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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
	:	Case No. 17-10466 (SCC)
BCBG MAX AZRIA GLOBAL HOLDINGS, LLC, *et al.*,[1]	:	(Jointly Administered)
Debtors.	:	Re: Docket No. 461

LIMITED OBJECTION OF BCBG MAX AZRIA GROUP SAS TO AMENDED JOINT PLAN OF REORGANIZATION OF BCBG MAX AZRIA GLOBAL HOLDINGS, LLC AND ITS DEBTOR AFFILIATES PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE

BCBG Max Azria Group SAS ("BCBG France"), a wholly-owned indirect subsidiary of the debtors in the above-captioned cases (collectively, the "Debtors"), hereby files this limited objection (the "Limited Objection")[2] to confirmation of the *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) (as may be amended or supplemented, the "Plan"). In support of this Limited Objection, BCBG France respectfully represents as follows:

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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.

2 Counsel to the Debtors granted BCBG France an extension of the deadline to file this Limited Objection to July 20, 2017 at 4:00 p.m. (ET).

Preliminary Statement

1. Although confirmation of the Plan is the ultimate goal of these chapter 11 cases, the current version of the Plan does not comply with section 1129 of the Bankruptcy Code. ***First***, the Plan inappropriately provides BCBG France no distribution on account of its claims against the Debtors simply because BCBG France is an affiliate of the Debtors. ***Second***, the Plan impermissibly purports to limit BCBG France's rights of setoff and recoupment. As a result, the Plan should be amended to comply with the requirements of section 1129 of the Bankruptcy Code or else confirmation of the Plan should be denied.

2. Specifically, as it pertains to BCBG France and the BCBG France Claims (as defined below), the Plan currently does not satisfy section 1129 of the Bankruptcy Code because:

- the Plan does not comply with section 1129(b) of the Bankruptcy Code by unfairly discriminating against the BCBG France Claims by failing to provide any recovery or reserve on account of such claims pending the claims resolution process;
- the Plan also does not comply with sections 1122 and 1129(a)(1) of the Bankruptcy Code by improperly classifying the BCBG France Claims in Class 7 (Intercompany Claims), as opposed to properly classifying such claims with other similarly situated creditors;
- the Plan further violates the best interests test of section 1129(a)(7) of the Bankruptcy Code by (a) providing no recovery to BCBG France on account of the BCBG France Claims and (b) limiting any right of offset or recoupment that BCBG France may possess, which would otherwise be retained in a hypothetical chapter 7 proceeding; and
- the Plan violates section 1129(a)(1) of the Bankruptcy Code by impairing any rights of setoff and recoupment that BCBG France may possess.

3. In light of the foregoing and for the other reasons more fully set forth below, BCBG France respectfully submits that the Plan should not be confirmed by this Court

unless the Debtors amend the Plan to (a) fix the classification and treatment of the BCBG France Claims and (b) preserve any right of offset or recoupment that BCBG France may have.

Background

A. BCBG France and the BCBG France Claims

4. BCBG France is a wholly-owned subsidiary of BCBG Max Azria Group Europe Holdings, SARL, which in turn is a wholly-owned subsidiary of Debtor BCBG Max Azria Group LLC. Historically, BCBG France operated as part of the BCBG family of companies. However, the Debtors determined to sever their business relations with BCBG France. On March 8, 2017, the commercial court of Romans sur Isère (France) commenced French insolvency proceedings. This court order appointed SELARL AJ PARTENAIRES ADMINISTRATEURS acting through Maître Bruno Sapin and Frédéric Abitbol as judicial administrators (*administrateurs judiciaries*), SELARL MJ SYNERGIE acting through Maître Geoffroy BERTHELOT as creditors' representative (*mandataire judiciaire*) and Romain Adam as statutory Insolvency Judge (*Juge-Commissaire*). BCBG France is subject to French reorganization proceeding **(***redressement judiciaire***)** (the "French Proceeding"). The Debtors have asserted claims against BCBG France in the French Proceeding. Those claims have yet to be resolved (*admises au passif*) by the statutory Insolvency Judge.

5. On June 9, 2017, BCBG France timely filed proofs of claim numbers 901, 902 and 903 (the "BCBG France Claims") against the Debtors predicated upon claims arising under, relating to, or in connection with the Debtors' breach and termination of multiple agreements with BCBG France, specifically (a) the Debtors' breach and discontinuation of the supply of product to BCBG France; (b) the Debtors' breach of credit terms to BCBG France; (c) the Debtors' future termination of certain trademark licenses, which are essential to BCBG France's operations; and (d) the Debtors' cessation of other services provided to BCBG France.

B. The Plan and the Discriminatory Treatment of the BCBG France Claims

6. On June 23, 2017, the Debtors filed the Plan and that certain *Disclosure Statement Relating to the 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. 462) (the "Disclosure Statement").

7. On June 23, 2017, the Court entered that certain *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").

8. As discussed in greater detail below, the Plan purports to treat BCBG France in several impermissible ways. ***First***, the Plan classifies the BCBG France Claims in Class 7 (Intercompany Claims) and, pursuant to Section III.B.7, provides BCBG France with no distributions on account of the BCBG France Claims whatsoever. See Plan Section I.79 ("'*Intercompany Claim*'" means any Claim held by a Debtor or an Affiliate of a Debtor against another Debtor arising before the Petition Date.") and Section III.B.7 ("Holders of Intercompany Claims shall not receive any distribution on account of such Intercompany Claims."). ***Second***, various provisions of the Plan operate to impair the setoff and recoupment rights BCBG France may have, including: (a) Section VI.I (preventing creditors from recouping claims against Debtors unless recoupment is completed before Plan's effective date); (b) Section VIII.B (releasing "Liens," including setoff rights, upon satisfaction of certain secured claims); and (c) Section VIII.F (enjoining certain parties from asserting related setoff and recoupment rights unless such party files a motion before the Plan's effective date). Notwithstanding this impairment of creditors' setoff and recoupment rights, the Debtors specifically reserve their own setoff and recoupment rights. See Plan Section VI.I.

9. As set forth in greater detail below, unless these deficiencies are rectified, the Plan should not be confirmed.

Limited Objection

I. THE CURRENT PLAN UNFAIRLY DISCRIMINATES AGAINST THE BCBG FRANCE CLAIMS

10. As the proponent of a chapter 11 plan of reorganization, "[t]he Debtor bears the burden of proving compliance with each of the requirements of 11 U.S.C. § 1129(a)." In re Fur Creations by Varriale, Ltd., 188 B.R. 754, 760 (Bankr. S.D.N.Y. 1995) (citations omitted). The Debtors must satisfy this burden by a preponderance of the evidence. In re Lionel L.L.C., No. 04-17324, 2008 WL 905928, at *4 (Bankr. S.D.N.Y. Mar. 31, 2008).

11. When considering a non-consensual plan, a chapter 11 plan that unfairly discriminates against a dissenting class cannot be confirmed. In re Lernout & Hauspie Speech Prods.N.V., 301 B.R. 651, 656 (Bankr. D. Del. 2003); Genesis, 266 B.R. at 599; In re Rotella, No. 91-00453, 1994 WL 362271, at *4 (Bankr. N.D.N.Y. Mar. 23, 1994) ("Section 1129(b)(1) of the Code prohibits unfair discrimination as to a dissenting class and requires that it receive value equal to the value given to all other similarly situated classes.").

12. In other words, when a class of claims, such as Class 7 under the Plan, is slated to receive no distribution under a plan and, thus, is deemed to reject that plan under section 1126(g) of the Bankruptcy Code, the plan must still satisfy the cramdown requirements of section 1129(b) with respect to such class, including that it not unfairly discriminate against that class. See, e.g., In re Kaiser Aluminum Corp., No. 02-10429, 2006 WL 616243, at *11 (Bankr. D. Del. Feb. 6, 2006) (noting that a plan must satisfy the cramdown requirements of section 1129(b) if any classes are deemed to reject pursuant to section 1126(g));
see also In re CIT Group Inc., No. 09-16565, 2009 WL 4824498, at *10 (Bankr. S.D.N.Y. Dec. 8,

2009) (applying section 1129(b) specifically to classes deemed to reject pursuant to section 1126(g)); In re G-I Holdings Inc., 420 B.R. 216, 268 (D.N.J. 2009) (applying unfair discrimination analysis to classes deemed to reject the plan pursuant to section 1126(g), including the class of claims consisting of claims of affiliates of the debtor).

13. Reduced to its essence, the statutory proscription against unfair discrimination means "a dissident class must . . . receive treatment which allocates value to the class in a manner consistent with the treatment afforded to other classes with similar legal claims against the debtor." Corestates Bank, N.A. v. United Chem. Techs., Inc., 202 B.R. 33, 47 (E.D. Pa. 1996) (quoting 5 Collier On Bankruptcy § 1129.03[3][b] (15th ed. 1991)).

14. The current formulation of the Plan undeniably discriminates against the BCBG France Claims. The Plan provides for distributions to similarly situated unaffiliated creditors. In contrast, the Plan provides that BCBG France will not receive *any* distribution on account of its claims.

15. To determine whether discrimination is unfair, courts consider whether (a) there is a reasonable basis for discriminating, (b) the debtor cannot consummate the plan without the discrimination, (c) the discrimination is proposed in good faith, and (d) the degree of discrimination is in direct proportion to its rationale. In re LightSquared Inc., 513 B.R. 56, 99 (Bankr. S.D.N.Y. 2014). "The purpose of the requirement is to ensure that a dissenting class will receive relative value equal to the value given to all other similarly situated classes." Id.

16. Here, the Debtors have failed to demonstrate a legitimate basis for discriminating against the BCBG France Claims. Under the Plan, the sole reason for BCBG France's treatment is its status as an affiliate of the Debtors. But BCBG France's status as an affiliate of the Debtors is legally insufficient to merit discriminatory treatment under section

1129(b) of the Bankruptcy Code. On that point, In re ARN Ltd. L.P., 140 B.R. 5 (Bankr. D.D.C. 1992) is particularly instructive. In that case, the court easily determined that a plan that proposed to grant to a class of insiders holding unsecured claims a meaningless recovery, while granting to a class of general unsecured creditors a "substantial" recovery, unfairly discriminated against the insider class. The court based its holding on findings that, among other things, (a) the treatment of the insider class amounted to equitable subordination under section 510(c) of the Bankruptcy Code, (b) the necessary elements for equitable subordination had not been shown, (c) there was no showing that when the insiders lent money to the debtor they did so with superior knowledge of the risks involved to the extent that they ought to be discriminated against and (d) the insiders were never in day-to-day control of the debtor. 140 B.R. at 12-13. All four parts of the court's reasoning in that case apply equally here to the relationship between BCBG France and the Debtors and the proposed discriminatory treatment of the BCBG France Claims on that basis. Along those lines, any discriminatory treatment based on BCBG France's insider status, if any, is not only as unfounded as it was in ARN, but it also doesn't make any sense in light of the fact that the Debtors control BCBG France, not the other way around.

17. Given the disparity in Plan consideration received by similarly situated creditors, the proposed treatment of Class 7 and the BCBG France Claims constitutes unfair discrimination that violates section 1129(b).

II. THE FAILURE TO ESTABLISH A RESERVE ON ACCOUNT OF THE BCBG FRANCE CLAIMS FURTHER UNFAIRLY DISCRIMINATES AGAINST THE BCBG FRANCE CLAIMS

18. Unlike most chapter 11 plans, the Plan does not contain any reserve procedures. See In re Oldco M Corporation, No. 09-13412 (Bankr. S.D.N.Y. Feb. 23, 2010) (confirmed plan included claims reserve provisions); see also In re Peabody Energy Corporation, No. 16-42529 (Bankr. E.D. Mo. Mar. 17, 2017) (same); In re Alpha Natural Resources, Inc.,

No. 15-33896 (Bankr. E.D. Va. Aug. 18, 2016) (same); In re Molycorp, Inc., No. 15-11357 (Bankr. D. Del. Apr. 8, 2016) (same).

19. The BCBG France Claims — however classified — must be reserved for or other distributions delayed pending resolution of the BCBG France Claims. A failure to establish a reserve on account of the BCBG France Claims would constitute unfair and unequal treatment vis-à-vis other creditors and would frustrate BCBG France's appellate rights. See In re MCorp Fin., Inc., 137 B.R. 219, 227-28 (Bankr. S.D. Tex. 1992) (failure to establish an adequate reserve rendered plan unconfirmable because it provided unequal treatment in respect of certain contested claims), appeal dismissed and remanded on other grounds, 139 B.R. 820 (S.D. Tex. 1992). Accordingly, regardless of classification, BCBG France is entitled to have its day in court, and as part of that fundamental right, BCBG France is entitled to an appropriate reserve for the BCBG France Claims.

III. THE PLAN IMPERMISSIBLY CLASSIFIES THE BCBG FRANCE CLAIMS FOR THE PURPOSE OF UNFAIRLY DISCRIMINATING AGAINST SUCH CLAIM

20. Contrary to section 1122 of the Bankruptcy Code, the Plan separately classifies the BCBG France Claims from other creditors and thus cannot be confirmed. See 11 U.S.C. § 1129(a)(1) ("The court shall confirm a plan only if . . . [t]he plan complies with the applicable provisions of [the Bankruptcy Code.]").

21. While the language of section 1122 of the Bankruptcy Code does not expressly prohibit the separate classification of claims, courts interpreting section 1122 have uniformly held that separate classification must be reasonable and not done for the purpose of gerrymandering. See John Hancock Mut. Life Ins. Co. v. Route 37 Bus. Park Assocs., 987 F.2d 154, 158 (3d Cir. 1993) (holding that chapter 11 plan that gerrymandered unsecured portion of mortgagee's claim from other unsecured claims constituted unreasonable classification, because

"the Code was not meant to allow a debtor complete freedom to place substantially similar claims in separate classes").

22. For that reason, courts hold (a) "ordinarily 'substantially similar claims,' those which share common priority and rights against the debtor's estate, should be placed in the same class," In re Greystone III Joint Venture, 995 F.2d 1274, 1278 (5th Cir. 1992) (internal quotations in original), and (b) "[u]nsecured claims will, generally speaking, comprise one class, whether trade, tort, publicly held debt or a deficiency of a secured creditor [because] they are claimants of equal rank entitled to share pro rata in values remaining after payment of secured and priority claims." In re Coram Healthcare, 315 B.R. 321, 348 (Bankr. D. Del. 2004) (quoting FGH Realty Credit Corp. v. Newark Airport/Hotel Ltd. P'ship, 155 B.R. 93, 99 (D.N.J. 1993)).

23. Importantly, "whenever a plan proponent has classified claims for the purpose of manipulating and defeating the Code's goal of equal treatment of similarly situated creditors, the Court may not condone classification." In re Northeast Dairy Coop. Fed'n, Inc., 73 B.R. 239, 250 (Bankr. N.D.N.Y. 1987); see also Olympia & York Fla. Equity Corp. v. The Bank of N.Y. (In re Holywell Corp.), 913 F.2d 873, 880 (11th Cir. 1990) (holding that "if the classification scheme violates basic priority rights, the plan cannot be confirmed"); Brinkley v. Chase Manhattan Mortg. and Realty Trust (In re LeBlanc), 622 F.2d 872, 879 (5th Cir. 1980) ("As a general rule, the classification in a plan should not do substantial violence to any claimant's interest. The plan should not arbitrarily classify or discriminate against creditors."); In re Sentry Op. Co. of Texas, Inc., 264 B.R. 850, 861 (Bankr. S.D. Tex. 2009) (holding that (1) the classification must be "designed to achieve a result that is permissible under the Bankruptcy Code" and (2) "the class definitions must be drawn sufficiently narrowly so that the classification scheme will not materially serve a proscribed purpose").

A. The Classification of the BCBG France Claims is Improperly Done to Effect an End-Run Around the Bankruptcy Code's Priority Rules and Unfairly Discriminate Against the BCBG France Claims

24. As proposed, the classification scheme violates section 1122 because it is, in effect, an end-run around the Bankruptcy Code's requirement of equal treatment among similarly situated claims by according the BCBG France Claims significantly worse treatment than other claims.

25. For example, in Holywell, the plan proposed sought to separately classify and subordinate the claims of a creditor that was also an affiliate of the debtors. Holywell, 913 F.2d at 877. As a justification for the separate classification and treatment, the plan proponent argued that because the creditor was an affiliate of the debtors, any distribution to such creditor would inure to the benefit of a general partner of the debtors. Id. at 879. The bankruptcy court confirmed the plan and the creditor appealed the confirmation order. On appeal, the district court reversed and remanded back to the bankruptcy court for the purpose of having the bankruptcy court determine the amount of the creditor's claim. On remand, the bankruptcy court established the amount of the creditor's claim and found that the plan proponent was required to pay such claim from the surety bond posted by the plan proponent. On appeal, the Court of Appeals for the Eleventh Circuit affirmed the district court's reversal of the bankruptcy court's order confirming the plan, agreeing with the district court that the creditor's status as an affiliate did not warrant separate classification and disparate treatment from that offered to other general unsecured claims. Id. at 880.

B. BCBG France's Insider Status Is Not An Appropriate Basis For Separate Classification

26. "The 'primary analysis [of whether claims are "substantially similar" and, thus, may be classed together,] centers upon the legal attributes of the claims and not upon the

status or circumstances of the claimant. Emphasis is not upon the holder so much as it is upon that which is held.'" Coram Healthcare, 315 B.R. at 349 (quoting In re FF Holdings Corp., No. 98-37, 1998 U.S. Dist. LEXIS 10741, at *13 (D. Del. Feb. 17, 1998)). That is, "a proper determination of what claims are 'substantially similar' focuses on the legal attributes of the claims, **not who holds them**." Id. at 350 (emphasis added).

27. To that end, insider status alone is not a basis for separate classification. See id. at 350 ("The legal attributes of [the insider's] general unsecured claim are no different from the legal attributes of the trade creditors' general unsecured claim. Thus, separately classifying [the insider] because it is an insider is not appropriate . . . ."); In re Frascella Enterprises, Inc., 360 B.R. 435, 443 (Bankr. E.D. Pa. 2007) ("There is no per se requirement that unsecured insider claims be separately classified from other unsecured claims. Insider status alone does not make a claim dissimilar."); In re Austin Ocala Ltd., 152 B.R. 773, 776 (Bankr. M.D. Fla. 1993) ("The Debtor's Plan proposed to separately classify[, among other things,] non-insider unsecured claims[] and insider unsecured claims. The Debtor failed to offer a sufficient justification for the separate classification of these claims, all of which are nothing more than general unsecured claims.").

28. Accordingly, BCBG France respectfully submits that its inclusion in Class 7 is inappropriate.

IV. THE PLAN VIOLATES THE "BEST INTERESTS" TEST AS TO BCBG FRANCE'S CLAIMS

29. The Plan violates the "best interests test" as to the BCBG France Claims because the Plan provides no recovery on account of such claim. Section 1129(a)(7) of the Bankruptcy Code, the so-called "best interests of the creditors" test, requires that each dissenting holder of a claim or interest that is part of an impaired class receive or retain under the plan at

least as much as it would under a hypothetical chapter 7 liquidation of the debtor.

11 U.S.C. § 1129(a)(7).

30. Since BCBG France currently stands to receive nothing on account of the BCBG France Claims under the Plan and any offset and recoupment rights that BCBG France may have would be preserved in the context of a chapter 7 liquidation, BCBG France would not receive or retain under the Plan as much as it would in a hypothetical chapter 7 liquidation. Therefore, the Plan violates the "best interests" test. See In re Affiliated Foods, Inc., 249 B.R. 770, 788 (Bankr. W.D. Mo. 2000) ("[T]he Plan does indeed appear to fail the best interests test by $16,750.00. Considering the size of the estate and the projected surplus, this figure does not seem significant. But, as counsel for [the claimant] accurately pointed out at the hearing, § 1129(a)(7)(ii) is a bright line test and does not appear to provide for any *de minimis* exception.").

V. THE PLAN VIOLATES SECTION 1129(A)(1) OF THE BANKRUPTCY CODE BY IMPAIRING BCBG FRANCE'S RIGHTS, IF ANY, OF SETOFF AND RECOUPMENT

31. The current formulation of the Plan is unconfirmable because it impermissibly impairs any setoff and recoupment rights that BCBG France may have. Section 1129(a)(1) of the Bankruptcy Code requires that, for a plan to be confirmable, the plan must "compl[y] with the applicable provisions of [the Bankruptcy Code]." 11 U.S.C. § 1129(a)(1). Under section 553 of the Bankruptcy Code, setoff rights are expressly preserved, in that, with certain limited exceptions, the Bankruptcy Code "does not affect any right of a creditor to offset a mutual debt owing by such creditor to the debtor that arose before the commencement of the case under this title against a claim of such creditor against the debtor that arose before the commencement of the case . . . ." 11 U.S.C. § 553(a); see also Official Comm. of Unsecured Creditors v. Mfrs. & Traders Trust Co. (In re Bennett Funding Grp.), 146

F.3d 136, 138-39 (2d Cir. 1998) ("Section 553(a) of [the Bankruptcy Code] does not create a right of setoff, but rather preserves whatever right exists under applicable non-bankruptcy law."); In re Lehman Bros. Holdings, Inc., 433 B.R. 101, 107 (Bankr. S.D.N.Y. 2010) (same).

32. Recoupment, although similar to setoff, is not identical. Recoupments, unlike setoffs, "do not involve the concept of mutuality of obligations and arise out of the same transaction rather than out of different transactions." In re Yonkers Hamilton Sanitarium Inc., 22 B.R. 427, 432 (Bankr. S.D.N.Y. 1982), aff'd, 34 B.R. 385 (S.D.N.Y. 1983). Moreover, the exercise of recoupment rights is not subject to section 553 of the Bankruptcy Code and is not subject to the automatic stay. In re Malinowski, 156 F.3d 131, 133 (2d Cir. 1998).

33. As recognized by other courts, confirmation of a debtor's chapter 11 plan does not extinguish prepetition setoff rights. In re Bousa Inc., No. 89-B-13380, 2006 Bankr. LEXIS 2733, at *22 (Bankr. S.D.N.Y. Sept. 29, 2006); see also Carolco Television, Inc. v. National Broadcast Co. (In re De Laurentiis Entm't Grp., Inc.), 963 F.2d 1269, 1276-77 (9th Cir. 1992) ("We conclude that section 553 must take precedence over section 1141.").

34. In addition, courts have held that recoupment rights survive plan confirmation. See In re Flagstaff Realty Assocs., 60 F.3d 1031, 1037 (3d Cir. 1995) ("[W]e conclude that confirmation and implementation of the reorganization plan does not prevent tenant from . . . asserting its right to recoupment."); see also In Re Revel AC, Inc., No. 14-22654, 2016 WL 6155903, at *12 (Bankr. D.N.J. Oct. 21, 2016) ("Courts addressing the issue previously have affirmed that recoupment obligations survive plan discharges.").

35. Here, because the Plan specifically preserves the Debtors' own setoff and recoupment rights under the Plan,[3] but apparently limits creditors' setoff and recoupment rights,[4]

[3] See Plan Section VI.I.

the Plan does not comply with applicable caselaw and section 553 of the Bankruptcy Code and thus violates section 1129(a)(1) of the Bankruptcy Code. E.g., In re Alta+Cast, L.L.C., No. 02-12982, 2004 Bankr. LEXIS 222, at *18–19 (Bankr. D. Del. Mar. 2, 2004) (modifying a plan that "improperly extinguishe[d] any setoff rights [the objecting creditor] may have" because "there is no basis in the Code to eliminate [such] setoff rights."); see also In re Harmon, 188 B.R. 421, 425 (B.A.P. 9th Cir. 1995) ("[R]ecoupment . . . is not a claim in bankruptcy, and is therefore unaffected by the debtor's discharge.").

36. For the foregoing reasons, the Plan cannot be confirmed absent preservation of creditors' setoff and recoupment rights.

Reservation of Rights

37. BCBG France expressly reserves any and all of its rights to supplement or amend this Objection, seek additional discovery with respect to same, and introduce evidence at any hearing relating to this Objection or to confirmation of the Plan, and without in any way limiting any other rights that BCBG France may have. BCBG France also expressly reserves its rights with respect to confirmation of the Plan or any other plans of reorganization proposed in these chapter 11 cases. BCBG France is seeking to subordinate the claims of the Debtors to the claims of third party creditors in BCBG France's proceeding up to 13.2 million Euros.

(continued…)

[4] See Plan Section VI.I (preventing creditors from recouping claims against Debtors unless recoupment is completed before Plan's effective date); Section VIII.B (releasing "Liens" upon satisfaction of certain Secured Claims); Plan Section I.A.125 (defining "Secured Claims" to include claims "subject to setoff pursuant to section 553"); Plan Section VIII.F (enjoining creditors whose claims have been released from asserting setoff rights).

Conclusion

WHEREFORE, for all the foregoing reasons, BCBG France respectfully requests that the Court (i) deny confirmation of the Plan unless (a) BCBG France's Claim is removed from the definition of "Intercompany Claim" and (b) any setoff and recoupment rights that BCBG France may have are expressly preserved; and (ii) grant BCBG France such other and further relief as this Court deems just and proper.

Dated: July 20, 2017
New York, New York

Respectfully submitted,

/s/ *Benjamin Rosenblum*

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