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7 Proposed General Bankruptcy Counsel for  
Debtor and Debtor in Possession

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10 UNITED STATES BANKRUPTCY COURT  
11 CENTRAL DISTRICT OF CALIFORNIA  
12 LOS ANGELES DIVISION

GREENBERG GLUSKER FIELDS CLAMAN  
& MACHTINGER LLP  
1900 Avenue of the Stars, 21st Floor  
Los Angeles, California 90067-4590

13 In re:  
14 B&B Liquidating, LLC,  
15  
16 Debtor and Debtor in Possession.

Case No. 2:18-bk-11744-NB

Chapter 11

**NOTICE OF MOTION AND EMERGENCY  
MOTION FOR ORDER LIMITING SCOPE  
OF NOTICE; MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT THEREOF**

*[Declaration of Brian Lipman in support of first  
day motions, filed concurrently herewith]*

**Emergency Hearing**

**Date: February 22, 2018**

**Time: 2:00 p.m.**

**Place: Courtroom 1545**

**255 E. Temple Street  
Los Angeles, CA 90012**

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1           **TO THE HONORABLE NEAL W. BASON, UNITED STATES BANKRUPTCY**  
2 **JUDGE, THE UNITED STATES TRUSTEE, ALL PARTIES-IN-INTEREST HEREIN,**  
3 **AND THEIR RESPECTIVE COUNSEL:**

4           **PLEASE TAKE NOTICE** that Debtor and Debtor in Possession B&B Liquidating, LLC,  
5 f/k/a B&B Bachrach, LLC, (the “Company” or the “Debtor”) hereby submits this motion<sup>1</sup> (the  
6 “Motion”), on an emergency basis, for entry of an order pursuant to sections 105, 1107 and 1108  
7 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”) and Rules  
8 2002, 4001, 6004, 6006, 6007, 9006, 9007, 9013, 9014, and 9019 of the Federal Rules of  
9 Bankruptcy Procedure (the “Bankruptcy Rules” and each a “Bankruptcy Rule”) authorizing the  
10 Debtor to limit notice of the Limited Notice Matters (as defined in the Memorandum of Points  
11 and Authorities) in this chapter 11 case to the following parties: (1) the Office of the United  
12 States Trustee; (2) the largest twenty unsecured creditors appearing on the list filed in accordance  
13 with Bankruptcy Rule 1007(d) by the Debtor unless and until an official committee of unsecured  
14 creditors (the “Committee”) is appointed, then in that event, to counsel for the Committee; (3)  
15 parties that file with the Court and serve upon the Debtor requests for notice of all matters in  
16 accordance with Bankruptcy Rule 2002(i); (4) any party with a pecuniary interest in the subject  
17 matter of the particular Limited Notice Matter or its counsel; and (5) Siena Lending Group LLC  
18 (“Siena”). If the relief requested herein is granted, the burden, complication, delay and cost to the  
19 Debtor’s estate that is associated with administering the chapter 11 case and providing notice of  
20 the proceedings in this chapter 11 case to hundreds of parties would be dramatically reduced.

21           This Motion is based upon these moving papers, the accompanying Memorandum of  
22 Points and Authorities, the concurrently filed *Omnibus Declaration of Brian Lipman in Support*  
23 *of First Day Motions* (the “Lipman Declaration”), the records and pleadings in this case, the  
24 arguments and representations of counsel, and any oral or documentary evidence presented at or  
25 prior to the time of the hearing.

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28 <sup>1</sup> This Motion is substantially similar to the motion filed by B&B Bachrach LLC in case no. 2:17-bk-15292-NB,  
which was previously approved by the Court.

1           **PLEASE TAKE FURTHER NOTICE** that pursuant to Local Bankruptcy Rule 2081-1  
2 this Motion may be heard pursuant to Local Bankruptcy Rule 9075-1 as an emergency motion.  
3 Further, pursuant to Local Bankruptcy Rule 9075-1(a)(2), counsel for the Debtor has contacted  
4 the chambers for the Honorable Neal W. Bason and has obtained approval for an emergency  
5 hearing on the Motion to be held on **February 22, 2018 at 2:00 p.m.** in Courtroom 1545, located  
6 at 255 E. Temple Street, Los Angeles, California 90012. Pursuant to Local Bankruptcy Rule  
7 9075-1, any response, written or oral, to the moving papers may be presented before or at the time  
8 of the hearing on the Motion.

9           **PLEASE TAKE FURTHER NOTICE** that, as instructed by the Court, the Debtor will  
10 serve this Notice and Motion, the attached Memorandum of Points and Authorities, and the  
11 Lipman Declaration via overnight mail on the Limited Service List, as defined in the  
12 Memorandum of Points and Authorities and in the manner set forth therein. The Debtor also  
13 requests that the Court waive compliance with Local Bankruptcy Rule 9075-1(a)(5) requiring  
14 telephonic notice of the hearing set hereon and substance thereof, and approve in lieu thereof  
15 service by overnight delivery or email.

16           **PLEASE TAKE FURTHER NOTICE** that in the event that the Court grants the relief  
17 requested by the Motion, the Debtor shall provide notice of the entry of the order granting such  
18 relief upon all creditors, parties-in-interest and any additional parties as the Court directs. The  
19 Debtor submits that such notice is sufficient and that no other or further notice need be given.

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1           **WHEREFORE**, for all the foregoing reasons, and such additional reasons as may be  
2 advanced at or prior to the hearing on this Motion, the Debtor respectfully requests that this Court  
3 enter an order (1) limiting the scope and manner of notice as set forth herein and in the  
4 Memorandum of Points and Authorities attached hereto, (2) finding that notice of the Motion is  
5 sufficient under the circumstances, and (3) granting such other and further relief as is just and  
6 proper under the circumstances.

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8           DATED: February 19, 2018

GREENBERG GLUSKER FIELDS CLAMAN  
& MACHTINGER LLP

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10           By: */s/ Brian L. Davidoff*

11           BRIAN L. DAVIDOFF  
12           KEITH PATRICK BANNER  
13           Proposed General Bankruptcy Counsel for  
14           Debtor and Debtor in Possession

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Debtor and Debtor in Possession B&B Liquidating, LLC, f/k/a B&B Bachrach, LLC, (the  
3 “Company” or the “Debtor”), having commenced this chapter 11 bankruptcy case on February  
4 16, 2018 (the “Petition Date”) hereby submits this motion (the “Motion”), on an emergency basis  
5 authorizing the Debtor to limit the scope of notice, on the terms set forth herein.

6 **I. JURISDICTION AND VENUE**

7 The Court has jurisdiction over these matters pursuant to 28 U.S.C. §§ 157 and 1334. This  
8 is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The venue of the case is proper pursuant  
9 to 28 U.S.C. §§ 1408 and 1409. The Debtor consents to the entry of a final judgment or order  
10 with respect to the Motion if it is determined that the Court, absent consent of the parties, cannot  
11 enter a final order or judgment consistent with Article III of the United States Constitution. The  
12 statutory predicates for the relief requested herein are sections 105, 1107 and 1108 of title 11 of  
13 the United States Code (the “Bankruptcy Code”); and Rules 2002(i), 2002(m), 4001, 6004, 6006,  
14 6007, 9006, 9007, 9013, 9014, and 9019 of the Federal Rules of Bankruptcy Procedure (the  
15 “Bankruptcy Rules” and each a “Bankruptcy Rule”).

16 **II. SUMMARY OF BACKGROUND FACTS**

17 The Company is a specialty men's clothing merchandiser with a 140-year history in the  
18 retail industry. The Company has traditionally relied on the “brick and mortar” retail model with  
19 stores in malls and other marketplaces that fundamentally rely on a consistent flow of customer  
20 foot traffic. Like many mall retailers in the current environment, the Company has come to learn  
21 that this retail model, in many malls, is rapidly becoming obsolete.

22 A decline across the board in sales in mid-2016 precipitated the Company’s filing of a voluntary  
23 chapter 11 petition on April 28, 2017, commencing case no. 2:17-bk-15292-NB (“*Bachrach*”).

24 During the course of *Bachrach*, the Company’s goals were four-fold: (a) shed the poorest  
25 performing stores; (b) liquidate excess inventory; (c) free up liquidity by resolving the over-  
26 advance with the Company’s then lender, Israel Discount Bank of New York (“IDB”) through  
27 restructure of the debt or buyout of the obligation; and (d) restructure leases regarding stores that  
28 showed a potential for profitability if the lease was renegotiated.

1 The Company successfully addressed each of these issues in a brisk chapter 11  
2 reorganization process, and on August 14, 2017 the Court in *Bachrach* confirmed the Debtor’s  
3 plan of reorganization. *See Bachrach* Docket No. 258 (including all exhibits attached thereto, the  
4 “*Bachrach Plan*”). The *Bachrach Plan* went effective on August 31, 2017.

5 Though *Bachrach* involved complications with the Company’s liquidator, difficult  
6 negotiations with IDB, and sales that often missed their target, the Company, among other things,  
7 (i) successfully liquidated and closed seven underperforming stores; (ii) renegotiated four leases  
8 resulting in substantial concessions; and (iii) negotiated a significant discount of approximately  
9 \$2.45 million from IDB’s secured claim of approximately \$10.5 million (*See Bachrach*, Claim  
10 No. 49).

11 Despite the relative success of the *Bachrach* reorganization, the decline in sales that the  
12 Company had faced pre-petition continued unabated after the Company’s exit from the chapter 11  
13 and starved the Company of vital cash. At the same time, IDB severely limited the Company’s  
14 use of cash.

15 With restricted use of cash and prolonged negotiations for a new debt facility, the Debtor  
16 required a financing arrangement to bridge the gap between the September 27, 2017 maturity date  
17 on the IDB loan and the closing of the new financing. The Company obtained a short term  
18 arrangement from Emerald Capital Funding, LLC (“Emerald”), which purchased the IDB loan for  
19 \$5,800,000. Emerald expected to be paid off in any subsequent refinancing. As part Emerald’s  
20 buyout of the IDB obligation, the Company executed a deficiency note in favor of IDB with a  
21 face value of \$1,200,000.00, which can be paid off within six months at 50% of face value. On or  
22 about September 19, 2017, the Emerald transaction closed.

23 Following the closing of the Emerald transaction, the Company completed negotiations  
24 with Siena Lending Group, LLC (“Siena”) regarding a new asset-based revolving credit facility in  
25 an amount not exceeding \$7,000,000.00 (the “Siena Loan”). Under the borrowing base  
26 calculation of the Siena Loan, the Company was only able to pay Emerald \$5.3 million at closing.  
27 Therefore, the Company issued a note payable to Emerald in the amount of \$500,000, secured by  
28

1 international goods in transit. Siena and Emerald also separately entered into an intercreditor  
2 agreement.

3 With the limiting of cash flow by IDB early in the process, the Company quickly began to  
4 fall behind on rent and plan payments. This running deficit was only worsened by the fact that  
5 the required two refinance transactions did not close until October 31, 2017, as opposed to the  
6 end of September as contemplated under the *Bachrach* Plan. This delay occurred during a critical  
7 time for the Company, as the Company's overseas vendors refused to ship inventory for the  
8 holiday season until closing of the refinance. Ultimately, the Company did not actually receive  
9 the holiday inventory, which is normally delivered during mid-November, until mid-December,  
10 which negatively affected the Company's holiday sales.

11 This cascade of issues ultimately affected the Company's availability under the Siena  
12 loan, as Siena has indicated that Company is in default for, among other things, failure to make  
13 timely payments under the *Bachrach* Plan and for post-confirmation rent. Siena applied the  
14 default interest rate to the loan and further restricted the Company's borrowing base.  
15 Ultimately, the Company was left with no alternative other than an orderly liquidation. The  
16 Company engaged Clear Thinking Group LLC ("CTG") as financial adviser. Working with CTG  
17 and Siena the Company sought to reach agreement with its landlords to accomplish a liquidation  
18 outside of the chapter 11 process. While some landlords were amenable to this, others were not.  
19 The end result is the current chapter 11 case.

20 Drawing from the extensive experience of CTG, the Company performed liquidation  
21 analyses and solicited bids with various liquidators to conduct the inventory liquidation sales (the  
22 "Store Closing Sales") at the 13 locations leased by the Company (the "Closing Stores"). The  
23 Store Closing Sales will span an 18-week period, with the Closing Stores closed upon completion  
24 of each Store Closing Sale. Prior to the Petition Date, the Debtor retained liquidation consultants,  
25 Great American Group, LLC and Tiger Capital Group, LLC (collectively, the "Liquidation  
26 Consultant") to conduct the Store Closing Sales. At the conclusion of the sale period, the Debtor  
27 intends to reject all of its leases and terminate operations. The Debtor will also seek to sell its  
28 intellectual property and other assets. For a further discussion on the events leading up to the

1 bankruptcy filing and the business structure of the Company, please refer to the *Omnibus*  
2 *Declaration of Brian Lipman* (“Lipman Declaration”) filed concurrently herewith.

3 **III. PROPOSED LIMITED NOTICE**

4 As of the Petition Date, there are hundreds of vendors, taxing authorities, employees and  
5 other parties to be served in this chapter 11 bankruptcy case, which includes the expansive list of  
6 creditors from *Bachrach* who are entitled to distributions under the *Bachrach* Plan. Providing  
7 notice of all matters identified in Bankruptcy Rule 2002 to all creditors and interested parties in  
8 this chapter 11 case would be costly and time-consuming. In an effort to minimize the  
9 administrative burden and expense on the Debtor while remaining cognizant of the due process  
10 concerns of creditors and other parties in interest, the Debtor brings this Motion.

11 The Debtor requests that the Court limit the scope of service of all notices, motions, or  
12 applications, including, but not limited to, the following:

- 13 i. any proposed use, sale, or lease of property of the estate pursuant to section 363 of  
14 the Bankruptcy Code and Bankruptcy Rules 2002(a)(2), 4001(b), and 6004 (except  
15 a sale of substantially all assets of the Debtor);
- 16 ii. any proposed debtor in possession financing or use of cash collateral;
- 17 iii. any proposed extension of the Debtor’s exclusive time to file a chapter 11 plan and  
18 solicit acceptance thereof (including, without limitation, the time to file a  
19 disclosure statement) pursuant to section 1121 of the Bankruptcy Code and  
20 Bankruptcy Rule 3016;
- 21 iv. any proposed approval of a compromise or settlement of a controversy pursuant to  
22 Bankruptcy Rules 2002(a)(3) and 9019 and/or section 363 of the Bankruptcy  
23 Code;
- 24 v. any proposed abandonment or disposition of property of the estate pursuant to  
25 section 554 of the Bankruptcy Code and Bankruptcy Rule 6007(a);
- 26 vi. any proposed assumption, assumption and assignment or rejection of contracts or  
27 leases under section 365 of the Bankruptcy Code and Bankruptcy Rule 6006(a) or  
28 (c);



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- 1           vii. any proposal to prohibit or condition the use, sale or lease of property pursuant to
- 2                section 363 of the Bankruptcy Code or Bankruptcy Rule 4001(a);
- 3           viii. any proposed objections to claims pursuant to section 502 of the Bankruptcy Code
- 4                or Bankruptcy Rules 3002, 3003 or 3007;
- 5           ix. any proposed application for employment of professionals pursuant to sections
- 6                327, 1103 or 1104 of the Bankruptcy Code or Bankruptcy Rule 2014;
- 7           x. any proposed application for compensation or reimbursement of expenses of
- 8                professionals, pursuant to sections 328, 329, 330, or 331 of the Bankruptcy Code
- 9                and Bankruptcy Rules 2002(a)(6), 2016, 2017, and 6005; except as provided by
- 10             other orders of this Court; and
- 11          xi. except as limited below, a hearing relating to any other contested matters, requests
- 12             for relief, pleadings, or papers in this chapter 11 case that may or may not require
- 13             notice to all creditors or equity holders pursuant to the Bankruptcy Code,
- 14             Bankruptcy Rule 9014, or the Local Bankruptcy Rules, provided that, the Debtor,
- 15             applicant, or movant, as applicable, includes in such pleading the basis for the
- 16             limited service.

17           (The notices, motions and applications for which the Debtor is seeking to limit notice are  
18 hereinafter referred to as the “Limited Notice Matters”).

19           Notwithstanding the foregoing, the relief requested in this Motion does not affect the  
20 rights of all creditors to receive notice of the following matters or proceedings: (i) the date fixed  
21 for filing proofs of claim; (ii) the time fixed for filing objections to any disclosure statement and  
22 any hearing to consider approval of any disclosure statement; (iii) the time fixed for accepting,  
23 rejecting, or objecting to confirmation of a plan or any modification thereof and the hearing  
24 thereon; (iv) the entry of an order confirming a plan; (v) a hearing on the dismissal or conversion  
25 of this chapter 11 bankruptcy case; and (vi) any other proceeding for which the Court orders  
26 further notice.

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1 **IV. ARGUMENT**

2 **A. The Court Has the Authority to Limit the Scope of Notice**

3 Bankruptcy Rule 2002(i) provides, in pertinent part, as follows:

4 [T]he Court may order that notices required by subdivision (a)(2),  
5 (3) and (6) of this rule be transmitted to the United States Trustee  
6 and be mailed only to the committees . . . appointed under § 1102  
7 of the Code or to their authorized agents and to the creditors and  
8 equity security holders who serve on the trustee or debtor in  
9 possession and file a request that all notices be mailed to them.

10 Bankruptcy Rules 4001, 6004, 6006, 9006, 9007, 9013, 9014, and 9019 each allow this  
11 Court to determine those parties to whom the Debtor must provide notice. Given the number of  
12 parties in interest in this chapter 11 case, it would impose an administrative and economic burden  
13 upon the Debtor's estate if the Debtor were required to mail notice of every matter in this chapter  
14 11 case to all parties listed on the creditor matrix.

15 **B. The Proposed Notice Procedures**

16 As permitted by Bankruptcy Rules 2002(i) and (m), the Debtor proposes that the Court  
17 enter an order that, to the extent allowed, limits the parties upon whom the Debtor must serve the  
18 Limited Notice Matters in this chapter 11 case. This Order should also designate the manner of  
19 service as set forth below regarding all matters for which the Bankruptcy Code and the  
20 Bankruptcy Rules authorize the Court to designate the manner of service, including matters  
21 subject to Bankruptcy Rules 2002(i), 4001, 6004, 6006 or 6007 and Local Bankruptcy Rule 2081-  
22 1. It is well within the Court's authority to regulate notices and to approve the notice procedures  
23 proposed by the Debtor. Furthermore, these notice procedures will minimize administrative  
24 burdens in this chapter 11 case without diminishing creditor participation.

25 1. Service of Limited Notice Matters That Are Not Emergency or Expedited Motions  
26 Specifically, the Debtor proposes that notices regarding the Limited Notice Matters be served by  
27 first class mail, email or the Court's NEF system, as applicable, upon only: (a) the Office of the  
28 United States Trustee; (b) the largest twenty unsecured creditors appearing on the list filed in  
accordance with Bankruptcy Rule 1007(d) by the Debtor unless and until an official committee of

1 unsecured creditors (the “Committee”) is appointed, then in that event, to counsel for the  
2 Committee; (c) parties that file with the Court and serve upon the Debtor requests for notice of all  
3 matters in accordance with Bankruptcy Rule 2002(i); (d) any party with a pecuniary interest in the  
4 subject matter of the particular Limited Notice Matter or its counsel; and (e) Siena Lending Group  
5 LLC (“Siena”) (collectively, the “Limited Service List”).

6           2. Service of Limited Notice Matters That Require Emergency or Expedited Relief  
7 Pursuant to Local Bankruptcy Rule 9075-1(a)(5), motions filed in chapter 11 cases that require  
8 emergency or expedited relief must be served by email, fax or personal service. In some  
9 instances, service by one of the means listed is not possible within the time frame available or is  
10 not practical (*e.g.*, service on a very large group for which the Debtor has no fax or email  
11 addresses readily available). The Debtor proposes that service of emergency or expedited  
12 Limited Notice Matters be upon only the Limited Service List and that, in addition to the service  
13 methods authorized by Local Bankruptcy Rule 9075-1, service of emergency or expedited  
14 Limited Notice Matters by overnight delivery be authorized if such notice will be delivered prior  
15 to the scheduled hearing time.

16           **C. The Limited Notice Procedures are Necessary and Appropriate**

17           The above proposed limited notice procedures are necessary and appropriate given that  
18 the creditor body is large and many of the creditors would not be interested in receiving copies of  
19 all the Limited Notice Matters but would find service of all these motions and other documents  
20 wasteful. Requiring notice to and service upon so many parties, would add to the cost and  
21 administrative burden on the Debtor, without conferring any meaningful benefit to the Debtor’s  
22 estate, and thus would diminish the assets ultimately available to fund the liquidation of the  
23 Company and distribute to creditors of the estate. Further, allowing service of an emergency  
24 motion by overnight delivery in the instances outlined above provides parties on the Limited  
25 Service List with adequate notice and preserves the Debtor’s ability to bring such matters on a  
26 timely and efficient basis. The Debtor submits that such notice constitutes due and sufficient  
27 notice of the Limited Notice Matters.  
28

1 If this Motion is granted, the Debtor will provide a copy of the Limited Service List to any  
2 creditor or party in interest that requests it. The Debtor will also send a copy of any order  
3 granting this Motion to all known creditors and parties-in-interest.

4 **D. Service of This Motion**

5 The Debtor is serving this Motion by email, overnight delivery or facsimile on the Limited  
6 Service List prior to the day of the hearing. The Debtor submits such notice is appropriate under  
7 the circumstances.

8 The Debtor notes that Local Bankruptcy Rule 9075-1(a)(4) and (5) could plausibly be  
9 interpreted to require that the Debtor serve all parties on the creditor matrix by personal delivery,  
10 messenger, telephone, fax or email with this Motion because the Motion affects their right to  
11 receive service of certain notices, motions and applications. As stated above, there are hundreds  
12 of parties on the mailing matrix. The Debtor does not have fax numbers or email addresses for a  
13 majority of these parties. Serving the Motion by telephone, messenger or personal delivery on  
14 each of the parties would clearly be cost and time prohibitive, if not impossible.

15 Further, serving the Motion by overnight delivery on potentially hundreds of parties  
16 would be cost prohibitive, defeat the very purpose for which this Motion is filed and would  
17 accomplish very little. The vast majority of parties will not be interested in receiving the Limited  
18 Notice Matters or this Motion and will likely simply dispose of the material upon receipt. Also,  
19 the Debtor is serving the Limited Service List, which contains the names of the creditors holding  
20 the largest claims against the Debtor as well as the U.S. Trustee. The Debtor submits that service  
21 of this Motion as set forth above is sufficient under the circumstances and, in the event that Local  
22 Bankruptcy Rule 9075-1(a)(4) and (5) actually requires personal delivery, messenger, telephone,  
23 fax or email on the hundreds of creditors and other interested, the Debtor hereby requests that the  
24 Court waive compliance with said Rule and find that notice of this Motion to the Limited Service  
25 List is sufficient and appropriate notice.

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1 **V. CONCLUSION**

2 Based upon the foregoing, the Debtor respectfully requests that the Court enter an order,  
3 on an emergency basis: (1) limiting the scope and manner of notice as set forth herein; (2) finding  
4 that notice of the Motion is sufficient under the circumstances; and (3) such other and further  
5 relief as the Court deems just and proper.

6 DATED: February 19, 2018

GREENBERG GLUSKER FIELDS CLAMAN &  
MACHTINGER LLP

9 By: */s/ Brian L. Davidoff*

10 BRIAN L. DAVIDOFF  
11 KEITH PATRICK BANNER  
Proposed General Bankruptcy Counsel for Debtor  
and Debtor in Possession

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