

**RIMON P.C.**  
Counsel to the Chapter 7 Trustee  
Kenneth P. Silverman, Esq.  
100 Jericho Quadrangle Suite 300  
Jericho, New York 11753  
Brian Powers  
Haley Trust  
Courtney M. Roman

**Hearing Date: September 26, 2024**  
**Time: 10:00 a.m.**

**Objections Due: September 19, 2024**  
**Time: 4:00 p.m.**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In re:

Chapter 7

BUTH-NA-BODHAIGE, INC.,  
Debtor.

Case No.: 24-10392 (DSJ)

-----X  
**NOTICE OF HEARING ON CHAPTER 7 TRUSTEE'S MOTION  
FOR AN ORDER APPROVING SETTLEMENTS PROVIDING FOR  
(I) SURRENDER OF DEBTOR'S LEASED PROPERTY, (II) FIXING  
ALLOWED CLAIMS, AND (III) ABANDONMENT OF PERSONAL  
PROPERTY PURSUANT TO 11 U.S.C. § 554 AND BANKRUPTCY RULE 6007**

**PLEASE TAKE NOTICE THAT**, upon the motion (the "Motion") of Kenenth P. Silverman, the chapter 7 trustee (the "Trustee") for the bankruptcy estate of Buth-Na-Bodhaige, Inc. (the "Debtor"), by his counsel, Rimom P.C., will move before the Honorable David S. Jones, United States Bankruptcy Judge, for the United States Bankruptcy Court of the Southern District of New York, via Zoom for Government, on **September 26, 2024 at 10:00 a.m.** (the "Hearing"), or as soon thereafter as counsel can be heard, for entry of an order, substantially in the form annexed to the Motion as **Exhibit A**, for signature (i) authorizing and approving the surrender of certain leased premises to the respective landlord, (ii) fixing allowed claims of landlords, (iii) authorizing and approving the abandonment of the Debtor's personal property pursuant to § 554 of the Bankruptcy Code and Bankruptcy Rule 6007, (iv) authorizing and approving the collective stipulations (collectively, the "Stipulations") pursuant to Bankruptcy Rule 9019, and (v) for such further relief as the Court deems proper.



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**PLEASE TAKE FURTHER NOTICE**, that prior to the Hearing, any party wishing to appear at the Hearing is required to register their appearance by 4:00 p.m. one (1) business day in advance of the Hearing using the Court's eCourt Appearances platform: <https://ecf.nysb.uscourts.gov/cgi-bin/nysbAppearances.pl>.

**PLEASE TAKE FURTHER NOTICE**, that objections to the relief sought in the Motion shall be in writing, conform to the requirements of the Bankruptcy Code, Bankruptcy Rules, and the Local Rules of this Court, must set forth the name of the objecting party, the basis for the objection and the specific grounds therefore, and must be filed electronically with the Bankruptcy Court in accordance with General Order M-399 (General Order M-399 and the User's Manual for the Electronic Case Filing System may be found at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov), the official website for the Bankruptcy Court) by registered users of the Bankruptcy Court's case filing system, and by all other parties in interest on a disk, preferably in Portable Document Format (PDF), WordPerfect, or any other Windows-based word processing format (with courtesy copies delivered directly to Chambers), and must be served upon (i) counsel to the Trustee, Rimón P.C., 100 Jericho Quadrangle, Suite 300, Jericho, New York, 11753, Attn: Brian Powers, Esq. and (ii) The Office of the United States Trustee, Alexander Hamilton Custom House, One Bowling Green, Room 534, New York, New York, 10004-1408, Attn: Mark Bruh, Esq., no later than **September 19, 2024 at 4:00 p.m.**

**PLEASE TAKE FURTHER NOTICE**, that the Hearing may be adjourned without further notice other than the announcement of such adjournment in open Court or by the filing of such notice of adjournment on the docket sheet for the Debtor's case.

**PLEASE TAKE FURTHER NOTICE**, that you need not appear at the Hearing if you do not object to the relief requested in the Motion.

Dated: Jericho, New York  
August 28, 2024

**RIMON P.C.**  
Counsel to Kenneth P. Silverman, Esq.,  
the Chapter 7 Trustee

By: s/ Brian Powers  
Brian Powers  
Partner  
100 Jericho Quadrangle, Suite 300  
Jericho, New York 11753

**RIMON P.C.**  
Counsel to the Chapter 7 Trustee  
Kenneth P. Silverman, Esq.  
100 Jericho Quadrangle Suite 300  
Jericho, New York 11753  
Brian Powers  
Courtney M. Roman

**Hearing Date: September 26, 2024**  
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In re:

Chapter 7

BUTH-NA-BODHAIGE, INC.,

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Debtor.  
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**CHAPTER 7 TRUSTEE'S MOTION  
FOR AN ORDER APPROVING SETTLEMENTS PROVIDING FOR  
(I) SURRENDER OF DEBTOR'S LEASED PROPERTY, (II) FIXING  
ALLOWED CLAIMS, AND (III) ABANDONMENT OF PERSONAL  
PROPERTY PURSUANT TO 11 U.S.C. § 554 AND BANKRUPTCY RULE 6007**

Kenneth P. Silverman, Esq., the chapter 7 trustee (the "Trustee") for the bankruptcy estate of Buth-Na-Bodhaige, Inc. (the "Debtor"), submits this omnibus motion (this "Motion") seeking entry of an order, substantially in the form annexed hereto as **Exhibit A**, (i) authorizing and approving the surrender of certain leased premises to the respective landlord, (ii) fixing allowed claims of landlords, (iii) the abandonment of the Debtor's personal property pursuant to § 554 of the Bankruptcy Code and Bankruptcy Rule 6007, (iv) authorizing and approving the collective stipulations (collectively, the "Stipulations") pursuant to Bankruptcy Rule 9019, and (v) for such further relief as the Court deems proper, and respectfully represents as follows:

**JURISDICTION**

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory basis for the relief requested herein are sections 105(a), 365(a), 502(b), and 554(a) of the Bankruptcy Code, Bankruptcy Rules 6004, 6006 and 6007, and rules 6006-1(a) and 6007(1) of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”).

## **BACKGROUND**

### **I. The Bankruptcy Case**

4. On March 8, 2024 (the “Petition Date”), the Debtor filed a voluntary petition for relief pursuant to chapter 7 of the Bankruptcy Code.

5. On March 9, 2024, Kenneth P. Silverman, Esq., was appointed the interim chapter 7 trustee of the Debtor’s estate, has since been duly qualified, and is the permanent trustee in this case.

6. The Debtor was a cosmetic and skin care retailer that is a subsidiary of the Body Shop International Limited, a UK based company.

### **The Landlord Claims**

7. On June 17, 2024, MOAC Mall Holdings LLC (the “MOAC Landlord”) filed a proof of claim in the Debtor’s case, designated Claim No. 103 on the Debtor’s claims register (the “MOAC Claim”) asserting a general unsecured claim in the amount of \$85,902.65.

8. On June 17, 2024, Bellevue Square Merchants Association (the “BMA”) filed a proof of claim in the Debtor’s case, designated Claim No. 114 on the Debtor’s claims register asserting an (i) administrative priority claim in the amount of \$1,528.41, and a (ii) general unsecured claim in the amount of \$12,299.56 (the “BMA Claim”).

9. On June 17, 2024, Bellevue Square Managers Inc. (“BSM” and, together with BMA, “Bellevue”) (Bellevue together with the MOAC Landlord, are collectively referred to as the

“Landlords”) filed a proof of claim in the Debtor’s case, designated Claim No. 120 on the Debtor’s claims register asserting an (i) administrative priority claim in the amount of \$40,088.32, and a (ii) general unsecured claim in the amount of \$14,115.68 (the “BSM Claim,” and together with the BMA Claim, the “Bellevue Claims”).

**II. The Debtor’s Inventory Remaining at Debtor’s Store  
Locations and The Trustee’s Investigation to Hire a Liquidator**

10. Prior to the Petition Date, the Debtor was a tenant under a number of nonresidential real property leases from which it operated its retail locations. As set forth in the Declaration of Kenneth P. Silverman, Esq., (the “Silverman Declaration”) filed in support of this Motion and annexed hereto as **Exhibit B**, due to the Debtor being in chapter 7 rather than chapter 11, the Trustee determined, in his business judgment, that the leases would be burdensome and would provide no corresponding benefit to the Debtor or its estate. Moreover, the Trustee determined that, due in part to the amount of rent outstanding at many of the locations and the current market for retail space, there would be limited, if any, value to the estate from the assumption and assignment of its leases.

11. As part of the Trustee’s review and analysis of the Debtor’s financial affairs, the Trustee and his retained professionals also undertook a comprehensive investigation of the inventory remaining at the Debtor’s store locations. This analysis involved the Trustee and his retained professionals engaging in discussions with various liquidators to market and sell the Debtor’s inventory remaining in its store locations. Ultimately, the Trustee received a proposal from a nationally recognized liquidator to marshal, market, and sell the Debtor’s inventory currently remaining in the various store locations across the United States.

12. Simultaneously, the Trustee and his professionals entered into negotiations with the Debtor’s landlords with respect to rejection of existing leases, potential waivers of claims, and the

fixing of certain rejection damages claims. Accordingly, the Trustee determined that, on a store-by-store basis, greater value may be achieved through agreements with landlords than the liquidation of remnant inventory.

### **III. The Stipulations By and Between the Trustee and Certain Landlords**

13. As described below, the Trustee and his retained professionals have entered into two (2) Stipulations, subject to Court approval, with certain of the Debtor's landlords, whereby the Trustee seeks to (i) authorize and approve the surrender of certain leased premises to the respective Landlords (defined herein), (ii) fix the allowed claims of Landlords, and (iii) abandon the Debtor's personal property and inventory left remaining at those premises. The Trustee believes that the settlements reached with each landlord are fair and reasonable and provide benefits to the estate (including full administrative and substantial unsecured claims waivers) greater than that which would be obtained through the liquidation of the inventory remaining in each premises.

#### **A. Trustee's Stipulation with MOAC Mall Holdings LLC**

14. The Trustee and MOAC Mall Holdings LLC (the "MOAC Landlord") entered into a stipulation (the "MOAC Stipulation"), by which (i) the Trustee seeks to surrender the leased premises known as and located at Mall of America, Space W148, Bloomington, Minnesota 55425 (the "MOAC Premises") to the Debtor; (ii) all remaining personal property left in the MOAC Premises, including any inventory, is deemed abandoned and may be disposed of by the MOAC Landlord without any liability or responsibility to the Debtor's estate, and the automatic stay of Bankruptcy Code § 362 is modified to the extent necessary; (iii) the MOAC Landlord shall have an allowed general unsecured claim in the Debtor's case in the total amount of \$85,902.65 (the "MOAC Allowed Claim"); and (iv) the MOAC Landlord agrees that except for the right to retain

the MOAC Allowed Claim and its rights under the MOAC Stipulation, the MOAC Landlord waives any and all claims it has or may have, whether known or unknown, asserted or unasserted, including any other claims for rejection damages pursuant to Bankruptcy Code § 502(b)(6), against the Debtor and its estate. A copy of the proposed MOAC Stipulation is annexed hereto as **Exhibit C.**

**B. Trustee's Stipulation with Bellevue Square LLC and Bellevue Square Merchants Association**

15. The Trustee and Bellevue entered into a stipulation (the "Bellevue Stipulation"), by which (i) the lease is deemed expired, by its terms, on June 30, 2024; (ii) all remaining personal property left in the premises, including any inventory, is deemed abandoned and may be disposed of by Bellevue without any liability or responsibility to the Debtor's estate, and the automatic stay of Bankruptcy Code § 362 is modified to the extent necessary; (iii) BMA shall have an allowed general unsecured claim in the amount of \$13,827.97; (iv) BSM shall have an allowed general unsecured claim in the amount of \$34,159.84; and (v) BSM shall have an allowed administrative priority claim in the amount of \$20,044.16. A copy of the proposed Bellevue Stipulation is annexed hereto as **Exhibit D.**

**RELIEF REQUESTED**

16. As set forth above and in the Silverman Declaration, the Trustee has determined in his business judgment that the leases provided little to no value to the Debtor's estate. Therefore, in an effort to avoid the risks and costs associated with the Debtor remaining in the premises and/or the assignment of the leases to a third-party, as well as, any litigation that may arise over the nature, extent and validity of the landlord's potential administrative and/or unsecured general claims against the Debtor's estate, the Trustee and the Landlords have entered into Stipulations to resolve



all disputes relating to the leases. Accordingly, by this Motion the Trustee seeks approval of the Stipulations.

**I. The Stipulations Should Be Approved Under Rule 9019**

17. Bankruptcy Rule 9019 governs the approval of compromises and settlements, and provides in relevant part as follows:

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States Trustee, the debtor, and indentured trustees as provided in Rule 2002 and to any other entity as the court may direct.

Fed. R. Bankr. P. 9019(a).

18. In approving the compromise and settlement, the Bankruptcy Court is required to make an “informed and independent judgment” as to whether the compromise and settlement is fair and equitable based on an:

educated estimate of the complexity, expense, and likely duration of such litigation, the possible difficulties of collecting on any judgment which might be obtained, and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Basic to this process in every instance, of course, is the need to compare the terms of the compromise with the likely rewards of litigation.

*Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425, *reh'g denied*, 391 U.S. 909 (1968). See *In re Arrow Air, Inc.*, 85 B.R. 886, 891 (Bankr. S.D. Fla. 1988); *In re Bell & Beckwith*, 77 B.R. 606, 611 (Bankr.N.D.Ohio), *aff'd*, 87 B.R. 472 (N.D.Ohio 1987); *Cf. Magill v. Springfield Marine Bank (In re Heissinger Resources Ltd.)*, 67 B.R. 378, 383 (C.D. Ill. 1986) (“the law favors compromise”).

19. In making its determination on the “propriety of the settlement”, the Court should consider whether the proposed settlement is in the “best interest of the estate”.<sup>1</sup> As stated in *Arrow*

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<sup>1</sup> *Handler v. Roth (In re Handler)*, 386 B.R. 411, 420 (Bankr. E.D.N.Y. 2007) (quoting *In re Adelpia Communications Corp.*, 327 B.R. 143, 158 (Bankr. S.D.N.Y. 2005)); *Depo v. Chase Lincoln First Bank, N.A. (In re Depo)*, 77 B.R. 381, 383 (N.D.N.Y. 1987), *aff'd*, 863 F.2d 45 (2d Cir. 1988).

*Air*, the "approval of [a] proposed compromise and settlement is a matter of this Court's sound discretion". *Arrow Air*, 85 B.R. at 891. In passing upon a proposed settlement, "the bankruptcy court does not substitute its judgment for that of the trustee". *In re Depo*, 77 B.R. at 384 (citations omitted). The bankruptcy court is not required "to decide the numerous questions of law and fact raised by [objectors]. . . . [R]ather [the Court should] canvass the issues and see whether the settlement falls below the lowest point in the range of reasonableness."<sup>2</sup> In evaluating the reasonableness of a proposed compromise, the Court "may give weight to the opinions of the Trustee, the parties and their counsel." *Bell & Beckwith*, 77 B.R. at 612; *see also In re Handler*, 386 B.R. at 421.

20. The U.S. Court of Appeals for the Second Circuit outlined the following seven factors (the "Iridium Criteria") to be considered by a court in deciding whether to approve a compromise or settlement:

- i. the balance between the litigation's possibility of success and the settlement's present and future benefits;
- ii. the likelihood of complex and protracted litigation, with its attendant expense, inconvenience, and delay, including the difficulty in collecting on the judgment if the settlement is not approved;
- iii. the paramount interest of the creditors, including the proportion of class members who do not object to or who affirmatively support the settlement;
- iv. whether other parties in interest support the settlement;
- v. the competency and experience of the counsel who support the proposed settlement;
- vi. the relative benefits to be received by individuals or groups within the class; and

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<sup>2</sup> *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983), *cert denied*, 464 U.S. 822 (1983) (quoting *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972), *cert denied*, 409 U.S. 1039 (1972); *see also In re Handler*, 386 B.R. at 420-21.

vii. the extent to which the settlement is the product of arms-length bargaining.

*Motorola, Inc. v. Official Comm. of Unsecured Creditors et al. (In re Iridium Operating LLC et al.)*, 478 F.3d 452, 462; *In re Handler*, 386 B.R. at 421.

21. The proposed Stipulations, among other things: (i) resolves all of the legal issues between the Trustee and the Landlords; (ii) fixes the Landlords' claims asserted against the Debtor's estate; (iii) eliminates significant administrative claims for post-petition rent that continued to accrue under the Lease; and (iv) significantly reduces the administrative costs to the Debtor's estate for the continued administration, including potential litigation associated with the Landlords' claims, and the potential costs associated therewith.

22. The Trustee has determined that settling the Landlords' claims and the issues surrounding the Landlords' claims, upon the terms and conditions of the respective proposed Stipulations, is in the best interests of the Debtor's estate, falls well within the lowest ranges of reasonableness, and is the most economical and efficient way to avoid the inherent risks and fees associated with would could be extremely costly, protracted, and complex litigation should the Trustee object to the Landlords' claims. Further, the Stipulations bypasses all of the potential complexities and delays associated with litigation and authorizes the Trustee to continue with the administration of the Debtor's estate.

23. The Stipulations were negotiated at arms-length by and among the Trustee and his counsel and the Landlords and their counsel. Both the Trustee and the Landlords exercised their business judgment when entering into the Stipulations and have taken into consideration the unknown casts, risks, and delays attendant to proceeding with the potential litigation.

24. The Trustee and the Landlords believe the Stipulations are fair and equitable and in the best interests of the Debtor's estate, and respectfully request that the Court approve the Stipulations.

25. Under the circumstances of this case, the Stipulations should be approved because they are in the best interests of the Debtor, its estate and its creditors, falls above the lowest range of reasonableness, and represents the reasonable exercise of the Trustee's business judgment.

**II. Abandonment of Personal Property, Including Any Inventory, Remaining in the Leased Premises Should Be Approved by the Court**

26. With respect to the Trustee's request for authority to abandon the personal property, including the Debtor's inventory, remaining in the leased premises, the Trustee submits that the standard set forth in Bankruptcy Code § 554(a) is satisfied.

27. Section 554(a) provides that a debtor in possession may abandon, subject to court approval, "property of the estate that . . . is of inconsequential value and benefit to the estate." 11 U.S.C. § 554(a). Before authorizing abandonment of property, a bankruptcy court must find either: (i) the property is burdensome to the estate or (ii) the property is both of inconsequential value and inconsequential benefit to the estate. *See, e.g., Midlantic Nat'l bank v. N.J. Dep't of Env'tl. Prot.*, 474 U.S. 494, 497) (1986), *reh'g denied*, 475 U.S. 1091 (1986).

28. As stated herein, the Trustee and his retained professionals thoroughly investigated the inventory remaining at the Debtor's store locations, and sought proposals from potential liquidators. As a result of that investigation, the Trustee determined, in his sound business judgment, that the abandonment of the inventory in the premises would be more beneficial to the estate as part of agreements with the Landlords. The immediate abandonment of the inventory helped ease negotiations with the Landlords as it enables the Landlords to remove the inventory

quickly without having to wait for the Trustee to determine how to proceed with the remaining inventory.

29. Rule 6007-1 of the Local Rules requires that notice of a proposed abandonment describe the property to be abandoned, state the reason for the proposed abandonment, and identify the entity to whom the property is proposed to be abandoned, unless the Court orders otherwise. The Trustee submits that given the description provided herein, the requirements of the Local Rules have been satisfied.

30. The Trustee also requests that the abandonment of the inventory should be effective as of the proposed effective date of the Stipulations.

### **CONCLUSION**

31. Based on the foregoing, the Trustee submits that the relief requested is necessary and appropriate, is in the best interests of the Debtor's estate and its creditors, and should be granted in all respects.

32. No prior motion for the relief requested herein has been made to this or any other Court.

**WHEREFORE**, the Trustee respectfully requests entry of an order substantially in the form annexed hereto as Exhibit A, which grants the relief requested herein and for such other, further and different relief as the Court deems just and proper.

Dated: Jericho, New York  
August 28, 2024

**Rimon P.C.**  
Counsel to Kenneth P. Silverman, Esq.,  
the Chapter 7 Trustee

By: s/ Brian Powers  
Brian Powers  
Partner  
100 Jericho Quadrangle, Suite 300  
Jericho, New York 11753

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 7

BUTH-NA-BODHAIGE, INC.,

Case No.: 24-10392 (DSJ)

Debtor.  
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**ORDER GRANTING CHAPTER 7 TRUSTEE'S MOTION  
FOR AN ORDER APPROVING SETTLEMENTS PROVIDING FOR  
(I) SURRENDER OF DEBTOR'S LEASED PROPERTY, (II) FIXING  
ALLOWED CLAIMS, AND (III) ABANDONMENT OF PERSONAL  
PROPERTY PURSUANT TO 11 U.S.C. § 554 AND BANKRUPTCY RULE 6007**

1. Upon the motion (the "Motion")<sup>1</sup> of Kenneth P. Silverman, Esq., the chapter 7 trustee (the "Trustee") of the bankruptcy estate of Buth-Na-Bodhaige, Inc. (the "Debtor"), seeking the entry of an order (i) authorizing and approving the surrender of certain leased premises to the respective landlord, (ii) fixing allowed claims of landlords, (iii) authorizing and approving the abandonment of the Debtor's personal property pursuant to § 554 of the Bankruptcy Code and Bankruptcy Rule 6007, (iv) authorizing and approving the collective stipulations (collectively, the "Stipulations") pursuant to Bankruptcy Rule 9019, and (v) for such further relief as the Court deems proper, and upon the Declaration of Kenneth P. Silverman, Esq. filed in support of the Motion, annexed to the Motion as Exhibit B; and upon the hearing on the Motion held before the Court on September 26, 2024 (the "Hearing"), the transcript of which is incorporated herein by reference; and notice of the Motion, the Hearing, and the relief sought in the Motion having been good and sufficient under the circumstances; and the Court having determined that the legal and factual bases set forth in the Motion establishing sufficient cause for the relief requested; now, therefore,

**IT IS HEREBY ORDERED THAT:**

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

1. The Motion is granted.
2. The MOAC Stipulation, annexed to the Motion as Exhibit C, is hereby approved.
3. The Bellevue Stipulation, annexed to the Motion as Exhibit D, is hereby approved.
4. The proof of claim filed by MOAC Landlord, designated Claim No. 103 on the Debtor's claims register, is hereby allowed. The MOAC Landlord shall have an allowed general unsecured claim in the total amount of \$85,902.65.
5. The MOAC Premises is deemed surrendered to the MOAC Landlord as of the date of entry of this order.
6. The proofs of claim filed by Bellevue, designated Claim Nos. 114 and 120, are hereby allowed as followed:
  - a. BMA shall have an allowed general unsecured claim in the amount of \$13,827.97.
  - b. BSM shall have an allowed general unsecured claim in the amount of \$34,159.84 and an allowed administrative priority claim in the amount of \$20,044.16.
7. The abandonment of the Debtor's personal property remaining in each of the premises is hereby approved, as set forth in the Stipulation. The Trustee is authorized to take any and all actions reasonably necessary to perform or enforce any and all obligations contemplated by this Order.
8. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: New York, New York  
September \_\_, 2024

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HONORABLE DAVID S. JONES  
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In re:

Chapter 7

BUTH-NA-BODHAIGE, INC.,

Case No.: 24-10392 (DSJ)

Debtor.  
-----X

**DECLARATION OF KENNETH P. SILVERMAN, ESQ.  
IN SUPPORT OF CHAPTER 7 TRUSTEE’S MOTION  
FOR AN ORDER APPROVING SETTLEMENTS PROVIDING FOR  
(I) SURRENDER OF DEBTOR’S LEASED PROPERTY, (II) FIXING  
ALLOWED CLAIMS, AND (III) ABANDONMENT OF PERSONAL  
PROPERTY PURSUANT TO 11 U.S.C. § 554 AND BANKRUPTCY RULE 6007**

I, Kenneth P. Silverman, Esq., declare as follows:

1. I am a partner of Rimon P.C. and the chapter 7 trustee (the “Trustee”) of the bankruptcy estate (the “Estate”) of Buth-Na-Bodhaige, Inc. (the “Debtor”), with offices located at 100 Jericho Quadrangle, Suite 300, Jericho, New York 11753. I am duly admitted to practice before this Court and the courts of the State of New York.

2. I submit this declaration (this “Declaration”) in support of the motion (the “Motion”)<sup>1</sup> seeking entry of an order (i) authorizing and approving the surrender of certain leased premises to the respective landlord, (ii) fixing allowed claims of landlords, (iii) the abandonment of the Debtor’s personal property pursuant to § 554 of the Bankruptcy Code and Bankruptcy Rule 6007, (iv) authorizing and approving the collective stipulations (collectively, the “Stipulations”) pursuant to Bankruptcy Rule 9019, and (v) for such further relief as the Court deems proper.

3. I have reviewed the Motion and relevant documents thereto and certify that its contents are true and correct to the best of my knowledge, and those facts are incorporated herein by reference.

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<sup>1</sup> All capitalized terms used but not defined herein shall have the meaning ascribed to them in the Motion.



## **I. The Bankruptcy Case**

4. On March 8, 2024 (the “Petition Date”), the Debtor filed a voluntary petition for relief pursuant to chapter 7 of the Bankruptcy Code.

5. On March 9, 2024, I was appointed the interim chapter 7 trustee of the Debtor’s estate, have since been duly qualified and am the permanent trustee in this case.

6. The Debtor was a cosmetic and skin care retailer that is a subsidiary of the Body Shop International Limited, a UK based company.

### The Landlord Claims

7. On June 17, 2024, MOAC Mall Holdings LLC (the “MOAC Landlord”) filed a proof of claim in the Debtor’s case, designated Claim No. 103 on the Debtor’s claims register (the “MOAC Claim”) asserting a general unsecured claim in the amount of \$85,902.65.

8. On June 17, 2024, Bellevue Square Merchants Association (“BMA”) filed a proof of claim in the Debtor’s case, designated Claim No. 114 on the Debtor’s claims register asserting an (i) administrative priority claim in the amount of \$1,528.41, and a (ii) general unsecured claim in the amount of \$12,299.56 (the “BMA Claim”).

9. On June 17, 2024, Bellevue Square Managers Inc. (“BSM” and together with BMA, “Bellevue”) (Bellevue together with the MOAC Landlord, are collectively referred to as the “Landlords”) filed a proof of claim in the Debtor’s case, designated Claim No. 120 on the Debtor’s claims register asserting an (i) administrative priority claim in the amount of \$40,088.32, and a (ii) general unsecured claim in the amount of \$14,115.68 (the “BSM Claim,” and together with the BMA Claim, the “Bellevue Claims”).

## **II. The Debtor’s Inventory Remaining at Debtor’s Store Locations and The Trustee’s Investigation to Hire a Liquidator**

10. Prior to the Petition Date, the Debtor was a tenant under a number of nonresidential real property leases from which it operated its retail locations. Due to the Debtor being in chapter 7 rather than chapter 11, I determined, in my business judgment, that the leases would be burdensome and would provide no corresponding benefit to the Debtor or its estate. Moreover, I determined that, due in part to the amount of rent outstanding at many of the locations and the current market for retail space, there would be limited, if any, value to the estate from the assumption and assignment of its leases. Accordingly, Trustee permitted the Lease, by its terms, to expire on April 30, 2024.

11. As part of my review and analysis of the Debtor's financial affairs, my retained professionals and I also undertook a comprehensive investigation of the inventory remaining at the Debtor's store locations. This analysis involved me and my retained professionals engaging in discussions with various liquidators to market and sell the Debtor's inventory remaining in its store locations. Ultimately, I received a proposal from a nationally recognized liquidator to marshal, market, and sell the Debtor's inventory currently remaining in the various store locations across the United States.

12. Simultaneously, me and my professionals entered into negotiations with the Debtor's landlords with respect to the rejection of existing leases, potential waivers of claims, and the fixing of certain rejection damages claims. Accordingly, I determined that, on a store-by-store basis, greater value may be achieved through agreements with landlords than the liquidation of remnant inventory.

### **III. The Stipulation By and Between the Trustee and Certain Landlords**

13. As described below and in the Motion, my retained professionals and I have entered into two stipulations, subject to Court approval, with the Landlords, whereby the Trustee seeks to (i) authorize and approve the surrender of certain leased premises to the respective Landlords

(defined herein), (ii) fix the allowed claims of Landlords, and (iii) abandon the Debtor's personal property and inventory left remaining at those premises. I believe that the settlements reached with the Landlords are fair and reasonable, and provide benefits to the estate (including full administrative and substantial unsecured claims waivers) greater than that which would be obtained through the liquidation of the inventory remaining in each premises

**A. Trustee's Stipulation with MOAC Mall Holdings LLC**

14. I, on behalf of the Estate, and MOAC Mall Holdings LLC (the "MOAC Landlord") entered into a stipulation (the "MOAC Stipulation") by which (i) the Trustee the Trustee seeks to surrender the leased premises known as and located at Mall of America, Space W148, Bloomington, Minnesota 55425 (the "MOAC Premises") to the Debtor; (ii) all remaining personal property left in the MOAC Premises, including any inventory, is deemed abandoned and may be disposed of by the MOAC Landlord without any liability or responsibility to the Debtor's estate, and the automatic stay of Bankruptcy Code § 362 is modified to the extent necessary; (iii) the MOAC Landlord shall have an allowed general unsecured claim in the Debtor's case in the total amount of \$85,902.65 (the "MOAC Allowed Claim"); and (iv) the MOAC Landlord agrees that except for the right to retain the MOAC Allowed Claim and its rights under the MOAC Stipulation, the MOAC Landlord waives any and all claims it has or may have, whether known or unknown, asserted or unasserted, including any other claims for rejection damages pursuant to Bankruptcy Code § 502(b)(6), against the Debtor and its estate. A copy of the proposed MOAC Stipulation is annexed to the Motion as Exhibit B.

**B. Trustee's Stipulation with Bellevue Square LLC and Bellevue Square Merchants Association**

15. I, on behalf of the Estate, and Bellevue entered into a stipulation (the "Bellevue Stipulation"), by which (i) the lease is deemed expired, by its terms, on June 30, 2024; (ii) all

remaining personal property left in the premises, including any inventory, is deemed abandoned and may be disposed of by Bellevue without any liability or responsibility to the Debtor's estate, and the automatic stay of Bankruptcy Code § 362 is modified to the extent necessary; (iii) BMA shall have an allowed general unsecured claim in the amount of \$13,827.97; (iv) BSM shall have an allowed general unsecured claim in the amount of \$34,159.84; and (v) BSM shall have an allowed administrative priority claim in the amount of \$20,044.16. A copy of the proposed Bellevue Stipulation is annexed to the Motion as Exhibit C.

16. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Jericho, New York on August 28, 2024.

*s/ Kenneth P. Silverman*

Kenneth P. Silverman, Esq.

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In re:

Chapter 7

BUTH-NA-BODHAIGE, INC.,

Case No.: 24-10392 (DSJ)

Debtor.  
-----X

**STIPULATION WITH RESPECT TO SURRENDER OF  
DEBTOR’S LEASED NON-RESIDENTIAL REAL PROPERTY,  
FIXING ALLOWED CLAIM, AND ABANDONMENT OF PERSONAL PROPERTY**

Kenneth P. Silverman, Esq., the chapter 7 trustee (the “Trustee”) for the bankruptcy estate of Buth-Na-Bodhaige, Inc. (the “Debtor”), by his attorneys, Rimon P.C., and MOAC Mall Holdings LLC (“Landlord,” and together with the Trustee, the “Parties” and each a “Party”), hereby enter into this stipulation (this “Stipulation”) and agree as follows:

**RECITALS**

**WHEREAS**, on March 8, 2024 (the “Petition Date”), the Debtor filed a voluntary petition for relief pursuant to chapter 7 of title 11, United States Code (the “Bankruptcy Code”); and

**WHEREAS**, on March 9, 2024, Kenneth P. Silverman, Esq., was appointed the interim chapter 7 trustee of the Debtor’s estate; and

**WHEREAS**, the Debtor and the Landlord are parties to a lease agreement (the “Lease”) pursuant to which the Landlord leased premises to the Debtor known as and located at Mall of America, Space W148, Bloomington, Minnesota 55425, in which the Debtor conducted its business prior to the Petition Date (the “Premises”); and

**WHEREAS**, as of May 7, 2024, the Lease was deemed rejected pursuant to Bankruptcy Code § 365(d)(1); and

**WHEREAS**, on June 17, 2024, the Landlord filed a proof of claim in the Debtor's case, designated Claim No. 103 on the Debtor's claims register (the "Landlord Claim"), asserting a general unsecured claim in the amount of \$85,902.65; and

**WHEREAS**, the Trustee and the Landlord, by and through counsel, have engaged in arms-length negotiations with respect the Lease, the fixing of the Landlord Claim, and the disposition of the Debtor's personal property, including inventory, that may remain at the Premises, and engaged in negotiations in effort to reach an amicable resolution to the issues between the Parties without protracted litigation; and

**NOW, THEREFORE**, it is hereby stipulated and agreed by and among the Parties hereto, that the matters set forth above be resolved upon the terms and conditions set forth herein as follows:

1. Surrender of Premises. Upon entry of an order of the Bankruptcy Court approving this Stipulation, the Premises shall be deemed surrendered by the Trustee to the Landlord, with such surrender acknowledged by the Parties.

2. Abandonment of Personal Property. All remaining personal property left at the Premises, including any inventory, is hereby deemed abandoned and may be disposed of by the Landlord without any liability or responsibility to the Debtor's estate or any third party claiming an interest in such personal property and/or inventory, and the automatic stay of Bankruptcy Code § 362 is modified to the extent necessary.

3. Allowed Claim. The Landlord Claim, designated Claim No. 103, shall be an allowed general unsecured claim in the Debtor's case in the amount of \$85,902.65 (the "Allowed Claim").

4. Waiver of Post-Petition Claims. Except for the right to retain the Allowed Claim, and its rights under this Stipulation, the Receiver hereby waives any and all claims it has or may have, including the Administrative Claim, whether known or unknown, asserted or unasserted, including any other claims for rejection damages pursuant to Bankruptcy Code § 502(b)(6), against the Debtor and its estate.

5. Approval of Court. This Stipulation is subject to the approval of the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”). In the event the Bankruptcy Court fails to authorize and approve this Stipulation in its entirety, this Stipulation shall be null and void, and will have no further force and effect, and nothing contained herein shall be deemed an admission or waiver of the rights of any party.

6. No Modification, Amendment, or Waiver. No provision of this Stipulation shall be modified, amended, or waived in any way except in a writing signed with the handwritten signature of an authorized agent of the Parties, which writing identifies this Stipulation and expressly provides that it is intended to amend it.

7. Jurisdiction. The Parties expressly consent to the exclusive jurisdiction of the Bankruptcy Court with respect to any and all disputes arising out of or in connection with this Stipulation, without regard to choice of law.

8. Governing Law. This Settlement Agreement shall be governed by the laws of the State of New York.

9. Authority. Each signatory hereto, represents and warrants that they hold and are exercising the requisite authority to bind their respective clients.

10. Counterparts. For the convenience of the Parties, this Stipulation may be executed in counterparts that shall together constitute an original, and any signatures to this Stipulation that

are delivered between the Parties or their counsel via email or facsimile shall, for evidentiary purposes, have the same validity and effect as the original signatures.

Dated: Jericho, New York  
August 14, 2024

**RIMON P.C.**  
Counsel to Kenneth P. Silverman, Esq.,  
the Chapter 7 Trustee

By: s/ Brian Powers  
Brian Powers  
Partner  
100 Jericho Quadrangle, Suite 300  
Jericho, New York 11753

Dated: Bloomington, Minnesota  
August 14, 2024

By: s/ Juliana Panetta  
Juliana Panetta  
General Counsel to Mall of America  
2131 Lindau Lane, Suite 500  
Bloomington, Minnesota 55425



UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In re:

Chapter 7

BUTH-NA-BODHAIGE, INC.,

Case No.: 24-10392 (DSJ)

Debtor.  
-----X

**STIPULATION WITH RESPECT TO FIXING  
ALLOWED CLAIM, AND ABANDONMENT OF PERSONAL PROPERTY**

Kenneth P. Silverman, Esq., the chapter 7 trustee (the “Trustee”) for the bankruptcy estate of Buth-Na-Bodhaige, Inc. (the “Debtor”), by his attorneys, Rimon P.C., and Bellevue Square Managers, Inc. and Bellevue Square Merchants Association (collectively, the “Landlord,” and together with the Trustee, the “Parties” and each a “Party”), by its attorneys Illuminate Law Group, hereby enter into this stipulation (this “Stipulation”) and agree as follows:

**RECITALS**

**WHEREAS**, on March 8, 2024 (the “Petition Date”), the Debtor filed a voluntary petition for relief pursuant to chapter 7 of title 11, United States Code (the “Bankruptcy Code”); and

**WHEREAS**, on March 9, 2024, Kenneth P. Silverman, Esq., was appointed the interim chapter 7 trustee of the Debtor’s estate; and

**WHEREAS**, the Debtor and the Landlord are parties to a lease agreement (the “Lease”) pursuant to which the Landlord leased premises to the Debtor known as and located at Bellevue Square, Space 2034, Bellevue, Washington 98004, in which the Debtor conducted its business prior to the Petition Date (the “Premises”); and

**WHEREAS**, the Lease, by its terms, expired on June 30, 2024, but certain of the Debtor’s personal property remains in the Premises; and

**WHEREAS**, on June 17, 2024, the Landlord filed proofs of claim in the Debtor's case, designated Claim Nos. 114 and 120 on the Debtor's claims register; and

**WHEREAS**, Claim No. 114 ("Claim 114") asserts an administrative priority claim in the amount of \$1,528.41 and a general unsecured claim in the amount of \$12,299.56; and

**WHEREAS**, Claim No. 120 ("Claim 120" and, together with Claim 114, the "Landlord Claims") asserts an administrative priority claim in the amount of \$40,088.32 and a general unsecured claim in the amount of \$14,115.68; and

**WHEREAS**, the Trustee and the Landlord, by and through counsel, have engaged in arms-length negotiations with respect to the Lease, the fixing of the Landlord Claims, and the disposition of the Debtor's personal property, including inventory, that may remain at the Premises, and engaged in negotiations in effort to reach an amicable resolution to the issues between the Parties without protracted litigation; and

**NOW, THEREFORE**, it is hereby stipulated and agreed by and among the Parties hereto, that the matters set forth above be resolved upon the terms and conditions set forth herein as follows:

1. Abandonment of Personal Property. All remaining personal property left at the Premises, including any inventory, is hereby deemed abandoned and may be disposed of by the Landlord without any liability or responsibility to the Debtor's estate or any third party claiming an interest in such personal property and/or inventory, and the automatic stay of Bankruptcy Code § 362 is modified to the extent necessary.

2. Allowed Claims. The Landlord Claims shall be allowed as follows:

- a. Claim 114 shall be an allowed general unsecured claim in the Debtor's case in the amount of \$13,827.97.

- b. Claim 120 shall be an allowed administrative priority claim in the amount of \$20,044.16 and a general unsecured claim in the amount of \$34,159.84.

3. Approval of Court. This Stipulation is subject to the approval of the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”). In the event the Bankruptcy Court fails to authorize and approve this Stipulation in its entirety, this Stipulation shall be null and void, and will have no further force and effect, and nothing contained herein shall be deemed an admission or waiver of the rights of any party.

4. No Modification, Amendment, or Waiver. No provision of this Stipulation shall be modified, amended, or waived in any way except in a writing signed with the handwritten signature of an authorized agent of the Parties, which writing identifies this Stipulation and expressly provides that it is intended to amend it.

5. Jurisdiction. The Parties expressly consent to the exclusive jurisdiction of the Bankruptcy Court with respect to any and all disputes arising out of or in connection with this Stipulation, without regard to choice of law.

6. Governing Law. This Settlement Agreement shall be governed by the laws of the State of New York.

7. Authority. Each signatory hereto, represents and warrants that they hold and are exercising the requisite authority to bind their respective clients.

8. Counterparts. For the convenience of the Parties, this Stipulation may be executed in counterparts that shall together constitute an original, and any signatures to this Stipulation that are delivered between the Parties or their counsel via email or facsimile shall, for evidentiary purposes, have the same validity and effect as the original signatures.

Dated: Jericho, New York  
August 26, 2024

**RIMON P.C.**  
Counsel to Kenneth P. Silverman, Esq.,  
the Chapter 7 Trustee

By: s/ Brian Powers  
Brian Powers  
Partner  
100 Jericho Quadrangle, Suite 300  
Jericho, New York 11753

Dated: Bellevue, Washington  
August 26, 2024

**ILLUMINATE LAW GROUP**  
Counsel to Bellevue Square, LLC and Bellevue  
Square Merchants Association

By: s/ Rachel Khadivi  
Rachel Khadivi  
10500 NE 8<sup>th</sup> Street, Suite 850  
Bellevue, Washington 98004