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Transaction ID 65592135
Case No. 2020-0297-

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

SP VS BUYER LP,	)	
Plaintiff,	)	C.A. No. 2020-_____-___
v.	)	
L BRANDS, INC.,	)	
Defendant.	)	

VERIFIED COMPLAINT

Plaintiff SP VS Buyer LP ("Plaintiff" or "Buyer"), by and through its undersigned counsel, hereby brings this action for declaratory judgment against Defendant L Brands, Inc. ("Defendant" or "L Brands") and alleges as follows:

NATURE OF THE ACTION

1. By this action, Plaintiff seeks a declaration that the termination of its agreement to acquire a majority interest in the Victoria's Secret Business[1] of L Brands is valid. Specifically, because L Brands has breached its covenants in the parties' Transaction Agreement (as defined below) and has caused several of its

[1] For purposes of this Verified Complaint, the "Victoria's Secret Business" means the specialty retail business of L Brands and its subsidiaries with respect to women's intimate and other apparel, accessories, beauty care products and fragrances that is conducted under the Victoria's Secret or PINK brands, and the global development, production and sourcing functions of L Brands and its subsidiaries solely to the extent related to women's intimate and other apparel that is conducted under the Victoria's Secret or PINK brands.

representations and warranties in the Transaction Agreement to become false, L Brands cannot satisfy the conditions precedent to closing, and Plaintiff was permitted to terminate the Transaction (as defined below). The spread of a novel coronavirus ("COVID-19") provides no relief to L Brands under the terms of the Transaction Agreement that Plaintiff seeks to enforce.

2. On February 20, 2020, the parties entered into a transaction agreement (the "Transaction Agreement") pursuant to which the Victoria's Secret Business would be separated from L Brands and placed into a privately-held company majority-owned by an affiliate of private equity firm Sycamore Partners ("Sycamore"). A true and correct copy of the Transaction Agreement is attached hereto as Exhibit A. Pursuant to the Transaction Agreement, L Brands would transfer certain assets and liabilities relating to the Victoria's Secret Business to a newly formed subsidiary and sell 55% of the equity interests in that subsidiary to Buyer (the "Transaction"). L Brands estimated that the purchase price for this 55% equity interest in the Victoria's Secret Business, after accounting for certain liabilities, would be approximately $525 million. L Brands and Buyer anticipated closing the Transaction in the second quarter of 2020.

3. Less than one month after L Brands entered into the Transaction Agreement with Plaintiff, however, it closed nearly all of its approximately 1,600 Victoria's Secret and PINK brick and mortar locations globally, including all 1,091

of its Victoria's Secret and PINK stores in the United States and Canada. More importantly however, L Brands also took the following voluntary actions with respect to the Victoria's Secret Business: furloughed most of the employees of the Victoria's Secret Business; reduced by 20% the base compensation of all employees at the level of senior vice president and above, and deferred annual merit increases for 2020; drastically reduced new merchandise receipts which, when coupled with L Brands' failure to dispose of existing out-of-season, obsolete and excess merchandise, has saddled the Victoria's Secret Business with a stock of merchandise of greatly diminished value; and failed to pay rent during April 2020 for its retail stores in the United States[2]. All of these actions were taken by L Brands in violation of the Transaction Agreement.

4. That these actions were taken as a result of or in response to the COVID-19 pandemic is no defense to L Brands' clear breaches of the Transaction Agreement. Specifically, L Brands agreed that a condition to Plaintiff's obligation to close the Transaction is 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." Those obligations included L Brands' covenant that it "shall and shall cause its Subsidiaries to conduct the

[2] https://www.wsj.com/articles/landlords-companies-clash-over-rent-payments-during-coronavirus-11586865600. (Last visited on April 22, 2020).

Business in the ordinary course consistent with past practice." Those obligations also included L Brands' covenant not to, and to cause its subsidiaries not to, "change any cash management policies, practices, principles or methodologies used with respect to the Business." The actions taken by L Brands' have materially breached these covenants, among others, and these breaches are not capable of being cured. These actions have caused significant damage to the Victoria's Secret Business.

5. As a result, the conditions precedent to closing the Transaction cannot be satisfied, and Plaintiff terminated the Transaction Agreement on April 22, 2020. Plaintiff brings this action seeking a declaratory judgment that the termination is valid.

PARTIES

6. Plaintiff SP VS Buyer LP is a Delaware limited partnership and referred to as "Buyer" in the Transaction Agreement. SP VS Buyer LP is an affiliate of Sycamore.

7. Non-party Sycamore is a private equity firm based in New York. Sycamore specializes in retail and consumer investments.

8. Defendant L Brands is a publicly traded Delaware corporation with its principal place of business in Columbus, Ohio. L Brands is referred to as "Parent" in the Transaction Agreement. L Brands, through Victoria's Secret, PINK and Bath & Body Works, is an international retail company. L Brands operates almost 3,000

company-owned specialty stores in the United States, Canada, the United Kingdom, Ireland and Greater China (China and Hong Kong), and its brands are sold in more than 650 franchised, licensed and wholesale locations worldwide. The Victoria's Secret Business includes 1,180 of L Brands' company-owned stores, with an additional 440 Victoria's Secret stores operating under franchise, license and wholesale arrangements.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction under 10 *Del. C.* § 6501 to declare the rights, status and other legal relations of the parties to the Transaction Agreement.

10. This Court has personal jurisdiction over L Brands, a Delaware corporation, pursuant to 8 *Del. C.* § 321.

11. 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." Further, Section 11.05 of the Transaction Agreement provides that the Transaction Agreement shall be governed by and construed in accordance with the law of the State of Delaware, without regard to conflicts of law rules.

BACKGROUND

A. Beginning of the Transaction

12. On February 20, 2020, L Brands announced a planned sale of a majority stake in the Victoria's Secret Business to Buyer for a purchase price estimated by L Brands of approximately $525 million (after accounting for certain liabilities). Buyer would own a 55% controlling interest in the Victoria's Secret Business, while L Brands would maintain a 45% interest.

13. L Brands also owns Bath & Body Works. The Transaction would position Bath & Body Works to become a standalone public company while separating the Victoria's Secret Business into a privately-held entity.

B. The Transaction Agreement

14. The Transaction Agreement was executed by Plaintiff and Defendant on February 20, 2020. The 101-page agreement is a carefully negotiated agreement between sophisticated and well-advised commercial parties. Because Plaintiff would be acquiring a majority stake in a global business, it negotiated for a Transaction Agreement that imposed a detailed set of obligations on the Defendant with respect to the conduct of the Victoria's Secret Business between signing and closing. Because of the critical importance of maintaining the value associated with the Victoria's Secret Business pending the closing of the Transaction, L Brands agreed to a detailed set of conditions to closing that included the accuracy of various

representations and warranties made by L Brands and the performance in all material respects by L Brands of various covenants. Thus, any "allocation of risk" negotiated by the parties is reflected only through the precise terms of the Transaction Agreement.[3]

15. Article 8 of the Transaction Agreement sets forth the conditions to the closing of the Transaction. In particular, Section 8.02 provides the conditions precedent to Plaintiff's obligation to close the Transaction. Significantly, these conditions include that "Parent 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." TA § 8.02(a)(ii).

16. Another condition precedent to Plaintiff's obligation to close the Transaction is that:

> (i) The representations and warranties of Parent contained in Section 3.09(a) shall be true and correct at and as of the Closing Date, as if made at and as of such date, . . . and (iii) the representations and warranties of Parent contained in Article 3 other than Section 3.09(a), Section 3.01, Section 3.02, Section 3.05, Section 3.06 and Section 3.19 (determined without regard to any qualification or exception contained therein relating to "material", "materiality", "Material Adverse Effect" or any similar qualification or standard) shall be true and correct at and as of the Closing Date, as if made at and as of such date (except with respect to representations and warranties that are made

[3] Section 10.01(d) of the Transaction Agreement provides that either party may choose not to proceed with the Transaction if it has not been completed by August 20, 2020, which date may be extended by either party to November 20, 2020, under certain limited circumstances.

> expressly as of a specific date, which representations and warranties shall be true and correct as of such date), in the case of this clause (iii) 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.

TA §§ 8.02(b)(i) and 8.02(b)(iii).

C. L Brands' Covenants

17. L Brands made certain covenants and accepted certain limitations on its conduct between signing and closing. Among other things, L Brands made important promises with respect to the conduct of the Victoria's Secret Business. Specifically, L Brands covenanted that:

> From the date hereof until the Closing Date, except as contemplated by this Agreement or pursuant to the Restructuring Transactions, as required by Applicable Law or any Governmental Authority, as disclosed on Section 5.01(a) of the Parent Disclosure Schedule or as consented to in writing by Buyer (such consent not to be unreasonably withheld, conditioned or delayed), **[L Brands] shall and shall cause its Subsidiaries to conduct the Business in the ordinary course consistent with past practice** and to use their reasonable best efforts to preserve intact the business organizations of the Business and the relationships of the Business with third parties and to keep available the services of the Business's present officers and employees; *provided* that no action by Parent or any of its Subsidiaries that is set forth on Section 5.01(b) of the Parent Disclosure Schedule or consented to in writing by Buyer in accordance with Section 5.01(b) shall be deemed to be a breach of this Section 5.01(a).

TA § 5.01(a) (emphasis added).

18. In addition, L Brands covenanted that it would not, and would cause its

subsidiaries not to "change any cash management policies, practices, principles or methodologies used with respect to the Business." TA § 5.01(b)(xv)(y).

D. L Brands' Representations and Warranties

19. L Brands also made a number of representations and warranties to Plaintiff, the inaccuracy of which results in the failure of a condition to Plaintiff's obligation to close the Transaction.

20. Among other things, L Brands represented that:

> Since 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.[4]

TA § 3.09(a).

21. L Brands also represented that:

> Since the Reference Date, except for transactions contemplated by this Agreement (including the Restructuring Transactions), as set forth on Section 5.01(a) of the Parent Disclosure Schedule or for transactions undertaken with the prior written consent of Buyer, the Business has been conducted in the ordinary course of business consistent with past practice in all material respects.

TA § 3.09(b).

22. L Brands also represented that:

> Since the Reference Date . . . there has not been any action taken by Parent or any of its Subsidiaries (including any Acquired Company) that, if taken during the period from the date of this

[4] The Transaction Agreement defines the Reference Date as November 2, 2019.

> Agreement through the Closing Date without Buyer's consent, would constitute a material breach of Section 5.01(b).

TA § 3.09(c).

23. L Brands also represented that "there are no liabilities of the Business or any Acquired Company of any kind whatsoever, whether accrued, contingent, absolute, determined, determinable or otherwise", other than the exceptions specified therein. TA § 3.10.

24. L Brands also represented that "[n]one of Parent or any of its Subsidiaries or, to the Knowledge of Parent, any other party thereto is in material default or material breach under the terms of any Material Contract, and no event or circumstance has occurred that, with or without notice or lapse of time or both, would constitute any material event of default thereunder" (TA § 3.11(b)) and that "[w]ith respect to the leases that are Material Contracts, the Acquired Companies are not in material breach or material default under such leases, and no event has occurred or circumstance exists which, with the delivery of notice, the passage of time or both, would constitute such a material breach or material default, or permit the termination, modification or acceleration of any material amount of rent under such lease" (TA § 3.14(a)).

25. Given the significant damage done to the Victoria's Secret Business as a result of L Brands' failure to comply with its contractual obligations—including its unqualified covenant to run the Victoria's Secret Business in the ordinary course

consistent with past practice—and its inability to certify the accuracy of its representations and warranties in the Transaction Agreement, L Brands cannot satisfy the conditions precedent to closing.[5] TA §§ 5.01(a), 8.02(a)(ii).

26. Additionally, a Material Adverse Effect has occurred. A Material Adverse Effect is defined in the Transaction Agreement as:

> any 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 … (H) pandemics…

TA at 10 (emphasis added). The various carve-outs that apply to the second part of the definition of a Material Adverse Effect (including the pandemic carve-out) do not apply to the first part of the definition requiring that there not be any state of facts, circumstance or event that would prevent or materially impede the performance by L Brands of its obligations under the Transaction Agreement. As such, the existence of *any* state of facts, circumstance or event that would prevent or materially impede the performance by L Brands of its obligations under the

[5] Section 8.02(c) of the Transaction Agreement requires that L Brands provide Plaintiff with a bring-down certificate certifying the accuracy of the matters set forth in Section 8.02(a) and Section 8.02(b).

Transaction Agreement—regardless of whether such state of facts, circumstance or event and the resulting adverse effect is, for example, the result of a pandemic — constitutes a Material Adverse Effect causing a failure of a condition to closing. TA § 8.02(b)(i); TA at 10. Accordingly, the Transaction Agreement is clear that the risk of L Brands' failure to operate the Victoria's Secret Business in the ordinary course consistent with past practice between signing and closing, even in the face of events such as the COVID-19 pandemic, is to be expressly and completely borne by L Brands.

27. Plaintiff is entitled to terminate the Transaction Agreement at any time prior to closing:

> if there has been a violation, breach or inaccuracy of any representation, warranty, covenant or agreement of Parent contained in [the Transaction Agreement], which violation, breach or inaccuracy would cause any of the conditions set forth in Section 8.02(a) or Section 8.02(b) not to be satisfied, and such violation, breach or inaccuracy has not been waived by Buyer or cured by Parent within 20 days after receipt by Parent of written notice thereof from Buyer or is not capable of being cured.

TA § 10.01(b).

E. After Signing the Transaction Agreement, L Brands Breaches its Covenant to Operate the Victoria's Secret Business in the Ordinary Course of Business Consistent with Past Practice

28. After the Transaction Agreement was signed, the spread of COVID-19 caused a national and international emergency. By March 31, 2020, at least 30 states

and the District of Columbia—representing more than two-thirds of this country's population—had implemented stay-at-home orders restricting non-essential travel and activities.[6]

29. On March 17, 2020, L Brands announced the temporary closure of all Bath & Body Works, Victoria's Secret and PINK stores in the United States and Canada through March 29, 2020.[7] L Brands operated 1,091 Victoria's Secret and PINK stores in the United States and Canada as of February 1, 2020 and had closed all of them by March 17, 2020. Thereafter, L Brands announced that it was extending the closure of its stores beyond March 29, 2020[8] and such closure remains in effect at the time of filing this complaint.

30. Commencing on or about the time L Brands took action to close substantially all of its Victoria's Secret and PINK stores, L Brands also began a pattern of repeated, material and incurable breaches of its covenant "to conduct the Business in the ordinary course consistent with past practice." None of these material breaches of the Transaction Agreement were "required by Applicable Law or any Governmental Authority." Nor were they contemplated by the Transaction

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[6] https://www.cnn.com/2020/03/23/us/coronavirus-which-states-stay-at-home-order-trnd/index.html. (Last visited April 22, 2020).

[7] http://investors.lb.com/news-releases/news-release-details/l-brands-provides-covid-19-related-update. (Last visited April 22, 2020).

[8] http://investors.lb.com/news-releases/news-release-details/l-brands-provides-additional-update-related-covid-19-pandemic. (Last visited April 22, 2020).

Agreement. And, importantly, they were not consented or acquiesced to in any way by Buyer. TA §§ 5.01(a).

31. The actions taken by L Brands that breached Section 5.01(a) and Section 5.01(b) of the Transaction Agreement include, but are not limited to:

a) On March 27, 2020, L Brands announced that it was furloughing most store associates and those who are not currently supporting its e-commerce business or who cannot work from home. L Brands' furloughed employees included all store associates below the level of manager, all field asset protection investigators, all staff at five closed distribution centers, all processing center associates below the supervisor level, all call associates who cannot work from home and all security and dining staff at the home office buildings.[9] L Brands said that furloughed associates would be able to apply for unemployment benefits, if eligible.

b) On March 27, 2020, L Brands also announced that it is reducing by 20% the base compensation of all employees at the level of senior vice president and above, and that L Brands is deferring annual merit increases for 2020.

[9] https://www.bizjournals.com/columbus/news/2020/03/27/l-brands-furloughs-workers-wexner-and-board-wont.html. (Last visited April 22, 2020).

c) On March 27, 2020, L Brands also announced that it is executing a substantial and ongoing reduction in forward merchandise receipts, which has been coupled with L Brands' failure to dispose of out-of-season, excess and obsolete existing merchandise inventories of the Victoria's Secret Business.

d) L Brands also failed to pay April 2020 rent for the retail stores of the Victoria's Secret Business in the United States[10].

Buyer neither consented to, nor acquiesced to, any of these material breaches of the Transaction Agreement. In its April 14, 2020 letter to Buyer, L Brands conceded that it never obtained Buyer's consent to any of these material breaches of the Transaction Agreement — rather, L Brands mistakenly claimed that "L Brands did not need [Buyer's] consent to take these actions."

32. L Brands' material breaches of the Transaction Agreement have caused severe damage to the Victoria's Secret Business, including the adverse effects of furloughing most of the Victoria's Secret employees ("We view our customers' in-store experience as an important vehicle for communicating the image of each brand. We utilize visual presentation of merchandise, in-store marketing, music and our sales associates to reinforce the image represented by the brands. . . . Our sales associates and managers are a central element in creating the atmosphere of the

[10] https://www.wsj.com/articles/landlords-companies-clash-over-rent-payments-during-coronavirus-11586865600. (Last visited on April 22, 2020).

stores by providing a high level of customer service."[11]). Unfortunately, those associates who were expected to provide a "high level of customer service" have now been forced to search for new employment and/or file for unemployment insurance, with little to no certainty that they will return to work for Victoria's Secret. There is also significant uncertainty as to the state of employee morale in the Victoria's Secret workforce if indeed the furloughed associates do ever return to work for Victoria's Secret. The erosion of employee morale will be further exacerbated by L Brands' decision to reduce by 20% the base compensation of all employees at the level of senior vice president and above and defer merit increases for 2020. L Brands' material breaches of the Transaction Agreement have therefore damaged the relationship between the Victoria's Secret Business and one of its most valuable assets — its employees — and, as a result, have significantly damaged the Victoria's Secret Business.

33. The significant damage to the Victoria's Secret Business also includes L Brands' actions taken to drastically reduce new merchandise receipts which, when coupled with L Brands' failure to dispose of existing out-of-season, obsolete and excess merchandise, has saddled the Victoria's Secret Business with a stock of merchandise of greatly diminished value. The Victoria's Secret Business derives a

[11] L Brands' March 30, 2020 Form 10-K. (http://investors.lb.com/static-files/fe53c8ad-8bfa-4653-8395-04b7eac71cfe). (Last visited April 22, 2020).

significant portion of its sales because its customers identify it as a brand associated with fashion, newness and innovation ("Our ability to…remain current with fashion trends and launch new product lines successfully…impact the image and relevance of our brands."[12]). Many of the Victoria's Secret Business' sales are also seasonal in nature ("We experience major seasonal fluctuations in our net sales and operating income, with a significant portion of our operating income typically realized during the fourth quarter holiday season. Any decrease in sales or margins during this period could have a material adverse effect on our results of operations, financial condition and cash flows."[13]). As a result, the importance of having the right inventory in the right quantities at the right time is critical to the ability of the Victoria's Secret Business both to maintain sales and its image and reputation as a current and fashionable brand. In fact, L Brands has historically air- shipped almost all of its inventory from overseas even though doing so is considerably more costly than ocean shipping because the speed of air shipping has allowed the Victoria's Secret Business to have fresh and up-to-date product available for sale to customers ("With respect to the use of airfreight, frankly, substantially everything that we have produced outside the United States is on an airplane . . . And it's because the value in our judgment of speed and agility . . . the economic value of that far outstrips the

[12] L Brands' March 30, 2020 Form 10-K. (http://investors.lb.com/static-files/fe53c8ad-8bfa-4653-8395-04b7eac71cfe). (Last visited April 22, 2020).

[13] *Id.*

incremental cost of moving stuff on a boat."[14]). L Brands itself has recognized these key attributes of the Victoria's Secret Business ("Our success depends in part on management's ability to effectively manage the life cycle of our brands and to anticipate and respond to changing fashion preferences and consumer demands and to translate market trends into appropriate, salable product offerings in advance of the actual time of sale to the customer" . . . "We believe a large part of our success comes from frequent and innovative product launches, which include bra launches at Victoria's Secret and PINK."[15]). The actions taken by L Brands in material breach of the Transaction Agreement have undermined this image and damaged the financial condition of the Victoria's Secret Business. The substantial reduction by L Brands of new merchandise receipts, when coupled with L Brands' failure to dispose of its existing excess, obsolete and out-of-season inventory, has saddled the Victoria's Secret business with a stock of merchandise of greatly diminished value. Since nearly all of the existing merchandise of the Victoria's Secret Business is excess, obsolete and out-of-season, this will result in the Victoria's Secret Business experiencing reduced sales, higher markdowns and substantially reduced cash flows for a significant period of time following the re-opening of the Victoria's Secret Business retail stores. L Brands itself has acknowledged the substantial damage

[14] L Brands' Q2-19 Earnings Transcript August 22, 2019.

[15] L Brands' March 30, 2020 Form 10-K. (http://investors.lb.com/static-files/fe53c8ad-8bfa-4653-8395-04b7eac71cfe). (Last visited April 22, 2020).

resulting from these extraordinary levels of excess, out-of-season and obsolete inventory ("If we are not successful in selling inventory, we may have to sell the inventory at significantly reduced prices or may not be able to sell the inventory at all, which could have a material adverse effect on our results of operations, financial condition and cash flows."[16]). Moreover, the sale of out-of-date product as a result of L Brands' actions in material breach of the Transaction Agreement is catastrophic to the image of a brand associated with being current, relevant and fashionable.

34. Another of L Brands' material breaches of the Transaction Agreement — its failure to pay rent for April 2020 for the retail stores of the Victoria's Secret Business in the United States[17] — has damaged the relationship with one of the Victoria's Secret Business' most significant counterparties, the landlords of its brick and mortar retail stores. This failure to pay rent is likely to result in the Victoria's Secret Business being in default on effectively all of its U.S. retail store leases.

35. The financial position of the Victoria's Secret Business has taken a devastating hit as a result of L Brands' material breaches of the Transaction Agreement. The impact of just the actions taken that have been publicly disclosed:

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[16] *Id.*

[17] L Brands' March 30, 2020 10-K disclosed that "[p]art of our future growth is significantly dependent on our ability to operate stores in desirable locations . . . to earn a reasonable return". It will likely prove difficult to realize such future growth that is dependent on desirable store locations when the tenant [L Brands] under the Victoria's Secret business' leases fails to pay rent to its landlords.

the loss of experience and skill of the Victoria's Secret Business employees that have been furloughed that will never return to work for Victoria's Secret; the cost and disruption of onboarding replacement employees and furloughed employees; the negative impact of salary cuts and furloughs on employee morale and retention; the lost sales, increased markdowns and reduction in cash flows resulting from the stockpiling of out-of-season, obsolete and excess merchandise; and the long-term damage to relationships with landlords associated with not paying rent, all has caused incalculable damage to the Victoria's Secret Business.

36. The negotiated terms of the Transaction Agreement are clear. Until the closing, L Brands was required to operate the Victoria's Secret Business in the ordinary course of business consistent with past practice. The plain and simple fact is that L Brands has materially breached this covenant in a myriad of ways that have materially and irreparably damaged the Victoria's Secret Business and impaired its value. What remains of the Victoria's Secret Business is not what Buyer agreed to purchase under the Transaction Agreement.

F. Plaintiff is Entitled to Terminate the Transaction Agreement

37. The current COVID-19 pandemic provides no relief to L Brands. The actions it has taken have breached numerous provisions of the Transaction Agreement resulting in significant damage (financial and otherwise) to the Victoria's Secret Business; these breaches are incapable of being cured. Most significantly, L

Brands has failed to "conduct the Business in the ordinary course consistent with past practice" as required by Section 5.01(a) by, among other things:

a) Furloughing most of the employees of the Victoria's Secret Business;

b) Reducing by 20% the base compensation for all employees at the level of senior vice president and above, and deferring annual merit increases for 2020;

c) Substantially reducing new merchandise receipts, which when coupled with L Brands' failure to dispose of out-of-season, obsolete and excess merchandise, has saddled the Victoria's Secret Business with a stock of merchandise of greatly diminished value; and

d) Failing to pay rent for April 2020 for the retail stores of the Victoria's Secret Business in the United States.

38. These actions also constitute breaches of other covenants in the Transaction Agreement, including L Brands' agreement in Section 5.01(b)(xv)(y) of the Transaction Agreement not to "change any cash management policies, practices, principles or methodologies used with respect to the Business."

39. None of the foregoing breaches of covenants is capable of being cured and they illustrate that L Brands has not performed all of its obligations under the

Transaction Agreement in all material respects. As such, L Brands has not satisfied and is incapable of satisfying the conditions to Plaintiff's obligations to close. TA § 8.02(a)(ii).

40. L Brands has also suffered a Material Adverse Effect pursuant to Section 3.09(a), insofar as there exists "any state of facts, circumstance, condition, event, change, development, occurrence, result or effect" that "prevent[s] and materially impede[s] the performance by [L Brands] of its obligations under [the Transaction] Agreement." TA at 10. As such, a condition to closing cannot be satisfied. TA §§ 3.09(a) and 8.02(b)(i).

41. L Brands' actions have also caused several representations and warranties under Section 3 of the Transaction Agreement to become false, which in turn violates the closing conditions outlined in Section 8.02(b)(iii) of the Transaction Agreement, which provides that "the representations and warranties of Parent contained in Article 3 other than Section 3.09(a), Section 3.01, Section 3.02, Section 3.05, Section 3.06 and Section 3.19 . . . shall be true and correct at and as of the Closing Date, as if made at and as of such date . . . in the case of this clause (iii) 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." TA § 8.02(b)(iii).

42. Specifically, L Brands' representation in Section 3.09(b) has become false because L Brands cannot represent, now or at any future closing, that from the

Reference Date "the Business has been conducted in the ordinary course of business consistent with past practice in all material respects." TA § 3.09(b). This is so for all of the same reasons that L Brands has breached its covenant to conduct the Victoria's Secret Business in the ordinary course consistent with past practice in Section 5.01(a).

43. Further, because L Brands is in violation of covenants under Section 5.01(b) as described above, its representation under Section 3.09(c) that it would not take any action before closing that would constitute a material breach of Section 5.01(b) has become false. *See* TA § 3.09(c).

44. L Brands' representation that "there are no liabilities of the Business or any Acquired Company of any kind whatsoever, whether accrued, contingent, absolute, determined, determinable or otherwise" has also become false because L Brands: furloughed most of the employees of the Victoria's Secret Business; failed to pay April 2020 rent for the Victoria's Secret Business retail stores in the United States; and slashed new merchandise receipts of the Victoria's Secret Business in contravention of existing firm commitments to accept and pay for such merchandise. TA § 3.10.

45. L Brands' representations that "[n]one of [L Brands] or any of its Subsidiaries or, to the Knowledge of [L Brands], any other party thereto is in material default or material breach under the terms of any Material Contract, and no

event or circumstance has occurred that, with or without notice or lapse of time or both, would constitute any material event of default thereunder" (TA § 3.11(b)) and "[w]ith respect to the leases that are Material Contracts, the Acquired Companies are not in material breach or material default under such leases, and no event has occurred or circumstance exists which, with the delivery of notice, the passage of time or both, would constitute such a material breach or material default, or permit the termination, modification or acceleration of any material amount of rent under such lease" (TA § 3.14(a)) are also false because L Brands failed to pay April 2020 rent for the retail stores of the Victoria's Secret Business in the United States, and as a result of L Brands drastic reductions in new merchandise receipts of the Victoria's Secret Business in contravention of existing firm commitments to accept and pay for such merchandise.

46. The foregoing false representations, in the aggregate, constitute a Material Adverse Effect and, as such, L Brands has not satisfied a condition precedent to Plaintiff's obligation to close. TA § 8.02(b)(iii).

47. Plaintiff has complied with, and is in compliance with, all of its obligations under the Transaction Agreement and has not breached, and is not in breach of, the Transaction Agreement.

G. Buyer Informs L Brands of its Material Breaches

48. On April 2, 2020, counsel for Buyer communicated to counsel for

L Brands that Buyer had "neither consented to nor acquiesced to any" actions taken by L Brands in response to the coronavirus pandemic and that Buyer "has serious concerns that the conditions to consummate the closing" are capable of being satisfied.

49. Later that day, counsel for L Brands responded. Though counsel for L Brands conceded that the COVID-19 pandemic had "broadly affected" the retail industry in which the Victoria's Secret Business operates, counsel for L Brands claimed that L Brands had not breached the Transaction Agreement and that all closing conditions were capable of being satisfied. Counsel for L Brands stated, "To be clear, [L Brands] has complied in all respects with its obligations under the Transaction Agreement, and it fully expects that all closing conditions will be capable of being satisfied early in its fiscal second quarter and potentially as soon as May 2, 2020." May 2, 2020 is the date L Brands indicated that it might breach the "debt to consolidated EBITDA covenant" in its secured credit facility that would give L Brands' lenders "the right to accelerate [its] Secured Revolving Facility indebtedness . . . and terminate the funding commitments available thereunder.[18]" L Brands' material breaches of the Transaction Agreement may have been taken to further L Brands' corporate goals — whether to stockpile cash to weather the storm

[18] L Brands' March 30, 2020 Form 10-K. (http://investors.lb.com/static-files/fe53c8ad-8bfa-4653-8395-04b7eac71cfe). (Last visited April 22, 2020).

of the COVID-19 pandemic, to stave off the aforementioned potential default under its secured credit facility, or to "strengthen [its] financial flexibility"[19], but none of those reasons excuse L Brands' repeated, material and incurable breaches of the Transaction Agreement that have materially and irreparably damaged the stand-alone Victoria's Secret Business that L Brands now wishes to urgently hand over to Buyer.

50. On April 7, 2020, Buyer notified L Brands that as a result of certain actions taken by L Brands in response to the COVID-19 pandemic, "Buyer believes that L Brands is in material breach of the Transaction Agreement" and urged L Brands to respond to Buyer's detailed information requests to better understand the likely effects of L Brands' material breaches of the Transaction Agreement. Buyer's correspondence indicated that Buyer looked forward to receipt of this information "to allow us to properly assess logical next steps related to the transactions contemplated by the Transaction Agreement."

51. On April 8, 2020, L Brands responded, indicating that "L Brands rejects the contention that it has breached the . . . Transaction Agreement." L Brands indicated that "[w]e will evaluate and respond to your new requests for information and any additional requests consistent with [L Brands'] contractual obligations."

52. On April 13, 2020, Buyer "reiterate[d] that L Brands is in material

[19] *Id.*

breach of the Transaction Agreement by reason of certain actions taken by L Brands in response to the COVID-19 pandemic," and again reiterated that "Buyer neither consented to those actions, nor in any way acquiesced to them." Yet again Buyer implored L Brands to respond to Buyer's previous information requests 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 [L Brands] and [Buyer] 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."

53. On April 14, 2020, L Brands communicated that "L Brands has no obligation to renegotiate the purchase price or any other economic terms of the pending transaction." L Brands attempted to justify its material breaches of the Transaction Agreement as "consistent with the steps that retailers across the country have taken in response to the pandemic" and "consistent with the steps Sycamore has taken on behalf of other companies that it owns" — all of which is irrelevant to L Brands' material breaches of its covenant "to conduct the Business in the ordinary course consistent with past practice" as those other companies do not have a detailed set of obligations with respect to the conduct of their businesses associated with a M&A transaction. Moreover, L Brands' April 14, 2020 letter conceded that L Brands never sought Buyer's consent to L Brands' actions taken in response to the

COVID-19 pandemic, based on the mistaken belief that "L Brands did not need [Buyer's] consent to take these actions." L Brands further indicated that "[L Brands is] concerned . . . that Sycamore has requested information from L Brands about the Victoria's Secret business for use in connection with a potential renegotiation" and that "it is not reasonable for Sycamore to request information for the admitted purpose of seeking to change the economic terms of the transaction."

54. Based on L Brands' material and incurable breaches of the Transaction, and its stated position that "L Brands has no obligation to renegotiate the purchase price or any other economic terms of the pending transaction", Plaintiff terminated the Transaction Agreement on April 22, 2020. A true and correct copy of Buyer's termination letter dated April 22, 2020 is attached hereto as Exhibit B. Plaintiff was entitled to terminate the Transaction Agreement because "there has been a violation, breach or inaccuracy of any representation, warranty, covenant or agreement of [L Brands] contained in this Agreement, which violation, breach or inaccuracy would cause any of the conditions set forth in Section 8.02(a) or Section 8.02(b) not to be satisfied, and such violation, breach or inaccuracy . . . is not capable of being cured." TA § 10.01(b).

55. Plaintiff seeks the Court's intervention to adjudicate this ripe dispute and controversy between the parties.

COUNT I
(DECLARATORY JUDGMENT)

56. Plaintiff repeats and realleges the allegations above as if fully set forth herein.

57. The conditions precedent to Plaintiff's obligation to close the Transaction have not been met for the following reasons, among others:

a) From at least March 2020, Defendant did not conduct the Victoria's Secret Business in the ordinary course consistent with past practice as required by Sections 5.01(a) and 3.09(b).

b) There has been a Material Adverse Effect because a state of facts, circumstances and events have prevented and materially impeded the performance by Defendant of its obligations under the Transaction Agreement. TA § 3.09(a).

c) Defendant has taken actions since the date of the Transaction Agreement without Buyer's consent that constitute a material breach of covenants in Section 5.01(b) and the representation in Section 3.09(c).

d) There have been material violations of Defendant's representations and warranties in Section 3.09(b), Section 3.09(c), Section 3.10, Section 3.11(b), and Section 3.14(a) which, in the aggregate, constitute a Material Adverse Effect and, as such, Defendant has not satisfied a condition precedent to Plaintiff's obligation to close. TA § 8.02(b)(iii).

58. These breaches constitute an incurable failure of the conditions to Plaintiff's obligation to close under Sections 8.02(a)(ii) and 8.02(b).

59. Plaintiff has complied with, and is in compliance with, all of its obligations under the Transaction Agreement and has not breached, and is not in breach of, the Transaction Agreement.

60. Plaintiff terminated the Transaction Agreement on April 22, 2020.

61. Defendant has claimed that it is entitled to performance of Plaintiff's alleged obligations under the Transaction Agreement, including but not limited to the obligation to close the transactions contemplated by the Transaction Agreement. As such, an actual controversy exists between the parties as to whether the conditions precedent to such obligations have been satisfied. Accordingly, Plaintiff is entitled to a judgment declaring that the conditions precedent to closing have not been satisfied, and cannot be satisfied, and that it was entitled to terminate the Transaction Agreement.

62. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff respectfully requests that this Court enter an order as follows:

A. Declaring that the conditions precedent to closing under Section 8.02 of the Transaction Agreement have not been satisfied and cannot be satisfied;

B. Declaring that Plaintiff's termination of the Transaction Agreement was valid;

C. Awarding Plaintiff its costs and reasonable attorneys' fees; and

D. Granting such other and further relief as the Court deems proper.

/s/ Gregory P. Williams
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Dated: April 22, 2020