COURT ORDERS** that any employee of any of the Applicants who is sent a notice of termination of employment or any other communication by the Applicants after the date hereof shall be deemed to have received such communication by no later than 8:00 a.m. Eastern Standard/Daylight Time on the fourth (4th) day following the date any such notice is sent, if such notice is sent by ordinary mail, expedited parcel or registered mail to the individual's address as reflected in the Applicants' books and records; provided, however, that any communication that is sent to an employee of the Applicants by electronic message to the individual's corporate email address and/or the individual's personal email address as last shown in the Applicants' books and records shall be deemed to have been received twenty-four (24) hours after the time such electronic message was sent, notwithstanding that any such notices of termination of employment or other employee communication was sent pursuant to any other means.

57. ~~48.~~ **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca//scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a case website shall be established in accordance with the Protocol with the following URL: www.alvarezandmarsal.com/TBRetail (the "**Monitor's Website**").

58. ~~49.~~ **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol or the CCAA and the regulations thereunder is not practicable, the Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and

orders in these proceedings, any notices or other correspondence, by forwarding copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile transmission or electronic message to the Applicants' creditors or other interested parties at their respective addresses (including e-mail addresses) as last shown in the books and records of the Applicants and that any such service or distribution shall be deemed to be received on the earlier of (a) the date of forwarding thereof, if sent by electronic message on or prior to 5:00 p.m. Eastern Standard/Daylight Time (or on the next business day following the date of forwarding thereof if sent on a non-business day); (b) the next business day following the date of forwarding thereof, if sent by courier, personal delivery, facsimile transmission or electronic message sent after 5:00 p.m. Eastern Standard/Daylight Time; or (c) on the third (3rd) business day following the date of forwarding thereof, if sent by ordinary mail.

59. ~~50.~~ **THIS COURT ORDERS** that the Applicants and the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding copies thereof by electronic message to the Applicants' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS).

COMEBACK HEARING

~~51. THIS COURT ORDERS that the comeback motion in these CCAA proceedings shall be heard on May 3, 2024 (the "Comeback Hearing").~~

GENERAL

60. ~~52.~~ **THIS COURT ORDERS** that the Applicants or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their respective powers and duties hereunder.

61. ~~53.~~ THIS COURT ORDERS that noting in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of any or all of the Applicants, the Business or the Property.

62. ~~53.~~ **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Foreign Representative (as defined below), the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants, to the Foreign Representative and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants, the Foreign Representative and the Monitor and their respective agents in carrying out the terms of this Order.

63. ~~54.~~ **THIS COURT ORDERS** that the Applicants and the Monitor be at liberty and are hereby authorized and empowered to seek any relief deemed appropriate by them from the United States Bankruptcy Court and apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that Ted Baker Canada is hereby authorized and empowered to act as the foreign representative (the “**Foreign Representative**”) in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada, including acting as a foreign representative of the Applicants to apply to the United States Bankruptcy Court for relief pursuant to chapter 15 of the Bankruptcy Code.

64. ~~55.~~ **THIS COURT ORDERS** that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order ~~at the Comeback Hearing~~ on not less than ~~five~~seven (~~5~~7) calendar days’ notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

65. ~~56.~~ **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

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

Court File No: CV-24-00718993-00CL

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

Ontario
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

AMENDED AND RESTATED INITIAL ORDER
(amending the Initial Order dated April 24, 2024)

OSLER, HOSKIN & HARCOURT LLP

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Lawyers for the Applicants

TAB 5

Court File No. CV-24-00718993-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	FRIDAY, THE 3 rd
)	
JUSTICE BLACK)	DAY OF MAY, 2024

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.

REALIZATION PROCESS APPROVAL ORDER

THIS MOTION, made by Ted Baker Canada Inc. ("**Ted Baker Canada**"), Ted Baker Limited, OSL Fashion Services Canada Inc. ("**Fashion Canada**"), and OSL Fashion Services, Inc. ("**Fashion US**" and collectively with Ted Baker Canada, Ted Baker Limited, and Fashion Canada, the "**Applicants**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), for an order, among other things, (i) approving the consulting agreement between Ted Baker Canada and Ted Baker Limited and Gordon Brothers Canada ULC and Gordon Brothers Retail Partners, LLC (together, the "**Consultant**") dated as of April 30, 2024 (as may be amended and restated in accordance with the terms of this Order, the "**Consulting Agreement**") and the transactions contemplated thereby, and (ii) granting certain related relief, was heard this day by judicial videoconference via Zoom at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the affidavit of Antoine Adams sworn April 24, 2024, and the Exhibits thereto (the "**Initial Adams Affidavit**"), the affidavit of Antoine Adams sworn May 1, 2024 and the Exhibits thereto (the "**Second Adams Affidavit**"), and the First Report of Alvarez & Marsal Canada Inc., in its capacity as monitor of the Applicants

(in such capacity, the “**Monitor**”) dated May 1, 2024 (the “**First Report**”), and on hearing the submissions of counsel to the Applicants, the Monitor, and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of ● sworn ●. 2024, filed:

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Amended and Restated Initial Order in these proceedings dated May 3, 2024 (the “**Amended and Restated Initial Order**”), the Sales Guidelines (as defined below), or the Consulting Agreement (attached as Exhibit “E” to the Second Adams Affidavit), as applicable;

THE CONSULTING AGREEMENT

3. **THIS COURT ORDERS** that the Consulting Agreement, including the sale guidelines attached as Schedule “A” hereto in respect of the Canadian Stores and as Schedule “B” hereto in respect of the US Stores (together, the “**Sale Guidelines**”), and the transactions contemplated thereunder are hereby approved, authorized and ratified and that the execution of the Consulting Agreement by the Merchant is hereby approved, authorized, and ratified, *nunc pro tunc*, with such minor amendments to the Consulting Agreement (but not the Sale Guidelines) as the Merchant (with the consent of the Monitor) and the Consultant may agree to in writing. Subject to the provisions of this Order and the Amended and Restated Initial Order, the Merchant is hereby authorized and directed to take any and all actions as may be necessary or desirable to implement the Consulting Agreement and each of the transactions contemplated therein. Without limiting the foregoing, the Merchant is authorized to execute any other agreement, contract, deed or document, or take any other action, that is necessary or desirable to give full and complete effect to the Consulting Agreement. The Consultant shall have the right to syndicate and partner with additional entities to serve as “Consultant” under the Consulting Agreement in accordance with the terms thereof.

THE SALE

4. **THIS COURT ORDERS** that the Merchant, with the assistance of the Consultant, is authorized to conduct the Sale in accordance with this Order, the Consulting Agreement and the Sale Guidelines and to advertise and promote the Sale within the Stores in accordance with the Sale Guidelines. If there is a conflict between this Order, the Consulting Agreement and the Sale Guidelines, the order of priority of documents to resolve such conflicts is as follows: (1) this Order; (2) the Sale Guidelines; and (3) the Consulting Agreement.

5. **THIS COURT ORDERS** that, subject to paragraph 12 of the Amended and Restated Initial Order, the Merchant, with the assistance of the Consultant, is authorized to market and sell, or otherwise dispose of, the Merchandise, FF&E and Additional Consultant Goods on a “final sale” and/or “as is” basis and 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, and financial, monetary or other claims, whether or not such claims have attached or been perfected, registered or filed and whether secured, unsecured, quantified or unquantified, contingent or otherwise, whensoever and howsoever arising, and whether such claims arose or came into existence prior to or following the date of this Order (in each case, whether contractual, statutory, arising by operation of law, in equity or otherwise) (all of the foregoing, collectively “**Claims**”), including, without limitation, (a) the Administration Charge, the Interim Lender’s Charge, the Directors’ Charge, the DIP Lender’s Charge, the KERP Charge and any other charges hereafter granted by this Court in these proceedings (collectively, the “**CCAA Charges**”); and (b) all Claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario), *Personal Property Security Act* (Alberta), *Personal Property Security Act* (British Columbia), *Personal Property Security Act* (Manitoba), the *Civil Code of Quebec*, *Uniform Commercial Code* or any other personal or movable property registration system (all of such Claims (including the CCAA Charges) collectively referred to herein as the “**Encumbrances**”), which Encumbrances will attach instead to the proceeds of the Sale (other than amounts specified in paragraph 15 of this Order) in the same order and priority as they existed immediately prior to the Sale.

6. **THIS COURT ORDERS** that subject to the terms of this Order, the Amended and Restated Initial Order and the Sale Guidelines, or any greater restrictions in the Consulting

Agreement, the Consultant shall have the right to enter and use the Stores and Warehouses and all related store services and all facilities and all furniture, trade fixtures and equipment, including the FF&E, located at the Stores and Warehouses other assets of the Merchant as designated under the Consulting Agreement, for the purpose of conducting the Sale and for such purposes, the Consultant shall be entitled to the benefit of the stay of proceedings granted in favour of the Applicants under the Amended and Restated Initial Order, as such stay of proceedings may be extended by further Order of the Court.

7. **THIS COURT ORDERS** that until the end of the FF&E Removal Period for each Store (which shall in no event be later than August 2, 2024, or such later date as may be ordered by this Court), the Consultant shall have access to (a) the Stores in accordance with the applicable Leases and (b) the Warehouses in accordance with the applicable contractual agreements between the applicable Applicant or Applicants and the third party operator of the applicable Warehouse, in each case in accordance with the Sale Guidelines, as applicable, and on the basis that the Consultant is assisting the Merchant, and the Merchant has granted its right of access to the Stores and Warehouses to the Consultant. To the extent that the terms of the applicable Leases are in conflict with any term of this Order or the Sale Guidelines, the terms of this Order and the Sale Guidelines shall govern.

8. **THIS COURT ORDERS** that nothing in this Order shall amend or vary, or be deemed to amend or vary, the terms of the Leases. Nothing contained in this Order or the Sale Guidelines shall be construed to create or impose upon the Merchant or the Consultant any additional restrictions not contained in the applicable Lease.

9. **THIS COURT ORDERS** that, subject to and in accordance with the Consulting Agreement, the Sale Guidelines and this Order, the Consultant is authorized to advertise and promote the Sale, without further consent of any Person other than (a) the Merchant and the Monitor as provided under the Consulting Agreement; or (b) a Landlord as provided under the Sale Guidelines.

10. **THIS COURT ORDERS** that until the Sale Termination Date, the Consultant shall have the right to use, without interference by any Person (including any licensor), all licenses and rights granted to the Merchant to use trade names, trademarks, logos, copyrights or other intellectual property of any Person, solely for the purpose of advertising and conducting the Sale of the

Merchandise, FF&E and Additional Consultant Goods in accordance with the terms of the Consulting Agreement, the Sale Guidelines, and this Order.

CONSULTANT LIABILITY

11. **THIS COURT ORDERS** that the Consultant shall act solely as an independent consultant to the Merchant and that it shall not be liable for any claims against the Merchant other than as expressly provided in the Consulting Agreement (including the Consultant's indemnity obligations thereunder) or the Sale Guidelines and, for greater certainty:

- (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, related or common employer or payor within the meaning of any legislation, statute or regulation or rule of law or equity governing employment, labour standards, pension benefits or health and safety for any purpose whatsoever in relation to the employees of Ted Baker Canada or Ted Baker Limited, and shall not incur any successorship liabilities whatsoever (including without limitation, losses, costs, damages, fines or awards); and
- (c) subject to and without limiting the Consultant's indemnification of the Ted Baker Indemnified Parties pursuant to the Consulting Agreement, the Consultant shall bear no responsibility for any liability whatsoever (including without limitation, losses, costs, damages, fines or awards) relating to Claims of customers, employees and any other Persons arising from events occurring at the Stores during and after the term of the Sale 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.

12. **THIS COURT ORDERS** that, to the extent (a) any Landlord has a claim against the Merchant arising solely out of the conduct of the Consultant in conducting the Sale; and (b) the Merchant has a claim against the Consultant under the Consulting Agreement arising from such conduct, the Merchant shall be deemed to have assigned such claim against the Consultant under the Consulting Agreement free and clear to the applicable Landlord (the “**Assigned Landlord Rights**”); provided that, each such Landlord shall only be permitted to advance the Assigned Landlord Rights against the Consultant if written notice, including the reasonable details of such claim, is provided by such Landlord to the Consultant, the Merchant and the Monitor during the period commencing on the Sale Commencement Date and ending on the date that is thirty (30) days following the FF&E Removal Deadline; provided, however, that, the Landlords shall be provided with access to the Stores to inspect the Stores within fifteen (15) days following the FF&E Removal Deadline.

CONSULTANT AN UNAFFECTED CREDITOR

13. **THIS COURT ORDERS** that the Consulting Agreement shall not be repudiated, resiliated or disclaimed by the Merchant nor shall the claims of the Consultant pursuant to the Consulting Agreement be compromised or arranged pursuant to any plan of arrangement or compromise among the Merchant and its creditors (a “**Plan**”) and, for greater certainty, the Consultant shall be treated as an unaffected creditor in these proceedings and under any Plan.

14. **THIS COURT ORDERS** that the Merchant is hereby authorized and directed, in accordance with the Consulting Agreement, to remit all amounts that become due to the Consultant thereunder.

15. **THIS COURT ORDERS** that no Encumbrances shall attach to any amounts payable or to be credited or reimbursed to, or retained by, the Consultant pursuant to the Consulting Agreement, including without limitation, any amounts to be reimbursed by any Applicant to the Consultant pursuant to the Consulting Agreement (including, for greater certainty, the proceeds of the Additional Consultant Goods (other than the Additional Consultant Goods Fee), which Additional Consultant Goods shall be consigned to the Merchant as a true consignment under applicable law), and at all times the Consultant will retain such amounts, free and clear of all Encumbrances, notwithstanding any enforcement or other process or Claims, all in accordance with the Consulting Agreement.

16. **THIS COURT ORDERS** that notwithstanding:

- (a) the pendency of these proceedings;
- (b) any application for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (“**BIA**”) in respect of any Applicant, or any bankruptcy order made pursuant to any such applications;
- (c) any assignment in bankruptcy made in respect of any Applicant;
- (d) the provisions of any federal, or provincial statute; or
- (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other document or agreement to which any Applicant is a party;

the Consulting Agreement and the transactions and actions provided for and contemplated therein, including without limitation, the payment of amounts due to the Consultant and the Assigned Landlord Rights shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicants and shall not be void or voidable by any Person, including any creditor of the Applicants, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable or reviewable transaction, under the CCAA or BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

PIPEDA

17. **THIS COURT ORDERS** that the Merchant is authorized and permitted to transfer to the Consultant personal information in the Merchant’s custody and control solely for the purposes of assisting with and conducting the Sale and only to the extent necessary for such purposes and the Consultant is hereby authorized to make use of such personal information solely for the purposes as if it were the Merchant, subject to and in accordance with the Consulting Agreement.

GENERAL

18. **THIS COURT ORDERS** that the Applicants or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their respective powers and duties hereunder.

19. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Foreign Representative, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants, to the Foreign Representative and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants, the Foreign Representative and the Monitor and their respective agents in carrying out the terms of this Order.

20. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

SCHEDULE “A”
Canadian Store Sale Guidelines

SALE GUIDELINES (CANADIAN STORE LOCATIONS)

Capitalized terms used but not defined in these Sale Guidelines shall have the meanings ascribed to them in the Amended and Restated Initial Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated May 3, 2024 (as amended and restated from time to time, the “**ARIO**”) made in the proceedings involving, *inter alia*, Ted Baker Canada Inc. and Ted Baker Limited (collectively, the “**Merchant**”) under the *Companies’ Creditors Arrangement Act* (“**CCAA**”) and the Realization Process Approval Order (as defined below), as applicable.

The following procedures shall apply to the sale (the “**Sale**”) of merchandise, inventory, furniture, fixtures and equipment at the Merchant’s Canadian stores or at Canadian concession locations as set forth in the Updated Store list attached as Schedule “1A” to the Consulting Agreement (as defined below) (individually, a “**Store**” and, collectively, the “**Stores**”).

1. Except as otherwise expressly set out herein, and subject to: (i) the Order of the Court dated May 3rd, approving, *inter alia*, the consulting agreement between the Merchant and Gordon Brothers Canada ULC and Gordon Brothers Retail Partners, LLC (collectively, the “**Consultant**”) dated as of April 30, 2024 (as amended and restated from time to time in accordance with the Realization Process Approval Order (as defined below), the “**Consulting Agreement**”) and the transactions contemplated thereunder (the “**Realization Process Approval Order**”); (ii) any further Order of the Court; and/or (iii) any subsequent written agreement between the Merchant and its Landlord(s) and approved by the Consultant, the Sale shall be conducted in accordance with the terms of the applicable Leases. However, nothing contained herein shall be construed to create or impose upon the Merchant or the Consultant any additional restrictions not contained in the applicable Lease.
2. The Sale shall be conducted so that each Store remains open during its normal hours of operation provided for in its respective Lease, until the respective Sale Termination Date (as defined below) of each such Store. The Sale at the Stores shall end by no later than August 2, 2024 (such date, or such other date as determined in accordance with the Realization Process Approval Order, the “**Sale Termination Date**”). Rent payable under the Leases shall be paid up to and including the effective date of an applicable Lease Disclaimer as provided in the ARIO (which, for greater certainty, may be up to seven (7) days following the applicable Sale Termination Date (the “**FF&E Removal Period**”).
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws and regulations, unless otherwise authorized under the CCAA, the ARIO, or otherwise ordered by the Court.
4. All display and hanging signs used by the Consultant in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Notwithstanding anything to the contrary contained in the Leases, the Consultant may advertise the Sale at the Stores as a “everything on sale”, “everything must go”, “store closing” and/or similar theme sale at the Stores (provided however that no signs shall advertise the Sale as a “bankruptcy”, a “liquidation” or a “going out of business” sale, it being understood that the French equivalent of “clearance” is “liquidation” and is permitted to be used). Forthwith upon request from a Landlord, the Landlord’s counsel, the Merchant or the Monitor, the Consultant shall provide the proposed signage packages along with proposed dimensions by e-mail to the applicable Landlords or to their counsel of record and the applicable Landlord

shall notify the Consultant of any requirement for such signage to otherwise comply with the terms of the Lease and/or these Sale Guidelines and where the provisions of the Lease conflict with these Sale Guidelines, these Sale Guidelines shall govern. The Consultant shall not use neon or day-glow signs or any handwritten signage (save that handwritten “you pay” or “topper” signs may be used). If a Landlord is concerned with “Store Closing” signs being placed in the front window of a Store or with the number or size of the signs in the front window, the Merchant, the Consultant and the Landlord will work together to resolve the dispute. Furthermore, with respect to enclosed mall Store locations without a separate entrance from the exterior of the enclosed mall, no exterior signs or signs in common areas of a mall shall be used unless explicitly permitted by the applicable Lease and shall otherwise be subject to all applicable laws. In addition, the Consultant shall be permitted to utilize exterior banners/signs at stand alone, strip mall or enclosed mall Store locations with a separate entrance from the exterior of the enclosed mall; provided, however, that: (i) no signage in any other common areas of a mall shall be used; and (ii) where such banners are not explicitly permitted by the applicable Lease and the applicable Landlord requests in writing that banners are not to be used, no banners shall be used absent further Order of the Court, which may be sought on an expedited basis on notice to the recipients listed in the service list in respect of these CCAA proceedings (the “**Service List**”). Any banners used shall be located or hung so as to make clear that the Sale is being conducted only at the affected Store and shall not be wider than the premises occupied by the affected Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the facade of the premises of a Store as a result of the hanging or removal of the exterior banner, such damage shall be professionally repaired at the expense of the Consultant.

5. The Consultant shall be permitted to utilize sign-walkers and street signage; provided, however, such sign-walkers and street signage shall not be located on the shopping centre or mall premises.
6. The Consultant shall be entitled to include additional merchandise of the Merchant in the Sale; provided that: (i) the additional merchandise is currently in the possession or control of the Merchant (including in any Warehouse (as defined in the Consulting Agreement) used by the Merchant) or has previously been ordered by or on behalf of the Merchant and is currently in transit to the Merchant (including any Warehouse used by the Merchant) or a Store; and (ii) the additional merchandise is of the type and quality typically sold in the Stores and consistent with any restriction on usage of the Stores set out in the applicable Leases.
7. Subject to the Realization Process Approval Order and only with the prior written consent of the Merchant, the Consultant shall be entitled to include Additional Consultant Goods in the Sale, provided that the Additional Consultant Goods are of like kind and category and no lesser quality to the Merchandise (as defined in the Consulting Agreement).
8. Conspicuous signs shall be posted in the cash register areas of each of the Stores to the effect that all sales are “final” and customers with any questions or complaints are to call the Merchant’s customer care number.
9. The Consultant shall not distribute handbills, leaflets or other written materials to customers outside of any of the Stores on Landlord’s property, unless explicitly permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Store is located. Otherwise, the Consultant may solicit customers in the Stores themselves. The Consultant shall not use any giant balloons, flashing lights or amplified sound to advertise the

Sale or solicit customers, except as explicitly permitted under the applicable Lease or agreed to by the Landlord, and no advertising trucks shall be used on Landlord property or mall ring roads, except as explicitly permitted under the applicable Lease or otherwise agreed to by the Landlord.

10. At the conclusion of the Sale and the FF&E Removal Period in each Store, the Consultant shall arrange that the premises for each Store are in “broom-swept” and clean condition, and shall arrange that the Stores are in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any Landlord of a Store shall be removed or sold during the Sale. No permanent fixtures (other than the FF&E (as defined below)) may be removed without the applicable Landlord’s written consent unless otherwise provided by the applicable Lease and in accordance with the Initial Order and the Realization Process Approval Order. Any trade fixtures or personal property left in a Store after the applicable FF&E Removal Period in respect of which the applicable Lease has been disclaimed or resiliated by the Merchant shall be deemed abandoned, with the applicable Landlord having the right to dispose of the same as the Landlord chooses, without any liability whatsoever on the part of the Landlord. Nothing in this paragraph shall derogate from or expand upon the Consultant’s obligations under the Consulting Agreement.
11. Subject to the terms of paragraph 10 above, the Consultant may also sell existing furniture, fixtures and equipment and/or improvements to real property located in the Stores during the Sale and the FF&E Removal Period that are owned by the Merchant, partially owned, third party owned and/or leased (collectively, the “**FF&E**”). For greater certainty, FF&E does not include any portion of a Store’s mechanical, electrical, plumbing, security, HVAC, sprinkler, fire suppression, or fire alarm systems (including related fixtures and affixed equipment). The Merchant and the Consultant may advertise the sale of the FF&E consistent with these Sale Guidelines on the understanding that the Landlord may require such signs to be placed in discreet locations within the Stores reasonably acceptable to the Landlord. Additionally, the purchasers of any FF&E sold during the Sale shall only be permitted to remove the FF&E either through the back shipping areas designated by the Landlord or through other areas after regular Store business hours or, through the front door of the Store during Store business hours if the FF&E can fit in a shopping bag, with Landlord’s supervision if required by the Landlord and in accordance with the Initial Order and the Realization Process Approval Order. The Consultant shall repair any damage to the Stores resulting from the removal of any FF&E by the Consultant or by third party purchasers of FF&E.
12. The Consultant shall not make any alterations to interior or exterior Store lighting, except as authorized pursuant to the affected Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these Sale Guidelines, shall not constitute an alteration to a Store.
13. The Merchant hereby provides notice, including for purposes of the ARIO, to the Landlords of the Merchant’s and the Consultant’s intention to sell and remove FF&E from the Stores. The Consultant shall make commercially reasonable efforts to arrange with each Landlord represented by counsel on the Service List and with any other Landlord that so requests, a walk-through with the Consultant to identify any FF&E that is subject to the Sale. The relevant Landlord shall be entitled to have a representative present in the applicable Stores to observe such removal. If the Landlord disputes the Consultant’s entitlement to sell or remove any FF&E under the provisions of the Lease, such FF&E shall remain on the premises and shall be dealt with as agreed between the Merchant, the Consultant and such Landlord, or by further

Order of the Court upon motion by the Merchant on at least two (2) business days' notice to such Landlord and the Monitor. If the Merchant has disclaimed or resiliated the Lease governing such Store in accordance with the CCAA and the Initial Order, it shall not be required to pay rent under such Lease pending resolution of any such dispute (other than rent payable for the notice period provided for in the CCAA and the Initial Order), and the disclaimer or resiliation of the Lease shall be without prejudice to the Merchant's or the Consultant's claim to the FF&E in dispute.

14. If a notice of disclaimer or resiliation of Lease is delivered pursuant to the CCAA and the ARIO to a Landlord while the Sale is ongoing and the Store in question has not yet been vacated, then: (i) during the notice period prior to the effective date of the disclaimer or resiliation, the Landlord may show the affected Store to prospective tenants during normal business hours, on giving the Merchant, the Monitor and the Consultant at least twenty-four (24) hours' prior written notice; and (ii) at the effective date of the disclaimer or resiliation, the relevant Landlord shall be entitled to take possession of any such Store without waiver of or prejudice to any claims or rights such Landlord may have against the Merchant or any of its affiliates in respect of such Lease or Store; provided that, nothing herein shall relieve such Landlord of any obligation to mitigate any damages claimed in connection therewith.
15. The Consultant and its agents and representatives shall have the same access rights to each Store as the Merchant under the terms of the applicable Lease, and the Landlords shall have access rights to the applicable Store as provided for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings and the terms of the ARIO).
16. The Merchant and the Consultant shall not conduct any auctions of Merchandise or FF&E at any of the Stores.
17. The Consultant shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact persons for the Consultant shall be Monique Sassi, 40 King Street West, Toronto, Ontario, M5H3C2, who may be reached by phone at 416-860-6886 or email at msassi@cassels.com. If the parties are unable to resolve the dispute between themselves, the Landlord or the Merchant shall have the right to schedule a "status hearing" before the Court on no less than two (2) days written notice to the other party or parties and the Monitor, during which time the Consultant shall suspend all activity in dispute other than activities expressly permitted herein, pending determination of the matter by the Court; provided, however, subject to paragraph 4 of these Sale Guidelines, if a banner has been hung in accordance with these Sale Guidelines and is the subject of a dispute, the Consultant shall not be required to take any such banner down pending determination of any dispute.
18. Nothing herein or in the Consulting Agreement is, or shall be deemed to be, a sale, assignment or transfer of any Lease to the Consultant nor a consent by any Landlord to the sale, assignment or transfer of any Lease, or shall, or shall be deemed to, or grant to the Landlord any greater rights in relation to the sale, assignment or transfer of any Lease than already exist under the terms of any such Lease.
19. These Sale Guidelines may be amended on a Store-by-Store basis, by written agreement between the Merchant, the Consultant, and the applicable Landlord, with the consent of the Monitor; provided however, that such amended Sale Guidelines shall not affect or bind any

other Landlord not privy thereto without further Order of the Court approving such amended Sale Guidelines.

SCHEDULE “B”
US Store Sale Guidelines

Sale Procedures¹
(US Store Locations)

1. The Sale will be conducted during normal business hours or such hours as otherwise permitted by the applicable unexpired lease.
2. The Sale will be conducted in accordance with applicable state and local “Blue Laws,” and thus, where such a law is applicable, no Sale will be conducted on Sunday unless the Debtors have been operating such stores on Sundays.
3. On “shopping center” property, neither the Debtors nor the Consultant shall distribute handbills, leaflets, or other written materials to customers outside of any stores’ premises, unless permitted by the applicable lease or if distribution is customary in the “shopping center” in which such store is located; *provided* that the Debtors and the Consultant may solicit customers in the stores themselves. On “shopping center” property, neither the Debtors nor the Consultant shall use any flashing lights or amplified sound to advertise the Sale or solicit customers, except as permitted under the applicable lease or agreed in writing by the landlord.
4. The Debtors and the Consultant shall have the right to use and sell the FF&E. The Debtors and the Consultant may advertise the sale of the FF&E in a manner consistent with these Sale Procedures. The purchasers of any FF&E sold during the Sale shall be permitted to remove the FF&E either through the back or alternative shipping areas at any time, or through other areas after Store business hours; *provided*, however, that the foregoing shall not apply to *de minimis* FF&E sales made whereby the item can be carried out of a Store in a shopping bag.
5. At the conclusion of the Sale, Consultant shall vacate the Stores in broom clean condition; provided that Consultant may abandon any FF&E not sold in the Sale at the conclusion of the Sale, without cost or liability of any kind to Consultant. Any abandoned FF&E left in a Store after a lease is rejected shall be deemed abandoned to the landlord having a right to dispose of the same as the landlord chooses without any liability whatsoever on the part of the landlord to any party and without waiver of any damage claims against the Merchant. For the avoidance of doubt, as of the Sale Termination Date or vacate date, as applicable, Consultant may abandon, in place and without further responsibility or liability of any kind, any FF&E.
6. The Debtors and the Consultant may, but are not required to, advertise the Sale as “store closing,” “sale on everything/everything on sale,” “everything must go,” or similarly themed Sale (provided however that no signs shall advertise the Sale as a “bankruptcy”, a “liquidation” or a “going out of business” sale). The Debtors and the Consultant may also have a “countdown to closing” sign prominently displayed in a manner consistent with these Sale Procedures.

¹ Capitalized terms used but not defined in these Sale Procedures have the meanings given to them in the Interim Order to which these Sale Procedures are attached as Exhibit ●, or the Motion to which the Interim Order is attached, as applicable.

7. The Debtors and the Consultant shall be permitted to utilize sign walkers, displays, hanging signs, and interior banners in connection with the Sale; *provided* that such sign walkers, displays, hanging signs, and interior banners shall be professionally produced and hung in a professional manner. Neither the Debtors nor the Consultant shall use neon or day-glo on its sign walkers, displays, hanging signs, or interior banners if prohibited by the applicable lease or applicable law. Furthermore, with respect to enclosed mall locations, no exterior signs or signs in common areas of a mall shall be used unless otherwise expressly permitted in these Sale Procedures. In addition, the Debtors and the Consultant shall be permitted to utilize exterior banners at (a) non-enclosed mall stores and (b) enclosed mall stores to the extent the entrance to the applicable Store does not require entry into the enclosed mall common area; *provided*, that such banners shall be located or hung so as to make clear that the Sale is being conducted only at the affected Store, shall not be wider than the storefront of the Store and shall not be larger than 4 x 40 feet. In addition, the Debtors shall be permitted to utilize sign walkers in a safe and professional manner. Nothing contained in these Sale Procedures shall be construed to create or impose upon the Debtors or the Consultant any additional restrictions not contained in the applicable lease agreement.
8. Neither the Debtors nor the Consultant shall make any alterations to the storefront, roof, or exterior walls of any stores or shopping centers, or to interior or exterior store lighting, except as authorized by the applicable lease. The hanging of in-Store signage or exterior banners shall not constitute an alteration to a Store.
9. Affected landlords will have the ability to negotiate with the Debtors, or at the Debtors' direction, the Consultant, modifications to the Sale Procedures. The Debtors and the landlord of any Store are authorized to enter into agreements ("Side Letters") without further order of the Court, provided that Side Letters do not have a material adverse effect on the Debtors or their estates.
10. To the extent relevant, and as set forth in more detail in the Consulting Agreement, conspicuous signs will be posted in each of the affected stores to the effect that all sales are "final."
11. The Debtors will keep store premises and surrounding areas clear and orderly, consistent with past practices.
12. An unexpired nonresidential real property lease will not be deemed rejected by reason of a Sale or the adoption of these Sale Procedures.
13. The rights of landlords against the Debtors for any damages to a store shall be reserved in accordance with the provisions of the applicable lease.
14. If and to the extent that the landlord of any Store contends that the Debtors or the Consultant are in breach of or default under these Sale Procedures, such landlord shall provide at least five days' written notice, served by email or overnight delivery, on:

If to the Debtors:

c/o Osler, Hoskin and Harcourt LLP
100 King Street West
1 First Canadian Place, Suite 6200
Toronto, ON M5X 1B8
Attn: Tracy C. Sandler and Shawn Irving
Email: tsandler@osler.com and sirving@osler.com

and

Cole Schotz P.C.
Court Plaza North
25 Main Street
Hackensack, NJ 07601
Attn: Warren A. Usatine, Esq. and Felice Yudkin, Esq.
Email: wusatine@coleschotz.com and fyudkin@coleschotz.com

If to the Consultant:

Gordon Brothers Retail Partners, LLC
101 Huntington Avenue, 11th Floor
Boston, MA 02199
Attn: Durien Sanchez and David Braun
E-mail: dsanchez@gordonbrothers.com and dbraun@gordonbrothers.com

with copies to:

Cassels, Brock & Blackwell LLP
Bay Adelaide Centre, North Tower
40 Temperance St. Suite 3200
Toronto ON M5H 0B4
Attn: Jane Dietrich and Monique Sassi
Email: jdietrich@cassels.com and msassi@cassels.com

and

Reimer Braunstein LLP
Times Square Tower, Suite 2506
Seven Times Square
New York, NY 10036
Attn: Steven E. Fox, Esq.
Email: sfox@riemerlaw.com

And in either case, with copies to:

Alvarez and Marsal Canada Inc.
Royal Bank Plaza, South Tower

Suite 3500 – 200 Bay Street
Toronto, ON M5J 2J1
Attn: Joshua Nevsky and Greg Karpel
Email: jnevsky@alvarezandmarsal.com and gkarpel@alvarezandmarsal.com

with copies to:

Bennett Jones LLP
100 King Street West
1 First Canadian Place, Suite 3400
Toronto, ON M5X 1A4
Attn: Sean Zweig, and Jesse Mighton
Email: zweigs@bennettjones.com and mightonj@bennettjones.com

15. If the parties are unable to resolve the dispute, either the landlord or the Debtors shall have the right to schedule a hearing before the Court on no less than five days' written notice to the other party, served by email or overnight delivery.

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

Court File No: CV-24-00718993-00CL

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

Ontario
**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

REALIZATION PROCESS APPROVAL ORDER

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Lawyers for the Applicants

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

	ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST
	PROCEEDING COMMENCED AT TORONTO
	MOTION RECORD (Comeback Hearing returnable May 3, 2024)
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