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Transaction ID 65595277
Case No. 2020-0304-

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

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| L BRANDS, INC., | ) | |
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| Plaintiff, | ) | |
| | ) | |
| v. | ) | C.A. No. 2020- |
| | ) | |
| SP VS BUYER L.P., SYCAMORE PARTNERS III, L.P., and SYCAMORE PARTNERS III-A, L.P., | ) | |
| | ) | |
| Defendants. | ) | |

## VERIFIED COMPLAINT

Plaintiff L Brands, Inc. ("L Brands"), by and through its undersigned attorneys, as and for its verified complaint against Defendants SP VS Buyer L.P. ("Sycamore"), Sycamore Partners III, L.P., and Sycamore Partners III-A, L.P. (together, "Sycamore Partners" and collectively with Sycamore, the "Defendants"), alleges as follows:

## NATURE OF THE ACTION

1. L Brands brings this action for specific performance of Sycamore's obligation to consummate the purchase of a 55% interest in Victoria's Secret Lingerie, Victoria's Secret Beauty, and PINK (collectively, "Victoria's Secret") from L Brands (the "Transaction") pursuant to a Transaction Agreement dated February 20, 2020 (the "Transaction Agreement" or "Agreement"), for specific performance of the obligations of an equity commitment agreement among L

Brands, Sycamore, and Sycamore Partners (the "Equity Commitment Letter") that requires Sycamore Partners to fund Sycamore's obligation to pay the purchase price, and for declaratory judgment that Sycamore's purported termination of the Transaction Agreement is invalid.

2. As Sycamore has conceded, this is a case of a buyer trying to get out of a deal because of the impact of the COVID-19 pandemic. On April 22, 2020, Sycamore sent a letter to L Brands purporting to terminate the Transaction Agreement on the grounds that L Brands had supposedly materially breached the Agreement "and that a Material Adverse Effect has occurred" as a result of the "COVID-19 pandemic." But Sycamore ignores a fundamental problem with its apparent case of buyer's remorse: At the time the parties negotiated the Agreement, the world was already well aware of the existence of COVID-19, and the parties agreed that *Sycamore* would bear the risk of any adverse impacts stemming from such a pandemic. Indeed, the definition of "Material Adverse Effect" in the Transaction Agreement expressly carves out impacts resulting from pandemics.

3. As a pretext for its invalid and improper termination, Sycamore has asserted that L Brands purportedly breached the Transaction Agreement by taking steps without Sycamore's consent or acquiescence that have irreparably damaged the Victoria's Secret business. This is nonsense. L Brands is the current owner

of Victoria's Secret and will remain a significant minority owner following the closing of the Transaction. It has every economic incentive to preserve the value of Victoria's Secret. Moreover, at every step, Sycamore was aware of the actions L Brands intended to take to protect the Victoria's Secret business in light of the COVID-19 pandemic. L Brands was completely transparent and forthcoming with Sycamore, and Sycamore assured L Brands as recently as a week ago that it intended to proceed with the Transaction.

4. In fact, Sycamore repeatedly described the actions that L Brands has taken to preserve the Victoria's Secret business during the COVID-19 pandemic as reasonable and raised no objections. That is not surprising. Sycamore Partners were themselves taking the same, or even more extensive, steps to protect other retail portfolio companies they own—just as virtually every other retailer in the country has done. If, as Sycamore now claims, the steps that L Brands has taken (and which Sycamore previously described as reasonable) have materially and irreparably harmed the Victoria's Secret business, the same must be true for the steps Sycamore Partners has taken for its own businesses.

5. In reality, Sycamore's current position is pure gamesmanship. On April 13, 2020, roughly a week before it sent its purported termination notice, Sycamore sent L Brands a letter revealing its true motivations in all of this. In that letter, Sycamore stated that it still wanted to buy Victoria's Secret, but it

wanted to renegotiate the purchase price and other economic terms of the Transaction Agreement "to take account of the COVID-19 situation." This letter followed a telephone call on April 7, 2020 during which Peter Morrow, a representative of Sycamore, explained that Sycamore still wanted to go through with the Transaction but that the COVID-19 "situation made the deal "tricky" for Sycamore under the circumstances.

6. In its April 13 letter, Sycamore represented—as it had done several other times—that it would continue to satisfy its contractual obligations and work towards closing, as it is required to do under the Transaction Agreement. This was mere lip-service. Sycamore was preparing behind the scenes to attempt to terminate the Transaction Agreement and file a lawsuit seeking a declaration of the validity of that purported termination. When L Brands declined to renegotiate the purchase price, on the ground that the Transaction Agreement expressly allocates the risk of pandemics to Sycamore, Sycamore pulled the trigger, sent a termination notice, and, simultaneously, filed a lawsuit. Far from maintaining its commitment to continue performing its reasonable best efforts under the Transaction Agreement, Sycamore had obviously already turned its back on its contractual obligations because L Brands refused to cut Sycamore a better deal.

7. Sycamore and its representatives may wish that the world did not have to face the pandemic that now confronts us, and may regret that they did not

negotiate the allocation of pandemic risk differently in the Transaction Agreement. But having made that commercial choice, Sycamore must now live by it. L Brands brings this action seeking a declaratory judgment and an order of specific performance to enforce its contractual rights.

## PARTIES

8. Plaintiff L Brands, Inc. ("L Brands" or the "Company") is incorporated in Delaware and headquartered in Columbus, Ohio. Among its brands, the Company owns and operates Victoria's Secret, including Victoria's Secret PINK, the leading specialty retailer of women's intimate and other apparel, and Bath & Body Works, a leading specialty retailer of personal care products.

9. Defendant SP VS Buyer L.P. ("Buyer" or "Sycamore") is a Delaware limited partnership.

10. Defendant Sycamore Partners III, L.P. is a Cayman Islands exempted limited partnership.

11. Defendant Sycamore Partners III-A, L.P. is a Cayman Islands exempted limited partnership.

## JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction over this action pursuant to 10 *Del. C.* § 6501 to declare the rights, status, and legal obligations of the parties to the Transaction Agreement, as well as under 10 *Del. C.* § 341, which gives the

Court jurisdiction "to hear and determine all matters and causes in equity" where, as here, Plaintiff seeks specific performance.

13. This Court has personal jurisdiction over Buyer, a Delaware limited partnership, pursuant to 6 *Del. C.* § 17-105 and Section 11.06 of the Transaction Agreement.

14. This Court has jurisdiction over Defendants Sycamore Partners III, L.P. and Sycamore Partners III-A, L.P. *See* Ex. B ¶ 9.

15. Venue is proper before this Court pursuant to Section 11.06 of the Transaction Agreement, which provides that the "parties hereto agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be brought in the Chancery Court of the State of Delaware." Ex. A § 11.06; *see also* Ex. B ¶ 9.

## FACTS

### A. Following Extensive Negotiation, L Brands and Sycamore Enter into the Transaction Agreement

16. On February 20, 2020, L Brands and Sycamore (the "Parties") entered into the Transaction pursuant to which Victoria's Secret would be separated from L Brands into a privately held company in which Sycamore would hold a 55% interest. L Brands selected Sycamore Partners as its strategic partner in the Transaction after receiving other indications of interest and offers from

other parties. L Brands agreed to retain a 45% stake in Victoria's Secret in connection with the Transaction to enable its stockholders to meaningfully participate in any potential upside of these businesses.

17. The Parties' agreement is reflected in the Transaction Agreement, which is attached hereto as Exhibit A (the "Transaction Agreement"). L Brands agreed to form a new subsidiary, VS Holdco, and to contribute to VS Holdco various assets comprising the Victoria's Secret and PINK businesses. Sycamore agreed to a pay a purchase price of approximately $525 million in exchange for a 55% interest in VS Holdco, subject to certain adjustments. *See* Ex. A.

18. L Brands and Sycamore finalized the terms of the Transaction Agreement following months of negotiations and extensive due diligence, during which both L Brands and Sycamore were represented by sophisticated and experienced legal counsel and other advisors. Indeed, as part of the Transaction Agreement, Sycamore expressly represented that it "ha[d] been provided with and ha[d] evaluated such documents and information as it has deemed necessary to enable it to make an informed and intelligent decision with respect to the execution, delivery and performance of [the Transaction] Agreement." *See id.* § 4.10.

19. Sycamore assured L Brands that it had the financing necessary to close the Transaction. Among other requirements, the Transaction Agreement

obligated Sycamore to execute the Equity Commitment Letter with Sycamore Partners "confirming their commitment to provide [Sycamore] with equity financing in connection with the transactions contemplated hereby in the amounts set forth therein." *See id.* § 4.05(a). The Equity Commitment Letter between Buyer and Sycamore Partners is attached hereto as Exhibit B.

20. Pursuant to the Equity Commitment Letter, Defendants Sycamore Partners III, L.P. and Sycamore Partners III-A, L.P. agreed to contribute an aggregate amount sufficient to enable Sycamore to pay the purchase price and any other amounts it is required to pay at the closing. *See* Ex. A § 4.05(a).

21. The Parties also agreed to various provisions addressing the operation of the Victoria's Secret business between the signing and closing of the Transaction Agreement. Pursuant to Section 5.01(a) of the Transaction Agreement, L Brands agreed that, "except as contemplated by this Agreement . . . , as required by Applicable Law or any Governmental Authority, . . . or as consented to in writing by Buyer (such consent not to be unreasonably withheld, conditioned or delayed)," it would "conduct the Business in the ordinary course consistent with past practice" and would use "reasonable best efforts to preserve intact the business organizations of the Business and the relationships of the Business with third parties." *See id.* § 5.01(a).

22. The Transaction Agreement precludes L Brands from taking certain enumerated actions, except "as required by Applicable Law or any Governmental Authority," without written consent from Sycamore, which again could not be unreasonably withheld, conditioned or delayed. *Id.* § 5.01(b).

23. Both Parties agreed that they would use their "reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or desirable under Applicable Law to consummate the transactions contemplated by this Agreement." *Id.* § 5.02(a).

24. The Parties expressly set forth certain conditions on Sycamore's obligations to close the Transaction. One of the closing conditions provides that L Brands "shall have performed in all material respects all of its other obligations [under the Transaction Agreement] required to be performed by it on or prior to the Closing Date." *Id.* § 8.02(a)(ii).

25. In order for Sycamore to be obligated to close, L Brands also has to bring down as of closing its representations and warranties in Article 3 of the Transaction Agreement, subject to a "Material Adverse Effect" qualification.

26. Section 8.02(b)(i) provides that the representations and warranties "contained in Section 3.09(a) shall be true and correct at and as of the Closing Date." *Id.* § 8.02(b)(i). Section 3.09(a) states that "[s]ince the Reference Date, there has not been any state of facts, circumstance, condition, event, change,

development, occurrence, result or effect that has had or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect." *Id.* § 3.09(a).

27. Section 8.02(b)(iii) of the Transaction Agreement states that L Brands' remaining representations and warranties must be true and correct as of the Closing Date, "with only such exceptions as has not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect." *Id.* § 8.02(b)(iii).

28. The Transaction Agreement contains a heavily negotiated definition of Material Adverse Effect (or "MAE").

29. As set forth in further detail below, at the time the Parties were negotiating the Transaction, the world was well aware of the threat that COVID-19 could pose and, indeed, already had begun to pose in certain parts of the globe. Accordingly, the Parties expressly considered whether the direct or indirect effects of a pandemic on the financial performance of Victoria's Secret would constitute an MAE and, thus, would impact the Parties' obligations to close the Transaction. L Brands and Sycamore specifically agreed that such circumstances would not constitute an MAE and carved such effects out of the defined term. As a result, MAE is defined in the Transaction Agreement as:

> [A]ny state of facts, circumstance, condition, event, change, development, occurrence, result or effect (i) that would prevent,

> materially delay or materially impede the performance by Parent of its obligations under this Agreement or Parent's consummation of the transactions contemplated by this Agreement; or (ii) that has a material adverse effect on the financial condition, business, assets, or results of operations of the Business, ***excluding, in the case of clause (ii), any state of facts, circumstance, condition, event, change, development, occurrence, result or effect to the extent directly or indirectly resulting from . . . (E) changes or conditions generally affecting the industry of the Business . . . [or] (H) the existence, occurrence or continuation of any pandemics***, tsunamis, typhoons, hail storms, blizzards, tornadoes, droughts, cyclones, earthquakes, floods, hurricanes, tropical storms, fires ***or other natural or manmade disasters or acts of God or any national, international or regional calamity.***

*Id.* § 1.01 (definition of Material Adverse Effect).

30. The Parties also agreed that specific performance is an appropriate remedy in the event that either party breaches its obligations under the Transaction Agreement. Section 11.12 provides:

> The parties hereto agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties hereto shall be entitled to an injunction or injunctions to prevent breaches of this Agreement or to enforce specifically the performance of the terms and provisions hereof in the Chosen Courts; *provided* that under no circumstance shall Parent be permitted or entitled to receive both a grant of specific performance pursuant to this Section 11.12, on the one hand, and monetary damages (whether pursuant to this Agreement or the Limited Guaranty), on the other hand.

*Id.* § 11.12.

31. Section 10.01(d) of the Transaction Agreement provides for an outside closing date of August 20, 2020 (the "Termination Date"). *Id.* § 10.01(d).

With certain limited exceptions, if the Transaction has not closed by that date, either Party has the right to terminate. Section 10.01(d) further provides that Sycamore shall not have the right to terminate under that provision if it "is then in material breach of its representations, warranties, covenants or agreements under [the Transaction Agreement] which breach is a principal cause of, or resulted in the failure of the Closing to have occurred by the Termination Date." *Id.*

### B. Like Other Retailers, L Brands Takes Measures to Respond to the COVID-19 Pandemic

32. In early January 2020, while the Parties were negotiating the Transaction Agreement, media outlets reported that a virus that had sickened dozens of people in the city of Wuhan, China had been identified as a novel coronavirus ("COVID-19").[1] By January 30, 2020, the World Health Organization had declared a global health emergency as the COVID-19 outbreak spread beyond China.[2] In response, on January 31, 2020, the United States government began restricting travel from abroad, suspending entry into the United States by any foreign nationals who had recently traveled to China.[3] On March 11, 2020, the United States government expanded its travel restrictions to

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[1] Derrick Bryson Taylor, *A Timeline of the Coronavirus Pandemic*, N.Y. Times, Apr. 7, 2020, https://www.nytimes.com/article/coronavirus-timeline.html.

[2] *Id.*

[3] *Id.*

travelers from Europe.[4] Two days later, on March 13, President Donald Trump declared a national emergency.[5]

33. On March 15, 2020, the Centers for Disease Control and Prevention ("CDC") issued social distancing guidelines that advised against gatherings of 50 or more people.[6] That same day, the State of New York announced that it would order all schools, restaurants, and bars to temporarily close, and announced on March 20, 2020 that it would order all "non-essential" businesses to close as well.[7] Nearly every other state, including Ohio where L Brands maintains its corporate headquarters and distribution centers, followed suit soon thereafter with similar actions as the COVID-19 pandemic worsened.

34. On March 16, 2020, the day after the CDC issued its social distancing guidelines, Sycamore advised L Brands that it was tracking public news about different retailers who were taking steps to reduce store hours or close stores altogether. This news included information about various Sycamore Partners' portfolio companies such as Belk, Torrid, and Talbots.

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[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] *Id.*

35. On March 17, 2020, L Brands responsibly took action to safeguard the health and safety of its employees and customers in light of the spread of COVID-19 and in response to recommendations from governmental authorities. That day, L Brands announced that it would temporarily close all Victoria's Secret and PINK stores in the United States and Canada, effective that day through March 29, 2020. It also announced that store employees would continue to receive pay and benefits during the temporary closure period.

36. L Brands advised representatives of Sycamore of these actions before taking them. Sycamore did not object to these steps. To the contrary, Peter Morrow of Sycamore expressed his appreciation for being kept in the information loop.

37. On March 27, 2020, L Brands announced that it would extend the closure of its stores beyond March 29, 2020 in response to the continued spread of COVID-19 and stay-at-home orders and other mandates issued by governmental authorities across the country. It also announced that it would furlough store associates effective as of April 5, 2020. In an effort to further strengthen its financial flexibility and efficiently manage through the COVID-19 pandemic, L Brands announced it would reduce expenses and capital expenditures and temporarily reduce base compensation by 20% for senior vice presidents and more senior employees.

38. The March 27 announcements were not a surprise to Sycamore. L Brands representatives had an extensive meeting with Peter Morrow and Adam Weinberger of Sycamore on March 25, 2020 during which L Brands' representatives provided a broad array of information about the Victoria's Secret business and the steps L Brands was planning to take to address the impact of the COVID-19 pandemic. Once again, Sycamore did not object. To the contrary, the Sycamore representatives told L Brands that the steps L Brands was taking to address the impact of the COVID-19 pandemic were reasonable and consistent with steps Sycamore Partners was taking on behalf of its own retail portfolio companies. Mr. Morrow also told the L Brands representatives that Sycamore could not slow L Brands down and acknowledged that L Brands was doing what was best for the Victoria's Secret business. Further, Mr. Morrow again stated that he appreciated the information that L Brands was providing and notably said that Sycamore believed it was in an awkward position because it did not own Victoria's Secret and could not direct the decisions L Brands was planning to make.

39. During the March 25, 2020 meeting, the L Brands representatives identified the different tasks to be addressed to achieve a targeted May 2, 2020 closing. Mr. Weinberger concluded the meeting by expressing his view that there

was a lot of work to do and that he was worried that the Parties may not hit the desired May 2, 2020 closing date.

40. Sycamore's failure to object to the steps L Brands previewed during the March 25, 2020 meeting was unsurprising. Indeed, the actions that L Brands believed prudent and responsible to take in response to the COVID-19 pandemic and government orders were consistent with those taken by other retailers. For example, on March 17, 2020, the retailer Talbots, which Sycamore Partners acquired in 2012, announced that it would temporarily close all of its retail stores "in order to help protect our communities and contain the spread."[8] On the same day, Belk, a Charlotte, North Carolina-based retailer in which Sycamore Partners is an investor, likewise announced that it would temporarily close all of its retail stores and continue providing compensation and benefits to affected employees.[9] On March 27, 2020, Belk further announced that it would furlough certain store associates, and would reduce pay for most employees who remained working—

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[8] Talbots, Our Response to COVID-19: How Talbots Is Protecting Our Community (Mar. 17, 2020), https://www.talbots.com/talbots-covid-19.html?intcmp=20200318_storelocator_covid19.

[9] Catherine Muccigrosso, *Charlotte-based Belk department stores closed due to coronavirus; Target cuts hours*, The Charlotte Observer, Mar. 18, 2020, https://www.charlotteobserver.com/news/coronavirus/article241291341.html.

including up to 50% for its most senior employees.[10] Sell-side equity research analysts were documenting the extensive closures and other steps being taken by numerous store-based retailers to address the impact of the COVID-19 pandemic.

### C. Sycamore Takes Steps to Renege on the Transaction Agreement

41. On April 2, 2020, Sycamore's counsel at Kirkland & Ellis LLP sent a letter regarding the actions that L Brands "has taken related to the COVID-19 situation." A true and correct copy of that letter is attached hereto as Exhibit C. The letter noted Sycamore's "appreciat[ion] that L Brands has endeavored to provide Buyer with prior notice before implementing at least certain of [the] actions" but now claimed that Sycamore "has neither consented to nor acquiesced to any such actions taken by L Brands." Ex. C at 1. Sycamore's letter requested information relating to the actions that L Brands "has taken and plans to take in response to the COVID-19 situation" and "to gain a better understanding of the likely adverse financial effects of the COVID-19 situation." *Id.* Sycamore closed by calling into question whether the Transaction could be consummated by the anticipated closing date of May 2, 2020. *Id.* at 2. This last statement in the letter

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[10] Catherine Muccigrosso, *Belk furloughs workers, cuts senior staff pay 50% during wave of coronavirus closings*, The Charlotte Observer, Mar. 27, 2020, https://www.charlotteobserver.com/news/coronavirus/article241557351.html.

was consistent with a comment made by Mr. Morrow earlier on April 2, 2020 that a May 2 closing date seemed impossible.

42. L Brands responded to Sycamore later on April 2, 2020, explaining that the steps L Brands had taken were consistent with those taken by other similarly situated businesses—including those owned by Sycamore Partners—reflecting their ordinary course nature in light of the COVID-19 pandemic, and that it had provided extensive information to Sycamore in advance of taking those steps. A true and correct copy of that letter is attached hereto as Exhibit D. L Brands' response further noted that Sycamore had never objected to these steps and, in fact, had described them as "reasonable" during conversations with L Brands representatives. Ex. D. Lastly, L Brands stated that it planned to work expeditiously towards closing and expected Sycamore to do the same. *Id.*

43. On April 7, 2020, L Brands representatives had a call with Peter Morrow and Adam Weinberger of Sycamore to discuss the Transaction. During that call, Sycamore's representatives stated that Sycamore still wanted to buy the Victoria's Secret business and wanted to close the deal, but Mr. Morrow stated that closing the Transaction in the circumstances created by the COVID-19 "situation" was "tricky."

44. Following that call, Sycamore sent another letter to L Brands, this time from Mr. Morrow rather than Sycamore's legal counsel. A true and correct

copy of that letter is attached hereto as Exhibit E. Sycamore identified additional steps that L Brands had taken "related to the COVID-19 situation," which L Brands had previewed with Sycamore in advance of taking them—again, without objection. Ex. E at 1. The letter noted the call that had occurred earlier that day and stated that Sycamore believed that L Brands was in material breach of the Transaction Agreement. Sycamore's letter did not dispute that it had previously characterized the steps L Brands had taken as "reasonable." Nor did it dispute that Sycamore Partners was taking those very same steps in its other businesses. Sycamore requested various information from L Brands and again questioned whether the Transaction could close, at least by the parties' desired closing date of May 2, 2020. Ex. E at 2. Nonetheless, Sycamore represented that it still intended to continue to satisfy each of its obligations under the Transaction Agreement. *Id.*

45. L Brands responded quickly, rejecting any suggestion that it had breached the Transaction Agreement in any way and reiterating the numerous conversations that L Brands and Sycamore representatives had to discuss the actions L Brands was intending to take. A true and correct copy of L Brands' response letter is attached hereto as Exhibit F. L Brands again reminded Sycamore of its repeated statements that those steps were reasonable and consistent with the steps Sycamore was taking with its own retail businesses. *See*

Ex. F. L Brands acknowledged Sycamore's information requests and explained that it would respond to them, and it again stated that it was going to continue to work expeditiously towards closing and expected Sycamore to do the same. *Id.*

46. Less than a week later, on April 13, 2020, Mr. Morrow sent another letter to L Brands on behalf of Sycamore, contending that Sycamore had not received advance notice of all the steps L Brands intended to take and stating that Sycamore "neither consented to such actions, nor in any way acquiesced to them." A true and correct copy of the April 13 letter is attached hereto as Exhibit G. Mr. Morrow then revealed the hand Sycamore really wanted to play. Consistent with his statement on April 7, 2020 that closing the Transaction in the current COVID-19 circumstances was "tricky" for Sycamore, Mr. Morrow wrote:

> On March 30, 2020, April 1, 2020 and April 8, 2020, Buyer requested detailed information from L Brands to assess the adverse consequences to the Victoria's Secret business as a result of L Brands' actions taken in response to the COVID-19 situation. L Brands has not provided Buyer with most of such requested information, although we understand that you intend to provide such information by this Thursday. ***The receipt and analysis of this information will allow Buyer to assess the expected future performance of the Victoria's Secret business given the effects of the COVID-19 situation, which will be critical to allow you and us to have an informed negotiation about adjusting the purchase price and other economics of the contemplated acquisition of the Victoria's Secret business to take account of the COVID-19 situation.***

Ex. G (emphasis added).

47. Put simply, Sycamore had conceded to L Brands by April 13, 2020, that it wanted to close the Transaction but not on L Brands' preferred timeline. Sycamore also had conceded that closing the Transaction was "tricky" in light of COVID-19, and that it wanted to renegotiate the deal price "to take account of the COVID-19 situation," a risk that Sycamore had expressly agreed to bear in the Transaction Agreement. In an attempt to avoid that agreed-upon risk allocation, Sycamore continued to refrain from calling the COVID-19 pandemic what it actually is—a pandemic—instead referring to it crassly as a mere "situation."

48. Despite demanding that L Brands renegotiate the deal price, Sycamore stated that it intended to "continue to satisfy each of its obligations set forth in the Transaction Agreement," including the obligations in Section 5.02 to use reasonable best efforts to consummate the Transaction. Ex. G. This statement was false, as events in the immediate future would reveal.

49. L Brands responded to Sycamore the next day, rejecting the assertion that the steps L Brands had taken had adversely affected the Victoria's Secret business. A true and correct copy of the letter dated April 14, 2020 is attached hereto as Exhibit H. Taking value-destructive actions would have been absurd—L Brands was the 100% owner of Victoria's Secret and will remain a 45% owner following the closing of the Transaction. L Brands also reminded Sycamore again that L Brands had previewed steps it intended to take before taking them

and Sycamore had not objected. L Brands also flatly rejected Sycamore's effort to renegotiate the purchase price to account for the impact of the COVID-19 pandemic:

> The Transaction Agreement could not be more clear: Sycamore agreed to bear the risk of any changes to the Victoria's Secret business resulting from a pandemic, which COVID-19 plainly is (regardless of your repeated characterization of it as a "situation"). L Brands has no obligation to renegotiate the purchase price or any other economic terms of the pending transaction to account for a risk that the Transaction Agreement unequivocally allocates to Sycamore.

Ex. H at 1.

50. L Brands also raised concerns that Sycamore was expressly using its information rights under the Transaction Agreement to gather information to use in service of Sycamore's desired purchase-price renegotiation. *Id.* But L Brands relied on Sycamore's representation that it would continue to comply with its obligations under the Transaction Agreement, including its obligations under Section 5.02 to use reasonable best efforts to consummate the Transaction, and compiled a significant amount of the information that Sycamore had requested in order to share it with Sycamore.

51. During the week of April 13 and into the week of April 20, 2020, L Brands and its personnel continued to expend significant resources and effort to work towards the closing of the Transaction. This included participating in a

lengthy telephone call with Sycamore on April 21, 2020 to provide Sycamore with responses to its numerous information requests.

52. On April 22, 2020, at around 8:30 a.m. Eastern Time, Stefan Kaluzny of Sycamore placed separate calls to one of the members of the L Brands Board of Directors and to Stuart Burgdoerfer, L Brands' Chief Financial Officer, to advise them that Sycamore was sending a purported termination notice, notwithstanding Sycamore's statement just a week earlier that it intended to comply with its contractual obligations. During those calls, Mr. Kaluzny mentioned that Sycamore had already filed a lawsuit in the Court of Chancery seeking a declaratory judgment that Sycamore's termination was valid.

53. Sycamore followed those calls with its purported notice of termination. In that letter, Sycamore asserted that L Brands "remains in material and incurable breach of the Transaction Agreement and that a Material Adverse Effect has occurred." A true and correct copy of the purported notice of termination is attached hereto as Exhibit I. Sycamore further claimed that the closing conditions set forth in Section 8.02(a) and (b) of the Transaction Agreement "are incapable of ever being satisfied." Ex. I. Sycamore also stated that its termination "is a direct result of the actions that L Brands took without our consent or acquiescence and in breach of the Transaction Agreement." *Id.* And, in a remarkable statement, in stark contrast to its prior characterizations of L

Brands' conduct as reasonable and consistent with steps Sycamore Partners had taken with its other retail portfolio companies, Sycamore claimed that the steps L Brands had taken had "materially and irreparably damaged the Victoria's Secret business." *Id.* (The investors in Sycamore Partners' funds are sure to take notice of the contention that Sycamore Partners supposedly took steps that materially and irreparably damaged portfolio companies that they own.)

54. For the first time, Sycamore's purported termination letter finally acknowledged that COVID-19 is a pandemic. This is because, as revealed in the lawsuit Sycamore filed prior to contacting L Brands, Sycamore had come up with what it believes to be a theory that there is an MAE on the grounds that there is a "state of facts, circumstance, condition, event change, development, occurrence, result or effect (i) that would prevent, materially delay or materially impede the performance by [L Brands] of its obligations under this Agreement or [L Brands'] consummation of the transactions contemplated by this Agreement."

55. This theory falls flat. Since the execution of the Transaction Agreement, L Brands has been working diligently toward satisfying each and every one of the closing conditions—all of which have been achieved already or remain fully achievable. Indeed, Sycamore's sole basis for claiming that the conditions cannot be satisfied is that L Brands supposedly failed to operate the Victoria's Secret business in the ordinary course or otherwise failed to obtain

Sycamore's consent to any deviations from ordinary course operation. As explained above, that position is baseless. There is only one circumstance or event that will prevent, materially impede, or materially delay L Brands' performance of its obligations under the Transaction Agreement—Sycamore's improper effort to terminate that Agreement.

### D. L Brands Has Complied with its Contractual Obligations, and Sycamore Has No Basis to Terminate the Transaction Agreement

56. The basis for Sycamore's purported termination is pretextual. Sycamore agreed to bear the risk of any financial impact resulting from pandemics. Sycamore no longer likes that part of its bargain, so it asked L Brands to renegotiate the purchase price. L Brands said no, an answer that Sycamore did not like. So rather than continue to comply with its contractual obligations, as it said that it would, Sycamore prepared a lawsuit and resolved to attempt to terminate the Transaction Agreement. Sycamore has breached the Transaction Agreement by failing to use reasonable best efforts to consummate the Transaction and by improperly seeking to terminate the Agreement.

57. L Brands, by contrast, has complied with its obligations throughout this process. L Brands did not need Sycamore's consent to take the steps catalogued herein to protect the Victoria's Secret business, because those steps were taken to comply with Applicable Law and Governmental Authority, and were taken in the ordinary course as reflected by the fact that such steps are

consistent with the steps that nearly every other retailer across the country has taken. These steps are consistent with steps L Brands has taken in the past when faced with global economic upheaval, including with respect to the treatment of inventory, capital expenditures, employee compensation, and other items. Moreover, L Brands previewed these steps with Sycamore's representatives, who raised no objection but instead conceded that the steps taken were reasonable and consistent with what Sycamore Partners was doing with its retail portfolio companies. Accordingly, Sycamore thereby acquiesced to these actions in any event.

**COUNT I**
**(Declaratory Judgment Pursuant to 10 *Del. C.* § 6501)**

58. L Brands incorporates herein by reference paragraphs 1 through 57 hereof as if fully set forth herein.

59. The Transaction Agreement is a valid and enforceable contract, and L Brands has substantially performed its obligations to date, has not breached the Agreement, and remains ready, willing, and able to undertake all actions to consummate the closing and provide certain transitional services as contemplated by the Agreement.

60. Plaintiff has satisfied all conditions precedent in the contractual agreements or will be capable of satisfying any remaining closing conditions at or prior to closing.

61. Defendant Sycamore has refused to abide by its obligations and has unilaterally breached the Agreement by failing to use reasonable best efforts to consummate the Transaction as contemplated by Section 5.02 of the Transaction Agreement. *See* Ex. A § 5.02.

62. A real and adverse controversy exists between the Parties that is ripe for adjudication, including whether Defendant Sycamore is in breach of the Transaction Agreement by failing to use reasonable best efforts to consummate the Transaction and by improperly seeking to terminate the Transaction Agreement.

63. Plaintiff is entitled to a declaration that Defendant Sycamore's refusal to use reasonable best efforts to consummate the Transaction is a violation of the Transaction Agreement and that Defendant Sycamore has knowingly and willfully breached the Agreement.

64. Plaintiff is also entitled to a declaration that Defendant Sycamore's attempt to terminate the Transaction Agreement is invalid.

## COUNT II
## (Breach of Contract and Specific Performance Against Sycamore)

65. L Brands incorporates herein by reference paragraphs 1 through 64 hereof as if fully set forth herein.

66. The Transaction Agreement is a valid and binding contract.

67. L Brands has substantially performed under the Transaction Agreement and remains ready, willing, and able to perform any remaining obligations.

68. Plaintiff has satisfied all conditions precedent in the contractual agreements or will be capable of satisfying those conditions precedent at or prior to the closing of the Transaction.

69. Defendant Sycamore has breached, and intends to breach, the Transaction Agreement, without contractual excuse or justification, by, among other things, failing to use reasonable best efforts to consummate the Transaction as contemplated by Section 5.02 of the Transaction Agreement and refusing to close the Transaction without any basis for taking such action under the Transaction Agreement or applicable law. *See* Ex. A § 5.02.

70. L Brands will be irreparably harmed if Defendant Sycamore refuses to comply with its contractual obligations to use reasonable best efforts to consummate the Transaction, as contemplated by Section 11.12 of the Transaction Agreement, in which the Parties agreed that "irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof." *See* Ex. A § 11.12.

71. Defendant Sycamore must abide by the clear contractual obligations imposed by the Transaction Agreement, and it will not be harmed if it is

prevented from violating L Brands' contractual rights. By contrast, L Brands will be immediately and irreparably harmed. The balance of the equities weighs in L Brands' favor.

72. L Brands has no adequate remedy at law.

## COUNT III
## (Breach of Contract and Specific Performance Against Sycamore Partners)

73. L Brands incorporates herein by reference paragraphs 1 through 72 hereof as if fully set forth herein.

74. The Transaction Agreement and Equity Commitment Letter are valid and binding contracts.

75. L Brands has substantially performed under the Transaction Agreement and the Equity Commitment Letter and remains ready, willing, and able to perform any remaining obligations.

76. Plaintiff has satisfied all conditions precedent in the contractual agreements or will be capable of satisfying those conditions precedent at or prior to the closing of the Transaction.

77. Defendant Sycamore has breached, and intends to breach, the Transaction Agreement, without contractual excuse or justification, by, among other things, failing to use reasonable best efforts to consummate the transaction as contemplated by Section 5.02 of the Transaction Agreement, and refusing to close the Transaction without any basis for taking such action under the

Transaction Agreement or applicable law. *See* Ex. A § 5.02. Moreover, Defendants Sycamore Partners intend to breach their obligations under the Equity Commitment Letter by refusing to fund the purchase price.

78. L Brands will be irreparably harmed if Defendant Sycamore refuses to comply with its contractual obligation to use reasonable best efforts to consummate the Transaction, as contemplated by Section 11.12 of the Transaction Agreement, in which the Parties agreed that "irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof," and if Defendants Sycamore Partners fail to fund the purchase price as required by the Equity Commitment Letter. Ex. A § 11.12.

79. Defendants must abide by the clear contractual obligations imposed by the Transaction Agreement and the Equity Commitment Letter, and they will not be harmed if they are prevented from violating L Brands' contractual rights. By contrast, L Brands will be immediately and irreparably harmed. The balance of the equities weighs in L Brands' favor.

80. L Brands has no adequate remedy at law.

## RELIEF REQUESTED

WHEREFORE, L Brands respectfully requests that this Court grant the following relief:

a. A declaration that Defendants' refusal to Close is a violation of the Transaction Agreement and that Defendants have knowingly and willfully breached the Agreement;

b. Judgment in favor of Plaintiff on all claims asserted against Defendants;

c. An Order requiring Defendants to specifically perform their obligations under the Transaction Agreement, including the obligation to use reasonable best efforts to consummate the Transaction, paying the purchase price upon the satisfaction of all closing conditions, funding the purchase price on behalf of Sycamore in accordance with the terms of the Equity Commitment Letter, and transferring the purchase price to Plaintiff;

d. An Order, in the alternative, awarding Plaintiff monetary damages;

e. An Order awarding Plaintiff its costs and attorneys' fees incurred in bringing this action;

f. An Order awarding Plaintiff such other relief as the Court deems necessary, equitable, and just.

MORRIS, NICHOLS, ARSHT
& TUNNELL LLP

*/s/ Kevin M. Coen*
William M. Lafferty (#2755)
Kevin M. Coen (#4775)
Sabrina M. Hendershot (#6286)
A. Gage Whirley (#6707)
1201 North Market Street
Wilmington, Delaware 19801
(302) 658-9200
*Attorneys for Plaintiff L Brands Inc.*

OF COUNSEL:

Andrew Ditchfield
Brian M. Burnovski
Serena D. Wu
Patrick O. Malone
DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, NY 10017
(212) 450-4000

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