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

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In re: :
 : Chapter 11
BCBG MAX AZRIA GLOBAL HOLDINGS, :
LLC, *et al.*, : Case No. 17-10466 (SCC)
 : Debtors.¹ :
 : (Joint Administration Requested)
 :
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**OBJECTION AND RESERVATION OF RIGHTS OF BLOOMINGDALE’S, INC.,
BLOOMINGDALES.COM, LLC, AND MACY’S RETAIL HOLDINGS, INC. TO
DEBTORS’ PROPOSED CURE AMOUNTS SCHEDULED IN
THE PLAN SUPPLEMENT**

**TO THE HONORABLE SHELLEY C. CHAPMAN,
UNITED STATES BANKRUPTCY JUDGE:**

Bloomingdale’s, Inc. (“Bloomingdale’s”), Macy’s Retail Holdings, Inc. (“Macy’s”) and
Bloomingdales.com, LLC (“Bloomingdales.com” and, together with Bloomingdale’s and Macy’s,

¹ 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.

the “Macy’s Entities”), submit this objection and reservation of rights (this “Objection”) to the cure amounts proposed in the Debtors’ *Plan Supplement* (Docket No. 523). In support of this Objection, the Macy’s Entities respectfully state:

BACKGROUND

1. On February 28, 2017 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of New York (this “Court”).

2. Upon information and belief, the Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.

3. Prior to the Petition Date, Bloomingdale’s, Inc. and BCBG Max Azria Group, LLC (the “BCBG Group Debtor”) entered into that certain License Agreement dated as of July 19, 2004, as amended from time to time (the “Bloomingdale’s License Agreement”). Pursuant to Article 4 of the Bloomingdale’s License Agreement, each month of the Bloomingdale’s License Agreement, Bloomingdale’s, Inc. pays to the BCBG Group Debtor the Monthly Settlement Amount (as defined in Article 4.4 of Bloomingdale’s License Agreement). The amount paid by Bloomingdale’s to the BCBG Group Debtor is net of the charges set forth in the Bloomingdale’s License Agreement, including but not limited to the Monthly License Fee that is due and owing to Bloomingdale’s, Inc. under the Bloomingdale’s License Agreement.

4. Prior to the Petition Date, Macy’s Retail Holdings, Inc. and the BCBG Group Debtor entered into that certain Licensed Department Agreement dated as of October 3, 2004, as amended and assigned by the parties from time to time (the “Macy’s License Agreement”). Pursuant to Article 8 of the Macy’s License Agreement, each month of the Macy’s License Agreement, Macy’s Retail Holdings, Inc. pays to the BCBG Group Debtor the amounts detailed on the Macy’s License

Agreement. The monthly amount paid by Macy's to the BCBG Group Debtor is net of the charges set forth in the License Agreement, including but not limited to the License Fee (as defined in Section 5 of the Macy's License Agreement) that is due and owing to Macy's under the Macy's License Agreement.

5. Prior to the Petition Date, Bloomingdales.com, LLC and the BCBG Group Debtor entered into that certain Merchandise Supply Agreement effective as of December 22, 2014, as amended from time to time (the "Supply Agreement").² Pursuant to Article 6 of the Supply Agreement Bloomingdales.com, LLC pays to the BCBG Group Debtor the amounts set forth in Article 6.4 of the Supply Agreement. The amount paid by Bloomingdales.com to the BCBG Group Debtor is net of the charges set forth in the Supply Agreement, including but not limited to the License Fee (as defined in the Supply Agreement) that is due and owing to Bloomingdales.com under the Supply Agreement.

6. On March 23, 2017, counsel for the Macy's Entities and counsel for the Debtors reached an agreement whereby each of the Macy's Entities can continue, in the ordinary course of business of the BCBG Group Debtor and Macy's Entities, to deduct the monthly amounts owing by the BCBG Group Debtor to the Macy's Entities under each of the Agreements, including, but not limited to, any and all amounts owing to the Macy's Entities by the BCBG Group Debtor for the period prior to Petition Date under the doctrine of recoupment without further order of the Bankruptcy Court. Counsel for the Macy's Entities and counsel for the Debtors also reached an agreement whereby the Macy's Entities may exercise all rights of recoupment under applicable pursuant to any and all amounts owing to the Macy's Entities by the BCBG Group Debtor under the Agreements.

² The Bloomingdale's License Agreement, the Macy's License Agreement, and the Supply Agreement shall collectively be referred to as the "Agreements".

7. On June 8, 2017, the Macy's Entities timely and properly filed proofs of claim for amounts due and owing under the Agreements. Specifically, Macy's filed a claim, identified as Claim No. ECN-287, asserting \$520,823.00 as the aggregate amount due and owing under the Macy's License Agreement, Bloomingdale's filed a claim, identified as Claim No. ECN-289, asserting an unknown amount as the amount due and owing under the Bloomingdale's License Agreement, and Bloomingdales.com filed a claim, identified as Claim No. ECN-288, asserting an unknown amount as the amount due and owing under the Supply Agreement.

8. On June 23, 2017, the Debtors filed the solicitation version of their *Amended Joint Plan of Reorganization of BCBG Max Azria Global Holdings, LLC and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (Docket No. 461) (the "Plan"). Pursuant to Article V of the Plan, the Debtors propose to assume those leases and executory contracts identified on the Schedule of Assumed Executory Contracts and Unexpired Leases attached to the Plan Supplement.

9. On July 12, 2017, the Debtors filed their Plan Supplement. The Schedule of Assumed Executory Contracts and Unexpired Leases attached to the Plan Supplement identifies the Agreements as being assumed in connection with the Plan. The Debtors propose a cure amount of \$0.00 to assume the Bloomingdale's License Agreement (the "Bloomingdale's Proposed Cure Amount") and a cure amount of \$125,215.00 to assume the Macy's License Agreement (the "Macy's Proposed Cure Amount") and, together with the Bloomingdale's Proposed Cure Amount, the "Proposed Cure Amounts"). The Debtors have not designated the Supply Agreement on the Schedule of Assumed Executory Contracts and Unexpired Leases attached to the Plan Supplement for assumption in connection with the Plan.³

10. As provided in the Plan Supplement, the deadline to object to confirmation of the Plan

³ The Macy's Entities expressly reserve any and all rights with respect to the Supply Agreement in the event the Debtors seek to assume or assume and assign the Supply Agreement.

is July 17, 2017 at 4:00 p.m.⁴

OBJECTION

11. While the Macy's Entities do not generally object to the Plan or the assumption of the Agreements as part of the Plan, the Macy's Entities object to the Proposed Cure Amounts.

12. Any assumption of the Agreements by the Debtors pursuant to the terms of the Plan must be conditioned on the Debtors' compliance with the requirements of section 365 of the Bankruptcy Code and all terms of the Agreements, including, but not limited to, paying all amounts due and owing under the Agreements through the effective date of the assumption and assignment of the Agreements.

13. As of the date of this Objection, based on information available to the Macy's Entities, the cure amount due and owing under the Macy's License Agreement is \$520,823.00⁵ (collectively, the "Cure Amount").⁶

14. The Cure Amount represents the known amounts, based on information available to the Macy's Entities, currently due and owing to the Macy's Entities under the Agreements, exclusive of any sums which have become due, have been paid, or are discovered after the date of this Objection. The Cure Amount may increase prior to any actual date of assumption and assignment of the Agreements if the Debtors do not pay all amounts that accrue after the date of this Objection, and other amounts that may come due, pursuant to the terms of the Agreements and regardless of when

⁴ Notwithstanding the foregoing, Article V.E of the Plan provides that the deadline to object to any cure amounts provided by the Debtors is three days prior to the Confirmation Hearing (as defined in the Plan), which is currently scheduled for July 25, 2017.

⁵ An itemization of the Cure Amount for the Macy's License Agreement is included in the proof of claim filed by Macy's.

⁶ Bloomingdale's is in discussions with the Debtors regarding an amendment to the Bloomingdale's License Agreement. To the extent that Bloomingdale's and the Debtors are unable to finalize an amendment to the Bloomingdale's License Agreement that is acceptable to Bloomingdale's, Bloomingdale's reserves all of its rights with respect to the Bloomingdale's Proposed Cure Amount, the Plan, and the Plan Supplement.

those amounts accrued.

15. Accordingly, the Macy's Entities expressly reserve their rights to amend or supplement this Objection and the Cure Amount from time to time and at any time, and request that the Debtors remain liable for, among other things: (a) certain amounts accruing under the Agreements which may be unbilled as of the date hereof or are otherwise undetermined as of the date hereof, (b) any regular or periodic adjustment of charges under the Agreements which were not due or had not been determined as of the date of this Objection; and/or (c) other contractual obligations under the Agreements.

16. The Macy's Entities submit that, as part of the assumption of the Agreements, the Debtors or the assignee(s) must promptly pay to the Macy's Entities all amounts due and owing under the Agreements through the effective date of assumption and assignment of the Agreements (*i.e.*, the Cure Amount), as the same may increase to reflect other amounts that become due or are determined after the date of this Objection. In addition, the Macy's Entities submit that the Debtors or the assignee(s) must be responsible for paying the following charges when they become due, regardless of whether these obligations and charges accrue prior to or after effective date of assumption of the Agreements:

- a) all accruing but unbilled charges under the Agreements, including but not limited to all unpaid adjustments and reconciliations;
- b) all regular or periodic adjustment of charges under the Agreements which were not due or had not been determined as of the date of this Objection; and
- c) all indemnification and other contractual obligations under the Agreements.

17. Moreover, and as set forth in detail in the Agreements, because the amounts owing to the Macy's Entities are not known until the end of each business month, there may be unknown and/or unasserted claims (among various other types of claims and liabilities) against the Macy's Entities

that presently exist or may exist in the future, for which the Debtors may be obligated to indemnify the Macy's Entities. The Macy's Entities expressly reserve their rights under the Agreements and applicable law to assert against the Debtors or any other appropriate party, including the reorganized Debtors, any and all amounts that may be due and owing to them or their affiliated or related parties for the indemnification and contribution obligations under the Agreements. All rights of the Macy's Entities under the Agreements for setoff, recoupment, and subrogation (including defenses thereto) must survive assumption, notwithstanding any terms or conditions of the Plan to the contrary.

18. Nothing in this Objection is intended to be, or should be construed as, a waiver by the Macy's Entities of any of their rights under the Agreements, the Bankruptcy Code, or applicable law. The Macy's Entities expressly reserve all such rights, including, without limitation, the right to: (a) supplement and/or amend this Objection and to assert any additional objections with respect to the Proposed Cure Amount and any proposed assumption and assignment of the Agreements on any and all grounds; (b) amend the Cure Amount; (c) assert any nonmonetary defaults under the Agreements; (d) assert any rights for indemnification or contribution against the Debtors arising under the Agreements; and (e) assert any further objections as it deems necessary or appropriate.

WHEREFORE, the Macy's Entities respectfully request that this Court enter an order: (a) sustaining this Objection; (b) affirmatively requiring the Debtors or the assignee to pay all amounts owing to the Macy's Entities under the Agreements through the effective date of any assumption of the Agreements; (c) affirmatively requiring the assignee to comply with each and every term, condition and obligation set forth in the Agreements; and (d) granting the Macy's Entities such other and further relief as this Court deems just and appropriate under the circumstances.

[Signature page follows.]

Dated: July 17, 2017

Respectfully submitted,

/s/ Ronald E. Gold

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*Counsel for Bloomingdale's, Inc.,
Bloomingdales.com, LLC and Macy's Retail
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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of July, 2017, a true and correct copy of the foregoing *Objection and Reservation of Rights of Bloomingdale's, Inc., Bloomingdales.com, LLC, and Macy's Retail Holdings, Inc. to Debtors' Proposed Cure Amounts Scheduled in the Plan Supplement* was sent via ECF Noticing to all parties receiving ECF Notices in these chapter 11 cases and to the parties set forth below.

/s/ Ronald E. Gold
Ronald E. Gold

Debtors	Counsel to the Debtors
BCBG Max Azria Global Holdings, LLC 2761 Fruitland Avenue, Vernon, California 90058 Attn: Erica Alterwitz Meierhans	Kirkland & Ellis LLP 300 North LaSalle Chicago, Illinois 60654 Attn: Benjamin M. Rhode John R. Luze
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