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**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

**MOTION OF TED BAKER CANADA INC., AS FOREIGN REPRESENTATIVE OF
TED BAKER CANADA INC. AND CERTAIN OF ITS AFFILIATES, FOR AN ORDER
GRANTING CERTAIN PROVISIONAL RELIEF**

Ted Baker Canada Inc. (“Ted Baker Canada”) in its capacity as the authorized foreign representative (“Foreign Representative”) of the above-captioned debtors (the “Debtors” or the “Company”), which are the subject of jointly-administered proceedings under Canada’s *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (as amended, the “CCAA”) in the Ontario Superior Court of Justice, in Toronto, Ontario, Canada (the “Canadian Proceedings” and such court, the “Canadian Court”), respectfully moves (the “Motion”) as follows:

¹ The Debtors in these Chapter 15 cases, along with the last four digits of each Debtor’s U.S. Federal Employer Identification Number (“FEIN”) or Canada Revenue Agency Business Number (“BN”), are: Ted Baker Canada Inc. (BN 3889); Ted Baker Limited (FEIN 3341); OSL Fashion Services, Inc. (FEIN 1225); and OSL Fashion Services Canada (BN 0001).

RELIEF REQUESTED

1. Pursuant to sections 105(a), 362, 363, 364, 365(a), 365(e), 1517, 1519, 1521, and 1522 of title 11 of the United States Code (the “Bankruptcy Code”), the Foreign Representative respectfully requests entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), providing the following relief (collectively, the “Requested Provisional Relief”):

- (a) recognizing and enforcing in the United States, on a provisional basis, the initial order of the Canadian Court (the “Initial CCAA Order”) that, among other things:²
 - i. authorizes the Debtors to continue to borrow from Canadian Imperial Bank of Commerce (the “Interim Lender”) under their existing credit facility (the “Interim Facility”) in an aggregate principal amount up to \$7 million under the terms set forth in paragraph 35 of the Initial CCAA Order;
 - ii. grants the Interim Lender a charge against the Debtors’ property pursuant to Section 506(c), 552(b) and 105(a) of the Bankruptcy Code under the terms set forth in paragraph 38 of the Initial CCAA Order (the “Interim Lender Charge”) as security for all obligations to the Interim Lender under the Interim Facility and having the priority set out in paragraph 40 of the Initial CCAA Order;
 - iii. confirms that the existing security in favor of the Interim Lender continues in the priority set out in paragraph 40 of the Initial CCAA Order;
 - iv. grants the Debtors’ directors and officers a charge against the Debtors’ property for an amount not to exceed \$2.5 million (the “Directors’ Charge”) as security for the indemnity provided in paragraph 23 of the CCAA Initial Order and having the priority set out in paragraph 40 of the Initial CCAA Order;

² Terms used but not defined in the Motion shall have the meaning ascribed to them in the Initial CCAA Order, a copy of which is attached to the Adams Declaration.

- v. ordering that no Person shall be entitled to set off amounts due and owing on account of pre-filing obligations against amounts that may become due and owing on account of post-filing obligations without the consent of the Applicants and the Monitor, or leave of the Canadian Court;
 - vi. grants the Debtors authority to disclaim or resiliate (*i.e.*, cancel) leases and contracts, subject to the notice procedures and other requirements in the CCAA;
 - vii. grants the Monitor, the Monitor's legal counsel, and the Debtors' (including the Foreign Representatives') legal counsel a charge against the Debtors' property for an aggregate amount not to exceed \$750,000 (the "Administration Charge," and together with the Interim Lender Charge and the Directors' Charge, the "CCAA Charges") as security for the professional fees and expenses incurred in connection with the CCAA Proceedings and Chapter 15 Cases; and
- (b) granting, on a provisional basis, to and for the benefit of the Interim Lender, certain protections afforded by the Bankruptcy Code, including those protections provided by section 364(c), 364(d), 364(e) of the Bankruptcy Code, including, without limitation, the grant of liens and security interests in the Debtors' property located within the territorial jurisdiction of the United States pursuant to section 364(d)(1) in respect of, and in accordance with the Interim Lender's Charge and finding that any loans made by the Interim Lender in accordance with the Initial CCAA Order prior to the entry of an order granting recognition shall be extended in "good faith" as contemplated by sections 363(m) and 364(e), such that the validity of the loans made pursuant to the Initial CCAA Order, and the priority of the Interim Lender's Charge in respect of the Debtors' property located within the territorial jurisdiction of the United States shall not be affected by any reversal or modification of the Interim Provisional Relief Order on appeal or entry of an order denying the Debtors' request for entry of an order granting recognition;
- (c) providing that the Interim Lender shall not be subject in any way to (i) the equitable doctrine of "marshaling" or any similar doctrine with respect to the collateral, (ii) 506(c), which the Debtors waive with respect to the Interim Lender and (iii) the "equities of the case" exception found within Bankruptcy Code Section 552(b).
- (d) applying sections 362 and 365(e) of the Bankruptcy Code in these chapter 15 cases on a provisional basis, pursuant to sections 105(a), 1519(a) and 1521(a)(7) of the Bankruptcy Code;
- (e) providing that notwithstanding any provision in the Bankruptcy Rules to the

contrary, (i) the Proposed Order shall be effective immediately and enforceable upon entry, (ii) the Foreign Representative is not subject to any stay in the implementation, enforcement, or realization of the relief granted in the Proposed Order, and (iii) the Foreign Representative is authorized and empowered, and may, in its discretion and without further delay, take any action and perform any act necessary to implement and effectuate the terms of the Proposed Order; and

- (f) granting such other relief as this Court deems necessary and/or appropriate, including, without limitation, giving full force and effect in the United States to any extensions and/or continuations by the Canadian Court of the relief provided in the Initial Order.

2. The Foreign Representative has commenced these chapter 15 cases in order to seek aid from this Court in respect of the CCAA. Such aid includes the Requested Provisional Relief, which is sought to prevent actions that could cause the Debtors irreparable harm and undermine the implementation of the restructuring and the CCAA, to the detriment of all constituencies. For the avoidance of doubt, the Foreign Representative seeks the Requested Provisional Relief through and including the hearing to consider recognition of the chapter 15 cases.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 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.). This is a core proceeding under 28 U.S.C. § 157(b)(2)(P). These cases have been properly commenced pursuant to section 1504 of the Bankruptcy Code by the filing of chapter 15 petitions and the *Verified Petition for Entry of Order Recognizing Foreign Main Proceedings and Granting Additional Relief* (the “Verified Petition,” and together with the chapter 15 petitions, the “Petitions”) for recognition of the CCAA Proceedings under section 1515 of the Bankruptcy Code.

4. The Foreign Representative, in its capacity as authorized foreign representative, consents to the entry of final orders or judgments by the Court if it is determined that the Court,

absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

5. Venue is proper in this District pursuant to section 1410 of title 28 of the United States Code.

6. The statutory predicates for the relief requested herein are sections 105, 362, 363, 364, 365(a), 365(e), 1517, 1519, 1521, and 1522 of the Bankruptcy Code.

BACKGROUND

7. The Company operates an integrated fashion clothing retail, wholesale and e-commerce business under the TED BAKER banner in Canada and the United States. The Company's business operations are conducted, in Canada, through Ted Baker Canada, and in the United States, through 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. Additional information about the Debtors' business and operations, the events leading up to the filing of the Petitions, and the facts and circumstances surrounding the CCAA Proceedings and the Chapter 15 Cases, is set forth in the contemporaneously filed *Declaration of Antoine Adams in Support of the Debtors' Chapter 15 Petitions and First Day Pleadings in Foreign Proceedings* (the "Adams Declaration"). The Adams Declaration is incorporated herein by reference.

9. As set forth in the Adams Declaration, the Debtors urgently require relief from this Court, including implementation of a provisional stay, in light of their current financial challenges, including liquidity constraints that have resulted in significant arrears owing to certain vendors, the potential termination of a critical license agreement, and the potential cessation of shipments by the Applicants' third-party warehouse distribution provider as a result of the arrears.

10. Most imminently, on or about April 17, 2024, Ted Baker Limited and Ted Baker Canada received Notices of Breach from Authentic Brands Group (“ABG”) for the amounts owing under their three License Agreements with ABG. The Licenses Agreement provide for a five business day cure period, which cure period expires on April 25, 2024. The termination of the Debtors’ License Agreements with ABG would cause the Debtors, and their constituents, irreparable and irreversible harm. The Debtors reserve all rights with respect to, among other things, ABG, the received notice, and the License Agreements.

11. On the date hereof, the Company filed the Canadian Proceedings and the Canadian Court entered the Initial CCAA Order, which is attached to the Petitions. Among other things, the Initial CCAA Order appointed Alvarez & Marsal Canada Inc. (“A&M,” or the “Monitor”) as monitor pursuant to the CCAA to, among other things, assist the Debtors in their business and financial affairs in accordance with section 23 of the CCAA and the terms of the Initial CCAA Order. The Canadian Court also appointed the Foreign Representative to assist and oversee the Debtors and represent them in these chapter 15 proceedings.

12. On the date hereof, the Foreign Representative filed the Petitions under chapter 15 of the Bankruptcy Code for recognition of the Canadian Proceeding, thereby commencing the Debtors’ chapter 15 cases.

BASIS FOR RELIEF

A. Sections 1519, 1521 and 1522 of the Bankruptcy Code Authorizes the Requested Provisional Relief

13. Upon this Court’s final recognition of the Canadian Proceeding as a “foreign main proceeding,” the automatic stay provided by section 362 of the Bankruptcy Code will immediately apply with respect to all of the Debtors’ property that is within the territorial jurisdiction of the United States. *See* 11 U.S.C. § 1520(a)(1). Unlike in a typical corporate reorganization case under

Chapter 11 of the Bankruptcy Code, however, in an ancillary proceeding commenced under Chapter 15, no stay automatically protects the Debtors' assets and operations in the United States during the period between the petition date and the date on which the Court enters an order recognizing the Canadian Proceeding as a foreign proceeding.

14. Therefore, to prevent any irreparable harm during the "interim period" between commencement of a Chapter 15 proceeding and entry of an order recognizing the foreign proceeding, section 1519 of the Bankruptcy Code authorizes the Court to grant the Foreign Representative certain enumerated relief pending the Court's ruling on the Petitions:

- (a) From the time of filing a petition for recognition until the court rules on the petition, the court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including —
 - (1) staying execution against the debtor's assets;
 - (2) entrusting the administration or realization of all or part of the debtor's assets located in the United States to the foreign representative or another person authorized by the court, including an examiner, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; and
 - (3) any relief referred to in paragraph (3), (4) or (7) of section 1521(a).

11 U.S.C. § 1519(a).

15. Section 1519(a)(3) of the Bankruptcy Code expressly authorizes the Court to grant the Foreign Representative any relief referenced in, among others, section 1521(a)(7) of the Bankruptcy Code. Section 1521(a)(7), in turn, permits a court to grant any relief (with certain limited exceptions that are not applicable here) that would be available to a bankruptcy trustee, thereby authorizing application of sections 105, 362, 363, 364(e) and 365(e) of the Bankruptcy Code to the Chapter 15 Cases on a provisional basis and the granting of provisional recognition to foreign court orders.

16. Furthermore, section 1522 of the Bankruptcy Code makes clear that “[t]he court may grant relief under section 1519 or 1521 ... only if the interests of the creditors and other interested entities, including the debtor, are sufficiently protected.” As noted herein, failure to procure the relief sought herein would be determinantal to the interests of the Debtors, creditors and other interest entities.

17. Courts commonly grant provisional relief to protect a debtor’s assets until a recognition hearing, and at least one court has granted provisional relief to protect inventory specifically. In *In re Innua Canada Ltd.*, the court found that the debtor would suffer irreparable harm absent an injunction because, in part, warehouses that housed the debtor’s inventory might sell the inventory in their possession as compensation for unpaid invoices. No. 09-16362, 2009 WL 1025088, at *4 (Bankr. D.N.J. March 25, 2009); *see also In re Caledonian Bank Ltd.*, No. 15-10324 (MG) (Bankr. S.D.N.Y. Feb. 16, 2015) (granting a stay of execution against the debtor’s assets because, absent such relief, the Debtor would “suffer irreparable harm to the value of its business, assets, and property”); *In re Tibanne Co. Ltd.*, No. 15-10355 (REG) (Bankr. S.D.N.Y. Feb. 13, 2015) (granting injunction and finding that an attack on the debtor’s assets in the United States would cause harm to the debtor’s efforts to liquidate); *In re Sifco S.A.*, No. 14-11179 (REG) (Bankr. S.D.N.Y. May 7, 2014) (finding a material risk that creditors or other parties in interest would attempt to control or possess the debtor’s assets existed absent an injunction).

18. Of particular relevance to these Chapter 15 Cases is section 364(e), which provides that a reversal or modification of a financing order does not affect the validity or priority of a post-petition lender’s claim or lien. Lenders to foreign debtors in chapter 15 cases are entitled to the protection that their claims and liens retain their validity and priority if a recognition order is not

entered. Absent such relief, the incorporation of section 364 into chapter 15 through sections 1519 and 1521(a)(7) would have little effect.

19. Further, the Court should approve the Debtors' waivers of (i) the equitable doctrine of "marshaling", (ii) section 506(c), and (ii) section 552(b)'s "equities of the case" exception, which are each routinely waived in chapter 11 cases under similar circumstances. Courts have also granted such relief on a provisional basis. *See, e.g., In re Cinram International Inc.*, Case No. 12-11882 (KJC) (Bankr. D. Del. June 26, 2012) (granting provisional DIP relief), *In re Arctic Glacier Int'l Inc.*, Case No. 12-10605 (KG) (Bankr. D. Del. Feb. 23, 2012) (order granting provisional DIP relief); *In re Fraser Papers Inc.*, Case No. 09-12123 (KJC) (Bankr. D. Del. June 19, 2009); *In re W.C. Wood Corp., Ltd.*, Case No. 09-11893 (KG) (Bankr. D. Del. June 1, 2009); *In re Destinator Techs. Inc.*, Case No. 08-11003 (CSS) (Bankr D. Del. May 20, 2008).

B. The Requested Provisional Relief Is Justified

20. Relief under section 1519 is available where the foreign representative can satisfy the applicable standard for injunctive relief. 11 U.S.C. § 1519(e). To obtain injunctive relief, the movant must make a showing of (1) a likelihood of success on the merits; (2) irreparable harm in the absence of an injunction; (3) a balance of the hardships tipping in their favor; and (4) non-disservice of the public interest by issuance of a preliminary injunction. *Secured Worldwide LLC v. Kinney*, No. 15 CIV. 1761 CM, 2015 WL 1514738, at *10 (S.D.N.Y. Apr. 1, 2015) (citing *Winter v. Natural Res. Defense Council*, 555 U.S. 7, 20 (2008)). In evaluating these factors, courts take a "flexible approach and no one factor is determinative." *In re Calpine Corp.*, 365 B.R. 401, 409 (S.D.N.Y. 2007) (internal citations omitted). The Debtors' circumstances satisfy the requirements for injunctive relief.

(i) **There Is a Substantial Likelihood of Recognition**

21. As detailed more fully in the Verified Petition and the Adams Declaration, there is a substantial likelihood of recognition of the Canadian Proceedings as foreign main proceedings, or, in the alternative, foreign nonmain proceedings. The Canadian Proceedings are “foreign proceeding[s]” and the Foreign Representative is a “foreign representative,” as those terms are defined in sections 101(23) and (24) the Bankruptcy Code. In addition, these Chapter 15 Cases were duly and properly commenced by filing the Petitions in accordance with section 1515 of the Bankruptcy Code and Rule 7007.1 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). Moreover, and for the reasons set forth in the Verified Petition, the Canadian Proceedings are foreign main proceedings as defined in section 1502 of the Bankruptcy Code because the Debtors’ center of main interests is located in Canada. To the extent this Court determines that any of the Canadian Proceedings (with respect to the Debtors incorporated outside of Canada) fail to establish Canada as their respective center of main interest, for all the reasons set forth herein and in the Verified Petition, the Debtors submit that, at a minimum, such Canadian Proceeding is a foreign nonmain proceeding, as each Debtor has an establishment within the meaning of section 1502 of the Bankruptcy Code in Canada.

(ii) **The Debtors Will Suffer Irreparable Harm if the Request for Provisional Relief Is Denied**

22. Provisional recognition and relief under sections 105(a), 362, 363, 364(c), 364(d), 364(e), 365(a), 365(e), 1517, 1519, and 1521, and 1522 of the Bankruptcy Code in these cases is important to prevent irreparable damage to the interests of the Debtors’ estates, creditors, and the efficacy of the Canadian Proceedings. The stay in section 362 of the Bankruptcy Code is one of the fundamental protections provided by bankruptcy law, halting all collection efforts, harassment and foreclosure actions and providing debtors with necessary breathing room from the financial

pressures that caused the bankruptcy filing. Section 365(e) of the Bankruptcy Code provides a debtor with similar relief by prohibiting counterparties from terminating contracts with the debtor solely because of the debtor's bankruptcy filing. Although the Initial CCAA Order implements a stay preventing parties from taking actions against the Debtors and their assets wherever located, the Debtors have assets in the United States that may be subject to enforcement actions by certain creditors and litigants that may not believe they are bound by the Initial CCAA Order.³ *See In re Daebo Int'l Shipping Co.*, 543 B.R. 47, 54 (Bankr. S.D.N.Y. 2015) (holding that "the Court finds that under [Canadian] law the stay order plainly was intended to have worldwide effect [Canadian] law (and the stay order) are clear, and it is consistent with the purpose of Chapter 15 to give effect to them."). The granting of a stay, as set forth herein, for the initial ten day period set forth in the Initial CCAA Order, is fundamental to an orderly and value maximizing process in the CCAA.

23. If these protections afforded by sections 362 and 365(e) are not applied here, the Debtors could face immediate and irreparable harm resulting from the potential termination of critical leases and contracts, including the License Agreements with ABG and the piecemeal loss of assets from individual creditor collection and enforcement efforts. Absent the provisional relief requested, counterparties in the United States may attempt to terminate these valuable leases and contracts, which would undermine the centralized nature and fundamental fairness of the Canadian Proceedings.

24. In the bankruptcy context, irreparable harm exists where the conduct to be enjoined would, if not stayed, interfere with the restructuring process. *In re Calpine Corp.*, 365 B.R. at 409

³ The Foreign Representative and the Debtors reserve all rights and remedies with respect to any party that takes action against the Debtors or their assets inconsistent with the Initial CCAA Order and Canadian law.

(internal citations omitted) (a court may issue a “preliminary injunction in the bankruptcy context where the action to be enjoined is one that threatens the reorganization process”); *see also Lyondell Chem. Co. v. Centerpoint Energy Gas Servs. (In re Lyondell Chem. Co.)*, 402 B.R. 571, 590 (Bankr. S.D.N.Y. 2009).

25. In the chapter 15 context, irreparable harm exists when the failure to enjoin local actions could disrupt the orderly restructuring of a foreign debtor and undermine the fair distribution of assets, or where creditor actions would pose the threat of dissipating such assets. *See, e.g., In re Garcia Avila*, 296 B.R. 95, 114 (Bankr. S.D.N.Y. 2003) (recognizing irreparable harm if creditors were permitted to pursue their individual remedies and thereby “diminish the recovery available to other creditors and possibly wreck the [foreign debtor’s] reorganization efforts”); *In re Berau Capital Resources PTE Ltd.*, No. 15-11804 (MG) (Bankr. S.D.N.Y. Aug. 6, 2015) [Docket No. 20] (granting provisional relief where failure to enjoin could cause harm to foreign debtor from, *inter alia*, interference with efforts to restructure its operations pursuant to a foreign proceeding and “undermin[e] the [f]oreign [r]epresentative’s efforts to achieve an equitable result for the benefit of all of the [f]oreign [d]ebtor’s creditors and interest holders”); *In re Netia Holdings S.A.*, 278 B.R. 344, 352 (Bankr. S.D.N.Y. 2002) (finding irreparable injury in the “dissipation of the finite resources of an insolvent estate”). That is precisely the risk here. If individual creditors were permitted to commence individual enforcement actions in the United States, the Debtors’ ability to maximize value for distribution to stakeholders through the Canadian Proceeding would be severely undermined.

26. In addition, the Debtors will suffer immediate and irreparable harm if the Debtors do not obtain access to the Interim Facility approved by the Canadian Court. As set forth in the Adams Declaration, the Debtors require immediate access to the Interim Facility to fund urgent working capital requirements, as well as other general corporate purposes and the costs of

administering the Canadian Proceedings until a final hearing can be held on the Petitions. The Interim Lender has permitted the extension of credit, but the provisional recognition of the Initial CCAA Order, including the Interim Lender's Charge, and the protections afforded via sections 364(c), (d) and (e) of the Bankruptcy Code, are preconditions to funding.

27. With the assistance of A&M, the Debtors have prepared cash flow projections that forecast the Debtors' cash needs on a weekly basis following entry of the Initial CCAA Order. As discussed in the Adams Declaration, the Debtors have run out of cash and require immediate access to the Interim Facility. The funding provided by the Interim Facility is therefore necessary to make critical payments and to give vendors, employees and other critical parties who deal with the Debtors confidence that the Debtors have access to funds to meet their post-filing obligations to such parties in the normal course. It also provides the crucial runway to effectuate a value-maximizing CCAA. If such requested relief is not granted, the Debtors ultimately will be unable to meet their obligations and maintain the operation of their business, and risk destroying substantial value otherwise available for creditors.

28. Accordingly, the Foreign Representative requests that the Court, on a provisional basis, recognize the liens, charges and other protections negotiated in the Interim Facility and approved by the Canadian Court, and afford the Interim Lender the protections available under section 364(c), 364(d), and 364(e) of the Bankruptcy Code. Cause exists to grant the requested relief pursuant to sections 1519 and 1521(a)(7) of the Bankruptcy Code because the Debtors require immediate access to the funds under the Interim Facility and the Interim Lender has requested an order providing the express protections of section 364(e) of the Bankruptcy Code. In sum, absent the interim financing, the Debtors and their creditors will suffer immediate and irreparable harm.

(iii) **There Will Be No Harm to Creditors if the Provisional Relief Is Granted**

29. The Debtors' creditors will not be harmed by the Requested Provisional Relief as it will largely preserve the *status quo* and will enable the Debtors to continue to finance their operations for the short time necessary for the Court to rule on the Petitions. In fact, granting the request for provisional relief will benefit the Debtors' creditors because it will ensure that the value of the Debtors' assets is preserved for the benefit of all interested parties. Indeed, as stated in the legislative history to section 362 of the Bankruptcy Code:

The automatic stay also provides creditor protection. Without it, certain creditors would be able to pursue their own remedies against the debtor's property. Those who acted first would obtain payment of the claims in preference to and to the detriment of other creditors. Bankruptcy is designed to provide an orderly liquidation procedure under which all creditors are treated equally. A race of diligence by creditors for the debtor's assets prevents that.

H.R. Rep. No. 95-595, at 340-42 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6297. Similarly, the legislative history to section 365(e) provides:

Subsection (e) invalidates ipso factor [sic] or bankruptcy clauses. These clauses, protected under present law, automatically terminate the contract or lease, or permit the other contracting party to terminate the contract or lease, in the event of bankruptcy. This frequently hampers rehabilitation efforts. If the trustee may assume or assign the contract under the limitations imposed by the remainder of the section, then the contract or lease may be utilized to assist in the debtor's rehabilitation or liquidation.

Id. at 348-49, 1978 U.S.C.C.A.N at 6304-05.

30. The Foreign Representative submits that there will be no harm to creditors if its request for provisional relief is granted. Rather, the Requested Provisional Relief is narrowly tailored to the goal of preserving value for all stakeholders pending the court's consideration of the Petitions.

(iv) **The Public Interest Favors Granting the Requested Provisional Relief**

31. Finally, the relief requested is in the public interest. Protecting the Debtors' assets, business operations and processes within the United States will assist the Canadian Court in its efforts to oversee an equitable restructuring under the CCAA.

32. In the context of a bankruptcy proceeding, the public interest is "in promoting a successful reorganization." *In re Lazarus Burman Assocs.*, 161 B.R. 891, 901 (Bankr. E.D.N.Y. 1993); *Rehabworks, Inc. v. Lee (In re Integrated Health Servs., Inc.)*, 281 B.R. 231, 239 (Bankr. D. Del. 2002) ("In the context of a bankruptcy case, promoting a successful reorganization is one of the most important public interests."). In the instant case, a successful restructuring of the Company's affairs hinges on preservation of the Debtors' business enterprise while it considers and pursues strategic alternatives under the Canadian Court's jurisdiction. Moreover, granting the requested relief furthers the cooperation between courts of the United States and foreign courts—one of the core purposes of Chapter 15. *See* 11. U.S.C. § 1501(a) ("The purpose of this chapter is to incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives of . . . cooperation between courts of the United States . . . and the courts and other competent authorities of foreign countries involved in cross-border insolvency cases.")

NOTICE

33. The Foreign Representative will provide notice of this Motion consistent with Bankruptcy Rule 2002(q) and Local Rule 9013-1(m). The Foreign Representative proposes to notify all known creditors and parties in interest of the filing of the Petitions and the Foreign Representative's request for entry of the Final Order in the form and manner set forth in the *Motion of Foreign Representative for Entry of Order Scheduling Hearing and Specifying Form and Manner of Service of Notice Pursuant to Sections 1515 and 105(a) of the Bankruptcy Code and*

Bankruptcy Rules 2002 and 9007, filed contemporaneously herewith. The Foreign Representative submits that, in view of the facts and circumstances, such notice is sufficient and no other or further notice need be provided.

CONCLUSION

WHEREFORE, for all of the reasons stated above, the Foreign Representative respectfully requests that this Court: (a) enter an order, substantially in the form attached hereto as Exhibit A, granting the relief requested herein; and (b) grant such other and further relief as this Court deems just and proper.

Dated: April 24, 2024
New York, New York

Respectfully submitted,

COLE SCHOTZ P.C.

By: /s/ Warren A. Usatine

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EXHIBIT A

Provisional Relief Order

**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. __

**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 requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors; and it appearing that the relief requested in the Motion is necessary and beneficial to the Debtors; and no objections or other responses having been filed that have not been overruled, withdrawn or otherwise resolved; 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 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 are satisfied in accordance with section 1517 of the Bankruptcy Code, and (d) application of section 365(e) on an interim basis to prevent contract counterparties from terminating their prepetition contracts with the Debtors is entirely consistent with the injunctive relief afforded by the automatic stay under section 362 of the Bankruptcy Code.

C. The Foreign Representative has demonstrated that commencement or continuation of any action or proceeding in the United States against the Debtors should be enjoined pursuant to sections 105(a), 1519, 1521 and 1522 of the Bankruptcy Code, which protections, in each case, shall be coextensive with the provisions of section 362 of the Bankruptcy Code, to permit the expeditious and economical administration of the Canadian Proceedings, and such relief will either (a) not cause an undue hardship to other parties in interest or (b) any hardship to parties is outweighed by the benefits of the relief requested.

D. The Foreign Representative has demonstrated that without the protection of sections 362 and 365(e) of the Bankruptcy Code, there is a material risk that the Debtors' creditors or other parties-in-interest in the United States may attempt to exercise certain remedies, including terminating contracts or accelerating obligations, with respect to the Debtors that will severely impair the Debtors' restructuring efforts and result in irreparable damage to the Debtors' business and the value of Debtors' assets, and substantial harm to Debtors' creditors and other parties-in-interest.

E. Such acts could (a) interfere with the jurisdictional mandate of this Court under chapter 15 of the Bankruptcy Code, (b) interfere with and cause harm to the Debtors' efforts to administer the Canadian Proceedings, (c) interfere with the Debtors' operations, and (d) undermine the Debtors' efforts to achieve an equitable result for the benefit of all of the Debtors' creditors. Accordingly, there is a material risk that the Debtors may suffer immediate and irreparable injury, and it is therefore necessary that the Court enter this Order.

F. The Foreign Representative has demonstrated that without the protections afforded to lenders under section 364(e) of the Bankruptcy Code, there is a material risk that the Debtors will be unable to obtain the requisite financing to continue their business operations and fund their

restructuring proceedings, which will significantly impair and potentially result in irreparable damage to the value of the Debtors' assets.

G. The Initial CCAA Order provides for, among other things, certain charges and security in the Debtors' Property, including an Administration Charge, a Directors Charge, and the Interim Lender's Charge. Further, the Initial CCAA Order 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 39 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.

H. Entry of an order of this Court recognizing and enforcing the Initial CCAA Order in the United States and applying (i) the Interim Lender's Charge to the Debtors' property located in the territorial jurisdiction of the United States and (ii) the protections provided by Section 364(c), (d) and (e) of the Bankruptcy Code is necessary to give effect to the Initial CCAA Order as it relates to the Debtors and their property in the United States and is required by the Interim Lender pursuant to paragraph 34 of the Initial CCAA Order.

I. The Foreign Representative has demonstrated that, as found by the Canadian Court, recognition, on a provisional basis, of the incurrence of the indebtedness under the Interim Facility and the granting of liens and charges negotiated in connection with the Interim Facility, as authorized by the Initial CCAA Order, is necessary to prevent irreparable harm to the Debtors. Without such financing, the Debtors will be unable to continue normal course operations and fund their restructuring proceedings, which will significantly impair the value of the Debtors and their assets. Further, the amount that the Debtors have been authorized to borrow pursuant to the Initial

CCAA Order is reasonably necessary for the continued operations of the Debtors in the ordinary course of business pending entry of the Recognition Order.

J. The Foreign Representative has further demonstrated that recognition of the Initial CCAA Order, on a provisional basis, is warranted and that, based on the record before this Court, including the Initial CCAA Order and the findings of the Canadian Court, the terms of the Interim Facility are fair and reasonable and were entered into in good faith by the Debtors and the Interim Lender and that the Interim Lender would not have extended financing without the protections provided by section 364 of the Bankruptcy Code, made applicable by section 1519(a)(3), 1521(a)(7), and 105 of the Bankruptcy Code. The Foreign Representative has demonstrated that the terms of the Interim Facility are reasonable and necessary under the circumstances, as found by the Canadian Court.

K. The Interim Lender is entitled to adequate protection of its interests in the collateral securing the indebtedness under the Existing Credit Facility (the “Prepetition Collateral”) from any diminution in value from the use, sale or lease of the Prepetition Collateral and the imposition of the automatic stay, including the use of their “cash collateral” (within the meaning of section 362(a) of the Bankruptcy Code, the “Cash Collateral”). Accordingly, the Debtors have agreed, in their reasonable business judgment, to provide adequate protection as set forth in this Order, which terms and conditions are fair and reasonable and were negotiated in good faith and at arm’s-length.

L. The Foreign Representative has demonstrated that the following relief is in the best interest of the Debtors, as the Debtors will suffer immediate and irreparable harm if the Court does not permit (a) the Debtors to expeditiously disclaim, resiliate (*i.e.*, cancel) or reject executory contracts and leases governed by U.S. law or within the territorial jurisdiction of the United States, subject to the notice procedures and requirements of the CCAA, (b) to comply with the provisions

of the Canadian Court's orders in respect of landlord-related issues, and (c) honor and comply with customer obligations, including customer pre-payments, deposits, gift cards, programs and other customer loyalty programs.

M. The Foreign Representative has demonstrated that no injury will result to any party that is greater than the harm to Debtors' business, assets, and property in the absence of the relief requested in the Motion.

N. The Debtors' creditors will not suffer any significant harm by the requested provisional relief, as the relief will ensure the value of the Debtors' assets are preserved, protected and maximized for the benefit of all creditors.

O. The Foreign Representative has demonstrated that, in the interest of comity, the purpose of chapter 15 is carried out by granting recognition and giving effect to the Initial CCAA Order.

P. The interest of the public will be served by this Court's entry of this Order.

Q. The Foreign Representative and the Debtors are entitled to the full protections and rights available pursuant to section 1519(a)(1)-(3) of the Bankruptcy Code.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. The Initial CCAA Order is hereby given full force and effect on a provisional basis, including, without limitation, the sections of the Initial CCAA Order (a) authorizing the Debtors to obtain funding under the Interim Facility in the amount not to exceed USD\$7,000,000 in accordance with the terms set forth in paragraphs 34 to 39 of the Initial CCA Order and granting to the Interim Lender the Interim Lender's Charge, (b) authorizing the Debtors to enter into, perform and borrow under the Interim Facility in accordance with the terms of paragraph 34 to 39

of the Interim CCAA Order and (c) staying the commencement or continuation of any actions against the Debtors and their assets.

3. While this Order is in effect, the Foreign Representative and Debtors are entitled to the full protections and rights pursuant to section 1519(a)(1), which protections shall be coextensive with the provisions of section 362 of the Bankruptcy Code, and this Order shall operate as a stay of any execution against Debtors' assets within the territorial jurisdiction of the United States.

4. While this Order is in effect, pursuant to sections 1519(a)(3) and 1521(a)(7) of the Bankruptcy Code, sections 362 and 365(e) of the Bankruptcy Code are hereby made applicable in these Chapter 15 Cases to the Debtors and their property within the territorial jurisdiction of the United States.

5. 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.

6. To the extent authorized under the Initial CCAA Order, the Court recognizes, on a provisional basis, the Interim Lender's Charge, as defined by and granted in the Initial CCAA Order which applies to all of Debtors' assets located in the United States, subject to the priorities, terms, and conditions of the Initial CCAA Order to secure current and future amounts outstanding under the Interim Facility.

7. To the extent provided by the Initial CCAA Order, the obligations of the Debtors under the Interim Facility shall be an allowed administrative expense claim with priority under section 364(c)(1) of the Bankruptcy Code over all administrative expense claims and unsecured claims against the Debtors, now existing or hereafter arising.

8. This Order shall be sufficient and conclusive notice and evidence of the grant, validity, perfection, and priority of the liens granted to the Interim Lender in the Initial CCAA Order without the necessity of executing any guarantee, security or other document or filing or recording this Order or any financing statement, mortgage, or other instrument or document which may otherwise be required under the law of any jurisdiction; provided that 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.

9. To the extent provided in the Initial CCAA Order, the Debtors are hereby 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, notwithstanding any other provision of this Order and without any further order of this Court.³

10. The Interim Lender is entitled to adequate protection of its interests in the Prepetition Collateral from any diminution in value resulting from the use, sale, or lease of the Prepetition Collateral including the use of Cash Collateral, or the imposition of the automatic stay. Accordingly, the Interim Lender is (a) granted valid, binding, enforceable and perfected liens (the “Adequate Protection Liens”) in all property of the Debtors to secure their indebtedness under the Existing Facility (the “Adequate Protection Claims”) equal to any diminution in the value of their interests in the Prepetition Collateral subsequent to the date of the filing of the Petitions resulting from the use of the use, sale or lease of the Prepetition Collateral, including use of the Cash Collateral, the imposition of the automatic stay, (b) granted an allowed administrative expense claim with priority under section 364(c)(1) of the Bankruptcy Code in an amount equal to the Adequate Protection Claims over all administrative expense claims and unsecured claims against the Debtors, now existing or hereafter arising and (c) entitled to receive payment for, and the Debtors are authorized to pay, the reasonable and documented fees and expenses incurred by the Interim Lender’s Canadian and U.S. counsel and other advisors, whether incurred before or after the Petition Date. Nothing herein shall prejudice, impair, or otherwise affect the rights of the Interim Lender to seek any other or supplemental relief in respect of their adequate protection rights.

11. The Interim Facility has been negotiated in good faith and at arm’s-length between the Debtors and the Interim Lender. Any financial accommodations made to the Debtors by the

³ The aforementioned cash flow forecast is attached as Appendix A to the Pre-Filing Report of the Proposed Monitor, Alvarez & Marsal Canada Inc.

Interim Lender pursuant to the Initial CCAA Order shall be deemed to have been made by the Interim Lender in good faith, as that term is used in section 364(e) of the Bankruptcy Code. Accordingly, pursuant to sections 364(e), 1519(a)(3), 1521(a)(7), and 105(a) of the Bankruptcy Code, section 364(e) of the Bankruptcy Code hereby applies for the benefit of the Interim Lender, and the validity of the indebtedness, and the priority of the liens authorized by the Initial CCAA Order made enforceable in the United States by this Order, shall not be affected by any reversal or modification of this Order, on appeal or the entry of an order denying recognition of the Canadian Proceedings pursuant to section 1517 of the Bankruptcy Code.

12. No action, inaction or acquiescence by the Interim Lender, including, without limitation, funding the Debtors' ongoing operations under this Order, shall be deemed to be or shall be considered as evidence of any alleged consent by the Interim Lender to a charge against the collateral pursuant to Sections 506(c), 552(b) or 105(a) of the Bankruptcy Code. The Interim Lender shall not be subject in any way whatsoever to (i) the equitable doctrine of "marshaling" or any similar doctrine with respect to the collateral, (ii) 506(c), which the Debtors waive with respect to the Interim Lender and (iii) the "equities of the case" exception found within Bankruptcy Code Section 552(b).

13. Effective on a provisional basis upon entry of this Order, and subject to the Initial CCAA Order, no person or entity shall be entitled, directly or indirectly, whether by operation of sections 506(c), 552(b) or 105 of the Bankruptcy Code or otherwise, to direct the exercise of remedies or seek (whether by order of this Court or otherwise) to marshal or otherwise control the disposition of any collateral or property after an event of default under the Existing Credit Facility, or termination or breach under the Interim Facility, the Initial CCAA Order, or this Order.

14. The Foreign Representative, the Debtors, and their respective agents are authorized to serve or provide any notices required under the Bankruptcy Rules or local rules of this Court.

15. 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.

16. 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.

17. To the extent applicable, the security provisions of Rule 65(c) of the Federal Rules of Civil Procedure, made applicable pursuant to Bankruptcy Rule 7065, are hereby waived.

18. 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
_____, 2024

UNITED STATES BANKRUPTCY JUDGE