

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
)	
BARNEYS NEW YORK, INC., <i>et al.</i> , ¹)	Case No. 19-36300 (CGM)
)	
Debtors.)	(Joint Administration Requested)
)	

**INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO
(A) CONTINUE TO OPERATE THEIR CASH MANAGEMENT
SYSTEM, (B) HONOR CERTAIN PREPETITION OBLIGATIONS
RELATED THERETO, (C) MAINTAIN EXISTING BUSINESS FORMS,
AND (D) CONTINUE TO PERFORM INTERCOMPANY TRANSACTIONS,
(II) GRANTING ADMINISTRATIVE EXPENSE STATUS TO POSTPETITION
INTERCOMPANY BALANCES, AND (III) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an interim order (this “Interim Order”) (a) authorizing the Debtors to (i) continue to operate their Cash Management System, (ii) honor certain prepetition obligations related thereto, (iii) maintain existing Business Forms in the ordinary course of business, and (iv) continue to perform Intercompany Transactions consistent with historical practice, (b) granting administrative expense status to postpetition Intercompany Balances, (c) scheduling a final hearing to consider approval of the Motion on a final basis, and (d) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern*

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: Barneys New York, Inc. (1818); Barney’s Inc. (2980); BNY Catering, Inc. (4434); BNY Licensing Corp. (4177); and Barneys Asia Co. LLC (0819). The location of the Debtors’ service address is 575 Fifth Avenue, New York, New York 10017.

² Capitalized terms used but not defined herein have the meanings given to such terms in the Motion.

District of New York, dated February 1, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on an interim basis as set forth herein.
2. The final hearing (the "Final Hearing") on the Motion shall be held on September 4, 2019, at 10:30 a.m., prevailing Eastern Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Eastern Time, on August 28, 2019, and shall be served on: (a) Barneys New York, Inc., 575 Fifth Avenue, New York, New York 10017; Attn: Grace Fu; (b) proposed co-counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Edward O. Sassower, P.C., Joshua A. Sussberg, P.C., and Gene Goldmintz, Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654, Attn: Chad J. Husnick, P.C. and W. Benjamin Winger, and Katten Muchin Rosenman LLP, 575 Madison Avenue, New York, New York 10022, Attn: Steven J. Reisman; (c) the United States Trustee, 11A Clinton Avenue, Room 620, Albany, New York

12207, Attn: Alicia Leonhard; (d) counsel to any statutory committee appointed in these chapter 11 cases; (e) counsel to the Prepetition ABL Agent, (x) Riemer & Braunstein LLP, 100 Cambridge Street, Boston, Massachusetts 02114, Attn: Donald E. Rothman and (y) Riemer & Braunstein LLP, Times Square Tower, Seven Times Square, Suite 2506, New York, New York 10036, Attn: Steven E. Fox; (f) counsel to the Term Loan Agent, Choate Hall & Stewart LLP, Two International Place, Boston, Massachusetts 02110, Attn: Kevin J. Simard and Mark Silva; (g) counsel to the DIP Agent and the DIP Lenders, Jones Day, 250 Vesey Street, New York, New York 10281, Attn: Sidney P. Levinson, Michael Schneiderei, and Jeremy Evans; and (h) counsel to TPG Specialty Lending, Inc., Schulte Roth & Zabel, 919 Third Avenue, New York, NY 10022, Attn: Adam Harris, Esq., Kristine Manoukian, Esq. and Kelly V. Knight, Esq. In the event no objections to entry of a final order on the Motion are timely received, this Court may enter such final order without need for the Final Hearing.

3. The Debtors are authorized, but not directed, to: (a) continue operating the Cash Management System, substantially as identified on **Exhibit 1** attached hereto and as described in the Motion; (b) honor their prepetition obligations related thereto; (c) continue to use the Purchase Cards; (d) maintain certain, limited preprinted correspondence and business forms, such as letterhead (collectively, the "**Business Forms**"); and (e) continue to perform Intercompany Transactions consistent with historical practice.

4. The Debtors are further authorized, but not directed, to: (a) continue to use, with the same account numbers, the Bank Accounts in existence as of the Petition Date, including those accounts identified on **Exhibit 2** attached hereto; (b) treat the Bank Accounts for all purposes as accounts of the Debtors as debtors in possession; (c) deposit, directly or through its cash transport agent Brink's, Inc., funds in and withdraw funds from the Bank Accounts by all usual means,

including checks, wire transfers, and other debits; (d) pay the Bank Fees (including any prepetition amounts); and (e) pay any ordinary course Bank Fees incurred in connection with the Bank Accounts, irrespective of whether such fees arose prior to the Petition Date, and to otherwise perform their obligations under the documents governing the Bank Accounts. Any postpetition fees, costs, charges and expenses, including Bank Fees, or charge-backs payable to the Cash Management Banks that are not so paid shall be entitled to priority as administrative expenses pursuant to section 503(b)(1) of the Bankruptcy Code.

5. The Debtors are authorized, but not directed, to continue using the Purchase Cards up to a maximum amount of \$200,000, including all fees and charges incurred thereunder, and to pay all amounts owed thereunder in the ordinary course. Any postpetition fees, costs, charges and expenses payable incidental to the maintenance and use of the Purchase Cards that are not so paid shall be entitled to priority as administrative expenses pursuant to section 503(b)(1) of the Bankruptcy Code.

6. The Debtors are authorized, but not directed, to continue using, in their present form, the Business Forms, as well as checks, invoices, and other documents related to the Bank Accounts existing immediately before the Petition Date, without reference to the Debtors' status as debtors in possession; *provided, however*, once the Debtors have exhausted their existing stock of Business Forms, the Debtors shall ensure that any new Business Forms are clearly labeled "Debtor In Possession," and *provided further* that with respect to any Business Forms, checks, and invoices that are generated electronically, to the extent reasonably practicable, the Debtors shall ensure that such electronic Business Forms, checks, and invoices are clearly labeled "Debtor in Possession."

7. The Cash Management Banks are authorized to continue to maintain, service, and administer the Bank Accounts as accounts of the Debtors as debtors in possession, without interruption and in the ordinary course, and to receive, process, honor, and pay, to the extent of available funds, any and all checks, drafts, wires, credit card payments, and ACH transfers issued and drawn on the Bank Accounts after the Petition Date by the holders or makers thereof, as the case may be; *provided* that (a) those certain existing deposit agreements between the Debtors and the Cash Management Banks shall continue to govern the postpetition cash management relationship between the Debtors and the respective Cash Management Bank, and all of the provisions of such agreements, including, without limitation, the termination and fee provisions and any provisions relating to offset or charge back rights with respect to returned items, shall remain in full force and effect, and (b) subject to the terms of the ABL Facility, the Debtors and the Cash Management Banks may, without further order of this Court, agree to and implement changes to the Cash Management System and procedures related thereto in the ordinary course of business pursuant to terms of those certain existing deposit agreements, including, without limitation, the closing of Bank Accounts or the opening of new bank accounts in an authorized depository.

8. The relief granted in this Interim Order is extended to any new bank account opened by the Debtors after the date hereof in accordance with the terms of the ABL Facility, which account shall be deemed a Bank Account, and to the bank at which such account is opened, which bank shall be deemed a Cash Management Bank.

9. All banks, including the Cash Management Banks, provided with notice of this Interim Order maintaining any of the Bank Accounts shall not honor or pay any bank payments

drawn on the listed Bank Accounts, or otherwise issued before the Petition Date, absent further direction from the Debtors.

10. The Debtors will maintain records in the ordinary course reflecting transfers of cash, if any, so as to permit all such transactions to be ascertainable.

11. In the course of providing cash management services to the Debtors, each of the Cash Management Banks is authorized, without further order of this Court, to deduct the applicable fees and expenses associated with the nature of the deposit and cash management services rendered to the Debtors, whether arising prepetition or postpetition, from the appropriate accounts of the Debtors, and further, to charge back to the appropriate accounts of the Debtors any amounts resulting from returned checks or other returned items, including returned items that result from wire transfers, ACH transactions, or other electronic transfers of any kind, regardless of whether such items were deposited or transferred prepetition or postpetition and regardless of whether the returned items relate to prepetition or postpetition items or transfers.

12. Each of the Cash Management Banks is authorized to debit the Debtors' accounts in the ordinary course and without further order of this Court on account of (a) all checks drawn on the Debtors' accounts that have been cashed at such banks' counters or exchanged for cashier's or official checks by the payees thereof prior to such Cash Management Bank's receipt of notice of the Petition Date; (b) all checks, automated clearing house entries, or other items deposited in, or credited to, one of the Debtors' accounts with such bank prior to the Petition Date which have been dishonored, reversed, or returned unpaid for any reason, together with any fees and costs in connection therewith, to the same extent the Debtors were responsible for such items prior to the Petition Date; and (c) all undisputed prepetition amounts outstanding as of the date hereof, if any,

owed to any bank as to service charges for the maintenance of the Cash Management System, in an amount not to exceed \$17,000.

13. Any bank, including a Cash Management Bank, may rely upon the representations of the Debtors with respect to whether any check, draft, wire, or other transfer drawn or issued by the Debtors, whether prior to the Petition Date or after the Petition Date, should be honored pursuant to any order of this Court. No bank that honors a check, draft, wire, or other transfer drawn or issued on any account that is the subject of this Interim Order (a) at the direction of the Debtors, (b) in a good-faith belief that this Court has authorized such prepetition check or item to be honored, or (c) as a result of an innocent mistake made despite implementation of customary item handling procedures, shall be deemed to be liable nor have any liability to the Debtors, their estates, or any other party on account of such check, draft, wire, or other item being honored, or otherwise deemed to be in violation of this Interim Order.

14. Any and all banks, including the Cash Management Banks, are further authorized to (a) honor the Debtors' directions with respect to the opening and closing of any Bank Account and (b) accept and hold the Debtors' funds in accordance with the Debtors' instructions; *provided*, that the Cash Management Banks shall not have any liability to any party for relying on such representations to the extent such reliance otherwise complies with applicable law.

15. Nothing contained herein shall permit any Cash Management Bank to terminate any cash management services without thirty days' prior written notice to the Debtors, U.S. Trustee, and any official committee appointed in these chapter 11 cases.

16. The Debtors are authorized to open new bank accounts or close any existing Bank Accounts as they may deem necessary and appropriate in their sole discretion, *provided* that (a) prior to opening any new bank accounts the Debtors shall give notice five days advance notice

(if practicable) to the U.S. Trustee and any statutory committees appointed in these chapter 11 cases and (b) any new bank account shall be at a bank that has executed a Uniform Depository Agreement with the U.S. Trustee, or at such bank that is willing to immediately execute such an agreement.

17. The requirement to establish separate accounts for cash collateral and/or tax payments is hereby waived.

18. Should the Debtors not be in compliance with section 345(b) of the Bankruptcy Code, the Debtors shall have an additional forty-five days, without prejudice to seeking an additional extension, from the entry of this Interim Order to either come into compliance with section 345(b) of the Bankruptcy Code or to seek appropriate relief from the Court.

19. Notwithstanding anything to the contrary set forth herein, the Debtors are authorized, but not directed, to continue Intercompany Transactions arising from or related to the operation of their business in the ordinary course. All postpetition payments from a Debtor to another Debtor under any postpetition Intercompany Transactions authorized hereunder are hereby accorded administrative expense status under section 503(b) of the Bankruptcy Code. In connection with the Intercompany Transactions, the Debtors shall continue to maintain current records with respect to all transfers of cash so that all Intercompany Transactions may be readily ascertained, traced, and properly recorded on intercompany accounts; *provided* that such records shall distinguish between prepetition and postpetition transactions.

20. The relief granted in this Interim Order with respect to the postpetition Intercompany Transactions and the Intercompany Balances resulting therefrom shall not constitute a finding as to the validity, priority, or status of any prepetition Intercompany Balance or any Intercompany Transactions from which such Intercompany Balance may have arisen, the Debtors

stipulate that they do not take a position with regard to the validity, priority, or status of any prepetition Intercompany Balance or any Intercompany Transactions from which such Intercompany Balance may have arisen, and the right of any party to contest the validity, priority, or status of any prepetition Intercompany Balance or any Intercompany Transactions from which such Intercompany Balance may have arisen is expressly reserved.

21. Notwithstanding the relief granted in this Interim Order, any payment made by the Debtors pursuant to the authority granted herein, or authorizations contained hereunder, shall be subject to and in compliance with any orders entered by the Court approving the Debtors' entry into any postpetition debtor in possession financing facility and any budget in connection therewith and/or authorizing the Debtors' use of cash collateral and any budget in connection therewith. To the extent there is any inconsistency between such orders and any action taken or proposed to be taken hereunder, the terms of such orders and budgets shall control.

22. Nothing contained in the Motion or this Interim Order shall be construed to (a) create or perfect, in favor of any person or entity, any interest in cash of a Debtor that did not exist as of the Petition Date or (b) alter or impair any security interest or perfection thereof, in favor of any person or entity, that existed as of the Petition Date.

23. Notwithstanding the Debtors' use of a consolidated cash management system, the Debtors shall calculate quarterly fees under 28 U.S.C. § 1930(a)(6) based on the disbursements of each Debtor, regardless of which entity pays those disbursements.

24. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief, nothing in this Interim Order shall be deemed: (a) an admission as to the validity, priority, or amount of any particular claim against a Debtor entity; (b) a waiver of the Debtors' or any other party-in-interest's right to dispute any particular claim on any grounds; (c) a

promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Interim Order or the Motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' or any other party-in-interest's rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors or any other party-in-interest that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to this Interim Order are valid and the Debtors and all other parties-in-interest expressly reserve their rights to contest the extent, validity, or perfection or to seek avoidance of all such liens. Any payment made pursuant to this Interim Order should not be construed as an admission as to the validity, priority, or amount of any particular claim or a waiver of the Debtors' or any other party-in-interest's rights to subsequently dispute such claim.

25. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order or any other order of this Court, without any duty of further inquiry and without liability for following the Debtors' instructions.

26. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with any Bank Fees.

27. As soon as practicable after entry of this Interim order, the debtors shall serve a copy of this Interim Order on the Cash Management Banks.

28. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

29. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

30. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order are immediately effective and enforceable upon its entry.

31. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

32. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

Dated: August 7, 2019
Poughkeepsie, New York

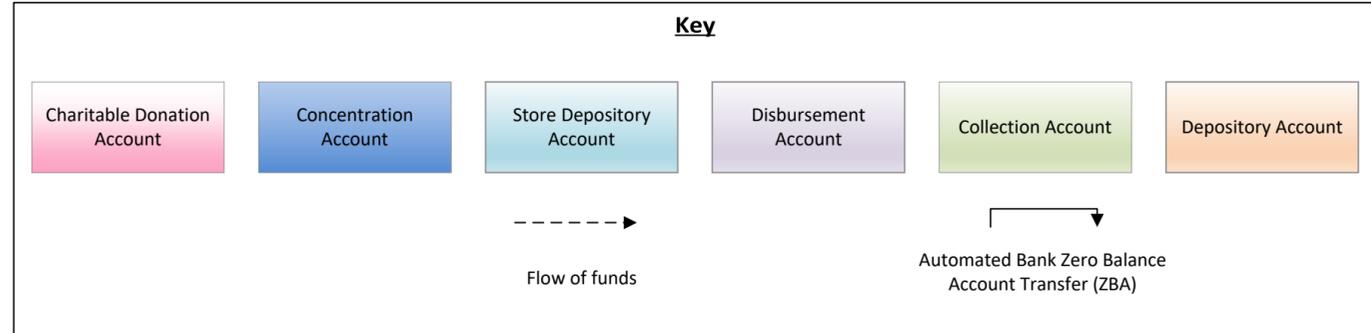
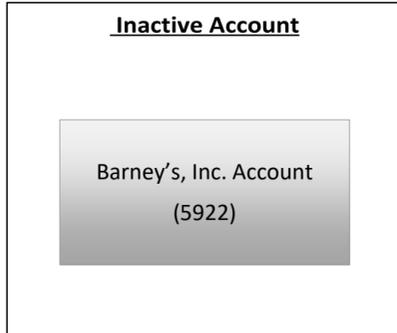
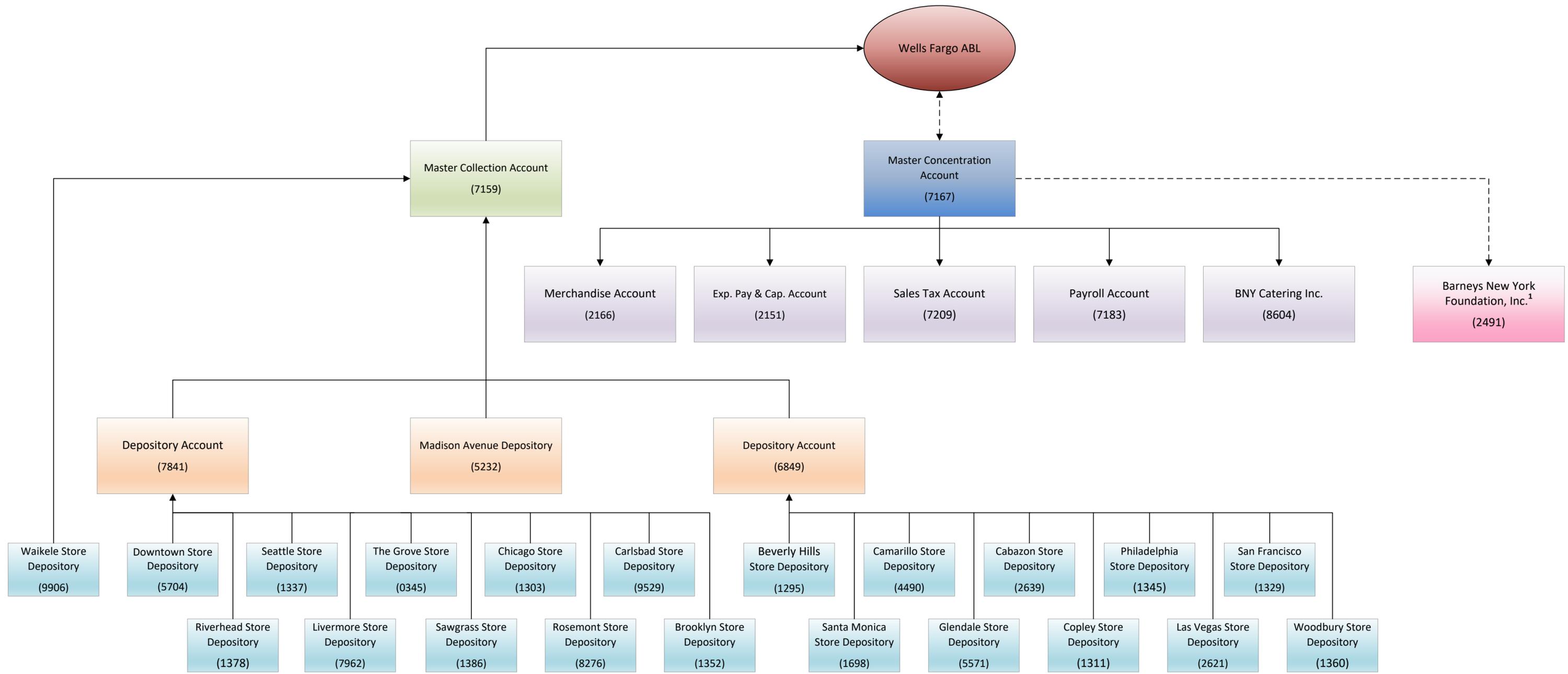


/s/ Cecelia G. Morris

Hon. Cecelia G. Morris
Chief U.S. Bankruptcy Judge

Schedule 1

Cash Management System Schematic



1 This account is not held by the Debtors, and, therefore, is not property of the Debtors' estates.

2 The flow of funds diagrammed here reflects certain transfer requests made by the ABL Agent upon the Debtors entering cash dominion under the ABL Facility, as more fully described in the motion.

Schedule 2

Bank Accounts

<u>Last Four Digits of Account No.</u>	<u>Bank</u> ¹	<u>Account Type</u>
<u>Concentration Accounts</u>		
7167	Wells Fargo Bank	Master Concentration Account
<u>Collection Accounts</u>		
7159	Wells Fargo Bank	Master Collection Account
<u>Depository Accounts</u>		
7841	Wells Fargo Bank	Depository Account
6849	Wells Fargo Bank	Depository Account
5232	Wells Fargo Bank	Madison Avenue Depository Account
<u>Store Depository Accounts</u>		
1295	Wells Fargo Bank	Beverly Hills Store Depository Account
1311	Wells Fargo Bank	Copley Store Depository Account
2621	Wells Fargo Bank	Las Vegas Store Depository Account
1329	Wells Fargo Bank	San Francisco Store Depository Account
5571	Wells Fargo Bank	Glendale Store Depository Account
1345	Wells Fargo Bank	Philadelphia Store Depository Account
1698	Wells Fargo Bank	Santa Monica Store Depository Account
1360	Wells Fargo Bank	Woodbury Store Depository Account
2639	Wells Fargo Bank	Cabazon Store Depository Account
4490	Wells Fargo Bank	Camarillo Store Depository Account
5704	Wells Fargo Bank	Downtown Store Depository Account
1303	Wells Fargo Bank	Chicago Store Depository Account
1337	Wells Fargo Bank	Seattle Store Depository Account
0345	Wells Fargo Bank	The Grove Store Depository Account
1352	Wells Fargo Bank	Brooklyn Store Depository Account
1378	Wells Fargo Bank	Riverhead Store Depository Account
9529	Wells Fargo Bank	Carlsbad Store Depository Account
1386	Wells Fargo Bank	Sawgrass Store Depository Account
7962	Wells Fargo Bank	Livermore Store Depository Account

¹ Wells Fargo is an authorized depository in the Southern District of New York, and the Bank of Hawaii is an authorized depository in the District of Hawaii. The amounts in the Bank of Hawaii account are fully insured and under the FDIC limit, and the account is swept daily.

<u>Last Four Digits of Account No.</u>	<u>Bank</u>¹	<u>Account Type</u>
8276	Wells Fargo Bank	Rosemont Store Depository Account
9906	Bank of Hawaii	Waikele Store Depository Account
<u>Disbursement Accounts</u>		
2166	Wells Fargo Bank	Merchandise Account
2151	Wells Fargo Bank	Expense Pay and Capitals Account
7209	Wells Fargo Bank	Sales Tax Account
7183	Wells Fargo Bank	Payroll Account
2491	Wells Fargo Bank	Barneys New York Foundation
8604	Wells Fargo Bank	BNY Catering Inc. Disbursement Account
<u>Inactive Accounts</u>		
5922	Wells Fargo Bank	Electronic Payables Account
<u>Charitable Donation Account</u>		
2491	Wells Fargo Bank	Non-Debtor Barneys New York Foundation account