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

In re:) Chapter 15
)
Ted Baker Canada Inc., <i>et al.</i> , ¹) Case No. 24-10699 (MEW)
) (Joint Administration Requested)
Debtors in a Foreign Proceeding.)
)
)
)

**VERIFIED PETITION FOR ENTRY OF
ORDER RECOGNIZING FOREIGN MAIN
PROCEEDINGS AND GRANTING ADDITIONAL RELIEF**

Ted Baker Canada Inc. (“Ted Baker Canada”), in its capacity as the Canadian Court-appointed and authorized foreign representative (the “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”), filed chapter 15 petitions for each

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

of the Debtors (the chapter 15 petitions, together with this Verified Petition, the “Petitions”), and respectfully states as follows:

RELIEF REQUESTED

1. The Foreign Representative has commenced these chapter 15 cases as ancillary proceedings to the CCAA Proceedings and respectfully files this Verified Petition contemporaneously with the required accompanying documentation pursuant to sections 1504 and 1515 of title 11 of the United States Code (the “Bankruptcy Code”).

2. The Foreign Representative requests that this Court enter an order, substantially in the form of the proposed order attached hereto as **Exhibit A** (the “Proposed Order”), pursuant to sections 105(a), 362, 363, 364, 365(a), 365(e), 1504, 1507, 1509, 1510, 1515, 1517, 1520, 1521, and 1522 of the Bankruptcy Code that (collectively, the “Relief Requested”):

- (a) recognizing the Canadian Proceedings, pursuant to Bankruptcy Code section 1517, as “foreign main proceedings” or, in the alternative, as “foreign nonmain proceedings,” as such terms are defined in Bankruptcy Code sections 1502(4) and 1502(5), respectively;
- (b) recognizing the Foreign Representative as the “foreign representative,” as defined in section 101(24) of the Bankruptcy Code, in respect of the Canadian Proceedings;
- (c) recognizing and giving full force and effect in the United States to the initial order issued on April 24, 2024, by the Canadian Court (the “Initial CCAA Order”);
- (d) granting the Debtors all the relief afforded pursuant to section 1520 of the Bankruptcy Code, including but not limited to the “automatic stay” under section 362 of the Bankruptcy Code, which shall apply with respect to the Debtors and the Debtors’ property that is now or in the future located within the territorial jurisdiction of the United States;
- (e) granting certain additional and further relief pursuant to sections 1521 and 1507 (to the extent it is not granted automatically and as of right upon recognition of the Canadian Proceedings as foreign main proceedings pursuant to section 1520(a)), including extending on a final basis the provisional relief requested in the Provisional Relief Motion (as defined herein), and including an injunction prohibiting all persons and entities,

other than the Foreign Representative and his representatives and agents, from:

- i. execution against any of the Debtors' assets;
- ii. the commencement or continuation, including the issuance or employment of process, of a judicial, quasi-judicial, administrative, arbitral, or other action or proceeding, or to recover a claim, including, without limitation, any and all unpaid judgments, settlements or otherwise against the Debtors, which in either case is in any way related to, or would interfere with, the administration of the Debtors' estates in the Canadian Proceedings;
- iii. taking or continuing any act to create, perfect or enforce a lien or other security interest, setoff or other claim against the Debtors or any of their property or proceeds thereof;
- iv. transferring, relinquishing or disposing of any property of the Debtors to any person or entity other than the Foreign Representative;
- v. commencing or continuing an individual action or proceeding concerning the Debtors' assets, rights, obligations or liabilities; and
- vi. declaring or considering the insolvency of the Debtors, the Initial CCAA Order, the Provisional Relief Order, the Proposed Order or the filing of the Canadian Proceedings or these Chapter 15 Cases a default or event of default under any agreement, contract or arrangement;

provided, in each case, that such injunctions shall be effective solely within the territorial jurisdiction of the United States; and *provided, further*, that nothing herein shall: (x) prevent any entity from filing any claims against the Debtors in the Canadian Proceedings or (y) prevent any entity from seeking relief from the Canadian Court in the Canadian Proceedings or, to the extent applicable, this Court in these Chapter 15 Cases for relief from the injunctions contained in the Proposed Order;

- (f) providing protections substantially similar to those provided in the Provisional Relief Order (as defined below) to the Interim Lender with respect to any and all borrowings approved by order of the Canadian Court in the Canadian Proceedings, including any order entered at the "comeback" hearing or similar order superseding the Initial CCAA Order;
- (g) granting comity to and giving full force and effect to the Canadian Proceedings; and

- (h) awarding the Foreign Representative such other and further relief as this Court deems just and proper.

JURISDICTION AND VENUE

3. This Court has subject-matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a) 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).

4. These chapter 15 cases have been properly commenced pursuant to section 1504 of the Bankruptcy Code by the filing of the Petitions in accordance with section 1515 of the Bankruptcy Code.

5. Venue in this district is proper pursuant to 28 U.S.C. § 1410(1) and (3).

BACKGROUND

6. The Debtors 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 (together, "Ted Baker NA"). Ted Baker Canada also conducts retail, wholesale and e-commerce operations under the BROOKS BROTHERS and LUCKY BRAND banners, solely in Canada.

7. On the date hereof, the Debtors filed petitions under the CCAA to commence proceedings under the supervision of the Canadian Court. The same day, the Canadian Court entered the Initial CCAA Order appointing 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 the Debtors pursuant to the Initial CCAA Order.

8. On the date hereof, the Foreign Representative filed the Petitions under chapter 15 of the Bankruptcy Code for recognition of the Canadian Proceedings, thereby commencing the Debtors' chapter 15 cases (the "Chapter 15 Cases").

9. 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 Canadian Proceedings and these chapter 15 proceedings are set forth in the contemporaneously filed *Declaration of Antoine Adams in Support of Verified Petition for Entry of an Order Recognizing Foreign Main Proceedings and Granting Additional Relief* (the "Adams Declaration"). The Adams Declaration is incorporated herein by reference.²

BASIS FOR RELIEF

10. The relief requested is based on the provisions of chapter 15 of the Bankruptcy Code. The purpose of chapter 15 is to "incorporate the Model Law on Cross-Border Insolvency (the "Model Law") so as to provide effective mechanisms for dealing with cases of cross-border insolvency." 11 U.S.C. § 1501(a). In interpreting chapter 15, a court is to "consider its international origin, and the need to promote an application of [chapter 15] that is consistent with the application of similar statutes adopted by foreign jurisdictions." 11 U.S.C. § 1508.

11. Consistent with these principles, as provided in the Adams Declaration, the Foreign Representative commenced these Chapter 15 Cases as ancillary proceedings to obtain recognition

² Capitalized terms used but not defined herein have the meanings assigned to them in the Adams Declaration and, if not therein, the Initial CCAA Order.

of the Canadian Proceedings with the ultimate goal of giving effect in the United States to the Debtors' Canadian restructuring.

12. In the interim, the Foreign Representative seeks recognition of the Initial CCAA Order on a provisional basis as further set forth in the *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* (the "Provisional Relief Motion," and any order or orders granting such motion, the "Provisional Relief Order") filed contemporaneously herewith.

13. Furthermore, the Foreign Representative submits that recognition of the Canadian Proceedings will not undermine the rights of U.S. creditors. All creditors of the Debtors, including any in the United States, will have the opportunity to assert their claims or rights in the Canadian Proceedings and are sufficiently protected as they are expected to receive substantially similar treatment under the Canadian Proceedings as they would in bankruptcy proceedings in the United States. As the Debtors are still in the plan formulation and negotiation stage of their Canadian Proceedings, the Chapter 15 Cases will also provide U.S. creditors notice and time to assert their rights in the Canadian Proceedings.

I. Recognition of the Canadian Proceeding as Foreign Main Proceedings and Ted Baker Canada as Its Foreign Representative is Appropriate

14. Bankruptcy Code section 1517(a) provides that, after notice and a hearing, an order recognizing a foreign proceeding shall be entered if (i) the foreign representative applying for recognition is a person or body; (ii) such foreign proceeding for which recognition is sought is a foreign main proceeding or foreign nonmain proceeding within the meaning of section 1502; and (iii) the petition meets the requirements of section 1515 of the Bankruptcy Code. *See* 11 U.S.C. § 1517. Each of the foregoing requirements has been satisfied, as described below.

A. The Canadian Proceedings Are Foreign Main Proceedings or, in the Alternative, Foreign Nonmain Proceedings

15. In order to apply for recognition of the Canadian Proceedings under section 1515(a) of the Bankruptcy Code, two principal requirements must be satisfied: (i) the Canadian Proceedings must qualify as “foreign proceedings” and (ii) Ted Baker Canada must qualify as a “foreign representative.” Both requirements are satisfied here.

a. The Chapter 15 Cases Concern Foreign Proceedings

16. As an initial matter, the Canadian Proceedings satisfy the definition of “foreign proceedings” set forth in Bankruptcy Code section 101(23), which defines “foreign proceeding” as “a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.” 11 U.S.C. § 101(23).

17. There can be little doubt the Canadian Proceedings satisfy the requirements of section 101(23): the Canadian Proceedings are collective judicial proceedings in which the assets and affairs are subject to the supervision of the Canadian Court. The CCAA provides for a controlled reorganization or liquidation designed to enable financially distressed companies to maximize company value.

18. Given, among other things, the similarities between the CCAA and chapter 11, U.S. Courts have routinely and consistently held that Canadian restructuring proceedings under the CCAA satisfy section 101(23)’s requirements. *See, e.g., In re Inscope Corp.*, No. 23-10074 (MEW) (Bankr. S.D.N.Y. March 1, 2023) [Docket No. 22]; *In re Nygard Holdings (USA) Ltd.*, No. 20-10828 (DSJ) (Bankr. S.D.N.Y. April 23, 2020) [Docket No. 40]; *In re Imperial Tobacco Canada Ltd.*, No. 19-10771 (JPM) (Bankr. S.D.N.Y. April 17, 2019) [Docket No. 40]; *In re U.S.*

Steel Canada, Inc., No. 17-11519 (MG) (Bankr. S.D.N.Y. July 31, 2017) [Docket No. 16]; *In re Sino-Forest Corp.*, No. 13-10361 (MG) (Bankr. S.D.N.Y. Apr. 15, 2013) [Docket No. 16]; *In re Metcalf & Mansfield Alt. Invs.*, No. 09-16709 (MG) (Bankr. S.D.N.Y. Jan. 5, 2010) [Docket No. 28]; *In re Calmest Global Commc'ns Corp.*, No. 09-15994 (SMB) (Bankr. S.D.N.Y. Nov. 3, 2009) [Docket No. 34]; *In re Baronet U.S.A. Inc.*, No. 07-13821 (JMP) (Bankr. S.D.N.Y. Jan. 10, 2008) [Docket No. 15]; *In re Lone Pine Res. Inc.*, No. 13-12487 (BLS) (Bankr. D. Del. Sept. 26, 2013) [Docket No. 18]; *In re Xentel Inc.*, No. 13-10888 (KG) (Bankr. D. Del. Apr. 12, 2013) [Docket No. 15].

*b. The Chapter 15 Cases Have Been Commenced by a Duly
Authorized Foreign Representative*

19. The Foreign Representative is duly authorized to serve in its capacity as a foreign representative in these Chapter 15 Cases. The term “foreign representative” is defined under section 101(24) of the Bankruptcy Code as:

a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor’s assets or affairs or to act as a representative of such foreign proceeding.

11 U.S.C. § 101(24).

20. Pursuant to the Initial CCAA Order, the Court appointed Ted Baker Canada as the Foreign Representative, and authorized and empowered the Foreign Representative to (i) act as a foreign representative in respect of the Canadian Proceedings, and (ii) to file chapter 15 cases in the United States for the purpose of having the Canadian Proceedings recognized. Moreover, pursuant to section 1516(a) of the Bankruptcy Code, the Foreign Representative is presumed to be the foreign representative because it was identified as such in the Initial CCAA Order. Accordingly, the Foreign Representative is a proper “foreign representative” within the meaning of section 101(24) of the Bankruptcy Code. *See In re U.S. Steel Canada Inc.*, 571 B.R. 600, 612

(Bankr. S.D.N.Y. 2017) (holding that U.S. Steel Canada Inc., a debtor, “is qualified to be the foreign representative.”).

c. *The Canadian Proceedings Should Be Recognized as Foreign Main Proceedings*

21. The Bankruptcy Code provides that a foreign proceeding for which Chapter 15 recognition is sought must be recognized as a “foreign main proceeding” if it is pending in the country where the debtor has its center of main interests. 11 U.S.C. §§ 1517(b)(1), 1502(4).

22. The Bankruptcy Code neither defines nor provides a conclusive test for determining the location of a debtors’ “center of main interests” or “COMI.” Although there is a statutory presumption that a debtor’s “registered office” is its COMI “in the absence of evidence to the contrary,” *see* 11 U.S.C. § 1516(c), the legislative history makes clear that this presumption is rebuttable and that the rule of the “registered office,” *i.e.*, “place of incorporation,” is “designed to make recognition as simple and expedient as possible” in cases where the facts are not controversial rather than to establish a conclusive presumption. H.R. Rep. No. 109-31, pt. 1, at 112-13 (2005), *reprinted in* 2005 U.S.C.C.A.N. 88, 175. Thus, the court in *In re Bear Stearns* observed that

This presumption permits and encourages fast action in cases where speed may be essential, while leaving the debtor’s true ‘center’ open to dispute in cases where the facts are more doubtful . . . This presumption is *not a preferred alternative where there is a separation between a corporation’s jurisdiction of incorporation and its real seat.*

Chapter 15 changed the Model Law standard that established the presumption in ‘the absence of proof to the contrary’, to a presumption in ‘the absence of evidence to the contrary’. The legislative history explains that the word ‘proof’ was changed to ‘evidence’ to make it clearer using United States terminology that the ultimate burden is on the foreign representative . . . Whatever may be the proper interpretation of the EU Regulation, the Model Law and Chapter 15 give limited weight to the presumption of jurisdiction of incorporation as the COMI.

In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd., 374 B.R. 122, 128 (Bankr. S.D.N.Y. 2007), *aff'd*, 389 B.R. 325 (S.D.N.Y. 2008) (emphasis added, original emphasis and internal citations omitted); *see also In re Tri-Cont'l Exch. Ltd.*, 349 B.R. 627, 635 (Bankr. E.D. Cal. 2006) (similar view). With respect to Ted Baker Canada and Fashion Canada, there is no difference between their jurisdiction of incorporation and their real seat, both of which are in Canada.

23. To determine a debtor's COMI, courts have held that "the relevant principle ... is that the COMI lies where the debtor conducts its regular business, so that the place is ascertainable by third parties." *Morning Mist Holdings Ltd. v. Kryz (In re Fairfield Sentry Ltd.)*, 714 F.3d 127, 136 (2d Cir. 2013) In undertaking a COMI analysis, courts may consider "any relevant activities, including liquidation activities and administrative functions . . . , the location of the debtor's headquarters, the location of those who actually manage the debtor . . . , the location of the debtor's primary assets, the location of the majority of the debtor's creditors or of a majority of the creditors who would be affected by the case; and/or the jurisdiction whose law would apply to most disputes." *In re Suntech Power Holdings Co.*, 520 B.R. 399, 416 (Bankr. S.D.N.Y. 2014) (citing *Fairfield Sentry Ltd.*, 714 F.3d at 137).

24. Courts also "consider the location of the debtor's 'nerve center,' 'including from where the debtor's activities are directed and controlled.'" *Suntech*, 520 B.R. at 416 (quoting *Fairfield Sentry Ltd.*, 714 F.3d at 138 n.10). The "nerve center" test, as opposed to the "place of operations" test, seeks to ascertain:

[T]he nerve center from which a corporation radiates out to its constituent parts and from which its officers direct, control and coordinate all activities without regard to locale, in the furtherance of the corporate objective. Under this test, courts focus on those factors that identify the place where the corporation's overall policy originates. The other test has been labeled the "place of operations" or "locus of operations" test. There, the effort is to identify the place in which a corporation

conducts its principal operations. Courts generally apply the “nerve center” test when a corporation’s operations are geographically widespread, and the “locus of operations” test when a corporation is centralized.

Phoenix Four Inc. v. Strategic Res. Corp., 446 F. Supp. 2d 205, 214-15 (S.D.N.Y. 2006) (internal citations and quotations omitted). The analysis of a foreign debtor’s center of main interests is a flexible one, as “courts do not apply any rigid formula or consistently find one factor dispositive.” *In re Betcorp Ltd.*, 400 B.R. 266, 290 (Bankr. D. Nev. 2009).

25. As discussed in the Adams Declaration, the Debtors run a consolidated business, with operations in both Canada and the United States. Those operations, however, are functionally and operationally integrated such that the US business is entirely dependent on the Canadian business and key personnel in Canada. Thus, the Debtors’ “nerve center” is in Canada. Furthermore, as set forth in Adams Declaration, (a) all or or substantially all of the key operational and strategic and corporate decision-making relating to all the Debtors’ business and all major stakeholder negotiations, including all negotiations with Authentic Brands Group and its affiliates (*i.e.*, the Debtors’ licensor), were and are primarily made in Canada; (b) the Debtors’ day-to-day management team ultimately report to Mr. Adams and Mr. Farren, (c) IT leadership for the Debtors’ strategy, development, implementation, and people management is performed by employees of OSL Retail Services, Inc. (“Retail”) that are based out of Canada; (e) certain of the Debtors’ principal contracts are governed by Canadian law, including, *e.g.*, their secured revolving credit facility with Canadian Imperial Bank of Commerce (“CIBC”); (f) the Debtors have a centralized Cash Management System for the collection, transfer and disbursement of funds, which is maintained and administered by treasury and finance personal based in Fashion Canada’s head office in Canada and Ted Baker Limited’s office in New York. Of the Company’s 45 bank accounts, 41 of them are in Canada. The balance outstanding under the CIBC credit facility is paid

down on a daily basis through the automatic sweeping of certain Canadian Bank Accounts; and (f) the Debtors' ultimate shareholders are located in Canada.

26. As such, the Foreign Representative submits that all the Debtors have their center of main interests in Canada and, thus, the Canadian Proceedings qualify as "foreign main proceedings" as defined in section 1502(4) of the Bankruptcy Code.

27. Moreover, courts have previously recognized CCAA proceedings for non-Canadian entities as "foreign main proceedings" given that they were part of a jointly-administered CCAA proceeding with their Canadian parent. *See, e.g., In re The John Forsyth Shirt Co. Ltd.*, Case No. 13-10526 (SCC) (Bankr. S.D.N.Y. Mar. 18, 2013) [Docket No. 24]; *In re Essar Steel Algoma Inc.*, Case No. 15-12271 (BLS) (Bankr. D. Del. Dec. 1, 2015) [Docket No. 97]; *In re Talon Sys. Inc.*, Case No. 13-11811 (KJC) (Bankr. D. Del. Aug. 30, 2013) [Docket No. 49]; *In re Arctic Glacier Int'l Inc.*, Case No. 12-10605 (KG) (Bankr. D. Del. Mar. 16, 2012) [Docket No. 70]; *In re Catalyst Paper Corp.*, Case No. 12-10221 (PJW) (Bankr. D. Del. March 5, 2012) [Docket No. 89]; *In re Angiotech Pharm., Inc.*, Case No. 11-10269 (KG) (Bankr. D. Del. Feb. 22, 2011) [Docket No. 83].

d. In the Alternative, the Canadian Proceedings Should Be Recognized as Foreign Nonmain Proceedings

28. In the alternative, were this Court to deny recognition of any of the Canadian Proceedings as foreign main proceedings, it should grant recognition of such Canadian Proceedings as foreign nonmain proceedings. Pursuant to the Bankruptcy Code, a "foreign nonmain proceeding" is defined as a "foreign proceeding" pending in a country where the debtor has an "establishment" within the meaning of section 1502. 11 U.S.C. § 1517(b)(2). "Establishment" is broadly defined in the Bankruptcy Code as "any place of operations where the debtor carries out a nontransitory economic activity." 11 U.S.C. § 1502(2). To satisfy this

definition, a debtor must have “a seat for local business activity in the foreign country” and this activity must have a “local effect on the marketplace.” *In re Mood Media Corp.*, 569 B.R. 556, 561-62 (Bankr. S.D.N.Y. 2017). This is evidenced by, among other things, engagement of “local counsel and commitment of capital to local banks.” *In re Millennium Glob. Emerging Credit Master Fund Ltd.*, 458 B.R. 63, 86-67 (Bankr. S.D.N.Y. 2011), *aff’d*, 474 B.R. 88 (S.D.N.Y. 2012). As discussed above, the non-Canadian Debtors are operationally and functionally integrated with the Canadian Debtors, and all the Debtors are loan parties with respect to their revolving credit facility with CIBC, a Canadian bank. For all these and other reasons highlighted above and discussed in the Adams Declaration, the Foreign Representative submits that the Court should find that each of the Debtors has an “establishment” in Canada within the meaning of Bankruptcy Code section 1502(2) and, if any of the Canadian Proceedings are not recognized as foreign main proceedings, this Court should recognize the Canadian Proceedings as foreign nonmain proceedings.

B. The Petitions Meet the Requirements of Bankruptcy Code Section 1515

29. These Chapter 15 Cases were duly and properly commenced by filing the chapter 15 petitions and this Verified Petition accompanied by all fees, documents, and information required by the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure, including: (i) a corporate ownership statement containing the information described in Bankruptcy Rule 7007.1; (ii) a list containing (a) the names and addresses of all persons or bodies authorized to administer foreign proceedings of the Debtors, (b) all parties to litigation pending in the United States in which the Debtors are a party at the time of the filing of the chapter 15 petitions, and (c) all entities against whom provisional relief is being sought under section 1519 of the Bankruptcy Code; (iii) a statement identifying all foreign proceedings with respect to the Debtors that are known to the Foreign Representative; and (iv) a true and correct copy of the Initial CCAA Order.

30. Having filed the above-referenced documents and because the Court is entitled to presume the authenticity of such documents filed in connection with chapter 15 petitions and the Verified Petition under section 1516(b) of the Bankruptcy Code, the requirements of section 1515 of the Bankruptcy Code have been met.

II. The Debtors Are Entitled to the Automatic Relief Under 11 U.S.C. § 1520

31. Section 1520(a) of the Bankruptcy Code sets forth a series of statutory protections that automatically result from the recognition of a foreign proceeding as a foreign main proceeding, see 11 U.S.C. § 1520(a), including the application of the protection afforded by the automatic stay under section 362(a) of the Bankruptcy Code to the debtor and to the debtor's property that is within the territorial jurisdiction of the United States. Given that the protections set forth in section 1520(a) flow automatically from the recognition of a foreign main proceeding under section 1517, the Foreign Representative respectfully submits that no further showing is required to the extent the Court recognizes the Canadian Proceeding as a foreign main proceeding.

32. Alternatively, to the extent Court determines to grant the Canadian Proceedings recognition (i) as foreign main proceedings with respect to the Canadian Debtors and (ii) as foreign nonmain proceedings with respect to the non-Canadian Debtors (*i.e.*, Ted Baker Limited and Fashion Services), the Non-Canadian Debtors hereby request that the protections afforded by the automatic stay under section 362(a) of the Bankruptcy Code be extended to the non-Canadian Debtors and their property within the territorial jurisdiction of the United States pursuant to section 1521 of the Bankruptcy Code. Such relief is necessary and appropriate to protect the assets of the Non-Canadian Debtors, which serve critical roles in the Company's structure, including as licensees of important licenses. Furthermore, the non-Canadian Debtors' creditors would be sufficiently protected because they can avail themselves of the Canadian Proceedings to assert any and all rights.

III. The Discretionary Relief Requested Is Necessary and Appropriate to Effect the Restructuring and Should be Granted

33. Upon recognition of a foreign proceeding, section 1521(a) authorizes the Court to grant “any appropriate relief” at the request of the recognized foreign representative “where necessary to effectuate the purpose of [chapter 15] and to protect the assets of the debtor or the interests of the creditors.” 11 U.S.C. § 1521(a). Such relief may include, among other things, “granting any additional relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550, and 724(a).” 11 U.S.C. § 1521(a)(7). The Court may grant relief under section 1521(a) if the interests of “the creditors and other interested entities, including the debtor, are sufficiently protected.” 11 U.S.C. § 1522(a).

34. For the reasons that follow and as set forth in the Provisional Relief Motion, incorporated herein by reference, the Foreign Representative asks this Court to exercise its discretion under section 1521(a) to extend on a final basis the following additional relief sought in the Provisional Relief Motion, including:

- (a) recognizing and enforcing in the United States the Initial CCAA Order that, among other things:
 - i. authorizes the Debtors to enter into, perform and borrow up to USD\$7,000,000 pursuant to the terms of the Initial CCAA Order;
 - ii. grants the Interim Lender a charge against the Debtors’ property (the “Interim Lender’s Charge”) as security for all obligations to the Interim Lender incurred with respect to the Initial CCAA Order or any order entered at the “comeback” hearing or similar order superseding or amending and restating the Initial CCAA Order;
 - iii. grants the Debtors’ directors and officers a charge against the Debtors’ property for an aggregate amount of USD\$2,500,000 (the “Directors’ Charge”) as security for the Debtors’ indemnification obligations owed to the Debtors’ directors and officers in their capacity as such (solely to the extent in excess of applicable insurance coverage and excluding obligations or liabilities incurred as a result of such directors’ or officers’ gross negligence, willful misconduct or gross or intentional fault);

- iv. grants the Debtors authority to disclaim or resiliate (*i.e.*, cancel) leases and contracts (including terminate certain employee contracts), subject to the Initial CCAA Order and notice procedures and other requirements in the CCAA;
 - v. grants the Monitor, the Monitor's legal counsel, the Debtors' (including the Foreign Representative) legal counsel and the Monitor and Debtors' respective advisors a charge against the Debtors' property for an aggregate amount of \$750,000 (the "Administration Charge," and together with the Directors' Charge and the Interim Lender's Charge, the "CCAA Charges") as security for the professional fees and expenses incurred in connection with the Canadian Proceedings and Chapter 15 Cases; and
- (b) granting 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), and 364(e) of the Bankruptcy Code and approving 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;
 - (c) applying sections 362 and 365(e) of the Bankruptcy Code in these chapter 15 cases pursuant to sections 105(a), 1519(a) and 1521(a)(7) of the Bankruptcy Code;

35. The Foreign Representative further asks this Court to exercise its discretion under section 1521(a) to provide on a final basis protections substantially similar to those provided in the Provisional Relief Order to the Interim Lender with respect to any and all borrowings approved by order of the Canadian Court in the Canadian Proceedings, including any order entered at the "comeback" hearing or similar order superseding or amending and restating the Initial CCAA Order.

36. The Interim Lender has agreed to provide the Interim Borrowings upon the terms of Paragraph 34 to 39 of the Initial CCAA Order. The Foreign Representative understands that the terms of the Interim Borrowings were negotiated, proposed and entered into without collusion, in good faith and at arm's length. The Debtors will require access to a portion of the Interim Facility to fund, among other things, working capital requirements, other general corporate expenditures and the costs of administering their bankruptcy cases. As discussed in the Adams

Declaration, the Debtors have run out of cash and require immediate access to the Interim Borrowings. The funding provided by the Interim Facility is therefore necessary to make critical payments and 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. Furthermore, the Interim Lender has conditioned interim availability of the Interim Borrowings on this Court's recognition of the protections granted by the Canadian Court. As such, the Foreign Representative requests that this Court grant final recognition and give effect to the Initial CCAA Order and any amendment or restatement of such order with respect to assets of the Debtors now or in the future located within the territorial jurisdiction of the United States. The Interim Borrowings will preserve and maintain the going concern value of the Debtors' estates, which, in turn, is integral to maximizing value.

37. As explained in the Provisional Relief Motion, it is also essential that this Court recognize and give effect to the Debtors' authority (upon grant by the Canadian Court) to disclaim and resiliate (*i.e.*, cancel) leases and other executory contracts (including employment contracts) in the Canadian Proceedings—including the contracts and leases that are either governed by U.S. law or within the territorial jurisdiction of the United States. In a CCAA proceeding, prior to disclaimer, landlords generally may be entitled to payment of rent obligations that become due and owing post-filing. As such, any delay in disclaiming such leases could cause the Debtors to incur substantial additional post-filing rent obligations that will further diminish funds available for claims and thereby negatively affect recoveries for creditors in the Canadian Proceedings.

38. As also explained in the Provisional Relief Motion, section 365(e) of the Bankruptcy Code prohibits counterparties from terminating contracts with the debtor solely because of the debtor's bankruptcy filing. As the Debtors may not be disclaiming all of their leases

and executory contracts, the Debtors could face significant harm resulting from the potential termination of critical contracts and leases. Absent the continued relief requested, counterparties may attempt to terminate these valuable contracts and leases.

39. Furthermore, the purpose of chapter 15 is carried out by granting recognition of and giving effect in full to the Initial CCAA Order as it will (a) maximize value of the Debtors' assets, (b) facilitate the fair and efficient cross-border restructuring; and (c) foster cooperation between courts in Canada and the United States.³

IV. The Relief Requested Is Consistent with United States Public Policy and the Policy Behind the Bankruptcy Code

40. The purpose of chapter 15 is set forth in section 1501 and includes: (i) cooperation between courts of the United States and the courts and other competent authorities of foreign countries involved in cross-border insolvency cases; (ii) greater legal certainty for trade and investment; (iii) fair and efficient administration of cross-border insolvencies that protect the interests of all creditors, and other interested entities, including the debtor; (iv) protection and maximization of the value of the debtor's assets; and (v) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment. See 11 U.S.C. § 1501. Recognition of the Canadian Proceedings as foreign main proceedings will facilitate an orderly and equitable wind-down of the Debtors' business. Such orderly administration is demonstrably consistent with the public policy of the United States and the Bankruptcy Code.

41. Recognition of the Canadian Proceedings would also promote the fair and efficient administration of a cross-border insolvency proceeding that protects the interests of all creditors and interested parties. By recognizing the Canadian Proceedings and granting the relief requested,

³ To the extent this Court believes section 1507 of the Bankruptcy Code is the appropriate section to grant any relief requested herein, the Foreign Representative requests such relief be granted thereunder.

the process of resolving claims against the Debtors would be centralized in Canada. Claims would be treated in accordance with a court-approved distribution order that comports with Canadian law, and any disputes would be subject to the uniform jurisdiction of one tribunal, the Canadian Court.

CONCLUSION

WHEREFORE the Foreign Representative respectfully requests that this Court enter an order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and such other and further relief as may be just and proper.

Dated: April 24, 2024
New York, New York

Respectfully submitted,

COLE SCHOTZ P.C.

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EXHIBIT A

Proposed Order

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

In re:)	Chapter 15
)	
)	Case No. 24-10699 (MEW)
Ted Baker Canada Inc., <i>et al.</i> , ¹)	
)	(Joint Administration Requested)
Debtors in a Foreign Proceeding.)	
)	
)	
)	

**ORDER RECOGNIZING FOREIGN MAIN
PROCEEDINGS AND GRANTING ADDITIONAL RELIEF**

A hearing having been held (the “Hearing”) to consider the chapter 15 petitions for each of the above-captioned debtors (the “Debtors”) and the Verified Petition, filed on April 24, 2024 (the “Verified Petition,” and together with the chapter 15 petitions, the “Petitions”)² of Ted Baker Canada, the duly authorized foreign representative (the “Foreign Representative”) of the above-captioned debtors (the “Debtors”) for entry of an order pursuant to sections 105(a), 362, 1517, 1520 and 1521 of the Bankruptcy Code: (i) recognizing the Canadian Proceedings as foreign main proceedings pursuant to sections 1517 and 1520 of the Bankruptcy Code, (ii) recognizing the Foreign Representative as the “foreign representative,” as defined in section 101(24) of the Bankruptcy Code, in respect of the Canadian Proceedings, (iii) recognizing and enforcing the Initial CCAA Order, (iv) granting a stay of execution against the Debtors’ assets and applying

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

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Verified Petition or the Initial CCAA Order (as defined in the Verified Petition), as applicable.

section 362 of the Bankruptcy Code in these Chapter 15 Cases pursuant to sections 1520(a)(1), 1521(a) and 105(a) of the Bankruptcy Code, and (v) granting certain additional relief pursuant to section 1521 of the Bankruptcy Code; and upon this Court's review and consideration of the Petitions, the Adams Declaration, and the Provisional Relief Motion, each filed contemporaneously therewith, and the evidence admitted at the Hearing to consider the Petitions; and due and proper notice of the Petitions having been provided; and no other or further notice being necessary or required; and no objections or other responses having been filed that have not been overruled, withdrawn, or otherwise resolved; and all interested parties having had an opportunity to be heard at the Hearing; and after due deliberation and sufficient cause appearing therefor, the Court makes the following findings of fact and conclusions of law:³

- a. 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.).
- b. This is a core proceeding under 28 U.S.C. § 157(b)(2)(P).
- c. Venue is proper in this district pursuant to 28 U.S.C. § 1410(1) and (3).
- d. The Foreign Representative is the duly appointed "foreign representative" of the Debtors, as such term is defined in 11 U.S.C. § 101(24).
- e. These chapter 15 cases were properly commenced pursuant to 11 U.S.C. §§ 1504, 1509 and 1515.

³ The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, or any of the following conclusions of law constitute findings of fact, they are adopted as such.

- f. The Foreign Representative has satisfied the requirements of 11 U.S.C. § 1515 and Fed. R. Bankr. P. 1007(a)(4) and 2002(q).
- g. The Debtors have satisfied the eligibility requirements of 11 U.S.C. §§ 109(a) and 1517(a).
- h. The Canadian Proceedings currently pending before the Canadian Court and provisions made thereunder for the protection, administration and distribution of the Debtors' assets, are "foreign proceedings," as such term is defined in 11 U.S.C. § 101(23).
- i. The Canadian Proceedings are entitled to recognition by this Court pursuant to 11 U.S.C. § 1517.
- j. The Canadian Proceedings are pending in the country where the Debtors' center of main interests is located, are "foreign main proceedings," as such term is defined in 11 U.S.C. § 1502(4), and are entitled to recognition as "foreign main proceedings" pursuant to 11 U.S.C. § 1517(b)(1).
- k. The Foreign Representative is entitled to all the relief provided pursuant to 11 U.S.C. § 1520, without limitation.
- l. Appropriate notice of the filing of, and the Hearing on, the Petition for Recognition was given, which notice is deemed adequate for all purposes, and no other or further notice need be given.
- m. The Foreign Representative is further entitled to all relief expressly set forth in 11 U.S.C. §§ 1521(a)-(b).
- n. The relief granted hereby is necessary and appropriate, in the interests of the public and international comity, consistent with the public policy of the United States, and

warranted under 11 U.S.C. §§ 105(a), 362, 363, 364(e), 365(a), 365(e), 1504, 1507, 1509, 1517, 1520, 1521, 1522 and 1525, and will not cause hardship to creditors of the Debtors or other parties in interests that is not outweighed by the benefits of granting that relief.

- o. The relief granted hereby is necessary to effectuate the purposes and objectives of chapter 15 and to protect the Debtors and the interests of their creditors and other parties in interest.
- p. Absent the requested relief, the efforts of the Debtors, the Canadian Court and the Foreign Representative in conducting the Canadian Proceedings and effecting their restructuring therein may be thwarted by the actions of certain creditors, a result that will obstruct the purposes of chapter 15 as reflected in section 1501(a) of the Bankruptcy Code.
- q. Each of the injunctions contained in this Order (i) is within the Court's jurisdiction, (ii) is essential to the success of the Debtors' restructuring in the Canadian Proceedings, (iii) confers material benefits on, and is in the best interests of, the Debtors and their creditors, and (iv) is important to the overall objectives of the such restructuring.

NOW THEREFORE, IT IS HEREBY ORDERED THAT:

- 1. The Petitions and the relief requested therein are GRANTED as set forth herein.
- 2. The Canadian Proceedings are granted recognition with respect to each of the Debtors as a foreign main proceeding pursuant to 11 U.S.C. §§ 1517(a) and 1517(b)(1).
- 3. Ted Baker Canada is recognized as the "foreign representative" as defined in section 101(24) of the Bankruptcy Code in respect of the Canadian Proceedings.

4. The Debtors and the Foreign Representative are granted all relief set forth in 11 U.S.C. § 1520.

5. The Initial CCAA Order, including any and all existing and future extensions, amendments, restatements, and/or supplements authorized by the Canadian Court, are hereby given full force and effect, on a final basis, with respect to the Debtors and the Debtors' property that now or in the future is located within the territorial jurisdiction of the United States, including, without limitation, staying the commencement or continuation of any actions against the Debtors or its assets (except as otherwise expressly provided herein or therein).

6. Pursuant to 11 U.S.C. § 1520(a)(1), 11 U.S.C. § 362, including, without limitation, the automatic stay authorized by 11 U.S.C. § 362, shall apply with respect to the Debtors and the Debtors' property that now or in the future is located within the territorial jurisdiction of the United States; *provided however*, the foregoing relief shall not abridge or modify, and shall rather in all respects be subject to, the rights and protections of the Interim Lender as provided by the order granting the Provisional Relief Motion [Docket No. ●] (the "Provisional Relief Order"), the Initial CCAA Order (as it may be amended and restated), and/or any other order of the Canadian Court in the Canadian Proceedings.

7. The Foreign Representative is authorized to operate the business of the Debtors that is the subject of the Canadian Proceedings and exercise the powers of a trustee to the extent provided by 11 U.S.C. § 1520(a)(3).

8. Pursuant to 11 U.S.C. § 1521(a)(1)-(3), all persons and entities, other than the Foreign Representative and its representatives and agents are hereby enjoined (to the extent they have not been stayed under section 1520(a)) from:

- a. execution against any of the Debtors' assets;

- b. the commencement or continuation, including the issuance or employment of process, of a judicial, quasi-judicial, administrative, regulatory, arbitral, or other action or proceeding, or to recover a claim, including, without limitation, any and all unpaid judgments, settlements or otherwise against the Debtors, which in either case is in any way related to, or would interfere with, the administration of the Debtors' estates in the Canadian Proceedings;
- c. taking or continuing any act to create, perfect or enforce a lien or other security interest, setoff or other claim against the Debtors or any of their property or proceeds thereof;
- d. transferring, relinquishing or disposing of any property of the Debtors to any person or entity (as that term is defined in section 101(15) of the Bankruptcy Code) other than the Foreign Representative;
- e. commencing or continuing an individual action or proceeding concerning the Debtors' assets, rights, obligations or liabilities; and
- f. declaring or considering the insolvency of the Debtors, the Initial CCAA Order, the Provisional Relief Order, the Proposed Order or filing of the Canadian Proceedings or these Chapter 15 Cases a default or event of default under any agreement, contract or arrangement;

provided, in each case, that such injunctions shall be effective solely within the territorial jurisdiction of the United States; and *provided further* that nothing herein shall: (x) prevent any entity from filing any claims against the Debtors in the Canadian Proceedings or (y) prevent any entity from seeking relief from the Canadian Court in the Canadian Proceedings or this Court in these Chapter 15 Cases, as applicable, for relief from the

injunctions contained in the Order or (z) abridge or modify, and shall rather in all respects be subject to, the rights and protections of the Interim Lender as provided by the Provisional Relief Order, the Initial CCAA Order (as it may be amended and restated), and/or any other order of the Canadian Court in the Canadian Proceedings.

9. Pursuant to 11 U.S.C. § 1521(a)(5), the administration or realization of the Debtors' assets within the territorial jurisdiction of the United States is entrusted to the Foreign Representative and the Foreign Representative is hereby established as the exclusive representative of the Debtors in the United States.

10. Pursuant to 11 U.S.C. §§ 1521(a)(6) and 1521(a)(7), all prior relief granted to the Debtors or the Foreign Representative by this Court pursuant to section 1519(a) or 1521 of the Bankruptcy Code shall be extended and that certain Provisional Relief Order shall remain in full force and effect, notwithstanding anything to the contrary contained therein; *provided*, for the avoidance of doubt, the protections to the Interim Lender therein shall apply not only to the Initial Borrowings, but shall also apply with respect to any and all borrowings approved by order of the Canadian Court in the Canadian Proceedings, including any order entered at the "comeback" hearing or similar order amending or restating the Initial CCAA Order or superseding the Initial CCAA Order.

11. The Canadian Proceedings and all prior orders of the Canadian Court shall be and hereby are granted comity and given full force and effect in the United States.

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

13. No action taken by the Foreign Representative, the Debtors, or their respective successors, agents, representatives, advisors, or counsel in preparing, disseminating, applying for,

implementing, or otherwise acting in furtherance of or in connection with the Canadian Proceedings, this order, these Chapter 15 Cases, or any adversary proceeding herein, or any further proceeding commenced hereunder, shall be deemed to constitute a waiver of the rights or benefits afforded such persons under 11 U.S.C. §§ 306 and 1510.

14. 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 is 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.

15. A copy of this Order shall be served (i) within three business days of entry of this order, by electronic mail to the extent email addresses are available and otherwise by United States mail, overnight or first-class postage prepaid, upon the Notice Parties (as defined in the *Motion for Order Scheduling Recognition Hearing and Specifying Form and Manner of Service of Notice*), the Office of the United States Trustee, and such other entities as the Court may direct and (ii) by posting on the Monitor's web site at www.alvarezandmarsal.com/TBRetail. Such service shall constitute good and sufficient service and adequate notice for all purposes.

16. The Court shall retain jurisdiction with respect to: (i) the enforcement, amendment or modification of this order; (ii) any requests for additional relief or any adversary proceeding brought in or through these Chapter 15 Cases; and (iii) any request by an entity for relief from the provisions of this order, for cause shown, as to any of the foregoing, and provided the same is properly commenced and within the jurisdiction of this Court.

17. This Order shall be effective and enforceable immediately upon entry and shall constitute a final order within the meaning of 28 U.S.C. § 158(a).

Dated: New York, New York
_____, 2024

UNITED STATES BANKRUPTCY JUDGE