

EXHIBIT B

**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)

**CORRECTED DECLARATION OF BRIAN FLEMING IN SUPPORT OF RESPONSE
TO DEBTORS' OBJECTION TO PROOF OF CLAIM NUMBER 751 FILED BY
NYAM LLC**

I, Brian Fleming, Chief Financial Officer of NYAM LLC (“NYAM”), submit this declaration in support of NYAM’s *Response* (the “Response”)² to the *Debtors’ Objection to Proof of Claim Number 751 Filed by NYAM LLC* (the “Objection”) under penalty of perjury:

Background and Qualifications

1. I am the Chief Financial Officer of NYAM and have served in that position since January 2016.
2. I have reviewed the Objection and the Response and I am familiar with their contents.
3. Except as otherwise indicated, all facts set forth in this Declaration are based on my personal knowledge, my discussions NYAM’s management team and advisors, my review of relevant documents and information provided to me or verified by other executives, management, employees, or advisors of NYAM, or my opinion based on my personal experience and knowledge of the facts set forth herein. I am authorized to submit this declaration on behalf

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 Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Response.

of NYAM, and, if called upon to testify, I could and would testify competently to the facts set forth herein.

NYAM's Relationship with the Debtors and the License Agreements

4. NYAM has been a vendor of BCBG Max Azria Group, LLC ("BCBG"), one of the Debtors, since 2014, with product sales to BCBG in 2014, 2015, and 2016. NYAM has bought, financed, imported and sold goods to BCBG throughout the parties' business relationship. Additionally, during 2015 – 2016, NYAM and the Debtors have been parties to certain license agreements, depending on the particular type of product and line, pursuant to which NYAM has had the right to use certain trademarks, service marks and copyrights ("IP") in connection with the manufacture and distribution of various BCBG products.

5. Pursuant to these license agreements, NYAM has been obligated to pay certain royalty fees to BCBG. However, in the normal course of business, the parties have agreed to, and indeed have, setoff NYAM's royalty fees against amounts due and owing on account of NYAM's sale of product to the Debtors.

6. Consistent with their prior course of dealing, on or about February 1, 2016, NYAM and BCBG entered into a *Manufacturing License Agreement Between BCBG Max Azria Group, LLC and NYAM LLC* (the "License Agreement")³ for an initial term of one contract year, commencing as of February 1, 2016 and ending on April 1, 2017. Under the License Agreement, BCBG granted NYAM the right to BCBG's IP in connection with the manufacture and distribution of handbags and luggage under the BCBG Paris trademark and luggage under the BCBGeneration trademark. Under the License Agreement, NYAM was responsible for the manufacture of certain products for BCBG.

³ A copy of the License Agreement is attached as **Exhibit A** to the Objection.

7. Additionally, as with prior license agreements, NYAM was responsible for the payment of certain royalties to BCBG. Also, as with prior license agreements, under the terms of the License Agreement, NYAM and the Debtors regularly setoff NYAM's royalty fees against amounts due and owing by the Debtors to NYAM for product sold. Indeed, § 13.11 of the License Agreement provides that "BCBG and [NYAM] shall each have the right to offset any amount it is due from any amount it owes to the other party provided that the offset is documented in writing and is not subject to a bona fide dispute and the account if [sic] 30 days past due."

The Program

8. 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.

9. 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.

10. 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, 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 based on volume.

11. To pay All In, NYAM agreed to factor the invoices with Hana Financial, Inc. ("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.

12. 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.

13. 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 NYAM's proof of claim are invoices that were factored, but not approved by Hana. The Debtors' bankruptcy has left NYAM with an unpaid liability to All In for goods that the Debtors received totaling \$1,552,936. If BCBG had satisfied the invoices

comprising NYAM's claim, NYAM's debt to All In, on account of products sent to the Debtors, would have been extinguished.

14. While the Debtors characterize NYAM as a "middleman" between the Debtors and Mega-Link in their Objection, such is not the case. As part of the Program, all of the relevant parties – NYAM, Hana, Mega-Link, and the Debtors – agreed to NYAM's role, the risk it was undertaking, and the benefit it provided to BCBG through its participation in the Program. In that regard, NYAM took on significant financial risk to facilitate the acquisition, delivery and financing of critical inventory, all with the Debtors' knowledge and blessing. While the Debtors allege that NYAM was involved only because Hana denied Mega-Link's request to factor invoices, that is simply not the case – Hana did not deny any such request of Mega-Link and, even if it did, the facts in this case nevertheless support an independent claim against the Debtor by NYAM for its participation in, risk assumed, and benefit provided as part of the Program.

15. Moreover, for the Debtors to characterize NYAM as a middleman completely ignores the nature of the Program and the role each party played. Indeed, Mega-Link was itself a "middleman", which merely outsourced manufacturing and production to various factories. Mega-Link was not itself a manufacturer of any product. When neither Mega-Link nor the Debtors could pay the factories to have the Debtors' product released, it was NYAM that stepped in and assumed all risk of non-payment until invoices were approved by Hana that allowed the Debtors to continue to receive more inventory.

16. 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.

17. 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.

18. 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.

19. Since March 1, 2017, NYAM has continued pay factories, ship goods and deliver BCBG goods to BCBG under a modified program. Under the modified program, invoices are not being factored. Rather, the factories are paid by All In to release the goods and they are shipped to Los Angeles at the risk of NYAM and All In. When the goods arrive in NYAM's Los Angeles warehouse ready for delivery, the Debtors send a wire payment to NYAM for the respective goods. The risk exposure is up to 3 weeks for goods shipped via ship. Under this modified program, BCBG pays weekly and so far NYAM has delivered \$7.5 million in goods to BCBG since March 1, 2017. Thus, NYAM continues to be a vendor of the Debtors.

20. NYAM did not obtain an assignment of Mega-Link's claims in order to effect a setoff. Rather, it obtained an assignment of Mega-Link's claim because that was a requirement of Hana as part of the Program, which was necessary to provide for the continued sale of goods to the Debtors. It had nothing to do with effectuating setoff rights. Indeed, NYAM did not purchase Mega-Link's claim at a discount to the Debtors' disadvantage.

21. While the invoices comprising NYAM'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 C** attached to the ~~Objection~~[Response](#) in the ordinary course of the parties' business. Indeed, this was the practice employed by the parties during the entire duration of the Program.

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

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Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct.

DATED: West Hollywood , California
July ~~18~~,24, 2017

/s/ Brian Fleming
Name: Brian Fleming
Title: Chief Financial Officer
NYAM LLC

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