

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:)	
)	Chapter 11
)	
NEIMAN MARCUS GROUP LTD LLC, <i>et al.</i> , ¹)	Case No. 20-32519 (DRJ)
)	
Debtors.)	(Jointly Administered)
)	

**DEBTORS' MOTION
FOR ENTRY OF AN ORDER (I) AUTHORIZING
AND APPROVING THE CONDUCT OF STORE CLOSING
SALES, WITH SUCH SALES TO BE FREE AND CLEAR OF ALL
LIENS, CLAIMS, AND ENCUMBRANCES, AND (II) GRANTING RELATED RELIEF**

THIS MOTION SEEKS ENTRY OF AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) state as follows in support of this motion:²

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Neiman Marcus Group LTD LLC (9435); Bergdorf Goodman Inc. (5530); Bergdorf Graphics, Inc. (9271); BG Productions, Inc. (3650); Mariposa Borrower, Inc. (9015); Mariposa Intermediate Holdings LLC (5829); NEMA Beverage Corporation (3412); NEMA Beverage Holding Corporation (9264); NEMA Beverage Parent Corporation (9262); NM Bermuda, LLC (2943); NM Financial Services, Inc. (2446); NM Nevada Trust (3700); NMG California Salon LLC (9242); NMG Florida Salon LLC (9269); NMG Global Mobility, Inc. (0664); NMG Notes PropCo LLC (1102); NMG Salon Holdings LLC (5236); NMG Salons LLC (1570); NMG Term Loan PropCo LLC (0786); NMG Texas Salon LLC (0318); NMGP, LLC (1558); The Neiman Marcus Group LLC (9509); The NMG Subsidiary LLC (6074); and Worth Avenue Leasing Company (5996). The Debtors’ service address is: One Marcus Square, 1618 Main Street, Dallas, Texas 75201.

² The facts and circumstances supporting this motion are set forth in the *Declaration of Mark Weinsten, Chief Restructuring Officer of Neiman Marcus Group LTD LLC, in Support of the Debtors’ Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed substantially contemporaneously with the Debtors’ voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) on May 7, 2020 (the “Petition Date”) and incorporated by reference herein. Capitalized terms used but not

Relief Requested

1. The Debtors seek entry of an order, substantially in the form attached hereto (the “Order”), (a) authorizing and approving, but not directing, store closings or similar themed sales (the “Initial Store Closings”) at the stores listed on Schedule 1 to the proposed order (collectively, the “Initial Closing Stores”); (b) authorizing the Debtors to conduct store closings at additional stores (the “Additional Store Closings” and, together with the Initial Store Closings, the “Store Closings”) at a later date or dates pursuant to the procedures set forth herein (collectively, the “Additional Closing Stores,” if any, and, together with the Initial Closing Stores, the “Closing Stores”), with such sales to be free and clear of all liens, claims, and encumbrances (the “Sales”), in accordance with the terms of the store closing sale guidelines (the “Sale Guidelines”), attached as Schedule 2 to the proposed order, to the extent the Debtors determine in an exercise of their business judgment and in accordance with the terms set forth in the Order that such additional store closings are in the best interests of the Debtors’ estates and stakeholders; and (c) granting related relief.

Jurisdiction and Venue

2. The United States Bankruptcy Court for the Southern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b). The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the entry of a final order by the Court.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

immediately defined in this motion shall have the meanings assigned to them elsewhere in this motion or in the First Day Declaration, as applicable.

4. The bases for the relief requested herein are sections 105, 363, 365, and 554 of the Bankruptcy Code, Bankruptcy Rules 2002 and 6004, and rules 1075-1 and 9013-1 of the Local Bankruptcy Rules for the Southern District of Texas (the “Local Rules”).

Background

5. For over 100 years, the Debtors have been the leader in retail luxury, innovation, and customer experiences. Since opening in 1907 with just one store in Dallas, Texas, the Debtors have strategically grown to 67 stores across the United States, including their marquee luxury Neiman Marcus and Bergdorf Goodman locations, Horchow e-commerce website, and off-price Last Call stores. Each Neiman Marcus and Bergdorf Goodman store offers a distinctive selection of apparel, handbags, shoes, cosmetics, and precious and designer jewelry from premier luxury and fashion designers. Horchow offers luxury home furnishings and accessories, and Last Call provides a more affordable option for price-sensitive yet fashion-minded customers. To complement its store footprint, NMG operates the largest luxury e-commerce platform in the world. More than 30 percent of NMG’s total annual revenue is from online sales. The Debtors’ non-Debtor affiliates own and operate a single store under the THERESA brand and an e-commerce platform under the Mytheresa brand. As of the Petition Date, the Debtors have funded-debt obligations of approximately \$5.3 billion.

6. The Debtors commenced these chapter 11 cases in the face of the unprecedented global COVID-19 pandemic with the goal of stabilizing the Debtors’ business and maximizing the value of the enterprise for stakeholders. In the face of these catastrophic headwinds, the Debtors have obtained financial commitments from key stakeholders to enable the Debtors to satisfy their postpetition obligations and beyond, and support from these same key stakeholders for a pre-negotiated transaction pursuant to the Restructuring Support Agreement, filed contemporaneously herewith. The Restructuring Support Agreement includes commitments from

holders of over 99% of the Debtors' Extended Term Loans, 100% of the Debtors' Second Lien Notes, 70% of the Debtors' Third Lien Notes, and 78% of the Debtors' Debentures to equitize their debt and certain of such holders have committed to backstop the full amount of a \$675 million new-money debtor-in-possession financing facility and a \$750 million committed exit financing facility. Through the Debtors' diligent and timely efforts to implement the transaction, the Debtors seek to deleverage their balance sheet by approximately \$4 billion and emerge from chapter 11 as a stronger, better-capitalized enterprise.

7. On the Petition Date, each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On May 7, 2020, the Court entered an order [Docket No. 23] authorizing procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). On May 19, 2020, the United States Trustee for the Southern District of Texas (the "U.S. Trustee") appointed an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code (the "Committee") [Docket No. 455].

I. The Store Closings.

8. While the Debtors have been proactive in addressing changing industry trends, they face a challenging commercial environment brought on by a general trend away from brick-and-mortar to online retail channels. These challenges have been further exacerbated by the COVID-19 pandemic (the "Pandemic") and the accompanying public health protocols that have shuttered stores, including the Debtors', across the country. Given the expenses associated with a substantial brick-and-mortar presence and the issues affecting the retail industry as a whole, the Debtors have evaluated their existing store footprint for opportunities to increase operational efficiencies.

9. More specifically, recognizing the need to optimize their store base in the Debtors' go-forward business plan, the Debtors' management team and advisors undertook an extensive performance analysis of all existing stores, evaluating, among other factors, historical and recent store profitability, historical and recent sales trends, occupancy costs, the geographic market in which each store is located, the mall or property in which each store is located, the potential to negotiate rent reductions with landlords, and specific operational circumstances related to each store's performance. The Closing Stores are either significantly underperforming the Debtors' portfolio, or are not a strategic fit with the Debtors' business going forward. Many of the Closing Stores are located in geographic markets that the Debtors have made a strategic decision to exit, have experienced negative sales trends, and no longer fit within the Debtors' business plan.

10. Ultimately, the Debtors' management team and advisors determined that it was in the Debtors' best interests to close and wind down 17 of the Debtors' off-price Last Call store locations. The Debtors publicly announced their intention to close the Last Call locations on March 11, 2020 and have been preparing for such closures since this announcement. Closing certain Last Call stores will preserve funds the Debtors intend to invest in their core luxury retail locations and e-commerce platforms, drive full-price sales, and allow the Debtors' management to focus on growing their luxury customer base. The Debtors now seek relief to implement this strategic path forward.

11. Given the uncertainty surrounding the Pandemic, however, the Debtors cannot currently predict when they will be able to re-open their stores and begin the Sales. If business conditions permit, the Debtors hope to commence the Sales promptly after reopening their stores, and seek the relief sought in this motion to ensure that the Debtors can commence the Sales and Store Closings without additional delay as soon as it is prudent to do so. The relief sought in this

motion, if granted, would offer the Debtors the flexibility to conduct the Sales and/or Store Closings once they determine that store foot traffic, consumer spending, and other factors are at optimal levels to maximize the value of the Debtors' estates. The Debtors will balance these considerations against, among other factors, the ongoing impact of market headwinds on the Closing Stores and the postpetition accrual of rent and other expenses.

12. Following the earlier of the completion of each Sale or the determination in the Debtors' business judgment that a contemplated Sale will no longer maximize value in light of, among other factors, market trends away from brick-and-mortar retail outlets and postpetition expenses, the Debtors intend to vacate the applicable properties and reject the corresponding leases.

13. While the Debtors have thus far determined only to close certain Last Call store locations, they continue to analyze their full store portfolio and overarching strategic direction. Accordingly, the Debtors request authority to identify the Additional Closing Stores to be closed at a later date or dates in accordance with the procedures set forth herein.

II. The Sale Guidelines.

14. To this end and to effectuate the Store Closings, the Debtors seek approval of streamlined procedures (*i.e.*, the Sale Guidelines) to sell or transport the inventory located in the Closing Stores (the "Merchandise"), and the associated furniture, fixtures, and equipment (the "FF&E") and, together with the Merchandise, the "Store Closure Assets"), in each case free and clear of liens, claims, and encumbrances. Specifically, the Debtors seek approval of the Sale Guidelines, which are substantially similar to sale guidelines approved in similar cases. The Debtors also seek approval of the Sale Guidelines to provide newspapers and other advertising media in which the Sales may be advertised with comfort that the Debtors are conducting the Sales in compliance with applicable law and with this Court's approval.

15. The Debtors have determined, in the exercise of their reasonable business judgment and in consultation with their advisors, that the Sale Guidelines will provide the best and most efficient means of selling or transporting the Store Closure Assets to maximize the value of their estates.

III. Liquidation Sale Laws and Dispute Resolution Procedures.

16. Certain states in which the Debtors operate stores have or may have licensing or other requirements governing the procedures for store closing, liquidation, or other inventory clearance sales, including, without limitation, state and local laws, statutes, rules, regulations, and ordinances (collectively, the “Liquidation Sale Laws”). The Liquidation Sale Laws may establish licensing, permitting, or bonding requirements, waiting periods, time limits, bulk sale restrictions, and augmentation limitations that would otherwise apply to the Store Closings. Such requirements may restrict the Debtors’ ability to maximize value in selling their inventory. Subject to the Court’s approval, the Debtors intend to conduct the Store Closings in accordance with the Sale Guidelines, and to the extent such guidelines conflict with the Liquidation Sale Laws, the Debtors request that the Sale Guidelines control.

17. To resolve any disputes between the Debtors and any Governmental Units (as defined in section 101(27) of the Bankruptcy Code) that may arise due to a perceived conflict between the Sale Guidelines and any Liquidation Sale Laws, the Debtors respectfully request that the Court authorize the Debtors to implement the following dispute resolution procedures (the “Dispute Resolution Procedures”):

- i. Provided that the Sales are conducted in accordance with the Order and the Sale Guidelines, the Debtors and the Debtors’ landlords, shall be deemed to be in compliance with any requirements of all county, parish, or municipal or other local government (hereinafter referred to as “Local”) and State requirements governing the conduct of the Sales of the Store Closure Assets, including but not limited to Local statutes, regulation, and ordinances establishing licensing or permitting requirements, waiting periods or time limits, or bulk sale restrictions that would

otherwise apply to the Sales and sales of the Store Closure Assets (collectively, the “Liquidation Sale Laws”) of any state or local Governmental Unit (as defined in Bankruptcy Code section 101(27)); *provided* that the term “Liquidation Sale Laws” shall be deemed not to include any public health or safety laws (collectively, “Safety Laws”), and the Debtors shall continue to be required to comply, as applicable, with such Safety Laws and General Laws, subject to any applicable provision of the Bankruptcy Code and federal law, and nothing in the Order shall be deemed to bar Governmental Units (as defined in section 101(27) of the Bankruptcy Code) or public officials from enforcing Safety Laws or General Laws.

- ii. Within three business days after entry of the Order, the Debtors will serve by first-class mail, copies of the Order and the Sale Guidelines on the following: (a) the Attorney General’s office for each state where the Sales are being held; (b) the county consumer protection agency or similar agency for each county where the Sales are being held; (c) the division of consumer protection for each state where the Sales are being held; and (d) the landlords for the Closing Stores (collectively, the “Dispute Notice Parties”).
- iii. With respect to any Additional Closing Stores, within three business days after filing any Additional Closing Store List (as defined below) with the Court, the Debtors will serve by first-class mail, copies of the Order and the Sale Guidelines on the Dispute Notice Parties, counsel to the Term Loan Lender Group, and counsel to the Noteholder Group.
- iv. To the extent that there is a dispute arising from or relating to the Sales, the Order, or the Sale Guidelines, which dispute relates to any Liquidation Sale Laws (a “Reserved Dispute”), the Court shall retain exclusive jurisdiction to resolve the Reserved Dispute. Any time within ten days following entry of the Order, or service of an Additional Closing Store List, as applicable, any Governmental Unit may assert that a Reserved Dispute exists by sending a notice (the “Dispute Notice”) explaining the nature of the dispute to: (i) Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654, Attn: Anup Sathy, P.C. (anup.sathy@kirkland.com), and Chad J. Husnick, P.C. (chad.husnick@kirkland.com), and Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Matt C. Fagen, (matthew.fagen@kirkland.com), and Gary Kavarsky (gary.kavarsky@kirkland.com); (ii) Jackson Walker L.L.P., 1401 McKinney Street, Suite 1900, Houston, Texas 77010, Attn. Matthew D. Cavanaugh (mcavanaugh@jw.com), Jennifer F. Wertz (jwertz@jw.com), Kristhy M. Peguero (kpeguero@jw.com), and Veronica A. Polnick (vpolnick@jw.com). If the Debtors and the Governmental Unit are unable to resolve the Reserved Dispute within fifteen days after service of the Dispute Notice, the relevant Governmental Unit may file a motion with the Court requesting that the Court resolve the Reserved Dispute (a “Dispute Resolution Motion”).
- v. In the event that a Dispute Resolution Motion is filed, nothing in the Order shall preclude the Debtors, a landlord, or any other interested party from asserting (i) that

the provisions of any Liquidation Sale Laws are preempted by the Bankruptcy Code, or (ii) that neither the terms of the Order nor the conduct of the Debtors pursuant to the Order violates such Liquidation Sale Laws. Filing a Dispute Resolution Motion as set forth herein shall not be deemed to affect the finality of the Order or to limit or interfere with the Debtors' ability to conduct or to continue to conduct the Sales pursuant to the Order absent further order of the Court. Upon the entry of the Order, the Debtors shall be authorized to conduct the Sales pursuant to the terms of the Order and the Sale Guidelines and to take all actions reasonably related thereto or arising in connection therewith. The Governmental Unit will be entitled to assert any jurisdictional, procedural, or substantive arguments it wishes with respect to the requirements of its Liquidation Sale Laws or the lack of any preemption of such Liquidation Sale Laws by the Bankruptcy Code. Nothing in the Order will constitute a ruling with respect to any issues that may be raised in any Dispute Resolution Motion.

- vi. If, at any time, a dispute arises between the Debtors and a Governmental Unit as to whether a particular law is a Liquidation Sale Law, and subject to any provisions contained in the Order related to the Liquidation Sale Laws, then any party to that dispute may utilize the provisions of subparagraphs (iv) and (v) above by serving a notice to the other party and proceeding thereunder in accordance with those paragraphs. Any determination with respect to whether a particular law is a Liquidation Sale Law shall be made *de novo*.

IV. Fast Pay Laws.

18. Certain states in which the Debtors operate have laws and regulations that require the Debtors to pay an employee substantially contemporaneously with his or her termination (the "Fast Pay Laws" and together with the Liquidation Sale Laws, the "Applicable State Laws"). These laws often require payment to occur immediately or within a period of only a few days from the date such employee is terminated.

19. The nature of the Store Closings contemplated by this motion could result in a number of employees being terminated during the Store Closings. To be clear, the Debtors intend to pay their terminated employees as expeditiously as possible and under normal payment procedures. However, the Debtors' payroll systems may be unable to process the payroll information associated with these terminations in a manner that will be compliant with the Fast Pay Laws. This process requires the Debtors' payroll department to calculate individual payments

upon termination, prepare each termination payment check, obtain authorization for each such check and then prepare each such check for mailing. Given the number of employees who may be terminated during the Store Closings, this process could take several days, making compliance with the Fast Pay Laws burdensome to the Debtors' estates, if not impossible. To that end, the Debtors respectfully request authority to conduct the Store Closings notwithstanding any Fast Pay Laws.

V. Lease Restrictions.

20. The Debtors also respectfully request a waiver of any contractual restrictions that could otherwise inhibit or prevent the Debtors from maximizing value for creditors through the Store Closings and Sales. In certain cases, the contemplated Store Closings and Sales may be inconsistent with certain provisions of leases, subleases, or other documents with respect to the premises in which the Debtors operate, including (without limitation) reciprocal easement agreements, agreements containing covenants (including, without limitation, covenants regarding the sale of the applicable building), conditions, and restrictions (including, without limitation, "go dark" provisions and landlord recapture rights), or other similar documents or provisions. Such restrictions would also obstruct the Debtors' ability to maximize value in selling their inventory.

21. The Debtors also request that no entity, including, without limitation, utilities, landlords, shopping center managers and personnel, creditors, and all persons acting for or on their behalf shall interfere with or otherwise impede the conduct of the Store Closings, the Sales, or institute any action against the Debtors in any court (other than this Court) or before any administrative body that in any way directly or indirectly interferes with, obstructs, or otherwise impedes the conduct of the Store Closings, the Sales, or the advertising and promotion (including through the posting of signs) of the Sales.

22. The Debtors anticipate potential concerns from landlords and will seek to resolve such concerns as expeditiously as possible. In similar cases, debtors have proposed store closing procedures with materially similar lease restrictions. Consistent with store closing procedures in other cases, the Debtors respectfully request the authority to enter into “side letters” with the applicable landlord to resolve any landlord concerns that may arise (the “Side Letters”). Side Letters may be used to set out agreed-upon terms that may differ from the Sale Guidelines. To the extent that the terms of a Side Letter conflict with the Sale Guidelines, the Side Letter will govern. Prior to entry of a Side Letter, the Debtors will serve notice and a copy of such proposed Side Letter on counsel to the Term Loan Lender Group and counsel to the Noteholder Group by email (to the extent available to the Debtors) or overnight mail. The authority to enter into Side Letters will provide the Debtors with flexibility to address landlord concerns as they arise, leading to more efficient sales and increased landlord support during this crucial period.

VI. Abandonment.

23. The Debtors respectfully request that the Court authorize the abandonment of certain owned Store Closure Assets remaining in the Closing Stores. The Debtors intend to sell any marketable owned Store Closure Assets present in the Closing Stores. However, the Debtors may determine that the cost associated with holding or selling certain property exceeds the proceeds that will be realized from its sale, or such property may not be saleable at all. In such cases, retaining the property would be burdensome to the estate and the property would be of inconsequential value.

24. For the avoidance of doubt, the Debtors will not sell any personal identifying information (which means information which alone or in conjunction with other information identifies an individual, including, but not limited to, an individual’s name, social security number, date of birth, government-issued identification number, account number, and credit or debit card

number) as part of the Store Closings, and all personal identifying information, if any, will be removed from any Store Closure Assets prior to the abandonment of the same. Accordingly, the Debtors respectfully submit that abandonment of such property is in the best interests of their estates and request that the Court authorize them to abandon such property where they determine in their business judgment that abandonment is the appropriate course of action.

Basis for Relief

I. The Court Should Approve the Sale Guidelines.

25. The Court may authorize the Debtors to consummate the Store Closings pursuant to sections 105(a) and 363(b) of the Bankruptcy Code. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that, “[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Further, section 105(a) of the Bankruptcy Code provides, in relevant part, that, “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

26. As discussed herein, pursuant to section 363(b) of the Bankruptcy Code, for the purpose of conducting the Store Closings, the Debtors need only show a legitimate business justification for the proposed action. *See, e.g., Institutional Creditors of Cont'l Air Lines, Inc. v. Cont'l Air Lines, Inc. (In re Cont'l Air Lines, Inc.)*, 780 F.2d 1223, 1226 (5th Cir. 1986) (stating that for a debtor in possession "to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling or leasing the property outside the ordinary course of business"); *In re 9 Houston LLC*, 578 B.R. 600, 610 (Bankr. S.D. Tex. 2017) (stating that, under *Continental*, to gain approval of a sale of assets outside the ordinary course of business, "the debtor must articulate a sound business reason for the proposed

sale and prove that the sale is in the best interest of the estate") (citing *Cont'l Air Lines*, 780 F.2d at 1226).

27. In addition, the Court may authorize the Store Closings based on section 105(a) of the Bankruptcy Code. Section 105(a) codifies the Court's inherent equitable powers to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." Under section 105(a), courts may authorize any action that is essential to the continued operation of a debtor's businesses. *See, e.g., In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002); *see also In re Scotia Development, LLC*, No. 07-20027, 2007 WL 2788840, at *1 (Bankr. S.D. Tex. Sep. 21, 2007) (acknowledging the doctrine of necessity).

28. The relief requested by this motion represents a sound exercise of the Debtors' business judgment, is necessary to avoid immediate and irreparable harm to the Debtors' estates, and is justified under sections 105(a) and 363(b) of the Bankruptcy Code. The Debtors and their advisors believe that the Sale Guidelines represent the most efficient and appropriate means of maximizing the value of the Store Closure Assets, while balancing the potentially competing concerns of landlords and other parties in interest.

29. Furthermore, ample business justification exists to conduct the Store Closings. Prior to the Petition Date, the Debtors, with the assistance of their advisors, engaged in an extensive review of each of their stores to: (a) identify underperforming stores; (b) consider whether the each store's performance could be improved by various initiatives, including through the negotiation of lease concessions with landlords; (c) determine which stores were candidates for downsizing; (d) assess the potential to consolidate certain stores within a reasonable proximity of one another; and (e) determine which stores should be closed promptly to eliminate their ongoing negative impact on the Debtors' financial performance and to improve the Debtors' liquidity. This

process has resulted in the Debtors' identification of the Initial Closing Stores and is ongoing with respect to the Additional Closing Stores.

30. Further delay in consummating the Store Closings would diminish the recovery tied to monetization of the Store Closure Assets for a number of reasons, chief among them that the Closing Stores are a drain on liquidity. Thus, the Debtors will realize an immediate benefit in terms of financial liquidity upon the sale of the Store Closure Assets and the termination of operations at the Closing Stores. Further, the swift and orderly commencement of the Store Closings will allow the Debtors to timely reject the applicable store leases, and therefore avoid the accrual of unnecessary administrative expenses for rent payment. Delaying the Store Closings may cause the Debtors to pay postpetition rent at many of these stores. Additionally, given the 365(d)(4) deadline, there is a finite number of days that the Sales can run without obtaining further consents from landlords.

II. The Court Should Approve the Sale of the Store Closure Assets Free and Clear of all Liens, Encumbrances, and Other Interests under section 363(f) of the Bankruptcy Code.

31. The Debtors request approval to sell the Store Closure Assets on a final "as is" basis, free and clear of any and all liens, claims, and encumbrances in accordance with section 363(f) of the Bankruptcy Code. A debtor in possession may sell property under sections 363(b) and 363(f) of the Bankruptcy Code "free and clear of any interest in such property of an entity other than the estate" if any one of the following conditions is satisfied: (i) applicable non-bankruptcy law permits sale of such property free and clear of such interest; (ii) such entity consents; (iii) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property; (iv) such interest is in bona fide dispute; or (v) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest. 11 U.S.C. § 363(f); *see also In re Nature Leisure Times, LLC*, No.

06-41357, 2007 WL 4554276, at *3 (Bankr. E.D. Tex. Dec. 19, 2007) (“The language of § 363(f) is in the disjunctive such that a sale free and clear of an interest can be approved if any one of the aforementioned conditions contained in § 363(f) are satisfied.”).

32. The Debtors anticipate that, to the extent there are liens on the Store Closure Assets, all holders of such liens will consent to the Sales because they provide the most effective, efficient, and time-sensitive approach to realizing proceeds for, among other things, the repayment of amounts due to such parties. Any and all liens on the Store Closure Assets sold under the Sales would attach to the remaining net proceeds of such sales with the same force, effect, and priority as such liens currently have on these assets, subject to the rights and defenses, if any, of the Debtors and of any party-in-interest with respect thereto. Moreover, all identified lienholders have received sufficient notice and have been given sufficient opportunity to object to the relief requested.

33. Accordingly, the Debtors submit that the sale of the Store Closure Assets satisfies the statutory requirements of section 365(f) of the Bankruptcy Code and should, therefore, be free and clear of any liens, claims, encumbrances, and other interests.

III. The Court Should Waive Compliance with Applicable State Laws and Approve the Dispute Resolution Procedures.

34. The Debtors’ ability to conduct the Sales in accordance with the Sale Guidelines and without complying with Applicable State Laws is critical to the Sales’ success. Although the Debtors intend to comply with state and local health and safety laws and consumer protection laws in conducting the Sales, many Liquidation Sale Laws require special and cumbersome licenses, waiting periods, time limits, and other procedures for store closing, liquidation, or similar sales. Additionally, compliance with Fast Pay Laws would require the Debtors to pay terminated

employees within a time frame that would be significantly burdensome, if not impossible, given the Debtors' payroll limitations.

35. To eliminate the time, delay, and expense associated with the administrative procedures necessary to comply with the Applicable State Laws, the Debtors propose the Sale Guidelines as a way to streamline the administrative burdens on their estates while still adequately protecting the broad and varied interests of both landlords and applicable governmental agencies charged with enforcing any Liquidation Sale Laws that may apply to the Store Closings. As such, the Debtors believe the Sale Guidelines mitigate any concerns that their landlords or governmental agencies may raise with respect to the Store Closings and, therefore, the below requested relief is in compliance with any applicable Liquidation Sale Laws.

36. The Debtors submit that there is strong support for granting them the authority not to comply with the Liquidation Sale Laws. *First*, it is generally accepted that many state statutes and regulations provide that if a liquidation or bankruptcy sale is court authorized, a company need not comply with the Liquidation Sale Laws. *See, e.g.*, Fla. Stat. Ann. 559.25(1) (exempting from the provisions of the chapter sales pursuant to court order); Ga. Code Ann. § 10-1-393(b)(24)(C)(iv) (same); 815 ILCS 350/3 (same); La. Rev. Stat. Ann. § 51:43(1) (same); N.Y. Gen. Bus. Law § 584(a) (same); Tex. Bus. & Com. Code Ann. § 17.91(3) (same). *Second*, pursuant to section 105(a) of the Bankruptcy Code, the Court has the authority to permit the Store Closings to proceed notwithstanding any contrary Applicable State Laws as it is essential to the continued operation of the Debtors' business. *Third*, this Court will be able to supervise the Store Closings because the Debtors and their assets are subject to this Court's exclusive jurisdiction. *See* 28 U.S.C. § 1334. As such, creditors and the public interest are adequately protected by notice of this motion and the ongoing jurisdiction and supervision of the Court.

37. Further, bankruptcy courts have consistently recognized, with limited exception, that federal bankruptcy law preempts state and local laws that contravene the underlying policies of the Bankruptcy Code. *See, e.g., In re Williams*, No. 06-32921 (KHR), 2007 WL 2122131, at *9 (Bankr. E.D. Va. July 19, 2007) (“When a conflict exists between state law and bankruptcy laws enacted by Congress, the state law is superseded.”); *Belculfine v. Aloe (In re Shenango Group, Inc.)*, 186 B.R. 623, 628 (Bankr. W.D. Pa. 1995) (“Trustees and debtors-in-possession have unique fiduciary and legal obligations pursuant to the bankruptcy code. . . . [A] state statute [] cannot place burdens on [a debtor] where the result would contradict the priorities established by the federal bankruptcy code.”), *aff’d*, 112 F.3d 633 (3d Cir. 1997); *In re Trevino*, 535 B.R. 110, 153 n.17 (Bankr. S.D. Tex. 2015) (“If plaintiffs were allowed to assert state law claims objecting to the procedures followed in a bankruptcy court, then a state could effectively override federal bankruptcy law.”).

38. Courts in some jurisdictions have found that preemption of state law is not appropriate if the laws deal with public health and safety. *See Baker & Drake, Inc. v. Pub. Serv. Comm’n of Nev. (In re Baker & Drake, Inc.)*, 35 F.3d 1348, 1353–54 (9th Cir. 1994) (holding that Bankruptcy Code did not preempt state law prohibiting taxicab leasing that was promulgated in part as public safety measure). However, preemption is appropriate where, as here, the only state laws involved concern economic regulation rather than the protection of public health and safety. *See id.* at 35 (finding that “federal bankruptcy preemption is more likely . . . where a state statute is concerned with economic regulation rather than with protecting the public health and safety”).

39. Under the circumstances of these chapter 11 cases, enforcing the strict requirements of the Liquidation Sale Laws would undermine the fundamental purpose of section 363(b) of the Bankruptcy Code by placing constraints on the Debtors’ ability to maximize estate assets for the

benefit of creditors. Accordingly, authorizing the Sales without the delays and burdens associated with obtaining various state and local licenses, observing state and local waiting periods or time limits, and/or satisfying any additional requirements with respect to advertising, sales, and similar items is necessary and appropriate. The Debtors do not seek a general waiver of all state and local law requirements, but only those that apply specifically to retail liquidation sales. Indeed, the requested waiver is narrowly tailored to facilitate the successful consummation of the Sales. Moreover, the Debtors will comply with applicable state and local public health and safety laws, and applicable tax, labor, employment, environmental, and consumer protection laws, including consumer laws regulating deceptive practices and false advertising. Finally, the Dispute Resolution Procedures provide an ordered means for resolving any disputes arising between the Debtors and any Governmental Units with respect to the applicability of any Liquidation Sale Laws, and should therefore be approved.

IV. The Court Should Waive Compliance with Restrictions in the Debtors' Leases.

40. Certain of the Debtors' leases governing the premises of the stores subject to the Store Closings may contain provisions purporting to restrict or prohibit the Debtors from conducting store closing, liquidation, or similar sales. Such provisions have been held to be unenforceable in chapter 11 cases as they constitute an impermissible restraint on a debtor's ability to properly administer its reorganization case and maximize the value of its assets under section 363 of the Bankruptcy Code. *See In re Ames Dep't Stores, Inc.*, 136 B.R. 357, 359 (Bankr. S.D.N.Y. 1992) (deciding that enforcement of such lease restrictions would "contravene overriding federal policy requiring [the debtor] to maximize estate assets. . ."); *In re R.H. Macy and Co., Inc.*, 170 B.R. 69, 73–74 (Bankr. S.D.N.Y. 1994) (holding that the lessor could not recover damages for breach of a covenant to remain open throughout the lease term, because the debtor had a duty to maximize the value to the estate and the debtor fulfilled this obligation by

holding a store closing sale and closing the store); *In re Tobago Bay Trading Co.*, 112 B.R. 463, 467–68 (Bankr. N.D. Ga, 1990) (finding that a debtor’s efforts to reorganize would be significantly impaired to the detriment of creditors if lease provisions prohibiting a debtor from liquidating its inventory were enforced); *In re Lisbon Shops, Inc.*, 24 B.R. 693, 695 (Bankr. E.D. Mo. 1982) (holding restrictive lease provision unenforceable in chapter 11 case where the debtor sought to conduct a liquidation sale).

41. Store closing sales are a routine part of chapter 11 cases involving retail debtors. Such sales are consistently approved by courts, despite provisions in recorded documents or agreements purporting to forbid such sales. Thus, to the extent that such provisions or restrictions exist in any of the leases of the stores subject to the Store Closings, the Debtors request that the Court authorize the Debtors to conduct any liquidation sales without interference by any landlords or other persons affected, directly or indirectly, by the liquidation sales.

V. The Court Should Approve the Abandonment of Certain Property in Connection with any Store Closings.

42. After notice and a hearing, a debtor “may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.” 11 U.S.C. §554(a); *see also Hanover Ins. Co. v. Tyco Indus., Inc.*, 500 F.2d 654, 657 (3d Cir. 1974) (stating that a trustee “may abandon his claim to any asset, including a cause of action, he deems less valuable than the cost of asserting that claim”).

43. The Debtors are seeking to sell all owned Store Closure Assets remaining in the Closing Stores. However, the Debtors may determine that the costs associated with holding or selling certain Store Closure Assets exceeds the proceeds that will be realized upon their sale, or that such property is not sellable at all. In such event, the property is of inconsequential value and benefit to the estates and/or may be burdensome to retain.

44. To maximize the value of the Debtors' assets and to minimize the costs to the estates, the Debtors respectfully request authority to abandon any of their remaining Store Closure Assets or other property located at any of the Closing Stores without incurring liability to any person or entity. The Debtors further request that the landlord of each Closing Store with any abandoned Store Closure Assets or other property be authorized to dispose of such property without liability to any third parties.

45. Notwithstanding the foregoing, the Debtors will utilize all commercially reasonable efforts to remove or cause to be removed any confidential or personal identifying information (which means information which alone or in conjunction with other information identifies an individual, including, but not limited to, an individual's name, social security number, date of birth, government-issued identification number, account number, and credit or debit card number) in any of the Debtors' hardware, software, computers or cash registers or similar equipment that are to be sold or abandoned.

VI. The Court Should Approve the Procedures Relating to the Additional Closing Stores.

46. The Debtors request that the Sale Guidelines and the Order apply to any Additional Closing Stores. In order to provide landlords and other parties in interest with information regarding the ultimate disposition of the Closing Stores, to the extent that the Debtors seek to conduct the Sales or Store Closings at any Additional Closing Store, the Debtors will file a list of such Additional Closing Stores with the Court (the "Additional Closing Store List"), and serve a notice of their intent to conduct the Sales at the Additional Closing Stores on the applicable landlords (the "Additional Closing Store Landlords"), counsel to the Term Loan Lender Group, counsel to the Noteholder Group, and any other interested parties by email (to the extent available to the Debtors) or overnight mail. With respect to Additional Closing Store Landlords, the Debtors

will mail such notice to the notice address set forth in the lease for such Additional Closing Store (or, if none, at the last known address available to the Debtors).

47. The Debtors propose that the Additional Closing Store Landlords (each of whom will have already been served with this motion and Order) and any interested parties have seven days after service of the applicable Additional Closing Store List to object to the application of the Order to their Closing Stores. If no timely objections are filed with respect to the application of the Order to an Additional Closing Store, then the Debtors should be authorized, pursuant to sections 105(a) and 363(b) and (f) of the Bankruptcy Code to proceed with conducting the Sales at the Additional Closing Store in accordance with the Order and the Sale Guidelines. If any objections are filed with respect to the application of the Order to an Additional Closing Store, and such objections are not resolved, the objections and the application of the Order to the Additional Closing Store will be considered by the Court at the next regularly scheduled omnibus hearing, subject to the rights of any party to seek relief on an emergency basis on shortened notice, to the extent necessary so that the Debtors can move promptly to maximize value and minimize expenses for the benefit of their creditors and stakeholders.

Waiver of Bankruptcy Rule 6004(a) and 6004(h)

48. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

Notice

49. The Debtors will provide notice of this motion to: (a) the U.S. Trustee for the Southern District of Texas; (b) the holders of the 50 largest unsecured claims against the Debtors (on a consolidated basis); (c) counsel to the Term Loan Lender Group; (d) counsel to the

Noteholder Group; (e) the United States Attorney's Office for the Southern District of Texas; (f) the Internal Revenue Service; (g) the United States Securities and Exchange Commission; (h) the state attorneys general for states in which the Debtors conduct business; (i) the landlords for the Initial Closing Stores; and (j) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Debtors respectfully request that the Court enter an order, granting the relief requested in this motion and granting such other and further relief as is appropriate under the circumstances.

Houston, Texas
July 3, 2020

/s/ Matthew D. Cavanaugh

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Certificate of Service

I certify that on July 3, 2020, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Matthew D. Cavanaugh

Matthew D. Cavanaugh

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

)	
In re:)	Chapter 11
)	
NEIMAN MARCUS GROUP LTD LLC, <i>et al.</i> , ¹)	Case No. 20-32519 (DRJ)
)	
Debtors.)	(Jointly Administered)
)	
)	Re: Docket No. ___

**ORDER (I) AUTHORIZING
AND APPROVING THE CONDUCT OF
STORE CLOSING SALES, WITH SUCH SALES
TO BE FREE AND CLEAR OF ALL LIENS, CLAIMS,
AND ENCUMBRANCES, AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”), authorizing, but not directing, the Debtors to (a) authorize and approve the continuation or initiation of the Store Closings in accordance with the terms of the Sale Guidelines, with such sales to be free and clear of all liens, claims, and encumbrances, (b) authorize the conduct of the Store Closings with respect to the Additional Closing Stores at a later date or dates, and (c) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Neiman Marcus Group LTD LLC (9435); Bergdorf Goodman Inc. (5530); Bergdorf Graphics, Inc. (9271); BG Productions, Inc. (3650); Mariposa Borrower, Inc. (9015); Mariposa Intermediate Holdings LLC (5829); NEMA Beverage Corporation (3412); NEMA Beverage Holding Corporation (9264); NEMA Beverage Parent Corporation (9262); NM Bermuda, LLC (2943); NM Financial Services, Inc. (2446); NM Nevada Trust (3700); NMG California Salon LLC (9242); NMG Florida Salon LLC (9269); NMG Global Mobility, Inc. (0664); NMG Notes PropCo LLC (1102); NMG Salon Holdings LLC (5236); NMG Salons LLC (1570); NMG Term Loan PropCo LLC (0786); NMG Texas Salon LLC (0318); NMGP, LLC (1558); The Neiman Marcus Group LLC (9509); The NMG Subsidiary LLC (6074); and Worth Avenue Leasing Company (5996). The Debtors’ service address is: One Marcus Square, 1618 Main Street, Dallas, Texas 75201.

² Capitalized terms used and not defined herein have the meanings ascribed to them in the Motion.

pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is hereby:

FOUND AND DETERMINED THAT:³

A. The Sale Guidelines, which are attached hereto as **Schedule 1**, are reasonable and appropriate, and the conduct of the Sales in accordance with the Sale Guidelines will provide an efficient means for the Debtors to dispose of the Store Closure Assets, and are in the best interest of the Debtors' estates.

B. The Store Closings and Sales are in the best interest of the Debtors' estates.

C. The Dispute Resolution Procedures are fair and reasonable, and comply with applicable law.

³ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact where appropriate. *See* Fed. R. Bankr. P. 7052.

D. The Debtors have represented that they intend to neither sell nor lease personally identifiable information pursuant to the relief requested in the Motion, although the Debtors will be authorized to distribute emails and promotional materials to their customers consistent with their existing policies on the use of consumer information.

E. The entry of this Order is in the best interests of the Debtors and their estates, creditors, and interest holders and all other parties in interest herein; and now therefore it is hereby

ORDERED THAT:

1. The Motion is granted as set forth in this Order.
2. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.
3. To the extent there is any conflict between this Order and the Sale Guidelines, the terms of this Order shall control.
4. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

I. Authority to Engage in Sales and Conduct Store Closings.

5. The Debtors are authorized, pursuant to sections 105(a) and 363(b)(1) of the Bankruptcy Code, to continue the Sales at the Closing Stores in accordance with this Order and the Sale Guidelines, as may be modified by any Side Letters between the Debtors and the landlords at the Closing Stores. Prior to entry of a Side Letter, the Debtors shall serve notice and a copy of such proposed Side Letter on counsel to the Term Loan Lender Group and counsel to the Noteholder Group by email (to the extent available to the Debtors) or overnight mail.
6. The Sale Guidelines are approved in their entirety on a final basis.
7. The Debtors are authorized to discontinue operations at the Closing Stores in accordance with this Order and the Sale Guidelines.

8. All entities that are presently in possession of some or all of the Merchandise or FF&E in which the Debtors hold an interest that are or may be subject to this Order hereby are directed to surrender possession of such Merchandise or FF&E to the Debtors.

9. Neither the Debtors nor any of their officers, employees, or agents shall be required to obtain the approval of any third party other than to the extent required under the DIP Loan Documents (as defined in the DIP Order [Docket No. 850]), including (without limitation) any Governmental Unit (as defined under section 101(27) of the Bankruptcy Code) or landlord, to conduct the Sales and Store Closings and to take the related actions authorized herein.

II. Conduct of the Sales.

10. All newspapers and other advertising media in which the Sales and Store Closings may be advertised and all landlords are directed to accept this Order as binding authority so as to authorize the Debtors to conduct the Sales and Store Closings, including, without limitation, to conduct and advertise the sale of the Merchandise and FF&E in the manner contemplated by and in accordance with this Order and the Sale Guidelines.

11. The Debtors are hereby authorized to take such actions as may be necessary and appropriate to conduct the Sales and Store Closings without necessity of further order of this Court as provided in the Sale Guidelines (subject to any Side Letters), including, but not limited to, advertising the sale as a “store closing sale,” “sale on everything,” “everything must go,” or similar-themed sales as contemplated in the Sale Guidelines through the posting of signs (including the use of exterior banners at non-enclosed mall closing locations, and at enclosed mall closing locations to the extent the applicable closing location entrance does not require entry into the enclosed mall common area), use of sign walkers, A-frames, and other street signage, as contemplated in the Sale Guidelines.

12. Except as expressly provided in the Sale Guidelines, the sale of the Store Closure Assets shall be conducted by the Debtors notwithstanding any restrictive provision of any lease, sublease, restrictive covenant, or other agreement relative to occupancy affecting or purporting to restrict the conduct of the Store Closings or the Sales (including the sale of the Store Closure Assets), the rejection of leases, abandonment of assets, or “going dark” provisions shall not be enforceable in conjunction with the Store Closings or the Sales. Breach of any such provisions in these chapter 11 cases in conjunction with the Store Closings or the Sales shall not constitute a default under a lease or provide a basis to terminate the lease; *provided* that the Store Closings and Sales are conducted in accordance with the terms of this Order, any Side Letter, and/or the Sale Guidelines. The Debtors and landlords of the Closing Stores are authorized to enter into the Side Letters between themselves modifying the Sale Guidelines without further order of the Court, and such Side Letters shall be binding as among the Debtors and any such landlords, provided that nothing in such Side Letters affects the provisions of this Order. In the event of any conflict between the Sale Guidelines and any Side Letter, the terms of such Side Letter shall control.

13. Except as expressly provided for herein or in the Sale Guidelines, no person or entity, including, but not limited to, any landlords, licensors, service providers, utilities, or creditors, shall take any action to directly or indirectly prevent, interfere with, or otherwise hinder consummation of the Sales or the sale of Merchandise or FF&E, or the advertising and promotion (including the posting of signs and exterior banners or the use of sign walkers) of such sales, and all such parties and persons of every nature and description, including, but not limited to, any landlords, licensors, service providers, utilities, and creditors and all those acting for or on behalf of such parties, are prohibited and enjoined from (a) interfering in any way with, obstructing, or otherwise impeding, the conduct of the Store Closings, and/or (b) instituting any action or

proceeding in any court (other than in this Court) or administrative body seeking an order or judgment against, among others, the Debtors or the landlords at the closing locations that might in any way directly or indirectly obstruct or otherwise interfere with or adversely affect the conduct of the Sales or sale of the Store Closure Assets or other liquidation sales at the closing locations and/or seek to recover damages for breach(es) of covenants or provisions in any lease, sublease, license, or contract based upon any relief authorized herein.

14. All sales of Store Closure Assets shall be “as is” and final. No returns related to the purchase of Store Closure Assets shall be accepted at any Closing Stores or any stores that are not participating in the Store Closings.

15. The Debtors shall accept the return of any goods that contain a defect which the lay consumer could not reasonably determine was defective by visual inspection prior to purchase for a full refund, provided that the consumer must return the merchandise within the time period proscribed by the Debtors’ return policy that was in effect when the merchandise was purchased, the consumer must provide a receipt, and the asserted defect must in fact be a “latent” defect.

16. The Debtors are directed to remit all taxes arising from the Sales to the applicable Governmental Units as and when due, provided that in the case of a *bona fide* dispute the Debtors are only directed to pay such taxes upon the resolution of such dispute, if and to the extent that the dispute is decided in favor of the applicable Governmental Unit. For the avoidance of doubt, sales taxes collected and held in trust by the Debtors shall not be used to pay any creditor or any other party, other than the applicable Governmental Unit for which the sales taxes are collected. This Order does not enjoin, suspend, or restrain the assessment, levy, or collection of any tax under state, provincial or federal law, and does not constitute a declaratory judgment with respect to any party’s liability for taxes under state, provincial or federal law.

17. Pursuant to section 363(f) of the Bankruptcy Code, all sales of Store Closure Assets shall be free and clear of any and all liens, claims, encumbrances, and other interests; *provided, however,* that any such liens, claims, encumbrances, and other interests shall attach to the proceeds of the sale of the Store Closure Assets with the same validity, in the amount, with the same priority as, and to the same extent that any such liens, claims, and encumbrances have with respect to the Store Closure Assets, subject to any claims and defenses that the Debtors may possess with respect thereto.

18. The Debtors are authorized and empowered to transfer Store Closure Assets among, and into, the Closing Stores in accordance with the Sale Guidelines, as applicable. The Debtors are authorized to sell the Store Closure Assets and abandon the same, in each case, as provided for and in accordance with the terms of the Sale Guidelines.

19. Neither the Sale Guidelines nor this Order authorize the Debtors to transfer or sell the personal identifying information (which means information which alone or in conjunction with other information identifies an individual, including but not limited to an individual's first name (or initial) and last name, physical address, electronic address, telephone number, social security number, date of birth, government-issued identification number, account number and credit or debit card number) ("PII") of any customers unless such sale or transfer is permitted by the Debtors' privacy policy and state, provincial, or federal privacy and/or identity theft prevention laws and rules (collectively, the "Applicable Privacy Laws"). The foregoing shall not limit the use of the Debtors' customer lists and mailing lists solely for purposes of advertising and promoting the Sales.

20. The Debtors shall remove or cause to be removed any confidential and/or PII in any of the Debtors hardware, software, computers, or cash registers or similar equipment which are to be sold or abandoned so as to render the PII unreadable or undecipherable.

III. Procedures Relating to Additional Closing Stores.

21. To the extent that the Debtors seek to conduct Sales at any Additional Closing Stores, the Sale Guidelines and this Order shall apply to the Additional Closing Stores.

22. Prior to conducting the Sales at any Additional Closing Store, the Debtors will file a list, which list shall be subject to the approval of the Required DIP Lenders (as defined in the DIP Order) to the extent required under the DIP Loan Documents, including such Additional Closing Store with this Court (each, an “Additional Closing Store List”), and serve a notice of their intent to conduct the Sales at the Additional Closing Store on the applicable landlords (collectively, the “Additional Closing Store Landlords”), counsel to the Term Loan Lender Group, counsel to the Noteholder Group, and other interested parties by email (to the extent available to the Debtors) or overnight mail. With respect to Additional Closing Store Landlords, the Debtors will mail, if applicable, such notice to the notice address set forth in the lease for such Additional Closing Store (or, if none, at the last known address available to the Debtors).

23. The Additional Closing Store Landlords, the Term Loan Lender Group, the Noteholder Group, and any interested parties shall have seven days after service of the applicable Additional Closing Store List to object to the application of this Order. If no timely objections are filed with respect to the application of this Order to an Additional Closing Store, the Debtors shall be authorized, pursuant to sections 105(a), and 363(b) and (f) of the Bankruptcy Code, to proceed with conducting the Sales at the Additional Closing Stores in accordance with this Order and the Sale Guidelines. If any objections are filed with respect to the application of this Order to an Additional Closing Store and such objections are not resolved, the objections and the application

of this Order to the Additional Closing Store will be considered by the Court at the next regularly scheduled omnibus hearing, subject to the rights of any party to seek relief on an emergency basis on shortened notice, to the extent necessary.

IV. Dispute Resolution Procedures with Governmental Units.

24. Nothing in this Order or the Sale Guidelines, releases, nullifies, or enjoins the enforcement of any liability to a Governmental Unit under environmental laws or regulations (or any associated liabilities for penalties, damages, cost recovery, or injunctive relief) to which any entity would be subject as the owner, lessor, lessee, or operator of the property after the date of entry of this Order. Nothing contained in this Order or the Sale Guidelines shall in any way: (a) diminish the obligation of any entity to comply with environmental laws; or (b) diminish the obligations of the Debtors to comply with environmental laws consistent with their rights and obligations as debtors in possession under the Bankruptcy Code. The Store Closings and the Sales shall not be exempt from laws of general applicability, including, without limitation, public health and safety, criminal, tax (including, but not limited to, the collection of sales taxes), labor, employment, environmental, antitrust, fair competition, traffic and consumer protection laws, including consumer laws regulating deceptive practices and false advertising, consumer protection, the sale of gift certificates, layaway programs, return of goods, express or implied warranties of goods, and “weights and measures” regulation and monitoring (collectively, “General Laws”). Nothing in this Order or the Sale Guidelines shall alter or affect obligations to comply with all applicable federal safety laws and regulations. Nothing in this Order shall be deemed to bar any Governmental Unit (as such term is defined in section 101(47) of the Bankruptcy Code) from enforcing General Laws in the applicable non-bankruptcy forum, subject to the Debtors’ rights to assert in that forum or before this Court that any such laws are not in fact General Laws or that such enforcement is impermissible under the Bankruptcy Code or this Order.

Notwithstanding any other provision in this Order, no party waives any rights to argue any position with respect to whether the conduct was in compliance with this Order and/or any applicable law, or that enforcement of such applicable law is preempted by the Bankruptcy Code. Nothing in this Order shall be deemed to have made any rulings on any such issues.

25. To the extent that the sale of Store Closure Assets is subject to any Liquidation Sale Laws, including any federal, state, or local statute, ordinance, rule, or licensing requirement directed at regulating “going out of business,” “store closing,” or similar inventory liquidation sales, or bulk sale laws, laws restricting safe, professional and non-deceptive, customary advertising such as signs, banners, signage, and use of sign walkers solely in connection with the sale of the Store Closing Assets, including ordinances establishing license or permit requirements, waiting periods, time limits, or bulk sale restrictions that would otherwise apply solely to the sale of the Store Closure Assets, the dispute resolution procedures in this section shall apply:

- i. Provided that the Sales are conducted in accordance with this Order and the Sale Guidelines, the Debtors and the Debtors’ landlords, shall be deemed to be in compliance with any requirements of all county, parish, or municipal or other local government (hereinafter referred to as “Local”) and State requirements governing the conduct of the Sales of the Store Closure Assets, including but not limited to Local statutes, regulation, and ordinances establishing licensing or permitting requirements, waiting periods or time limits, or bulk sale restrictions that would otherwise apply to the Sales and sales of the Store Closure Assets (collectively, the “Liquidation Sale Laws”) of any state or local Governmental Unit (as defined in Bankruptcy Code section 101(27)); *provided* that the term “Liquidation Sale Laws” shall be deemed not to include any public health or safety laws (collectively, “Safety Laws”), and the Debtors shall continue to be required to comply, as applicable, with such Safety Laws and General Laws, subject to any applicable provision of the Bankruptcy Code and federal law, and nothing in this Order shall be deemed to bar Governmental Units (as defined in section 101(27) of the Bankruptcy Code) or public officials from enforcing Safety Laws or General Laws.
- ii. Within three business days after entry of this Order, the Debtors will serve by first-class mail, copies of this Order and the Sale Guidelines on the following: (a) the Attorney General’s office for each state where the Sales are being held; (b) the county consumer protection agency or similar agency for each county where the Sales are being held; (c) the division of consumer protection for each state where

the Sales are being held; and (d) the landlords for the Closing Stores (collectively, the “Dispute Notice Parties”).

- iii. With respect to any Additional Closing Stores, within three business days after filing any Additional Closing Store List (as defined below) with the Court, the Debtors will serve by first-class mail, copies of this Order and the Sale Guidelines on the Dispute Notice Parties.
- iv. To the extent that there is a dispute arising from or relating to the Sales, this Order, or the Sale Guidelines, which dispute relates to any Liquidation Sale Laws (a “Reserved Dispute”), the Court shall retain exclusive jurisdiction to resolve the Reserved Dispute. Any time within ten days following entry of this Order, or service of an Additional Store Closing List, as applicable, any Governmental Unit may assert that a Reserved Dispute exists by sending a notice (the “Dispute Notice”) explaining the nature of the dispute to: (i) Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654, Attn: Anup Sathy, P.C. (anup.sathy@kirkland.com), and Chad J. Husnick, P.C. (chad.husnick@kirkland.com), and Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Matt C. Fagen, (matthew.fagen@kirkland.com), and Gary Kavarsky (gary.kavarsky@kirkland.com); (ii) Jackson Walker L.L.P., 1401 McKinney Street, Suite 1900, Houston, Texas 77010, Attn. Matthew D. Cavanaugh (mcavanaugh@jw.com), Jennifer F. Wertz (jwertz@jw.com), Kristhy M. Peguero (kpeguero@jw.com), and Veronica A. Polnick (vpolnick@jw.com). If the Debtors and the relevant Governmental Unit are unable to resolve the Reserved Dispute within fifteen days after service of the Dispute Notice, the Governmental Unit may file a motion with the Court requesting that the Court resolve the Reserved Dispute (a “Dispute Resolution Motion”).
- v. In the event that a Dispute Resolution Motion is filed, nothing in this Order shall preclude the Debtors, a landlord, or any other interested party from asserting (i) that the provisions of any Liquidation Sale Laws are preempted by the Bankruptcy Code, or (ii) that neither the terms of this Order nor the conduct of the Debtors pursuant to this Order violates such Liquidation Sale Laws. Filing a Dispute Resolution Motion as set forth herein shall not be deemed to affect the finality of this Order or to limit or interfere with the Debtors’ ability to conduct or to continue to conduct the Sales pursuant to this Order absent further order of the Court. Upon the entry of this Order, the Debtors shall be authorized to conduct the Sales pursuant to the terms of this Order and the Sale Guidelines and to take all actions reasonably related thereto or arising in connection therewith. The relevant Governmental Unit will be entitled to assert any jurisdictional, procedural, or substantive arguments it wishes with respect to the requirements of its Liquidation Sale Laws or the lack of any preemption of such Liquidation Sale Laws by the Bankruptcy Code. Nothing in this Order will constitute a ruling with respect to any issues to be raised in any Dispute Resolution Motion.

- vi. If, at any time, a dispute arises between the Debtors and a Governmental Unit as to whether a particular law is a Liquidation Sale Law, and subject to any provisions contained in this Order related to the Liquidation Sale Laws, then any party to that dispute may utilize the provisions of subparagraphs (iv) and (v) above by serving notice to the other party and proceeding thereunder in accordance with those paragraphs. Any determination with respect to whether a particular law is a Liquidation Sale Law shall be made *de novo*.

26. Subject to paragraphs 24 and 25 above, each and every federal, state, or local agency, departmental, or Governmental Unit with regulatory authority over the Sales and all newspapers and other advertising media in which the Sales are advertised shall consider this Order as binding authority that no further approval, license, or permit of any Governmental Unit shall be required, nor shall the Debtors be required to post any bond, to conduct the Sales.

27. Provided that the Sales are conducted in accordance with the terms of this Order and the Sale Guidelines, and in light of the provisions in the laws that exempt court-ordered sales from their provisions, the Debtors shall be presumed to be in compliance with any Liquidation Sale Laws and are authorized to conduct the Sales in accordance with the terms of this Order and the Sale Guidelines without the necessity of further showing compliance with any such Liquidation Sale Laws.

28. Nothing in this Order or the Sale Guidelines releases, nullifies, or enjoins the enforcement of any liability to a Governmental Unit under environmental laws or regulations (or any associated liabilities for penalties, damages, cost recovery, or injunctive relief) to which any entity would be subject as the owner, lessor, lessee, or operator of the property after the date of entry of this Order. Nothing contained in this Order or the Sale Guidelines shall in any way: (a) diminish the obligation of any entity to comply with environmental laws; or (b) diminish the obligations of the Debtors to comply with environmental laws consistent with their rights and obligations as debtors in possession under the Bankruptcy Code.

V. Other Provisions.

29. To the extent the Debtors are subject to any state Fast Pay Laws in connection with the Store Closings, the Debtors shall be presumed to be in compliance with such laws to the extent, in applicable states, such payroll payments are made by the later of: (a) the Debtors' next regularly scheduled payroll; and (b) seven calendar days following the termination date of the relevant employee, and in all such cases consistent with, and subject to, any previous orders of this Court regarding payment of same.

30. Notwithstanding the relief granted herein and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in the Motion or any order granting the relief requested by the Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in this Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens. Any payment made pursuant to this Order should

not be construed as an admission as to the validity, priority, or amount of any particular claim or a waiver of the Debtors' or any other party-in-interest's rights to subsequently dispute such claim.

31. Notice of the Motion satisfies the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

32. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

33. Cause exists to shorten the notice period set forth in Bankruptcy Rule 2002, to the extent applicable.

34. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

35. This Court shall retain jurisdiction with regard to all issues or disputes relating to this Order, including, but not limited to: (a) any claim or issue relating to any efforts by any party or person to prohibit, restrict or in any way limit banner and sign walker advertising, including with respect to any allegations that such advertising is not being conducted in a safe, professional, and non-deceptive manner; (b) any claim of the Debtors and/or the landlords for protection from interference with the Store Closings or Sales; (c) any other disputes related to the Store Closings or Sales; and (d) any assertions of any liens, claims, encumbrances, and other interests. No parties or person shall take any action against the Debtors, the landlords, the Store Closings, or the Sales until this Court, as applicable, has resolved such dispute. This Court shall hear the request of such parties or persons with respect to any such disputes on an expedited basis, as may be appropriate under the circumstances.

Houston, Texas

Dated: _____, 2020

JUDGE DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

Schedule 1

Initial Closing Stores

Store Type	Location
Last Call Outlet	5000 Katy Mills Circle, Suite 321 Katy, TX 77494
Last Call Outlet	11441 NW 12th St. #D100 Miami, FL 33172
Last Call Outlet	5900 Sugarloaf Pkwy Suite 235 Lawrenceville, GA 30043
Last Call Outlet	4115 Capital of Texas Hwy S. Austin, TX 78704
Last Call Outlet	1230 Great Mall Drive Milpitas, CA 95035
Last Call Outlet	10801 Corkscrew Rd, Suite 50 Estero, FL 33928
Last Call Outlet	201 The Arches Circle Deer Park, NY 11729
Last Call Studio	5550 West Lovers Lane, #147 Dallas, TX 75209
Last Call Outlet	600 Ventura Blvd, #1350 Camarillo, CA 93010
Last Call Studio	500 Bergen Town Center Paramus, NJ 07652
Last Call Studio	1601-B Rockville Pike, Space #210 Rockville, MD 20852
Last Call Studio	1601 Preston Rd, Suite K Plano, TX 75093
Last Call Studio	2315 Post Oak Boulevard Houston, TX 77056
Last Call Outlet	5220 Fashion Outlets Way, Suite 2085 Rosemont, IL 60018

Last Call Studio	Outlet Collection Riverwalk
	500 Port of New Orleans Place, Suite 100
	New Orleans, LA 70130
Last Call Studio	210 Joralemon
	Brooklyn, NY, 11201
Last Call Studio	505 So. Grand Central Parkway #3299
	Las Vegas, NV 89106

Schedule 2

Sale Guidelines

Sale Guidelines¹

1. The Sales shall be conducted so that the Closing Stores in which sales are to occur will remain open no longer than during the normal hours of operation or such hours as otherwise provided for in the respective leases for the Closing Stores.
2. The Sales shall be conducted in accordance with applicable state and local “Blue Laws,” where applicable, so that no Sale shall be conducted on Sunday unless the Debtors had been operating such Closing Store on a Sunday prior to the commencement of the Sales.
3. On “shopping center” property, the Debtors shall not distribute handbills, leaflets or other written materials to customers outside of any Closing Stores’ premises, unless permitted by the lease or, if distribution is customary in the “shopping center” in which such Closing Store is located; *provided* that the Debtors may solicit customers in the Closing Stores themselves. On “shopping center” property, the Debtors shall not use any flashing lights or amplified sound to advertise the Sales or solicit customers, except as permitted under the applicable lease or agreed to by the landlord.
4. At the conclusion of the Sale, the Debtors shall vacate the Closing Stores in broom clean condition; *provided* that the Debtors may abandon any furniture, fixtures and equipment (including, but not limited to, machinery, rolling stock, office equipment and personal property, and conveyor systems and racking) (“FF&E”) or other Store Closure Assets not sold in the Sales at the conclusion of the Sales (the “Termination Date”), without cost or liability of any kind to the Debtors. The Debtors shall notify the landlord of their intention to abandon any FF&E or other Store Closure Assets at least two (2) days prior to the Termination Date. The Debtors will have the option to remove the FF&E or other Store Closure Assets at their own cost prior to the Termination Date. Any abandoned FF&E or other Store Closure Assets left in a Closing Store after a lease is rejected shall be deemed abandoned to the landlord having a right to dispose of the same as the landlord chooses without any liability whatsoever on the part of the landlord to any party and without waiver of any damage claims against the Debtors. For the avoidance of doubt, as of the Termination Date, the Debtors may abandon, in place and without further responsibility or liability of any kind, any FF&E or other Store Closure Assets.
5. The Debtors may advertise the Sales as “store closing,” “sale on everything,” “everything must go,” “everything on sale,” or similar-themed sales. The Debtors may also have a “countdown to closing” sign prominently displayed in a manner consistent with these Sale Guidelines. All signs, banners, ads, and other advertising material, promotions, and campaigns will be approved by the Debtors, prior to purchase, in accordance with these Sale Guidelines.
6. The Debtors shall be permitted to utilize sign walkers, display, hanging signs, and interior banners in connection with the Sales; *provided* that such sign walkers, display, hanging signs, and interior banners shall be professionally produced and hung in a professional manner. The Debtors shall not use neon or day-glo on their sign walkers, display, hanging

¹ Capitalized terms used but not defined in these Sale Guidelines have the meanings given to them in the Motion.

signs, or interior banners. Furthermore, with respect to enclosed mall locations, no exterior signs or signs in common areas of a mall shall be used unless otherwise expressly permitted in these Sale Guidelines. In addition, the Debtors shall be permitted to utilize exterior banners at (i) non-enclosed mall Closing Stores and (ii) enclosed mall Closing Stores to the extent the entrance to the applicable Closing Store does not require entry into the enclosed mall common area; *provided*, however, that such banners shall be located or hung so as to make clear that the Sales are being conducted only at the affected Closing Store, and shall not be wider than the storefront of the Closing Store. In addition, the Debtors shall be permitted to utilize sign walkers in a safe and professional manner and in accordance with the terms of the Order. Nothing contained in these Sale Guidelines shall be construed to create or impose upon the Debtors any additional restrictions not contained in the applicable lease agreement.

7. Conspicuous signs shall be posted in the cash register areas of each of the affected Closing Stores to effect that “all sales are final.”
8. Except with respect to the hanging of exterior banners, the Debtors shall not make any alterations to the storefront or exterior walls of any Closing Stores, except as authorized by the applicable lease.
9. The Debtors shall not make any alterations to interior or exterior Closing Store lighting, except as authorized by the applicable lease. No property owned by the landlord of a Closing Store shall be removed or sold during the Sales. The hanging of exterior banners or in-Closing Store signage and banners shall not constitute an alteration to a Closing Store.
10. The Debtors shall keep Closing Store premises and surrounding areas clear and orderly consistent with present practices.
11. The Debtors and the landlord of any Store are authorized to enter into Side Letters without further order of the Court, provided that such agreements do not have a material adverse effect on the Debtors or their estates.
12. The Debtors may advertise the sale of the owned FF&E in a manner consistent with these guidelines. The purchasers of any owned FF&E sold during the sale shall be permitted to remove the owned FF&E either through the back or alternative shipping areas at any time, or through other areas after applicable business hours, *provided, however* that the foregoing shall not apply to *de minimis* FF&E sales made whereby the item can be carried out of the Closing Store in a shopping bag. For the avoidance of doubt, as of the Sale Termination Date, the Debtors may abandon, in place and without further responsibility, any FF&E.
13. At the conclusion of the Sales at each Closing Store, pending assumption or rejection of applicable leases, the landlords of the Closing Stores shall have reasonable access to the Closing Stores’ premises as set forth in the applicable leases. The Debtors and their agents and representatives shall continue to have access to the Closing Stores pending assumption or rejection of applicable leases.
14. The rights of landlords against Debtors for any damages to a Closing Store shall be reserved in accordance with the provisions of the applicable lease.

15. If and to the extent that the landlord of any Closing Store affected hereby contends that the Debtors is in breach of or default under these Sale Guidelines, such landlord shall email or deliver written notice by overnight delivery on the Debtors as follows:

Neiman Marcus Group LTD LLC
One Marcus Square, 1618 Main Street
Dallas, Texas 75201
Attention: Tracy Preston
Email: tracy_preston@neimanmarcus.com

with copies (which shall not constitute notice) to:

Kirkland & Ellis LLP
300 North LaSalle Street
Chicago, Illinois 60654
Attention: Anup Sathy, P.C., and Chad J. Husnick, P.C.
Email: anup.sathy@kirkland.com
chad.husnick@kirkland.com

- and -

Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
Attention: Matthew C. Fagen and Gary J. Kavarsky
Email: matthew.fagen@kirkland.com
gary.kavarsky@kirkland.com

-and-

Jackson Walker L.L.P.
1401 McKinney Street, Suite 1900
Houston, Texas 77010
Attention: Matthew D. Cavanaugh, Jennifer F. Wertz, Kristhy M. Peguero, and
Veronica A. Polnick
Email: mcavanaugh@jw.com
jwertz@jw.com
kpeguero@jw.com
vpolnick@jw.com