

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: August 1, 2024
Time: 10:00 a.m.

Objections Due: July 25, 2024
Time: 4:00 p.m.

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

**NOTICE OF HEARING ON CHAPTER 7 TRUSTEE'S MOTION FOR AN ORDER
APPROVING SETTLEMENT PROVIDING FOR (I) SURRENDER OF
NONRESIDENTIAL REAL PROPERTY, (II) WAIVER OF CLAIMS ARISING
FROM DEBTOR'S LEASE, 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, Rimon 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 **August 1, 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 the leased premises located at 60 East 8th Street, New York, NY 10003 (the "Premises"), (ii) authorizing and approving the abandonment of the Debtor's personal property pursuant to section 554 of the Bankruptcy Code and Bankruptcy Rule 6007, (iii) authorizing and approving the Landlord's waiver of any and all claims to be asserted against the Debtor's estate, except as permitted by the



Stipulation, (iv) authorizing and approving the stipulation (the "Stipulation"), and (v) for such further relief as the Court deems proper.

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, 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, Rimon 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 **July 25, 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
July 11, 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
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UNITED STATES BANKRUPTCY COURT
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In re:

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BUTH-NA-BODHAIGE, INC.,

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**CHAPTER 7 TRUSTEE’S MOTION FOR AN ORDER
APPROVING SETTLEMENT PROVIDING FOR (I) SURRENDER OF
NONRESIDENTIAL REAL PROPERTY, (II) WAIVER OF CLAIMS ARISING
FROM DEBTOR’S LEASE, 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 motion (this “Motion”) seeking entry of an order, substantially in the form annexed hereto as **Exhibit A** pursuant to section 105(a) of title 11, United States Code (the “Bankruptcy Code”) and Federal Rule of Bankruptcy Procedure (the “Bankruptcy Rules”) 9019(a) approving the Trustee’s stipulation (the “Stipulation”) with SA Retail Holdings LLC (the “Landlord”) for the real estate located at 60 East 8th Street, New York, New York 10003 and known as “Broadway 1” (the “Premises”) annexed hereto as **Exhibit B**, which provides for (i) the surrender of the Premises to the Landlord, (ii) the abandonment of the Debtor’s personal property pursuant to § 554 of the Bankruptcy Code and Bankruptcy Rule 6007, (iii) Landlord’s waiver of any and all claims to be asserted against the Debtor’s estate, except as permitted by the Stipulation, and (iv) 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 Rule 6007, and rule 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, and has since been duly qualified.
6. The Debtor was a cosmetic and skin care retailer that is a subsidiary of the Body Shop International Limited, a UK based company.
7. On June 14, 2024 the Landlord filed a proof of claim in the Debtor's case, designated Claim No. 76 on the Debtor's claims register (the "Landlord Claim") asserting: (i) a secured claim in the amount of \$42,000, secured by the security deposit held pursuant to the Debtor's prepetition lease for the Premises (the "Lease"), and (ii) an administrative priority claim in the amount of \$122,935.04 for various amounts allegedly due to Landlord relating to the Lease.

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

8. 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 C, due to the Debtor being in chapter 7 rather than chapter 11, the Trustee determined, in his business judgment, that the Lease 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. Accordingly, Trustee permitted the Lease, by its terms, to expire on April 30, 2024.

9. 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.

10. Simultaneously, the Trustee and his 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, 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 Stipulation By and Between the Trustee and the Landlord

11. As described below, the Trustee entered into a stipulation, subject to Court approval, with the Landlord, whereby the Trustee seeks to (i) surrender the Premises, (ii) abandon

the personal property and inventory left remaining at the Premises, and (iii) waive Landlord's claims, except as permitted in the Stipulation. The Trustee believes that the settlement reached with the Landlord is fair and reasonable, and provides benefits to the estate (including a full administrative claims waiver) greater than that which would be obtained through the liquidation of the inventory remaining in the premises.

12. Pursuant to the Stipulation, the Trustee surrenders to the Landlord the Premises and all remaining personal property left in the Premises, including any inventory, is deemed abandoned and may be disposed of by the Landlord without any liability or responsibility of the Debtor's estate, and the automatic stay of Bankruptcy Code § 362 is modified to the extent necessary. Additionally, the Stipulation provides that the Landlord shall be entitled to retain \$39,669.29 of the security deposit obtained from the Debtor prior to the Petition Date, and the Landlord shall remit to the Trustee \$2,330.71, the remaining balance of the security deposit. The Stipulation also permits the Landlord to draw upon the prepetition Letter of Credit which it obtained as security for the Lease, and all other claims against the Debtor or its estate are waived. A copy of the proposed Stipulation is annexed hereto as Exhibit B.

RELIEF REQUESTED

13. As set forth above and in the Silverman Declaration, the Trustee has determined in his business judgment that the Lease 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 Lease 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 Landlord have entered into a Stipulation to resolve

all disputes relating to the Lease. Accordingly, by this Motion the Trustee seeks approval of the Stipulation.

I. The Stipulation Should Be Approved Under Rule 9019

14. 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).

15. 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”).

16. 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”.¹ As stated in *Arrow 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.”² 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.

17. 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;

¹ *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).

² *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.

- 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
- 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.

18. The proposed Stipulation, among other things: (i) resolves all of the legal issues between the Trustee and the Landlord; (ii) fixes the Landlord's claim asserted against the Debtor's estate; (iii) eliminates the (a) administrative claims for post-petition rent that continued to accrue under the Lease and (b) general unsecured claim filed against the Debtor's estate for pre-petition rents owed by the Debtor; and (iv) significantly reduces the administrative costs to the Debtor's estate for the continued administration, including potential litigation associated with the Landlord's claims, and the potential costs associated therewith.

19. The Trustee has determined that settling the Landlord's claims and the issues surrounding the Landlord's claims, upon the terms and conditions of the respective proposed Stipulation, 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 Landlord's claims. Further, the Stipulation 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.

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

21. The Trustee and the Landlord believe the Stipulation is fair and equitable and in the best interests of the Debtor's estate, and respectfully request that the Court approves the Stipulation.

22. Under the circumstances of this case, the Stipulation should be approved because it is 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

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

24. 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).

25. 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 an agreement with the Landlord. The immediate abandonment of the inventory helped ease negotiations with the Landlord as it enables the Landlord to remove the inventory quickly without having to wait for the Trustee to determine how to proceed with the remaining inventory.

26. 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.

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

CONCLUSION

28. 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.

29. 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
July 11, 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

-----x
In re:

Chapter 7

BUTH-NA-BODHAIGE, INC.,

Case No.: 24-10392 (DSJ)

Debtor.
-----x

**ORDER GRANTING CHAPTER 7 TRUSTEE’S MOTION FOR AN ORDER
APPROVING SETTLEMENT PROVIDING FOR (I) SURRENDER OF
NONRESIDENTIAL REAL PROPERTY, (II) WAIVER OF CLAIMS ARISING
FROM DEBTOR’S LEASE, AND (III) ABANDONMENT OF PERSONAL
PROPERTY PURSUANT TO 11 U.S.C. § 554 AND BANKRUPTCY RULE 6007**

1. Upon the motion (the “Motion”)¹ 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 Trustee’s stipulation (the “Stipulation”) with SA Retail Holdings LLC (the “Landlord”), (ii) authorizing and approving the surrender of the real estate located at 60 East 8th Street, New York, New York 10003 and known as “Broadway 1” (the “Premises”) annexed as Exhibit B to the Motion, (iii) authorizing and approving the abandonment of the Debtor’s personal property pursuant to section 554 of the Bankruptcy Code and Bankruptcy Rule 6007, (iv) authorizing and approving the Landlord’s waiver of any and all claims to be asserted against the Debtor’s estate, except as permitted by the Stipulation, (v) authorizing and approving the stipulation (the “Stipulation”), and (vi) 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 C; and upon the hearing on the Motion held before the Court on August 1, 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

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

factual bases set forth in the Motion establishing sufficient cause for the relief requested; now, therefore,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted.
2. The Stipulation, annexed to the Motion as Exhibit B, is hereby approved.
3. The proof of claim filed by Landlord, designated Claim No. 76 on the Debtor's claims register, is hereby disallowed.
4. The abandonment of the Debtor's personal property remaining in the premises subject to Lease 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.
5. 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
August __, 2024

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

**STIPULATION WITH RESPECT TO SURRENDER OF
DEBTOR'S LEASE OF NON-RESIDENTIAL REAL PROPERTY, WAIVER
OF PROOF OF 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 SA Retail Holdings LLC (the "Landlord" and, together with the Trustee, the "Parties" and each a "Party"), by its attorneys Halperin Battaglia Benzija, LLP, 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") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"); and

WHEREAS, on March 9, 2024, Kenneth P. Silverman, Esq., was appointed the interim chapter 7 trustee of the Debtor's estate, and has since duly qualified; and

WHEREAS, prior to the Petition Date, the Debtor and the Landlord were parties to a certain Lease Agreement dated May 1, 1988 (together with its amendments and extensions, the "Lease") pursuant to which Landlord leased premises to the Debtor as lessee located at 60 East 8th

Street, New York, New York and known as “Broadway 1,” in which the Debtor conducted its business prior to the Petition Date (the “Premises”); and

WHEREAS, prior to the Petition Date and as a requirement under the Lease, the Landlord obtained (i) a security deposit from the Debtor in the amount of \$42,000 (the “Security Deposit”), and (ii) a letter of credit from the Debtor in the amount of \$100,000 (the “Letter of Credit”), each as security to secure the Debtor’s performance under the Lease; and

WHEREAS, the Lease, by its terms, expired on April 30, 2024, but the leased premises were not surrendered and certain of the Debtor’s personal property remains in the Premises; and

WHEREAS, on June 14, 2024, the Landlord filed a proof of claim in the Debtor’s case, designated Claim No. 76 on the Debtor’s claims register (the “Landlord Claim”), asserting: (i) a secured claim in the amount of \$42,000, secured by the Security Deposit, and (ii) an administrative priority claim in the amount of \$122,935.04 for various amounts allegedly due to Landlord relating to the Lease; 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 remains 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. Security Deposit. The Landlord shall be entitled to retain \$39,669.29 of the Security Deposit, which shall be applied to any amounts due and owing by the Debtor under the Lease. Upon entry by the Bankruptcy Court of an order approving this Stipulation, Landlord shall remit the balance of the Security Deposit, totaling \$2,330.71, to the Trustee via wire transfer pursuant to instructions provided by counsel to the Trustee.

4. Letter of Credit. Landlord shall be entitled to draw on the Letter of Credit, up to an including the full amount of the Letter of Credit, to satisfy Landlord's claims against the Debtor.

5. Waiver of Landlord Claim. Upon entry by the Bankruptcy Court of an order approving this Stipulation, with the exception for its rights granted pursuant to Paragraphs 3 and 4 hereof, the Landlord hereby waives any and all claims for rejection of and/or charges under the Lease against the Debtor and its estate, and the Landlord Claim shall be deemed disallowed.

6. Release By Trustee. Upon entry by the Bankruptcy Court of an order approving this Stipulation, the Trustee, on behalf of the Debtor and its estate, shall be deemed to have released and discharged the Landlord, Landlord's counsel and other professionals, and their respective predecessors, successors, heirs and assigns from and against, any and all claims, causes of action,

liabilities, obligations and rights of action with respect to any matter, cause or thing known or unknown, asserted or unasserted, suspected or unsuspected that relate in any way to the Lease, the Debtor, or the Debtor's bankruptcy estate, including without limitation any claims belonging to the Trustee, or the Debtor's bankruptcy estate, other than with respect to the Landlord's obligations hereunder.

7. Approval of Court. This Stipulation is subject to the approval of the Bankruptcy Court. In the event the Bankruptcy Court fails to authorize and approve this Stipulation in its entirety within thirty (30) days of the date hereof, 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.

8. 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.

9. 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.

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


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

12. 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
July 2, 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: New York, New York
July 2, 2024

HALPERIN BATTAGLIA BENZIJA, LLP
Counsel to SA Retail Holdings, LLC
s/ Donna H. Lieberman

By: 

Donna H. Lieberman
40 Wall Street, 37th Floor
New York, New York 10005

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 SETTLEMENT PROVIDING FOR (I) SURRENDER
OF NONRESIDENTIAL REAL PROPERTY, (II) WAIVER OF CLAIMS ARISING
FROM DEBTOR’S LEASE, 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”)¹ seeking entry of an order (i) authorizing and approving the surrender of the leased premises located at 60 East 8th Street, New York, NY 10003 (the “Premises”), (ii) authorizing and approving the abandonment of the Debtor’s personal property pursuant to section 554 of the Bankruptcy Code and Bankruptcy Rule 6007, (iii) authorizing and approving the Landlord’s waiver of any and all claims to be asserted against the Debtor’s estate, except as permitted by the Stipulation, (iv) authorizing and approving the stipulation (the “Stipulation”), and (v) for such further relief as the Court deems proper.

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

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.

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.

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

7. On June 14, 2024 the Landlord filed a proof of claim in the Debtor’s case, designated Claim No. 76 on the Debtor’s claims register (the “Landlord Claim”) asserting: (i) a secured claim in the amount of \$42,000, secured by the security deposit held pursuant to the Debtor’s prepetition lease for the Premises (the “Lease”), and (ii) an administrative priority claim in the amount of \$122,935.04 for various amounts allegedly due to Landlord relating to the Lease.

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

8. 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.

9. 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.

10. 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 Landlord

11. As described below and in the Motion, my retained professionals and I have entered into a stipulation, subject to Court approval, with the Landlord, whereby the Trustee seeks to (i) surrender the Premises, (ii) abandon the personal property and inventory left remaining at the Premises, and (iii) waive Landlord's claims, except as permitted in the Stipulation. I believe that the settlement reached with the Landlord is 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 the Premises.

12. I, on behalf of the Estate, and SA Retail Holdings LLC entered into a stipulation (the “Stipulation”) by which the Trustee surrenders to the Landlord the Premises and all remaining personal property left in the Premises, including any inventory, is deemed abandoned and may be disposed of by the Landlord without any liability or responsibility of the Debtor’s estate, and the automatic stay of Bankruptcy Code § 362 is modified to the extent necessary. Additionally, the Stipulation provides that the Landlord shall be entitled to retain \$39,669.29 of the security deposit obtained from the Debtor prior to the Petition Date, and the Landlord shall remit to the Trustee \$2,330.71, the remaining balance of the security deposit. The Stipulation also permits the Landlord to draw upon the prepetition Letter of Credit which it obtained as security for the Lease, and all other claims against the Debtor or its estate as waived. A copy of the proposed Stipulation is annexed to the Motion as Exhibit B.

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

Executed in Jericho, New York on July 2, 2024.

s/ Kenneth P. Silverman
Kenneth P. Silverman, Esq.