

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

| | | |
|--|---|----------------------------------|
| In re: |) | |
| |) | Chapter 11 |
| |) | |
| LIBERATED BRANDS LLC, <i>et al.</i> , ¹ |) | Case No. 25-10168 () |
| |) | |
| Debtors. |) | (Joint Administration Requested) |
| |) | |

**DECLARATION OF TODD
HYMEL, CHIEF EXECUTIVE OFFICER OF
LIBERATED BRANDS LLC, IN SUPPORT OF THE
DEBTORS' CHAPTER 11 PETITIONS AND FIRST DAY PLEADINGS**

I, Todd Hymel, hereby declare under penalty of perjury:

1. Liberated is a global leader in the sport, outdoor, and lifestyle apparel industry. Liberated offers its customers access to products under high-quality brands such as Volcom[®], Billabong[®], Quiksilver[®], Spyder[®], RVCA[®], Roxy[®], and Honolua[®], in its 124 retail locations across the United States and through other channels.² As an omnichannel apparel licensee with deep-rooted and unique expertise in trend forecasting and brand development, Liberated has attracted loyal customers in more than 100 countries. Liberated operates regional headquarters in North America, Europe, Japan, and Australia.³

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Liberated Brands LLC (2718); Boardriders Retail, LLC (0505); Liberated AX LLC (1537); Liberated Brands International, Inc. (4439); Liberated Brands USA LLC (3827); Liberated-Spyder LLC (9831); Volcom Retail Outlets, LLC (1493); Volcom Retail, LLC (9045); and Volcom, LLC (6919). The location of the Debtors' service address for purposes of these chapter 11 cases is: 1740 Monrovia Ave, Costa Mesa, CA 92627.

² As of the Petition Date, certain of Liberated's license rights as to the Volcom[®], Billabong[®], RVCA[®], and Spyder[®] brands have been terminated and transitioned to new licensees.

³ For clarity, the Company's foreign entities including its Australian, European, Japanese, and Canadian entities are not Debtors in these chapter 11 cases. The anticipated path forward for these entities is discussed in paragraph 52 of this Declaration.

2. Notwithstanding the Company's impressive portfolio of brands, loyal customer base, and unique expertise in brand marketing and support, the Debtors have faced a series of major headwinds and challenges. Before these headwinds manifested, and shortly after Liberated



was formed, the Company experienced a sharp increase in product demand during the COVID-19 pandemic, largely due to increased outdoor leisure time and governmental stimulus support provided to customers. Heightened demand, coupled with a series of license acquisitions, resulted in Liberated's revenue

increasing significantly from \$350 million in 2021 to \$422 million in 2022—a 20 percent increase year over year. In late 2023, seeking to keep up with expanding opportunities in the outdoor apparel space and pursuing new consumer segments, Liberated acquired licenses and retail assets for several major outdoor apparel brands, including Quiksilver[®], Billabong[®], Roxy[®], RVCA[®], Honolua[®], and Boardriders[®], which expanded its operations beyond its core geographical area of North America to Australia, New Zealand, Thailand, and Indonesia.

3. Macroeconomic issues, including a rapid and dramatic rise in interest rates, persistent inflation, supply chain delays, a decline in customer demand well below the historical trendline, shifting consumer preferences, and substantial fixed costs placed significant pressure on Liberated's revenue and cost structure. Liberated also encountered duplicative fixed costs associated with transitioning the legacy Boardriders[®] infrastructure to Liberated's processes. As a result of these headwinds, Liberated faced significant liquidity challenges in 2024.

4. As these operational and liquidity challenges manifested, the Company undertook multiple measures to manage and improve liquidity and stabilize the business. These efforts included: (a) seeking potential investments in the business from financial and strategic parties, as well as from its existing equityholders; (b) exploring a sale to sell the business or certain business lines, to one or more financial or strategic buyers; (c) renegotiating leases with various landlords; (d) implementing a hiring freeze and strategic reduction in force; and (e) stretching trade and other payables, including through negotiated payment plans with vendors.

5. While Liberated's sale and capital raising efforts (the "Prepetition Marketing Process") generated market interest and engagement with various potential transaction counterparties, the process did not yield any actionable transaction proposals. As a result, Liberated had to further stretch its accounts payable to conserve liquidity amid growing uncertainty about the future of the business. This measure resulted in a further deterioration of the Company's vendor relationships, which led to a range of operational disruptions, including the delay or stranding of inventory shipments.

6. Faced with mounting financial and operational challenges, in November 2024, Liberated determined that it needed to explore alternative options to maximize value for its stakeholders in the event of a potential downside scenario, and hired AlixPartners, LLC ("Alix") and Kirkland & Ellis LLP ("Kirkland"). Liberated also appointed an independent and disinterested manager, Mark Hootnick of MSH Advisory LLC, to its board. Also in November 2024, Liberated divested its loss-making North American Spyder[®] business through a transaction with Q4D LLC ("Q4D").

7. In December 2024, Liberated's North American license rights for its wholesale operations under the Volcom[®], RVCA[®], and Billabong[®] brands were terminated as a result of

Liberated's default under the associated licenses. In connection with this termination, Liberated's United States and Canadian wholesale and e-commerce license rights with respect to those brands were transitioned to new operators, with Liberated retaining a limited right to sell through prior-season branded inventory (subject to certain restrictions). Compounding an already dire liquidity situation, towards the end of December 2024 and continuing into January 2025, vendors began holding back in-transit inventory as well as pending inventory shipments for the spring 2025 season, reducing the Debtors' borrowing base under their Prepetition ABL Facility by more than \$10.0 million.

8. Due to their business and financial issues, and coupled with the Debtors' reduced borrowing base, JPMorgan Chase Bank, N.A., the agent under the Prepetition ABL Facility (the "Prepetition ABL Agent"), implemented reserves and the Debtors became over-advanced under their Prepetition ABL Facility by approximately \$3.5 million around mid-January 2025 and approximately \$6.0 million in late-January 2025. Faced with drastically diminished prospects to operate as a going-concern, and without access to cash receipts due to the over-advance under the Prepetition ABL Facility, the Debtors accelerated negotiations with the Prepetition ABL Agent regarding further advances under the Prepetition ABL Facility and a consensual and value-maximizing disposition of the Debtors' assets. Amid these negotiations, the Debtors retained Gordon Brothers Retail Partners, LLC as their exclusive, independent consultant to, among other things, assist the Debtors with marketing, selling, and otherwise disposing of certain of the Debtors' United States retail assets, including certain merchandise sold in specified retail locations.⁴ Following extensive arm's-length negotiations, the Debtors and the Prepetition ABL Agent reached an agreement for the Prepetition ABL Agent to provide a \$35.0 million new-money

⁴ Gordon Brothers was formerly the appraiser for the Prepetition ABL Agent under the Prepetition ABL Facility.

DIP ABL Facility (as defined herein) to fund the Chapter 11 Cases and the Debtors' ongoing efforts to monetize their assets in an orderly, efficient, and value-maximizing process. The Debtors intend to promptly file a chapter 11 plan that will enable the Debtors to conclude the orderly and expeditious monetization of their assets and make distributions to creditors.

BACKGROUND AND QUALIFICATIONS

9. I am the Founder and Chief Executive Officer of Liberated Brands LLC, a Delaware limited liability company (collectively, with its Debtor affiliates, the "Debtors" and, together with their non-Debtor affiliates "Liberated" or the "Company").⁵

10. I founded and joined Liberated as Chief Executive Officer in 2019, after sixteen years in the retail space. Prior to my tenure with Liberated, I joined Volcom, Inc. ("Volcom") in December 2015 as Chief Executive Officer. Before my tenure with Volcom, I worked at Kering Kering S.A. ("Kering") from June 2008 to July 2015. At Kering, which owned Volcom at the time, I served as Chief Operating Officer of Kering's Sport and Lifestyle Division, and then as Chief Executive Officer of the Kering Action Sports Brand. I began my career working for investment firms KPMG International Limited (1995 through 2003), Platinum Equity LLC (2003 through 2007), and then Naxos Capital Partners (2007 through 2008), where I co-founded the investment group. I hold a Bachelor of Science degree in Accounting from the University of New Orleans.

11. I am authorized to submit this Declaration on behalf of the Debtors in the above-captioned chapter 11 cases (collectively, the "Chapter 11 Cases"). In my capacity as Chief Executive Officer, I am responsible for overseeing the financial and operational activities of the

⁵ Capitalized terms used but not immediately defined herein have the meanings given to them in other sections herein.

Debtors, including, but not limited to, directing business relationships, workforce issues, financial planning, and providing overall direction and leadership for Liberated, including overseeing the work of Liberated's other executives and its management of employees, and assisting Liberated's board of managers in making and implementing major corporate decisions. I am generally familiar with the Debtors' business, operations, financial matters, operating results, business plans, actual and projected cash flows, and underlying books and records. Except as otherwise indicated, all facts set forth in this declaration (this "Declaration") are based on my personal knowledge, my discussions with other members of the Debtors' management team, employees, and advisors, my review of relevant documents, or my opinion based on my experience, knowledge, and information concerning the Debtors' operations and financial condition. Any references to the Bankruptcy Code, the chapter 11 process, and related legal matters herein reflect my understanding of such matters based on the explanations and advice counsel to the Debtors have provided. If called to testify, I would testify competently to the facts set forth in this Declaration.

12. On February 2, 2025 (the "Petition Date"), the Debtors filed voluntary petitions (the "Petitions") for relief under chapter 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"), with the United States Bankruptcy Court for the District of Delaware (the "Court"). I submit this Declaration (a) to describe the Debtors' business and background, the circumstances that led to the Debtors' chapter 11 filings, and the Debtors' goals in these Chapter 11 Cases, and (b) in support of the Debtors' Petitions and the "first-day" motions and applications that are being filed with the Court concurrently herewith (collectively, the "First Day Pleadings").

13. The Debtors commenced these Chapter 11 Cases to implement an orderly and value-maximizing monetization of their assets for the benefit of all stakeholders. To that end, the

Debtors seek the relief set forth in the First Day Pleadings to minimize any adverse effects of the commencement of these Chapter 11 Cases on their business. I have reviewed the Debtors' Petitions and the First Day Pleadings, or have otherwise had their contents explained to me, and it is my belief that the relief sought therein is essential to ensure the uninterrupted operation of the Debtors' business during these Chapter 11 Cases and to successfully maximize the value of the Debtors' estates.

14. To familiarize the Court with the Debtors, their business, the circumstances leading to these Chapter 11 Cases, and the relief the Debtors seek in the First Day Pleadings, this Declaration is organized as follows:

- **Part I** describes the Debtors' business, organizational structure, and prepetition indebtedness;
- **Part II** describes the circumstances leading to the commencement of these Chapter 11 Cases;
- **Part III** describes the path forward that the Debtors have charted for the Chapter 11 Cases; and
- **Part IV** lists the First Day Pleadings and provides support for the relief requested therein.

DISCUSSION

I. COMPANY BACKGROUND

A. The Debtors' Corporate History.

15. Liberated was founded in 2019 by the former management team of Volcom contemporaneously with Kering's sale of Volcom's intellectual property rights to Authentic Brands.⁶ Volcom, a modern lifestyle clothing company rooted in skateboarding, surfing and

⁶ "Authentic Brands" or "Authentic" refers to Authentic Brands Group LLC and its affiliates that are or were party to license agreements with the Company.

snowboarding, was purchased by Authentic, a global brand development company, on April 19, 2019, in an effort to expand the brands' platform. Through this acquisition, an alignment relationship between Authentic and Liberated was born. Liberated would (a) maintain the Volcom operations in the United States, France, Australia, and Japan and (b) oversee Volcom's product development, athlete marketing, and retail and wholesale businesses worldwide pursuant to an agreement under which Authentic granted Liberated the license rights and operating responsibilities for the Volcom® brand.

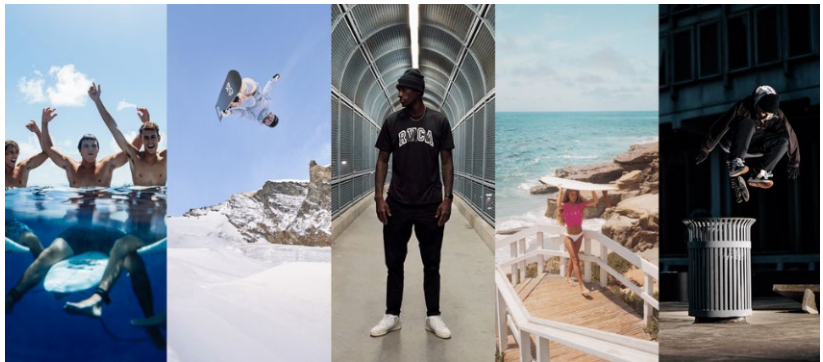
16. Over the next two and a half years, Liberated, as the master licensee of Volcom®, ran its daily operations and product lines, including the brand's marketing efforts and brand management. Under Liberated's operation, the brand experienced much success. In 2021, Volcom® partnered with Netflix to launch a collection inspired by the Netflix hit series, *Outer Banks*, and in



January 2022 Volcom® was named the official apparel partner of the United States Snowboard Team for the 2022 Olympic Winter Games in Beijing. Following such success, in October 2021, Liberated acquired Authentic's core licenses in Spyder®, a leading active lifestyle brand. This transaction was the first in a series of similar transactions under which Liberated acquired Authentic's master licensing rights and related operating responsibilities of sport and entertainment brands under Authentic's platform, and Liberated leveraged its retail and wholesale operational experience to further expand these brands worldwide.

17. In September of 2023, Liberated and Authentic entered into a new relationship whereby Liberated became the licensee—and the retail and e-commerce operator for—Authentic’s newly acquired brands Quiksilver®, Billabong®, Roxy®, RVCA®, Honolua® and Boardriders® in the United States and Canada (the “U.S. Boardriders Transaction”). In December of 2023, Authentic named Liberated a “Key Partner for Iconic Action and Outdoor Sports Brands Across Australia, New Zealand, Thailand, and Indonesia.” At the same time, Liberated and Authentic consummated a transaction (the “Australian Boardriders Transaction” and together with the U.S. Boardriders Transaction, the “Boardriders Transaction”), under which Liberated acquired licenses and took over the operations for certain Authentic brands in the APAC region, including management of over 200 retail locations across the region.

18. The Boardriders Transaction was completed in two stages. *First*, in



September 2023, HLB Group Holdings LLC (“HLB”) made an initial investment to assist Liberated in the acquisition of the brands contemplated in the U.S. Boardriders Transaction, bringing its ownership of Debtor Liberated Brands LLC to a near-majority. *Second*, in December 2023, HLB made an additional investment to support Liberated’s consummation of the Australian Boardriders Transaction. As a result, HLB became the majority owner of Debtor Liberated Brands LLC. Through the Boardriders Transaction, Liberated became the license partner and wholesale distributor in the United States and Canada for Billabong®, RVCA®, and Honolua®, which sell adult sportswear, activewear, swimwear, outerwear, headwear and base layer

products. The Boardriders Transaction resulted in rapid growth in the scope and scale of Liberated's operations.

B. The Company's Business Operations.

19. The Company currently operates domestically in the United States, and internationally, with regional offices in France, Japan, and Australia. As of the Petition Date, the Company leases 400 storefronts in over 100 countries.

20. *The Company's Products.* The Company's products, while primarily focused on outdoor apparel, vary across the Company's different brands. Specifically, the Company's brands specializing in surf gear and beach apparel, such as Billabong®, Quiksilver®, Roxy®, Honolua®, and RVCA®, sell products like wetsuits, swimwear, beach coverups, and other activewear. Additionally, certain brands focus on apparel for the winter seasons—Spyder® and Volcom® both offer premium ski and snowboarding gear.⁷



21. *The Company's Sale's Channels.* The Company sells its products in three main channels: (a) wholesale to retailers; (b) e-commerce platforms; and (c) retail sales in leased storefronts. In 2024, approximately 50 percent of revenue was attributable to the Company's

⁷ As of the Petition Date, Liberated's North American license rights in relation to Volcom®, Billabong®, RVCA®, and Spyder® brands have been terminated or otherwise transitioned to other operators as described herein.

wholesale business, and the other 50 percent came from direct-to-consumer businesses, through sales from brick-and-mortar stores and the Company's e-commerce platforms.



22. *The Company's Value-Add Services.* As a full-service operating company and licensee, the Company has niche brand consultant and marketing expertise across various retail markets. The Company handles product design, sourcing, shipping, branding, and more across all sales channels, from direct-

to-consumer to specialty wholesale and everything in between. The Company strives to strike a balance for brands between sustainability, growth, and brand-culture—something brands often grapple with. With over thirty-years' experience in the sport, entertainment, and outdoor gear retail space, the Company seeks to assist its brand partnerships with brand cultivation through immersive storytelling.

C. The Debtors' Prepetition Corporate Structure.

23. As set forth on the corporate structure chart attached as **Exhibit A**, Debtor Liberated Brands LLC is the ultimate parent company of the eight other Debtors in these Chapter 11 Cases, along with thirty-two non-Debtor affiliates. The majority of Debtor Liberated Brands LLC stock is held by HLB, 19.9 percent is owned by ABG Intermediate Holdings 2 LLC (an affiliate of Authentic), and the remaining shares are owned by the management team.⁸

⁸ I, through the Hymel Family Trust, own 19.6 percent of Liberated Brands LLC stock.

D. The Debtors' Prepetition Capital Structure.**1. The Prepetition ABL Facility**

24. As of the Petition Date, the Debtors have approximately \$98.0 million in principal amount of total funded debt obligations, and approximately \$3.9 million in cash in Debtor and non-Debtor bank accounts. The non-Debtor foreign entities have approximately \$28.1 million of total funded debt obligations under the Prepetition ABL Facility.

| Debtors' Funded Debt | Lender | Maturity | Approximate Principal |
|---------------------------------|---------------------------|------------------------------|------------------------------|
| Prepetition ABL Facility | JPMorgan Chase Bank, N.A. | August 27, 2025 ⁹ | \$83.0 million |
| Promissory Note | QS Holdings SARL | December 19, 2026 | 15.0 million |
| Total: | \$98.0 million | | |

25. Volcom, LLC, Volcom Retail, LLC, Volcom Retail Outlets LLC, Volcom Canada, Inc., and the other Loan Parties thereto from time to time (together, the "Prepetition Borrowers") entered into the Credit Agreement with JPMorgan Chase Bank, N.A., as Prepetition ABL Agent and lender, dated January 29, 2021, as amended by that certain First Amendment to the Credit Agreement, dated as of June 30, 2021, that certain Second Amended to the Credit Agreement, dated as of August 16, 2021, that certain Third Amendment to the Credit Agreement, dated as of September 3, 2021, that certain Fourth Amendment to the Credit Agreement dated as of November 1, 2021, that certain Fifth Amendment to the Credit Agreement, dated as of July 28, 2022, that certain Sixth Amendment to the Credit Agreement and Waiver dated as of May 22, 2023, that Seventh Amendment to the Credit Agreement dated as of September 26, 2023,

⁹ The Prepetition ABL Facility provides that the maturity date is the earlier of (i) August 27, 2025 and (ii) 91 days prior to the maturity date of that certain promissory note dated as of December 19, 2023, by and between Debtor Liberated Brands LLC as the issuer and QS Holdings SARL, a Luxembourg Société à Responsabilité Limitée, as the holder.

that Eighth Amendment to the Credit Agreement, dated as of December 19, 2023, that Ninth Amendment to the Credit Agreement, dated as of May 29, 2024, that Tenth Amendment to the Credit Agreement, dated as of August 8, 2024, that Eleventh Amendment to the Credit Agreement dated as of November 5, 2024, that Twelfth Amendment to the Credit Agreement dated as of January 24, 2025, and as further amended, restated, supplemented, or otherwise modified from time to time, (the “Prepetition ABL Facility”). The Twelfth Amendment to the Credit Agreement provided a cross guarantee and cross collateralization by certain Canadian non-Debtors of the Prepetition Borrowers’ obligations. Additionally, it decreased the aggregate Prepetition ABL Facility commitment amount to \$115 million. As of the Petition Date, the Prepetition Borrowers are over-drawn under the Prepetition ABL Facility by approximately \$15.4 million.

26. The Prepetition ABL Facility is secured by a first-priority interest in substantially all of the Debtors’ assets. The Prepetition ABL Facility includes a letter of credit sub-facility with an aggregate exposure of \$15.0 million and with respect to which letters of credit issued to the Australian and New Zealand borrowers thereunder are further limited as provided therein. The maturity date for the Prepetition ABL Facility is August 27, 2025.

2. Trade and Royalty Debt Obligations

27. The Debtors have certain other outstanding non-funded debt obligations, including (a) approximately \$78.0 million accrued, unpaid obligations under certain vendor and trade agreements as of the Petition Date and (b) approximately \$50.0 million accrued, unpaid royalty payments under the licensing agreements as of the Petition Date.

3. Outstanding Promissory Note

28. In connection with the Australian Boardriders Transaction, QS Holdings SARL, a Luxembourg Société à Responsabilité Limitée, an affiliate of Authentic, as the seller of the

Australian licenses and assets purchased during such transaction, issued an unsecured promissory note in the amount of \$15.0 million to Debtor Liberated Brands LLC, as issuer, and Volcom LLC and Liberated-Spyder LLC, as guarantors (the “Promissory Note”). The Promissory Note has a maturity date of December 19, 2026, and an interest rate of 10 percent payable in kind.

II. EVENTS LEADING TO THE FILING OF THESE CHAPTER 11 CASES

A. Prepetition Challenges.

29. Liberated currently faces significant liquidity constraints, resulting from a fast and fierce culmination of unanticipated challenges. *First*, the Company has been negatively impacted by macroeconomic factors, including sustained high interest rates and inflation. *Second*, the Company has been further challenged by trends impacting the retail environment more broadly, including shifting consumer preferences for “fast fashion” and e-commerce as opposed to branded apparel and brick-and-mortar retail. *Third*, the Company has faced operational challenges and increased costs associated with integration efforts across its portfolio of brands. Together, these factors have resulted in a substantially diminished operational and financial outlook for the Debtors.

30. *Macroeconomic Shocks*. Historically, the United States outdoor apparel market experienced steady, controlled growth. Towards the middle to end of the COVID-19 pandemic, however, demand spiked and despite inflation and higher supply and transport costs, the overall outdoor apparel market experienced significant growth. This spike, combined with Liberated’s acquisition of the Spyder[®] license in July of 2021, caused Liberated’s North America revenue to grow from \$350 million in 2021 to approximately \$422 million in 2022. With increased discretionary cash from COVID-19 relief, more time for leisure activity, and evolving social norms that encouraged time outside, a myriad of new consumers entered the outdoor apparel market, and existing customers became remarkably more active. The COVID-19 pandemic cemented a period

of growth for Liberated, as Liberated not only capitalized on interest in the sector but also sought to elevate itself as a market leader. This growth culminated in the Boardriders Transaction, which expanded Liberated's retail footprint from 67 to 140 stores and increased Liberated's headcount from 638 to 1,480.

31. However, as the COVID-19 pandemic abated and gave way to a sustained period of high interest rates and inflation, customer demand weakened. Overall customer purchase volumes decreased across the board, and, where demand remained, it shifted away from



Liberated's products. Although Liberated initially expected that this trend would diminish in 2024, the ongoing inflationary pressures and high interest rates have continued to challenge Liberated's ability to effectively generate demand. In the last eighteen

months, the average consumer has shifted their spending away from discretionary products such as those offered by Liberated.

32. In addition, like many businesses in the retail space, the long-standing impacts of COVID-19 on the supply chain resulted in shipping delays and the rising cost of materials, labor, and fuel. This has led to increased expenses and reduced margins across Liberated's entire portfolio of brands. Further, Liberated suffered considerable delays in updating its inventories because of transportation shortages and port congestion.

33. ***Retail-Related Challenges.*** Liberated's significant brick-and-mortar retail footprint has imposed a further drag on profitability. During the COVID-19 pandemic, consumer demand for online shopping increased across the retail apparel industry and the demand for the brick-and-mortar shopping experience did not bounce back fully after the crisis had abated. The

effects of COVID-19 continue to challenge the fashion and sport apparel industry today, as evidenced by recent chapter 11 filings by, among others, Express, Inc., Olympia Sports Acquisitions, LLC, and Rue21, Inc., each of which entered chapter 11 with large brick-and-mortar retail location portfolios. Operating in such a challenged retail environment significantly contributed to Liberated's liquidity challenges.

34. Additionally, Liberated, like other branded-goods sellers, has experienced a decrease in pricing power and profitability, given the significant shift in consumer demand towards "fast fashion." Consumers can cheaply, quickly, and easily order low-quality clothing garments from fast fashion powerhouses and have such goods delivered within days. These fast-fashion companies can cater to micro-trends as opposed to the traditional seasonal trend-forecasting retail model. Liberated, and other companies reliant on the traditional retail model, have generally suffered from decreased profit margins after losing part of their overall market share and pricing power to fast fashion.

35. ***Operational and Integration Challenges.*** Liberated also experienced both general and specific operational and integration challenges in 2024. From an operational perspective, Liberated incurred operational losses stemming from, among other things, significant fixed cost obligations, including minimum guaranteed royalties under license agreements with Authentic, underperforming retail locations, and increased competition in the apparel retail industry on a broad scale. However, post-Boardriders Transaction, it also experienced significant losses that arose from the duplication of operating expenses endured while maintaining the legacy businesses and simultaneously establishing Liberated's own structure for such businesses. Further, Liberated experienced macroeconomic supply chain issues and issues stemming from miscommunications with third-party logistic companies.

36. **Liquidity Crisis.** The combination of macroeconomic shocks such as sustained interest rates and inflation throughout 2024, retail-related challenges, and a slowdown in consumer demand, resulted in a lethal combination of significantly lower revenue than anticipated during a period of increased operating expenses and integration costs. This combination strained Liberated's profitability and cash flow, resulting in a dramatic decrease from \$2.3 million in EBITDA in 2022 versus negative \$12.5 million in EBITDA in 2024—a negative 646 percent change over the course of two years.

B. Prepetition Initiatives.

37. In response to these liquidity challenges, in mid-2024 Liberated began implementing a series of initiatives to reduce liabilities and remove costly obligations from its operational footprint and attempt to address its shortening liquidity runway. Specifically, Liberated implemented a series of cost-cutting initiatives, including among other things, (a) decreasing its workforce and (b) stretching trade and other payables. In conjunction with these initiatives, Liberated also began marketing the business and certain business lines, including those in Japan, Australia, and Europe, as part of its Prepetition Marketing Process. When that process did not yield actionable proposals, the Company retained advisors and appointed a disinterested manager to chart a value-maximizing path forward.

38. **Prepetition Marketing Process.** As part of the Prepetition Marketing Process, which commenced in mid- 2024, Liberated engaged with various potential transaction parties to sell or secure investment(s) in all or some of its businesses. As the process progressed, interest coalesced around a potential whole-business transaction, as well as around the Australian and European businesses, and the North American Spyder[®] business. Ultimately, however, the Prepetition Marketing Process did not yield any actionable transaction proposals.

39. ***Cost Cutting Initiatives.*** In conjunction with the Prepetition Marketing Process, Liberated began cutting costs in July 2024, when it initiated a hiring freeze of its workforce. In August 2024, Liberated terminated forty-seven employees. Contemporaneously, Liberated sought to stretch trade and other payables, including through negotiated payment plans with vendors.

40. By October 2024, the Company's sale and capital raising efforts had not yielded any cash infusions. Accordingly, that same month, Liberated began suspending certain vendor payments departing from previously negotiated payment plans. Unfortunately, this culminated in heightened tensions with certain vendors and a reputational challenge that disrupted day-to-day business operations.

41. ***Advisor Retention.*** On November 11, 2024, Liberated retained Alix as financial advisor, and on November 13, 2024, Liberated retained Kirkland as legal counsel. In preparation for these Chapter 11 Cases, pursuant to an engagement letter dated January 27, 2025, Liberated retained Klehr Harrison Harvey Branzburg LLP ("Klehr Harrison") as local Delaware and conflicts counsel. On January 29, 2025, after soliciting proposals from three qualified claims and noticing firms pursuant to the Court's *Protocol for the Employment of Claims and Noticing Agents Under 28 U.S.C. § 156(c)*, the Debtors retained Stretto, Inc. as claims and noticing agent and as a consulting and administrative services provider.

42. ***Appointment of a Disinterested Manager.*** On November 14, 2024, Liberated appointed Mark Hootnick to its board of managers as an independent and disinterested manager (the "Disinterested Manager") to assist in exploring, negotiating, and entering into potential strategic value-maximizing transactions. Mr. Hootnick has over twenty-five years of experience in the restructuring industry and extensive expertise advising companies facing liquidity constraints. Contemporaneously with his appointment, Mr. Hootnick was delegated exclusive

decision-making authority with respect to matters that constitute conflict matters between Liberated's other directors and officers, and the Company. Mr. Hootnick is overseeing an investigation into transactions and transfers by the Debtors for the purpose of evaluating claims for chapter 11 purposes and ensuring that any releases to be provided under a plan of reorganization or other disposition of the Chapter 11 Cases are appropriate in scope and nature. Mr. Hootnick is overseeing the investigation with the assistance of Klehr Harrison.

43. ***Recent Transactions.*** On November 22, 2024, Liberated divested its interests in its North American Spyder[®] business, a business segment that has been significantly unprofitable for the last two years, through a transaction with Q4D (the "Q4D Transaction").¹⁰ Through this transaction, in exchange for the transfer of certain Spyder[®]-related assets, including accounts receivable, Q4D assumed and paid certain liabilities related to the North American Spyder[®] business. To facilitate Q4D's receipt of the Spyder[®] accounts receivable, customers were directed to transmit any accounts payable payments to Q4D directly. Despite this directive, certain payments were instead sent to the Debtors. Due to the Debtors' cash dominion position prior to the Petition Date, however, the Debtors have been unable to forward certain of these payments to Q4D, resulting in a dispute between the parties. The Debtors anticipate addressing this dispute and related issues in the Chapter 11 Cases.

44. The Q4D Transaction allowed Liberated to continue selling its remaining inventory of licensed products that were made for the spring 2025 season, and prior selling seasons, while shedding liabilities and future operating spend related to the North American Spyder[®] business.

¹⁰ Following the Q4D Transaction, HOC LLC, an affiliate of HLB, invested in a joint venture with Q4D, which joint venture relates to the North American Spyder[®] business.

This cashless transaction reduced the liabilities on Liberated's balance sheet while freeing operational resources from an unprofitable Spyder® wholesale business.

45. In December 2024, after Liberated defaulted on its licensing agreements and failed to make required guaranteed royalty payments to Authentic, Authentic terminated Liberated's licenses for the United States and Canadian wholesale and e-commerce operations relating to Volcom®, RVCA®, and Billabong®. On December 31, 2024, Liberated, with its advisors, negotiated a limited reinstatement of such licenses, which allows Liberated to sell its inventory through prior-season branded merchandise (subject to certain limitations). As part of this agreement, Liberated also entered into transition agreements with the new operators for these brands, including (a) O5 Apparel as the new operator for Billabong® North America Wholesale and the e-commerce businesses for Billabong® North America and Quiksilver® North America and (b) the Levy Group as the new operator for Volcom® North America Wholesale.

46. Thereafter, with minimal prospects for continued operations in North America, Liberated made the difficult decision to close its corporate offices and lay off approximately 350 corporate employees and approximately 1,040 retail staff.

III. THE PROPOSED DIP FACILITY AND ANTICIPATED PATH FORWARD

A. Discussion of the Proposed DIP Facility.

47. By the Debtors' *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claim, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* (the "DIP

Motion”),¹¹ filed contemporaneously herewith, the Debtors seek approval of entry into a debtor-in-possession financing facility to provide funding throughout the Chapter 11 Cases, in the form of a \$35.0 million new-money senior secured superpriority debtor-in-possession asset-based financing facility (the “DIP ABL Facility”), \$25.0 million of which shall be available upon entry of an interim order, and the terms of which are described in the DIP Motion. The DIP ABL Facility will be provided by JPMorgan Chase Bank, N.A., the lender under the Prepetition ABL Facility, who has also agreed to the Debtors’ use of cash collateral in the Chapter 11 Cases. The DIP ABL Facility contains the following milestones:

| Proposed DIP Milestone | Timing |
|---|--|
| Entry of Interim DIP Order | No later than 3 days after the Petition Date |
| Entry of Final DIP Order | No later than 35 days after the Petition Date |
| Australian Credit Support for DIP Facility (subject to compliance with applicable Australian law and other governing law) | No later than entry of the Final DIP Order |
| Filing of Chapter 11 Plan and Disclosure Statement | No later than 45 days after the Petition Date |
| Entry of Order Approving Disclosure Statement | No later than 77 days after the Petition Date |
| Confirmation of Chapter 11 Plan | No later than 108 days after the Petition Date |
| Effective Date of Chapter 11 Plan | No later than 122 days after the Petition Date |

48. I am familiar with the DIP ABL Facility, the material terms thereto, and the Debtors’ immediate liquidity needs. I believe that approval of the proposed DIP ABL Facility, and the use of cash collateral, are essential for the continued operation of the Debtors’ businesses

¹¹ Capitalized terms not defined herein shall have the meanings ascribed to them in the DIP Motion or the DIP Declaration (as defined herein), as applicable.

during these Chapter 11 Cases in order to facilitate an orderly and value-maximizing monetization of the Debtors' businesses.

49. As more fully described in the *Declaration of James Nelson in Support of the Debtors' Motion Seeking Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* (the "DIP Declaration"), filed contemporaneously herewith, the Debtors require access to immediate liquidity to administer these Chapter 11 Cases, preserve the value of their remaining assets, including accounts receivable, execute a comprehensive and efficient sale and wind-down process, pay remaining employees for their work during this period, and thereby enable the Debtors to continue their efforts to preserve and maximize the value of their estates during these Chapter 11 Cases.

50. As discussed more specifically in paragraph 36 herein, the Debtors have been facing serious liquidity challenges since mid-2024. If the Debtors cannot quickly access liquidity through the DIP ABL Facility and the use of cash collateral, the Debtors will not be able to operate their business and will have insufficient liquidity to implement a value-maximizing monetization of their assets.

51. In light of the Debtors' circumstances, I believe that access to the DIP ABL Facility and use of cash collateral will ensure the Debtors have sufficient funds to preserve and maximize the value of their estates and responsibly administer these Chapter 11 Cases. For the reasons set forth in this Declaration, I submit that it would be appropriate for the Court to approve the DIP ABL Facility and the use of cash collateral as contemplated by the DIP Motion.

B. Anticipated Path Forward.

52. The Debtors filed these Chapter 11 Cases to implement an orderly monetization process along several parallel paths, including a liquidation and wind-down of the Company's North American business and one or more sales of the Company's non-U.S. businesses, including its Australian, European, Japanese, and Canadian entities, either on a going-concern or liquidation basis. To that end, the Debtors filed the Store Closing Motion and the Bidding Procedures Motion¹² to achieve these objectives. With respect to the Debtors' United States business, the Debtors anticipate liquidating retail inventory through store closing sales and wholesale inventory through a Company-managed process. The Debtors also intend to promptly file a chapter 11 plan and move expeditiously towards confirmation and consummation of the plan to make distributions to creditors.

IV. EVIDENTIARY BASIS FOR RELIEF REQUESTED IN THE FIRST DAY PLEADINGS

53. Contemporaneously herewith, the Debtors have filed a number of First Day Pleadings seeking orders granting various forms of relief intended to stabilize the Debtors' business operations, facilitate the efficient administration of these Chapter 11 Cases, and help ensure that the value of the Debtors' assets is maximized for the benefit of all interested parties.

54. The First Day Pleadings request authority to pay certain prepetition claims. I understand that Federal Rule of Bankruptcy Procedure 6003 provides, in relevant part, that the Court shall not consider motions to pay prepetition claims during the first twenty-one days

¹² "Bidding Procedures Motion" means that certain *Motion of Debtors for Entry of an Order (I)(A) Approving Bidding Procedures for the Sale of the Debtors' Assets, (B) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (C) Approving Assumption and Assignment Procedures, and (D) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof, (II)(A) Approving the Sale of the Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances and (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases, and (III) Granting Related Relief* filed contemporaneously with the First Day Pleadings.

following the filing of a chapter 11 petition, “except to the extent relief is necessary to avoid immediate and irreparable harm.” In light of this requirement, the Debtors have narrowly tailored their requests for immediate authority to pay certain prepetition claims to those circumstances where the failure to pay such claims would cause immediate and irreparable harm to the Debtors and their estates. Other relief will be deferred for consideration at a later hearing.

55. On the Petition Date, the Debtors filed the following First Day Pleadings:

- **Automatic Stay Motion.** *Motion of Debtors Seeking Entry of an Order (I) Restating and Enforcing the Worldwide Automatic Stay, Anti-Discrimination Provisions, and Ipso Facto Protections of the Bankruptcy Code, (II) Approving the Form and Manner of Notice, and (III) Granting Related Relief.*
- **Cash Management:** *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue to Operate the Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Business Forms, (D) Continue to Perform Intercompany Transactions, and (II) Granting Related Relief.*
- **Creditor Matrix Motion.** *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Redact Certain Confidential Information of Customers and (B) Redact Certain Personally Identifiable Information of Individuals, (II) Approving the Form and Manner of Service of the Notice of Commencement, and (III) Granting Related Relief.*
- **Critical Vendors Motion.** *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to Pay Prepetition Claims of Certain Critical Vendors and Lien Claimants, (II) Confirming Administrative Expense Priority of Outstanding Orders, and (III) Granting Related Relief.*
- **DIP Motion.** *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral; (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Modifying the Automatic Stay; (IV) Scheduling a Final Hearing; and (V) Granting Related Relief.*
- **Insurance Motion.** *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Maintain Insurance, Surety Coverage, and Letters of Credit Entered into Prepetition and Satisfy Prepetition Obligations Related Thereto, (B) Renew, Amend, Supplement, Extend, or Purchase Insurance Policies, Surety Bonds, and Letters of Credit, and (C) Continue to Pay Broker Fees, and (II) Granting Related Relief.*

- **Joint Administration Motion.** *Motion of Debtors for Entry of an Order (I) Directing the Joint Administration of Chapter 11 Cases and (II) Granting Related Relief.*
- **Stretto, Inc. Retention Application.** *Application of Debtors for Appointment of Stretto, Inc. as Claims and Noticing Agent.*
- **Store Closing Motion.** *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to Assume the Consulting Agreement, (II) Authorizing and Approving the Conduct of Store Closing Sales, with such Sales to be Free and Clear of all Liens, Claims, and Encumbrances, (III) Approving Modifications to the Customer Programs, and (IV) Granting Related Relief.*
- **Taxes Motion.** *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Payment of Certain Prepetition and Postpetition Taxes and Fees and (II) Granting Related Relief.*
- **Utilities Motion.** *Motion of Debtors for Entry of Interim and Final Orders (I) Approving the Debtors' Proposed Adequate Assurance of Payment for Future Utility Services, (II) Approving the Debtors' Proposed Procedures for Resolving Additional Assurance Requests, (III) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Services, and (IV) Granting Related Relief.*
- **Wages Motion.** *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs; and (II) Granting Related Relief.*

56. I have reviewed and am familiar with the content of each of the First Day Pleadings and have consulted with the Debtors' advisors to ensure that I understand each First Day Pleading and the relief requested therein. To the best of my knowledge and belief, the factual statements contained in each of the First Day Pleadings are true and accurate and each such factual statement is incorporated herein by reference.

57. Based on my knowledge, and after reasonable inquiry, I am familiar with the information contained in each of the First Day Pleadings and believe that the approval of the relief requested therein is: (a) necessary to enable the Debtors to transition into chapter 11 with minimal disruption or loss of productivity and value; (b) critical to the Debtors' effective monetization of their remaining assets; and (c) in the best interest of the Debtors' estates and their stakeholders.

Of particular note, I believe that redaction of customer names is of paramount importance in these Chapter 11 Cases. I believe that the Debtors' customer list is among its most valuable assets to a potential buyer in an auction scenario and that maintaining this confidential information is vital to ensuring the Debtors are able to realize the full value of their business in a sale process. I believe that, if the Court does not grant the relief requested by the Debtors in the First Day Pleadings, the Debtors' business and their estates will suffer immediate and irreparable harm. Accordingly, for the reasons set forth herein and in the First Day Pleadings, the Court should grant the relief requested in each of the First Day Pleadings.

[Remainder of Page Intentionally Left Blank]

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Dated: February 3, 2025

/s/ Todd Hymel

Name: Todd Hymel
Title: Founder and Chief Executive
Officer,
Liberated Brands LLC

Exhibit A

Corporate Structure Chart

