



ENTERED
07/30/2020

**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. 1115

**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, any Side Letter, and the Sale Guidelines, the terms of any Side Letter shall control over this Order, and the terms of this Order shall control over all other documents and Sale Guidelines.
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), and the *Final Order (I) Authorizing the Debtors to (A) Obtain Prepetition Financing and (B) Utilize Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Modifying the Automatic Stay, and (IV) Granting Related Relief* [Docket No. 850] (the “DIP Order”). 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, counsel to the FILO Agent, and counsel to the Prepetition ABL Credit Facility Agent (as defined in the DIP Order) by email (to the extent available to the Debtors) or overnight mail.

6. The Sale Guidelines are approved in their entirety.

7. The Debtors are authorized to discontinue operations at the Closing Stores in accordance with this Order and the Sale Guidelines. The Debtors will maintain insurance coverage at each of the Closing Stores through at least the date in which the Lease is rejected following the Store Closing Sale.

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. Debtors shall immediately serve a copy of this Order on any party alleged to be in possession of said Merchandise or FF&E.

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), 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. Nothing herein shall be construed to require

newspapers or other advertising media to change or modify their normal process for accepting advertising relevant to any Sale.

11. Notwithstanding anything herein to the contrary, and in view of the importance of the use of sign-walkers, banners, and other advertising to the Sale and Store Closings, to the extent that disputes arise during the course of such sale regarding laws regulating the use of sign-walkers, banners, or other advertising and the Debtors are unable to resolve the matter consensually, any party may request an immediate telephonic hearing with this Court pursuant to these provisions. Such hearing will, to the extent practicable, be scheduled initially no later than within two (2) business days of such request. This scheduling shall not be deemed to preclude additional hearings for the presentation of evidence or arguments as necessary.

12. 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.

13. 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, the DIP 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 provision in paragraph 21 concerning the treatment of hazardous material, or the provisions in paragraphs 28 or 29 of this Order.

14. Except as expressly provided for herein or in the Sale Guidelines, and except with respect to any Governmental Unit (as to which paragraphs 28 and 29 shall apply), 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.

15. Notwithstanding anything herein, as to the Store Closing Sales, all state and federal laws relating to implied warranties for latent defects shall be complied with and are not superseded by the sale of said goods or the use of the terms “as is” or “final sales.” At the Closing Stores, the Debtors shall accept return of any goods purchased during the Store Closing Sales 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 thirty (30) days of their purchase, the consumer must provide a receipt for the purchase to the Debtors, and the asserted defect must in fact be a “latent” defect, which goods shall be considered returned Merchandise, and to the extent counted as Merchandise shall be re-characterized as excluded defective Merchandise, and which goods shall not be resold by the Debtors.

16. Closing Stores will continue to accept the Debtors’ validly issued gift certificates and gift cards issued prior to the Sale commencement date for in-person (and only in-person) purchases in the ordinary course of business for the duration of the Closing Sales. Notwithstanding any policy or state law to the contrary, the gift cards are not redeemable for cash at any time at Closing Stores. Any gift cards and gift certificates issued at Closing Stores may be used online or at non-Closing Store locations in accordance with the Debtors’ applicable policies.

17. The Debtors shall post conspicuous signs in their Closing Stores, including at their cash registers, in English and in Spanish, that clearly and in plain language explain the above “consumer provisions” to customers, including the return policies and gift card policy, and the date returns and gift cards will no longer be honored at the Closing Stores, which shall remain posted

throughout the duration of the Store Closing Sales. In addition, the Debtors will post notice of the return policies and gift card policy at Closing Stores on the home page of the Debtors' website or provide a clear and conspicuous link to said policies on the home page. The Debtors shall notify known customers of the Closing Stores by electronic mail of the deadline to return merchandise and related return policy, and the gift card policy.

18. 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.

19. 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 immediately before the closing of the applicable sale, subject to any claims and defenses that the Debtors may possess with respect thereto. Notwithstanding the sale of the Store Closing Assets, the Collin County taxing authorities shall retain all existing lien rights in accordance with the Texas Property Tax Code and the Debtors shall pay property taxes for the

current year as they become due and owing in the ordinary course pursuant to applicable property tax laws.

20. Good faith purchasers of Store Closure Assets shall be entitled to the protections of section 363(m) of the Bankruptcy Code, and good faith purchasers acting without collusion and on an arm's-length basis shall be protected from the purchase being avoided under section 363(n) of the Bankruptcy Code.

21. 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. Notwithstanding anything to the contrary in this Order or the Sales Guidelines, to the extent prohibited by applicable law the Debtors are not authorized to abandon, and the Debtors are directed to remove and properly dispose of, any hazardous materials defined under applicable law of the jurisdiction in which the materials are located from any leased premises as and to the extent required by applicable law of the jurisdiction in which the lease premises lies.

22. Notwithstanding anything to the contrary in this Order, the Debtors shall not sell or abandon, any FF&E or equipment belonging to any utility that provides services to the Closing Stores, or which is known by the Debtors to belong to a lessor or other entity and shall follow the Debtors' customary procedures to notify such utilities, lessors, and other entities of (a) the closure of Closing Stores and the date on which the Debtors intend to cease operations or surrender possession of any leased premises in which such equipment is located and (b) the process by which the Debtors shall return or the utility lessor, or other entity may retrieve such FF&E or equipment.

In addition, the Debtors shall not abandon FF&E or equipment as to which they know a third party has asserted a lien without providing notice to such party.

23. 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.

24. To the extent that the Debtors propose to sell or abandon Store Closure Assets that may contain PII or confidential information about the Debtors' employees and/or customers, the Debtors shall remove or cause to be removed the PII and/or confidential information from such items of Store Closure Assets, including any of the Debtors' hardware, software, computers or cash registers or similar equipment which are to be sold, donated, transferred, abandoned, or otherwise disposed of so as to render the PII unreadable or undecipherable, before such sale or abandonment. At the conclusion of the Store Closing Sales, the Debtors certify that they have not removed, copied, sold, or transferred any customer PII and that any records containing PII were shredded, erased or otherwise modified to render the PII unreadable or undecipherable prior to any sales. The Debtors shall prepare and file a declaration of compliance within thirty (30) days from

the conclusion of each sale which reflects if any sale or abandonment of Store Closure Assets containing PII has taken place and that removal of the PII has occurred.

III. Procedures Relating to Additional Closing Stores.

25. 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.

26. 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 and, if applicable, to transfer any Merchandise or FF&E to other Closing Stores or stores, which notice shall include the material terms of the Sales including the commencement and termination dates, on the applicable landlords (collectively, the “Additional Closing Store Landlords”), counsel to the Term Loan Lender Group, counsel to the Noteholder Group, counsel to the FILO Agent, counsel to the Prepetition ABL Credit Facility Agent, applicable landlords (and their counsel, if known), the U.S. Trustee for the Southern District of Texas; counsel for the Unsecured Creditors Committee; the United States Attorney’s Office for the Southern District of Texas; the Internal Revenue Service; the United States Securities and Exchange Commission; the Environmental Protection Agency and similar state environmental agencies for states in which the Debtors conduct business; the state attorneys general for states in which the Debtors conduct business; sublessees, licensees, or concessionaries of the Debtors’ goods and owners of goods held by the Debtors on memo, consignment, or as bailee located at Additional Closing Stores; the Dispute Notice Parties, and any party that has requested notice pursuant to Bankruptcy Rule 2002, 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).

27. The Additional Closing Store Landlords, the Term Loan Lender Group, the Noteholder Group, the Prepetition ABL Credit Facility Agent, the FILO Agent, 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.

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. 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.

29. 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 Closure 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; (d) the landlords for the Closing Stores; and (e) the United States Trustee (email only) (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); and (iii) any affected landlord and their counsel of record (if known). 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*.

30. Subject to paragraphs 28 and 29 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.

31. 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.

32. Notwithstanding any other provision of this Order, nothing herein (including the Sale Guidelines) shall constitute a finding that any Store Closing, Sale, asset sale, or other transaction is permitted by the DIP Order or the DIP Loan Documents, and nothing in this Order (including the Sale Guidelines) or any Side Letter shall abrogate or supersede the Debtors' obligations under, or any other provisions of, the DIP Loan Documents or the DIP Order (including, without limitation, the Cash Collateral Termination Event (as defined in the DIP Order) related to the closure of full-line stores).

33. 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.

34. 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.

35. Notwithstanding any other provisions of this Order, the Debtors and Capital One, National Association (“Capital One”), shall continue to perform their obligations under Third Amended and Restated Credit Card Program Agreement, as amended from time to time (the “Program Agreement”), relating to the program (the “Program”) whereby Capital One issues Neiman Marcus private label credit cards (the “NM Cards”) except (a) the Debtors and Capital One shall remove all marketing materials in the Closing Stores relating to the Program; (b) the Debtors shall instruct its sales persons in such Closing Stores to not actively market the Program and (c) in the event that Capital One and the Debtors, in their commercially reasonable judgment, determine or deem likely a material increase in fraud-indicating behavior relating to the Program including, but not limited to, high velocity of new applications for NM Cards and disputed charges by the holders of NM Cards, Capital One may, subject to mutual agreement with the Debtors in writing (which may be by email): (a) direct the Debtors to cease accepting in-store payments at the Closing Stores; (b) cease approving authorization requests for purchases on, or otherwise accepting, NM Cards for transactions in the Closing Stores; (c) cease accepting applications for NM Cards at Closing Stores; and (d) cease approving credit line increase requests at Closing Stores.

36. Notwithstanding the sale of the Store Closing Assets, the Debtors shall pay property taxes for the current year as they become due and owing in the ordinary course pursuant to applicable property tax laws.

37. 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.

38. In connection with the Store Closing Sales, the Debtors are authorized to sell post-petition consigned Merchandise and pre-petition consigned Merchandise (collectively, the "Consigned Merchandise"), provided that: (a) all such sales of Consigned Merchandise shall be subject to the terms and conditions of the DIP Order and (b) without prior written consent of the consignor (which may be by electronic mail), no sale of Consigned Merchandise shall be for an amount less than the Consigned Cost (as defined in the DIP Order) of such Consigned Merchandise. Consigned Merchandise remaining after the conclusion of the Store Closing Sales

shall, at the Debtors' sole election and cost, be returned to the applicable consignor or reallocated to other store locations of the Debtors. For the avoidance of doubt, nothing herein shall limit the rights of a Valid Consignor granted under the DIP Order.

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

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

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

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

43. 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.

Signed: July 30, 2020.



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 upon the effective date of a lease rejection pursuant to section 365 of the Bankruptcy Code shall be deemed abandoned and the landlord shall have a right to use or dispose of the same as the landlord chooses without any notice or 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 effective date of a lease rejection pursuant to section 365 of the Bankruptcy Code, 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

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

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 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