

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

In re

Ted Baker Canada Inc. *et al.*,

Debtors in a Foreign Proceeding

Chapter 15

Case No. 24-10699 (MEW)

Joint Administration Requested

**DECLARATION OF TRACY C. SANDLER AS
CANADIAN COUNSEL IN SUPPORT OF THE VERIFIED PETITION
FOR ENTRY OF ORDER RECOGNIZING FOREIGN MAIN PROCEEDINGS AND
GRANTING ADDITIONAL RELIEF**

I, Tracy C. Sandler, to the best of my knowledge, information and belief, state as follows:

1. I am a Partner in the Insolvency and Restructuring practice at the Canadian law firm of Osler, Hoskin & Harcourt LLP at 100 King Street West #6200, Toronto ON M5X 1B8 ("Osler"). Osler is acting as Canadian counsel to Ted Baker Canada Inc., Ted Baker Limited, OSL Fashion Services Canada Inc., and OSL Fashion Services, Inc. (the "Debtors")¹ in the Canadian proceedings (the "CCAA Proceedings") commenced under the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended (the "CCAA") before the Ontario Superior Court of Justice (Commercial List) in Ontario, Canada, Court File No. CV-24-00718993-00CL (the "Canadian Court").

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 Canada"); Ted Baker Limited (FEIN 3341); OSL Fashion Services, Inc. (FEIN 1225); and OSL Fashion Services Canada Inc. (BN 7745).

2. I submit this declaration (this “Declaration”) in support of (i) the *Verified Petition for Entry of Order Recognizing Foreign Main Proceedings and Granting Additional Relief* [Docket No. 6] (the “Verified Petition”) and *Supplement to Verified Petition for Entry of Order Recognizing Foreign Main Proceedings and Granting Additional Relief* [Docket No. 24] (the “Supplement to Verified Petition,” and together with the Verified Petition, the “Petition for Recognition”) and the *Motion of the Foreign Representative for Entry of an Order (I) Recognizing and Enforcing the Realization Process Approval Order and (II) Granting Related Relief* [Docket No. 27] (the “Realization Process Motion”), each filed by the Debtors in these cases under chapter 15 of title 11 of the United States Bankruptcy Code (the “Bankruptcy Code”).

3. I am over the age of 18 and, if called upon to testify, could and would testify competently to all facts and matters set forth in this Declaration. All facts and matters contained in this Declaration are based upon (i) my knowledge, (ii) my review of the relevant documents, and/or (iii) my opinion based upon my knowledge and experience of the Debtors’ operations.

PERSONAL BACKGROUND AND QUALIFICATIONS

4. I received a Juris Doctorate from Osgoode Hall Law School and was admitted to the Ontario Bar in 1991.

5. I have extensive experience representing debtors, creditors, and court-appointed monitors and receivers in a broad range of Canadian insolvency matters, including complex proceedings under the CCAA and the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, out-of-court workouts, and distressed investments and purchases. I also have significant experience with cross-border and international mandates with a particular focus on proceedings in the United States.

6. Although I am not admitted to practice law in the United States, I am generally familiar with recognition proceedings arising under Chapter 15 of the Bankruptcy Code as a consequence of my involvement with other Canadian restructurings involving companies that have required recognition proceedings under Chapter 15 of the Bankruptcy Code.

THE DEBTORS' CCAA PROCEEDINGS

7. On April 24, 2024, the Debtors filed an application with the Canadian Court pursuant to, among others, section 11 of the CCAA. On that date, the Canadian Court signed a first day initial order (as may be amended and restated from time to time, the “Initial CCAA Order”): (i) appointing Alvarez & Marsal Canada Inc. as monitor within the CCAA Proceedings (the “Monitor”); (ii) granting a stay of proceedings against the Debtors, the Monitor, and their respective employees, directors, advisors, officers and representatives acting in such capacities for an initial Stay Period;² (iii) authorizing Ted Baker Canada and Ted Baker Limited to continue to borrow from the Interim Lender, being Canadian Imperial Bank of Commerce, under the Debtors’ Existing Credit Facility in an amount not to exceed USD \$7 million, subject to the requirements in the Initial CCAA Order; (iv) authorizing the Debtors to pay certain pre-filing amounts with the consent of the Monitor and the Interim Lender to key participants in the Debtors’ distribution network, and to other critical suppliers, if required; and (v) granting the following Charges (as defined in the Initial CCAA Order), in order of priority: an Administration Charge in the maximum amount of USD \$750,000; an Interim Lender’s Charge; and a Directors’ Charge in the maximum amount of USD \$2.5 million.

² Capitalized terms not otherwise defined have the meanings given to them in the Supplemental Declaration of Antoine Adams dated May 6, 2024, filed in support of the Petition for Recognition and Realization Process Motion.

8. The Initial CCAA Order further authorizes Ted Baker Canada (a) to act as the foreign representative of the Debtors for the purpose of having the CCAA Proceedings recognized and approved in a jurisdiction outside of Canada, and (b) to apply for foreign recognition and approval of the CCAA Proceedings and related relief, including provisional relief, as necessary, in the United States Bankruptcy Court for the Southern District of New York pursuant to Chapter 15 of Title 11 of the Bankruptcy Code.

9. On May 3, 2024, the Debtors applied for and were granted the following relief by the Canadian Court:

- (a) an Amended and Restated Initial Order, among other things:
 - (i) extending the Stay Period to August 2, 2024;
 - (ii) approving a key employee retention plan (the “KERP”) and granting a Court-ordered charge as security for payments under the KERP, and granting a sealing order in relation to the KERP;
 - (iii) authorizing the Debtors to enter into the DIP Term Sheet and borrow under the DIP Facility in the maximum principal amount of USD \$28 million, and granting the DIP Lender’s Charge;
 - (iv) increasing the Administration Charge from USD \$750,000 to USD \$1.5 million and the Directors’ Charge from USD \$2.5 million to USD \$5 million; and

- (b) a Realization Process Approval Order, among other things:
- (i) approving a consulting agreement between Ted Baker Canada and Ted Baker Limited (together, the “Merchant”) and Gordon Brothers Canada ULC and Gordon Brothers Retail Partners, LLC (together, the “Consultant”) dated as of April 30, 2024 (as may be amended and restated in accordance with the terms of the Realization Process Approval Order, the “Consulting Agreement”);
 - (ii) approving the proposed Canadian sale guidelines (the “Canadian Sale Guidelines”) and the US sale guidelines (the “US Sale Guidelines” and, together with the Canadian Sale Guidelines, the “Sale Guidelines”) for the orderly realization of the Merchandise and FF&E at the Debtors’ Stores and as located at the Debtors’ Warehouses through sales in accordance with the terms of the Canadian and US Sale Guidelines, respectively; and
 - (iii) authorizing the Merchant, with the assistance of the Consultant, to undertake a realization process in accordance with the terms of the Realization Process Approval Order, the Consulting Agreement and the Sale Guidelines.

STATEMENTS OF CANADIAN LAW AND PRACTICE

10. The CCAA provides for court-supervised restructuring designed to enable financially distressed companies with liabilities in excess of \$5 million to avoid foreclosure or

seizure of assets while maximizing the company's value as a going concern for the benefit of creditors and other parties in interest.

11. A CCAA proceeding is, in the usual course, a voluntary insolvency proceeding in which a debtor aims to reorganize or liquidate its business and distribute proceeds to creditors, typically pursuant to a plan or distribution order, and under court supervision. A debtor's assets and affairs are subject to the supervision of the Canadian court and court-appointed monitor during the pendency of a CCAA proceeding.

12. In a CCAA proceeding, absent exceptional circumstances, a debtor's management and board of directors remain in place, and the board maintains its power under Canadian law to approve significant actions, including disposing of important assets, borrowing significant amounts, or changing corporate structures, subject to oversight by a court-appointed monitor and approval of the court.

13. Upon the commencement of a CCAA proceeding, the court will appoint a qualified monitor that functions as an independent court officer and observer of the CCAA proceeding and the debtor's business. The monitor's powers and duties are set out in the CCAA and relevant court order and include, among other things, the duties to (i) monitor the debtor's ongoing operations, (ii) report to the court on any major events affecting the debtor, (iii) notify the debtor's creditors and, if applicable, shareholders of any meetings and tabulates votes at these meetings, if held, (iv) assist with preparing, filing, and holding meetings for voting on a plan of arrangement, (v) approve the disclaimer of contracts and leases, (vi) prepare reports in conjunction with any interlocutory motions by the company or other stakeholders, and (vii) prepare a report on a plan of arrangement, which is usually included in the mailing of the plan, if

one is filed. Consent of the monitor is generally not required for the debtor to manage its business in the ordinary course, including the sale of assets in the ordinary course, but the monitor may request that the court enjoin any actions that may prove harmful to the debtor and/or its creditors. Though the monitor need not formally approve significant transactions such as asset sales outside of the ordinary course, court approval is generally required for such transactions and the court gives weight to the monitor's recommendations concerning such transactions.

14. Following the commencement of a CCAA proceeding, the company may select one or more foreign representatives to apply to a court in a jurisdiction outside Canada for recognition of the CCAA proceeding on behalf of the debtor company.

15. Upon the commencement of a CCAA proceeding, all actions against the debtor and its assets are stayed. The stay presumptively applies to all persons who might bring proceedings or take either judicial or extra-judicial steps against the debtor or its property, unless there is an express exemption in the CCAA. The stay is first granted for a maximum period of ten (10) days, but is typically extended where the debtor can show it continues to act with good faith and due diligence and provides a cash flow forecast demonstrating sufficient liquidity to continue the CCAA proceeding during the proposed extension of the stay period. There is no prescribed limit on the number or duration of these extensions of the stay.

16. In a CCAA proceeding, subject to limited exceptions, clauses triggering termination rights upon the debtor's commencement of an insolvency proceeding are not enforceable, so contract counterparties may not terminate contracts solely by virtue of the commencement of the CCAA proceeding.

17. In a CCAA proceeding, a debtor is also able to obtain postpetition financing (*i.e.*, DIP financing), subject to a hearing and court approval, after showing that the proposed financing is in the best interests of its estate. Such borrowings would typically have priority status in the CCAA proceeding. The Canadian court may approve priority charges against the company's assets, which take priority over existing secured creditors, where notice of the hearing to approve priority charges is given to the potentially affected creditors and the court is of the opinion that such charges are appropriate in the circumstances.

18. Throughout a CCAA proceeding, the court retains broad discretion to make any order that it considers appropriate in the circumstances.

THE CCAA PROCEEDINGS ARE FOREIGN MAIN PROCEEDINGS

19. To ensure the effective and economic administration of the Debtors' restructuring efforts, I believe that the Debtors require the protection afforded to foreign debtors pursuant to chapter 15 of the Bankruptcy Code in order to prevent business disruption and recognize the legal effect of the CCAA Proceedings in the United States.

20. The CCAA Proceedings provide full due process for impacted creditors, including receipt of notice, an opportunity to retain counsel and to appear, to raise objections, and to appeal.

21. To the best of my information and belief, the CCAA Proceedings are collective judicial proceedings under Canadian law in which the purpose is a corporate restructuring or realization process. In the CCAA Proceedings, the Debtors' assets and affairs are subject to the

control or supervision of the Canadian Court and the Monitor. Impacted creditors are afforded full due process rights.

22. I believe, to the best of my information and belief, the CCAA Proceedings are the only proceedings related to the insolvency of the Debtors and therefore, are the only “foreign proceedings” with respect to the Debtors within the meaning of the Bankruptcy Code.

[Remainder of Page Intentionally Left Blank]

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

Dated: May 6, 2024
Toronto, Canada

/s/ Tracy C. Sandler
Tracy C. Sandler