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CITY BAR

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May 8, 2020

Via Facsimile

Members of the New York State Congressional Delegation
United States Congress
Washington, D.C. 20515

Re: COVID-19 Suggested Relief Measures for the Fashion and Retail Industries

Dear Members:

On behalf of the Fashion Law Committee of the New York City Bar Association (“Committee”), we write to bring attention to certain issues arising from the COVID-19 pandemic and to propose relief provisions that would greatly benefit the fashion and retail industries in the next stimulus bill.¹

The tremendous efforts taken by Congress to provide relief to our nation’s businesses and workers during this pandemic is commendable. Many individuals and entities have benefited from provisions in the CARES Act, including the Paycheck Protection Program. While these programs provide assistance for certain fashion and retail companies during this time, additional relief is necessary as retail locations remain closed.

The fashion and retail industries contribute to the very fabric of New York and encompass emerging, independent, and quintessentially New York operations, to established, iconic, and global institutions. As of February 2019, in New York City alone, the fashion industry employed 4.6% of the total private-sector workforce, including designers, seamstresses, salespeople and

¹ The Committee consists of member attorneys in private practice, government, and in-house, with expertise in and representing individuals and entities within the fashion and retail industries – from emerging to iconic – in and around New York City. Although the proposals in this letter are presented from the perspective of the Committee’s expertise in the fashion and retail industries, and represent relief measures that we believe would have the greatest impact on those industries, we understand that many of the relief provisions discussed herein would be of value to a wide variety of businesses during this time.

office personnel, and generated more than \$11.3 billion in wages and \$3.2 billion in tax revenue.² Retail is a major economic generator in New York State, employing nearly 1 million people in approximately 77,000 establishments and generating upwards of \$251 billion in sales annually.³ Further, a wide range of creative industries, laborers, vendors and professionals are supported by the fashion and retail industries throughout New York State and beyond.

The COVID-19 pandemic has severely impacted the fashion and retail industries. Non-essential retail has been shuttered by mandatory stay-at-home orders and unprecedented levels of unemployment have resulted in drastic cuts in consumer spending. Despite this devastating economic situation, many in the fashion community have risen to the challenge and pivoted production from mini-skirts to masks and from evening gowns to hospital gowns.⁴

The industry eagerly awaits re-opening but needs a runway to get there. The Committee has identified the need for certain relief measures for a seamless transition to operation in the immediacy and in the months to follow: (1) a modification to the Paycheck Protection Program, (2) a Net Operating Loss Carryback, (3) a stability fund, (4) a federally-backed business interruption insurance program, and (5) assistance with Occupational Safety and Health Administration compliance and other guidelines to ensure the safety of fashion and retail employees and customers.

The Committee proposes the following federal assistance for immediate relief to the fashion and retail industries:

- A Modification to the Paycheck Protection Program (PPP): The PPP covers an eight-week period from its disbursement. Since this bill was enacted, it has become evident that the crisis will extend past this time. Therefore, we ask the time limitations for the use of PPP funds be extended to a period of six months.
- The Net Operating Loss (NOL) Carryback: The CARES Act provides cash benefits under NOL, however, we ask for this to be accelerated by allowing companies to estimate their 2020 net operating loss and immediately offset these losses against prior taxable income on an expedited refund basis, as well as expanding the carryback provision for 10 years.
- Stability Fund: The creation of a federal direct assistance program would provide much needed liquidity to the industry. Fashion and retail need funding and flexibility to pay rent⁵, taxes and vendors, as well as current and new staff.

² U.S. Congress Joint Economic Committee, *The Economic Impact of the Fashion Industry*, <https://www.jec.senate.gov/public/cache/files/39201d61-aec8-4458-80e8-2fe26ee8a31e/economic-impact-of-the-fashion-industry.pdf>. (All websites last visited May 5, 2020.)

³ Retail Council of New York State, *Facts About the NYS Retail Industry*, <https://retailcouncilnys.com/resources/fact-nys-retail-industry/>.

⁴ Booth Moore et al., *Coronavirus: U.S. Apparel Manufacturers Go to Battle Making Masks, PPE Despite Leadership Void*, Women's Wear Daily, <https://wwd.com/business-news/markets/coronavirus-face-masks-ppe-production-1203553574/>.

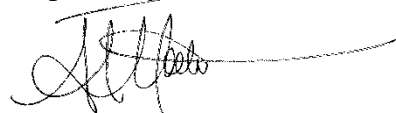
⁵ This letter does not reference the myriad solutions being explored at the local, state and federal levels to address the situation of tenants being unable to meet rent obligations due to the stay-at-home orders as other City Bar committees are examining those issues. Certainly, however, any federal relief that increases liquidity will help

As the fashion and retail industries re-open their physical retail locations and transition to a new normal in the coming months, the Committee proposes the following additional federal assistance:

- Business Interruption Insurance: The creation of a federally-backed business interruption insurance program, similar to the Terrorism Risk Insurance Act or the Flood Insurance program, would provide much needed protection for the fashion and retail industries should we face a second wave of the coronavirus resulting in mandated store closings.⁶
- Occupational Safety and Health Administration (OSHA) Issues: OSHA recently reclassified retail from a low to a moderate risk industry. The fashion and retail industry needs to train their staff on these new requirements and engage more aggressive sanitation efforts. They may also need to provide personal protective equipment (PPE) for their employees and customers, as well as retrofit their establishments and educate their customers to comply with any new required social distancing rules. Although such actions serve to protect employees and provide a level of comfort for customers to return to retail brick and mortar establishments, they are costly. Grants or tax incentives to cover the increased cost of compliance with the new requirements, along with a free compliance training program could alleviate the financial burden on the retail establishment.

The retail and fashion industries are uniquely important to New York – economically and culturally. Accordingly, the Committee has taken great care and thought in suggesting these relief provisions to protect these industries as New York fashion, quite literally, touches us all.⁷ We look forward to a dialogue with you and your staff on these and other relief measures that would benefit the fashion and retail industries during this time. Thank you for your consideration.

Respectfully submitted,



Adrienne T. Montes
Chair, Fashion Law Committee

fashion and retail businesses meet expenses, including rent payments. The Committee urges New York State's Congressional Delegation to use all available means to address this aspect of the crisis and to help bring about a solution as the current situation is untenable.

⁶ The Committee's support for a federally backed pandemic insurance program is not an expression of support for any specific pending legislation.

⁷ The Committee wishes to recognize Hilary F. Jochmans for her contribution to this proposal.