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*Proposed Counsel to the Debtors and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

	)				
In re:	)				Chapter 11
	)				
BCBG MAX AZRIA GLOBAL HOLDINGS, LLC, <i>et al.</i> , <sup>1</sup>	)				Case No. 17-10466 (___)
	)				
Debtors.	)				(Joint Administration Requested)
	)				

**DEBTORS’ MOTION FOR ENTRY OF INTERIM AND FINAL  
ORDERS (I) AUTHORIZING THE DEBTORS TO PAY PREPETITION  
CLAIMS OF LIEN CLAIMANTS, IMPORT AND EXPORT CLAIMANTS,  
AND 503(B)(9) CLAIMANTS AND (II) GRANTING RELATED RELIEF**

BCBG Max Azria Global Holdings, LLC and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”),<sup>2</sup> respectfully state the following in support of this motion:

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: BCBG Max Azria Global Holdings, LLC (6857); BCBG Max Azria Group, LLC (5942); BCBG Max Azria Intermediate Holdings, LLC (3673); Max Rave, LLC (9200); and MLA Multibrand Holdings, LLC (3854). The location of the Debtors’ service address is: 2761 Fruitland Avenue, Vernon, California 90058.

<sup>2</sup> A detailed description of the Debtors and their businesses, and the facts and circumstances supporting this motion and the Debtors’ chapter 11 cases, are set forth in greater detail in the *Declaration of Holly Felder Etlin, Chief Restructuring Officer of BCBG Max Azria Global Holdings, LLC, (I) in Support of Chapter 11 Petitions and First Day Motions and (II) Pursuant to Local Bankruptcy Rule 1007-2* (the “First Day Declaration”), filed contemporaneously with the Debtors’ voluntary petitions for relief filed under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), on February 28, 2017 (the “Petition Date”).

### **Relief Requested**

1. The Debtors seek entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (respectively, the “Interim Order” and “Final Order”): (a) authorizing the Debtors to pay an aggregate amount up to \$4.1 million (the “Obligations Cap”), absent further order of the Court, on account of prepetition claims held by (i) certain shippers and warehousemen, (ii) certain import and export claimants, and (iii) certain 503(b)(9) claimants; and (b) granting related relief. The Debtors estimate that, as of the Petition Date, there is approximately \$4.1 million outstanding on account of the Obligations (as defined below). Pursuant to the Interim Order, the Debtors seek authority to, on an interim basis, pay an aggregate amount not to exceed \$1.8 million on account of the Obligations that may come due prior to the Final Hearing (as defined in the Interim Order). In addition, the Debtors request that the Court schedule a final hearing within approximately 25 days of the commencement of these chapter 11 cases to consider approval of this motion on a final basis.

### **Jurisdiction and Venue**

2. The United States Bankruptcy Court for the Southern District of New York (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012. The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the entry of a final order by the Court in connection with this motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested herein are sections 105(a) and 363 of the Bankruptcy Code, Bankruptcy Rules 6003 and 6004, and Rule 9013-1(a) of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”).

#### **The Lien Claimants**

5. The Debtors’ business depends on the uninterrupted flow of inventory and other goods through its supply chain and distribution network, including the purchase, importation, storage, and shipment of the Debtors’ merchandise and other personal property (the “Merchandise”). Generally, the Debtors design the Merchandise in-house and contract with various foreign manufacturers, located predominantly in China and Hong Kong (collectively, the “Foreign Vendors”), to produce and inspect the Merchandise. Depending on the nature of the Debtors’ arrangement with a given manufacturer, the manufacturers or the Debtors, through freight forwarders, ship the Merchandise to certain warehouses that serve as the Debtors’ distribution centers. These warehouses are predominantly operated by the Debtors themselves, with the exception of certain warehouses for e-commerce that are operated by third-party warehousemen (the “Warehousemen”). Additionally, the flow of Merchandise from the Debtors’ manufacturers, to the Warehousemen or the Debtors’ owned warehouses, and ultimately to (a) stock the Debtors’ domestic brick and mortar stores and partner shops, (b) fulfill orders placed with the Debtors’ e-commerce provider, or (c) fulfill wholesale orders of the Debtors’ distributors, wholesalers, and foreign affiliates, depends on the services provided by, among others, various freight forwarders, common carriers, and custom brokers (collectively, the “Shippers,” and together with the Warehousemen, the “Lien Claimants”).

6. The Foreign Vendors generally manufacture and ship Merchandise and other goods to the Debtors either “free on board” (“FOB”) or “delivery duty paid” (“DDP”). Under an

FOB arrangement, the Debtors pay freight forwarders to transport the Merchandise and other goods from Southeast Asia to the Debtors' U.S.-based warehouse and title passes to the Debtors when the Merchandise and goods are loaded for shipment to the United States. Under the DDP arrangements, the Foreign Vendor pays to ship the goods to the Debtors' U.S.-based warehouse and title to the Merchandise and goods does not pass to the Debtors until it arrives at the Debtors' U.S.-based warehouse. Under either arrangement, the Foreign Vendors or the Lien Claimants may refuse (and have in the past refused) to release Merchandise or other goods for shipment to the United States if they are not paid current.

7. Collectively, the Debtors estimate approximately \$1.75 million of third-party shipping and storage charges (collectively, the "Lien Charges") are due and owing as of the Petition Date, of which approximately \$700,000 may come due within 25 days after the Petition Date.

8. Under certain non-bankruptcy laws, the Lien Claimants may be able to assert liens on the goods in their possession to secure payment of the charges or expenses incurred in connection with the Lien Charges.<sup>3</sup> Accordingly, in the event the Lien Charges remain unpaid, the Lien Claimants are likely to attempt to assert such possessory liens, and may refuse to deliver or release goods in their possession until their claims are satisfied and their liens redeemed. The Lien Claimants' possession (and retention) of the Debtors' goods and supplies would disrupt the Debtors' operations and affect the Debtors' ability to efficiently administer these chapter 11 cases. The cost of such disruption to the Debtors' estates would likely be greater than the

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<sup>3</sup> For example, section 7-307 of the Uniform Commercial Code provides, in pertinent part, that "[a] carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges after the date of the carrier's receipt of the goods for storage or transportation, including demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law." *See* U.C.C. § 7-307(a) (2003).

applicable Lien Charges. Further, pursuant to section 363(e) of the Bankruptcy Code, the Lien Claimants may be entitled to adequate protection of any valid possessory lien, which would drain estate assets.

9. Accordingly, the Debtors seek authority, but not direction, to pay and discharge, on a case-by-case basis, the Lien Charges in an aggregate amount up to \$700,000 on an interim basis and up to \$1.75 million on a final basis. For the avoidance of doubt, the Debtors seek authority to pay only those amounts that they determine are necessary or appropriate to (a) obtain release of critical or valuable goods, (b) maintain a reliable, efficient, and smooth distribution system, and (c) induce the Lien Claimants to continue to carry goods and make timely delivery. The Debtors intend to pay prepetition Lien Charges only where they believe, in their business judgment, that the benefits to their estates from making such payments will exceed the costs that their estates would incur by bringing an action to compel the turnover of such goods and the delay associated with such actions.

#### **The Import Claimants**

10. As described in greater detail above, in the ordinary course of their businesses, the Debtors import inventory and related materials (collectively, the “Imported Goods”) from the Foreign Vendors. In the ordinary course, the Debtors also export inventory (collectively, the “Exported Goods”) to foreign countries, including inventory to be sold in the Debtors’ stores located in Canada, Europe, and Japan. Timely receipt or transmittal, as applicable, of the Imported Goods and Exported Goods is critical to both the Debtors’ domestic and foreign business operations. Any disruption or delay would adversely affect the Debtors’ business operations and affect the Debtors’ ability to efficiently administer these chapter 11 cases.

11. In connection with the import and export of goods, the Debtors may be required to pay various charges (the “Import/Export Charges”), including customs duties, detention and demurrage fees, tariffs and excise taxes, freight forwarding, and other similar obligations. The Debtors pay approximately \$15.2 million annually on account of Import/Export Charges. The Debtors estimate that approximately \$1.55 million in Import/Export Charges for goods currently in transit is outstanding as of the Petition Date, approximately \$1.1 million of which may come due in the first 25 days after the Petition Date.

12. The Debtors seek authority to pay any and all necessary and appropriate Import/Export Charges incurred on account of prepetition transactions. Absent such payment, parties to whom the Debtors owe Import/Export Charges may interfere with the transportation of the Imported Goods or Exported Goods. If the flow of Imported Goods or Exported Goods were to be interrupted, the Debtors may be deprived of the inventory necessary to stock the racks and shelves in their domestic and foreign stores, which means the Debtors would not have inventory to sell to their customers. The ultimate value of such sales is worth far more to the Debtors (both in terms of future receipts and the maintenance of valuable customer good will) than the aggregate amount of incurred, but unpaid, Import/Export Charges.

13. Accordingly, the Debtors seek authority, but not direction, to pay and discharge, on a case-by-case basis, the Import/Export Charges in an aggregate amount up to \$1.1 million on an interim basis and up to \$1.55 million on a final basis. For the foregoing reasons, the Debtors submit that payment of the Import/Export Charges is necessary to preserve and enhance the value of the Debtors’ business for the benefit of all parties in interest.

**The 503(b)(9) Claimants**

14. The Debtors may have received certain inventory, goods, or materials from various foreign and domestic vendors (collectively, the “503(b)(9) Claimants”) within the 20-day period immediately preceding the Petition Date. Many of the Debtors’ relationships with the 503(b)(9) Claimants are not governed by long-term contracts. Rather, the Debtors obtain inventory, goods, or other materials from such claimants on an order-by-order basis. As a result, a 503(b)(9) Claimant may refuse to supply new orders without payment of its prepetition claims. Such refusal could negatively affect the Debtors’ estates as the Debtors’ business is dependent on the steady flow of inventory to stock their stores.

15. Further, substantially all of the 503(b)(9) Claimants are Foreign Vendors that supply goods, materials, or services to the Debtors that are crucial to the Debtors’ ongoing U.S. operations—specifically the Merchandise necessary to stock the shelves and racks in the Debtors’ stores and supply the Debtors’ e-commerce provider. The Debtors have, in some instances, already invested in the fabric and other raw materials necessary to manufacture the Merchandise overseas. Moreover, even though the manufacture of certain Merchandise is completed, the Foreign Vendors are unlikely to ship unless the Debtors pay some or all of the claims owing to such vendors. In light of the fact that the Foreign Vendors are located outside of the United States, it would be difficult for the Debtors to *compel* the Foreign Vendors to ship Merchandise. Without the flow of fresh Merchandise, the Debtors’ businesses will effectively starve—the critical nature of the need for the regular shipment of foreign-manufactured Merchandise cannot be overstated.

16. Additionally, if left unpaid, the Foreign Vendors may take action against the Debtors based upon an erroneous belief that Foreign Vendors are not subject to the automatic

stay provisions of section 362(a) of the Bankruptcy Code. In light of these consequences, the Debtors have concluded that payment of the Foreign Vendor 503(b)(9) Claimants is essential to avoid disruptions to the Debtors' operations. The estimated amounts owing to the 503(b)(9) Claimants set forth below pales in comparison to the potential damage to the Debtors' businesses if the Debtors' operations were to experience significant disruption.

17. The Debtors believe that as of the Petition Date, they owe approximately \$800,000 on account of goods delivered within the 20 days immediately preceding the Petition Date, none of which will come due in the first 25 days after the Petition Date, and the value of which may be entitled to administrative priority under section 503(b)(9) of the Bankruptcy Code.

18. Accordingly, the Debtors request the authority, but not the direction, to pay those undisputed claims arising from the value of such goods received by the Debtors within the 20 days immediately preceding the Petition Date that were sold to the Debtors in the ordinary course of business (each, a "503(b)(9) Claim") and, together with the Lien Charges and the Import/Export Charges, the "Obligations") in an aggregate amount up to \$800,000 on a final basis. The Debtors seek authority to pay only those amounts that they determine are necessary or appropriate to (a) obtain critical or valuable goods, (b) maintain a reliable, efficient, and smooth distribution system, and (c) induce the 503(b)(9) Claimants to continue to provide goods. The Debtors intend to pay prepetition 503(b)(9) Claims only where they believe, in their business judgment, that the benefits to their estates from making such payments will exceed the costs to their estates.

**Basis for Relief**

**I. The Court Should Grant the Relief Requested in this Motion Pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code.**

19. Courts have recognized that it is appropriate to authorize the payment of prepetition obligations where necessary to protect and preserve the estate. *See, e.g., In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (authority to pay prepetition wages); *Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 398 (Bankr. S.D.N.Y. 1983) (authority to pay prepetition claims of suppliers); *see also In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). In so doing, these courts acknowledge that several legal theories rooted in sections 105(a) and 363(b) of the Bankruptcy Code support the payment of prepetition claims as provided herein.

20. Pursuant to section 363(b) of the Bankruptcy Code, courts may authorize payment of prepetition obligations where a sound business purpose exists for doing so. *See Ionosphere Clubs Inc.*, 98 B.R. at 175 (noting that section 363(b) provides “broad flexibility” to authorize a debtor to honor prepetition claims where supported by an appropriate business justification); *see also James A. Phillips, Inc.*, 29 B.R. at 397 (relying upon section 363 as a basis to allow a contractor to pay the prepetition claims of suppliers who were potential lien claimants). Indeed, courts have recognized that there are instances when a debtor’s fiduciary duty can “only be fulfilled by the preplan satisfaction of a prepetition claim.” *CoServ*, 273 B.R. at 497.

21. In addition, courts may authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code. Section 105(a) codifies the Court’s inherent equitable powers to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” Under section 105(a), courts may authorize pre-plan payments of prepetition obligations when essential to the continued operation of a

debtor's businesses. *See In re C.A.F. Bindery, Inc.*, 199 B.R. 828, 835 (Bankr. S.D.N.Y. 1996); *see also In re Fin. New Network Inc.*, 134 B.R. 732, 735–36 (Bankr. S.D.N.Y. 1991) (holding that the “doctrine of necessity” stands for the principle that a bankruptcy court may allow pre-plan payments of prepetition obligations where such payments are critical to the debtor’s reorganization). Specifically, the Court may use its power under section 105(a) of the Bankruptcy Code to authorize payment of prepetition obligations pursuant to the “necessity of payment” rule (also referred to as the “doctrine of necessity”). *Ionosphere Clubs*, 98 B.R. at 176.

22. The relief requested herein is appropriate and warranted under the circumstances. The authority to satisfy the Obligations in the initial days of these cases without disrupting the Debtors’ operations will maintain the integrity of the Debtors’ supply chain, facilitate the sale of inventory and the Debtors’ accounts receivable collection, and allow the Debtors to efficiently administer these chapter 11 cases. Failure to pay the Obligations could potentially destroy value that would otherwise inure to the benefit of the Debtors’ estates. Where, as here, debtors have shown that the payment of prepetition claims is critical to maximize the value of their estates, courts in this district and other jurisdiction have routinely authorized payments to lien claimants. *See In re Sabine Oil & Gas Corp.*, No. 15-11835 (SCC) (Bankr. S.D.N.Y. Oct. 15, 2015) (approving the payment of prepetition claims of shipper and warehousemen claimants on the basis that shippers and warehousemen could refuse to deliver or return the debtors’ goods if prepetition claims were not satisfied); *In re Pac. Sunwear of Calif., Inc.*, No. 16-10882 (LSS) (Bankr. D. Del. Apr. 8, 2016) (approving the payment of prepetition claims arising from the receipt of merchandise from foreign and domestic vendors on the basis that the vendors would withhold the debtors’ merchandise and disrupt the debtors’ supply chain if not paid); *In re*

*Quicksilver, Inc.*, No. 15-11880 (BLS) (Bankr. D. Del. Sept. 10, 2015) (approving payment of prepetition claims and ongoing costs arising from the debtors’ vast network of shippers, including global vendors, global freight forwarders, and other parties that maintain the debtors’ international supply chain in order to prevent any disruption to the debtors’ business).<sup>4</sup>

23. Allowing the Debtors to pay the Obligations is especially appropriate where, as here, doing so is consistent with the “two recognized policies” of chapter 11 of the Bankruptcy Code—preserving going concern value and maximizing the value of property available to satisfy creditors. *See Bank of Am. Nat’l Trust Savs. Ass’n v. 203 N. LaSalle St. P’Ship.*, 526 U.S. 434, 453 (1999). Based on these circumstances, the Debtors submit that the relief requested herein represents a sound exercise of the Debtors’ business judgment, is necessary to avoid immediate and irreparable harm to the Debtors’ estates, and is therefore justified under sections 105(a) and 363(b) of the Bankruptcy Code.

**II. Failure to Make Timely Payment of the Lien Charges Would Threaten the Debtors’ Ability to Operate and May Subject the Debtors’ Assets to the Perfection of Liens.**

24. As noted above, certain Lien Claimants may be entitled under applicable non-bankruptcy law to assert certain possessory liens on the Debtors’ goods or equipment in their possession (notwithstanding the automatic stay under section 362 of the Bankruptcy Code) in an attempt to secure payment of their prepetition claim. Under section 362(b)(3) of the Bankruptcy Code, the act of perfecting such liens, to the extent consistent with section 546(b) of the Bankruptcy Code, is expressly excluded from the automatic stay.<sup>5</sup> As a result, the Debtors anticipate that certain of the Lien Claimants may assert or perfect liens, simply refuse to turn

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<sup>4</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this motion. Copies of these orders are available upon request of the Debtors’ proposed counsel.

<sup>5</sup> *See* 11 U.S.C. § 546(b)(1)(A) (providing that a debtor’s lien avoidance powers “are subject to any generally applicable law that . . . permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection”).

over goods in their possession, or stop performing their ongoing obligations. Even absent a valid lien, to the extent certain Lien Claimants have possession of the Debtors' inbound inventory or outbound products, mere possession or retention would disrupt the Debtors' operations.

25. Furthermore, paying the Lien Charges should not impair unsecured creditor recoveries in these chapter 11 cases. In instances where the amount owed to Shippers or Warehousemen is less than the value of the goods that could be held to secure a Shipping and Warehousing Claim, such parties may be fully-secured creditors of the Debtors' estates. In such instances, payment now only provides such parties with what they might be entitled to receive under a plan of reorganization, only without any interest costs that might otherwise accrue during these chapter 11 cases. Conversely, all creditors will benefit from the seamless transition of the Debtors' operations into bankruptcy and the ultimate delivery and sale of inventory in the Debtors' stores and e-commerce channel.

26. Where debtors have shown that the payment of prepetition claims is critical to maximize the value of their estates, courts in this district and other jurisdictions have routinely authorized payments to shippers and warehousemen under similar circumstances. *See, e.g., In re Sabine Oil & Gas Corp.*, No. 15-11835 (SCC) (Bankr. S.D.N.Y. Oct. 15, 2015) (holding that the payment of certain lien claimants prepetition claims is warranted when lien claimants are able to assert possessory liens on the debtors' goods in the event of non-payment); *In re Chassix Holdings, Inc.*, No. 15-10578 (MEW) (Bankr. S.D.N.Y. Apr. 14, 2015) (same); *In re Energy Future Holdings Corp.*, No. 14-10979 (CSS) (Bankr. D. Del. June 3, 2014) (same); *In re GSE Env'tl, Inc.*, No. 14-11126 (MFW) (Bankr. D. Del. May 6, 2014) (same); *In re Hawker Beechcraft, Inc.*, No. 12-11873 (SMB) (Bankr. S.D.N.Y. May 30, 2012) (same).

### **III. The Court Should Authorize the Payment of Import/Export Charges.**

27. Further, the Import/Export Charges would likely be paid in full under any plan of reorganization pursuant to Bankruptcy Code section 507(a)(8), which provides eighth priority status to the claims of a governmental unit based on a customs duty arising out of the importation of certain merchandise. Thus, payment of the Import/Export Charges as proposed in this motion merely accelerates the distribution that the Import/Export providers would receive in any event upon confirmation of a plan. Therefore, granting this motion with respect to the Import/Export Charges would have no substantial effect on the relative distribution of the estate's assets.

28. For these reasons, courts have authorized the payment of prepetition import and export claims under similar circumstances in recent retail chapter 11 cases. *See In re Pacific Sunwear of Calif. Inc., a California Corp.*, No. 16-10882 (LSS) (Bankr. D. Del. Apr. 8, 2016) (approving payment of charges incurred in connection with the transportation of merchandise); *In re Sports Authority Holdings, Inc.*, No. 16-10527 (MFW) (Bankr. D. Del. Mar. 29, 2016) (approving payment of customs duties, detention and demurrage fees, tariffs and excise and related taxes to third party vendor); *In re Quicksilver, Inc.*, No. 15-11880 (BLS) (Bankr. D. Del. Sept. 10, 2015) (approving payment of import and export charges to third party administrator); *In re LHI Liquidation Co. f/k/a Loehmann's Holdings Inc.*, No. 13-14050 (MG) (Bankr. S.D.N.Y. Jan. 16, 2014) (authorizing payment of customs duties and brokers fees in connection with importing products).

### **IV. The Court Should Authorize the Payment of 503(b)(9) Claims.**

29. Finally, section 503(b)(9) provides administrative priority for the "value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which goods have been sold to the debtor in the ordinary course of such debtor's

business.” These claims must be paid in full for the Debtors to confirm a chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(A). Consequently, payment of such claims now only provides such parties with what they would be entitled to receive under a chapter 11 plan. Moreover, the timing of such payments also lies squarely within the Court’s discretion. *See In re Global Home Prods., LLC*, No. 06-10340 (KG), 2006 WL 3791955, at \*3 (Bankr. D. Del. Dec. 21, 2006) (agreeing with parties that “the timing of the payment of that administrative expense claim is left to the discretion of the Court”). The Debtors’ ongoing ability to obtain inventory and other goods as provided herein is key to their survival and necessary to preserve the value of their estates. Absent payment of the Section 503(b)(9) Claims at the outset of these chapter 11 cases—which merely accelerates the timing of payment and not the ultimate treatment of such claims—the Debtors could be denied access to the inventory and other goods necessary to maintain the Debtors’ business operations and maximize the value of the Debtors’ estates.

30. Further, as described above, substantially all of the 503(b)(9) Claimants are Foreign Vendors. Without the Foreign Vendors the Debtors would not be able to stock their shelves with the Merchandise necessary to continue operations. If the Debtors do not pay certain of the 503(b)(9) Claims owing to the Foreign Vendors, such Foreign Vendors may simply refuse to do business with the Debtors unless and until they receive payment on account of their prepetition claims. Such Foreign Vendors may also take other precipitous action against the Debtors based on the incorrect belief that they are not bound by the automatic stay.

31. For these reasons, courts in this District and others have regularly authorized the payment of claims arising under section 503(b)(9) of the Bankruptcy Code in the ordinary course of business. *See, e.g., In re Aéropostale, Inc.*, No. 16-11275 (SHL) (Bankr. S.D.N.Y. June 3, 2016) (authorizing payment of section 503(b)(9) claims); *In re Chassix Holdings, Inc.*,

No. 15-10578 (MEW) (Bankr. S.D.N.Y. Apr. 14, 2015) (same); *In re Sbarro LLC*, No. 14-10557 (MG) (Bankr. S.D.N.Y. Apr. 7, 2014) (same); *In re Hawker Beechcraft, Inc.*, No. 12-11873 (SMB) (Bankr. S.D.N.Y. May 30, 2012) (same); *In re United Retail Grp., Inc.*, No. 12-10405 (SMB) (Bankr. S.D.N.Y. Feb. 3, 2012) (same); *see also In re LHI Liquidation Co. f/k/a Loehmann's Holdings Inc.*, No. 13-14050 (MG) (Bankr. S.D.N.Y. Jan. 16, 2014) (authorizing payment of foreign vendor claims); *In re CJ Holding Co.*, No. 16-33590 (DRJ) (Bankr. S.D. Tex. Sept. 12, 2016) (same); *In re Hawker Beechcraft, Inc.*, No. 12-11873 (SMB) (Bankr. S.D.N.Y. May 30, 2012) (same); *In re Lear Corp.*, No. 09-14326 (ALG) (Bankr. S.D.N.Y. July 31, 2009) (same); *In re Chemtura Corp.*, No. 09-11233 (REG) (Bankr. S.D.N.Y. Apr. 13, 2009) (same).

**Processing of Checks and  
Electronic Fund Transfers Should Be Authorized**

32. The Debtors have sufficient funds to pay the amounts described in this motion during the chapter 11 cases, debtor-in-possession financing, and anticipated access to cash collateral. In addition, under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment in respect of the Lien Charges. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently. Therefore, the Debtors respectfully request that the Court authorize and direct all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this motion.

**The Requirement of Bankruptcy Rule 6003 Are Satisfied**

33. Bankruptcy Rule 6003 empowers a court to grant relief within the first 21 days after the Petition Date "to the extent that relief is necessary to avoid immediate and irreparable harm." For the reasons discussed above, allowing the Debtors to pay the Lien Charges and

granting the other relief requested herein is integral to the Debtors' ability to transition their operations into these chapter 11 cases. Failure to receive such authorization and other relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors' operations at this critical juncture. For the reasons discussed herein, the relief requested is necessary in order for the Debtors to preserve and maximize the value of the Debtors' estates for the benefit of all stakeholders. Accordingly, the Debtors submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

#### **Reservation of Rights**

34. Nothing contained in this motion or any actions taken by the Debtors pursuant to relief granted in the Interim Order and Final Order is intended or should be construed as: (a) an admission as to the validity of any particular claim against a Debtor entity; (b) a waiver of the Debtors' rights to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to this motion are valid, and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or seek avoidance of all such liens. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim

**Motion Practice**

35. This motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated and a discussion of their application to this motion. Accordingly, the Debtors submit that this motion satisfies Local Rule 9013-1(a).

**Waiver of Bankruptcy Rule 6004(a) and 6004(h)**

36. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

**Notice**

37. The Debtors will provide notice of this motion to: (a) the Office of the United States Trustee for the Southern District of New York; (b) the holders of the 50 largest unsecured claims against the Debtors (on a consolidated basis); (c) counsel to the agent under the Debtors' proposed asset-based lending revolving debtor-in-possession credit facility and the Debtors' prepetition asset-based lending revolving credit facility lenders; (d) counsel to the administrative agent under the Debtors' proposed debtor-in-possession term loan credit facility and the Debtors' prepetition tranche B term loan lenders; (e) counsel to the Debtors' prepetition tranche A term loan lenders; (f) counsel to the Debtors' prepetition new tranche A term loan lenders; (g) holders of BCBG Max Azria Global Holdings, LLC common units; (h) holders of BCBG Max Azria Global Holdings, LLC preferred units; (i) the United States Attorney's Office for the Southern District of New York; (j) the Internal Revenue Service; (k) the Environmental Protection Agency; (l) the office of the attorneys general for the states in which the Debtors operate; (m) the Securities and Exchange Commission; (n) the Lien Claimants; and (o) any party that has

requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

**No Prior Request**

38. No prior motion for the relief requested herein has been made to this or any other court.

*[Remainder of page intentionally left blank]*

WHEREFORE, the Debtors respectfully request that the Court enter the Interim Order and Final Order granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Dated: March 1, 2017

*/s/ Joshua A. Sussberg*

Joshua A. Sussberg, P.C.

Christopher J. Marcus, P.C.

**KIRKLAND & ELLIS LLP**

**KIRKLAND & ELLIS INTERNATIONAL LLP**

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- and -

James H.M. Sprayregen, P.C.

Benjamin M. Rhode (*pro hac vice* pending)

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*Proposed Counsel to the Debtors and Debtors in Possession*

**EXHIBIT A**

**Proposed Interim Order**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:	)	Chapter 11
	)	
BCBG MAX AZRIA GLOBAL HOLDINGS, LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 17-10466 (___)
	)	
Debtors.	)	(Joint Administration Requested)
	)	

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**INTERIM ORDER (I) AUTHORIZING, BUT NOT  
DIRECTING, THE DEBTORS TO PAY PREPETITION CLAIMS  
OF LIEN CLAIMANTS, IMPORT AND EXPORT CLAIMANTS,  
AND 503(B)(9) CLAIMANTS AND (II) GRANTING RELATED RELIEF**

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Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an interim order (this “Interim Order”): (a) authorizing the Debtors to pay prepetition claims held by certain claimants in an amount not to exceed the Obligations Cap; and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012; and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors’ notice of the Motion and opportunity for a hearing on the Motion were appropriate

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: BCBG Max Azria Global Holdings, LLC (6857); BCBG Max Azria Group, LLC (5942); BCBG Max Azria Intermediate Holdings, LLC (3673); Max Rave, LLC (9200); and MLA Multibrand Holdings, LLC (3854). The location of the Debtors’ service address is: 2761 Fruitland Avenue, Vernon, California 90058.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on an interim basis as set forth herein.
2. The final hearing (the "Final Hearing") on the Motion shall be held on \_\_\_\_\_, 2017, at \_\_\_:\_\_\_ .m., prevailing Eastern Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Eastern Time, on \_\_\_\_\_, 2017, and shall be served on: (a) the Debtors, BCBG Max Azria Global Holdings, LLC, 2761 Fruitland Avenue, Vernon, California 90058, Attn: Erica Alterwitz-Meierhans; (b) proposed counsel to the Debtors, Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654, Attn: Benjamin M. Rhode and John R. Luze; (c) counsel to the agent under the Debtors' proposed asset-based lending revolving debtor-in-possession credit facility and the Debtors' prepetition asset-based lending revolving credit facility lenders, Morgan, Lewis & Bockius LLP, One Federal Street, Boston, Massachusetts 02110, Attn: Marc R. Leduc and Matthew F. Furlong; (d) counsel to the administrative agent under the Debtors' proposed debtor-in-possession term loan credit facility and the Debtors' prepetition tranche B term loan lenders, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, Attn: Matt Barr; (e) counsel to the Debtors' prepetition tranche A term loan lenders, Curtis, Mallet-Prevost, Colt & Mosle LLP, 101 Park Avenue, New York, New York 10178-0061, Attn: Steven J. Reisman; (f) counsel to the Debtors' prepetition new tranche A term loan

lenders, Winston & Strawn LLP, 200 Park Avenue, New York, New York 10166-4193, Attn: Jordan S. Traister; (g) counsel to any statutory committee appointed in these cases; and (h) the Office of The United States Trustee, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, New York 10014, Attn: Brian Masumoto, Esq. In the event no objections to entry of a final order on the Motion are timely received, this Court may enter such final order without need for the Final Hearing.

3. The Debtors are authorized, but not directed, in the reasonable exercise of their business judgment, to pay all or part of, and discharge, on a case-by-case basis, the Lien Charges in an aggregate amount not to exceed \$700,000, on an interim basis.

4. The Debtors are authorized, but not directed, in the reasonable exercise of their business judgment, to pay all or part of, and discharge, on a case-by-case basis, the Import/Export Charges in an aggregate amount not to exceed \$1.1 million, on an interim basis.

5. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief, nothing in this Interim Order shall be deemed: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtors' right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Interim Order or the Motion; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' rights or the rights of any other Person under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion are valid, and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or seek avoidance of all

such lien.

6. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order.

7. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with any Lien Charge.

8. Notwithstanding anything to the contrary contained herein, (i) payments made by the Debtors pursuant to the authority granted in this Order must be in compliance with, and shall be subject to, the requirements imposed on the Debtors under the Debtors' postpetition financing agreements (the "DIP Agreements") and the terms and conditions of the interim and final orders, as applicable, approving the DIP Agreements and governing the Debtors' use of cash collateral (in either case, the "DIP Order"), and (ii) to the extent there is any inconsistency between the terms of the DIP Order and any action taken or proposed to be taken hereunder, the terms of the DIP Order shall control.

9. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

10. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

11. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order are immediately effective and enforceable upon its entry.

12. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

13. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

New York, New York

Dated: \_\_\_\_\_, 2017

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UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT B**

**Proposed Final Order**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:	)	Chapter 11
	)	
BCBG MAX AZRIA GLOBAL HOLDINGS, LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 17-10466 (___)
	)	
Debtors.	)	(Joint Administration Requested)
	)	

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**FINAL ORDER (I) AUTHORIZING, BUT NOT  
DIRECTING, THE DEBTORS TO PAY PREPETITION CLAIMS  
OF LIEN CLAIMANTS, IMPORT AND EXPORT CLAIMANTS,  
AND 503(B)(9) CLAIMANTS AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of a final order (this “Final Order”): (a) authorizing the Debtors to pay prepetition claims held by certain claimants in an amount not to exceed the Obligations Cap; and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012; and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors’ notice of the Motion and opportunity for a hearing on the Motion were appropriate

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: BCBG Max Azria Global Holdings, LLC (6857); BCBG Max Azria Group, LLC (5942); BCBG Max Azria Intermediate Holdings, LLC (3673); Max Rave, LLC (9200); and MLA Multibrand Holdings, LLC (3854). The location of the Debtors’ service address is: 2761 Fruitland Avenue, Vernon, California 90058.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on a final basis as set forth herein.
2. The Debtors are authorized, but not directed, in the reasonable exercise of their business judgment, to pay all or part of, and discharge, on a case-by-case basis, the Lien Charges in an aggregate amount not to exceed \$1.75 million, absent further order of the Court.
3. The Debtors are authorized, but not directed, in the reasonable exercise of their business judgment, to pay all or part of, and discharge, on a case-by-case basis, the Import/Export Charges in an aggregate amount not to exceed \$1.55 million, absent further order of the Court.
4. The Debtors are authorized, but not directed, in the reasonable exercise of their business judgment, to pay all or part of, and discharge, on a case-by-case basis, the 503(b)(9) Claims in an aggregate amount not to exceed \$800,000, absent further order of the Court.
5. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtors' right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Final Order or the Motion; (e) a request or authorization to assume any

prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' rights or the rights of any other Person under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion are valid, and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or seek avoidance of all such lien.

6. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order.

7. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with any Lien Charge.

8. Notwithstanding anything to the contrary contained herein, (i) payments made by the Debtors pursuant to the authority granted in this Order must be in compliance with, and shall be subject to, the requirements imposed on the Debtors under the Debtors' postpetition financing agreements (the "DIP Agreements") and the terms and conditions of the interim and final orders, as applicable, approving the DIP Agreements and governing the Debtors' use of cash collateral (in either case, the "DIP Order"), and (ii) to the extent there is any inconsistency between the terms of the DIP Order and any action taken or proposed to be taken hereunder, the terms of the

DIP Order shall control.

9. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

10. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

11. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

12. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

13. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

New York, New York

Dated: \_\_\_\_\_, 2017

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UNITED STATES BANKRUPTCY JUDGE