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

In re

BCBG MAX AZRIA GLOBAL HOLDINGS,
LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 17-10466 (SCC)

**RESPONSE TO DEBTORS' OBJECTION TO PROOF OF
CLAIM NUMBER 753 FILED BY HANA FINANCIAL, INC.**

Hana Financial, Inc. ("Hana"), by and through its undersigned counsel, files this *Response* (the "Response")² to the *Debtors' Objection to Proof of Claim Number 753 Filed by Hana Financial, Inc.*, and in support thereof, states as follows:

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.

² In further support of this Response, Hana submits the Declaration of Brian Fleming in Support of the Response to Debtors' Objection to Proof of Claim Number 753 Filed by Hana Financial, Inc., attached hereto as **Exhibit A**.

The Chapter 11 Cases

1. On February 28, 2017 (the “Petition Date”), each of the above-captioned debtors and debtors in possession (the “Debtors”) filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No party has requested the appointment of a trustee or examiner in the chapter 11 cases.

2. On March 1, 2017, the Debtors filed the *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. 39] (as amended, the “Plan”). On April 25, 2017, the Debtors filed the *Disclosure Statement Relating to the 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. 345] (as amended, the “Disclosure Statement”).

3. On June 23, 2017, the Court entered an *Order Approving (I) the Adequacy of the Disclosure Statement; (II) Solicitation and Notice Procedures; (III) Forms of Ballots and Notices in Connection Therewith; and (IV) Certain Dates with Respect Thereto* [Docket No. 459] (the “Disclosure Statement Order”).

Background

4. Approximately 12 years ago, Mega-Link International Holdings Limited (“Mega-Link”), a Hong Kong based sourcing agency, began outsourcing the manufacture of high quality apparel for the Debtors with various factories, which today represents 40% of the Debtors’ apparel production. As only a sourcing company, Mega-Link historically has been undercapitalized and has relied on the Debtors to pay in advance for apparel production.

5. In early 2016, due to liquidity problems, the Debtors ceased paying Mega-Link in advance and, as a result, Mega-Link was unable to pay the factories with which it dealt, for a large quantity of goods in production for the Debtors. The respective goods were held by the factories until payment could be made.

6. In a desperate effort to obtain the release of the goods being held at the factories and to provide for the continued sale and financing of product for BCBG, in May/June, 2016, Mega-Link, the Debtors, NYAM LLC (“NYAM”), and Hana came to terms on an agreement (the “Program”), which saved the Debtors’ apparel pipeline for the fall and holiday season of 2016. Under the Program, NYAM agreed to a financing arrangement with All In, a Shanghai based shipping company and occasional lender, which agreed to raise capital necessary to pay the factories with which Mega-Link did business and which were holding the Debtors’ goods. NYAM became directly liable to All In for payment of amounts lent to facilitate the release of the Debtors’ product. NYAM participated in and facilitated the Program and received a fee from All In based on volume.

7. To pay All In, NYAM agreed to factor the invoices with Hana, which NYAM had been doing already with other BCBG invoices, and to use the monies obtained from Hana, to pay All In. The Debtors were completely aware of the Program and approved its mechanics, with BCBG’s senior financial management participating in meetings with representatives of NYAM, Hana, and Mega-Link, and approving all aspects of the Program. Indeed, there was no other way for the Debtors to obtain their product.

8. For the invoices and purchase orders already issued, the Debtors and Hana required that they be reissued to state that the seller of the goods was “Mega-Link c/o NYAM LLC” (as opposed to just Mega-Link). In connection with the factored invoices, Hana took a

0.40% factoring commission on all invoices factored, both approved and non-approved. This arrangement continued for new product ordered and provided the means by which the Debtors could continue to purchase product.

9. Hana factored all of the invoices in the Program and funded 85% of approved invoices, which funds were used by NYAM to pay All In. At times, NYAM would borrow 50% of non-approved invoices and obtain additional funding to pay All In, completely at NYAM's risk. The invoices comprising Hana's proof of claim are invoices that were factored by Hana and approved. The invoices comprising NYAM's proof of claim are invoices that were factored, but not approved by Hana.

10. Even though the parties had agreed to the terms of the Program, under which Mega-Link's rights in the respective invoices and purchase orders were transferred to NYAM as evidenced by the reissuance of purchase orders to Mega-Link c/o NYAM, as a formality, Hana required that Mega-Link and NYAM execute assignment agreements identifying invoices covering a certain time period. The assignments and attached schedules identifying the invoices were generated 4-6 months after the product was ordered because of the attendant delay in the manufacturing of the product. Throughout the Program, to comply with Hana's requests, Mega-Link and NYAM would execute assignment agreements, identifying the respective invoices and purchase orders covering a period of time. In all instances, these assignment agreements were dated 4-6 months after the product was ordered at which time Mega-Link's interests in the purchase orders and invoices had already transferred to NYAM.

11. Consistent with the parties' practices under the Program, Mega-Link and NYAM identified the invoices to be factored by Hana under the Program for the period from December 2016 – February 2017 by an assignment agreement dated December 1, 2016. The date of the

assignment agreement, however, is insignificant in determining when Mega-Link's interests in the invoices were transferred to NYAM because all of the Debtors' invoices were transferred to Hana as part of the Program, as evidenced by the fact that purchase orders were reissued to Mega-Link c/o NYAM Inc. While Hana factored all of the respective invoices, it did not approve for payment those invoices comprising NYAM's claim. Indeed, in a six month period, the credit available from Hana to factor BCBG's invoices dropped from \$2.6 million in December 2016 to \$1.8 million in January 2017 because of Hana's concerns about BCBG's creditworthiness.

12. Each credit line change followed diligence meetings between the Debtors' senior management, Hana, and NYAM. Since the credit line was always fully utilized, NYAM would ship goods only after it received a payment on past receivables that equaled the cost of the goods to be shipped. For the period of June 2016 through February 2017, \$17,768,108 in goods was shipped and billed to the Debtors and \$14,115,365 in payments were made by BCBG to Hana in payment for same, leaving a balance of \$3,652,753 of receivables on Hana's books as of March 1, 2017. Of this balance, \$1,895,551 was approved and factored by Hana and \$1,757,202 was not, and is recourse and the risk of NYAM.

The Claim and Objection

13. On June 7, 2017, Hana timely filed proof of claim no. 753 against BCBG ("Claim 751"), which asserts a claim in the total amount of \$2,003,549, of which Hana asserts \$1,799,502 is entitled to administrative priority pursuant to § 503(b)(9) of the Bankruptcy Code and the balance is a general unsecured claim for goods sold to the Debtors.

14. On June 24, 2017, the Debtors filed the *Debtors' Objection to Proof of Claim Number 753 Filed by Hana Financial, Inc.* [Docket 468] (the "Claim Objection"), which seeks

to reclassify Claim 753 to a general unsecured claim in its entirety. In the Objection, the Debtors assert Claim 753 is not entitled to administrative priority because the Debtors paid for the goods at issue.

Hana's Response

15. The Debtors assert that Hana's § 503(b)(9) claim should be disallowed because the Debtors did not receive the respective goods on credit. Rather, the Debtors argue that they paid for the respective goods on the eve of the Petition Date. While the invoices comprising Hana's § 503(b)(9) claim are indeed the same invoices related to the goods that were held and ultimately shipped on the eve of the Petition Date, the invoices were merely used to calculate the amount necessary to release the respective goods. The amounts paid were then applied to the oldest invoices identified on **Exhibit B** attached hereto in the ordinary course of the parties' business. Indeed, this was the practice employed by the parties during the entire duration of the Program. While NYAM's Chief Financial Officer indeed agreed to a "one for one release of inventory for cash", the Debtors have not referenced any evidence as to which invoices the monies were intended to satisfy.

16. Because the monies paid on the eve of the Petition Date were indeed intended to be, and were, in part, applied to Hana's oldest invoices, the invoices relating to goods delivered during the twenty days preceding the Petition Date remain unpaid and Hana's § 503(b)(9) claim should be allowed in its entirety.

WHEREFORE, for the reasons set forth herein, the Debtors' Objection to Hana's claim should be overruled.

Dated: July 18, 2017
Wilmington, Delaware

Respectfully submitted,

/s/ L. Katherine Good

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