

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

RUNWAY LIQUIDATION HOLDINGS, LLC,
et al.,¹

Debtors.

Chapter

11

Case No. 17-10466 (SCC)

(Jointly Administered)

STIPULATION AND TOLLING AGREEMENT WITH
PEPPERJAM LLC
EXTENDING STATUTES OF LIMITATION

This stipulation (the “Stipulation”) is made between David MacGreevey, in his capacity as Plan Administrator under the terms of the chapter 11 plan (the “Plan”)² annexed to the *Findings of Fact, Conclusions of Law, and Order Confirming 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. 591] (the “Confirmation Order”), entered by the Court on July 26, 2017, in the above-captioned cases under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) and Pepperjam LLC (collectively, the “Company”) (each may be referred to as a “Party” and together as the “Parties”).

RECITALS

WHEREAS, on February 28, 2017 (the “Petition Date”), BCBG Max Azria Group, LLC, and certain affiliates (collectively, the “Debtors” and, upon the Effective Date of the Plan, the “Post-Effective Date Debtors”) commenced voluntary cases under chapter 11 of the Bankruptcy

¹ A list of the Post-Effective Date Debtors in these chapter 11 cases, along with the last four digits of each Post-Effective Date Debtor’s federal tax identification number include: Runway Liquidation Holdings, LLC (6857); Runway Liquidation, LLC (5942); Runway Liquidation Intermediate Holdings, LLC (3673); MR Liquidation, LLC (9200); and MMH Liquidation, LLC (3854).

²Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Plan.

Code in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”), jointly administered under Case No. 17-10465 (SCC) (the “Bankruptcy Cases”); and

WHEREAS, on July 26, 2017, the Court entered the Confirmation Order approving the terms of the Plan; and

WHEREAS, the Effective Date of the Plan occurred on July 31, 2017, and, thereupon, David MacGreevey was appointed as the Plan Administrator on the Effective Date; and

WHEREAS, pursuant to the Plan, from and after the Effective Date, the Plan Administrator shall be the sole representative of, and shall act for, the Post-Effective Date Debtors; and

WHEREAS, pursuant to Confirmation Order and the Plan (including, without limitation, sections IV.C., D., E. and N. of the Plan), the Bankruptcy Court granted authority for the Plan Administrator to prosecute avoidance actions on behalf of the Post-Effective Date Debtors; and

WHEREAS, the time period for the Plan Administrator to bring certain potential actions under chapter 5 of the Bankruptcy Code is set to expire on or about February 28, 2019; and

WHEREAS the Parties wish to enter into this Stipulation in order to continue to investigate and potentially resolve any action that the Plan Administrator may otherwise commence against the Company, without the need for litigation;

NOW, THEREFORE, as of the date hereof (the “Commencement Date”), the Plan Administrator and the undersigned, on behalf of the Company, hereby stipulate and agree as follows:

1. Covenant Not to Sue. In consideration of the Company’s agreement to toll the statutes of limitation (as set forth in paragraph 2 of this Stipulation), the Plan Administrator

agrees not to commence, file or initiate any Causes of Action against the Company under chapter 5 of the Bankruptcy Code from the Commencement Date through May 17, 2019.

2. Tolling of Statute of Limitation. In consideration of the Plan Administrator's Covenant Not to Sue (as set forth in paragraph 1 of this Stipulation), Company agrees that all statutes of limitation that have not otherwise already run including but not limited to those set forth in section 546 of the Bankruptcy Code, applicable to any Causes of Action that the Trustee may bring against Company under chapter 5 of the Bankruptcy Code are hereby extended through and including May 31, 2019 (the "Tolling Period"), and the Tolling Period shall be excluded from any calculation of any statute of limitations period applicable to any cause(s) of action brought by the Plan Administrator against the Company. The Company acknowledges that it will be estopped hereby from arguing that this Stipulation is ineffective to extend the time within which the Plan Administrator must commence an action to pursue any chapter 5 Cause of Action.

3. Miscellaneous.

a. Counterparts. This Stipulation may be signed in counterparts and such signatures may be delivered by facsimile or other electronic means.

b. No Admission. The execution of this Stipulation shall in no way operate as an admission or concession of liability or responsibility whatsoever by any Party or to any third person or entity.

c. Binding Effect. This Stipulation shall inure to the benefit of, and be binding upon, any and all successors-in-interests, assigns, and legal representatives, of any Party.

d. Authority. Each Party to this Stipulation and each person executing this document on behalf of any Party to this Stipulation warrants and represents that he or she has the power and authority to execute, deliver and perform its obligations under this Stipulation.

e. Entire Agreement. This Stipulation sets forth the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous written and oral agreements and discussions. This Stipulation may only be amended by an agreement in writing signed by the Parties.


f. No Waiver and Reservation of Rights. Except as otherwise provided herein, nothing in this Stipulation shall be, or deemed to be, a waiver of any rights, remedies or privileges of any of the Parties. Except as otherwise provided herein, this Stipulation is without prejudice to any Party's rights, privileges and remedies under applicable law, whether at law or in equity, and each Party hereby reserves all of such rights, privileges and remedies under applicable law.

g. No Waiver if Breach. The Parties agree that no breach of any provision hereof can be waived except in writing. The waiver of a breach of any provision hereof shall not be deemed a waiver of any other breach of any provision hereof.

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Dated: February 28th, 2019

PEPPERIAM LLC


By: A.J. VAN SENTE
Its: Chief Operating Officer.

Dated: February 23, 2019

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Administrator of the Post-Effective Date Debtors*