

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

In re:

NEIMAN MARCUS GROUP LTD LLC, *et al.*¹

Debtors.

Chapter 11

Case No. 20-32519 (DRJ)

Jointly Administered

**EMERGENCY MOTION OF THE OFFICIAL COMMITTEE
OF UNSECURED CREDITORS FOR ENTRY OF AN ORDER
(A) AUTHORIZING THE COMMITTEE TO ATTACH A PROPOSED PLAN
AND DISCLOSURE STATEMENT TO THE COMMITTEE'S MOTION TO
TERMINATE EXCLUSIVITY AND (B) SHORTENING TIME FOR HEARING
ON THE COMMITTEE'S DISCLOSURE STATEMENT, AS NECESSARY**

EMERGENCY RELIEF HAS BEEN REQUESTED. AN INITIAL STATUS CONFERENCE WILL BE CONDUCTED ON THIS MATTER ON JUNE 22, 2020, AT 12:30 P.M. (CENTRAL TIME) IN COURTROOM 400, 4TH FLOOR, 515 RUSK STREET, HOUSTON, TEXAS 77002. A FURTHER HEARING MAY BE SET AT THAT TIME. IF YOU OBJECT TO THE RELIEF REQUESTED OR YOU BELIEVE THAT EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU MUST EITHER APPEAR AT THE HEARING TO BE SET ON THE MERITS OR FILE A WRITTEN RESPONSE PRIOR TO SUCH HEARING. OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

PLEASE NOTE THAT ON MARCH 24, 2020, THROUGH THE ENTRY OF GENERAL ORDER 2020- 10, THE COURT INVOKED THE PROTOCOL FOR EMERGENCY PUBLIC HEALTH OR SAFETY CONDITIONS.

IT IS ANTICIPATED THAT ALL PERSONS WILL APPEAR TELEPHONICALLY AND ALSO MAY APPEAR VIA VIDEO AT THIS HEARING.

AUDIO COMMUNICATION WILL BE BY USE OF THE COURT'S REGULAR DIAL-IN NUMBER. THE DIAL-IN NUMBER IS +1(832) 917-1510. YOU WILL BE RESPONSIBLE FOR YOUR OWN LONG-DISTANCE CHARGE S. YOU WILL BE ASKED TO KEY IN THE CONFERENCE ROOM NUMBER. JUDGE JONES' CONFERENCE ROOM NUMBER IS 205691. PARTIES MAY PARTICIPATE IN ELECTRONIC HEARINGS BY USE OF AN INTERNET CONNECTION. THE INTERNET SITE IS WWW.JOIN.ME. PERSONS CONNECTING BY MOBILE DEVICE WILL NEED TO DOWNLOAD THE FREE JOIN.ME APPLICATION.

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.

The Official Committee of Unsecured Creditors (the “Committee”) appointed in the jointly administered bankruptcy cases of the above-captioned debtors and debtors in possession (together, the “Debtors”), filed under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), hereby files its *Emergency Motion for Entry of an Order (A) Authorizing the Committee to Attach a Proposed Plan and Disclosure Statement to the Committee’s Motion to Terminate Exclusivity and (B) Shortening Time for Hearing on the Committee’s Disclosure Statement, as Necessary* (this “Motion”). The proposed form of order approving this Motion is attached hereto as **Exhibit A**. In support of this Motion, the Committee respectfully represents as follows:

INTRODUCTION

1. The Committee intends to file a motion to terminate exclusivity (the “Exclusivity Termination Motion”) so that the Committee can propose a plan (the “Committee Plan”) that is substantially similar to the Debtors’ current proposed chapter 11 plan (the “Debtor Plan”), except as noted below. The Committee Plan will preserve (through the mechanism of a litigation trust) any and all estate claims against the non-Debtor parent, Neiman Marcus Group, Inc. (“NMG Inc.”), the Sponsors,² and their respective non-Debtor affiliates, board members, and representatives (other than officers running the business) (together, the “Litigation Targets”). The Committee Plan also will ensure that no value relating to the MyTheresa business that was siphoned away from the Debtors less than two years ago will be made available to any of the Litigation Targets. In order to preserve the Debtors’ existing timetable for plan confirmation, the Committee would set the Exclusivity Termination Motion for hearing on regular notice on July

² The Sponsors are Ares Corporate Opportunities Fund III, L.P. and Ares Corporate Opportunities Fund IV, LP, and certain affiliates that directly or indirectly hold equity interests in the Debtors; and CPP Investment Board USRE Inc., and certain affiliates that directly or indirectly hold equity interests in the Debtors.

17, 2020, the same date and time as the hearing to consider approval of the Debtors' disclosure statement (the "Debtor Disclosure Statement").

2. The Committee believes that the Committee Plan will promote a successful restructuring of the Debtors. Specifically, if exclusivity is not terminated for the Committee and the Court ultimately determines that the Debtor Plan is not confirmable because there are viable claims against the Litigation Targets and no reasonable settlement of such claims that can be approved, then the parties would be left with no plan and they would be forced to hurriedly find an alternative while various milestones are looming under the Debtors' postpetition financing facility. Stated bluntly, the Debtors' reorganization would be threatened if the Debtor Plan is determined to be unconfirmable, unless applicable milestones are extended or an alternative plan already exists. The Committee does not want to risk that the various lenders do not agree to extend such milestones, which if not extended would constitute a default under the financing facility. On the other hand, with competing plans that only differ in terms of how they deal with claims against the Litigation Targets,³ one of the two plans is almost certainly confirmable. Through the Committee Plan, the Court and other parties in interest will have an immediately available exit strategy that preserves both the restructuring and valuable claims against the Litigation Targets.

3. Other than excising the releases and any possible MyTheresa distributions in favor of the Litigation Targets, the Committee Plan otherwise will effectively mirror the Debtor Plan in promoting a speedy restructuring of the Debtors' business and capital structure, and ensuring that all secured creditor constituencies receive the same economic and non-pecuniary benefits available to them under the Debtor Plan. The Committee believes that filing its own

³ Under the Debtor Plan, as filed, the estates recover nothing on account of their claims against the Litigation Targets while the Litigation Targets receive blanket releases.

plan is critically important so that the Court and creditors will have an immediate and credible option of supporting an alternative plan that allows creditors to monetize valuable claims against the Litigation Targets while at the same time preserving the restructuring contemplated by the Debtor Plan.

4. This Motion is filed in order to allow the Committee to attach the Committee Plan and a disclosure statement in support (the “Committee Disclosure Statement”) as exhibits to the Exclusivity Termination Motion. Although the Committee believes that attaching the Committee Plan and the Committee Disclosure Statement to the Exclusivity Termination Motion is permissible under the Bankruptcy Code, the Committee files this Motion out of an abundance of caution in case anyone disagrees. The Committee also would file redline versions of the Committee Plan and the Committee Disclosure Statement reflecting changes to the Debtor Plan and the Debtor Disclosure Statement, respectively.

5. Finally, given that the Committee is fully committed to a restructuring of the Debtors on the same proposed timetable as the Debtor Plan, the Committee also seeks an order scheduling a hearing to consider approval of the Committee Disclosure Statement at the same date and time as the Debtor Disclosure Statement (currently July 17, 2020), assuming that the Exclusivity Termination Motion is granted. As noted above, the Committee would set the Exclusivity Termination Motion for the same hearing. The Committee requests that the Court shorten time for the hearing on the Committee Disclosure Statement as necessary in order to hold to the Debtors’ proposed confirmation schedule, in the event that the Exclusivity Termination Motion is granted.

BACKGROUND FACTS

6. On May 7, 2020 (the “Petition Date”), the Debtors filed voluntary petitions with this Court under chapter 11 of the Bankruptcy Code. The Debtors are operating their business and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these cases.

7. On May 19, 2020, the Office of the United States Trustee appointed the Committee pursuant to section 1102 of the Bankruptcy Code.

8. The Debtor Plan and the Debtor Disclosure Statement⁴ were filed on June 6, 2020. The hearing on the adequacy of the Debtor Disclosure Statement is currently set for July 17, 2020. The hearing was initially scheduled for July 8, 2020, but was continued by the Debtors to its current date at the Committee’s insistence so that the Committee would have an opportunity to file its preliminary report as addressed in paragraph 10 below.

9. Pursuant to the Debtor Plan, the Debtors intend to release and discharge any and all causes of action that they may have against a variety of persons, including, but not limited to, the Litigation Targets, arising from or relating to the September 2018 MyTheresa Transactions, the June 2019 Recapitalization Transactions, and any other transactions that would constitute Conflict Matters,⁵ subject only to an investigation being conducted by the Disinterested

⁴ The Debtor Disclosure Statement, as filed, lacks any valuations, financial projections, and recovery and liquidation analyses.

⁵ See Debtor Disclosure Statement, Art. VIII.I, p. 42. Although there may be other transactions in which the Debtors and related entities were involved that would fall within the scope of Conflict Matters, the primary transactions at issue are:

- i. The September 2018 MyTheresa Transactions through which the MyTheresa Operating Companies were distributed to NMG Inc., including, but not limited to, any consideration paid and received pursuant to the transaction by any Debtor, by NMG Inc. and by the Sponsors; and
- ii. The June 2019 Recapitalization Transactions.

See Debtor Disclosure Statement, Art. VI.D and E, pp. 29-30; See Debtor Plan, Art. I.A, Defined Terms. Defined terms have the meanings set forth in the Debtor Disclosure Statement.

Managers (Scott Vogel at Neiman Marcus Group LTD LLC and Anthony Horton at Mariposa Intermediate Holdings LLC).

10. The Committee is also in the midst of its own independent investigation of potential claims against the Litigation Targets. The Committee and its professionals have commenced the discovery process and legal analysis of potential claims, are reviewing tens of thousands pages of documents, have scheduled multiple depositions of key witnesses, and intend to file a preliminary report with the Court by July 15, 2020. Just based on the information uncovered by the Committee thus far, the claims possessed by the estates against the Litigation Targets appear to be highly valuable. The Committee is working diligently to be in position to ultimately settle such claims and believes that a settlement on appropriate terms would be in the best interests of all parties. However, should a settlement not be reached, the Committee Plan would preserve any such claims for prosecution by a post-confirmation litigation trust.

11. The Committee intends to file the Exclusivity Termination Motion and seeks authority to attach the Committee Plan and the Committee Disclosure Statement thereto. The Committee wants to file the Committee Plan in order to provide the Court and creditors with the choice of confirming a plan that maximizes the value of estate claims against the Litigation Targets. The Committee Plan otherwise will be effectively similar to the Debtor Plan and will carefully preserve the economic and non-pecuniary impact of the Debtor Plan for all constituents, except the Litigation Targets. The most significant distinction between the Committee Plan and the Debtor Plan will be that causes of action against the Litigation Targets will be preserved and transferred into a newly-created litigation trust to be pursued or settled, as the trustee and any oversight committee deems appropriate. The Committee Plan also will ensure that no value relating to the MyTheresa business will be realized by any of the Litigation

Targets. The Exclusivity Termination Motion will be filed by June 26, 2020 and set for hearing on regular notice at the same date and time as the Debtor Disclosure Statement.

RELIEF REQUESTED

12. By this Motion, the Committee seeks (a) authority to attach the Committee Plan and the Committee Disclosure Statement to the Exclusivity Termination Motion (along with redlines against the Debtor Plan and the Debtor Disclosure Statement) and (b) to the extent necessary and assuming that the Exclusivity Termination Motion is granted, an order shortening notice for hearing on the adequacy of the Committee Disclosure Statement such that the Committee Disclosure Statement will be heard at the same date and time as the Debtor Disclosure Statement (provided that the Committee files and serves the Exclusivity Termination Motion by June 26, 2020).

BASIS FOR RELIEF

13. Section 1121(b) of the Bankruptcy Code provides a debtor with an exclusive right to file a plan of reorganization for 120 days after the commencement of a chapter 11 case. Although this “exclusivity period” is subject to extension or termination, it is automatic and inviolate unless and until the bankruptcy court orders otherwise. Related thereto, section 1125(b) of the Bankruptcy Code prohibits solicitation of the acceptance or rejection of a plan of reorganization in the absence of a court-approved disclosure statement.

14. Some courts interpret “solicitation” in the broadest sense of the word, encompassing even the act of attaching a proposed competing plan or disclosure statement to a pleading. *See, e.g., In re Charles Street African Methodist Episcopal Church of Boston*, 499 B.R. 126, 132 (Bankr. D. Mass. 2013) (creditor effectively filed competing plan in violation of exclusivity by attaching it to motion to terminate exclusivity); *In re Clamp-All Corp.*, 233 B.R.

198, 205-207 (Bankr. D. Mass. 1999) (attaching potential competing plan and disclosure statement to creditor's combined objection to debtor's disclosure statement and motion to terminate exclusivity violated sections 1121(b) and 1125(b) and Fed. Bankr. R. 3017(a)); *In re Temple Retirement Community, Inc.*, 80 B.R. 367 (Bankr. W.D. Tex. 1987) (improper for indenture trustee to send letter suggesting bondholders would submit a better plan if the debtor's plan was rejected, parsing distinction between negotiation and solicitation). Other courts draw a distinction between solicitation and negotiation of a competing plan. *See Century Glove, Inc. v. First Amer. Bank of New York*, 860 F.2d 94, 102-103 (3d Cir. 1988) (counsel for lender did not violate sections 1121 or 1125 by sending a draft alternative plan to committee for discussion purposes because he was not soliciting votes, but merely properly engaging in plan negotiations.)

15. In any case, there is a gray area here. The Committee does not want to be accused of any violation of the Debtors' exclusivity by attaching the Committee Plan and the Committee Disclosure Statement to the Exclusivity Termination Motion. The Committee therefore seeks authority to do so. Given the complexity of these restructuring cases and the sophistication of the parties involved, the Committee submits that there will not be any confusion amongst creditors that the proposed Committee Plan and the Committee Disclosure Statement remain subject to a Court-approved termination of exclusivity.

16. Further, the Committee believes that it is critically important to file and solicit its own Committee Plan and Committee Disclosure Statement because creditors are entitled to a credible alternative to the blanket releases in favor of the Litigation Targets under the Debtor Plan. The Committee cannot count on reaching a settlement, or the Disinterested Managers proposing a fair settlement, with the Litigation Targets if there is no viable alternative to the Debtor Plan come late August or early September. There is also no certainty that the Debtor

Plan would drop the releases in favor of the Litigation Targets if that plan were determined to be unconfirmable in its current form. These estates need an immediate and credible option to restructure the Debtors on the same timetable as the Debtor Plan, but without the highly objectionable releases in favor of the Litigation Targets. Another focus of the Committee Plan is to prevent any distributable value associated with MyTheresa from going to the Litigation Targets.

17. Therefore, the Committee seeks approval of the Court to attach the Committee Plan and the Committee Disclosure Statement (along with redlines) to the Exclusivity Termination Motion. The Committee is seeking this relief not to delay these cases, but rather to keep them exactly on track. In determining whether there had been a violation of the solicitation restrictions under the Bankruptcy Code, the court in *Clamp-All* considered whether such actions would delay the reorganization or interfere with the debtor's efforts to propose a plan. *In re Clamp-All Corp.*, 233 B.R. at 208. Delay is exactly what the Committee seeks to avoid by this Motion.

18. Moreover, in the event that the Exclusivity Termination Motion is granted, the Committee requests that the Court set the hearing for approval of the Committee Disclosure Statement at the same time as the hearing on the Debtor Disclosure Statement, and shorten notice as necessary. The Committee will file and serve the Exclusivity Termination Motion by June 26, 2020 and set it for hearing on regular notice on July 17, 2020. Bankruptcy Rules 2002(b) and 3017(a) require that creditors and other parties in interest receive at least 28 days' notice of the time for filing objections and a hearing on the adequacy of a disclosure statement. No harm will come to creditors and other parties in interest if this time period is shortened in this instance. The hearing on the adequacy of the Debtor Disclosure Statement is currently set for July 17,

2020, and the Debtor Disclosure Statement is already on file. The Committee Disclosure Statement will follow along with the Debtor Disclosure Statement, minus the plan revisions noted herein, and will be filed, with the permission of the Court, in redlined form to allow all parties to quickly evaluate the differences. A simultaneous hearing on both the Committee Disclosure Statement and the Debtor Disclosure Statement is in the best interests of creditors and these estates.

WHEREFORE, the Committee requests that the Court enter an order (a) authorizing the Committee to file the Committee Plan and the Disclosure Statement (along with redlines) as exhibits to the Exclusivity Termination Motion; (b) shortening time for hearing on the Committee Disclosure Statement as necessary, only in the event that the Court terminates exclusivity; and (c) granting such other and further relief to which the Committee may be entitled.

[signature page follows]

Dated: June 21, 2020

/s/ Michael D. Warner

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*Proposed Lead Counsel for the Official Committee
of Unsecured Creditors*

Exhibit A

Proposed Order

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

<p>In re:</p> <p>NEIMAN MARCUS GROUP LTD LLC, <i>et al.</i>¹</p> <p style="text-align: center;">Debtors.</p>	<p>Chapter 11</p> <p>Case No. 20-32519 (DRJ)</p> <p>Jointly Administered</p> <p>Related to Docket No. ____</p>
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ORDER (A) AUTHORIZING THE COMMITTEE TO ATTACH A PROPOSED PLAN AND DISCLOSURE STATEMENT TO THE COMMITTEE’S MOTION TO TERMINATE EXCLUSIVITY AND (B) SHORTENING TIME FOR HEARING ON THE COMMITTEE’S DISCLOSURE STATEMENT, AS NECESSARY

Upon consideration of the emergency motion (the “Motion”)² of the Official Committee of Unsecured Creditors (the “Committee”) appointed in the jointly administered bankruptcy cases of the above-captioned debtors and debtors in possession (together, the “Debtors”), filed under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), for entry of an order (a) authorizing the Committee to attach the Committee Plan and the Committee Disclosure Statement to the Exclusivity Termination Motion (along with redlines against the Debtor Plan and the Debtor Disclosure Statement) and (b) to the extent necessary and assuming that the Exclusivity Termination Motion is granted, shortening notice for hearing on

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 not otherwise defined herein shall have the meanings ascribed to them in the Motion.

the adequacy of the Committee Disclosure Statement such that both the Committee Disclosure Statement will be heard at the same date and time as the Debtor Disclosure Statement; and this Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157(b)(2) and 1334; and consideration of the Motion, the relief requested therein, and the responses thereto being a core proceeding in accordance with 28 U.S.C. § 157(b); and the appearance of all interested parties and all responses and objections, if any, to the Motion having been duly noted in the record of the hearing on the Motion; and upon the record of the hearing, and all other pleadings and proceedings in these cases, including the Motion; and it appearing that the relief requested in the Motion is in the best interests of the Debtors' estates; and it further appearing that the relief requested in the Motion is based upon good and sufficient business reasons; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. The Committee is authorized to attach the Committee Plan and the Committee Disclosure Statement to the Exclusivity Termination Motion (along with redlines against the Debtor Plan and the Debtor Disclosure Statement).
3. The hearing to consider the adequacy of the Committee Disclosure Statement shall occur on the same date and time as the hearing on the Debtor Disclosure Statement, subject to the Court granting the Exclusivity Termination Motion. Notice of such hearing is shortened as necessary, provided that the Exclusivity Termination Motion (with the Committee Plan and the Committee Disclosure Statement as exhibits) is filed and served by the Committee by no later than June 26, 2020.

4. Notwithstanding any other Bankruptcy Rules or any other applicable rule or guideline, the terms and conditions of this Order are immediately effective and enforceable upon its entry.

5. The Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, enforcement or interpretation of this Order.

Dated: _____, 2020

The Honorable David R. Jones
United States Bankruptcy Judge