

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

Index No. _____
Purchased: Feb. 1, 2017

J. CREW GROUP, INC., J. CREW OPERATING
CORP., J. CREW INC., J. CREW
INTERNATIONAL, INC., J. CREW
INTERNATIONAL CAYMAN LIMITED, AND
CHINOS INTERMEDIATE HOLDINGS B, INC.,
Plaintiffs,

-against-

WILMINGTON SAVINGS FUND SOCIETY, FSB,
AS ADMINISTRATIVE AGENT AND
COLLATERAL AGENT,
Defendant.

SUMMONS

Plaintiffs designate New York
County as the place of trial.

Venue is based upon contract and
CPLR 503.

TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED and required to serve upon plaintiffs' attorneys an answer to the Complaint in this action within twenty (20) days after service of this summons, exclusive of the day of service, or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Venue is based upon Section 10.15(b) of the Amended and Restated Credit Agreement, dated as of March 5, 2014 (as amended, restated, amended and restated, supplemented, or otherwise modified and in effect on the date hereof). Venue is also proper under CPLR 503(c).

Dated: New York, New York
February 1, 2017

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WILMINGTON SAVINGS FUND SOCIETY, FSB,
AS ADMINISTRATIVE AGENT AND
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Defendant.

Index No.: _____

**COMPLAINT FOR
DECLARATORY JUDGMENT**

Plaintiffs designate New York
County as the place of trial.

Venue is based upon contract and
CPLR 503.

Plaintiffs, J. Crew Group, Inc., J. Crew Operating Corp., J. Crew Inc., J. Crew International, Inc., J. Crew International Cayman Limited, and Chinos Intermediate Holdings B, Inc. (collectively, “**J. Crew**”), by and through their undersigned attorneys, for their Complaint for Declaratory Judgment against Defendant Wilmington Savings Fund Society, FSB (“**WSFS**”), as Administrative Agent and Collateral Agent (the “**Agent**”) under an Amended and Restated Credit Agreement, dated as of March 5, 2014 (as amended, restated, amended and restated, supplemented, or otherwise modified and in effect on the date hereof, the “**Term Loan Agreement**”), by and among, *inter alia*, J. Crew Group (defined below), J. Crew Holdings (defined below), the “**Lenders**” (as defined in the Term Loan Agreement) party thereto and the Agent, allege as follows:

NATURE OF THE ACTION

1. A sophisticated group of hedge funds and other Lenders under the Term Loan Agreement (the “**Ad Hoc Group**”) is presently seeking to exert improper pressure on J. Crew through baseless assertions that recent transactions consummated by J. Crew breached the Term Loan Agreement. J. Crew brings this action to establish that there has been no such breach

and that, to the contrary, there can be no legitimate claim of Default or Event of Default (as defined in the Term Loan Agreement) based on the transactions at issue.

2. Defendant WSFS is the Agent under the Term Loan Agreement and is acting at the direction of the Ad Hoc Group. WSFS was only installed as the Agent for the Term Loan Agreement effective January 29, 2017, and is acting at the behest of the Ad Hoc Group, and its likely conflicted counsel, Jones Day LLP (“Jones Day”), which also serves (or until very recently served) as legal counsel to the Ad Hoc Group itself.

3. Upon information and belief, WSFS is preparing to issue an improper notice of default under the Term Loan Agreement and/or commence a declaratory judgment action, in either case wrongfully, asserting that J. Crew breached the Term Loan Agreement by investing a fraction of J. Crew’s intellectual property assets to certain of J. Crew Group’s “unrestricted” subsidiaries, notwithstanding the existence of negotiated provisions in the Term Loan Agreement that explicitly permit such an investment (the “**IP Transaction**”).

4. The purpose of the IP Transaction is to enable J. Crew to consider potential value-maximizing strategic transactions for J. Crew that will benefit all stakeholders, including the Lenders. More important, as WSFS and the Ad Hoc Group well know, the IP Transaction is *expressly* permitted by the terms of the Term Loan Agreement. Indeed, WSFS’s predecessor agent—Bank of America, N.A. (“**BofA**”)—executed documentation evidencing the release of certain liens on the intellectual property assets contributed to J. Crew’s unrestricted subsidiaries after its counsel, Shearman & Sterling LLP, engaged in four business days of legal diligence for the transaction. Moreover, BofA, in its capacity as agent under a separate \$350 million revolving credit facility that supports J. Crew’s operations executed similar documentation evidencing the release of liens.

5. Despite the clear basis for the IP Transaction under the Term Loan Agreement, WSFS and the Ad Hoc Group have taken—and continue to take—steps that are preventing J. Crew from realizing the benefits of this transaction, including the pursuit of potential value-maximizing strategic transactions. These steps threaten to cause imminent and significant disruption to J. Crew absent a declaration from this Court that J. Crew is in compliance with the terms of the Term Loan Agreement.

6. Among other things, for example, following BofA's decision to faithfully perform its obligations under the plain terms of the Term Loan Agreement, the Ad Hoc Group demanded that BofA hire the Ad Hoc Group's own lawyers at Jones Day and then resign as Agent, so that the Ad Hoc Group could then install WSFS to do its bidding. To be sure, the very purpose of forming the Ad Hoc Group and hiring Jones Day, counsel that is well known in the restructuring and debt litigation space, and installing WSFS as Agent can only be for purposes of advancing the parochial interests of the Ad Hoc Group members under the Term Loan Agreement, including by challenging the IP Transaction.

7. Indeed, the Ad Hoc Group has now stated its belief (during discussions with BofA concerning BofA's resignation) that BofA acted improperly under the Term Loan Agreement in executing documentation evidencing the release of liens because the Ad Hoc Group believes that the IP Transaction violates the terms of the Term Loan Agreement.

8. Moreover, numerous restructuring market sources and the press have advanced rumors—fueled by the Ad Hoc Group's actions—that Ad Hoc Group is planning to declare a Default or Event of Default (as defined in the Term Loan Agreement) and commence litigation against J. Crew with respect to the IP Transaction. On December 13, 2016, for example, an article appeared on *Yahoo!* stating that “J. Crew Group's lenders are gathering their

strength, preparing to hire advisers to apply pressure if the retailer's efforts to restructure its more than \$2 billion in debt don't appear to be going their way." The *Yahoo!* article further reported that "debt holders are starting to take on a 'we're going to fight this' attitude," including by hiring Jones Day. On December 20, 2016, an article appeared on *Bloomberg* stating that "[t]ransferring assets and investments to unrestricted subsidiaries can hurt creditors because new debt issued against them can get priority over their claims, potentially lowering the value of their holdings and preventing them from being paid first in the case of bankruptcy," and that as a result "J. Crew's lenders are said to be talking to lawyers and preparing for a potential fight." These rumors have been corroborated by Jones Day's involvement and the forced resignation of BofA as Agent under the Term Loan Agreement so that its fees would be covered in the litigation to come.

9. Such actions by the Ad Hoc Group, widely picked up and reported by the press, are nothing more than a thinly-veiled ploy to hold J. Crew hostage and improperly extract financial value to benefit the interests of the Ad Hoc Group at the expense of J. Crew and its other stakeholders. Worse, the assertion of fabricated breach of contract claims and other improper actions by WSFS and the Ad Hoc Group threaten to cause imminent and substantial disruption to J. Crew's business operations, all for the Ad Hoc Group's own gain, and at the expense of months of planning and millions of dollars in legal and advisor fees that J. Crew has invested in evaluating potential value-maximizing strategic opportunities that will benefit all stakeholders, including the Lenders.

10. Indeed, the overhang in the market caused by the threat of an impending declaration of a default by the Ad Hoc Group and WSFS and litigation related thereto has already created a substantial and continuing hurdle to J. Crew and its financial advisors, as J.

Crew pursues value-maximizing strategies. Potential counterparties have already expressed to J. Crew reluctance to seriously engage in discussions, much less a viable transaction, unless the overhang of threatened litigation or other actions to challenge the IP Transaction under the Term Loan Agreement by the Ad Hoc Group and WSFS is resolved.

11. Accordingly, J. Crew seeks a declaration from this Court that that the IP Transaction is expressly permitted by and complies with the terms of the Term Loan Agreement in all respects and that no Default or Event of Default (as defined in the Term Loan Agreement) has occurred or is continuing under the Term Loan Agreement as a result of the IP Transaction.

PARTIES

12. Plaintiff J. Crew Group, Inc. (“**J. Crew Group**”) is a Delaware corporation with its headquarters and principal place of business in New York, New York. A chart showing J. Crew’s organizational structure as relevant to the dispute appears in Paragraph 33 below.

13. Plaintiff J. Crew Operating Corp. (“**J. Crew OpCo**”), is a wholly-owned subsidiary of J. Crew Group.

14. Plaintiff J. Crew Inc. (“**J. Crew Inc.**”) is a wholly-owned subsidiary of J. Crew OpCo.

15. Plaintiff J. Crew International, Inc. (“**J. Crew International**”) is a wholly-owned subsidiary of J. Crew Inc.

16. Plaintiff J. Crew International Cayman Limited (“**J. Crew Cayman**”) is a wholly-owned subsidiary of J. Crew International.

17. Plaintiff Chinos Intermediate Holdings B, Inc. (“**J. Crew Holdings**”) is the direct parent company of J. Crew Group.

18. Defendant WSFS, a Delaware corporation, is a bank and trust company with its principal place of business in Wilmington, Delaware.

JURISDICTION AND VENUE

19. Under Section 10.15(b) of the Term Loan Agreement, WSFS has consented to the exclusive jurisdiction of the Courts of the State of New York sitting in New York City in the Borough of Manhattan.

20. Venue in this action is proper in the Supreme Court of New York, New York County pursuant to New York Civil Practice Law and Rule (“CPLR”) 503 because Plaintiffs are residents of New York County as a corporation with its principal place of business in New York County. Venue is also proper because, under Section 10.15(c) of the Term Loan Agreement, WSFS has irrevocably and unconditionally waived any objection to the laying of venue in the Courts of the State of New York sitting in New York City in the Borough of Manhattan, for any action arising out of or relating to the Term Loan Agreement.

FACTUAL ALLEGATIONS

I. BACKGROUND

21. J. Crew is an internationally recognized, multi-brand apparel and accessories retailer that designs, markets, and sells its products, through stores and websites that it operates worldwide.

22. J. Crew has three tranches of debt in its capital structure.

23. First, J. Crew Group has approximately \$1.5 billion of secured term loan indebtedness under the Term Loan Agreement, which is guaranteed by its direct parent company, J. Crew Holdings, and J. Crew Group’s domestic “**Restricted Subsidiaries**” (discussed below). The term loan was funded by various banks, hedge funds, and other financial institutions who are Lenders under the Term Loan Agreement. As of the date of this filing, the Ad Hoc Group

purports to represent the views of the holders of more than 50 percent of the total amount of indebtedness under the Term Loan Agreement. BofA acted as the Agent under the Term Loan Agreement until the Ad Hoc Group orchestrated its resignation on or about December 30, 2016. Thereafter the Ad Hoc Group installed WSFS as the replacement Agent to serve its purposes and to act only in the self-interest of the Ad Hoc Group to the detriment of J. Crew and all of its other stakeholders.

24. Second, J. Crew Group also is a party to a \$350 million senior secured asset-based revolving loan facility, dated as of March 7, 2011, as amended through and including November 17, 2016 (the “**ABL Agreement**”), which permits J. Crew Group to borrow revolving loans and to request the issuance of letters of credit of up to \$350 million in the aggregate, subject to availability under a borrowing base, supporting J. Crew Group’s obligations under the ABL Agreement. BofA continues to act as the Agent under the ABL Agreement.

25. Third, an indirect parent holding company of J. Crew, Chinos Intermediate Holdings A, Inc. (“**Chinos**”), has issued \$500 million aggregate principal of 7.75/8.50% unsecured Senior PIK Toggle Notes due May 1, 2019 (the “**PIK Notes**”).

II. KEY TERM LOAN AGREEMENT TERMINOLOGY

26. J. Crew Group is the “**Borrower**” under the Term Loan Agreement, meaning that it is the entity that is primarily liable for the \$1.5 billion term loan debt.

27. Several of J. Crew’s wholly-owned domestic (U.S.) subsidiaries serve as guarantors for J. Crew Group’s obligations under the Term Loan Agreement, and are therefore deemed to be “**Loan Parties**” under the Term Loan Agreement. The Loan Parties hold assets that serve as collateral for J. Crew Group’s obligations under the Term Loan Agreement and are “restricted” in the actions they can take with respect to those assets and their respective business generally by the terms of the Term Loan Agreement (“**Restricted Subsidiaries**”). As relevant

here, J. Crew OpCo, J. Crew Inc., and J. Crew International are Loan Parties and Restricted Subsidiaries under the terms of the Term Loan Agreement.

28. In addition to the domestic Restricted Subsidiaries, J. Crew also has wholly-owned foreign (non-U.S.) subsidiaries that are Restricted Subsidiaries under the terms of the Term Loan Agreement. As relevant here, J. Crew Cayman is a foreign Restricted Subsidiary. J. Crew Cayman, however, is not a guarantor of the obligations under the Term Loan Agreement, and it is therefore a **“Non-Loan Party”** under the terms of the Term Loan Agreement.

29. J. Crew also has certain wholly-owned domestic (U.S.) subsidiaries that are not guarantors of the obligations under the Term Loan Agreement and are not otherwise restricted by the terms of the Term Loan Agreement. As relevant here, these **“Unrestricted Subsidiaries”** include J. Crew Brand Holdings, LLC (**“Brand Holdings”**), J. Crew Brand, LLC, J. Crew Domestic Brand, LLC (**“Domestic Brand”**), and J. Crew International Brand, LLC (collectively, the **“Brand Entities”**). These subsidiaries were designated by J. Crew Group as Non-Loan Parties and Unrestricted Subsidiaries in accordance with the Term Loan Agreement, and, as a result of such designation, are not Loan Parties or Restricted Subsidiaries under the Term Loan Agreement.

III. OVERVIEW OF THE IP TRANSACTION

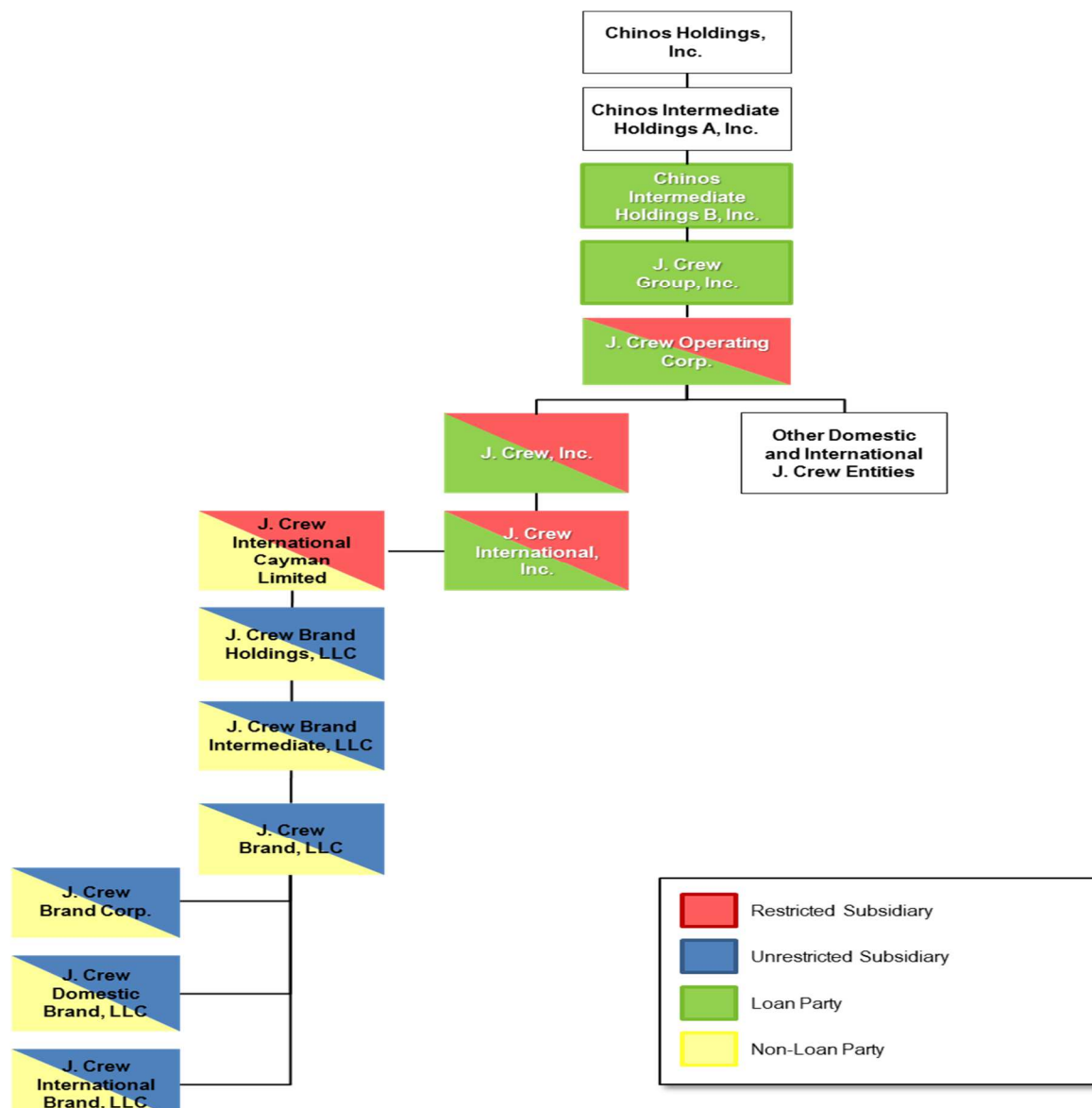
30. Article VII of the Term Loan Agreement sets forth certain “negative covenants”—in other words, provisions that prohibit J. Crew Group, J. Crew Holdings, and the Restricted Subsidiaries from engaging in various types of transactions—as well as several carefully crafted and negotiated exceptions (or “baskets”) that set forth specific types of transactions that J. Crew Group, J. Crew Holdings, and the Restricted Subsidiaries are otherwise permitted to engage in under the terms of the Term Loan Agreement.

31. The transaction that WSFS and the Ad Hoc Group contend is a breach of the Term Loan Agreement in fact was effectuated in compliance with the plain language of the Term Loan Agreement and is the very type of investment transaction that the Ad Hoc Group expressly agreed is permitted under Article VII of the Term Loan Agreement. On November 30, 2016, the Board of Directors of J. Crew Group delegated to a special committee of the Board of Directors of J. Crew OpCo, comprised entirely of outside, non-management directors, the authority to consider whether certain of J. Crew's intellectual property assets should be contributed from the Restricted Subsidiaries to the Unrestricted Subsidiaries in accordance with the permitted investment transactions authorized under Article VII of the Term Loan Agreement. The proposed transaction was the product of months of work by J. Crew management and J. Crew's legal and financial advisors, including Weil, Gotshal & Manges LLP and Lazard, and several formal and informal discussions with the outside, non-management directors during the month of November 2016. The purpose of this transaction was to enable J. Crew to consider and evaluate potential value-maximizing strategic transactions for J. Crew.

32. On December 2, 2016, the special committee of the Board of Directors of J. Crew OpCo determined that the proposed transaction would be advisable and in the best interests of J. Crew.

33. Accordingly, on December 5, 2016, J. Crew International, a wholly-owned subsidiary of J. Crew OpCo, contributed and assigned an undivided 72.04% interest in certain of its U.S. trademarks with a value of \$250 million (the "**IP Assets**") to J. Crew Cayman. Immediately upon receipt of the IP Assets from J. Crew International, J. Crew Cayman, a non-Loan Party Restricted Subsidiary, contributed the IP Assets to Brand Holdings, an Unrestricted Subsidiary, which in turn immediately contributed the IP Assets through certain of the remaining

Brand Entities to Domestic Brand, all Unrestricted Subsidiaries. Together, these transactions comprise the IP Transaction defined above. A depiction of J. Crew's organizational structure in which the IP Transaction was effectuated follows:



34. As explained in detail below, the IP Transaction was effectuated in accordance with “**Permitted Investment Baskets**” under the Term Loan Agreement which, when aggregated, allowed the relevant Restricted Subsidiaries to make investments of assets with a value of up to approximately \$277 million in Unrestricted Subsidiaries.

35. Prior to undertaking the IP Transaction, the special committee of J. Crew OpCo obtained a valuation and fairness opinion from Ocean Tomo, LLC (“**Ocean Tomo**”), an “**Independent Financial Advisor**” under the Term Loan Agreement, which confirmed that the value of the IP Assets was \$250 million and thus did not exceed the \$277 million of investment capacity under the Permitted Investment Baskets under the Term Loan Agreement.

36. The Brand Entities, J. Crew Cayman, and J. Crew International also have entered into an exclusive, non-transferable license agreement pursuant to which J. Crew International is able to continue using the IP Assets in exactly the same way it always has in the operation of J. Crew’s business in exchange for license payments to the Brand Entities. As required by the terms of the Term Loan Agreement, the license agreement is on terms substantially as favorable to J. Crew International as would have been obtainable by J. Crew International in a comparable arm’s length transaction, with an entity that is not an affiliate of J. Crew.

37. On December 8, 2016, after extensive review and legal due diligence of the IP Transaction, BofA, as Agent, executed certain collateral release documentation in accordance with the Term Loan Agreement necessary to release the Lenders’ security interest in the IP Assets. In addition, BofA, as agent under the ABL Agreement executed similar documentation evidencing the release of liens on the IP Assets.

38. Notably, the structure of the IP Transaction is merely only one way of many to effectuate the transfer of IP Assets in compliance with the terms of the Term Loan Agreement, and the special committee of J. Crew OpCo was authorized to effectuate the transfer of the IP Assets by any method that is compliant with the terms of the Term Loan Agreement.

IV. THE IP TRANSACTION IS EXPRESSLY PERMITTED BY THE TERM LOAN AGREEMENT

39. Article VII of the Term Loan Agreement contains restrictions or “negative covenants” prohibiting the Restricted Subsidiaries from engaging in various types of transactions, including the incurrence of debt, the granting of liens, the making of “Investments,” the “Disposition” of assets, and the consummation of transactions with “Affiliates.” Notwithstanding these general restrictions, the Term Loan Agreement expressly provides for a series of specifically enumerated exceptions or “baskets” pursuant to which the Restricted Subsidiaries are permitted to make certain Investments and Dispositions, and engage in certain transactions with Affiliates. As detailed below, the IP Transaction constituted a permitted Investment, a permitted Disposition and a permitted Affiliate transaction under the express terms of the Term Loan Agreement.

A. Permitted “Investment”

40. Section 1.01 of the Term Loan Agreement defines the term “Investment” to include “any direct or indirect acquisition or investment . . . by means of . . . [a] capital contribution.” The contribution of the IP Assets from J. Crew International to J. Crew Cayman, and from J. Crew Cayman to Brand Holdings was a permitted Investment under the terms of the Term Loan Agreement.

1. The Contribution Of IP Assets By J. Crew International To J. Crew Cayman Was A Permitted Investment

41. As relevant to the IP Transaction, Section 7.02 of the Term Loan Agreement provides for three Permitted Investment Baskets, which in the aggregate, enabled J. Crew International to invest the \$250 million worth of IP Assets into J. Crew Cayman.

42. First, Section 7.02(c)(iv) permits Investments “by any Loan Party in any Non-Loan Party that is a Restricted Subsidiary[,]” provided that “the aggregate amount of [such]

Investments . . . shall not exceed . . . \$150,000,000” plus additional capacity not relevant here (the “**Restricted Subsidiary Investment Basket**”). J. Crew International is a Loan Party, and J. Crew Cayman is a Non-Loan Party that is a Restricted Subsidiary. Accordingly, J. Crew International was permitted to make an Investment of up to \$150 million in J. Crew Cayman under the Restricted Subsidiary Investment Basket under the Term Loan Agreement.

43. Second, Section 7.02(n)(i) permits J. Crew Group (the Borrower) or any Restricted Subsidiary to make “other Investments that do not exceed in the aggregate . . . \$100,000,000” plus additional capacity not relevant here (the “**General Investment Basket**”). J. Crew International is a Restricted Subsidiary. Accordingly, J. Crew International was permitted to make an Investment of up to \$100 million in J. Crew Cayman under the General Investment Basket under the Term Loan Agreement.

44. Third, Section 7.02(n)(ii) permits J. Crew Group (the Borrower) or any Restricted Subsidiary to make Investments in an amount equal to the “Available Amount,” as defined in the Term Loan Agreement (the “**Available Amount Investment Basket**”). The “Available Amount” is variable and is determined in part under a formula specified in the Term Loan Agreement. As of December 2, 2016, there was approximately \$27.3 million of investment capacity under the Available Amount Basket. J. Crew International is a Restricted Subsidiary. Accordingly, J. Crew International was permitted to make an Investment of up to \$27.3 million in J. Crew Cayman under the Available Amount Investment Basket under the Term Loan Agreement

45. In sum, the Permitted Investment Baskets under the Term Loan Agreement enabled J. Crew International to make Investments of up to \$277 million in J. Crew Cayman. In the IP Transaction, J. Crew International made an Investment of \$250 million into

J. Crew Cayman, as confirmed by the Ocean Tomo valuation report, which was less than the investment capacity available under the Permitted Investment Baskets. Accordingly, the investment of \$250 million in IP Assets from J. Crew International to J. Crew Cayman in the IP Transaction did not violate the terms of the Term Loan Agreement.

2. The Contribution Of IP Assets By J. Crew Cayman To Brand Holdings Was A Permitted Investment

46. As relevant to the IP Transaction, Section 7.02(t) permits a Non-Loan Party Restricted Subsidiary to make an Investment in an Unrestricted Subsidiary “to the extent such Investments are financed with the proceeds received by such Restricted Subsidiary from an Investment in such Restricted Subsidiary made pursuant to [the Permitted Investment Baskets].”

47. In connection with the IP Transaction, J. Crew Cayman, a Non-Loan Party Restricted Subsidiary, received an Investment of \$250 million of IP Assets under the Permitted Investment Baskets of the Term Loan Agreement. Accordingly, Section 7.02(t) of the Term Loan Agreement permitted J. Crew Cayman to make an Investment of those assets in Brand Holdings, an Unrestricted Subsidiary, and thus the investment of the IP Assets by J. Crew Cayman in Brand Holdings did not violate the terms of the Term Loan Agreement.

B. Permitted “Disposition”

48. Section 1.01 of the Term Loan Agreement defines the term “Disposition” to mean “the transfer . . . or other disposition . . . of any property.” The contribution of the IP Assets from J. Crew International to J. Crew Cayman, and from J. Crew Cayman to Brand Holdings was a permitted Disposition under the terms of the Term Loan Agreement.

1. The Contribution Of IP Assets By J. Crew International To J. Crew Cayman Was A Permitted Disposition

49. As relevant to the IP Transaction, Section 7.05(e) of the Term Loan Agreement provides that permitted Investments under Section 7.02 of the Term Loan Agreement are permitted Dispositions under the Term Loan Agreement.

50. For the reasons set forth above, the Investment of \$250 million of IP Assets from J. Crew International under J. Crew Cayman was a permitted Investment under the Permitted Investment Baskets of Section 7.02 of the Term Loan Agreement. Accordingly, the transfer of the IP Assets from J. Crew International to J. Crew Cayman also was a permitted Disposition under the terms of the Term Loan Agreement and did not violate the terms of the Term Loan Agreement.

2. The Contribution Of IP Assets By J. Crew Cayman To Brand Holdings Was A Permitted Disposition

51. As relevant to the IP Transaction, Section 7.05(e) of the Term Loan Agreement provides that permitted Investment transactions under Section 7.02 of the Term Loan Agreement also are permitted Dispositions under the Term Loan Agreement.

52. For the reasons set forth above, the Investment of \$250 million of IP Assets from J. Crew Cayman to Brand Holdings was a permitted Investment under Section 7.02(t) of the Term Loan Agreement. Accordingly, the transfer of the IP Assets from J. Crew Cayman to Brand Holdings also was a permitted Disposition under the terms of the Term Loan Agreement and did not violate the terms of the Term Loan Agreement.

C. Permitted Affiliate Transactions

53. Section 1.01 of the Term Loan Agreement defines the term “Affiliate” to mean “with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person

specified.” “Control,” in turn, means “the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person.” Because J. Crew Cayman is a wholly-owned subsidiary of J. Crew International and Brand Holdings is a wholly-owned subsidiary of J. Crew Cayman, each of J. Crew Cayman and Brand Holdings qualifies as an Affiliate of J. Crew International under the terms of the Term Loan Agreement. The contribution of the IP Assets from J. Crew International to J. Crew Cayman, and from J. Crew Cayman to Brand Holdings, were permitted Affiliate transactions under the terms of the Term Loan Agreement.

1. The Contribution Of IP Assets From J. Crew International To J. Crew Cayman Was A Permitted Affiliate Transaction

54. As relevant to the IP Transaction, Section 7.08(a) of the Term Loan Agreement permits a Restricted Subsidiary to enter into a transaction with an Affiliate that is also a Restricted Subsidiary.

55. In connection with the IP Transaction, J. Crew International, a Restricted Subsidiary, entered into a transaction with its Affiliate, J. Crew Cayman, another Restricted Subsidiary. Accordingly, the IP Transaction whereby the IP Assets were transferred from J. Crew International to J. Crew Cayman was a permitted Affiliate transaction under the terms of the Term Loan Agreement and did not violate the terms of the Term Loan Agreement.

2. The Contribution Of IP Assets From J. Crew Cayman To Brand Holdings Was A Permitted Affiliate Transaction

56. As relevant to the IP Transaction, Section 7.08(b) permits a Restricted Subsidiary to enter into a transaction with any Affiliate, including any Affiliate that is an Unrestricted Subsidiary, if the terms of the transaction are “substantially as favorable . . . [as] in a comparable arm’s-length transaction with a Person other than an Affiliate.” Alternatively, Section 7.08(l) permits a Restricted Subsidiary to enter into a transaction with any Affiliate,

including any Affiliate that is an Unrestricted Subsidiary if “the [relevant Restricted Subsidiary] . . . delivers to the Administrative Agent a letter from an Independent Financial Advisor stating that such transaction is fair to the . . . Restricted Subsidiary from a financial point of view or meets the requirements of [Section 7.08(b)].”

57. The IP Transaction need only meet one of these tests, but in fact it meets both. On December 5, 2016, J. Crew delivered to BofA, as Administrative Agent, a fairness opinion from Ocean Tomo, an Independent Financial Advisor (within the meaning of the Term Loan Agreement), stating that the contribution of IP Assets from J. Crew Cayman to Brand Holdings was (i) “on terms substantially as favorable to” J. Crew Cayman as “in a comparable arm’s length transaction with a person other than an affiliate,” and (ii) “fair to” J. Crew Cayman “from a financial point of view.” Accordingly, the IP Transaction whereby the IP Assets transferred from J. Crew Cayman to Brand Holdings was a permitted Affiliate transaction under the terms of the Term Loan Agreement and did not violate the terms of the Term Loan Agreement.

V. THE CONTRIBUTION OF IP ASSETS AMONG J. CREW’S UNRESTRICTED SUBSIDIARIES IS NOT SUBJECT TO THE TERMS OF THE TERM LOAN AGREEMENT AND THEREFORE CANNOT HAVE VIOLATED THE TERMS OF THE TERM LOAN AGREEMENT

58. Brand Holdings and the Brand Entities are Unrestricted Subsidiaries, which means they are not subject in any way to the terms of the Term Loan Agreement, and accordingly, their actions are not limited in any way by the terms of the Term Loan Agreement.

59. Because Brand Holdings and the Brand Entities are not subject to the terms of the Term Loan Agreement, the IP Transaction whereby the IP Assets were transferred from Brand Holdings to the relevant Brand Entities was not subject to the terms of the Term

Loan Agreement and therefore did not, and could not, violate the terms of the Term Loan Agreement.

VI. BOFA REVIEWS THE IP TRANSACTION, DETERMINES THAT IT COMPLIES WITH THE TERMS OF THE TERM LOAN AGREEMENT, AND EXECUTES CERTAIN DOCUMENTATION IN ITS CAPACITY AS AGENT

60. Section 7.05 of the Term Loan Agreement expressly provides that the transfer of assets constituting collateral under the Term Loan Agreement from the Restricted Subsidiaries to any entity that is not a Loan Party, including any Unrestricted Subsidiary, will result in the automatic release of any lien on the transferred collateral. Specifically, Section 7.05(t) provides, in pertinent part:

To the extent any Collateral is Disposed of as expressly permitted by this Section 7.05 to any Person other than a Loan Party, *such Collateral shall be sold free and clear of the Liens created by the Loan Documents, and, if requested by the Administrative Agent, upon the certification by the Borrower that such Disposition is permitted by this Agreement, the Administrative Agent shall be authorized to take any actions deemed appropriate in order to effect the foregoing.*

(emphasis added).

61. Furthermore, Section 9.11 of the Term Loan Agreement expressly provides that the Lenders authorize the Agent to release any lien on property that is transferred in accordance with the Term Loan Agreement. Specifically, Section 9.11 provides, in pertinent part:

Each of the Lenders . . . irrevocably authorizes the Administrative Agent and the Collateral Agent, and each of the Administrative Agent and the Collateral Agent agrees that it will . . . release any Lien on any property granted to or held by the Administrative Agent or the Collateral Agent under any Loan Document . . . at the time the property subject to such Lien is transferred or to be transferred as part of or in connection with any transfer permitted [under the Term Loan Agreement].

62. On December 5, 2016, in accordance with Section 7.05 and 9.11 of the Term Loan Agreement, J. Crew Group delivered an officer's certificate to BofA, in its capacity as Agent, certifying that the contribution of the IP Assets in the IP Transaction was permitted by the Term Loan Agreement.

63. Thereafter, BofA's legal counsel, Shearman & Sterling LLP, engaged in four days of discussions, including legal due diligence, with J. Crew's counsel to review the IP Transaction under the terms of the Term Loan Agreement. Following that legal due diligence, on December 8, 2016, and in accordance with the express terms of the Term Loan Agreement, BofA, as Agent, executed documentation evidencing the release of liens of the IP Assets transferred in the IP Transaction.

VII. FOLLOWING BOFA'S COMPLIANCE WITH THE PLAIN LANGUAGE OF THE TERM LOAN AGREEMENT, THE AD HOC GROUP INSTIGATES THE RESIGNATION OF BOFA AS AGENT, AND FORCES THE REPLACEMENT OF COUNSEL AND ADVISORS TO ADVANCE THE AD HOC GROUP'S PAROCHIAL INTERESTS

64. Notwithstanding that the IP Transaction is expressly permitted by the terms of the Term Loan Agreement as described above and that BofA reviewed the IP Transaction with its legal counsel before executing certain collateral release documentation in accordance with the Term Loan Agreement, the Ad Hoc Group, seeks to challenge and exploit the IP Transaction to improperly extract value from J. Crew.

65. Less than one month after J. Crew effectuated the IP Transaction, upon information and belief, the Ad Hoc Group demanded the resignation of BofA by requesting that BofA (i) replace its legal counsel, Shearman & Sterling LLP, with the Ad Hoc Group's counsel, Jones Day LLP, and (ii) resign as Agent. Upon information and belief, the Ad Hoc Group sought BofA's resignation in order to install a replacement agent who would be willing to challenge the IP Transaction and declare a Default or Event of Default under the Term Loan

Agreement. Indeed, the only purpose for the Ad Hoc Group forming, retaining counsel and demanding the resignation of BofA as Agent to install WSFS as Agent is so that the Ad Hoc Group, through its counsel (or until very recently its counsel) Jones Day, can instigate a challenge to the IP Transaction by declaring a Default or Event of Default (as defined in the Term Loan Agreement) and commencing litigation against J. Crew.

66. On December 30, 2016, in the face of the Ad Hoc Group's demands and mounting agitation and pressure, BofA issued a Notice of Resignation of Agent pursuant to Section 9.09 of the Term Loan Agreement.

67. On January 4, 2017, the Ad Hoc Group sent a notice to J. Crew titled "Direction of Appointment of Successor Administrative Agent and Collateral Agent," purportedly appointing WSFS as replacement Administrative Agent and Collateral Agent for the Term Loan Agreement.

68. Effective January 29, 2017, WSFS formally became the successor Agent for the Term Loan Agreement.

69. Upon information and belief, WSFS—which is acting at the behest of the Ad Hoc Group, including with the conflicted advice of legal counsel who also serves (or until very recently served) as legal counsel to the Ad Hoc Group—is preparing to wrongfully assert through issuance of a notice of default under the Term Loan Agreement or through commencement of a declaratory judgment action that J. Crew breached the Term Loan Agreement by engaging in the IP Transaction, even though WSFS and the Ad Hoc Group know that the IP Transaction is expressly permitted by the Term Loan Agreement. Based on discussions with BofA concerning the circumstances surrounding BofA's resignation, J. Crew understands that the Ad Hoc Group has stated its belief that BofA acted improperly under the

Term Loan Agreement in executing documentation evidencing the release of liens because the Ad Hoc Group believes that the IP Transaction violates the terms of the Term Loan Agreement. To be sure, the very purpose of forming the Ad Hoc Group, hiring Jones Day (counsel that is well known in the restructuring and debt litigation space), and installing WSFS as Agent, can only be to advance the parochial interests of the Ad Hoc Group members under the Term Loan Agreement, including by challenging the IP Transaction.

70. The assertion of fabricated breach of contract claims and other improper actions by WSFS and the Ad Hoc Group threatens to cause imminent and substantial disruption to J. Crew's business operations, and waste the months of planning and millions of dollars in legal and advisor fees that J. Crew has invested in evaluating value-maximizing strategic opportunities for the benefit of all stakeholders, including the Lenders. Indeed, the overhang in the market caused by the threat of an impending declaration of a default by the Ad Hoc Group and WSFS and litigation related thereto already presents a substantial hurdle to J. Crew in its exploration of value-maximizing strategies, as potential counterparties have expressed to J. Crew their reluctance to seriously engage in discussions, much less a viable transaction, unless the overhang of threatened litigation or other actions to challenge the IP Transaction under the Term Loan Agreement by the Ad Hoc Group and WSFS is resolved.

FIRST CAUSE OF ACTION

(DECLARATORY JUDGMENT)

71. J. Crew repeats, realleges, and incorporates by reference the allegations in paragraphs 1 through 70 of this Complaint as if fully set forth in this claim for relief.

72. By virtue of the WSFS's actions described herein, an actual, present, and justiciable controversy under CPLR 3001 exists between J. Crew and WSFS concerning the Term Loan Agreement and the parties' respective legal rights and obligations thereto.

73. Pursuant to CPLR 3001, J. Crew seeks a declaration from this Court that no Default or Event of Default (as defined in the Term Loan Agreement) has occurred or is occurring under the Term Loan Agreement as a result of the IP Transaction and that the IP Transaction is expressly permitted by and complies with the terms of the Term Loan Agreement in all respects.

SECOND CAUSE OF ACTION

(DECLARATORY JUDGMENT)

74. J. Crew repeats, realleges, and incorporates by reference the allegations in paragraphs 1 through 70 of this Complaint as if fully set forth in this claim for relief.

75. By virtue of the WSFS's actions described herein, an actual, present, and justiciable controversy under CPLR 3001 exists between J. Crew and WSFS concerning the Term Loan Agreement and the parties' respective legal rights and obligations thereto.

76. Pursuant to CPLR 3001, J. Crew seeks a declaration from this Court that it is not required to reimburse WSFS for the costs and expenses of its financial advisors because those costs and expenses are not reasonable under Section 10.04 of the Term Loan Agreement and are not costs associated with WSFS's duties as Agent under the Term Loan Agreement. J. Crew also seeks a declaration from this Court that it is not required to reimburse WSFS for the costs and expenses of its legal advisors incurred prior to the effectiveness of its appointment as Agent under the Term Loan Agreement, other than the approximately \$125,000 that J. Crew has expressly agreed to pay under the Agency Resignation, Appointment, Assignment and

Assumption Agreement, dated as of January 29, 2017 (the “**Agency Transition Agreement**”), because those costs and expenses are not reasonable under Section 10.04 of the Term Loan Agreement and are not costs associated with WSFS’s duties as Agent under the Term Loan Agreement.

PRAYER FOR RELIEF

WHEREFORE, J. Crew respectfully requests that a judgment be awarded in its favor and against WSFS as follows:

A. Declaring and adjudging that no Default or Event of Default (as defined in the Term Loan Agreement) has occurred or is occurring under the Term Loan Agreement as a result of the IP Transaction and that the IP Transaction is expressly permitted by and complies with the terms of the Term Loan Agreement in all respects.

B. Declaring that J. Crew is not required to reimburse WSFS for the costs and expenses of its financial advisors because those costs and expenses are not reasonable under Section 10.04 of the Term Loan Agreement and are not costs associated with WSFS’s duties as Agent under the Term Loan Agreement.

C. Declaring that J. Crew is not required to reimburse WSFS for the costs and expenses of its legal advisors incurred prior to the effectiveness of its appointment as Agent under the Term Loan Agreement, other than the approximately \$125,000 that J. Crew has expressly agreed to pay under the Agency Transition Agreement, because those costs and expenses are not reasonable under Section 10.04 of the Term Loan Agreement and are not costs associated with WSFS’s duties as Agent under the Term Loan Agreement.

D. Awarding such other and further relief as this Court deems just and proper.

Dated: New York, New York
February 1, 2017

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