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

VICTORIA'S SECRET STORES, LLC successor in interest to VICTORIA'S SECRET STORES, INC.; and L BRANDS INC., successor in interest to THE LIMITED, INC. and INTIMATE BRANDS, INC.,

Plaintiffs,

-against-

HERALD SQUARE OWNER LLC successor in interest to 1328 BROADWAY, LLC,

Defendant.

Index No.: 651833/2020

COMPLAINT

Plaintiffs, Victoria's Secret Stores, LLC successor in interest to Victoria's Secret Stores, Inc. ("VS"); and L Brands Inc., successor in interest to The Limited, Inc. and Intimate Brands, Inc. ("L Brands" and collectively "Plaintiffs"), by and though their attorneys, Davidoff Hutcher & Citron LLP, bring the following Complaint against Defendant Herald Square Owner LLC successor in interest to 1328 Broadway, LLC ("Defendant"). The allegations of the Complaint are based on the knowledge of Plaintiffs, and on information and belief, including the investigation of counsel and review of publicly available information.

NATURE OF THE ACTION

1. This action seeks rescission of a commercial property lease, and a declaration that the lease is unenforceable as a result of the COVID-19 Pandemic and the related government-mandated shutdowns (including Governor Andrew Cuomo's "New York State on PAUSE" Executive Order). In sum, the total standstill of business, commerce, and everyday life in New York City has completely and unforeseeably frustrated the purpose of the lease, and has rendered performance impossible.

2. VS operates a flagship Victoria's Secret retail lingerie store at Two Herald Square, New York, New York. In exchange for the ability to operate its retail store at this location, VS agreed to pay Defendant, *inter alia*, a monthly rent of $937,734.17. In addition, the lease provided for certain other areas of the subject building (office space) in addition to the retail space, and for additional rent.

3. From a business and brand-development perspective, this hefty sum was largely predicated upon Herald Square's status as one of the most highly trafficked locations in all of Manhattan. Indeed, Herald Square is a prominent retail hub, known internationally, and located in the heart of New York City's premier tourist and business vicinity. It sits atop the MTA's 34th Street – Herald Square Station, a major transportation center serviced by the B, D, F, M, N, Q, R, and W subway lines, and thus easily accessible to all areas of New York City. It is also close to the PATH's HOB-33, JSW-33 trains, as well as Pennsylvania Station, thus offering seamless regional access. Steps from Madison Square Garden and adjacent to Macy's famed flagship store, VS had bargained for a prime position in one of the most heavily travelled urban avenues in the world.

4. Indeed, Herald Square draws more than two million visitors annually. Its crowded sidewalks amidst a global retail hub were material factors in Plaintiffs' decision to agree to a rent of roughly $1 million per month (and, indeed, Defendant's ability to charge that amount).

5. But in March 2020, all of New York City went dark. The COVID-19 pandemic, unprecedented in scope and destruction, spawned a massive and severe government response that has completely shuttered Victoria's Secret's Herald Square store since mid-March, and in fact prohibited most retail operations in New York City continuing to the present day. This shutdown has, thus, utterly and irreversibly frustrated the purpose of the parties' agreements, and indeed

rendered both parties' performance impossible. While the parties may have contemplated certain gradual ups and downs of tourism, the economy, seasonal habits, and the like, the COVID-19 shutdown is unlike anything ever before experienced in America in terms of severity and duration, and could not have been foreseen.

6. Even when retail is eventually permitted to reopen at Herald Square, government officials have announced that any reopening will be phased over many months. In other words, there is no "switch to flip," that will return the parties to their pre-COVID posture and suddenly cause eager shoppers to appear on the Broadway sidewalks.

7. To the contrary, it is indisputable that New York City's business landscape has been shattered, and is forever altered. Nobody can predict if or when Herald Square's two million annual visitors will return, or how the inevitably forthcoming social distancing requirements during any "phased reopening" will impact retail (and, in particular, a lingerie superstore). COVID-19 remains virulent, and businesses have been advised of extensive and mandatory guidelines intended to offer at least some measure of protection. Despite those restrictions, the experience of shopping for consumer products in a retail store has been altered forever. All that is known with certainty is that it will be years before retail has even a chance of returning to New York City in its pre-COVID form, which was the foundation for the material assumptions and fundamental bases upon which the parties relied in entering their agreements.

8. In other words, the purpose of tendering a monthly rent of $937,734.17 or more to operate a retail store is completely frustrated when that store cannot open. That purpose is also frustrated when the subject store can open at only a marginal capacity, or when customers are too fearful of profound illness and potential death to venture out to shop for lingerie or other personal items.

9. Thus, as explained below, this Court should declare that the lease and guaranty are rescinded as a result of the COVID-19 Pandemic and/or the Executive Orders which prohibit VS from operating its business at the Retail Premises (as defined below).

PARTIES

10. Victoria's Secret Stores, LLC is a Limited Liability Company, organized under the laws of the State of Delaware, authorized to conduct business in the State of New York, and currently maintains its principal place of business at Three Limited Parkway, Columbus, Ohio 43230.

11. Victoria's Secret Stores, LLC also has a principal place of business in New York, New York.

12. Victoria's Secret Stores, LLC is the successor in interest to a lease agreement entered by Victoria's Secret Stores, Inc. on August 22, 2001.

13. L Brands, Inc. is a Corporation, organized under the laws of the State of Delaware, authorized to conduct business in the State of New York, and currently maintains its principal place of business at Three Limited Parkway, Columbus, Ohio 43230.

14. L Brands, Inc. is the successor in interest to a guaranty agreement entered by Intimate Brands, Inc. and The Limited, Inc. on August 22, 2001.

15. Herald Square Owner LLC is a Limited Liability Company, organized under the laws of the State of Delaware, authorized to conduct business in the State of New York, and currently maintains its principal place of business at 420 Lexington Avenue, New York, New York 10170.

16. Herald Square Owner LLC is the owner of the building known as Two Herald Square in New York, New York.

17. Defendant Herald Square Owner LLC is a subsidiary of SL Green Realty Corp. an S&P 500 company and New York City's largest office landlord. SL Green Realty Corp. is a fully integrated real estate investment trust, or REIT.

18. Defendant Herald Square Owner LLC is the successor in interest to a lease agreement entered into by 1328 Broadway LLC on August 22, 2001.

JURISDICTION AND VENUE

19. The Court has jurisdiction over Defendant pursuant to CPLR 301 and 302(a) since Defendant owns real property within the State of New York.

20. Venue is proper in New York County pursuant to CPLR 503(a) in that Plaintiffs and Defendant reside in the County of New York and this litigation concerns real property located in the County of New York.

COMMERICAL LEASE AND GUARANTY

21. On or about August 22, 2001, Victoria's Secret Stores, Inc. (predecessor in interest to VS), entered into a written commercial lease with 1328 Broadway, LLC (predecessor in interest to Herald Square Owner LLC), for portions of a building now known as Two Herald Square, New York, New York (formerly known as 1328 Broadway, New York, New York) (hereafter referred to as the "Original Lease").

22. In connection with the Original Lease, on or about August 22, 2001, Intimate Brands, Inc. and The Limited, Inc. (predecessors in interest to L Brands, Inc.) entered into a Joint and Several Guaranty with 1328 Broadway LLC (predecessor in interest to Herald Square Owner LLC), wherein Intimate Brands, Inc. and The Limited, Inc. guaranteed Victoria's Secret Stores, Inc.'s obligations under the Lease (hereafter referred to as the "Original Guaranty").

23. The Original Guaranty was amended on or about April 23, 2013 (the "Amended Guaranty," which together with the Original Guaranty is collectively referred to herein as the "Guaranty").

24. The Original Lease has been amended ten times, and reference is made to the First Amendment of Lease, dated as of December 13, 2002 (the "First Amendment"); the Second Amendment of Lease, dated as of July 11, 2003 (the "Second Amendment"); the Third Amendment of Lease, dated as of December 18, 2006 (the "Third Amendment"); the Fourth Amendment of Lease, dated as of September 5, 2008 (the "Fourth Amendment"); the Fifth Amendment of Lease, dated as of November 8, 2010 (the "Fifth Amendment"); the Sixth Amendment of Lease, dated as of October 31, 2011 (the "Sixth Amendment"); the Seventh Amendment of Lease. dated as of January 20, 2012 (the "Seventh Amendment"); the Eighth Amendment of Lease, dated as of January 14, 2013 (the "Eighth Amendment"); the Ninth Amendment of Lease, dated as of April 23, 2013 (the "Ninth Amendment"); and the Tenth Amendment of Lease, dated as of April 19, 2018 (the "Tenth Amendment," which together with the Original Lease, the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment, the Sixth Amendment, the Seventh Amendment, the Eighth Amendment, and the Ninth Amendment is collectively referred to herein as the "Lease").

25. Plaintiffs and Defendant entered the Lease and Guaranty with the basic expectation that VS could operate the premises as a first-class retail location.

26. Pursuant to the terms of the Original Lease, VS had demised a portion of the ground floor, the second floor and mezzanine of Two Herald Square to operate a first-class retail location for "Victoria's Secret" (the "Retail Premises").

27. The Original Lease commenced on or about August 22, 2001 and expired on March 31, 2017.

28. In exchange for the permission to operate, VS paid Defendant both Minimum Rent (beginning at $4,100,000 per annum) and Percentage Rate Rent, which was calculated at 5% of VS' annual gross sales at that location from $32,000,000 through $37,000,000, and 4% of annual gross sales from $37,000,000.01 through $50,000,000.

29. On or about August 18, 2015, pursuant to Section 39(A) of the Original Lease, VS provided Defendant with a Renewal Notice, which sought to extend the Term of the Lease to March 31, 2022 (the "First Renewal Term").

30. On September 20, 2016, Defendant provided VS with its Notice of Landlord's Rental Value for the Retail Premises. Defendant therein proposed a certain amount in Minimum Rent for the Retail Premises.

31. On October 5, 2016, VS rejected Defendant's proposed Rental Value.

32. Accordingly, on December 29, 2016, Defendant commenced an Arbitration to determine the amount of the Minimum Rent for the Retail Premises during the First Renewal Term.

33. Defendant submitted detailed appraisal reports based upon, *inter alia*, the amount of foot-traffic in Herald Square, and Herald Square's reputation as a global shopping destination in order to advocate for the maximum rent possible during the First Renewal Period. Defendant also urged that Two Herald Square provided prime visibility and branding that is superior to other locations along West 34th Street.

34. Arbitration hearings occurred from July 16 through July 19, 2018. However, before the Arbitrator rendered a determination as to the amount of Minimum Rent for the Retail Premises for the First Renewal Period, the parties settled the dispute *via* the Tenth Amendment.

35. Based upon the prime Manhattan location of Two Herald Square, the heavy foot-traffic in and around the Retail Premises, Herald Square's reputation as a premier tourist and retail center, and the proximity to major transportation centers, VS and Defendant entered the Tenth Amendment, wherein they agreed upon the amount of Minimum Rent due during the First Renewal Period for the following portions of the Building: (1) Storage Space SB03/SB04 – from April 1, 2017 through March 31, 2022 for $25,916.61 per annum; (2) Storage Space SB08 – from April 1, 2017 through March 31, 2022 for $14,250 per annum; (3) Storage Space SB13 – from December 18, 2018 through December 17, 2021 for $66,909.32 per annum; (4) Storage Space SB09 – from September 5, 2017 through September 4, 2020 for $22,627.00 per annum; (5) Storage Space 203 – from April 1, 2017 through March 31, 2022 for $11,550 per annum; (6) Lower Level portion of the Retail Premises – from December 1, 2017 through November 30, 2020 for $3,582,810 per annum; (7) Ground Floor, Mezzanine and Second Floor portions of the Retail Premises – from Surrender Date through March 31, 2022 for $7,670,000 per annum; and (8) Office Premises – from April 1, 2019 through March 31, 2020 for $1,567,320 per annum (also from April 1, 2020 through March 31, 2021 for $1,590,704 per annum). *See* Exhibit A to Tenth Amendment. These areas are collectively referred to as the "Premises."

36. The "Office Premises" referred to in Paragraph 35(8), *supra,* were administrative facilities that directly supported the operation of the VS retail store operating at the Retail Premises, and served no purpose other than supporting the VS retail store.

37. Accordingly, the Premises' Minimum Rent for the month of March 2020, was $1,080,111.08. And the Minimum Rent for each of the months of April 2020, May 2020, and June 2020 was $1,082,059.75.

38. With respect solely to the Retail Premises, the Minimum Rent due for March, April, May, and June 2020 was $937,734.17, per month.

39. Plaintiffs have faithfully performed all of their obligations under the Lease and Guaranty including the payment of Minimum Rent until April 1, 2020, and the pre-payment of real estate tax expenses to Defendant.

40. Plaintiffs' Premises have been closed since March 17, 2020 because of the COVID-19 Pandemic and Governor Cuomo's "New York State on PAUSE" Executive Order (and related Executive Orders).

41. Under these sweeping government restrictions, Plaintiffs' Premises were deemed "non-essential businesses" and were required by law to shutter indefinitely. Any retail activity at the location would violate the State's orders, and could potentially subject Plaintiffs to criminal violations and penalties.

42. As a result of its total inability to operate its retail store at Two Herald Square – by government order – VS ceased paying Minimum Rent as of April 1, 2020, its performance under the Lease having been excused by, *inter alia*, the doctrines of frustration of purpose and impossibility of performance.

43. On May 11, 2020, Defendant provided VS with a notice of default, asserting that VS did not pay the "Minimum Rent" for the Retail Premises for April and May, 2020, aggregating $1,875,468.34, and demanding that VS cure on or before May 18, 2020.

44. Thereafter, on May 18, 2020, Defendant's counsel wrote to L Brands, threatening litigation, claiming that VS had defaulted on the terms of the Lease, and asserting that L Brands was responsible under the Guaranty.

45. Further, Defendant wrote that "[t]he Minimum Rent due under the Lease in respect of the Retail Premises for the remainder of the Term comes to at least $29,601,152."

46. On June 4, 2020 – ten days after the filing of the Summons With Notice in this action – Defendant provided VS with a notice of termination, purporting to cancel the Lease as to the Retail Premises effective June 9, 2020, and demanding that VS quit and surrender the Retail Premises as of that date.

47. On June 4, 2020, Defendants also provided a second notice relating to the rent for the Office Premises, claiming that VS has "failed to pay the Office Rent in the amount due each month…resulting in a total amount in arrears of $397,675.98," and demanding that VS cure on or before June 11, 2020.

48. The Lease expires on March 31, 2022.

49. However, owing to the frustration of purpose and/or impossibility of performance caused by the COVID-19 Pandemic, and the related government shutdown orders, Plaintiffs have elected to rescind the Lease and Guaranty as asserted herein.

FRUSTRATION OF PURPOSE AND IMPOSSIBILITY OF PERFORMANCE

50. Plaintiffs and Defendant entered the Lease and Guaranty with the principal and basic expectation that VS could operate the Premises as a first-class retail location for its Victoria's Secret brand.

51. The operation of the Premises as a first-class retail location was equally important and fundamental to both Plaintiffs and Defendant.

52. In fact, Defendant required VS to assent to Section 2(C)(i) of the Original Lease, which mandated that VS operate at the Premises as a retail store from Monday through Friday, and cautioned that VS' failure to do so would constitute a default under the terms of the Lease. *See*

Section 2(C)(i) of the Original Lease ("Tenant agrees to keep the Premises continuously open and operated for retail trade with the general public at least Monday through Friday (excluding holidays) ("Operating Hours"). Tenant shall at all times during Operating Hours offer for sale a complete line of merchandise and shall employ an adequate number of employees, for the diligent and active conduct of Tenant's business in the Premises. If Tenant shall fail to operate during the Operating Hours, such failure shall constitute a default hereunder.").

53. Thus, the Lease's express terms demonstrate that both parties recognized that the Lease's principal purpose was the operation of a first-class retail location, which would generate income for VS in the form of retail sales, and Defendant, in the form of percentage rent rate based upon VS' gross sales.

54. Without VS' ability to operate as a first-class retail location at the Premises, neither party would have entered the Lease.

55. Unfortunately, as a result of the governmental lockdown restrictions resulting from the COVID-19 Pandemic, VS is expressly precluded by law from operating its retail store at the Premises, and thus the very purpose of the Lease has been completely frustrated insofar as, *inter alia*, VS has been deprived of its use of the Premises for the full term that VS was promised under the Lease. Indeed, it was a fundamental and material expectation that VS would have access to the Premises for the full term of the Lease (not just some portion thereof).

56. COVID-19 has paralyzed the entire world, having killed more than 100,000 Americans and infected millions more. The disease has spread exponentially, shutting down retail stores, schools, jobs, professional sports seasons, and life as we know it.

57. The New York City Metropolitan Area has been the hardest hit region in America.

58. On March 7, 2020, Governor Andrew M. Cuomo issued Executive Order No. 202. That order, issued in response to the rapidly escalating COVID-19 public health emergency, stated that "a disaster [was] impending in New York State, for which the affected local governments [would be] unable to respond adequately" and therefore the declaration of "a State disaster emergency for the entire State of New York" was necessary (Executive Order [A. Cuomo] No. 202).

59. At that time in early March, the number of confirmed COVID-19 cases in New York State was less than 100 (Jesse McKinley and Edgar Sandoval, Coronavirus in NY: Cuomo Declares State of Emergency, NY Times, Mar. 7, 2020, https://nyti.ms/2XkHaZW); a month later, that number exceeded 138,000 (NY Virus Deaths Hit New High, but Hospitalizations Slow, NY Times, Apr. 7, 2020, https://nyti.ms/3aOzvXz).

60. In the ensuing days and weeks, the Governor, in a series of executive orders, aimed to "flatten the curve" and slow the spread of COVID-19 by limiting gatherings of people (see, e.g., Executive Order 202.1 [ordering the 30-day postponement or cancelation of "[a]ny large gathering or event for which attendance is anticipated to be in excess of five hundred people"]; Executive Order 202.3 [modifying the large gathering order in Executive Order 202.1 to gatherings where "more than fifty persons are expected in attendance"]; Executive Order 202.10 [cancelling or postponing all "(n)on-essential gatherings of individuals of any size for any reason"]).

61. On March 16, 2020, as the crisis worsened, New York City Mayor Bill de Blasio issued Emergency Executive Order No. 100, imposing restrictions on various types of retail locations. As such, at the close of business on March 16, 2020, VS suspended all retail operations at the Premises to comply with applicable governmental orders and guidelines and to protect the health and safety of its employees, customers, and the surrounding community.

62. On March 18, 2020, Governor Cuomo issued Executive Order 202.6, requiring non-essential businesses to reduce their in-person work force by 50%. VS's operations at the Premises was deemed "non-essential." By this time, business and commerce in New York City was already at a virtual standstill.

63. These efforts culminated in the issuance of Executive Order 202.8, on March 20, 2020, which ordered all nonessential businesses and nonprofit organizations to ***"reduce [their] in-person workforce at any work locations by 100% no later than March 22[, 2020] at 8 p.m."*** (Executive Order 202.8) (emphasis added).

64. Pursuant to these extraordinary and unforeseeable executive acts and decrees, VS was *required* to close all of its operations at the Premises (despite having paid full rent for the month of March 2020). The VS store at the Retail Premises remains shuttered to this day by government order.

65. The COVID-19 Pandemic and Executive Order 202.8 have completely frustrated the very purpose of the Lease, and made it impossible for the parties to perform.

66. Because of the COVID-19 Pandemic, VS cannot operate its retail store at the Premises consistent with the parties' fundamental understanding, purpose, and expectation at the time the lease was entered.

67. Because of Executive Order 202.8, VS cannot operate its retail store at the Premises consistent with the parties' fundamental understanding, purpose, and expectation at the time the lease was entered.

68. VS' inability to operate its store has completely frustrated the purpose of the Lease and rendered performance impossible.

69. In fact, Defendant acknowledged in the Original Lease that VS' inability to operate its store at the Retail Premises would frustrate the purpose of the Lease, and provided at Section 26(ii), that if "Tenant shall be not able to operate its store at the Premises, [or if the store] shall be closed for business and have discontinued its operation of the store for a period of ***six (6) consecutive days*** or more… that such failure has rendered the Premises unusable and that Tenant has closed for business and discontinued its operation of the store, then, Tenant shall be entitled to an abatement of Minimum Rent and additional rent for each day after said six (6) consecutive day period through the earlier to occur of the day preceding (i) the day on which the service is substantially restored and (ii) the day Tenant reopens for business and recommences its operation of the store at the Premises." (emphasis added). To put this in perspective, today marks the ***eighty-third consecutive day*** of closure at the Premises.

70. The COVID-19 Pandemic and related government shutdown orders – altering every aspect of business and life in New York City – were neither foreseen nor foreseeable by any party to the Lease.

71. Nevertheless, it is clear from the Lease that both parties understood that the operation of a retail business at the Retail Premises – amid the hustle-bustle of Midtown Manhattan – was ***the primary purpose*** of the Lease, and the inability to operate as a retail business in that setting would entitle VS to an abatement of rent and a rescission of the Lease.

72. Accordingly, as a result of the COVID-19 Pandemic and Executive Orders, the Lease and Guaranty are rescinded by the legal doctrines of frustration of purpose and impossibility of performance.

FIRST CAUSE OF ACTION
(Rescission Based on Frustration of Purpose)

73. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

74. An actual controversy of a justiciable nature exists between Plaintiffs and Defendant concerning the rights and obligations of the parties under the Lease and Guaranty.

75. Specifically, Defendant seeks to enforce the Lease and Guaranty despite the fact that the Lease and Guaranty are rescinded under the doctrine of frustration of purpose.

76. Under New York law, frustration of purpose applies to a situation where an unforeseen event has occurred which, in the context of the entire transaction, destroys the underlying reasons for performing such contract, thus operating to discharge a party's duties of performance.

77. As a result of COVID-19 and/or Governor Cuomo's Executive Orders, Plaintiffs are prohibited from operating their business at the Retail Premises and are prohibited from undertaking all other Permitted Uses set forth in the Lease.

78. Plaintiffs' inability to operate its business because of a pandemic and/or the related government shutdown order was completely outside of Plaintiffs' control and was neither foreseen nor foreseeable at the time the Lease and Guaranty were entered. When retail activities are permitted to resume, the government has announced that any reopening will be at marginal capacity for the foreseeable future. It will, thus, be years before consumer retail behavior and/or Herald Square business district activity levels recover to pre-COVID-19 levels. This, too, was unforeseeable.

79. Plaintiffs have a legally protectable interest in this controversy.

80. Specifically, Plaintiffs have a pecuniary interest in a declaration that they have no obligation to continue to pay rent to Defendant commencing on March 17, 2020 (the first date that operations at the Premises were shuttered).

81. Therefore, Plaintiffs seek a declaratory judgment of their rights under the doctrine of frustration of purpose.

82. Specifically, VS seeks a declaration from this Court that the Lease is rescinded as a result of the COVID-19 Pandemic and/or the Executive Orders, which prohibited VS from operating its business at the Retail Premises.

83. L Brands seeks a declaration that since the Lease is rescinded for frustration of purpose, its obligations under the Guaranty are extinguished.

84. Plaintiffs further seek a declaration that the Defendant wrongfully declared a default under the Lease.

85. This controversy is ripe for adjudication and a judicial declaration is necessary to end the present controversy.

SECOND CAUSE OF ACTION
(In the Alternative – Rescission Based on Impossibility of Performance)

86. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

87. The Lease requires Defendant to tender the Retail Premises for use as a retail store.

88. The Lease requires VS to use the Retail Premises as a retail store.

89. The doctrine of impossibility of performance provides that performance of a contract will be excused if such performance is rendered impossible by, *inter alia*, intervening governmental activities.

90. COVID-19 and/or the Executive Orders have rendered performance by both Plaintiffs and Defendant impossible. Indeed, since mid-March and continuing for months, governmental regulations have outlawed the operation of a retail store at the Retail Premises. Thus, performance under the Lease has been rendered impossible.

91. The impossibility occasioned by COVID-19 and/or the Executive Orders – as well as the "phased" reopening at marginal capacity only – was unforeseen and unforeseeable at the time the Lease was entered into, and cannot be attributed to VS or Defendant.

92. This controversy is ripe for adjudication and a judicial declaration is necessary to end the present controversy.

THIRD CAUSE OF ACTION
(In the Alternative – Reformation of Lease)

93. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

94. VS' ability to operate a retail store at the Retail Premises was the parties' mutual purpose in entering the Lease, as both parties understood at the time of contracting, and but for its right to operate such a retail store, VS would not have entered the Lease.

95. When VS was forced to cease all retail operations at the Premises, the purpose of the Lease was frustrated and impossible to effectuate due to no fault of VS. VS' obligations under the Lease became impossible and impracticable to perform, and VS was deprived of the consideration it received in exchange for entering the Lease.

96. Plaintiffs' inability to operate its business because of a pandemic and/or the related government shutdown order was completely outside of Plaintiffs' control and was neither foreseen nor foreseeable at the time the Lease and Guaranty were entered.

97. The Parties would not have entered the Lease had they known that VS would be unable to operate a retail store at the Retail Premises for the full term of the Lease, and VS' ability to use the Retail Premises as a retail store was the sole consideration VS received under the Lease.

98. It was the Parties' intent that VS would not pay rent or other consideration for the Premises if such use was rendered impossible or impracticable. Had the Parties been able to anticipate the events of the COVID-19 crisis at the time of contracting, the Parties would have provided language expressly stating their true intent.

99. An actual controversy exists between the Parties concerning their respective rights under the Lease, and Plaintiffs have no adequate remedy at law.

100. In the alternative to Plaintiffs' claims relating to the rescission of the Lease, Plaintiffs are entitled to judicial reformation of the Lease to reflect the Parties' true intent that Plaintiffs would have no obligation to pay rent once it was deprived of the use of the Premises and that the Lease would terminate automatically when VS was deprived of its use of the Premises as originally contemplated by the Lease.

FOURTH CAUSE OF ACTION
(Breach of Contract)

101. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

102. Prior to the Lease's termination and/or rescission, the Lease constituted a binding enforceable contract.

103. Defendant breached the contract by, among other things, demanding that Plaintiffs pay rent and/or other expenses that were not owed under the Lease; demanding, collecting and subsequently failing to reimburse VS for excess charges paid in advance under the Lease before the COVID-19 crisis (including but not limited to as March 2020 rent for periods in which the

Premises were required to be shuttered, as well as pre-paid real estate tax amounts); and later failing to reimburse VS for the prorated amount of the rent, charges and other expenses attributable to the period that VS has been deprived of its use of the Premises.

104. Plaintiffs performed all of their obligations under the Lease except those that were waived, excused or rendered impossible and/or impractical.

105. Plaintiffs are entitled to a judgment against Defendant in an amount to be proven at trial.

FIFTH CAUSE OF ACTION
(Money Had and Received)

106. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

107. VS' ability to operate a retail store at the Premises was the parties' mutual purpose in entering the Lease, as both parties understood at the time of contract.

108. But for its right to operate a retail store, VS would not have entered the Lease.

109. When VS was forced to cease all retail operations at the Premises, the purpose of the Lease was frustrated and impossible to effectuate due to no fault of VS. At that point, VS' obligations under the Lease became impossible and impracticable to perform, and VS was deprived of the consideration it received in exchange for entering the Lease.

110. This sudden mandatory cessation of retail operations at the Premises was unforeseeable and not contemplated by the parties at the time the Lease was entered.

111. The parties would not have entered the Lease had they known that VS would have been unable to operate a retail store at the Retail Premises, and VS' ability to use the Retail Premises as a retail store constituted the primary consideration it received under the Lease.

112. VS has previously paid rent, prepaid real estate taxes, and other consideration to Defendant, in an amount to be proved at trial, for the period of time that VS was prohibited from operating a retail store at the Retail Premises.

113. Defendant benefitted from these payments to VS' detriment.

114. Under principles of good conscience, Defendant should not be allowed to retain the rent and other consideration paid for the period of time that VS was unable to operate a retail store at the Retail Premises as originally contemplated by the Lease.

115. VS is entitled to a judgment in its favor equal to the amount that VS has previously overpaid as rent and as other consideration to Defendant, in an amount to be proven at trial, for the period of time that VS was barred from operating a retail store at the Premises as originally contemplated by the Lease.

SIXTH CAUSE OF ACTION
(Unjust Enrichment)

116. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

117. VS' ability to operate a retail store at the Premises was the parties' mutual purpose in entering the Lease, as both parties understood at the time of contract.

118. But for its right to operate a retail store, VS would not have entered the Lease.

119. When VS was forced to cease all retail operations at the Premises, the purpose of the Lease was frustrated and impossible to effectuate due to no fault of VS. At that point, VS' obligations under the Lease became impossible and impracticable to perform, and VS was deprived of the consideration it received in exchange for entering the Lease.

120. This sudden mandatory cessation of retail operations at the Premises was unforeseeable and not contemplated by the parties at the time the Lease was entered.

121. The parties would not have entered the Lease had they known that VS would have been unable to operate a retail store at the Premises, and VS' ability to use the Premises as a retail store was the sole consideration it received under the Lease.

122. VS has previously paid rent, prepaid real estate taxes, and other consideration to Defendant, in an amount to be proved at trial, for the period of time that VS was unable to operate a retail store at the Premises.

123. Defendant has been unjustly enriched from these payments to VS' detriment.

124. Under principles of good conscience, Defendant should not be allowed to retain the rent and other consideration paid for the period of time that VS was unable to operate a retail store at the Premises as originally contemplated by the Lease.

125. VS is entitled to restitution in an amount equal to the amount that VS has previously overpaid as rent and as other consideration to Defendant, in an amount to be proven at trial, for the period of time that VS was barred from operating a retail store at the Premises as originally contemplated by the Lease.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in Plaintiffs' favor as follows:

A. On the first cause of action, declaring that (1) the Lease is rescinded and of no further force an defect, pursuant to the doctrine of frustration of purpose; and (2) since the purpose of the Lease has been frustrated and the Lease is therefore rescinded, L Brands Inc.'s obligations under the Guaranty are extinguished;

B. Alternatively, on the second cause of action, declaring that: (1) the Lease is rescinded and of no further force and effect, pursuant to the doctrine of impossibility of

performance; and (2) since performance under the Lease is impossible and it is therefore rescinded, L Brands Inc.'s obligations under the Guaranty are extinguished;

C. Alternatively, on the third cause of action, reforming the Lease to reflect the Parties' true intent that Plaintiffs have no obligation to pay rent once VS was deprived of the use of the Premises and that the Lease would terminate automatically when VS was deprived of its use of the Premises as originally contemplated by the Lease;

D. On the fourth cause of action, awarding Plaintiffs money damages for Defendant's breaches of the Lease, including the reimbursement for the rents, pre-paid real estate taxes, and other expenses paid for the period of time that VS was deprived of its use of the Premises as originally contemplated in the Lease;

E. On the fifth cause of action, awarding Plaintiffs money damages to reimburse them for the rents, pre-paid real estate taxes, and other expenses paid for the period of time that VS was deprived of its use of the Premises as originally contemplated in the Lease;

F. On the sixth cause of action, awarding Plaintiffs money damages to reimburse them for the rents, pre-paid real estate taxes, and other expenses paid for the period of time that VS was deprived of its use of the Premises as originally contemplated in the Lease;

G. Awarding attorneys' fees and costs incurred by Plaintiffs in the prosecution of this lawsuit;

H. Awarding prejudgment interest on all amounts due; and

I. Awarding such other and further relief as this Court deems just, proper, and equitable.

Dated: June 8, 2020
New York, New York

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