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Case No. 2021-0029-

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

NANCY A, LAMBRECHT, Co-Trustee of The Amanda Greenfield 2012 Irrevocable Trust, derivatively on behalf of L BRANDS, INC., Plaintiff, vs. LESLIE WEXNER, DAVID A. KOLLAT, DENNIS H. HERSCH, SARAH E. NASH, ALLAN R. TESSLER, ABIGAIL S. WEXNER, DONNA A. JAMES, MICHAEL G. MORRIS, ROBERT H. SCHOTTENSTEIN, STEPHEN G. STEINOUR, ANNE SHEEHAN, PATRICIA S. BELLINGER, E. GORDON GEE, RAYMOND ZIMMERMAN and EDWARD G. RAZEK Defendants. and L BRANDS, INC., Nominal Defendant.	C.A. No. _____

VERIFIED STOCKHOLDER DERIVATIVE COMPLAINT

Plaintiff Nancy A. Lambrecht, Co-Trustee of the Amanda Greenfield 2012 Irrevocable Trust ("plaintiff"), alleges derivatively on behalf of L Brands, Inc. ("L Brands" or the "Company"), by and through her undersigned attorneys, upon

knowledge as to herself and her own acts, and upon information and belief as to all other matters based upon the investigation of her attorneys, which included, but was not limited to, a review of U.S. Securities and Exchange Commission ("SEC") filings, news reports, press releases and other publicly available information regarding the Company, as follows:

INTRODUCTION AND BACKGROUND

1. Plaintiff brings this shareholder derivative lawsuit, on behalf and for the benefit of nominal defendant, L Brands, against the individual defendants ("Individual Defendants") identified in this Complaint (who are present and former senior executive officers and/or members of the Board of Directors of L Brands).

2. As set forth herein, the Individual Defendants, breached their fiduciary duties to L Brands in connection with their failures of oversight which caused the Company to have an entrenched culture of misogyny, bullying and harassment, as well as ties to Jeffrey Epstein and other egregious mismanagement, which resulted in reputational harm to the Company, share price volatility, investigations and financial damages. After such malfeasance was reported on by *The New York Times* and other publications, the Company retained the conflicted law firm of Davis, Polk & Wardwell, LLP ("DPW") to conduct an investigation of certain of such matters, but no information about the scope of the investigation has been released publicly, and according to a recent *New York Times* article, many

former Victoria's Secret employees, including two who had interacted with Mr. Epstein, said they were never contacted by lawyers.

3. Prior to bringing this action, on July 10, 2020, Plaintiff made a demand that the Company bring suit against L Brands' former CEO and Chairman, Leslie Wexner, its former Chief Marketing Officer, Edward G. Razek and each member of the Board of Directors during the relevant period for breach of their fiduciary duties owed to the Company (the "Demand Letter").

4. More than three months later, on October 12, 2020, the Company belatedly responded to the Demand Letter through counsel at Wachtell, Lipton, Rosen & Katz ("Wachtell") and asserted that the Company had established a so-called special committee of independent directors (the "Special Committee") and that the Special Committee "is presently considering the matters raised in the Demand [Letter]." In an October 19, 2020 follow-up letter, counsel to the Special Committee disclosed that "[t]he Special Committee consists of independent directors Sarah E. Nash and Anne Sheehan" and asserted that the Special Committee "is investigating the matters raised in the Demand and its inquiry remains ongoing."

5. Notwithstanding repeated requests by Plaintiff for information that bears upon the Special Committee's formation, mandate and other issues relevant to Plaintiff's Demand Letter, including the circumstances regarding the retention of

counsel and any possible conflicts related thereto, the Company has declined to provide Plaintiff with such information.

PARTIES

Plaintiff

6. Plaintiff Nancy A. Lambrecht, Co-Trustee for the Amanda L. Greenfield 2012 Trust (the "Trust"), is currently an L Brands shareholder and has been a shareholder (through the Trust) and through her predecessors in interest continuously throughout the period of time relevant to this lawsuit through the present.

Individual Defendants

7. The following individuals named as defendants are or have been members of the Company's Board of Directors and/or officers, and are or have served on committees of the Board of Directors and/or are or have been in senior management positions, as follows:

8. Defendant Leslie H. Wexner ("Wexner") is the founder of the Company and formerly was its Chairman and Chief Executive Officer throughout most of the relevant time period.

9. Defendants Donna A. James ("James"), Michael G. Morris ("Morris"), Robert H. Schottenstein ("Schottenstein"), Stephen G. Steinour ("Steinour"), Patricia S. Bellinger ("Bellinger"), Sarah E. Nash ("Nash"), Anne

Sheehan ("Sheehan") and Abigail S. Wexner ("A. Wexner") are currently directors having joined the Board beginning in 1997 and thereafter.

10. Defendants Raymond Zimmerman ("Zimmerman"), E. Gordon Gee ("Gee"), Allan R. Tessler ("Tessler"), Dennis H. Hersch ("Hersch") and David A. Kollat ("Kollat") were formerly members of the Board and were directors during at least some of the relevant time period.

11. Defendant Edward G. Razek ("Razek") was, at most times relevant, the Company's Chief Marketing Officer.

12. Each of the above defendants ("Individual Defendants") breached his or her fiduciary duty to the Company by acting and/or failing to act as described herein, causing L Brands to be damaged in an amount which cannot presently be calculated by plaintiff.

13. By reason of their positions as officers and/or directors of the Company and because of their ability to control the business and corporate affairs of L Brands and their positions of oversight over the Company's operations, the Individual Defendants owed the Company and its shareholders the fiduciary obligations of good faith, loyalty, prudence, due care and diligence, and were required to use their utmost ability to exercise reasonable and prudent supervision over the affairs of the Company in a loyal, diligent, informed, fair, just, competent, ethical and legal manner. All Individual Defendants, during the times that they

held their respective positions had an obligation to act in the best interests of the Company, and to subordinate their individual self-interest to the paramount interests of L Brands. Each such individual failed to do so.

14. Each Individual Defendant, as a director and/or officer of L Brands, had and/or has an obligation to take the reasonable steps to ensure that the Company was operated in an honest and prudent manner, complying with all applicable federal and state laws, rules, regulations, and requirements, including the obligation to prevent the misconduct described herein. Compliance with these requirements were and are required to prevent significant harm to the Company. Each such Individual Defendant failed to do so and, in the case of those Individual Defendants who were officers of the Company, were active participants in the misconduct.

15. Each Individual Defendant, as a director and/or officer of L Brands, had an obligation to take reasonable steps to investigate and, if appropriate, assert any and all valid claims and causes of action the Company may have, or may have had, against persons and entities on account of the actions or omissions as alleged in this Complaint. The Individual Defendants also had an obligation to take reasonable and prudent steps to preserve the Company's ability to assert potential claims so that any such claims (or potential claims) do or did not lapse, or become stale, due to the passage of time. Each such Individual Defendant failed to do so.

16. In addition to their obligations as set forth above, each Individual Defendant was bound to implement, enforce and execute corporate policies and rules of corporate governance applicable to him or her, including the obligations set forth in the Company's Code of Conduct.

17. Instead of faithfully discharging their fiduciary duties, the Individual Defendants knowingly encouraged, allowed and facilitated the wrongdoing alleged herein – then retained a conflicted law firm (DPW) to conduct a purported investigation. Not surprisingly, that "investigation" yielded no results. The members of the Board acted as they did to*, inter alia,* protect the personal interests of L Brands' CEO and Founder, defendant Leslie Wexner as more fully described below.

Nominal Defendant L Brands

18. Nominal Defendant, L Brands, is a corporation incorporated under the laws of the State of Delaware. The Company maintains its principal place of business in Columbus, Ohio. No claims are alleged herein against L Brands, for whose benefit this litigation is being commenced.

JURISDICTION

19. This Court has jurisdiction over the subject matter of this action pursuant to 10 Del. C. §341. As officers and directors of a Delaware corporation, the Individual Defendants are deemed to have consented to the jurisdiction of this

Court pursuant to 10 Del. C. §3114. This Court has jurisdiction over Nominal Defendant L Brands, a Delaware corporation, pursuant to 10 Del. C. §3111.

The Misconduct of Edward G. Razek and Others

20. Edward G. Razek, L Brands' former Chief Marketing Officer, joined the Company in 1983 and departed in 2019 after persistent public criticism due to his reportedly having caused the Company to have an entrenched culture of misogyny, bullying and harassment. Many of the victims reportedly were models hired by the Company's subsidiary, Victoria's Secret and, during his employment, he was the subject of numerous complaints from his victims and others who brought his conduct to the attention of defendant Leslie Wexner and other Board members. According to *The New York Times*, "Executives said they had alerted Leslie Wexner…about his deputy's pattern of behavior." The *Times r*eported that some of the women who complained, even those not personally harassed, faced retaliation.

21. With respect to retaliation, the Company says on its website: "We strictly prohibit retaliation for reporting concerns…Anyone who retaliates or tries to retaliate against an individual who raises a concern in relation to this policy or who participates in the investigation, will be subject to disciplinary action up to and including termination of employment." Notwithstanding such stated policy, neither senior management nor the Board, despite their personal knowledge of

such wrongdoing, took any material action to protect the victimized employees or to punish the wrongdoers including, in particular, defendant Razek.

22. One of the highest-level employees who was reported to have been repeatedly harassed by defendant Razek was Monica Mitro who, until late 2019, was the Executive Vice President for Public Relations at Victoria's Secret, where 90% of the employees are female. According to the *Times*, Ms. Mitro complained to, among others, defendant David A. Kollat, a long-time member of the Board. Defendant Kollat, who was very close to defendant Wexner, presumably informed him and the other members of the Board of Ms. Mitro's complaints about defendant Razek's behavior. Neither Mr. Wexner, defendant Kollat nor any other Board member lifted a finger to help Ms. Mitro who was locked out of the building where she worked and placed on "administrative leave." After she retained counsel, the Company reached a settlement with her and required her to execute a non-disclosure agreement. Other similar complaints by employees, whether resolved by retaliation or otherwise, cost the Company substantially and negatively impacted on employee morale as well as on L Brands' reputation. Upon information and belief, DPW, including defendant Hersch, were directly involved in negotiating such settlement and keeping it from public disclosure in the Company's filings with the SEC and otherwise.

23. Apparently, according to the *Times*, "The [misogyny] atmosphere was set at the top. Mr. Razek…was perceived as Mr. Wexner's proxy leaving many employees with the impression he was invincible, according to current and former employees. On multiple occasions, Mr. Wexler himself was heard demeaning women." The *Times* further reported that "Mr. Razek often reminded [Victoria Secret] models that their careers were in his hands." According to one model, he claimed "I am the holder of the power. I can make you or break you."

24. Notwithstanding the numerous complaints made to the Company's Human Resources Department about defendant Razek's widely-known misconduct, neither defendant Leslie Wexner nor any member of the Board (including the purportedly "independent" directors) took action to protect the Company's employees or seek recovery of L Brands' damages from defendant Razek, Mr. Wexner or from anyone else as a result of their misconduct. Moreover, as reported in *The New York Times* on November 18, 2020, the Board acknowledged that the Company's Chief Financial Officer, Stuart Burgdoerfer, L Brands' chief financial officer for more than a decade, would also become interim chief executive of Victoria's Secret. As reported in the *Times*, "some current and former employees wondered how significantly Mr. Burgdoerfer could improve the Company's culture. Several years ago, while he was having an extramarital affair with an L Brands employee, fliers with both of their photos were placed on car

windshields in a Company parking lot, saying in part: 'Hope you two can buy enough lingerie to make up for the damage you caused your families!!!' News of the affair and the fliers spread through the Company and even reached at least one Wall Street analyst. The matter was never addressed internally with rank-and-file staff."

25. The misconduct of senior officers of L Brands was not limited to Messrs. Razek and Burgdoerfer. According to the *Times*, "Charles McGuigan, the longtime chief operating officer of L Brands, who has since departed the Company, was also in a serious relationship with an employee who worked in store design and construction. Five current and former employees said the situation was viewed as particularly egregious because Mr. McGuigan also oversaw human resources for a time while in the relationship."

26. As with the other improper relationships among senior officers and women employees of the Company, according to the *Times*: "Brooke Wilson, a Company spokeswoman, said the relationships 'were fully and thoroughly disclosed to the appropriate people, including the board.'"

27. Thus, sexual harassment and improper relationships at the Company went on for many years and continue to be problems that all members of the Board had been informed about but have chosen to ignore. Indeed, the Company's naming of two women to the Board, defendants Nash and Sheehan, amounted to

form over substance. Despite what they learned about the Company's history of misogyny when they joined the Board in 2019, they did nothing material to address this issue. It was not until this year, when forced by the circumstances of the pre-suit demands of Plaintiff and at least one other L Brands shareholder, did they get themselves constituted as a "Special Committee" purportedly to investigate this and other material wrongdoing that had taken place and was continuing at the Company.

Jeffrey Epstein's Relationship with the Company and the Wexners

28. Over a period of many years, the convicted and now-deceased sex offender, Jeffrey Epstein, had a close social and financial relationship with Mr. Wexner and his wife, defendant Abigail S. Wexner. Around 1990, Mr. Wexner appointed Epstein as the head of Wexner Investment Co., his *de facto* family office. The decision effectively demoted Harold Levin, who had then been in charge of the Wexners' personal finances for seven years, and came as a surprise to several people who worked with Mr. Wexner at the time. Some wondered what Mr. Wexner saw in Epstein, whom they described as charismatic but also arrogant and without much formal education in money management. "It was highly questionable what was going on," said Robert Morosky, a former Vice Chairman and Chief Financial Officer of the Limited, L Brands' precursor.

29. In 1991, Epstein was granted power-of-attorney over Mr. Wexner's assets. Within a few years, he was also a director of the Wexner Foundation and Wexner Heritage Foundation, and was involved in developing the town of New Albany outside Columbus, Ohio, where the Wexners lived. Upon information and belief, the Wexners let Epstein use their home for liaisons with victims. One of Epstein's victims, Virginia Giuffre, has claimed that he directed her to have sex with Mr. Wexner, among others. Another victim, Maria Farmer, has accused Abigail Wexner of acquiescence while Epstein and Ghislaine Maxwell sexually assaulted her in the New Albany compound and, effectively imprisoned her there and kept her under security guard.

30. Wexner Investment Co. invested in several real estate deals with Epstein during the 1990s. In some cases, Epstein took a cut of the proceeds once the transactions were finalized. Epstein also served as trustee of several trusts, foundations and corporations tied to the Wexners. Between 1994 and 2002, such entities sold an aggregate $1.5 billion of L Brands stock, regulatory filings show.

31. The Wexners entered into numerous other business and charitable relationships with Epstein, who was given access to the Company's facilities, assets and personnel. Mr. Wexner knew or should have known that Epstein was using his relationship with the Wexners and to the Company to recruit aspiring models by posing as a recruiter and lying to them about his ability to get them

Victoria's Secret assignments. One of whom, Alicia Arden, a model, complained of sexual battery by Epstein to the Santa Monica Police Department. According to the *Times*, "Three L Brands executives said Mr. Wexner was alerted in the mid-1990s about Epstein's attempts to recruit women. The executives said there was no sign that Mr. Wexner had acted on the complaints."

32. During the period of their close friendship with him, the Wexners intentionally transferred tens of millions of dollars to Epstein's control, some of which was directed to legitimate charitable entities. The Wexners have now belatedly claimed Epstein also embezzled many millions of dollars from them (and their family foundation), some of which may have been L Brands' funds. Epstein also was able to purchase one of the Company's corporate jets at a favorable price.

33. On August 8, 2019, Mr. Wexner sent a letter to the "Wexner Foundation Community" saying, *inter alia*, "we discovered that [Epstein] had misappropriated vast sums of money [believed to be at least $46 million] from me and my family…We were able to recover some of the funds." No comparable disclosure was made by Mr. Wexner as to Epstein's mis-use of Company assets or the details of the Company's transactions with him.

34. Notwithstanding Hersch's law firm, DPW's obvious conflicts of interest, including that defendant Hersch was a Board member and financial adviser to the Wexners and that Ms. Wexner had been a member of DPW, the

Board in July 2019 hired defendant DPW, at substantial expense, to investigate the relationships between and among Epstein, the Wexners and the Company. Although such investigation was begun at least 18 months ago, neither the Company nor DPW has disclosed the findings thereof. The Company should make such disclosures forthwith. Upon information and belief, the DPW "investigation" was form over substance and, according to a November 18, 2020 *New York Times* article, "many former Victoria's Secret employees, including two who had interacted with Mr. Epstein, said they were never contacted by lawyers." Moreover, by authorizing the Company to pay DPW to conduct what appears to be a sham "investigation," which generated no benefit to the Company, the members of the Board wasted the Company's corporate assets.

35. The Company has been damaged both by having paid substantial fees and expenses to DPW and by having the truth about the Epstein relationship remain concealed from the Company's shareholders, the SEC and the public generally.

36. After Plaintiff raised DPW's conflicts of issue, it appears the Company's Board and/or DPW selected another law firm, Wachtell, Lipton, Rosen & Katz, LLP ("Wachtell") to replace DPW in connection with the Epstein "investigation." For the reasons set forth below, Wachtell is not capable of conducting such investigation fairly and independently given the circumstances of

its appointment or otherwise representing the Board or any of its members with respect to such investigation.

The Sycamore Partners Transaction

37. On February 20, 2020, L Brands entered into a transaction pursuant to which it agreed to sell a 55% interest in Victoria's Secret to Sycamore Partners, a private equity firm, for $525 million. The transaction would have provided the Company with badly-needed cash and gave it an opportunity to dispose of a majority interest in a major asset, substantially overvalued on the Company's financial statements by more than $700 million.

38. The agreement documenting the planned sale did not contain a typically-worded clause giving either party a justification to terminate the transaction if there was a so-called "material adverse effect." Rather, the agreement included such a term but with a COVID-19 carve-out for "any state of facts, circumstance, condition, event, change, development, occurrence, result or effect to the extent directly or indirectly resulting from … pandemics." Thus, despite the ongoing pandemic and its material impact on the Company's business operations, Sycamore had no justifiable basis for terminating the agreement in then-current circumstances, which it sought to do. It nevertheless commenced litigation on April 22, 2020 against L Brands in the Delaware Court of Chancery alleging, *inter alia,* that the Company took actions in response to COVID-19 that breached its

commitments in the sales agreement. Specifically, Sycamore's complaint alleged that L Brands furloughed Victoria's Secret employees, cut executives' salaries, refused to receive new merchandise and failed to pay April rents at brick-and-mortar stores and that flagging morale, obsolete merchandise and poisoned relationships with landlords have "caused incalculable damage to the Victoria's Secret business."

39. Sycamore did not raise as justifications for its litigation the fact that there were badly poisoned personnel-related circumstances at Victoria's Secret or the relationship between and among L Brands, Epstein and the Wexners.

40. One day later, on the heels of the Sycamore suit, on April 23, L Brands filed its complaint against Sycamore seeking to specifically enforce the agreement with it, and highlighting the continued minority ownership interest in the target businesses held by L Brands and similar commercial steps undertaken by Sycamore's portfolio companies in response to COVID-19. In terms of the "material adverse effect" clause, L Brands called Sycamore's bluff, arguing that "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 with that in mind, the parties' contract included a provision in connection with the "material adverse effect" that "expressly carves out impacts resulting from pandemics." As *The New York Times*

reported shortly after the parties began filing suit, "Sycamore's lawsuit concedes that it can't invoke the 'material adverse event' clause to justify terminating the contract, given the language that specifically excludes a pandemic." Moreover, the Delaware courts, where the litigation was pending, have historically not permitted parties to avail themselves of "material adverse effect" clauses to terminate agreements unless the event "substantially threaten[s] the overall earnings potential of the target [business] in a durationally-significant manner," whereas a "short-term hiccup in earnings should not suffice." As such, it is highly likely that L Brands would have prevailed in its litigation against Sycamore and would have obtained specific performance, damages and/or a substantial "break-up" fee.

41. Subsequently, L Brands and Sycamore announced on May 4, 2020 that they would settle the litigation and mutually agreed to terminate the transaction agreement. No "break-up" or similar fee was paid to the Company, which, according to *The New York Times,* "[came] as a bit of a surprise, given that L Brands' lawyers had seemingly accounted for the [Covid 19] outbreak in the acquisition agreement" and "[l]anguage in the agreement essentially said that even if a pandemic struck, Sycamore would be legally obligated to complete the deal." Furthermore, according to L Brands' lawsuit, the Company and Sycamore had entered into the transaction "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". Upon information and belief, Sycamore had used, *inter alia,* the facts and circumstances as later referred to in Plaintiff's Demand letter to the Board as leverage against L Brands and Wexner to enable it to walk away from the transaction, rather than complete it or pay a "break-up" fee. The Board's decision not to pursue Sycamore under the prevailing circumstances amount to a waste of L Brands' corporate assets since the Company received no benefit in exchange for such release. As a result, the Company sustained substantial damages.

Board Responsibility

42. The members of the Company's Board bear responsibility for the oversight of L Brands' business operations. In light of the history of the Company's problems, including misconduct referred to herein, it is apparent that all current directors and their predecessors on the Board have been derelict in the performance of their stewardship responsibilities to the Company and its shareholders.

43. The Governance section of L Brands' website disingenuously proclaims:

> **What We Stand For**
> L Brands has long been recognized as a values-based organization. We are committed to building a culture that fosters mutual respect, open communication and sharing. As an enterprise, we have chosen to live our professional lives by this philosophy… we consistently try to do what's right. This

> behavior manifests itself in how we treat each other, how we treat customers and how we support the communities in which we live and work.

44. Among the so-called "values" the Company claims: "*Doing what is right means following our beliefs – and the rules – when no one is watching. Winning means nothing unless how we get there is fair, collaborative, rooted in our values and contributes to the greater good*."

45. The Board has adopted a Code of Conduct applicable to its members and all employees of the Company. It says unambiguously:

> **Leading With Values**
> **We are committed to living by our values, doing what's right and acting with integrity everywhere we do business regardless of the circumstances.** We all have a responsibility to comply with the law and follow the Code and other company policies. . .
>
> * * *
>
> **L Brands directors, officers and associates must comply with our Code of Conduct.** Third parties representing L Brands may be asked to comply with relevant aspects of our Code of Conduct. L Brands associates working with third parties should make sure third parties have appropriate information about our policy requirements and report third party misconduct or potential violations of law to Global Ethics & Compliance.

46. The Board has made clear that the Code of Conduct created guidelines for its members and senior management for "making the right decisions" that:

"[a]ppl[y] enterprise-wide", are "[v]isible to the public" and impose the "[h]ighest standards even beyond the law."

47. The Board was similarly unambiguous as to what standards it set for its own members, senior management and all "leaders" within the Company:

> ## Additional Responsibilities for Leaders
>
> **All managers and senior leaders are responsible for creating an environment that encourages compliance with our Code of Conduct and other company policies.** Supervision of responsible business practices is as important as supervision of performance and business results. To help us uphold our values and maintain a culture of compliance, you should:
>
> - act as a role model and encourage your teams to act with integrity at all times;
> - encourage open communication so associates can ask questions and raise concerns;
> - ensure your teams understand and follow the Code and complete all training;
> - promote an inclusive environment that welcomes and values differences;
> - actively support and follow the No Retaliation Policy;
> - report incidents of misconduct or potential violations of the law or policy; and
> - escalate reports and get help from Human Resources or Global Ethics & Compliance when needed.

48. Notwithstanding the longstanding culture of misogyny and harassment of female employees of the Company, the Board permitted such behavior to continue unabated in spite of what its Code of Conduct expected:

Civility and Anti-Harassment

We do not tolerate discrimination, harassment or bullying. Examples of harassment or discrimination include:

- giving unwanted sexual attention to others – colleagues, customers, vendors, and other business partners or third parties;
- offering a workplace benefit in exchange for sexual conduct or giving work-related rewards for sexual conduct;
- sexually explicit or suggestive comments or behavior;
- sexual joking, storytelling and the like;
- repeated requests for dates;
- comments, cartoons, jokes, emails, texts, social media posts, or other communications that include degrading, insulting or insensitive content or assumptions concerning any individual's race, color, religion, gender, gender identity, national origin, citizenship, age, disability, sexual orientation, marital status, pregnancy, genetic information or any other protected status under applicable laws;
- verbal, non-verbal, visual or physical behavior that makes another person feel intimidated, offended or uncomfortable;
- slurs and other offensive remarks; and
- joining in when others are harassing or discriminating against another person.

49. Similarly, the Board permitted retaliation against those who exposed troubling and/or illegal behavior to continue unabated, which the Code of Conduct specifically prohibited:

No Retaliation

You will not be subject to retaliation, disciplinary action or any career disadvantage for raising a concern. We strictly prohibit retaliation for good faith reporting under the Code or for participating in an investigation. "Good faith" means

> making a report with honest intentions and providing all relevant information. If you believe you've been retaliated against, you should report it immediately to Human Resources or Global Ethics & Compliance.

50. Notwithstanding the hiring of DPW purportedly to conduct an investigation, the Company's Code of Conduct also sets forth an obligation to avoid even *the appearance* of a conflict of interest:

> **Conflicts of Interest**
> **We avoid conflicts of interest.** A conflict of interest is any activity, financial interest or personal or professional relationship that interferes (or may appear to interfere) with your ability to make objective decisions on behalf of the company. Conflicts of interest create risks for our company, and we all have a duty to avoid situations that could create – or even appear to create – conflicts of interest.

51. The members of the Board, by allowing serious wrongdoing to be widespread inside the Company for many years, by failing to take material corrective action with respect to the conduct described above and otherwise failing in their fundamental oversight responsibilities, have breached the Company's Code of Conduct. They thereby are responsible to the Company for its damages.

Breach of Fiduciary Duties

52. This litigation is being commenced due to the Individual Defendants' breaches of their fiduciary duties to manage the affairs of L Brands in a diligent, informed, candid, ethical, legal and orderly fashion so as to avoid reputational, financial and other damage to the Company that has resulted from their failure to

discharge these obligations as well as their failure to put the Company's interests before their own.

53. Indeed, in covering up over many years (and, in fact, continuing through the present to cover up), the egregious wrongdoing alleged in this Complaint, the Individual Defendants continuously concealed their wrongdoing to, *inter alia*, retain their positions as officers and directors of the Company and, in particular, to continue to mollify defendant Leslie Wexner who solely determined whether they would be re-appointed to their positions as members of the Board.

54. In violation of their fiduciary obligations to the Company, including their duty of loyalty and care owed to it and its shareholders, the Individual Defendants each knowingly played a substantial role in causing or otherwise allowing the Company to engage in the unlawful conduct that has already caused, and will continue to cause, substantial damage to the Company and thereafter covering it up.

55. Defendant Leslie Wexner, who was the Chief Executive Officer of the Company during practically all of the relevant time period was specifically aware of numerous "red flags" that called into significant question the propriety and legality of the misconduct described herein. Indeed, Mr. Wexner as well as each member of the Board was made aware of concrete facts related to such misconduct and knew or should have known what was occurring on their watch.

56. These defendants acted to further their own interests, thereby breaching their duties of loyalty and good faith by reason of the derelictions of duty alleged in this Complaint.

57. As a direct and proximate result of the Individual Defendants' breaches of their fiduciary duties, the Company has sustained significant damages, and continues to sustain damages on an ongoing basis, as the current Board member defendants continue to acquiesce in at least some of the practices described herein. Indeed, the Board, together with legal counsel were and are engaged in purported investigations of such wrongdoing knowing that they are not being carried out independently or in *a bona fide* manner.

58. While effectively covered up from outside scrutiny, the facts and circumstances alleged in this Complaint, their existence, perpetuation and cover-up have been known by the Individual Defendants and all presently sitting members of the Board over a period of many years. Yet, as they and their predecessor Board members have done for many years, the Board has responded to the pre-suit demands of Plaintiff and other shareholders with deflection, delay and inaction.

Pre-Suit Demand on the Board Pursuant to Rule 23.1

59. The claims asserted herein are brought by Plaintiff derivatively on behalf of L Brands. Plaintiff and her undersigned counsel will fairly and adequately represent the Company’s interests in connection with this action.

60. Pursuant to Rule 23.1, on July 10, 2020, through her counsel, Plaintiff wrote to L Brands' directors (the "Demand Letter" attached hereto as Exhibit "A"). Her letter was sent solely for the purpose of demanding that the Board cause L Brands to commence litigation against Messrs. Wexner, Razek, each of the Board members and all persons and entities who are responsible for the transgressions and damages sustained by the Company as a result of the misconduct summarized in the Demand Letter. In addition, Plaintiff demanded that the Board put in place appropriate therapeutic measures which address the misconduct referred to in the Demand Letter to protect against their repetition.

61. The Demand Letter was initially ignored by the Board and its legal counsel. However, on October 12, 2020, three months following the Demand Letter, Wachtell surfaced (through partner William Savitt) by sending a letter to Plaintiff's counsel informing him that the L Brands Board had appointed a so-called "Special Committee" that was "presently considering the matters raised in the Demand." The October 12 letter provided minimal substantive information and did not identify the members of the "Special Committee" or offer any explanation why it took three months for there to be even an acknowledgement that the Demand Letter had been sent and received.

62. Most significantly, the October 12 letter from Wachtell indicated that the firm was simultaneously representing both the Special Committee and the

entire Board notwithstanding the inherent conflicts of interest in doing so. The October 12 Wachtell letter provided no information as to the circumstances surrounding the formation of the Special Committee or how or why Wachtell became its counsel while also representing all Board members.[1]

63. Given the paucity of substantive information provided in Wachtell's October 12 letter, plaintiff's counsel wrote back to Wachtell on October 19, 2020 (Exhibit "B" hereto) stating, *inter alia,:*

> "First, in writing to me, you identify your client as the so-called "Special Committee" of purportedly independent directors of the Company. At the same time, you say you are writing "on behalf of the Company and the Board." Which is it? Do you represent the Company, the entire Board, or certain directors of L Brands. If the latter, you do not identify which directors you represent. Please do so.
>
> You also do not explain why it has taken more than three months to respond to the Demand. Your letter provides no substantive response to it. May I have an explanation for such a substantial and unjustified delay? Please explain what you and the Special Committee have been doing during this period to "consider.. the matters raised in the Demand."
>
> In light of the absence of a substantive response to the Demand from the Board, it should not surprise you that a number of questions exist that bear upon the bona fides of the Special Committee and your representation of it. I have set forth below some of these questions the answers to which will enable me to evaluate whether the Demand is being considered in good faith and how to deal with you given your apparent multiple representations. In this regard, please provide me with copies of any minutes of the Board and resolutions addressing

[1] At some time following the sending of the Demand Letter which discussed DPW's conflicts of interest, the firm was replaced as counsel to the Board and the "Special Committee."

the Demand as well as any substantively similar demands upon the Board made by other L Brands shareholders."

64. Since the Wachtell October 12 letter raised so many issues as to, *inter alia,* the formation of the "Special Committee," the unexplained substitution of counsel to it and, more generally, the procedures being followed by the Board in connection with the Demand Letter, Plaintiff's counsel directed a number of questions to Wachtell which addressed the *bona fides* of the process that was underway. Responses to those questions would aid Plaintiff (and, ultimately, this Court) in evaluating the legitimacy of the Board's response to the Demand Letter.

65. The questions addressed to Wachtell and its clients were:

1. Were you or a representative of your firm present at any portion of a meeting of members of the Board relative to the Demand?

2. What criteria were used by the Board to determine which of its members would be appointed to address the issues raised by the Demand?

3. Who participated in the determination of such criteria?

4. Were there any factors or facts that the Board considered that might serve to disqualify any individual L Brands director from serving on the Special Committee and/or investigating the facts and issues raised by the Demand?

5. What process did the Board utilize to select the members of the Special Committee as the vehicle pursuant to which the demands set forth in the Demand would be considered?

6. Did anyone investigate the members of the Special Committee or your firm to determine whether there were any facts or circumstances which would disqualify any such members and/or your firm from participating in the evaluation of the facts and issues raised by the Demand? If so, who performed such investigation and when?

7. Which persons played a role in the selection of you and/or your firm to represent L Brands, the Board and/or the Special Committee?

8. When did you first learn that you and/or your firm were being considered to represent L Brands, the Board and/or the Special Committee in connection with the issues and facts referred to in the Demand? From whom did you learn this fact and when?

9. What steps were taken to insure that there were no facts or circumstances that might justify disqualification of you and/or your firm from acting as counsel to L Brands, the Board and/or the Special Committee in connection with the Demand? By whom and when?

10. Assuming your firm performed conflict checks before being considered for the retention by L Brands, the Board and/or the Special Committee in connection with the Demand or any other L Brands shareholder demand, when were any such conflict checks performed?

11. Did any member of the Board personally make any investigation into any of the facts and/or circumstances referred to in the Demand? If so, whom and when?

12. What communications were there between your firm and any member of the Board in connection with the Demand or any other substantively similar demand by other L Brands shareholders?

13. How long do you anticipate it will take until the Board completes its process and reaches its decision with respect to a response to the Demand?

14. Who is investigating the facts and circumstances related to the Demand?

15. What investigation of the facts and circumstances related to the Demand has been performed to date?"

66. On October 26, 2020, Mr. Savitt responded, identifying defendants Nash and Sheehan as the members of the "Special Committee" and tendering a purported excuse as to why there was no acknowledgement of receipt of the

Demand Letter for three months from a representative of the Board or its counsel; i.e. "your letter was sent to L Brands [Board of Directors] in the midst of a national health emergency." Mr. Savitt did not provide any of the requested documents or answer any of the questions that bear upon the legitimacy of the purported investigation of Plaintiff's demands. Mr. Savitt's "stonewalling" on behalf of his and Wachtell's clients, the Board and "Special Committee" members can only be taken as a tacit acknowledgement that true answers to Plaintiff's questions would demonstrate that the so-called investigation is a sham. Moreover, under such circumstances, the demands made by Plaintiff can and should be regarded *de facto* as refused.

67. The Board's response to the Demand Letter confers standing on Plaintiff to assert the claims alleged in this Complaint on behalf of L Brands.

COUNT I
(Breach of Fiduciary Duty)

68. Plaintiff repeats and re-alleges each of the allegations set forth above as if fully set forth herein.

69. The Individual Defendants all owed and/or owe fiduciary duties to L Brands and its shareholders to exercise candor, good faith and loyalty and to competently oversee and direct the business affairs of the Company. By reason of their fiduciary relationships to the Company, the Individual Defendants specifically owed and owe L Brands and its shareholders the highest obligation of

good faith and loyalty in the management and administration of the affairs of the Company.

70. Moreover, the Board had specific fiduciary duties as defined by the Company's key corporate governance principles as set forth in L Brands' Code of Conduct, and as set forth above, that, had they been discharged in accordance with the Board's and all officers' obligations, would have necessarily prevented the misconduct and consequent harm to the Company, as alleged herein.

71. The Individual Defendants consciously violated their corporate responsibilities and intentionally breached their fiduciary duties to protect the rights and interests of L Brands and its shareholders.

72. As a result of the misconduct alleged herein, L Brands has sustained and will continue to sustain significant damages, not only monetarily, but also to its corporate image and goodwill.

73. As a result of the misconduct alleged herein, the Individual Defendants are personally liable to the Company in an amount which cannot presently be determined.

COUNT II
(Waste)

74. Plaintiff repeats and re-alleges each of the allegations set forth above as if fully set forth herein.

75. As a direct and proximate result of the Individual Defendants' conscious failure to perform their fiduciary obligations and acting as described above, they have caused the Company to waste valuable corporate assets and expend its corporate funds unnecessarily.

76. In particular, they wasted L Brands' assets by paying the law firm, DPW, to carry out an investigation when the Board knew or should have known that because of DPW's conflicts of interest, it could not and did not conduct an independent and otherwise *bona fide* investigation for which the Company received no benefit.

77. The members of the Board also wasted L Brands assets by inexcusably causing the Company to relinquish its entitlement to a substantial "break-up fee" from Sycamore Partners in the context of the termination of the Victoria's Secret transaction and related litigation referred to above, from which the Company received no material benefit.

78. As a result of the misconduct alleged herein, L Brands has sustained significant damages, not only monetarily, but also to its corporate image and goodwill.

79. As a result of the misconduct alleged herein, the Individual Defendants are personally liable to the Company in an amount which cannot presently be determined.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment against the Individual Defendants as follows:

(a) An Order adjudicating and declaring the Individual Defendants responsible and liable for breaching their fiduciary duties to L Brands.

(b) An Order adjudicating and declaring that the Company's Board of Directors has failed to respond in good faith to the demands asserted by plaintiff, and that plaintiff has standing to assert the claims asserted in this Complaint derivatively on behalf of L Brands.

(c) An Order adjudicating and declaring that the defendants are barred and estopped from relying upon any actions taken or conclusions reached by Wachtell in connection the acts and omissions alleged in this Complaint.

(d) Assessing damages against the Individual Defendants to compensate L Brands for the damages it has and may hereafter sustain as a result of such defendants' breaches of duty as detailed in this Complaint.

(e) Directing that the Individual Defendants make restitution to L Brands and to disgorge any and all compensation or other benefits derived by them as a result of their breaches of duty alleged in this Complaint.

(f) Ordering that all Individual Defendants who currently serve on L Brands' Board of Directors to cause the Company to adopt and implement

therapeutic relief to remedy and prevent conduct such as described in this Complaint from happening again

(g) Awarding to Plaintiff the costs and disbursements of this action, including reasonable attorneys' fees, accountants and experts' fees, costs and expenses.

(h) Granting such other and further relief as may be appropriate and available under applicable law, and as the Court may deem just and proper.

Dated: January 12, 2021

/s/ P. Bradford deLeeuw

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