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: January 28, 2025
Time: 10:00 a.m.

Objections Due: January 21, 2025
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 DIRECTING EXAMINATION OF AND THE PRODUCTION OF DOCUMENTS BY ULTA INC. PURSUANT TO RULES 2004 AND 9016 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AND RULE 45 OF THE FEDERAL RULES OF CIVIL PROCEDURE

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"), 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 **January 28, 2025 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**, authorizing the issuance and service of subpoenas *duces tecum* and/or subpoenas *ad testificandum,* for the production of documents from, and/or examination of Ulta Inc. ("Ulta"), and for such other and further relief as the Court deems just and 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 **January 21, 2025 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
January 2, 2025

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

RIMÔN PC
Counsel to the Chapter 7 Trustee, Kenneth P. Silverman, Esq.
100 Jericho Quadrangle, Suite 300
Jericho, New York 11753
Telephone: (516) 479-6300
Brian Powers
Courtney M. Roman

Hearing Date: January 28, 2025
Time: 10:00 a.m.

Objection Deadline: January 21, 2025
Time: 4:00 p.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
----------X
In re:

BUTH-NA-BODHAIGE, INC.,

Debtor.
----------X

Case No.: 24-10392 (DSJ)

Chapter 7

CHAPTER 7 TRUSTEE'S MOTION FOR AN ORDER DIRECTING EXAMINATION OF AND THE PRODUCTION OF DOCUMENTS BY ULTA INC. PURSUANT TO RULES 2004 AND 9016 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AND RULE 45 OF THE FEDERAL RULES OF CIVIL PROCEDURE

Kenneth P. Silverman, solely in his capacity as the chapter 7 trustee (the "Trustee") for the estate (the "Estate") of the above-captioned debtor, Buth-Na-Bodhaige, Inc. (the "Debtor"), hereby moves this Court (the "Motion") for entry of an order substantially in the form the order attached as **Exhibit A** (the "Proposed Order"), pursuant to Rules 2004 and 9016 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), authorizing the issuance and service of subpoenas *duces tecum* and/or subpoenas *ad testificandum,* for the production of documents from, and/or examination of Ulta Inc. ("Ulta") set forth on **Exhibit B** (the "Documents" and "Witnesses"), as more fully described below. In support of this Motion, the Trustee respectfully represents as follows:

JURISDICTION

1. This Court has jurisdiction over 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 pursuant to 28 U.S.C. §§1408 and 1409.

3. The statutory bases for the relief sought by the Motion are §105 of title 11 of the United States Code (the "Bankruptcy Code"), Bankruptcy Rules 2004 and 9016.

BACKGROUND

A. The Debtor's Bankruptcy Case

4. The Debtor was a cosmetic skin care retailer that is a subsidiary of the Body Shop International Limited ("TBSI"), a United Kingdom based company. TBSI is currently in administration in the United Kingdom (the "Administration"). Shortly after TBSI entered administration, the Debtor terminated all of its employees, closed all of its retail locations, and filed this chapter 7 case.

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

6. The Debtor's Canadian affiliate, The Body Shop Canada Limited (the "TBSC"), which is also a subsidiary of TBSI, filed its own Canadian insolvency proceeding (the "Canadian Proceeding").

7. On March 9, 2024, Kenneth P. Silverman, Esq. was appointed the interim chapter 7 trustee of the Debtor's estate.

8. On April 9, 2024, the initial section 341 First Meeting of Creditors was held and the Trustee duly qualified and has become the permanent Trustee.

B. Ulta's Proof of Claim

9. On June 17, 2024, Ulta filed a proof of claim in the amount of $2,250.00.00 (the "Claim") in the Debtor's chapter 7 case. The alleged secured Claim is attached hereto as **Exhibit C**. The Claim is based upon an alleged agreement, purportedly created via e-mail, between Ulta and the Debtor, under which the Debtor allegedly agreed to buy back certain designated inventory (the "Inventory") at discounted rates (the "E-mail Agreement"). *See* **Exhibit C**, pp. 5-6.

10. Other than the limited documentation attached to the Claim, and despite numerous requests, the Trustee has not been provided with any additional information regarding the alleged E-mail Agreement or the facts and circumstances surrounding it. In order to continue his due diligence, the Trustee requires additional documents concerning the validity of the Claim, but not limited to the following categories of Documents:

(i) all correspondence between (a) Ulta and (b) the Debtor or its affiliates, representatives, employees, officers, directors, agents, or independent contractors concerning or relating to the alleged E-Mail Agreement including but not limited to, the negotiation and implementation of the E-Mail Agreement; (ii) all correspondence between (a) Ulta and (b) the Debtor or its affiliates, representatives, employees, officers, directors, agents, or independent contractors concerning or relating to designated Inventory; (iii) all documents prepared in connection with the E-mail Agreement including but not limited to, drafts of any formal contracts or agreements which refer to or embody the terms of the E-Mail Agreement; (iv) all documents relating to the Inventory, including the purchase of Inventory from the Debtor and the sale of any portion of the Inventory by Ulta prior to or after the date of the E-mail Agreement. *See* **Exhibit B**.

13. The Trustee may also seek testimony from Witnesses regarding the Documents and information they have with respect to the Email Agreement.

14. In the event that the Trustee cannot obtain the complete voluntary cooperation of the Witnesses or obtain the Documents, the Trustee must have the ability to continue his investigation by issuing subpoenas to depose the Witnesses and to obtain the Documents relevant to their testimony. In each case, if the Trustee issues a subpoena, the Witness will retain the right to move to quash the subpoena on any appropriate grounds.

RELIEF REQUESTED

15. By this Application, the Trustee seeks entry of an order that authorizes him to issue subpoenas to compel the Witnesses to produce Documents and other information and to attend one or more examinations before the Trustee and/or his counsel. The Trustee submits that such relief is warranted as described below.

16. Bankruptcy Rule 2004(a) provides that "on motion of any party in interest, the court may order the examination of any entity." Bankruptcy Rule 2004(b) permits the Trustee to conduct an inquiry ranging broadly over any "acts, conduct, or property [of the debtor] or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate . . .." Bankruptcy Rule 2004(b). *See*, *e.g.*, *In re Dieffenbacher*, 556 B.R. 79, 83 (Bankr. E.D.N.Y. 2016) ("The purpose of such a broad discovery tool is to assist the Trustee in revealing the nature and extent of the estate; ascertaining assets; and discovering whether any wrongdoing has occurred.") (quoting *In re Corso*, 328 B.R. 375, 383 (E.D.N.Y. 2005)); In *re Enron Corp.*, 281 B.R. 836, 840 (Bankr. S.D.N.Y. 2002) (scope of a Bankruptcy Rule 2004 examination is "broad and unfettered"); *In re Mavashev*, 559 B.R. 332, 336 (Bankr. E.D.N.Y. 2016) ("Rule 2004 discovery is broader than discovery under [the Federal Rules], and has fewer procedural safeguards. It can be legitimately compared to a fishing expedition.") (quoting *In re Drexel Burnham Lambert Group, Inc.*, 123 B.R. 702, 711 (Bankr. S.D.N.Y. 1991)).

17. Bankruptcy Rule 2004(c) provides that the "attendance of an individual for examination and the production of documents or electronically stored information . . . may be compelled in the manner provided in Rule 9016 for the attendance of a witness at a hearing or trial."

18. Accordingly, Bankruptcy Rule 2004 empowers the Court to compel the production of documents and the attendance of an entity for examination. The Trustee's proposed request for Documents and examination of Witnesses falls within the scope of Bankruptcy Rule 2004.

19. Bankruptcy Rule 2004 examinations of the Witnesses sought by this Motion are necessary for the Trustee to fulfill his fiduciary duties under the Bankruptcy Code.

20. The Trustee, therefore, respectfully requests that the Court grant the Trustee the authority to issue and serve a subpoenas *ad testificandum* and/or subpoenas *duces tecum* under Bankruptcy Rules 2004 and 9016 in order to compel production of Documents and attendance at the requested examination of the Witnesses. The Trustee notes that each Witness will retain the right to move to quash any subpoena to such Witness on any appropriate grounds.

PROPOSED GENERAL PROCEDURES

22. The Trustee proposes that, unless otherwise agreed with any Witnesses, the production of documents or electronic files be made at either (i) the offices of Trustee's counsel, Rimôn PC, 100 Jericho Quadrangle, Suite 300, Jericho, New York 11753; or (ii) through an electronic means as may be agreed upon by the parties. The Trustee proposes to serve any subpoenas *duces tecum* at least fourteen (14) days prior to the due date for the production or inspection of any documents or electronic files. To the extent the Trustee requires a deposition of any of the Witnesses, unless otherwise agreed with any Witnesses, where the deposition is within the geographic limits of a subpoena issued by the Court, the deposition will be at the offices of

Trustee's counsel, Rimôn, PC, 100 Jericho Quadrangle, Suite 300 Jericho, New York 11753, or by remote video conferencing on not less than fifteen (15) days' notice. When not within those geographic limits, the deposition will be at a location which complies with Civil Rule 45 on the geographic limits of a subpoena or by remote video conferencing. The Trustee shall retain the exclusive right to determine whether an examination is taken in person or via remote video conferencing.

NO PRIOR REQUEST

23. No previous request for the relief sought herein has been made by the Trustee to this or any other Court.

WHEREFORE, the Trustee respectfully requests that this Court enter an order, substantially in the form annexed hereto as **Exhibit A**: (i) authorizing the issuance and service of subpoenas *duces tecum* to compel the production of the Documents from the Witnesses; (ii) authorizing the issuance and service of subpoenas *ad testificandum* for the examination of the Witnesses; (iii) where determined by the Trustee, permitting the Trustee to take the deposition by remote electronic means; and (iv) granting such other relief as is just and proper under the circumstances.

Dated: Jericho, New York
January 3, 2025

RIMÔN, P.C.
Attorneys for Kenneth P. Silverman, Chapter 7
Trustee of the Estate of Buth-Na-Bodhaige, Inc.

By: /s/ *Brian Powers*
Brian Powers
Partner
100 Jericho Quadrangle, Suite 300
Jericho, New York 11753
(516) 479-6300
Brian.Powers@RimonLaw.com

EXHIBIT A

Proposed Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
----------X
In re:

BUTH-NA-BODHAIGE, INC.,

Debtor.
----------X

Case No.: 24-10392 (DSJ)

Chapter 7

ORDER AUTHORIZING THE TRUSTEE TO ISSUE SUBPOENAS FOR THE PRODUCTION OF DOCUMENTS AND AUTHORIZING THE TRUSTEE TO EXAMINE WITNESSES

Upon the *ex parte* motion, dated January 2, 2025 (the "Motion"), of Kenneth P. Silverman, solely in his capacity as the chapter 7 trustee (the "Trustee") pursuant to Bankruptcy Rules 2004 and 9016 for an order authorizing the Trustee to issue subpoenas for the production of documents and to examine witnesses (the "Witnesses") as more fully set forth in the Motion; and this Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. §157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§1408 and 1409; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtor's estate, creditors and other parties-in-interest; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefore; it is

ORDERED, that the Motion is granted on the terms set forth herein; and it is further

ORDERED, that the Trustee is authorized under Bankruptcy Rules 2004 and 9016, to issue such subpoenas as may be necessary to compel the production of documents and the testimony of the Witnesses in connection with the administration of this Chapter 7 case; and it is further

ORDERED, that unless otherwise agreed to by the Trustee, each Witness shall have twenty (20) days from the service of such subpoena, the Motion and a copy of this Order to either (1) produce to the Trustee all responsive documents requested in the Trustee's subpoena (including electronically stored information), other than those documents withheld under a claim of privilege or (2) file with this Court an objection or response to the subpoena with a hearing promptly scheduled; and it is further

ORDERED, that unless otherwise agreed to by the Trustee, if any Witness withholds any documents from the production based upon a claim of privilege, the Witness is directed to provide counsel for the Trustee with a privilege log, containing the information required under Bankruptcy Rule 7026 and S.D.N.Y. L.B.R. 7026-1, at the time of document production hereunder; and it is further

ORDERED, that each Witness is directed to submit to oral examination upon reasonable notice and, absent other agreement with the Trustee, in no event less than thirty (30) days from the date of the service of a deposition subpoena upon the Witness; and it is further

ORDERED, that the Trustee shall have the exclusive right, absent good cause shown, to determine if the examination shall be in person or conducted via remote video conferencing; and it is further

ORDERED, that nothing herein shall limit the rights of any Witness under applicable law to object to or oppose any subpoena the Trustee may serve upon such Witness; and it is further

ORDERED, that such Witness shall, prior to conducting an electronic search utilizing search terms, meet and confer with the Trustee's counsel to attempt to agree on appropriate search terms; and it is further

ORDERED, that all disputes concerning such supboenas issued pursuant to this Order, including objections thereto, that are not resolved by agreement of the parties may be raised only by letter brief to the Court not exceeding five (5) pages, single spaced. The other party shall file a responsive letter brief within three (3) business days, which shall not exceed five (5) pages, single spaced. Copies of such letter briefs shall also be emailed to the Court's chambers.

ORDERED, that in accordance with Bankruptcy Rules 2004 and 9016, (i) the Clerk of this Court shall issue subpoenas, signed, but otherwise in-blank, as requested by the Trustee, or (ii) provided that counsel for the Trustee is authorized to practice in this Court, counsel may issue and sign the subpoenas; and it is further

ORDERED, that the Trustee shall file with the Court an affidavit or declaration of service for each subpoena Trustee serves; and it is further

ORDERED, that this Order is without prejudice to the Trustee's right to file further motions seeking additional documents and testimony pursuant to Bankruptcy Rule 2004(a) or any other applicable law; and it is further

ORDERED, that this Court shall retain jurisdiction to resolve any disputes arising or related to this Order including any discovery disputes that may arise between or among the parties and to interpret, implement and enforce the provisions of this Order.

Dated: New York, New York

_____

_____
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

Witness and Document List

1. A designated representative of Ulta Inc. ("Ulta") with knowledge of the alleged agreement, purportedly created via e-mail, between Ulta and the Debtor, under which the Debtor allegedly agreed to buy back certain designated inventory at discounted rates (the "E-Mail Agreement").

2. All correspondence between (a) Ulta and (b) the Debtor or its affiliates, representatives, employees, officers, directors, agents, or independent contractors concerning or relating to the alleged E-Mail Agreement including but not limited to, the negotiation and implementation of the E-Mail Agreement.

3. All correspondence between (a) Ulta and (b) the Debtor or its affiliates, representatives, employees, officers, directors, agents, or independent contractors concerning or relating to designated Inventory

4. All documents prepared in connection with the E-mail Agreement including but not limited to, drafts of any formal contracts or agreements which refer to or embody the terms of the E-Mail Agreement.

5. All documents relating to the Inventory, including the purchase of Inventory from the Debtor and the sale of any portion of the Inventory by Ulta prior to or after the date of the E-mail Agreement.

Claim #104 Date Filed: 6/17/2024

Fill in this information to identify the case:

Debtor Buth-Na-Bodhaige, Inc.

United States Bankruptcy Court for the: Southern District of New York (State)

Case number 24-10392

Official Form 410

Proof of Claim

04/22

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**

   Ulta Inc.
   Name of the current creditor (the person or entity to be paid for this claim)

   Other names the creditor used with the debtor _____

2. **Has this claim been acquired from someone else?**

   ☑ No

   ☐ Yes. From whom? _____

3. **Where should notices and payments to the creditor be sent?**

   Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
See summary page	
Contact phone 412-297-4900	Contact phone _____
Contact email thomas.maxson@dentons.com	Contact email _____

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

___ ___

4. **Does this claim amend one already filed?**

   ☑ No

   ☐ Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**

   ☑ No

   ☐ Yes. Who made the earlier filing? _____

2410392240617000000000017

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**

☑ No

☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ 2,250,000. **Does this amount include interest or other charges?**

☑ No

☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**

Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.

Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).

Limit disclosing information that is entitled to privacy, such as health care information.

See Attachment.

9. **Is all or part of the claim secured?**

☐ No

☑ Yes. The claim is secured by a lien on property.

Nature or property:

☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.

☐ Motor vehicle

☑ Other. Describe: Secured by right of setoff and/or recoupment.

Basis for perfection: _____

Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: $ Unknown

Amount of the claim that is secured: $ Unknown

Amount of the claim that is unsecured: $ Unknown (The sum of the secured and unsecured amount should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: $ Unknown

Annual Interest Rate (when case was filed)_____%

☐ Fixed

☐ Variable

10. **Is this claim based on a lease?**

☑ No

☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**

☐ No

☑ Yes. Identify the property: See summary page

2410392240617000000000017

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☑ No

☐ Yes. *Check all that apply:*

	Amount entitled to priority
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$
☐ Up to $3,350* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$
☐ Wages, salaries, or commissions (up to $15,150*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$

* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim entitled to administrative priority pursuant to 11 U.S.C. 503(b)(9)?

☑ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

$

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☑ I am the creditor.

☐ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 06/17/2024
MM / DD / YYYY

/s/Jaclyn Kaczmarek
Signature

Print the name of the person who is completing and signing this claim:

Name: Jaclyn Kaczmarek
First name | Middle name | Last name

Title: Director, Senior Counsel

Company: Ulta Inc.
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: 1000 Remington Blvd., Suite 120, Bolingbrook, IL, 60440-4708, United States

Contact phone: _____ Email: JKaczmarek@ulta.com

2410392240617000000000017

Verita (KCC) ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (866) 967-0268 | International (310) 751-2668

Debtor:
24-10392 - Buth-Na-Bodhaige, Inc.

District:
Southern District of New York, New York Division

Creditor:
Ulta Inc.
c/o Thomas D. Maxson, Esq., Dentons Cohen and Grigsby P.C.
625 Liberty Avenue, 5th Floor
Pittsburgh, PA, 15222
United States

Phone:
412-297-4900

Phone 2:

Fax:

Email:
thomas.maxson@dentons.com

Has Supporting Documentation:
Yes, supporting documentation successfully uploaded

Related Document Statement:

Has Related Claim:
No

Related Claim Filed By:

Filing Party:
Creditor

Other Names Used with Debtor:

Amends Claim:
No

Acquired Claim:
No

Basis of Claim:
See Attachment.

Last 4 Digits:
No

Uniform Claim Identifier:

Total Amount of Claim:
2,250,000

Includes Interest or Charges:
No

Has Priority Claim:
No

Priority Under:

Has Secured Claim:
Yes: Unknown

Amount of 503(b)(9):
No

Based on Lease:
No

Subject to Right of Setoff:
Yes, Any valid claim asserted by Debtor against Claimant. See Attachment to claim.

Nature of Secured Amount:
Other
Describe: Secured by right of setoff and/or recoupment.

Value of Property:
Unknown

Annual Interest Rate:

Arrearage Amount:
Unknown

Basis for Perfection:

Amount Unsecured:
Unknown

Submitted By:
Jaclyn Kaczmarek on 17-Jun-2024 4:32:32 p.m. Eastern Time

Title:
Director, Senior Counsel

Company:
Ulta Inc.

Optional Signature Address:
1000 Remington Blvd.
Suite 120
Bolingbrook, IL, 60440-4708
United States

Telephone Number:

Email:
JKaczmarek@ulta.com

United States Bankruptcy Court
Southern District of New York
Case No. 24-10392-dsj
In re: Buth-Na-Bodhaige, Inc.

ATTACHMENT TO PROOF OF CLAIM

Ulta Inc. (the "Claimant") files this secured Proof of Claim in the amount of $2,250,000 against Buth-Na-Bodhaige, Inc. aka The Body Shop (the "Debtor") and makes the following statement in support thereof.

Pursuant to an agreement between Debtor and Claimant, Debtor agreed to buy back certain inventory on an eight (8) week phase/track (the "Inventory") at certain discounted rates (see the November 17, 2023 email attached hereto). At the end of the eighth week Debtor was to buy back any remaining unsold Inventory at the original cost. Upon information and belief, there are amounts owed to Claimant based on outstanding invoices and inventory buyback.

The Claim is secured up to and including any rights of set off and/or recoupment pursuant to Sections 553 and 506(a) of the Bankruptcy Code against any valid Debtor claims agreed to by Claimant or otherwise found to be valid by a court or other tribunal of competent jurisdiction, to the extent such claims exist. The Claimant will amend this Claim to include the amount due at a later date.

The Claimant reserves its right to amend, supplement or modify this Proof of Claim at any time, and reserves all other rights or remedies now or in the future available to it. The filing of this proof of claim shall not constitute a consent to jurisdiction or a waiver of the right to seek withdrawal of the reference or abstention, nor will it be considered a consent that any alleged claims Debtor may assert against the Claimant are core proceedings or within the constitutional jurisdiction of the Bankruptcy Court. The filing of this proof of claim shall not constitute a waiver of any right to jury trial or a consent to a jury trial being conducted by the Bankruptcy Court or to the Bankruptcy Court entering final findings of fact, conclusions of law or any judgment in any proceeding arising in this case, arising under the Bankruptcy Code or relating to this case.

4930251.v2

From: Christine Rademaker <Christine.Rademaker@thebodyshop.com>
Sent: Friday, November 17, 2023 1:29 PM
To: Miller Alvarez, Kelly; Shultz, Marisa
Cc: Aliza Perruzzi
Subject: RE: 2024 Assortment Update
Attachments: 2.2 Planogram ADD_DELETE_TEMPLATE-4FT SHELF ALL DOOR.xlsx

Hi Kelly,

We are aligned to RTV all goods for WK 8. I have updated additional SKUS that can be MD. Out of the 52 SKU's, we will not be discounting 18 of them. They are staying in your assortment on ECOM and test doors. We would prefer to continue to sell at full price.

Please let me know if you have any questions.

Best,

Christine

Christine Rademaker
Wholesale Account Manager, North America

E: Christine.Rademaker@thebodyshop.com
M: +1 (973) 281-2239

The Body Shop | 368 Ninth Ave, 12th Floor | New York, NY | 10001

From: Miller Alvarez, Kelly <KAlvarez@ulta.com>
Sent: Friday, November 17, 2023 11:40 AM
To: Christine Rademaker <Christine.Rademaker@thebodyshop.com>; Shultz, Marisa <MShultz@ulta.com>
Cc: Aliza Perruzzi <aliza.perruzzi@thebodyshop.com>
Subject: [EXTERNAL]RE: 2024 Assortment Update

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Christine,

In partnership I am aligned to bring in the reformulations of the scrubs and yogurts if The Body Shop agrees to RTV all goods reflected below in WK 8?

[redacted]

Thank you,

Kelly Alvarez
Buyer- Bath,Body & Personal Care
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Bolingbrook, IL 60440
kalvarez@ulta.com | ulta.com | Ulta Inc.
the possibilities are beautiful.™