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7 Proposed General Bankruptcy Counsel for
Debtor and Debtor in Possession

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9
10 UNITED STATES BANKRUPTCY COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 LOS ANGELES DIVISION

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:**

**(1) AUTHORIZING THE DEBTOR TO
PAY PRE-PETITION SALES, USE AND
SIMILAR TAXES IN THE ORDINARY
COURSE OF BUSINESS; AND**

**(2) DIRECTING BANKS AND FINANCIAL
INSTITUTIONS TO HONOR AND
PROCESS CHECKS AND TRANSFERS
RELATED THERETO;**

**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**

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

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,
5 LLC, f/k/a B&B Bachrach, LLC, (the “Company” or the “Debtor”) hereby submits this motion
6 (the “Motion”), on an emergency basis, for entry of an order pursuant to sections 105(a), 363(b),
7 503(b)(1), 507(a)(2), 1107(a) and 1108 of title 11 of the United States Code, 11 U.S.C. §§ 101 et
8 seq. (the “Bankruptcy Code”) and Rules 6003 and 6004 of the Federal Rules of Bankruptcy
9 Procedure (the “Bankruptcy Rules” and each a “Bankruptcy Rule”): (i) authorizing, but not
10 directing, the Debtor to pay sales and use taxes, essential business and regulatory fees, and similar
11 taxes and fees in the ordinary course of business that may come due post-petition for which the
12 Debtor has incurred and collected such taxes pre-petition; (ii) directing banks and financial
13 institutions to honor and process checks and transfers related thereto; and (iii) related relief¹.

14 As set forth in the accompanying Memorandum of Points and Authorities, there are good
15 and sufficient grounds for granting this Motion. The Company’s business consists of 14 “brick
16 and mortar” retail stores² located in Illinois, Indiana, Kansas, Michigan, New Jersey, Tennessee,
17 Texas, Wisconsin, and Virginia, and an online sales e-commerce business and distribution
18 component conducted out of Los Angeles, California. In connection with the operation of its
19 business, the Debtor incurs or collects and remits certain taxes, including sales, use, franchise,
20 commercial activity, business and occupation, and various other taxes, fees, charges, and
21 assessments (the “Taxes and Fees”) and remits such Taxes and Fees to various federal, state, and
22 local taxing and other governmental authorities and/or certain municipal or governmental
23 subdivisions or agencies of those states (the “Taxing Authorities”) in connection with the sale of
24 their merchandise at retail store locations or through purchases made and fulfilled through the
25 Company’s e-commerce website. The Debtor seeks authority as part of its liquidation efforts, to

26 _____
27 ¹ 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.

28 ² Of the 14 stores, one store, Store No. 20 located at the Chicago Fashion Outlet Center, is operated by the Debtor but
leased by an affiliated party.

1 pay such Taxes and Fees in the ordinary course of business as they come due, which, based on the
2 various tax collection schedules, includes Taxes and Fees incurred pre-petition. Timely payment
3 of the Taxes and Fees in the ordinary course, whether relating to pre-petition or post-petition
4 periods, is necessary to avoid the accrual of unnecessary interest and other penalties. Thus, by the
5 Motion, the Debtor seeks authority, as part of its liquidation efforts, to pay the Taxes and Fees to
6 the relevant Taxing Authorities. To the extent necessary, the Debtor also requests that the Court
7 direct any applicable banks or financial institutions to honor and process checks and transfers that
8 may be requested by the Debtor with respect to the payment of Taxes and Fees addressed hereby.

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

14 **PLEASE TAKE FURTHER NOTICE** that pursuant to Local Bankruptcy Rule 2081-1
15 this Motion may be heard pursuant to Local Bankruptcy Rule 9075-1 as an emergency motion.
16 Further, pursuant to Local Bankruptcy Rule 9075-1(a)(2), counsel for the Debtor has contacted
17 the chambers for the Honorable Neal W. Bason and has obtained approval for an emergency
18 hearing on the Motion to be held on **February 22, 2018 at 2:00 p.m.** in Courtroom 1545, located
19 at 255 E. Temple Street, Los Angeles, California 90012. Pursuant to Local Bankruptcy Rule
20 9075-1, any response, written or oral, to the moving papers may be presented before or at the time
21 of the hearing on the Motion.

22 **PLEASE TAKE FURTHER NOTICE** that, as instructed by the Court, the Debtor will
23 serve this Notice and Motion, the attached Memorandum of Points and Authorities, and the
24 Lipman Declaration via overnight mail on the following parties or, in lieu thereof, to their
25 counsel, if known: (a) the Office of the United States Trustee; (b) the largest twenty unsecured
26 creditors appearing on the list filed in accordance with Bankruptcy Rule 1007(d) by the Debtor
27 unless and until an official committee of unsecured creditors (the “Committee”) is appointed, then
28 in that event, to counsel for the Committee; (c) the Taxing Authorities; (d) Siena Lending Group

1 LLC (“Siena”); (e) any other known secured creditors; and (g) parties that file with the Court and
2 serve upon the Debtor requests for notice of all matters in accordance with Bankruptcy Rule
3 2002. The Debtor also requests that the Court waive compliance with Local Bankruptcy Rule
4 9075-1(a)(5) requiring telephonic notice of the hearing set hereon and substance thereof, and
5 approve in lieu thereof service by overnight delivery or email. In the event that the Court grants
6 the relief requested by the Motion, the Debtor shall provide notice of the entry of the order
7 granting such relief upon each of the foregoing parties and any other parties in interest as the
8 Court directs. The Debtor submits that such notice is sufficient and that no other or further notice
9 need be given.

10 **WHEREFORE**, for all the foregoing reasons, and such additional reasons as may be
11 advanced at or prior to the hearing on this Motion, the Debtor respectfully requests that the Court
12 enter an Order, on an emergency basis: (1) authorizing the Debtor to pay the Taxes and Fees to
13 the relevant Taxing Authorities as part of the liquidation of the Debtor, including payment of
14 Taxes and Fees incurred pre-petition; (2) directing any applicable banks or financial institutions
15 to honor and process checks and transfers that may be requested by the Debtor with respect to the
16 payment of Taxes and Fees; and (3) such other and further relief as is just and proper.

17
18 DATED: February 19, 2018

GREENBERG GLUSKER FIELDS CLAMAN
& MACHTINGER LLP

19
20 By: */s/ Brian L. Davidoff*

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

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 pay taxes and fees in the ordinary course of business, including those
6 incurred prior to the Petition Date, and related relief, as more fully set forth herein.

7 **I. JURISDICTION AND VENUE**

8 The Court has jurisdiction over these matters pursuant to 28 U.S.C. §§ 157 and 1334. This
9 is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The venue of the case is proper pursuant
10 to 28 U.S.C. §§ 1408 and 1409. The Debtor consents to the entry of a final judgment or order
11 with respect to the Motion if it is determined that the Court, absent consent of the parties, cannot
12 enter a final order or judgment consistent with Article III of the United States Constitution. The
13 statutory predicates for the relief requested herein are sections 105(a), 363(b), 503(b)(1),
14 507(a)(2), 1107(a) and 1108 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the
15 “Bankruptcy Code”); and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure
16 (the “Bankruptcy Rules” and each a “Bankruptcy Rule”).

17 **II. SUMMARY OF BACKGROUND FACTS**

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

23 A decline across the board in sales in mid-2016 precipitated the Company’s filing of a
24 voluntary chapter 11 petition on April 28, 2017, commencing case no. 2:17-bk-15292-NB
25 (“*Bachrach*”). During the course of *Bachrach*, the Company’s goals were four-fold: (a) shed the
26 poorest performing stores; (b) liquidate excess inventory; (c) free up liquidity by resolving the
27 over-advance with the Company’s then lender, Israel Discount Bank of New York (“IDB”)

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1 through restructure of the debt or buyout of the obligation; and (d) restructure leases regarding
2 stores that showed a potential for profitability if the lease was renegotiated.

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

7 Though *Bachrach* involved complications with the Company's liquidator, difficult
8 negotiations with IDB, and sales that often missed their target, the Company, among other things,
9 (i) successfully liquidated and closed seven underperforming stores; (ii) renegotiated four leases
10 resulting in substantial concessions; and (iii) negotiated a significant discount of approximately
11 \$2.45 million from IDB's secured claim of approximately \$10.5 million (See *Bachrach*, Claim
12 No. 49).

13 Despite the relative success of the *Bachrach* reorganization, the decline in sales that the
14 Company had faced pre-petition continued unabated after the Company's exit from the chapter 11
15 and starved the Company of vital cash.

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

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

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.
16 The Company engaged Clear Thinking Group LLC ("CTG") as financial adviser. Working with
17 CTG and Siena the Company sought to reach agreement with its landlords to accomplish a
18 liquidation outside of the chapter 11 process. While some landlords were amenable to this, others
19 were not. 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 a 16-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. THE DEBTOR’S TAX OBLIGATIONS**

4 The Debtor incurs and collects certain taxes, including sales, use, franchise, commercial
5 activity, business and occupation, and various other taxes, fees, charges, and assessments (the
6 “Taxes and Fees”), and periodically remits such Taxes and Fees to various federal, state, and
7 local taxing and other governmental authorities and/or certain municipal or governmental
8 subdivisions or agencies of those states (the “Taxing Authorities”). The Taxing Authorities are
9 set forth on Exhibit 1 hereto. The Taxes and Fees are paid monthly, quarterly, semi-annually, or
10 annually to the respective Taxing Authorities, depending on the given Tax or Fee and the relevant
11 Taxing Authority to which it is paid. As of the Petition Date, the Debtor estimates that it owes
12 approximately \$132,390.47 in unremitted Taxes and Fees incurred pre-petition, including
13 approximately \$23,590.00 in sales tax accrued in from February 1, 2018 to the Petition Date and
14 \$108,800.47 in sales tax accrued prior to that period.

15 **IV. ARGUMENT**

16 **A. Certain of the Taxes and Fees Are Not Property of the Debtor’s Bankruptcy**
17 **Estate**

18 The Debtor’s payment of the Taxes and Fees is justified in large part because certain of
19 these amounts are not property of the Debtor’s estates pursuant to section 541(d) of the
20 Bankruptcy Code. Specifically, section 541(d) of the Bankruptcy Code provides, in relevant part,
21 that “[p]roperty in which the debtor holds, as of the commencement of the case, only legal title
22 and not an equitable interest . . . becomes property of the estate under subsection (a)(1) or (2) of
23 this section only to the extent of the debtors’ legal title to such property, but not to the extent of
24 any equitable interest in such property that the debtor does not hold.” 11 U.S.C. § 541(d)
25 (emphasis added).

26 Consistent with section 541(d) of the Bankruptcy Code, courts have held that certain types
27 of taxes, particularly sales and use taxes, constitute so-called “trust fund” taxes that are collected
28 from third parties and held in trust for payment to applicable Taxing Authorities and are not part

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1 of a debtor’s estate. *See, e.g., Begier v. Internal Rev. Serv.*, 496 U.S. 53, 57–60 (1990) (holding
2 that any pre-petition payment of trust fund taxes is not a transfer subject to avoidance because
3 such funds are not the debtor’s property); *Shank v. Wash. State Dept. of Rev. (In re Shank)*, 792
4 F.2d 829, 833 (9th Cir. 1986) (sales tax required by state law to be collected by sellers for their
5 customers is a trust fund tax and excluded from the debtor’s estate); *DuCharmes & Co., Inc. v.*
6 *United States (In re DuCharmes & Co.)*, 852 F.2d 194, 196 (6th Cir. 1988) (per curiam) (same);
7 *cf. In re Calabrese*, 689 F.3d 312, 321 (3d Cir. 2012) (sales tax required by state law to be
8 collected by sellers from their customers is a “trust fund” tax that is not released by bankruptcy
9 discharge); *DeChiaro v. N. Y. State Tax Comm’n*, 760 F.2d 432, 435–36 (2d Cir. 1985) (sales
10 taxes are trust fund taxes); *Rosenow v. Ill. Dept. of Rev. (In re Rosenow)*, 715 F.2d 277, 279-82
11 (7th Cir. 1983) (use tax is a trust fund tax). To the extent these “trust fund” taxes are collected,
12 they are not property of the Debtor’s estate under section 541(d) of the Bankruptcy Code, and
13 should be turned over to the appropriate authority when due. *See Begier*, 496 U.S. at 59-62 (taxes
14 such as excise taxes, FICA taxes, and withholding taxes are property held by a debtor in trust for
15 another, and as such, do not constitute property of the estate); *In re Al Copeland Enterprises, Inc.*,
16 991 F.2d 233, 235 (5th Cir. 1993) (state sales tax revenues were held subject to trust for the state
17 and were not property of the estate).

18 Here, many of the Taxes and Fees—particularly the sales tax and use tax withheld by the
19 Debtor—constitute amounts held in trust, which the Debtor is required to collect and/or hold in
20 trust for payment to the Taxing Authorities. To the extent these Taxes and Fees constitute “trust
21 fund” taxes, they are not property of the Debtor’s estates under section 541(d) of the Bankruptcy
22 Code. Because the Debtor does not have an equitable interest in such Taxes and Fees, the Debtor
23 should be permitted to remit these Taxes and Fees to the Taxing Authorities as they become due,
24 irrespective of the commencement of this chapter 11 bankruptcy case.

25 **B. The Taxes and Fees are Potentially Entitled to Administrative Status**

26 Taxes and Fees owed to governmental units that are accrued pre-petition but do not come
27 due until after the Petition Date are arguably administrative expenses of the Debtor’s estate under
28 sections 503(b)(1)(B) and (D) of the Bankruptcy Code. To the extent the Taxes and Fees in this

1 chapter 11 case first come due post-petition, there is no enforceable pre-petition obligation
2 against the estate with respect to such Taxes and Fees prior to the applicable due date. *See, e.g.,*
3 *In re R.H. Macy & Co., Inc.*, 157 B.R. 548, 554 (S.D.N.Y. 1993) (concluding that personal
4 property taxes were incurred post-petition on the tax due date); 11 U.S.C. § 503(b). Hence, these
5 obligations could be construed as post-petition obligations of the estate. This result is consistent
6 with sections 503(b)(1)(B) and (D) of the Bankruptcy Code, which treat any tax incurred by the
7 estate, whether secured or unsecured, as an administrative expense (without need for the
8 governmental unit to file a request for payment of an administrative expense).

9 **C. Certain Taxes and Fees May Constitute Priority Claims**

10 Pursuant to section 1129 of the Bankruptcy Code, priority claims must be paid under any
11 chapter 11 plan. 11 U.S.C. § 1129(a)(9). Any priority taxes under a plan must be paid in full and
12 in regular cash installments over no more than a five-year period from the date of the order for
13 relief. *See* 11 U.S.C. § 1129(a)(9)(C)(i)-(ii). Additionally, priority taxes must be paid in the
14 order of priority no less favorable than the treatment given to the most favored general unsecured
15 claims. *See* 11 U.S.C. § 1129(a)(9)(C)(iii).

16 The Debtor submits that authorizing the payment of the Taxes and Fees is in the best
17 interests of its creditors and the estate because any of the Taxes and Fees accrued and due pre-
18 petition constitute priority claims under section 507(a)(8) of the Bankruptcy Code. As such,
19 payment of the Taxes and Fees will not prejudice the rights of general unsecured creditors.
20 Moreover, to the extent that such claims are entitled to priority treatment under section 507(a)(8)
21 of the Bankruptcy Code, the respective Taxing Authorities may attempt to assess interest and
22 penalties. *See* 11 U.S.C. § 507(a)(8)(G) (granting eighth priority status to “a penalty related to a
23 claim of a kind specified in this paragraph and in compensation for actual pecuniary loss”).

24 **D. Payment of the Taxes and Fees Is Warranted Under the Applicable Authority**

25 There is ample precedent authorizing the Debtor to honor the Taxes and Fees, even if they
26 are construed as pre-petition obligations. Authority for such payments may be found in sections
27 1107(a) and 1108 of the Bankruptcy Code, which vest a debtor in possession with authority to
28 continue operating its business. Sometimes this duty and the concomitant fiduciary duty to

1 maximize estate value may be fulfilled only through the pre-plan payment of certain unsecured
2 claims. *See, e.g., In re Mirant Corp.*, 296 BR. 427, 429 (Bankr. N.D. Tex. 2003); *In re CoServ.*
3 *L.L.C.*, 273 BR. 487, 498 (Bankr. N.D. Tex. 2002).

4 In addition, statutory support for the requested relief also exists pursuant to Bankruptcy
5 Code sections 105(a) and 363(b)(1) and the “necessity of payment” doctrine. Section 105(a)
6 provides in part:

7 The court may issue any order, process, or judgment that is
8 necessary or appropriate to carry out the provisions of this title.

9 11 U.S.C. §105(a). Section 105(a) grants bankruptcy courts broad authority and discretion to
10 enforce the provisions of the Bankruptcy Code by relying on either specific statutory or equitable
11 common law principles. The basic purpose of section 105 is to enable the court to do whatever is
12 appropriate and necessary to aid in its jurisdiction, in anything arising in or relating to a
13 bankruptcy case.” 2 COLLIER ON BANKRUPTCY, ¶ 105.01 (Alan N. Resnick & Henry J. Sommer
14 eds., 16th ed.). Essentially, section 105(a) codifies the bankruptcy court’s inherent equitable
15 powers. *See In re Am. Hardwoods, Inc.*, 885 F.2d 621, 625 (9th Cir. 1989) (section 105 endows
16 the court with general equitable powers, where not inconsistent with more specific law); *Eskanos*
17 *& Adler, P.C. v. Roman (In re Roman)*, 283 B.R. 1, 13 (9th Cir. B.A.P. 2002) (“[s]ection 105
18 provides a bankruptcy court with broad equitable powers”); *Mgmt. Tech. Corp. v. Pardo*, 56 B.R.
19 337, 339 (Bankr. D.N.J. 1985) (noting that the court’s equitable power is derived from section
20 105). In addition, section 363(b)(1) of the Bankruptcy Code authorizes a debtor-in-possession to
21 use property of the estate other than in the ordinary course of business after notice and a hearing,
22 giving bankruptcy courts broad flexibility to permit the debtor to expend funds outside the
23 ordinary course of business. If the debtor articulates the business justification for using property
24 outside of the ordinary course of business, bankruptcy courts may permit its expenditure under
25 section 363(b)(1).

26 Bankruptcy courts have authorized the payment and/or honoring of pre-petition claims
27 similar to the relief sought herein pursuant to Sections 105(a) and 363(b), where such action is
28 necessary to ensure that the debtor can continue its business operations uninterrupted. *See In re*

1 *Adam's Apple, Inc.*, 829 F.2d 1484, 1490 (9th Cir. 1987); *see also e.g. In re Pacific Forest*
2 *Industries, Inc.*, 95 B.R. 740, 743 (Bankr. C.D. Cal. 1989) (suggesting it is inherent in the concept
3 of operating a business that employee wages, taxes, supplies, and other types of obligations that
4 would be administrative claims are paid as part of the ongoing nature of the business); *In re*
5 *Lehigh & New England Railway. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (stating courts may
6 authorize payment of pre-petition claims when there “is the possibility that the creditor will
7 employ an immediate economic sanction, failing such payment”). Recently, the United States
8 Supreme Court recognized that courts commonly approve “first-day” orders that allow payment
9 on certain pre-petition claims. *See Czyzewski v. Jevic Holdings Corp. (In re Jevic)*, 580 U.S. ___,
10 137 S.Ct. 973, 985 (2017).

11 Accordingly, the Court has authority to authorize the Debtor to pay the Taxes and Fees in
12 the ordinary course of business, pursuant to sections 1107(a), 1108, 363(b) and 105(a) of the
13 Bankruptcy Code. The Debtor’s payment of the Taxes and Fees is an exercise of sound business
14 judgment and is necessary to maximize the value of the Debtor’s estates for the benefit of
15 creditors and other parties in interest. The Debtor operates a nationwide business, and any
16 disputes with the various Taxing Authorities could have wide-ranging and negative effects on the
17 Debtor’s efforts to swiftly and efficiently liquidate its assets and maximize distributions to
18 creditors.

19 **E. Processing Checks and Electronic Fund Transfers Should be Authorized**

20 The Debtor, through its budget and borrowing from Siena, will have sufficient funds to
21 pay any amounts related to the Taxes and Fees in the ordinary course of business. The Debtor
22 believes there is minimal risk that checks or wire transfer requests that the Court has not
23 authorized will be inadvertently made. Thus, the Debtor requests that the Court authorize all
24 applicable banks to receive, process, honor, and pay any and all checks or wire transfer requests
25 in respect of the Taxes and Fees.

26 **F. The Order Should Be Effective Immediately**

27 Bankruptcy Rule 6003 provides that the relief requested in this Motion may be granted if
28 the “relief is necessary to avoid immediate and irreparable harm.” Fed. R. Bankr. P. 6003. The

1 Debtor submits that for the reasons already set forth herein, the relief requested in this Motion is
2 necessary to avoid immediate and irreparable harm to the Debtor.

3 The Debtor further seeks a waiver of any stay of the effectiveness of the order approving
4 this Motion. Pursuant to Rule 6004(h) of the Bankruptcy Rules, “[a]n order authorizing the use,
5 sale, or lease of property other than cash collateral is stayed until the expiration of fourteen (14)
6 days after entry of the order, unless the court orders otherwise.” As set forth above, the relief
7 requested herein is essential to prevent irreparable damage to the Debtor’s operations, going-
8 concern value, and its efforts to pursue a restructuring of its assets and liabilities. Thus, the relief
9 sought in this Motion is appropriate under these circumstances.

10 **V. CONCLUSION**

11 Based upon the foregoing, the Company respectfully requests that the Court enter an
12 order, on an emergency basis: (1) authorizing the Debtor to pay the Taxes and Fees to the
13 relevant Taxing Authorities in the ordinary course of business, including payment of Taxes and
14 Fees accrued pre-petition; (2) directing any applicable banks or financial institutions to honor and
15 process checks and transfers that may be requested by the Debtor with respect to the payment of
16 Taxes and Fees; and (3) such other and further relief as the Court deems just and proper.

17 DATED: February 19, 2018

GREENBERG GLUSKER FIELDS CLAMAN &
MACHTINGER LLP

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19
20 By: */s/ Brian L. Davidoff*

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

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EXHIBIT 1

Sales Tax			
Store #	Taxing Authority State	Name	Address
33,34,36	Georgia	Georgia Dept of Revenue	Georgia Department of Revenue Sales & Use Tax Return P.O. Box 105408 Atlanta, GA 30348-5408
16,37	Indiana	Indiana Dept of Revenue	Indiana Department of Revenue P.O. Box 7218 Indianapolis, IN 46207-7218
8,12,64	Michigan	Michigan Dept of Revenue	P.O. Box 30774 Lansing, MI 48909-8274
20, 28, 79	Illinois	Illinois Dept of Revenue	Illinois Dept. of Revenue P.O. Box 19053 Springfield, IL 62794-9053
82	New Jersey	New Jersey Dept of Revenue	P.O. Box 999 Trenton, NJ 08646-0999
18,31,76	Texas	Texas Comptroller of Public Accounts	P.O. Box 149355 Austin, TX 78714-9355
21	Tennessee	Tennessee Dept of Revenue	Andrew Jackson State Office Building 500 Deaderick Street Nashville, TN 37242-1399
25	Wisconsin	Wisconsin Dept of Revenue	P.O. Box 930208 Milwaukee, WI 53293-0208
70	Kansas	Kansas Dept of Revenue	915 SW Harrison St. Topeka, KS 66612-1588
83	New York	New York Dept of Revenue	NYS Sales Tax Processing P.O. Box 15168 Albany, NY 12212-5168
89	Virginia	Virginia Dept of Revenue	Virginia Department of Taxation P.O. Box 1500 Richmond, VA 23218-1500
93	Maryland	Comptroller of Maryland	Attn: Kelly Wallace Compliance Division 301 West Preston St., #410 Maryland Baltimore, MD 21201
94	Missouri	Missouri Dept of Revenue	Missouri Department of Revenue Taxation Division P.O. Box 3666 Jefferson City, MO 65105-3666
Web	California	Board of Equalization	California Department of Tax P.O. Box 942879 450 N. Street Sacramento, CA 94279

Property Tax			
Store #	Taxing Authority State	Name	Address
8	City of Novi, Detroit, MI	City of Novi, Tax Processing	City of Novi - Tax Processing P.O. Box 674258 Detroit, MI 48267-4258
12	City of Auburn Hills, MI	City of Auburn Hills	City of Auburn Hills 1827 N. Squirrel Road Auburn Hills, MI 48326
18	Houston , TX	Tax Assessor	Mike Sullivan Tax Assessor-Collector P.O. Box 4622 Houston, TX 77210-4622
21	Nashville, TN	Metropolitan Trustee	Metropolitan Trustee Personal Property Tax Department P.O. Box 305012 Nashville, TN 37230-5012
23	Memphis, TN	David Lenoir	David Lenoir Shelby County Trustee P.O. Box 2751 Memphis, TN 38101-2751
25	Wauwatosa, WI	City of Wauwatosa	City of Wauwatosa Bin 360 Milwaukee, WI 53288-0360
31	Mckinney, TX	Kenneth L. Maun	Kenneth L. Maun Tax Assessor Collector Collin County P.O. Box 8046 McKinney, TX 75070-8046
34	Gwinnett, GA	Richard Steele	Richard Steele Gwinnett County Tax Commissioner Department of Property Tax P.O. Box 372 Lawrenceville, GA 30046-0372
33	Marietta, GA	Cobb County Tax Commissioner	Cobb County Tax Commissioner P.O. Box 100127 Marietta, GA 30061-7027
36	Atlanta, GA	Fulton County Tax Commissioner	Fulton County Tax Commissioner Arthur E. Ferdinand P.O. Box 105052 Atlanta, GA 30348-5052
64	Detroit, MI	City of Troy - tax	City of Troy - Tax P. O. Box 554754 Detroit, MI 48255-475

Property Tax (continued)			
Store #	Taxing Authority State	Name	Address
76	Dallas, TX	John R Ames	John R. Ames, CTA(State of Texas) John R. Ames, CTA P.O. Box 139066 Texas Dallas, TX 75313-9066
89	Merrifield, VA	Arlington County Treasurer	Arlington County Treasurer P.O. Box 1757 Merrifield, VA 22116-1757
93	Baltimore, MD	Prince George's County	Prince George's County, MD P.O. Box 17578 Baltimore, MD 21297-1578
16	Indianapolis, IN	Marion County Treasurer	Marion County Treasurer P.O. Box 6145 Indianapolis, IN 46206-6145
37	Crown Pt, IN	John E. Petalas	John E. Petalas Lake County Treasurer's Office 2293 North Main Street Crown Point, IN 46307-1896
Head Office	Los Angeles, CA	LA County Tax Collector	Los Angeles County Tax Collector P.O. Box 54027 Los Angeles, CA 90054-0027