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Proposed Counsel to the Debtors and Debtors in Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

DEBTOR BCBG MAX AZRIA GROUP, LLC'S REPLY TO THE AZRIAS' OBJECTION TO DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING THE REJECTION OF LUBOV AZRIA'S EMPLOYMENT AGREEMENT AND (II) FINDING THAT THE AMOUNT OF ANY CLAIM(S) UNDER THE EMPLOYMENT AGREEMENT IS SUBJECT TO 11 U.S.C. § 502(B)(7)

[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.

BCBG Max Azria Global Holdings, LLC and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "Debtors") hereby file this reply (this "Reply") to *The Azrias' Opposition to Debtors' Motion for Entry of an Order (I) Authorizing the Rejection of Lubov Azria's Employment Agreement and (II) Finding that the Amount of Any Claim(s) Under the Employment Agreement Is Subject to 11 U.S.C. § 502(b)(7)* [Docket No. 182] (the "Objection") filed by Max Azria and Lubov Azria (collectively, the "Objectors"). In further support of *Debtor BCBG Max Azria Group, LLC's Motion for Entry of an Order (I) Authorizing the Rejection of Lubov Azria's Employment Agreement and (II) Finding that the Amount of Any Claim(s) Under the Employment Agreement Is Subject to 11 U.S.C. § 502(b)(7)* [Docket No. 137] (the "Motion"),[2] BCBG Group submits the *Declaration of Holly Felder Etlin, Chief Restructuring Officer of BCBG Max Azria Global Holdings, LLC, in Support of Debtor BCBG Max Azria Group, LLC's Motion for Entry of an Order (I) Authorizing the Rejection of Lubov Azria's Employment Agreement and (II) Finding that the Amount of Any Claim(s) Under the Employment Agreement is Subject to 11 U.S.C. § 502(b)(7)* (the "Etlin Declaration"), filed contemporaneously herewith, and respectfully states as follows:

[2] Capitalized terms used but not defined herein shall have the meanings set forth in the Motion.

Introduction

1. This Court has authority to issue a binding order approving the Motion. Every day, bankruptcy courts must apply section 365 of the Bankruptcy Code when evaluating rejection motions—and they do so even though their application of the Bankruptcy Code may *also* require them to analyze state law. Is a contract executory? Is it "a" contract or merely part of a larger agreement? Is rejection supported by the Debtor's business judgment? These are textbook questions of bankruptcy law, even though each of them will likely require a bankruptcy judge to analyze State law in the course of answering them. This case is no different.

2. *Orion* did not reduce a bankruptcy court's power to decide motions under section 365 of the Bankruptcy Code. Instead, it made clear that bankruptcy judges should take care not to go *beyond* section 365 of the Bankruptcy Code and resolve substantive contractual disputes between the parties without first ensuring the protections of an adversary proceeding are present. But here, there are no contractual disputes. Neither party is accusing the other of breach, as in *Orion*. There is no substantive factual dispute over the voluntary surrender doctrine's applicability, as in *Great Atlantic*. There is no substantive factual dispute over the *nature* of a contractual provision, as the Court had to grapple with in *Sabine*. Instead, the Motion presents a straightforward question of bankruptcy law that, like many other such questions, requires the court to interpret and apply California contract law along the way to a decision. And because the contract in question here is unambiguous and contains an integration provision explicitly reflecting that the Employment Agreement stands alone, the decision is purely a question of law. The Objection's contrary position is an invitation down a slippery slope. Given that rejection motions relate exclusively to contracts, the Objection's statement of the law suggests that any dispute between the parties implicating the contract will require a Debtor to undertake the long slog through an adversary proceeding. This in turn would neuter the

effectiveness of this important chapter 11 tool. The Debtors respectfully submit that the Objectors' broad reading of *Orion* is unwarranted.

3. The Debtors filed the Motion to achieve certainty in connection with their reorganization efforts. This is why the Motion took pains to front the integration issue. If the Court concludes that the better procedural path is to conduct an adversary proceeding, the Debtors will of course be happy to comply, and ask only that the adversary proceeding be conducted according to a schedule that resolves the dispute in advance of the Bid Deadline set by the DIP Order. To that end, the Debtors attach a proposed schedule with respect to the adversary proceeding, which has been shared with the Objectors. Resolution of this issue by the Bid Deadline is important because it will inform bidders whether the Contribution Agreement can be assumed without the approximately $7 million price tag the Objectors seeks to attach to it. Regardless of the procedural path the Court chooses, the Debtors believe the Court should find that the rejection of an approximately $7 million golden parachute payment to Mrs. Azria is consistent both with the plain language of the contract as well as the sound exercise of business judgment.

I. REJECTION OF THE EMPLOYMENT AGREEMENT IS A SOUND EXERCISE OF BCBG GROUP'S BUSINESS JUDGMENT.

4. It is well settled that the rejection of an executory contract is governed by the business judgment standard, which requires a court to approve a debtor's business decision unless that decision "derives from bad faith, whim or caprice." *In re Helm,* 335 B.R. 528, 538 (Bankr. S.D.N.Y. 2006) (quoting *In re Cent. Jersey Airport Servs., LLC,* 282 B.R. 176, 183 (Bankr. D.N.J. 2002) (internal quotations omitted)); *see In re Orion Pictures Corp.*, 4 F.3d 1095, 1098–99 (2d Cir. 1993); *In re Enron Corp.*, No. 01-16034, 2006 WL 898033, at *4 (Bankr. S.D.N.Y. Mar. 24, 2006).

5. There is little argument that the relief requested by BCBG Group's Motion—rejection of ***only*** the Employment Agreement—is within BCBG Group's business judgment and is in the best interest of all of the Debtors' estates. As set forth in the Etlin Declaration, BCBG Group determined that in light of its decision to part ways with Mrs. Azria (which had been in consideration and discussion in the months leading to the commencement of these chapter 11 cases), the Employment Agreement provides no benefit to BCBG Group's estate and is not necessary to BCBG Group's ongoing operations. Thus, rejection of the Employment Agreement brings closure and certainty to BCBG Group's recent organizational changes. Moreover, failing to reject the Employment Agreement could expose BCBG Group's estate to significant liability.[3]

6. The Objectors do not disagree and they present no argument that rejection of the Employment Agreement ***alone*** would be the product of bad faith, whim, or caprice. Instead, the Objectors argue that because the Employment Agreement might be integrated with the Contribution Agreement (an agreement with a different Debtor), BCBG Group should "wait[] to first see the outcome of the Adversary Proceeding." Objection ¶ 7. But this argument assumes

[3] For example, failure to reject the Employment Agreement would subject the Debtors' estate to unnecessary costs and potential administrative expenses. And this is exactly why the Debtors seek to reject the employment agreement. The Debtors have no issue adjudicating Mrs. Azria's claims separate and apart from the motion to reject. But the footnoted assertion that Mrs. Azria's "golden parachute" claims for severance and "termination pay" are entitled to administrative expense priority is incorrect and misstates applicable law. The Objectors argue that *Drexel*, *Hooker*, *AppliedTheory*, and *Majestic Capital* "are distinguishable because each turned on a determination that the employees' claims were not really claims for severance." Objection ¶ 18 n.8. In fact, each of these cases turned on a determination that an executive employee's claims for "golden parachute" type payments, amounting to multiple years of the claimant's salary, were not really claims for severance ***of the type at issue in Strauss-Duparquet***. Specifically, the claims at issue in *Strauss-Duparquet* and *W.T. Grant* were asserted by non-executive employees for up to two week's severance pay based on the employee's length of employment and, in the case of *Straus-Duparquet*, arose under a collective bargaining agreement. *Straus-Duparquet, Inc. v. Local Union No. 3 Int'l Bhd. of Elec. Workers, A F of L, CIO*, 386 F.2d 649, 649–50 (2d Cir. 1967); *In re W. T. Grant Co.*, 474 F. Supp. 788, 790 (S.D.N.Y. 1979), *aff'd*, 620 F.2d 319 (2d Cir. 1980). By contrast, Mrs. Azria's potential claims could amount to millions of dollars payable over multiple years and arise only under the Employment Agreement. Each of *Drexel*, *Hooker*, *AppliedTheory*, and *Majestic Capital* held that *Straus-Duparquet* and its progeny do not apply to claims quantitatively and qualitatively similar to the claims Mrs. Azria might assert. *See In re AppliedTheory Corp.*, 312 B.R. 225, 245–46 (Bankr. S.D.N.Y. 2004); *In re Drexel Burnham Lambert Grp., Inc.*, 138 B.R. 687, 711 (Bankr. S.D.N.Y. 1992); *In re Majestic Capital, Ltd.*, 463 B.R. 289, 297–98 (Bankr. S.D.N.Y. 2012); *In re Hooker Investments, Inc.*, 145 B.R. 138, 150 (Bankr. S.D.N.Y. 1992).

that the Court cannot make a legal determination regarding integration in the context of BCBG Group's Motion to reject. As set forth below, BCBG Group disagrees. The Motion seeks approval of the determination to reject the Employment Agreement (and only the Employment Agreement), clearly fronting and explaining the potential integration issue. The question of integration is not a separate disputed factual issue, like the issues in *Orion* and *Sabine*, but simply a bankruptcy issue ripe for adjudication in the context of the Motion.

7. Accordingly, BCBG Group submits that rejection of the Employment Agreement is a reasonable exercise of its business judgment and the question of integration can and should be determined contemporaneously in the context of the Motion.

II. THE COURT CAN DECIDE LEGAL ISSUES OF BANKRUPTCY LAW IN THE CONTEXT OF A REJECTION MOTION.

A. *Orion* Does Not Prevent the Court from Ruling That the Employment Agreement is the Entire Agreement Between BCBG Group and Mrs. Azria.

8. The Objection rests entirely on the misguided assertion that the Court cannot rule that the Employment Agreement is the "entire agreement" between Mrs. Azria and BCBG Group in the context of a section 365 motion. The Objectors argue that *In re Orion Pictures Corp.*, 4 F.3d 1095 (2d Cir. 1993) ("*Orion*") precludes the Court from making this threshold determination. This is wrong.

9. On a motion to reject a contract under section 365 of the Bankruptcy Code, a court cannot conduct a mini-trial on substantive, disputed claims regarding the alleged breach or enforceability of a contract. *Id.* However, in ***every*** section 365 motion, the court must make certain threshold determinations to rule on a motion. These include analysis of whether the contract is executory, and whether it has been integrated with any other contracts. This makes sense: before you reject a contract, you have to know what the "contract" is that you are rejecting. Nothing in *Orion* restricts resolution of the routine elements of a section 365 motion.

See, e.g., *In re Bridgeport Jai Alai, Inc.*, 215 B.R. 651 (Bankr. D. Conn. 1997); *In re AbitibiBowater Inc.*, 418 B.R. 815 (Bankr. D. Del. 2009).

10. In *In re Bridgeport Jai Alai, Inc.*, 215 B.R. 651, 654 (Bankr. D. Conn. 1997), the court had to decide whether two prepetition agreements were integrated in the context of a section 365 motion before deciding whether the debtor could reject one and assume the other. Before filing for bankruptcy, Bridgeport Jai Alai, Inc. entered into two agreements with Autotote Systems Inc. to obtain equipment necessary to its simulcast and dog track operations. *Id.* at 653–54. After filing for bankruptcy, Bridgeport Jai Alai sought to assume one contract and reject the other in the context of a section 365 motion. *Id.* at 654. Just as the Objectors are doing now, the counterparty in *Bridgeport* argued that the contracts were integrated and must be assumed or rejected together. *Id.* ("The issue addressed here is whether the 1993 Agreement and the 1995 Agreement constitute separate and distinct executory contracts which may be assumed or rejected individually or whether they must be read together as a single indivisible contractual obligation which must either be assumed or rejected.") The *Bridgeport* Court, ruling ***after*** *Orion* had been decided, adjudicated the question of integration on the merits in the context of a section 365 motion and decided that Bridgeport Jai Alai could reject one agreement and assume the other because, under state law, the agreements were "separate and distinct contractual obligations." *Id.* at 659.

11. Similarly, in *In re AbitibiBowater Inc.*, 418 B.R. 815, 823–24 (Bankr. D. Del. 2009), before the court could turn to the question of whether the debtors could reject one prepetition agreement without rejecting other related prepetition agreements, it had to decide whether the agreements were integrated. The objector, Woodbridge, asserted that three agreements—a call agreement, a partnership agreement, and a consent agreement—where in fact

one integrated agreement. *Id.* at 823. Before ultimately deciding that the debtors could reject the call agreement, the court determined that under New York law the three agreements were not integrated all in the context of a section 365 motion. *Id.* at 823–24.

12. If accepted, the Objectors' argument would require an adversary proceeding in ***every*** section 365 motion in which a non-movant objects to determine whether the contract or lease was integrated with any other contracts. This is not the law. *In re Adelphia Bus. Sols., Inc.*, 322 B.R. 51, 54 (Bankr. S.D.N.Y. 2005); *Lewis Bros. Bakeries Inc. v. Interstate Brands Corp.* (*In re Interstate Bakeries Corp.*), 751 F.3d 955, 961 (8th Cir. 2014) ("To determine whether [an agreement] . . . is executory, we must first identify what constitutes the agreement at issue . . . the ultimate question, then, is whether [the] . . . integrated agreement is an executory contract under the Bankruptcy Code."); *United Air Lines, Inc. v. U.S. Trust Nat'l Ass'n* (*In re UAL Corp.*), 346 B.R. 456, 467 (Bankr. N.D. Ill. 2006) ("In order to assume or reject an unexpired lease or executory contract, the trustee must deal with the agreement as a whole—*cum onere*—rather than assuming only the beneficial aspects and rejecting the burdensome ones.").

13. Rather, *Orion* restricts a bankruptcy court's ability to make complicated factual findings on non-bankruptcy law issues. *See In re The Great Atl. & Pac. Tea Co., Inc.*, 544 B.R. 43, 50–51 (Bankr. S.D.N.Y. 2016) ("*Great Atlantic*"). In *Orion*, a motion picture distributor, Orion, and a cable television programmer, Showtime, entered into a prepetition licensing and distribution agreement. 4 F.3d at 1097. Approximately five years later, Showtime claimed that Orion had breached the agreement and halted its performance. *Id.* After Orion filed for bankruptcy, it sought to assume the contract by filing a section 365 motion and commencing an adversary proceeding for a declaration of the parties' rights under the agreement. *Id.* The bankruptcy court held hearings on both the section 365 motion and the adversary proceeding. *Id.*

at 1097–98. In the context of the section 365 motion, the court ultimately found no breach of the agreement, authorized Orion to assume the agreement, and dismissed the adversary proceeding as moot. *Id.* at 1098. The Second Circuit held that "it was error for the bankruptcy court to decide a disputed factual issue between the parties to a contract in the context of determining whether the debtor or trustee should be permitted to assume that contract." *Id.* Indeed, the issue of whether Orion was in breach of the contract was a factual dispute that required extrinsic evidence and could not be resolved based on a reading of the contract. *See id.*

14. *Sabine* and *Great Atlantic* appropriately apply the *Orion* holding. In *Sabine*, the Court granted the debtors' motion to reject certain agreements as a "reasonable exercise of the Debtors' business judgment" while declining to make any "final determination as to whether the covenants at issue in the rejected agreements run with the land." *In re Sabine Oil & Gas Corp.*, 547 B.R. 66, 80 (Bankr. S.D.N.Y. 2016). This decision falls squarely under the *Orion* holding because in order to reach a decision on the covenants, the Court had to evaluate extensive extrinsic evidence to resolve complicated factual disputes. *See, e.g.*, *id.* at 79 (evaluating extrinsic evidence in the form of "local recordings filed in connection with their respective Agreements" to resolve the factual dispute of whether the covenants touched and concerned the land). Similarly, in *Great Atlantic*, the court allowed a Debtor to reject a lease, while withholding judgment on a substantive contract dispute over whether the Debtors were owed money under the New York voluntary surrender doctrine. *Id.* The Court determined that the need to make intensive findings of fact on a complicated record precluded it from ruling on the merits. *Id.* ("Given the factual rulings that the Court would have to make, *In re Orion Pictures Corp.* thus precludes the Court's determination of whether the voluntary surrender doctrine

applies in the context of a motion to reject the Lease . . . [This] leaves for determination the issue of the subtenant's rights against the overlandlord under applicable non-bankruptcy law.").

15. In contrast, the issue of integration presents a narrow legal question of bankruptcy law: is the Employment Agreement a standalone executory contract susceptible to rejection under section 365 of the Bankruptcy Code? The answer turns on the face of the Employment Agreement, which unambiguously states that it is the "entire agreement" between Mrs. Azria and BCBG Group. Motion at Ex. 1, § 12.1. Indeed, the law ***prohibits*** consideration of extrinsic parol evidence, meaning there is no need to have the type of drawn out evidentiary hearing necessitated by *Orion*; when a contract contains an unambiguous merger clause, a court cannot look to parol evidence "to vary, or permit escape from, the terms of the integrated contract." *Mfrs. Hanover Trust Co. v. Yanakas*, 7 F.3d 310, 315 (2d Cir. 1993); *Grey v. Am. Mgmt. Servs.*, 139 Cal. Rptr. 3d 210, 214 (Cal. Ct. App. 2012) ("[t]he parol evidence rule generally prohibits the introduction of extrinsic evidence-oral or written-to vary or contradict the terms of an integrated written instrument" (internal quotations omitted)); *Greenfield v. Philles Records, Inc.*, 780 N.E.2d 166, 167 (N.Y. 2002) ("[I]f the agreement on its face is reasonably susceptible of only one meaning, a court is not free to alter the contract to reflect its personal notions of fairness and equity."); *see Wayland Inv. Fund, LLC v. Millenium Seacarriers, Inc.*, 111 F. Supp. 2d 450, 454 (S.D.N.Y. 2000) ("[T]he parol evidence rule bars the consideration of extrinsic evidence of the meaning of a complete written agreement if the terms of the agreement, considered in isolation, are clear and unambiguous."); *In re Delta Mills, Inc.*, 404 B.R. 95, 106 (Bankr. D. Del. 2009) (Where contract language is "unambiguous" courts "may not consider extrinsic evidence of the parties' intent" and must determine the meaning of the contract from its express terms."). The Court can, and should, determine whether the Employment Agreement is a standalone

contract on the face of the document; nothing in *Orion* prevents the Court from doing so on a section 365 motion.

B. THIS COURT SHOULD RULE THAT THE EMPLOYMENT AGREEMENT IS NOT INTEGRATED WITH THE CONTRIBUTION AGREEMENT

16. Under *Orion*, this court is empowered to resolve narrow legal issues such as integration on a 365 motion. Given the unambiguous and undisputed terms of the Employment Agreement, the Court should issue a binding ruling that the Employment Agreement is the "entire agreement" between BCBG Group and Mrs. Azria. Under both the express language of the Employment Agreement and applicable state law, the Employment Agreement is not integrated with any other contract.

1. The Integration Clause in the Employment Agreement is Dispositive in This Matter.

17. The Employment Agreement plainly states that it is the entire agreement between Mrs. Azria and BCBG Group; that should be the end of the Court's analysis. *Grey*, 139 Cal. Rptr. 3d at 212–13 ("when a contract is reduced to writing . . . is determined from the writing alone, if possible"). Section 12.1 of the Employment Agreement states that it "constitutes the entire agreement between the parties . . . ***superseding all prior understandings and agreements***, whether written or oral."[4] (emphasis added). Given the parties' clear intent as evidenced by the unambiguous language of the integration provision, the Court should give effect to the parties' intention and to the plain meaning of the text.

18. In *Grey*, the California Appellate Court found an unambiguous "entire agreement" clause in an employment agreement was "conclusive on the issue of integration, so

[4] Section 12.1 of the Employment Agreement states in its entirety: "Entire Agreement; Amendment. Except as otherwise expressly provided herein, this Agreement constitutes the entire agreement between the parties hereto with regard to the subject matter hereof, superseding all prior understandings and agreements, whether written or oral. This Agreement may not be amended or revised except by a writing signed by each of the parties."

that parol evidence to show the parties did not intend the writing to constitute the sole agreement [was] excluded." 139 Cal. Rptr. 3d at 213. As part of his application to American Management Services ("AMS") on June 19, 2006,[5] the appellant, Brandon Grey, signed multiple documents, including an Issue Resolution Agreement (the "IRA"). *Id.* at 212. The IRA required disputes to be settled through binding arbitration. *Id.* Shortly thereafter, on July 3, 2006, Grey accepted employment with AMS and signed an employment agreement which contained an "entire agreement" clause that stated, "[t]his Agreement is the entire agreement between the parties in connection with Employee's employment with [AMS], and supersedes all prior and contemporaneous discussions and understandings." *Id.* at 213. When Grey subsequently sued AMS for employment related issues, the court had to decide whether the IRA compelled arbitration for his claims or whether the employment agreement superseded the IRA. *Id.* at 212.

19. The court held that the employment agreement superseded the IRA. *Id.* at 214. In so holding, the court excluded "[p]arol evidence to show that the parties did not intend the writing to constitute the sole agreement." *Id.* The court recognized that the employment contract's express language that it was the 'entire agreement' and superseded all prior 'understandings' meant that the parties intended the contract to be the final and exclusive embodiment of their agreement." *Id.* at 213. "Because the contract says it is the entire agreement, common sense dictates that it supersedes other prior agreements related to Grey's employment." *Id.* at 213.

20. Not only is the text of the integration clause in *Grey* nearly identical to the text of the integration clause in the Employment Agreement, but the timing of the transactions are comparable. Brandon Grey signed the IRA in June 19, 2006, and subsequently signed his

[5] Although Brandon Grey signed the IRA on June 19, 2006, AMS did not sign the IRA until June 27, 2006. Brief for Appellant at 15, *Grey*, 139 Cal. Rptr. 3d 210 (Cal. Ct. App. 2012) (No. BC 412760), 2011 WL 5826890.

employment agreement on July 3, 2006. Similarly, Mrs. Azria first signed the Contribution Agreement on January 26, 2015, and subsequently signed her Employment Agreement on February 5, 2015. Thus, even if the Contribution Agreement was a prior agreement that was integrated with the draft, unexecuted Employment Agreement, it was a "***prior agreement***" that was "***superseded***" by the express terms of the "entire agreement" provision of the Employment Agreement. The Contribution Agreement was never integrated with the final, signed Employment Agreement. It only purported to integrate a ***draft*** exhibit, that itself was superseded when the actual Employment Agreement was signed.

21. The Objectors' reliance on *In re Physiotherapy Holding, Inc.*, 538 B.R. 225 (D. Del. 2015) and *In re Teligent, Inc*., 268 B.R. 723 (Bankr. S.D.N.Y. 2001) is unpersuasive. *See* Objection ¶ 17 n.7. In *Physiotherapy Holding*, the integration provision in the license agreement stated that "the terms and conditions of the Master Agreement are incorporated into this Agreement by this reference." 538 B.R. at 234. This language required the court to expand the scope of its inquiry beyond the license agreement to the terms of the master agreement. In *Teligent*, the merger agreement was not a "prior agreement" superseded by the non-compete and non-disclosure agreements; they were all executed at the same time. 268 B.R. at 729 ("[B]oth sets of documents were executed on the same day and as part of the same transaction.") But most critically, nowhere in the *Teligent* opinion does the court say that the non-compete and non-disclosure agreements contained "entire agreement" clauses like the one present in the Employment Agreement. This is a critical distinction and renders *Teligent* inapplicable to this case, in which the Employment Agreement was executed later in time, and contains an express provision stating that it supersedes all prior agreements.

2. The Integration Clause In the Contribution Agreement Does Not Change This Result.

22. Even if the Court looks beyond the "entire agreement" provision of the Employment Agreement—and it should not—other contract terms shows that the parties did not intend the final, executed Employment Agreement to be integrated with any other contract. BCBG Group, the only Debtor party to the Employment Agreement, is ***not*** a party to the Contribution Agreement. The Contribution Agreement was entered into by BCBG Max Azria Global Holdings, LLC ("Global Holdings")—on behalf of itself only, and not on behalf of BCBG Group. Several other parties also signed the Contribution Agreement, most of whom are not party to the Employment Agreement. Mrs. Azria, as one of the Debtors' shareholders, is the only party that signed both the Contribution Agreement and the Employment Agreement. Yet even Mrs. Azria only signed the Contribution Agreement with respect to a handful of provisions.

23. Critically, Mrs. Azria is ***not*** a party to the integration clause in the Contribution Agreement. The Contribution Agreement's integration clause is at section 11.5. Mrs. Azria is only a party to sections 2.8, 3.2(o), 5.5, 7.11, 7.12, 7.13, 7.14, 7.15, 11.8, and 11.13:

Solely for purposes of Sections 2.8, 3.2(o), 5.5, 7.11, 7.12, 7.13, 7.14, 7.15, 11.8 and 11.13

Max Azria

Lubov Azria

Mrs. Azria is not a party to the Contribution Agreement's Integration Clause at §11.5

11.5 Entire Agreement. This Agreement (including the schedules and exhibits attached hereto) and the Transaction Agreements constitute the entire agreement of the parties hereto in respect of the subject matter hereof and thereof, and supersede all prior agreements or understandings, among the parties hereto in respect of the subject matter hereof and thereof.

BCBG Group is not a party to the Contribution Agreement at all, let alone to the integration clause. In other words, ***no*** party to the Employment Agreement is also a party to the integration clause of the Contribution Agreement.

24. The Employment Agreement and Contribution Agreement concern distinct and discrete subject matters and were entered into by different parties and contain distinct obligations and duties which are independent of one another, all of which are hallmarks of severable contracts. *See Lazard Freres & Co. v. Crown Sterling Mgmt., Inc.*, 901 F. Supp. 133, 136 (S.D.N.Y. 1995); *In re Union Fin. Servs. Grp., Inc.*, 325 B.R. 816, 824 (Bankr. E.D. Mo. 2004). The Contribution Agreement governs the conversion of debt to equity and the rights of Mrs. Azria as a shareholder. The Employment Agreement is limited to Mrs. Azria's rights and duties as an employee only.

25. Indeed, the two contracts are not even governed by the same law. The Contribution Agreement is governed by New York law (s*ee* § 11.9) and the Employment Agreement is governed by California law (*see* § 12.8). Reading these two contracts as one is thus a legal impossibility, as it would require these contracts to be read together under two separate states' laws. Thus, rejection of the Employment Agreement by BCBG Group does not require rejection of the Contribution Agreement by the separate Debtor, Global Holdings.

III. TO THE EXTENT THE COURT CONCLUDES THAT AN ADVERSARY PROCEEDING IS REQUIRED, THE DEBTORS REQUEST A HEARING PRIOR TO THE BID DEADLINE.

26. The Debtors' sole goal in this Motion is to resolve this matter as efficiently and quickly as possible, so that the Debtors may provide certainty (to potential purchasers and their lenders) as to the state of the Employment Agreement and the Contribution Agreement. Substantial enterprise value likely resides in the Debtors' intellectual property, and the

Contribution Agreement contains important protections for this valuable property. The Debtors thus may seek to preserve the non-disparagement and non-compete protections contained in the Contribution Agreement if buyers (or existing stakeholders) find them valuable. Potential bidders need to know ahead of the sale deadline whether these important provisions are integrated with terms of the Employment Agreement, including the approximately $7 million golden parachute payment.

27. The Debtors believe there is nothing stopping the Court from resolving this matter immediately with a binding ruling that the Employment Agreement is the entire agreement between Mrs. Azria and BCBG Group. To the extent the Court believes that *Orion* requires that these matters be resolved in an adversary proceeding, however, the Debtors are not opposed to having this Motion heard simultaneously with that proceeding so long as resolution can be reached consistent with the Debtors' process milestones. To that end, the Debtors have proposed an expedited schedule attached as **Exhibit A**. This schedule has been provided to the Objectors. The Debtors request that the hearing be set at an early enough date to give potential purchasers of the company certainty as to whether the Debtors can reject the Employment Agreement without having to reject the Contribution Agreement before any potential purchaser is required to a submit bid on May 19, 2017 ahead of the May 22, 2017 proposed auction.

Conclusion

28. In sum, the Objection should be overruled because the Court can and should decide that the Employment Agreement is not integrated with Contribution Agreement and the rejection of the Employment Agreement is a sound exercise of BCBG Group's business judgment. Alternatively, to the extent the Court decides it cannot decide the integration issue in the context of the Motion, the Debtors request the Court manage the adversary proceeding in accordance with the schedule set forth in **Exhibit A**.

Dated: March 24, 2017

/s/ Joshua A. Sussberg

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Proposed Counsel to the Debtors and Debtors in Possession

Exhibit A

Litigation Schedule

Date	Schedule Item
March 31, 2017	Parties disclose any witnesses they plan to call at hearing
April 3, 2017	Deadline to Submit Document Requests. The Parties agree these will be narrow, targeted requests, and will avoid broad requests for "all documents" etc…
April 5, 2017	Debtors' Motion for Summary Judgment
April 7, 2107	Telephonic Hearing to Resolve any discovery disputes
April 12, 2017	Mrs. Azria's MSJ Response
April 17, 2017	MSJ Reply
April 19, 2017	Deadline to complete production of documents
April 24-May 5, 2107	Depositions
[May 12, 2017]	Hearing - pending court availability