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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
BCBG MAX AZRIA GROUP HOLDINGS, LLC, *et al.*,[1]	Case No. 17-10466 (SCC)
Debtors.	Jointly Administered
MAX AZRIA and LUBOV AZRIA,	Adv. Proc. No. 17-01040 (SCC)
Plaintiffs,	**PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR (I) PARTIAL SUMMARY ADJUDICATION OF ADVERSARY PROCEEDING AND (II) ENTRY OF AN ORDER AUTHORIZING THE REJECTION OF LUBOV AZRIA'S EMPLOYMENT AGREEMENT**
vs.	
BCBG MAX AZRIA GLOBAL HOLDINGS, LLC, *et al.*,	
Defendants.	

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are 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.

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, made applicable by Rules 7056 and 9014 of the Federal Rules of Bankruptcy Procedure, and Rule 7056-1 of the Local Bankruptcy Rules for the Southern District of New York (the "Local Rules"), Max Azria and Lubov Azria (together, the "Azrias"), plaintiffs in the above-captioned adversary proceeding (the "Adversary Proceeding"), hereby oppose *BCBG Max Azria Group, LLC's Motion for (I) Partial Summary Adjudication of Adversary Proceeding and (II) Entry of an Order Authorizing the Rejection of Lubov Azria's Employment Agreement* [Adv. Docket No. 5] (the "Motion") filed by the debtors and debtors in possession (the "Debtors") in the above-captioned jointly administered chapter 11 cases (collectively, the "Bankruptcy Case").

I. PRELIMINARY STATEMENT

1. Before what the Debtors have termed the "February 2015 Restructuring," Max Azria and Lubov Azria were the sole equityholders of the Debtors.[2] In that restructuring, the Azrias gave up 80% of their equity in exchange for, among other things, well-defined contractual rights as employees of a company over which they no longer had 100% ownership and control. The changes wrought by the February 2015 Restructuring (including the 80% reduction in the Azrias' equity stake and the new employment agreements) were effected by and through the Contribution Agreement and its ancillary "Transaction Agreements" (as that term is defined in the Contribution Agreement), all of which are fully integrated by and with each other.

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[2] *See Declaration of Holly Felder Etlin, Chief Restructuring Officer of BCBG Max Azria Global Holdings, LLC [Etc.]* [Bankr. Docket No. 3] (the "First Day Declaration") ¶¶ 28 (defining the "February 2015 Restructuring" as the transaction consummated pursuant to the January 26, 2015 "Contribution Agreement") & 31 (explaining that prior to the February 2015 Restructuring, "Max Azria, together with his wife Lubov Azria, owned 100 percent of BCBG's common equity"). The Azrias agree with Ms. Etlin's sworn testimony in this regard. *See Declaration of Lubov Azria in Opposition to Debtors' Motion for Summary Judgment* (the "Lubov Azria Declaration") ¶¶ 3 & 5–6; *Declaration of Max Azria in Opposition to Debtors' Motion for Summary Judgment* (the "Max Azria Declaration") ¶ 2.

2. Lubov Azria entered into her Employment Agreement[3] effective as of the close of the February 2015 Restructuring. The Employment Agreement's very legal existence is tied to the Contribution Agreement: "Notwithstanding anything in this Agreement to the contrary, if the transactions contemplated by the Contribution Agreement are not consummated or the Contribution Agreement is terminated in accordance with its terms, this Agreement shall be void *ab initio* and the Company shall have no obligations to Employee hereunder." Employment Agreement § 1(a). Where one contract is "void *ab initio*" if another contract is terminated, the two contracts are a textbook example of integration.

3. It is not only the Employment Agreement's terms that integrate it with the Contribution Agreement. In addition, the Contribution Agreement itself contains a robust integration clause: "This Agreement (including the schedules and exhibits attached hereto) ***and the Transaction Agreements*** constitute the ***entire agreement*** of the parties hereto in respect of the subject matter hereof and thereof, and supersede all prior agreements or understandings, among the parties hereto in respect of the subject matter hereof and thereof." Contribution Agreement § 11.5 (emphasis added). Because the Employment Agreement is one of the referenced "Transaction Agreements," *see id*. § 1.1, the two documents are integrated.

4. On what basis, then, do the Debtors claim that the Contribution Agreement and Employment Agreement "are separate agreements and cannot be integrated" (Mot. ¶ 34)? Originally, in their *Motion for Entry of an Order (I) Authorizing the Rejection of Lubov Azria's Employment Agreement [Etc.]* [Bankr. Docket No. 137] (the "Motion to Reject"), the Debtors staked out a temporal argument, asserting that the earlier date of the Contribution Agreement

[3] For consistency with the defined terms in the Debtors' Motion, references to the "Employment Agreement" are to the as-executed "Lubov Azria Employment Agreement" defined and described in Section 1.1 of the Contribution Agreement.

(January 26, 2015) versus the later date of the Employment Agreement (February 5, 2015) meant that the two could not be integrated:

> Ten days after the execution of the Contribution Agreement, BCBG Group and Mrs. Azria entered into the separate Employment Agreement. ***The timing is important***, because the Employment Agreement contains an "entire agreement" provision stating "[T]his Agreement constitutes the entire agreement between the parties with regard to the subject matter hereof, superseding all prior understandings and agreements, whether written or oral." *See* Employment Agreement at § 12.1 (emphasis added). In other words, when she signed the Employment Agreement with BCBG Group, Mrs. Azria expressly agreed that it was not integrated with the Contribution Agreement. [Mot. to Reject ¶ 9 (emphasis added and omitted).]

5. The Debtors' timing argument fell apart, however, when it was pointed out that February 5 was simply the date on which the transactions contemplated by the Contribution Agreement formally closed, and that, in point of fact, the Azrias signed all of the paperwork for the February 2015 Transaction on the same day: January 26, 2015. *See* Lubov Azria Decl. ¶ 8; Max Azria Decl. ¶ 2. Their signature pages (which are undated) were then held in escrow pending the closing, at which point they were appended to the drafts that then became the fully integrated "Transaction Agreements." *See* Contribution Agreement §§ 1.1 (defined terms "Transaction Agreements," "Employment Agreements," and "Lubov Azria Employment Agreement") & 11.5 (integrating the Contribution Agreement with all of the foregoing). And if for any reason the February 2015 Restructuring had failed to close, the Employment Agreement would have been "void *ab initio*" by its own terms. *See* Employment Agreement § 1(a).

6. With their lead argument no longer tenable, the Debtors shifted gears to what had been a throw-away argument in the Motion to Reject: that the robust integration clause in the Contribution Agreement "is not one of the limited sections of the contract to which Mrs. Azria is a party." Mot. to Reject ¶ 14 (emphasis omitted). But this argument is even worse than the one it replaces, for many reasons:

7. ***First***, the Debtors' interpretation eviscerates the substantive provisions of the Contribution Agreement that ***do*** specifically apply to the Azrias. For example, the defined terms (§ 1.1) are not specifically enumerated as applicable to Lubov Azria, yet they are used throughout the sections that do apply to her. Without them, the provisions to which she is a party (*e.g.*, those concerning the "Lubov Azria Publicity Rights") are unintelligible. No one could know what the "Lubov Azria Publicity Rights" were. Similarly, the Debtors' interpretation would mean that the agreement that binds the Azrias is one without the most basic provisions concerning, *e.g.*, amendments (§ 11.1), assignment (§ 11.2), choice of forum (§ 11.10), severability (§ 11.14), waiver (§ 11.16), and the like. Is it really the Debtors' position that the Azrias' rights and obligations under the Contribution Agreement can be orally amended at any time and freely assigned to whomever they choose, and that disputes can be filed in any jurisdiction they want?

8. ***Second***, read in context, the signature-block specifications that the Azrias personally are parties "solely to" certain substantive sections of the Contribution Agreement ***protect*** them by ensuring that they are not held personally liable if another party fails to comply with its obligations. The specified sections are those that either pertain to the Azrias' personal performance or their remedies against specified third parties: the use of their publicity rights (§ 2.8), delivery of evidence that their prior personal agreement had been terminated (§ 3.2(o)), limiting their responsibility to only specific representations and warranties (§ 5.5), delineating their personal releases, IP transfers, and non-disparagement / noncompetition obligations (§§ 7.11–7.15), consenting to certain remedies for any personal breach (§11.8), and limiting their personal remedies vis-à-vis the new lenders (§11.13). The effect of these specifications is to negate any argument that a general, unqualified signature could make the Azrias personally

liable as to matters over which they have no control. For example, Section 4.6(c) represents and warrants that no one acting on behalf of the company anywhere in the world has made any kickbacks to local officials; omitting Section 4.6(c) from the signature-block specifications ensures the Azrias cannot be held personally liable if it is discovered that a low-level employee in another country had acted inappropriately. Given the evident purpose of the signature-block specifications (to protect the Azrias from unwarranted personal liability), there is no merit in the Debtors' argument that the effect of the signature-block specifications is to shred the background tapestry of the agreement by excising all of its recitals and exhibits, all definitions of important terms (§ 1.1), and (among many others) provisions concerning the document's binding effect (§ 11.3), further assurances (§ 11.6), facsimile signatures and counterparts (§ 11.4), and the interpretive effect of headings (§ 11.11).

9. ***Third***, the Debtors' argument cannot be squared with Contribution Agreement's substantive cross-references to the Employment Agreement or the Employment Agreement's substantive cross-references to the Contribution Agreement, all of which inextricably intertwine the two documents. In the Contribution Agreement, Sections 2.8(b) and 7.12(d) (both applicable to the Azrias) prohibit Lubov Azria from using her publicity rights and non-excluded social media "during the term of the Lubov Azria Employment Agreement." And Section 1(a) of the Employment Agreement conditions the very existence of the Employment Agreement on the Contribution Agreement: "Notwithstanding anything in this Agreement to the contrary, if the transactions contemplated by the Contribution Agreement are not consummated or the Contribution Agreement is terminated in accordance with its terms, this Agreement shall be void *ab initio* and the Company shall have no obligations to Employee hereunder." The Employment Agreement also cross-references the Contribution Agreement more than a dozen times.

10. Whereas the Motion never cites (let alone quotes or analyzes) the extensive cross-references tying the two documents together, the evidence tendered herewith (all of which is admissible under California law, which both the Debtors and the Azrias agree applies, *see infra* ¶ 19) demonstrates that neither Max Azria nor Lubov Azria would have affixed their signatures to the Contribution Agreement – in any capacity, on behalf of any entity or entities – had the Employment Agreement not been part of the package deal. Lubov Azria Decl. ¶¶ 4–8; Max Azria Decl. ¶¶ 2–4. In other words, without the Employment Agreement there would have been no Contribution Agreement, and without the Contribution Agreement there would have been no Employment Agreement. The two are inextricably intertwined and, as a matter of form and substance, constitute the parties' agreement.

II. FACTUAL BACKGROUND[4]

11. Lubov Azria is an accomplished fashion designer. She joined the company in 1991 and was named Creative Director in 1996, the year the Company's core brand – BCBGMAXAZRIA – first debuted its runway collection during New York Fashion Week. Lubov Azria Decl. ¶ 2. Her husband, Max Azria, founded the company in 1989. *Id*. ¶ 3. Together, prior to the February 2015 Restructuring, the Azrias beneficially owned all the equity in the company. *Id*.

[4] The factual background set out by the Debtors in the body of their Motion, *see* Mot. ¶¶ 1–8, appears to be intended to comply with Local Rule 7056-1(b), which provides: "Upon any motion for summary judgment pursuant to Bankruptcy Rule 7056, there shall be annexed to the motion a separate, short, and concise statement, in numbered paragraphs, of the material facts as to which the moving party contends there is no genuine issue to be tried." The Debtors' statements, however, are not "annexed to the motion," *id*., nor (for the most part) are they "followed by citation to evidence which would be admissible," as required by Local Rule 7056-1(d). The Azrias' responses to the Debtors' allegedly undisputed facts are set out in tabular format at the end of this brief.

12. When the Azrias jointly owned all of the equity in the company, they had no need to be overly concerned about employment agreements, restrictive covenants, severance provisions, or similar matters. *Id*. ¶ 4. That changed when they decided to enter into a restructuring transaction by which the Azrias would go from being 100% owners to only 20% owners. *Id*. Lubov Azria explains:

> I was keenly attuned to the consequences of that change and the protections that Max and I would have going forward with only a minority stake. It was essential to me that the change in ownership and control of the Company be accompanied by protections for Max and me, including those that were to be included in our new employment contracts with the Company. [*Id*.]

13. Of particular focus to Lubov Azria were the terms of the severance that would be due if the company (post-restructuring) decided to part ways with her as an employee. *Id*. On that point specifically, there were multiple rounds of discussions with the counterparty to the restructuring, one example of which is referenced an email attached to her declaration:

> We just had a conference call about the employment agreements. We did not make much progress. They are flatly refusing the $5M/5 year payout, the bonus for Lubov, her requests regarding the CEO, her requests regarding design control, and cutting down all dollars for perks. I'll update you after we see the next draft but I am a bit disappointed. [*Id*. ¶ 4 & Ex. 1.]

14. Max Azria was also focused on the severance provisions in his wife's employment agreement. In his sworn declaration submitted herewith, he explains: "In the years leading up to the transaction, I had faced several serious health issues, including a heart attack in May 2012, bypass surgery in June 2012, pneumonia in July and August 2012, and congestive heart failure in September 2012." Max Azria Decl. ¶ 4. Although he thereafter made a complete recovery, "nothing brings to mind the need to ensure the protection of loved ones" like a health scare, *id.*, which is why appropriate protections for his wife weighed heavily on his mind. His testimony is unequivocal:

> I can say without any question whatsoever that I never would have agreed to the restructuring transaction, and given up 80% ownership of the business that Lubov and I created, had it not included Lubov's employment agreement. Specifically, I never would have placed my signature on any of the documents to effect the restructuring – in any capacity, on behalf of any entity or entities – without complete confidence that the terms of Lubov's employment agreement (including the severance that would protect her in the event something happened to me) were part of the deal. [*Id*.]

15. The Azrias' concern about post-restructuring employment agreements was not a secret. In fact, in the month prior to the execution of the Contribution Agreement, Max Azria received a letter from the restructuring counterparty that enclosed a term sheet containing the key details of the transaction being proposed. *Id*. ¶ 3 & Ex. 1. Some of those details changed in the month that followed, "but one particular term never varied. It is the last line on the last page: 'The definitive documentation will include employment agreements for each of Max Azria and Lubov Azria and a Consulting Services Agreement with an affiliate of the New Investors.'" *Id*. ¶ 3 (quoting Ex. 1).[5]

16. Ultimately, as reflected in the final, executed version of the Employment Agreement, the Azrias did reach agreement with their transaction counterparty on severance terms in the event Lubov Azria's employment was subsequently terminated. *See* Employment Agreement § 6. It is important that the terms of this severance be viewed in context, as Lubov

[5] The referenced "Consulting Services Agreement" is also one of the documents attached in draft form as an exhibit to the Contribution Agreement – Exhibit E, immediately following the form of Max Azria's employment agreement (Ex. C) and Lubov Azria's employment agreement (Ex. D). The executed *Services Agreement* is dated as of the closing (February 5, 2015), just like the Azrias' employment agreements, even though it was signed by the Azrias (along with all of the other paperwork) on January 26, 2015. Lubov Azria Decl. ¶ 8; *accord* Max Azria Decl. ¶ 2. Under the Services Agreement, the restructuring counterparty was entitled to nearly $5 million per year for essentially unspecified "Services," with the proviso that in undertaking these "Services," the counterparty was only required to "devote such time and efforts … as it deems reasonably necessary or appropriate," and that "no minimum number of hours shall be required to be devoted … on a weekly, monthly, annual or other basis."

Azria explains: "I have heard the Debtors describe the terms of my employment agreement as a 'golden parachute.' That is not true. [It] is and always was just one piece of a much larger deal in which [the severance was compensation for] everything that we gave up – including 80% of the business we built together over many years of hard work." Lubov Azria Decl. ¶ 7.

17. The Azrias signed all of the documents that effected the February 2015 Restructuring at once, on January 26, 2015. *See* Lubov Azria Decl. ¶ 8; *see also* Max Azria Decl. ¶ 2. Thus, although the Contribution Agreement is formally dated as of January 26 and the Employment Agreement is formally dated as of ten days later (when the transaction closed on February 5), all the papers were signed contemporaneously. Lubov Azria Decl. ¶ 8. Lubov Azria recalls that day specifically, and "can state with complete confidence that neither Max nor I would have placed our signatures on any of those documents … if we were not absolutely certain that the employment agreements were part of the package deal to which we were agreeing." *Id*.

III. APPLICABLE STANDARDS

A. Summary Judgment Under Rule 56

18. Summary judgment is appropriate only where "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A factual dispute is "genuine" under Rule 56 if "the evidence is such that a reasonable [finder of fact] could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A fact is "material" under Rule 56 if it "might affect the outcome of the suit under the governing law." *Id*. In undertaking the Rule 56 inquiry, all reasonable inferences must be drawn in the light most favorable to the party opposing the motion. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

B. Applicable Substantive Law

19. The parties agree that "[w]hether a contract is integrated is a question of state law," and further agree that California law is the relevant substantive law. Mot. ¶ 19 n.2. The Debtors, however, never articulate the interpretive methodology required by California law. It is true that in California, "courts ***begin*** with the plain language of the contracts at issue." *Id.* ¶ 16 (emphasis added). But that does not exhaust the inquiry. "California has long abandoned a rule that would limit the interpretation of a written instrument to its four corners." *First Nat. Mortg. Co. v. Fed. Realty Inv. Trust*, 631 F.3d 1058, 1066–67 (9th Cir. 2011) (citing the California Supreme Court's landmark decision in *Pacific Gas & Electric Co. v. G.W. Thomas Drayage & Rigging Co.*, 442 P.2d 641, 643-46 (Cal. 1968) ("*PG&E*")).[6] Rather, under California law, extrinsic evidence is always admissible to interpret the language of a written instrument "as long as such evidence is not used to give the instrument a meaning to which it is not reasonably susceptible." *Morey v. Vannucci*, 75 Cal. Rptr. 2d 573, 578 (Ct. App. 1998).

IV. ARGUMENT

A. The Text of the Documents Demonstrates That the Contribution Agreement and the Employment Agreement Are Integrated

20. Section 11.5 of the Contribution Agreement is dispositive: "This Agreement [*i.e.*, the Contribution Agreement] ***and the Transaction Agreements*** constitute the ***entire agreement*** of the parties hereto in respect of the subject matter hereof and thereof, and supersede all prior agreements or understandings, among the parties hereto in respect of the subject matter hereof

[6] In *PG&E*, the California Supreme Court explained that even contract provisions that appear clear and unambiguous on their face may be shown through extrinsic evidence to be reasonably susceptible to more than one interpretation. The classic example from first-year Contracts is *Raffles v. Wichelhaus*, 159 Eng. Rep. 375 (Ex. 1864), in which a contract referenced a shipment of cotton that was to arrive from a certain port on the ship "Peerless." The contract seemed definite enough – until the parties discovered that two ships named "Peerless" had departed from the same port.

and thereof." (Emphasis added.) The Employment Agreement is a "Transaction Agreement," *see* Contribution Agreement § 1.1 (defined terms "Transaction Agreements," "Employment Agreements," and "Lubov Azria Employment Agreement"), and therefore is integrated with the Contribution Agreement.

21. The Debtors' only response is to argue that Lubov Azria is not a party to Section 11.5 of the Contribution Agreement. That argument is a-contextual, contrary to the structure of the Contribution Agreement, and inconsistent with the purpose of the limitation by which the Azrias in their individual capacities are parties only to certain specified sections.

22. The sections listed in the Contribution Agreement as applicable to the Azrias personally are only those that specifically identify the Azrias as personally responsible for performance, to wit: Sections 2.8 (use of publicity rights during the covenant period), 3.2(o) (delivery of evidence that a prior agreement had been terminated), 5.5 (limiting the Azrias' responsibility for representations and warranties to those specific ones they made), 7.11–7.15 (specifying the personal releases, transfer of publicity rights, non-disparagement and noncompetition agreements), 11.8 (consenting to certain remedies if the Azrias personally breach their obligations), and 11.13 (limiting the Azrias' personal remedies against the new lenders). The effect of the signature qualification is to negate the argument that a general, unqualified signature could make them personally liable for non-performance or breach of warranty by parties associated with them that also have performance or warranty responsibility, such as the Members, or the Company itself. But nothing in the signature qualification, which limits their liability, evidences an intention to defeat or ignore other provisions of general application without which the listed sections would be rendered nonsensical.

23. The Debtors' position that not even the recitals, defined terms, or purely mechanical provisions (*e.g.*, that agreement to be executed in counterparts (§ 11.4)) is extreme and would render key portions of the Contribution Agreement essentially unintelligible.[7] Further, the evident purpose in making the Azrias personally party to only certain substantive provisions is to protect them from incurring personal liability as to matters over which they have no control – not to shackle them to the remains of a larger contract that has been cut to shreds.

24. Finally, the Debtors' argument cannot account for Section 1(a) of the Employment Agreement, to which Lubov Azria is unquestionably a party. That section ties the Employment Agreement's very legal existence to the Contribution Agreement: "Notwithstanding anything in this Agreement to the contrary, if the transactions contemplated by the Contribution Agreement are not consummated or the Contribution Agreement is terminated in accordance with its terms, this Agreement shall be void *ab initio* and the Company shall have no obligations to Employee hereunder." Employment Agreement § 1(a).[8] This interrelationship is the essence of an integrated set of contracts. *E.g.*, *Goodspeed v. Great Western Power Co.*, 91 P.2d 623,

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[7] This is perhaps best illustrated by the fact that one party (GLAC Holdings, LLC) is party to only a single section of the Contribution Agreement (§ 11.18). By the Debtors' telling, that means that the entirety of the contract vis-à-vis GLAC Holdings is just a single paragraph titled "Investor Guarantee," as though that paragraph were pasted onto a single page. Looking at the applicable paragraph, however, it is clear that it relies heavily on defined terms (at least three dozen) and multiple cross-references to other portions of the Contribution Agreement. Worse, with GLAC Holdings not even technically a party to the section governing amendments (§ 11.1), the Debtors' construction would mean that the other parties to the Contribution Agreement could get together without GLAC Holdings and amend the sole provision applicable to it without its consent. That cannot be the proper interpretation.

[8] The Debtors' silence regarding Section 1(a) of Employment Agreement is all the more conspicuous given that they are now aware of the provision, whereas they were not when they filed their opening brief on the Motion to Reject. *See* Mot. to Reject ¶ 20 (mistakenly asserting that "the Employment Agreement only references the Contribution Agreement in its opening recitals, none of which affect the actual performance of the promises contained within the respective Agreements"). The current Motion makes no such claim, yet the Debtors' argument still fails to address Section 1(a).

634–635 (Cal. Dist. Ct. App. 1939) (concluding that "the facts and circumstances clearly indicate that the stock purchase contracts and the water agreement were dependent, one upon the other, and constituted but one transaction" because the stock purchase agreement contained language that the rights of the parties "under any water contract are conditional upon, and exist only during the fulfillment" of the obligations under the stock purchase agreement, thus the "record can bear no reasonable construction other than that the stock contract would never have been executed unless the agreement to purchase water was also made").

B. Even Two Documents With Separate Integration Clauses May Be Integrated With Each Other

25. The centerpiece of the Debtors' Motion is Section 12.1 of the Employment Agreement, which is a limited integration clause that applies only to employment-related matters: "Except as otherwise expressly provided herein, this Agreement constitutes the entire agreement between the parties hereto ***with regard to the subject matter hereof***, superseding all prior understandings and agreements, whether written or oral." (Emphasis added.) The "subject matter" of the employment agreement, of course, is Lubov Azria's employment by the Debtors. To the extent there was ever a dispute about the scope of her responsibilities in such capacity, or whether she was entitled to a particular employee benefit or executive perquisite, the integration clause would preclude either side from relying on unwritten understandings or from relying on the terms of any prior and now-superseded employment-related agreements. But Section 12.1 does not save the Debtors' argument because it does not contradict or supersede Section 11.5 of the Contribution Agreement.[9]

[9] The Debtors' heavy reliance on *Grey v. American Management Services*, 139 Cal. Rptr. 3d 210 (Ct. App. 2012), *see* Mot. ¶¶ 19–24, is therefore unavailing. In *Grey*, the employee signed an employment contract with an integration clause providing that it "is the entire

(footnote continued)

26. The Debtors' fixation on the Employment Agreement's limited integration provision reveals a core premise that is never expressly stated in the Motion but is evident therefrom. Specifically, the Debtors seem to contend that two contracts that each have integration clauses can never be integrated with each other.[10] By the Debtors' telling, if the two documents "have related subject matters," then courts must enforce the integration clause in one but not the other, whereas if the two documents "have separate subject matters," then they cannot be integrated as a matter of law. Mot. ¶ 24.

> In other words, if the Employment Agreement and Contribution Agreement are deemed to have related subject matters, this Court must enforce the "entire agreement" provision in the Employment Agreement and rule against Mrs. Azria. If, instead, the Court believes the Employment Agreement and Contribution Agreement have separate subject matters, then the Court must … rule against Mrs. Azria. [*Id.* (emphasis omitted).]

27. The Debtors' theory that two documents with their own integration clauses can never be integrated with each other is not borne out by the case law. Judge Glenn's ruling in

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agreement between the parties ***in connection with Employee's employment*** with [the employer], and supersedes all prior and contemporaneous discussions and understandings." *Id*. at 212 (emphasis added). Unsurprisingly, the court applied that integration provision in an employment-related lawsuit to bar the employer from relying on a broader employment-related arbitration policy in a different employment-related document. If Lubov Azria were attempting to resolve an employment-related lawsuit by reference to an employment-related document other than the Employment Agreement, *Grey* would be on-point. But in this Adversary Proceeding – which concerns "'whether or not the various components of the February 2015 Restructuring constitute a single, integrated transaction,'" Mot. ¶ 9 (quoting Paragraph 18 of the Azrias' Adversary Complaint), *Grey* is of no assistance to the Debtors' argument.

[10] This argument is most clearly apparent from the Debtors' emphasis on the lack of a second integration clause in the two agreements that Judge Bernstein treated as one in *In re Teligent, Inc.*, 268 B.R. 723 (Bankr. S.D.N.Y. 2001). *See* Mot. ¶¶ 32–34 (attempting to distinguish *Teligent* on that basis). Indeed, the Debtors even go so far as to hunt down and attach the *Teligent* contracts (which are not publicly available from the docket) as Exhibits 3 and 4 to the *Declaration of Yates M. French in Support of [the Motion]* [Adv. Docket No. 6]. That is, even though Judge Bernstein did not regard the absence of a second integration clause important enough to note in his written opinion, the Debtors posit that such absence was somehow the deciding factor in Judge Bernstein's analysis.

Ocwen Loan Servicing, LLC v. ResCap Liquidating Trust (In re Residential Capital, LLC), 533 B.R. 379, 387–88 & 396 (Bankr. S.D.N.Y. 2015) ("*ResCap*"), is highly instructive. In *ResCap*, Judge Glenn concluded that four contracts relating to the sale of the debtors' mortgage loan servicing platform and loan servicing rights were "fully integrated and should be read and interpreted together" – even though at least three of the contracts (the Asset Purchase Agreement or APA; the Servicing Transfer Agreement, or STA; and the Transition Services Agreement, or TSA) each contained integration clauses. *Id*. at 387–88 & 396.

28. In *ResCap*, the APA's integration clause stated that the APA, "together with the Ancillary Agreements [a defined term that encompassed both the STA and the TSA], constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, both oral and written, between the parties with respect to the subject matter hereof." *Id.* at 397 n.13. The STA's integration clause stated that the STA, "including the Exhibits and Schedules hereto and the documents and other writings referred to herein or therein or delivered pursuant hereto, together with the APA contains the entire agreement and understanding of the Parties with respect to its subject matter." *Id.* at 387. Finally, the TSA's integration clause provided that the TSA, "including the Schedules hereto, which are each hereby incorporated herein and made a part hereof, contains the entire agreement between the Parties with respect to the subject matter hereof…." *Id.* at 387–88.

29. Judge Glenn ruled that all three documents "are fully integrated and should be read and interpreted together" because they "all relate to the sale of ResCap's servicing platform and mortgage servicing rights to Ocwen," "the contracts refer to one another," and the "agreements together encompass the entire transaction of the sale from ResCap to Ocwen." *Id.* at 397. He concluded that "too much emphasis" was being placed on the integration clause in

the STA, thereby robbing the integration clauses in the APA and the TSA of effect. *Id.* at 397–98. Instead, "the contracts should be read together as one single agreement." *Id.* at 398. *See also Pieco Inc. v. Atlantic Computer Sys. (In re Atlantic Computer Sys.)*, 173 B.R. 844, 846–47 (S.D.N.Y. 1994) (reversing the bankruptcy court's determination that several agreements were separate contracts that could be separately assumed or rejected on account of their individual integration clauses); *KFC Corp. v. Wagstaff Minn., Inc. (In re Wagstaff Minn., Inc)*, 2012 WL 10623, at *5–7, 2012 U.S. Dist. LEXIS 372, at *5–6 (D. Minn. 2012) (reversing the bankruptcy court on essentially the same basis); *Halliburton Co. v. KBR, Inc.*, 446 S.W.3d 551, 564–65 (Tex. Ct. App. 2014) (concluding that two agreements, each of which contained its own integration clause, must be "construed together as one contract" because the two agreements "are facets of the same transaction entered into for [a] unitary purpose" such that "[e]ach agreement provides an integral component to the transaction," with one agreement being "the broader umbrella agreement, providing the structure for the" transaction while the other agreement "sets out the more technical principles" regarding the allocation of tax liabilities in the context of that transaction; "[i]n other words, the agreements were vital and interrelated parts of one deal").

30. Here, too, the Debtors are placing more weight on the Employment Agreement's limited integration provision (§ 12.1) than that provision can bear, and in the process are depriving the Contribution Agreement's robust integration provision (§ 11.5) of any effect whatsoever. The effect is that the Debtors must strain to find conflicts between two documents that can easily be read as consistent. The Debtors speculate, for example, that the parties would be hopelessly confused about where to litigate any disputes and which law applies: "Imagine, for the moment, that a court decided to treat the two contracts as one, how would disputes be resolved; would they be litigated in New York applying New York law or arbitrated in California

applying California law?" Mot.¶ 29. The answer is simple: If the dispute concerns "the mechanics of the modifications of BCBG's capital structure," *id*. ¶ 31 n.4, the dispute will be litigated in a New York court applying New York law. Whereas if the dispute concerns "the terms of Mrs. Azria's continuing employment at BCBG," *id*., it will be arbitrated in California under California law.

31. In short, the proper analysis of whether two agreements with their own integration clauses are integrated with each other is what Judge Glenn undertook in *ResCap*: a close examination of the two documents together and in light of each other, followed by a good-faith effort to give effect to the entirety of the parties' negotiated language. That is what California law requires. *See, e.g.*, Cal. Civ. Code § 1641 ("The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other."); Cal. Civ. Code § 1642 ("Several contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction, are to be taken together."); *Katemis v. Westerlind*, 261 P.2d 553, 557 (Cal. Dist. Ct. App. 1953) ("It is well settled that where an agreement is expressed through the medium of a series of writings such documents must be construed collectively in ascertaining the whole contract between the parties.").[11]

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[11] *See also, e.g.*, *Nish Noroian Farms v. Agricultural Labor Relations Bd.*, 677 P.2d 1170, 1175 (Cal. 1984) ("A written instrument must be construed as a whole, and multiple writings must be considered together when part of the same contract. The factual context in which an agreement was reached is also relevant to establish its meaning unless the words themselves are susceptible to only one interpretation."); *Moore v. Wood*, 160 P.2d 772, 777 (Cal. 1945) ("for the purpose of ascertaining the intention of the parties, their agreement must be construed as a whole, so that when read together all of its provisions may be given effect"); *Zalkind v. Ceradyne, Inc.*, 124 Cal. Rptr. 3d 105,116 (Cal. Ct. App. 2011) ("To the extent practicable, the meaning of a contract must be derived from reading the whole of the contract, with individual provisions interpreted together, in order to give effect to all provisions and to avoid rendering some meaningless."); *Resloff v. Smith*, 249 P. 886, 889 (Cal. Ct. App. 1926) ("It is fundamental in the interpretation of contracts that the various terms will be harmonized, if possible.").

32. Finally, to the extent there is any residual doubt as to the relationship between the Contribution Agreement and the Employment Agreement, the Court has before it the sworn testimony of Max Azria and Lubov Azria, both of whom categorically state that they never would have placed their signatures on any of the documents necessary to facilitate the February 2015 Transaction if the Employment Agreement was not part of the package deal. *See* Lubov Azria Decl. ¶¶ 4–8; Max Azria Decl. ¶¶ 2–4. This is competent evidence under California law because it is not used being offered to give either contract "a meaning to which it is not reasonably susceptible." *Morey*, 75 Cal. Rptr. 2d at 578. *See also* Cal. Civ. Code § 1647 ("A contract may be explained by reference to the circumstances under which it was made, and the matter to which it relates.").[12]

C. The Authorities Cited in the Motion Do Not Support the Debtors' Position

33. The Motion asserts that, "[a]s a matter of statutory law, California courts may only integrate contracts '***relating to the same matters***.'" Mot. ¶ 24 (quoting Cal. Civ. Code § 1642, with emphasis added by the Debtors). The statute, however, is not framed as a limitation on what may be integrated, but rather as an interpretive maxim derived from the common law: "Several contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction, are to be taken together." Cal. Civ. Code § 1642. These types of interpretive common law maxims can be found throughout California's Civil Code, often in rather cryptic phrasing. *See, e.g.*, Cal. Civ. Code § 3521 ("He who takes the benefit must bear the burden."); Cal. Civ. Code § 3537 ("Superfluity does not vitiate.").

[12] At a bare minimum, this evidence creates a genuine issue of material fact. *See supra* ¶ 18 (discussing the summary judgment standard under which a fact is "material" if it might affect the outcome under governing law; a dispute over facts is "genuine" if the factfinder could rule in the non-moving party's favor; and all reasonable inferences must be drawn in the light most favorable to the non-moving party).

34. The non-limiting nature of the interpretive maxim in section 1642 of the Civil Code is evident from California cases such as *Holguin v. DISH Network LLC*, 178 Cal. Rptr. 3d 100 (Ct. App. 2014). In *Holguin*, the court explained that even though the parties to various contracts were different (and thus the situation did not come within the maxim expressed in the statute, which speaks of contracts "between the same parties"), the contracts could nonetheless be integrated. "Although Civil Code section 1642 references the 'same parties,' the common law rule is not so limited. Where, as here, the written instruments are all part of the same transaction, they may be considered together even when the counterparties to each instrument are different." *Id*. at 112 (citing *Harm v. Frasher*, 5 Cal. Rptr. 367, 373 (Ct. App. 1960) (rejecting the argument that "the rule codified by Section 1642 of the Civil Code [is] a rule of exclusion," and thus rejecting the contention that "separate 'contracts' may not be considered together unless each contract so considered is signed by the same parties and identifies the same subject matter")).

35. Just as the parties need not be identical for two contracts to be integrated, *see id*.; *see also In re Teligent*, 268 B.R. at 729 ("That some of the parties signed one of the agreements but not the other is [not inconsistent with integration, as] each party signed the part of the overall agreement that touched on that party's rights."), there is no requirement that the subject matter of the two documents be precisely identical. *E.g.*, *Holguin*, 178 Cal. Rptr. 3d at 112 (rejecting the argument that multiple writings were "'antagonistic' and thus should not be read together" because the "fact that each of the written instruments had slightly different (though overlapping) areas of concern does not mean that they are not interrelated"); *Harm*, 5 Cal. Rptr. at 415 (explaining that the "general subject matter of the transaction may be identified by referring to all of the instruments executed in connection therewith, even though the subject matter specifically described in each instrument may differ").

36. From both the Azrias' perspective and the counterparty's perspective, the February 2015 Restructuring was understood to be a single matter – a ceding of equity and control by the Azrias, and an investment by the counterparty. From the Azrias' perspective, the transaction fundamentally reordered their relationship to the company they built and nurtured by changing them from 100% equityholders to 20% minority equityholders with carefully negotiated employment agreements intended to safeguard them from any differing vision or business plan that the new majority owner might adopt. The contract counterparty's similar assessment is evident from the term sheet sent to Max Azria, *see* Max Azria Decl. ¶ 3 & Ex. 1, which specifically listed as a key term of the transaction being proposed "employment agreements for each of Max Azria and Lubov Azria …." For purposes of whether the contracts are integrated, this relationship in subject matter (to different facets of the February 2015 Restructuring) more than suffices under California law. *See, e.g.*, *Fillpoint, LLC v. Maas*, 146 Cal. Rptr.3d 194, 197 & 200–03 (Ct. App. 2012) (concluding that an executed purchase agreement and employment agreement, each of which contained an integration clause, "must be read together as an integrated agreement" where the agreements were "entered at roughly the same time as part of a single transaction" and the "purchase agreement contained an integration clause that made the blank form employment agreement [which was an exhibit to the purchase agreement] a part of the purchase agreement").

37. The Motion repeatedly quotes *Wagner v. Glendale Adventist Medical Center*, 265 Cal. Rptr. 412, 416 (Ct. App. 1989), to the effect that "it cannot reasonably be presumed that the parties intended to integrate two directly contradictory terms in the same agreement." *E.g.*, Mot. ¶¶ 26, 30, 33, 34. But neither *Wagner* nor the case it was quoting (*Gerdlund v. Electronic Dispensers International*, 235 Cal. Rptr. 279, 282 (Ct. App. 1987)) concerned the integration of

agreements with contradictory terms. Rather, the pertinent discussion in both cases concerned whether parol evidence could be introduced to contradict the express terms of a written contract – in each case, written employment contracts that were expressly at will and disgruntled employees who hoped to use parol evidence to demonstrate that they could only be fired for cause. Here, of course, the Court is faced with two written agreements, executed at the same time and as part of a single transaction, that are in no sense "directly contradictory."

38. Nor are the Debtors' citations to *Oracle Corp. v. Falotti*, 319 F.3d 1106 (9th Cir. 2003) (discussed in Mot. ¶ 30), and *In re AbitibiBowater Inc.*, 418 B.R. 815 (Bankr. D. Del. 2009) (discussed in Mot. ¶ 31), of any assistance to their argument. The former involved a highly fact-specific dispute concerning whether an executive who was fired from his job in Switzerland in apparent violation of Swiss law should still have been considered "employed" for purposes of a California-law-based stock option contract. Whether the same employee who was fired from the same job could simultaneously be said to be "employed" under Swiss law yet "unemployed" under California law is certainly an interesting choice-of-law issue, but is far removed from the issues here.

39. In *Abitibibowater*, the bankruptcy court considered whether the debtors could reject a 2001 call agreement, which the counterparty argued could not be rejected alone because it was integrated with a 1981 partnership agreement that was amended in 2001. *See* 418 B.R. at 818. The partnership agreement governed the relationship of the partners and their management and operation of a newsprint mill, whereas the much-later-executed call agreement provided an option for one of the two partners to purchase the shares of the company that owned the other partnership interest and the amendment to the partnership agreement provided for the substitution of the partners. *Id.* at 823. The court concluded that in view of the factual record

presented, including, among other things, the expanse of time between execution of the partnership agreement and the call agreement, the different subject matters of the two agreements, that the agreements were not given in consideration for one another, and that subsequent amendments to the partnership agreement and the call agreement were designed to keep the economics of the two agreements separate, "the parties intended to, and did, make separate agreements" that were not integrated and thus the debtors could reject the call agreement alone. *Id.* at 824–828. Notably, the court cautioned that "no single item here may be determinative of the issue," *id.* at 828, and thus even the purported presence of a few, but not all, of the factors present in *Abitibibowater* cannot be outcome determinative on the issue of integration in the case at bar.

V. CONCLUSION

40. For all the reasons set out above, the Azrias respectfully request that the Motion be denied.

DATED: April 15, 2017

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APPENDED SEPARATE STATEMENT

Debtors' Allegedly Undisputed Facts	Azrias' Responses
Mot. ¶ 1: On January 26, 2015, debtor BCBG Max Azria Global Holdings, LLC ("Global Holdings") entered into a Contribution Agreement by and among each of the "Members" of the company (Azria Enterprises, Inc. and AZ6, LLC), Fashion Funding, LLC (an affiliate of Guggenheim), certain GPIM Lenders (solely as to certain sections), GLAC Holdings, LLC (solely as to section 11.18), and Max and Lubov Azria (solely as to certain sections) (the "Contribution Agreement"). Pursuant to the terms of the Contribution Agreement, Fashion Funding LLC contributed $100 million in exchange for 40% equity membership interests. As contemplated by the Contribution Agreement, the GPIM Lenders exchanged preexisting debt in exchange for 40% equity membership interests and new debt. Max and Lubov Azria, who previously had held 100% of the membership interests through the "Members," retained 20% of the equity in Global Holdings. The Azrias also made covenants not to compete with the company, not to disparage the company, and recognizing the company's interest in certain intellectual property.	Paragraph 1 is generally an accurate summary description of the Contribution Agreement. In particular, the Debtors are correct that the Azrias "held 100% of the membership interests through the 'Members,'" *i.e.*, Azria Enterprises, Inc. and AZ6, LLC, and are further correct that the Members are parties to the Contribution Agreement in its entirety – not merely specified sections. *See also* First Day Decl. ¶ 31; Lubov Azria Decl. ¶¶ 3 & 5–6; Max Azria Decl. ¶ 2.
Mot. ¶ 2: During this transaction, both the Azrias, the new equity holders, and the Debtors were represented by counsel. Skadden, Arps, Slate, Meagher & Flom, LLP represented the company and the Azrias. Davis Polk & Wardell represented Guggenheim Capital, and Weil, Gotshal & Manges LLP represented Guggenheim Partners Investment Management.	Notwithstanding the lack of evidence for the assertions in Paragraph 2, it is and was the Azrias' understanding and belief that they were personally represented by Skadden, Arps, Slate, Meagher & Flom, LLP ("Skadden") during the negotiation of the February 2015 Restructuring. However, in response to inquiries from the Azrias' undersigned counsel, Skadden has denied such representation. The Azrias reserve all rights, claims, and defenses in this regard vis-à-vis Skadden and the Debtors.

Debtors' Allegedly Undisputed Facts	Azrias' Responses
Mot. ¶ 3: Mrs. Azria signed the Contribution Agreement solely for purposes of Sections 2.8, 3.2(o), 5.5, 7.11, 7.12, 7.14, 7.15, 11.8, and 11.13.	This assertion is incomplete. It is true that the signature-block specification specifically identifies Sections 2.8, 3.2(o), 5.5, 7.11, 7.12, 7.13, 7.14, 7.15, 11.8, and 11.13 (collectively, the "Specifically Enumerated Sections"). However, those Specifically Enumerated Sections are situated within the context of the broader document as a whole, and cannot be fairly interpreted, understood, or applied without reference to such context. The purpose and effect of the signature-block specifications is to protect Lubov Azria by ensuring that she is not held personally liable if another party fails to comply with its obligations. The specified sections are those that either pertain to the Azrias' personal performance or their remedies against specified third parties: the use of their publicity rights (§ 2.8), delivery of evidence that their prior personal agreement had been terminated (§ 3.2(o)), limiting their responsibility to only specific representations and warranties (§ 5.5), delineating their personal releases, IP transfers, and non-disparagement / noncompetition obligations (§§ 7.11–7.15), consenting to certain remedies for any personal breach (§ 11.8), and limiting their personal remedies vis-à-vis the new lenders (§ 11.13). The signature-block specification's identification of the Specifically Enumerated Sections has the effect of negating any argument that a general, unqualified signature could make the Azrias personally liable as to matters over which they have no control – not to shred the background tapestry of the agreement by excising all of its recitals and exhibits, all definitions of important terms (§ 1.1), and (among many others) provisions concerning the document's binding effect (§ 11.3), further assurances (§ 11.6), facsimile signatures and counterparts (§ 11.4), and the interpretive effect of headings (§ 11.11).

Debtors' Allegedly Undisputed Facts	Azrias' Responses
Mot. ¶ 4: Section 11.5 of the Contribution Agreement contains an integration clause, integrating the Contribution Agreement with several form contracts attached as exhibits, including the Employment Agreement. Notably, Mrs. Azria did not sign the Contribution Agreement with respect to Section 11.5.	This statement is incomplete. First, Section 11.5 of the Contribution Agreement does not merely integrate the Contribution Agreement with "several form contracts attached as exhibits, including the Employment Agreement," Mot. ¶ 4, though it does do that as well. The scope of Section 11.5 is broader, as it integrates "collectively, this Agreement [*i.e.*, the Contribution Agreement], the Operating Agreement, ***the Employment Agreements***, the Services Agreement, the Lease Amendments, the Exchange Agreement, the Amended & Restated Senior Credit Agreement and each other document, instrument, certificate, or agreement to be executed by the parties to effect the transactions contemplated by this Agreement." Contribution Agreement § 1.1 (definition of "Transaction Agreements," emphasis added). The "Employment Agreements," in turn, are defined as "the Lubov Azria Employment Agreement and the Max Azria Employment Agreement" – with the "Lubov Azria Employment Agreement" defined to mean "the Employment Agreement ***to be entered into*** with Lubov Azria in the form attached hereto as Exhibit C." *Id*. (emphasis added). Thus, Section 11.5 of the Contribution Agreement integrates the Contribution Agreement with the Employment Agreement itself (not merely a draft thereof, as the Motion suggests). The second sentence ("Notably, Mrs. Azria did not sign the Contribution Agreement with respect to Section 11.5.") is incomplete for the reasons set out in the Azrias' response to the Debtors' third allegedly undisputed fact (Mot. ¶ 3).

Debtors' Allegedly Undisputed Facts	Azrias' Responses
Mot. ¶ 5: Global Holdings is the only Debtor that is a party to the Contribution Agreement. A separate Debtor, BCBG Group did not enter into the Contribution Agreement. BCBG Group entered into a separate employment agreement with Mrs. Azria with an effective date of February 5, 2015 (the "Employment Agreement"). *See* Ex. 2, Employment Agreement. No other individuals or entities were party to Mrs. Azria's Employment Agreement. The Employment Agreement contains an "Entire Agreement" provision in section 12.1, which states as follows: > Except as otherwise expressly provided herein, this Agreement constitutes the entire agreement between the parties hereto with regard to the subject matter hereof, superseding all prior understandings and agreements, whether written or oral. This Agreement may not be amended or revised except by a writing signed by each of the parties.	The paragraph is technically accurate, though the absence of a separate signature block on the Contribution Agreement for the particular entity called BCBG Max Azria Group, LLC ("BCBG Group"), and the absence of a separate signature block on the Employment Agreement for the particular entity called BCBG Max Azria Global Holdings, LLC ("Global Holdings"), are not germane. The counterparty to the restructuring referred to a transaction with an undifferentiated "BCBG" when forwarding the term sheet, *see* Max Azria Decl. ¶ 3 & Ex. 1, and did not consider any distinction between BCBG Group and Global Holdings to be significant when specifying in the term sheet that "definitive documentation will include employment agreements for each of Max Azria and Lubov Azria," *id*., without specifying which particular BCBG entity would be the counterparty. Nor have the Debtors previously assigned significance to which particular entity was technically a counterparty to the Azrias' employment agreements, describing (for example) the February 2015 Restructuring as a transaction in which "Max and Lubov Azria agreed to … the terms of standalone employment agreements, each dated February 5, 2015, for three year terms …." First Day Decl. ¶ 31. *See also* Mot. ¶ 31 n.4 (explaining that "although both the Contribution Agreement and the Employment Agreement generally relate to the 2015 restructuring, they have distinct purposes: the Contribution Agreement to lay out the mechanics of the modifications of BCBG's capital structure, and the Employment Agreement to lay out the terms of Mrs. Azria's continuing employment at BCBG" – with no artificial distinction drawn between Global Holdings and BCBG Group).

Debtors' Allegedly Undisputed Facts	Azrias' Responses
Mot. ¶ 6: The Employment Agreement governs the terms of Mrs. Azria's employment with BCBG Group and provides that Mrs. Azria would serve as BCBG Group's Chief Creative Officer until February 5, 2018, the third anniversary of February 5, 2015 (the "Term"), subject to specified early termination provisions in the agreement. The Employment Agreement also provided that during the Term, Mrs. Azria would be entitled to a base salary at an annual rate of $2.15 million (the "Base Salary"), and that Mrs. Azria would be entitled to the following upon her termination: (A) in the event that Mrs. Azria is terminated for any reason or no reason, $5 million in cash, payable in equal annual installments of $1 million; and (B) in the event that Mrs. Azria is terminated without cause, continued payment of her Base Salary from the date she is terminated through the end of the Term.	This paragraph is accurate but lacks context. As detailed in the contemporaneously-filed declarations, the terms set out in the Employment Agreement were core components of the larger deal: "I have heard the Debtors describe the terms of my employment agreement as a 'golden parachute.' That is not true. The employment agreement, including the severance payments provided for therein, is and always was just one piece of a much larger deal in which everything provided to Max and me was given in exchange for everything that we gave up – including 80% of the business we built together over many years of hard work." Lubov Azria Decl. ¶ 7. *Accord* Max Azria Decl. ¶ 4 (describing the serious health issues that led him to insist on protection for his spouse, and concluding: "I never would have placed my signature on any of the documents to effect the restructuring – in any capacity, on behalf of any entity or entities – without complete confidence that the terms of Lubov's employment agreement (including the severance that would protect her in the event something happened to me) were part of the deal.").

Debtors' Allegedly Undisputed Facts	Azrias' Responses
Mot. ¶ 7: In addition to the distinct subject matters they discuss, the Contribution Agreement and the Employment Agreement also have important legal differences that reinforce the significance of the "Entire Agreement" provision of the Employment Agreement. Specifically, the two agreements: a. Are between different parties (*compare* Employment Agmt. at Intro. *with* Contribution Agmt. at Intro.); b. Have different terms (*compare* Employment Agmt. at § 5.4 (three year term) *with* Contribution Agmt. at §§ 1.1, 9.1 (certain covenants expire in 2022, no fixed term for remainder of contract)); c. Are governed by different state's law (*compare* Employment Agmt. at § 12.8 (California law) *with* Contribution Agmt. at § 11.9 (New York law)); and d. Require that disputes be heard in conflicting forums (*compare* Employment Agmt. at § 12.6 (arbitration) *with* Contribution Agmt. at § 11.9 (bench trial in New York state or federal court).)	The Motion's citations to various provisions of the two agreements are accurate, but the inference urged – that the two inherently conflict – is wrong. The choice of law and choice of forum provisions are good examples. It is perfectly appropriate to provide that disputes concerning the property transfers in the Contribution Agreement must be resolved by a court applying New York law, whereas disputes about Lubov Azria's employment must be resolved by an arbitrator applying California law. Nothing prevents contracting parties from selecting one forum and one state's substantive law to govern certain types of disputes, while simultaneously agreeing that a different forum and a different state's substantive law will govern other types of disputes. The only irreconcilable contradiction would be if the parties purported to designate as "exclusive" two different forums or two different states' substantive law ***as to the same matters***. If, for example, the validity of the terms and conditions of a particular real property lease were simultaneously required to be interpreted and enforced solely in a New York court and also solely in a California arbitration, there would be an irreconcilable conflict. That is not the situation here.

Debtors' Allegedly Undisputed Facts	Azrias' Responses
Mot. ¶ 8: As part of their restructuring efforts, the Debtors analyzed their workforce and organizational structure to identify opportunities to reduce costs and increase efficiency and profitability. In light of this analysis, the Debtors recently implemented a reduction in employee headcount at their corporate headquarters, as well as a reorganization of the Debtors' organizational hierarchy. As part of this headcount reduction and reorganization, the Debtors determined to part ways with Mrs. Azria. Accordingly, BCBG Group gave notice to Mrs. Azria on March 8, 2017 that her employment was being terminated, which will be effective as of May 7, 2017 due to the Debtors' statutory obligations under the federal Worker Adjustment and Retraining Notification Act and similar state law. The organizational changes have already been implemented and Mrs. Azria is no longer working at the company.	For purposes of this Motion, the Azrias do not take issue with the quoted assertions. It is telling, however, that the Debtors' explanation for parting ways with Lubov Azria is precisely the circumstance that the Azrias sought to protect themselves against when they insisted that employment agreements be a part of the February 2015 Restructuring. Prior to the transaction, the Azrias were the sole owners of the company. As such, they "were not overly concerned about employment agreements, restrictive covenants, severance provisions, or similar matters." Lubov Azria Decl. ¶ 4; *see* Max Azria Decl. ¶ 2. That relative lack of concern changed when the Azrias were evaluating the terms and conditions on which they would give up 80% of their equity: "It was essential to me that the change in ownership and control of the Company be accompanied by protections for Max and me, including those that were to be included in our new employment contracts with the Company." Lubov Azria Decl. ¶ 4; *accord* Max Azria Decl. ¶ 4. Those protections were necessary in the event the new majority equity holder elected "to reduce costs and increase efficiency and profitability" by "implement[ing] a reduction in employee headcount [and] a reorganization of the Debtors' organizational hierarchy," Mot. ¶ 8, to the detriment of the Azrias.

CERTIFICATE OF SERVICE

I, Robert J. Pfister, a member of the bar of this Court, on April 15, 2017, served the foregoing *Plaintiffs' Opposition to Defendants' Motion for (I) Partial Summary Adjudication of Adversary Proceeding and (II) Entry of an Order Authorizing the Rejection of Lubov Azria's Employment Agreement* by electronic mail on counsel for the Debtors and counsel for the Official Committee of Unsecured Creditors, as follows:

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