

EXHIBIT A



ENTERED
04/15/2021

**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)
Reorganized Debtors.)	Jointly Administered
)	(Docket No. 2368)

**STIPULATION AND AGREED ORDER REGARDING CLAIM NOS. 150, 324 AND 1122
FILED BY JOANNE KAO AS CLASS CLAIMANT**

This stipulation and order (the “Stipulation”) is made and entered into by and among Mohsin Meghji (“Trustee”) in his capacity as Trustee of the GUC Liquidating Trust (the “Trust”) of Neiman Marcus Group LTD LLC, *et al.*, the above-captioned reorganized debtors (collectively, the “Reorganized Debtors”), and Joanne Kao, as Class Claimant (the “Class Claimant”) in the litigation described below (collectively, the “Parties”). The Parties hereby stipulate to and agree as follows:

RECITALS

WHEREAS, in January 2014, Reorganized Debtor The Neiman Marcus Group LLC (“NMG LLC”) announced it had experienced a cybersecurity intrusion that caused the potential compromise of credit or debit card (“Payment Card”) information of certain of its customers who

¹ The Reorganized Debtors in these chapter 11 cases, along with the last four digits of each Reorganized 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 Reorganized Debtors’ service address is: One Marcus Square, 1618 Main Street, Dallas, Texas 75201.

used Payment Cards to make purchases in certain stores owned and operated by NMG LLC (the “Incident”).

WHEREAS, at the time of the Incident, NMG LLC was party to a Contract of Insurance with Beazley Group bearing policy number QK1303514 (the “Insurance Policy”). NMG LLC gave appropriate notice of the Incident under the Insurance Policy. Coverage under the Insurance Policy is subject to a retention payment (the “Retention”). Prior to the Petition Date, NMG LLC had met its Retention obligation for claims relating to the Incident.

WHEREAS, after the announcement of the Incident, a complaint was filed against NMG LLC in the United States District Court for the Northern District of Illinois (the “District Court”) which is now entitled *Hilary Remijas and Joanne Kao, et al.* (“Plaintiffs”) v. *The Neiman Marcus Group LLC*, case no. 1:14-cv-01735 (the “Lawsuit”) alleging various causes of action related to the Incident.

WHEREAS, prior to the filing of the Lawsuit, several other lawsuits² relating to the Incident had been filed, all of which were ultimately consolidated with the Lawsuit in the District Court.

WHEREAS, on March 17, 2017, the Plaintiffs in the Lawsuit moved for preliminary approval of a class action settlement between plaintiffs and NMG LLC dated February 23, 2017 (the “Initial Settlement”). On June 21, 2017, the District Court granted preliminary approval to the Initial Settlement, preliminarily certifying the settlement class and preliminarily appointing lead plaintiff and counsel for settlement purposes, and the District Court-appointed Settlement Administrator disseminated notice to class members regarding that Initial Settlement. On

² These cases include *Frank v. Neiman Marcus Group*, No. 14-cv-00233-ADS-GRB (E.D.N.Y. filed Jan. 13, 2014), and *Wong v. The Neiman Marcus Group, LLC*, No. 2:14-cv-00703-SJO-JC (C.D. Cal. filed Jan. 29, 2014). Similar actions followed, including *Chau v. Neiman Marcus Group, Ltd, Inc.*, No. 14-cv-597 (S.D. Cal. filed Mar. 14, 2014) and *Shields v. The Neiman Marcus Group, LLC*, No. 14-cv-752 (S.D. Cal. filed Apr. 1, 2014).

September 17, 2018, the District Court denied final approval to the Initial Settlement based on issues described in the District Court's written opinion.

WHEREAS, the parties to the Lawsuit negotiated a revised settlement to address the concerns described by the District Court in denying final approval to the Initial Settlement (the "Revised Settlement"), which was memorialized in a revised settlement agreement (the "Revised Settlement Agreement") which provides, among other things, that NMG LLC shall pay the sum of up to \$1.6 million in settlement of the Lawsuit if the District Court grants final approval of the Revised Settlement, including (a) \$1.2 million in payments (to the extent ordered by the District Court) to the settlement class, to class counsel for attorneys' fees and expenses, and to the class representatives, and (b) up to \$400,000 for the costs of administering and providing notice of the Revised Settlement.

WHEREAS on November 15, 2019, the Plaintiffs in the Lawsuit obtained from the District Court an order preliminarily approving the Revised Settlement, preliminarily certifying a settlement class and preliminarily appointing lead plaintiff and counsel, and directing notice to the preliminary settlement class, (the "Preliminary Approval Order"). Pursuant to the Preliminary Approval Order, notice of the Revised Settlement was disseminated to class members.

WHEREAS, on May 2, 2020, Plaintiffs filed their Motion for Final Approval of Revised Class Action Settlement (the "Final Approval Motion") seeking final approval of the Revised Settlement. On that same date, Plaintiffs filed their Motion for Attorneys' Fees, Costs, and Class Representative Service Award (the "Fee Motion").

WHEREAS, on May 7, 2020 (the "Petition Date"), the Debtors commenced voluntary cases under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas (the "Bankruptcy Court"). Upon the filing of these bankruptcy cases,

the Lawsuit was stayed pursuant to the automatic stay provisions of the Bankruptcy Code. Counsel representing NMG LLC in the Lawsuit has made periodic status reports to the District Court regarding the status of the bankruptcy cases.

WHEREAS, on June 25, 2020, the Bankruptcy Court entered its *Order (I) Setting Bar Dates for Filing Proofs of Claim, Including Requests for Payment Under Section 503(b)(9), (II) Establishing Amended Schedules Bar Date and Rejection Damages Bar Date, (III) Approving the Form of and Manner for Filing Proofs of Claim, Including Section 503(b)(9) Requests, (IV) Approving Notice of Bar Date, and (V) Granting Related Relief* [Docket No. 1014] (the “Bar Date Order”). On June 26, 2020, the Debtors served their *Notice of Deadlines for Filing Proofs of Claim, Including Requests for Payment Pursuant to Section 503(b)(9) of the Bankruptcy Code* [Docket No. 1091] (the “Bar Date Notice”), which provided notice that the deadline for all entities, other than Governmental Units, to file proofs of claim was July 20, 2020 (the “General Bar Date”).

WHEREAS, the Class Representative timely filed three proofs of claim against NMG LLC: Claim No. 150 in the amount of \$1.6 million, Claim No. 324 in the amount of \$1.6 million (duplicative of Claim No. 150) (Claim Nos. 150 and 324, the “Earlier Claims”), and Claim No. 1122 in the amount of \$1.75 million (the amended and operative claim) (the “Class Claim” and, together with the Earlier Claims, the “Claims”). The Class Claim relates to the pre-petition negotiated settlement of the Lawsuit, as described more fully above. The Class Claim seeks only the amount provided for under the Revised Settlement Agreement, and does not seek sums other than, or in excess of, the amounts provided for under the Revised Settlement Agreement. A copy of the Revised Settlement Agreement is attached to the Class Claim.

WHEREAS, on September 4, 2020, the Bankruptcy Court confirmed *Debtors’ Third Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code* [Docket

No. 1793] (as it may be amended, modified, supplemented or restated from time to time, the “Plan”) by entering the *Order Confirming the Debtors’ Third Amended Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 1795] (the “Confirmation Order”). The Plan provides for, among other things, the establishment of the Trust and grants the Trust and Reorganized Debtors, as applicable, the authority to prosecute claim objections or settle claims in Classes 10 and 11. *See* Trust Agreement, Art. 3.1. The Plan went effective on September 25, 2020 (the “Effective Date”).

WHEREAS, pursuant to the Plan, Article III, the Class Claim is a Class 11 Non-Funded Debt General Unsecured Claim, the holder of which, if deemed an allowed claim, will receive her pro rata share (determined based on all Allowed Funded-Debt General Unsecured Claims, together with all Allowed Non-Funded Debt General Unsecured Claims, but excluding Allowed Convenience General Unsecured Claims) of (A) 140,000,000 shares of MYT Series B Preferred Units, and (B) \$10,000,000, less the GUC Convenience Recovery³ and administrative expenses of the Trust in excess of \$1,500,000 (collectively, the “Class 11 Distribution”);

WHEREAS, pursuant to the Plan, Article VIII.A, and as ordered by the Bankruptcy Court in section C, paragraphs 85 through and including 87 of the Confirmation Order (the “Discharge and Injunction Provisions”), except as otherwise specifically provided in the Plan or in any contract, instrument, or other agreement or document created pursuant to the Plan, the distributions, rights, and treatment that are provided in the Plan shall be in complete satisfaction,

³ The GUC Convenience Recovery as defined in the Plan means, an aggregate amount of Cash sufficient to yield a recovery of 14.7% on account of each General Unsecured Claim Allowed in an amount of \$50,000 or less and all General Unsecured Claims Allowed in an amount of more than \$50,000 for which the Holders of such Claims elect to reduce the Allowed amount of such Claims to \$50,000 to receive their Pro Rata share

discharge, and release of all claims and causes of action against the debtors, including NMG LLC, effective as of the effective date of the Plan;⁴

WHEREAS, pursuant to the Plan, Article VIII.F, and as ordered by the Bankruptcy Court in the Discharge and Injunction Provisions, except as otherwise expressly provided in the Plan or for obligations issued or required to be paid pursuant to the Plan or the Confirmation Order, all entities that have held, hold, or may hold claims that have been released pursuant to the Plan are permanently enjoined after the effective date of the Plan from, among other actions, continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such claims;⁵

⁴ Article VIII.A of the Plan states in full: “Pursuant to section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan or in any contract, instrument, or other agreement or document created pursuant to the Plan, the distributions, rights, and treatment that are provided in the Plan shall be in complete satisfaction, discharge, and release, effective as of the Effective Date, of Claims (including any Debtor Intercompany Claims resolved or compromised after the Effective Date by the Reorganized Debtors), Interests, and Causes of Action of any nature whatsoever, including any interest accrued on Claims or Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and Interests in, the Debtors or any of their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date, any liability (including withdrawal liability) to the extent such Claims or Interests relate to services performed by employees of the Debtors before the Effective Date and that arise from a termination of employment, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not: (1) a Proof of Claim based upon such debt or right is filed or deemed filed pursuant to section 501 of the Bankruptcy Code; (2) a Claim or Interest based upon such debt, right, or Interest is Allowed pursuant to section 502 of the Bankruptcy Code; or (3) the Holder of such a Claim or Interest has accepted the Plan. Any default or “event of default” by the Debtors or Affiliates with respect to any Claim or Interest that existed immediately before or on account of the filing of the Chapter 11 Cases shall be deemed cured (and no longer continuing) as of the Effective Date. The Order shall be a judicial determination of the discharge of all Claims and Interests subject to the Effective Date occurring.”

⁵ Article VIII.F of the Plan states in full: “Except as otherwise expressly provided in the Plan or for obligations issued or required to be paid pursuant to the Plan or the Confirmation Order, all Entities that have held, hold, or may hold claims or interests that have been released pursuant to the Plan, shall be discharged pursuant to the Plan, or are subject to exculpation pursuant to the Plan, are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Reorganized Debtors, or any of the Released Parties: (i) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such claims or interests; (ii) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such claims or interests; (iii) creating, perfecting, or enforcing any lien or encumbrance of any kind against such Entities or the property or the estates of such Entities on account of or in connection with or with respect to any such claims or interests; (iv) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Entities or against the

WHEREAS, pursuant to Article VIII of the Plan and the Discharge and Injunction Provisions, Plaintiffs are presently barred from continuing the Lawsuit in any manner and the Class Claim would be entitled only to a pro rata distribution of the Class 11 Distribution and solely to the extent they are deemed to be allowed Class 11 Non-Funded Debt General Unsecured Claims;

WHEREAS, the Parties agree, pursuant to the terms of this Stipulation, that (a) NMG LLC may notify the District Court that this Stipulation is a final order of the Bankruptcy Court that permits the District Court to proceed with proceedings in the Lawsuit in a manner consistent with this Stipulation, and (b) Plaintiffs may seek approval of the Revised Settlement from the District Court, with all obligations of NMG LLC under the Revised Settlement to be satisfied from proceeds of the Insurance Policy including any and all attorneys' fees and expenses of the Reorganized Debtors and in lieu of any other recovery based on the Class Claim or the Lawsuit, including any of the Class 11 Distribution.

NOW THEREFORE, the Parties agree, and it is ORDERED, that:

1. The foregoing recitals and provisions are incorporated herein as if set forth separately below.
2. Modification of the Discharge and Injunction Provisions. The Discharge and Injunction Provisions will be modified for the limited purpose of the District Court deciding the pending Final Approval Motion, the pending Fee Motion, and any other motion for fees and costs related to the Final Approval Motion that may be filed (the "Other Fee Motion").

property of such Entities on account of or in connection with or with respect to any such claims or interests unless such Entity has timely asserted such setoff right in a document filed with the Bankruptcy Court explicitly preserving such setoff, and notwithstanding an indication of a claim or interest or otherwise that such Entity asserts, has, or intends to preserve any right of setoff pursuant to applicable law or otherwise; and (v) commencing or proceeding of any kind on account of or in connection with or with respect to any such claims or interests released or settled pursuant to the Plan."

a. The District Court may take steps it deems necessary to decide the Final Approval Motion and the Fee Motion, including, without limitation, holding a hearing on the Final Approval Motion and the Fee Motion.

b. In the event the District Court grants the Final Approval Motion, (i) the terms of the Revised Settlement will be implemented as ordered by the District Court, with any payments due from NMG LLC to be paid solely from the proceeds of the Insurance Policy, including any and all attorneys' fees and expenses of the Reorganized Debtors, and (ii) upon and after the payment in full by the carrier of the Insurance Policy of the amounts ordered pursuant to the prior clause, then the Claims will be disallowed and expunged and Plaintiffs' recovery on the Class Claim will in all cases be limited solely to recovery from available Insurance Policy proceeds in lieu of any other recovery based on the Claims or the Lawsuit, including any recovery as potential holders of Class 11 Non-Funded Debt General Unsecured Claims.

c. In the event that either the District Court does not grant the Final Approval Motion, or the District Court grants the Final Approval Motion but its order is overturned on appeal, the Discharge and Injunction Provisions, as applicable, shall automatically go back into effect as to the Lawsuit and the Claims, the Lawsuit shall be enjoined from proceeding further without a further order of the Bankruptcy Court, and both the Lawsuit and the Claims shall remain subject to the jurisdiction of the Bankruptcy Court in accordance with Article XI of the Plan to be liquidated in accordance with the Plan, which may include estimation of the Class Claim and/or Earlier Claims amount by the Bankruptcy Court and Class 11 treatment pursuant to the Plan.⁶

⁶ Article XI of the Plan provides: "Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over

d. The District Court's decision to grant (in whole or in part) or deny the relief sought in the Fee Motion, or in any Other Fee Motion, shall not affect the foregoing provisions of this Stipulation, nor shall any decision by any appellate court concerning the Fee Motion or any Other Fee Motion.

4. *Bankruptcy Court Approval.* This Stipulation is subject to the approval of the Bankruptcy Court and shall be of no force and effect unless and until signed and entered by the Bankruptcy Court in the above captioned chapter 11 cases.

5. *Exclusive Jurisdiction.* The Bankruptcy Court shall have sole and exclusive jurisdiction over the enforcement of the terms of this Stipulation as well as with respect to all matters arising from or related to the implementation of this Stipulation, and the Parties hereby consent to such jurisdiction to resolve any disputes or controversies arising from or related to this Stipulation. Any motion or application brought before the Bankruptcy Court to resolve a dispute arising from or related to this Stipulation shall be brought on notice as provided by and in accordance with the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Southern District of Texas.

6. *Reservation of Rights, Claims, and Defenses.* By entering into this Stipulation, neither Party is waiving nor will be deemed to have waived any available claims or defenses, including at law, equity, or otherwise, in regard to the Class Claim or the Lawsuit, except as otherwise provided in this Stipulation.

all matters arising out of, or relating to, the Chapter 11 Cases and the Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including jurisdiction to: allow, disallow, determine liquidate, classify, estimate, or establish the priority, secured or unsecured status, or amount of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the secured or unsecured status, priority amount, or allowance of Claims or Interests.”

5. *Modification of Stipulation.* This Stipulation shall not be modified, altered, amended, or vacated without written consent of all Parties hereto.

IT IS SO ORDERED.

Signed: April 15, 2021.



DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

AGREED TO BY:

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