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6 Proposed General Bankruptcy Counsel for
7 Debtor and Debtor in Possession

8
9 UNITED STATES BANKRUPTCY COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11 LOS ANGELES DIVISION

12
13 In re:
14 B&B Liquidating, LLC,
15
16 Debtor and Debtor in Possession.

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

Chapter 11

**DECLARATION OF BRIAN LIPMAN IN
SUPPORT OF FIRST DAY MOTIONS**

*Emergency Motion for Interim and Final
Orders Approving Stipulation with Siena
Lending Group LLC (1) Authorizing Post-
Petition Financing; (2) Authorizing Debtor's
Use of Cash Collateral; and (3) Related Relief*

*Emergency Motion for Interim and Final
Order: (1) Authorizing the Conducting of
Inventory Liquidation, Store Closing or Similar
Themed Sales; (2) Approving the Assumption of
the Consulting Agreement with Liquidation
Consultant Great American Group, LLC/ Tiger
Capital Group, LLC; and (3) Related Relief*

*Emergency Motion for Order Authorizing
Debtor In Possession To Honor Certain Pre-
Petition Wages And Benefits In The Ordinary
Course Of Business;*

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Emergency Omnibus Motion for Order Authorizing Debtor: (1) to Reject Certain Unexpired Leases of Nonresidential Real Property Retroactively to the Petition Date; and (2) to Reject Certain Unexpired Leases Upon the Closing of Each Location Pursuant to Rejection Notice Procedures;

Emergency Motion for Order: (1) Authorizing the Maintenance and Continued Use of Cash Management System; (2) Prohibiting Banks from Offsetting or Freezing Debtor's Existing Bank Accounts; and (3) Authorizing Continuation of Electronic Payment Processing and the Honoring of Related Pre-Petition Obligations in the Ordinary Course of Business;

Emergency Motion for Order (1) Prohibiting Utilities From Altering, Refusing Or Discontinuing Service; (2) Deeming Utilities Adequately Assured Of Future Performance; And (3) Establishing Procedures For Determining Adequate Assurance Of Payment

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; and

Emergency Motion for Order Limiting Scope of Notice;

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**

1 I, Brian Lipman, being fully sworn, hereby declare that the following is true to the best of
2 my knowledge, information and belief:

3 1. I am the sole manager and sole member of B&B Liquidating, LLC, f/k/a B&B
4 Bachrach, LLC, a California limited liability company, the debtor and debtor in possession in the
5 above referenced chapter 11 case (the “Company” or the “Debtor”). I have been responsible for
6 and have overseen the overall operations of the Company since 2006. In this capacity, I am
7 familiar with the history, day-to-day operations, business and financial affairs of the Company.
8 Except as otherwise indicated, all facts as set forth in this declaration are based upon my personal
9 knowledge, my discussion with other employees and representatives of the Company, my review
10 of relevant documents, or my opinion based upon my experience and knowledge of the
11 Company’s operations and financial condition. If I were called to testify, I would and could
12 testify competently to the facts set forth in this declaration.

13 2. I submit this declaration to assist the Court and other parties in interest in
14 understanding the circumstances that compelled the commencement of this chapter 11 case and in
15 support of (i) the Company’s voluntary Petition for relief under chapter 11 of title 11 of the
16 United States Code (the “Bankruptcy Code”) filed on February 16, 2018 (the “Petition Date”) and
17 (ii) the relief, in the form of emergency motions, that the Company has requested of the Court
18 (the “First Day Motions”).

19 3. This declaration is intended to provide a summary overview of the facts that led
20 the Company’s filing a new liquidation chapter 11 case. The Company’s reorganization chapter
21 11 case (Case No. 2:17-bk-15292-NB) (“*Bachrach*”) remains pending, and therefore, this
22 Declaration will not address the detailed history of the Company and facts leading to the
23 commencement of *Bachrach*. My declaration filed in *Bachrach* on April 28, 2017 [*Bachrach*
24 Docket No. 12] (the “*Bachrach* Lipman Declaration”) in support of the first day motions filed
25 therein is incorporated herein by reference for the general history of the Company.

26 4. Section A of this Declaration briefly describes the post-*Bachrach* exit events that
27 gave rise to the commencement of this liquidation chapter 11 case; Section B described the
28 current state of the Company; Section C summarizes the Company’s liquidation objectives; and

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1 Section D, under various sub-headings, addresses certain facts stated in support of the First Day
2 Motions, which the Company believes are crucial to a swift and orderly liquidation of the
3 Company.

4 **A. Events Leading Up to this Chapter 11 Liquidation Filing**

5 5. A decline across the board in sales in mid-2016 precipitated the filing of a
6 voluntary chapter 11 petition on April 28, 2017 (the “*Bachrach* Petition Date”). On August 14,
7 2017, the Court in *Bachrach* entered its *Order: (1) Approving Combined Plan and Disclosure*
8 *Statement As Containing Adequate Information; and (2) Confirming Combined Plan and*
9 *Disclosure Statement (As Modified)* [Bachrach Docket No. 265] (the “*Bachrach* Confirmation
10 Order”) with respect to the *Debtor’s Combined Chapter 11 Plan of Reorganization and*
11 *Disclosure Statement* [Bachrach Docket No. 197] filed by the Company on July 13, 2017 as such
12 document was modified by the *Debtor’s Combined Chapter 11 Plan of Reorganization and*
13 *Disclosure Statement, As Further Modified* [Bachrach Docket No. 258] including all exhibits
14 attached thereto (the “*Bachrach* Plan”). The *Bachrach* Plan went effective on August 31, 2017
15 (the “*Bachrach* Effective Date”).

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

21 7. Through the store closing sales approved by the Court in *Bachrach*, the Company
22 liquidated and closed a total of eight (8) underperforming stores. The Company also closed the
23 “pop-up” warehouse liquidation store location in St. Louis, Missouri which was opened on a
24 short-term basis to conduct inventory liquidation sales. The Company was also able to
25 renegotiate the leases as to four (4) additional underperforming stores located at (i) Opry Mills
26 Mall (Store No. 21); (ii) Woodfield Mall (Store No. 79); (iii) Great Lakes Crossing (Store No.
27 12); and (iv) Menlo Park Mall (Store No. 82).

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1 8. Though *Bachrach* involved complications with the Company’s liquidator, difficult
2 negotiations with IDB, and sales that often missed their target, the Company was largely able to
3 accomplish its reorganization goals. The Company, among other things, (i) successfully
4 liquidated and closed seven (7) underperforming stores; (ii) renegotiated four leases resulting in
5 substantial concessions; and (iii) negotiated a significant discount of approximately \$2.45 million
6 from IDB’s secured claim of approximately \$10,570,244.89 (*See Bachrach*, Claim No. 49).

7 9. Despite the relative success of *Bachrach*, the decline in sales the Company faced
8 pre-petition continued through the Company’s exit from the chapter 11 and essentially starved the
9 Company of vital cash. Possibly exacerbated by reputational harm from the bankruptcy filing,
10 the Company’s sales have consistently been 20% lower than projected.

11 10. With restricted use of cash and prolonged negotiations for a new debt facility, the
12 Debtor required a financing arrangement to bridge the gap between the September 27, 2017
13 maturity date on the IDB loan and the closing of the new financing. The Company obtained such
14 an arrangement from Emerald Capital Funding, LLC (“Emerald”) which entered into an
15 Assignment and Assumption Agreement (the “Emerald Assignment”), pursuant to which Emerald
16 purchased the IDB loan for \$5,800,000.00. Concurrent with the Emerald Assignment, the
17 Company executed a deficiency note in favor of IDB with a face value of \$1,200,000.00 (the
18 “IDB Deficiency Note”) which can be paid off within six months at 50% of face value. On or
19 about September 19, 2017, the Emerald transaction closed.

20 11. Following the closing of the Emerald transaction, the Company completed
21 negotiations with Siena regarding a new asset-based revolving credit facility (the “Siena Loan”).
22 Pursuant to the borrowing base calculation of the Siena Loan, the Company was only able to pay
23 Emerald \$5.3 million through escrow at closing. Therefore, the Company issued a note payable
24 to Emerald in the amount of \$500,000, secured by international goods in transit. Siena and
25 Emerald also separately entered into an intercreditor agreement.

26 12. Despite the relative success of the post-confirmation refinance of the Company’s
27 revolving loan facility, the fast-tracked refinance with no less than two lenders negatively
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1 affected the Company's cash flow causing the Company to fall immediately behind on rent and
2 plan payments.

3 13. In addition, because the Company was forced to engage in two separate refinance
4 transactions, the Company was not able to complete the process until October 31, 2017, as
5 opposed to the end of September contemplated under the *Bachrach* Plan. Though only a month
6 of delay, it occurred during a crucial time for the Company. Because the Company's inventory
7 for the holiday season is shipped from overseas, the Company's suppliers must ship that
8 inventory months in advance for the Company to be well-stocked for the season. Here, the
9 Company's primary vendors refused to ship the holiday inventory until the post-confirmation
10 refinance closed. Because the Siena transaction did not close until the end of October, the
11 Company did not actually receive the holiday inventory, which is normally delivered during mid-
12 November, until mid-December, which negatively affected the Company's holiday sales.

13 14. This has, further, in turn, affected the Company's availability under the Siena loan,
14 as Siena has indicated that Company is in default for, among other things, failure to make timely
15 payments under the *Bachrach* Plan. Siena applied the default interest rate to the loan. Restricted
16 cash flow was further exacerbated by the fact that borrowings under the Siena loan were based on
17 a variable net orderly liquidation value which had its lowest availability during January and
18 February, when sales are typically at their lowest.

19 15. As a result of the decreased sales, restricted cash availability, delayed refinance,
20 and late-arriving holiday inventory, since the Company's exit from *Bachrach*, the Company was
21 running approximately one-to-two months behind in plan payments and, in some cases, at least a
22 month behind in rent. This series of unfortunate events has led to the decision that an orderly
23 liquidation of the Company in a new chapter 11 is both necessary and appropriate.

24 **B. The Current State of the Company**

25 16. As of the Petition Date, the Company operated fourteen (14) retail stores located in
26 Illinois, Indiana, Kansas, Michigan, New Jersey, Tennessee, Texas, Wisconsin, and Virginia.
27 Shortly before the commencement of the case, the Company vacated the following two locations:
28 (i) Orland Park Crossing (Store No. 28) and (ii) Oak Park Mall (Store No. 70). One of the retail

1 stores operated by the Company, Store No. 20 located at the Chicago Fashion Outlet Center in
2 Rosemont, Illinois is operated by the Company but leased by an affiliated entity Preylock, LLC.
3 In addition to the retail locations, the Debtor also operates from a corporate office and primary
4 distribution center located at 8723 Bellanca Dr. Unit A, Los Angeles, California 90045 (the
5 “Head Office”) and a secondary distribution center located at 132nd St., Gardena, California
6 90249 (the “Distribution Center”).

7 17. On the Petition Date, the Company employed approximately 109 non-insider
8 employees (the “Employees”) and 3 insider employees, consisting of myself, my son Bradley
9 Lipman, and my son-in-law, Dean Asher.¹ Approximately 77 of the Employees are regular full-
10 time employees (the “Full-Time Employees”) and approximately 32 are part-time employees (the
11 “Part-Time Employees”).

12 18. As of December 2017, the Company’s current assets based on its unaudited
13 balance sheet, totaled approximately \$10.2 million and fixed assets (net of depreciation) were
14 approximately \$2.3 million.

15 19. As of December 2017, Bachrach’s unaudited balance-sheet reflects current
16 liabilities totaled approximately \$13.2 million. This amount includes about \$1.3 million in
17 accounts payable; \$6.4 million payable to Siena; \$1.2 million payable to Israel Discount Bank;
18 and \$500,000 payable to Emerald Capital Funding, LLC (“Emerald”).

19 **C. The Company’s Liquidation**

20 20. As a result of the delinquencies and defaults identified above, and with continuing
21 pressure from Siena, the Company evaluated its alternatives. Management recognized that cash
22 flow from operations was not likely to improve in the foreseeable future, and thus the likelihood
23 that the Company could cure its obligations under the *Bachrach* Plan and catch up with its
24 delinquent rent and other ongoing expenses seemed unlikely. Accordingly, the Company again
25 explored whether it could identify any other source of financing to take out Siena. There were
26 very few choices available to the Company in light of the recent chapter 11 filing and the existing
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28 ¹ As noted below, Dean Asher and Bradley Lipman are no longer employed by the Company.

1 cash flow difficulties. The only source that the Company could identify was a lender that would
2 purchase the Siena note at a substantial discount, which Siena declined. Mindful of the fact that
3 the Company had recently filed the *Bachrach* case and that another filing would likely do nothing
4 to improve business operations, the Company reluctantly concluded that it had no alternative but
5 to liquidate to seek to maximize the returns for all stakeholders.

6 21. The Company engaged Clear Thinking Group LLC (“Clear Thinking”) as financial
7 adviser. Working with CTG and Siena the Company sought to conduct an out of court liquidation.
8 Because it is essential to maximizing returns that the Company is able to sell inventory from its
9 retail locations, as opposed to “wholesaling” the inventory to another vendor, any liquidation of
10 the Company’s inventory required that the Company be able to reach agreement with its retail
11 landlords to conduct sales at the retail locations. While some landlords were amenable to this,
12 others were not. The end result is the current chapter 11 case.

13 22. Drawing from the extensive experience of CTG, the Company performed
14 liquidation analyses and solicited bids with various liquidators to conduct the inventory
15 liquidation sales (the “Store Closing Sales”) at the 14 locations operated by the Company, 13 of
16 which are locations leased by the Company (the “Closing Stores”). The Company is working
17 with the landlord of the Chicago Store, outside of the chapter 11 case, to reach agreement to
18 permit a liquidation sale at that location substantially similar to that requested by the Company in
19 this case.

20 23. The Store Closing Sales will span a 16-week period, ending on or about June 8,
21 2018 with the Closing Stores closed upon completion of each Store Closing Sale. Prior to the
22 Petition Date, the Company retained liquidation consultants, Great American Group, LLC and
23 Tiger Capital Group, LLC (collectively, the “Liquidation Consultant”) to conduct the Store
24 Closing Sales. At the conclusion of the sale period, the Company intends to reject all of its
25 Closing Store leases and terminate operations. The Company will also seek to sell its intellectual
26 property and other assets.

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1 **D. First Day Motions**

2 ***a. Emergency Motion for Order: (1) Authorizing Debtor in Possession to***
3 ***Honor Certain Pre-Petition Wages And Benefits In The Ordinary Course Of***
4 ***Business; (2) Authorizing the Administration and Maintenance of Employee***
5 ***Benefits and Programs; (3) Directing the Banks and Financial Institutions***
6 ***to Honor and Process Checks and Transfers Related Thereto; and (4)***
7 ***Granting Related Relief (the “Employee Wages Motion”)***

8 24. To the best of my knowledge, the table attached as Exhibit 1 to the Employee
9 Wages Motion is a true and accurate reflection of the pre-petition wage obligations owed by the
10 Company to the Employees.

11 25. The Company’s payroll is disbursed by Modern HR, Inc. (“Modern HR”) which
12 administers and manages the Company’s payroll and employee benefit programs pursuant to a
13 Client Services Agreement (the “Modern HR Agreement”). In order for Modern HR to timely
14 process the Company’s payroll according to its established payroll cycles, we must provide
15 payroll data, and wire sufficient payroll funds to Modern HR no later than one business day
16 before the pay date.

17 26. I believe that the Employees are critical to the Company during its liquidation.
18 During the liquidation process, in addition to conducting the sales, the Employees will continue
19 other general operations, including warehousing, billing and shipping, and some perform crucial
20 administrative and financial management services. Some of Company’s corporate office
21 employees have been, and will continue to be heavily involved in reviewing and assisting the
22 preparation of Bankruptcy Court documents and the financial reports required by the Office of the
23 United States Trustee (“U.S. Trustee”), and preparing the vital financial projections and budgets
24 required by the Court and senior lender Siena Lending Group LLC (“Siena”).

25 27. I believe that to prevent wholesale defections during the Company’s liquidation
26 and maintain a modicum of employee morale, it is essential for the Company to honor its pre-
27 petition employee obligations. Failing to honor payroll commitments and discontinuing
28 employee-benefit programs would likely result in a mass exit, leaving the Company with
29 insufficient staff to support the liquidation process.

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1 28. It has been our business practice to provide our Full-Time Employees with benefit
2 plans and programs designed to assist them in meeting certain financial burdens and to keep
3 employee morale positive for the benefit of the Company. These programs include such standard
4 benefits as paid time-off (intended to include vacation and sick time); legal holidays; bereavement
5 leave and time off for jury duty; health, vision and dental insurance benefits; group life and
6 disability insurance; and coverage through state insurance programs, including workers'
7 compensation and unemployment insurance (collectively, the "Employee Benefit Programs").

8 29. The Company provides Full-Time Employees with a certain amount of paid time-
9 off each year, including time for vacation ("Vacation PTO") and sick leave ("Sick PTO", together
10 with Vacation PTO, the "PTO"), which varies based on the Full-Time Employees' length of
11 service and employment location. Part-Time Employees are not eligible for PTO. For Sick PTO,
12 Full-Time Employees working in California earn .0334 hours of Sick PTO for every hour
13 worked, capped at 72 hours. For Full-Time Employees located outside of California, Sick PTO
14 does not begin to accrue until successfully completing 90 days of service; thereafter accruing at a
15 rate of 24 hours, annually. Sick PTO is not a vested benefit and is not paid to the employee upon
16 termination.

17 30. For Vacation PTO, base Vacation PTO amounts do not accrue until the Full-Time
18 Employee has achieved 6 months of service. Thereafter, Vacation PTO accrues as follows: from
19 7 months to 12 months of service, Full-Time Employees accrue 5 days of capped annual Vacation
20 PTO; from 13 months to 48 months, Full-Time Employees continue to accrue 5 days of capped
21 annual Vacation PTO; from 49 months to 96 months, Full-Time Employees accrue 10 days of
22 capped annual Vacation PTO; and from 97 months and beyond, Full-Time Employees accrue 15
23 days of capped annual Vacation PTO. Full-Time Employees with accrued Vacation PTO may not
24 use their accrued time until successfully completing one year of service. When used, Vacation
25 PTO is paid at the employee's regular straight time rate.

26 31. The Company provides health insurance to the Employees, including medical,
27 dental, and vision insurance (collectively, the "Health Plans"). Modern HR administers all Health
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1 Plans for the Company and invoices the Company for the employer portion of any applicable
2 premiums. Modern HR deducts the Employees' portion of premiums from their bi-weekly wages.

3 32. The Company provides its Full-Time Employees a PPO medical insurance plan
4 through various insurance providers (the "Medical Plan"), administered by Modern HR. Of the
5 Full-Time Employees' fixed premiums, the Company contributes between \$150 to \$225 an
6 average per pay period, depending upon the type of coverage elected by the Full-Time Employee,
7 with such Employee responsible for the premium balance. On an average monthly basis, the
8 Company remits approximately \$15,000 to \$20,000 to Modern HR to pay the employer portion of
9 the premiums owed on account of the Medical Plan. As of the Petition Date, the Company owes
10 approximately \$7,473.25 for pre-petition invoiced premiums due and owing for the Medical Plan.

11 33. In accordance with applicable law, the Company offers its employees, upon
12 separation, the opportunity to continue the medical benefits provided by the Medical Plan under
13 COBRA. As of the Petition Date there were no former employees were covered under the
14 COBRA program.

15 34. Under the laws of various states, the Company is required to maintain workers'
16 compensation insurance (the "WC Insurance") to provide its Employees with coverage for injury
17 claims arising from or related to their employment with the Company. The WC Insurance
18 coverage is administered by Modern HR and invoiced to the Company. The premiums due on the
19 WC Insurance are assessed on bi-weekly basis based on the Company's self-reported payroll. On
20 average, the Company pays between approximately \$2,000 to \$3,000 per pay period for WC
21 Insurance premiums. As of the Petition Date, the Company owes approximately \$2,425.27 for
22 pre-petition invoiced premiums due and owing for WC Insurance.

23 35. It is also the Company's policy to reimburse certain Employees for qualified
24 business expenses, such as work-related travel, certain of which are required in some states in
25 which the Company operates. For instance, Employees located in California are required to be
26 reimbursed expenses pursuant to California Labor Code section 2802. As of the Petition Date,
27 the Company owed seven (7) Employees reimbursement for qualified business expenses incurred
28 in the scope of their employment. The total of these expenses is approximately \$9,515.14. I am

1 unaware of additional expenses incurred by Employees prior to the Petition Date, but it is
2 possible that certain Employees have incurred expenses pre-petition but have yet to seek
3 reimbursement from the Company. I believe that payment of these *de minimus* expense
4 reimbursements is necessary for the retention of these Employees post-petition.

5 36. It is my belief that many of our employees live from paycheck to paycheck and
6 rely exclusively on receiving their full compensation or reimbursement of their expenses to pay
7 their daily living expenses. Our employees and their families would suffer undue hardship if we
8 are not permitted to pay and/or honor the wages and benefits owed to these employees.

9 37. The Company will not make any payments to the insiders, including myself,
10 Bradley Lipman, and Dean Asher, until such time as the insider compensation for us has been
11 approved. Bradley Lipman and Dean Asher are no longer employed by the Company and the
12 wages due to them in Exhibit 1 attached to the Employee Wages Motion represent their final
13 paychecks.

14 **b. *Emergency Motion for Order (1) Prohibiting Utilities from Altering,***
15 ***Refusing or Discontinuing Service; (2) Deeming Utilities Adequately***
16 ***Assured of Future Performance; and (3) Establishing Procedures for***
17 ***Determining Adequate Assurance of Payment (the “Utilities Motion”)***

18 38. In connection with its operations the Company obtains electricity, internet,
19 telephone, water, trash, and gas services from various utility companies (the “Utility
20 Company(ies)”) for services provided at the Head Office and the fourteen (14) retail stores
21 operated by the Company. A table that (i) lists each Utility Company, its addresses and the
22 Company’s account number(s) with such Utility Company; (ii) specifies the type of utility service
23 provided by each Utility Company; (iii) the average monthly payment made to each Utility
24 Company by the Company, calculated as a historical average during the three (3) months prior to
25 the Petition Date (where applicable); and (iv) the amount of existing deposits with each Utility
26 Company, if any, is attached as Exhibit 1 to the Utilities Motion. To the best of my knowledge, I
27 understand the list of Utility Companies set forth in Exhibit 1 to the Utilities Motion as accurate
28 and complete as of the Petition Date.

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1 39. Uninterrupted utility services to the Company’s retail locations are essential to the
2 orderly liquidation of the Company. Should any of the Utility Companies refuse or discontinue
3 services, especially electricity, internet and telephone, even for a brief period, the Company’s
4 ability to conduct store closing sales and liquidate its inventory will be severely disrupted. It is
5 therefore essential that utility services from the Utility Companies continue uninterrupted through
6 completion of the Company’s liquidation. The Company expects that it will be able to pay its
7 post-petition obligations to the Utility Companies for the duration of its liquidation.

8 **c. *Emergency Motion for Order Limiting Scope of Notice (the “Limit Notice
Motion”)***

9 40. As of the Petition Date, there are hundreds of vendors, taxing authorities,
10 employees and other parties to be served in this chapter 11 bankruptcy case, which includes the
11 expansive list of creditors from *Bachrach* who are entitled to distributions under the *Bachrach*
12 Plan. Given this large number, it would be impractical and would impose a large administrative
13 and economic burden upon the Company’s estate if the Company were required to mail notice of
14 every matter in this chapter 11 case to all parties listed on the creditor matrix.

15 41. I believe that the limited notice procedures detailed in the Limit Notice Motion are
16 necessary and appropriate given that the creditor body is large and many of the creditors would
17 not be interested in receiving copies of all matters, but would find service of all these motions and
18 other documents wasteful. Requiring notice to, and service upon, so many parties, therefore,
19 would substantially augment the cost and administrative burden on the Company, without
20 conferring any meaningful benefit to the Company’s bankruptcy estate, and thus would diminish
21 the assets ultimately available to fund the liquidation of the Company and distribute to creditors
22 of the estate.

23 **d. *Emergency Motion For Interim And Final Orders Approving Cash
Collateral Agreement With Israel Discount Bank of New York (the “Cash
Collateral Motion”)*** (“Cash Collateral Motion”)

24 42. Siena has agreed to provide post-petition financing to the Company on a secured
25 basis in the amount, such that the aggregate of the pre-petition debt and the post- petition debt
26 owed to Siena does not exceed \$7,000,000 (the “DIP Facility”), the terms of which are outlined
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1 in the *Stipulation Regarding Continuance of Financing of Debtor and Debtor in Possession,*
2 *Priority of Advances Made, Modification of the Automatic Stay and Adequate Protection* (the
3 “Stipulation”) attached to the Cash Collateral Motion; the Loan and Security Agreement dated as
4 of October 30, 2017 attached to the Stipulation as Exhibit 1 (the “Loan Agreement”); the
5 Modification to Loan and Security Agreement attached to the Stipulation as Exhibit 2 (the
6 “Modifications”)’ and the DIP Budget attached to the Stipulation as Exhibit 3 (the “Budget” and
7 collectively with the Stipulation, Loan Agreement, and Modifications, the “DIP Loan
8 Documents”).

9 43. The Company has an urgent and immediate need for access to cash collateral and
10 borrowing under the DIP Facility during the conducting of the Store Closing Sales and the
11 liquidation of the Company. As reflected in the Budget, the Debtor’s revenue from sales over the
12 liquidation period will, after permissible operating expenses, first be applied to Siena’s pre-
13 petition loan, and then once that is paid off, to the post-petition advances to be made by Siena.

14 44. As also discussed above, prior to the Petition Date and prior to the entry into the
15 commitment for the DIP Facility, I attempted to obtain additional unsecured financing that would
16 allow the Company to fund its ongoing operations or purchase the Siena loan, but I was
17 unsuccessful in doing so.

18 45. I believe that the it is fair, reasonable and necessary for the Court to approve the
19 DIP Facility and enter the proposed interim order accompanying the Cash Collateral Motion.

20 46. The Debtor has no ability to liquidate its assets unless the Debtor has the ability to
21 use Siena’s cash collateral.

22 ***e. Emergency Motion for Interim and Final Order: (1) Authorizing the***
23 ***Conducting of Inventory Liquidation, Store Closing or Similar Themed***
24 ***Sales; (2) Approving the Assumption of the Consulting Agreement with***
Liquidation Consultant Great American Group, LLC/ Tiger Capital Group,
LLC; and (3) Related Relief (the “Store Closing Sale Motion”)

25 47. The Company’s liquidation is wholly contingent on the timely conducting of Store
26 Closing Sales to promptly liquidate inventory at the Closing Stores, the sale of any remaining
27 inventory, if any at the Distribution Center and Head Office, and the sale of furniture, fixtures and
28 equipment (“FF&E”) at the Closing Stores, Distribution Center and Head Office.

1 48. Once determined that liquidation in a chapter 11 proceeding was the only viable
2 alternative, the Debtor, working with CTG obtained bids from various liquidators, including Tiger
3 Capital Group LLC (“Tiger”), Great American Group LLC (“Great American”), Hilco Merchant
4 Resources, LLC (“Hilco”), Gordon Brothers, Yellen Partners, and SB Capital Group, LLC
5 (“SB”). After negotiations regarding the terms of the Store Closing Sales, the Debtor entered
6 into that certain Consulting Agreement with joint liquidation consultants, Great American and
7 Tiger (as defined above, collectively, the “Liquidation Consultant”) dated as of February 15, 2018
8 (the “Consulting Agreement”). A true and correct copy of the Consulting Agreement is attached
9 to the Store Closing Sale Motion as Exhibit 2.

10 49. Pursuant to the Consulting Agreement, the Liquidation Consultant will conduct
11 the Store Closing Sales over a 16-week period, commencing February 16, 2018 and ending on or
12 about June 8, 2018. The assets to be sold through the Store Closing Sales include the inventory
13 located at the Closing Stores, Head Office and Distribution Center (the “Merchandise”), as well
14 as the associated furniture, fixtures and equipment (the “FF&E” and, together with the
15 Merchandise, the “Store Closure Assets”). Sale of Store Closure Assets at the Head Office and
16 Distribution Center will be in bulk, and the Company does not expect to conduct any retail “store
17 closing” themed sales at those locations.

18 50. In an effort to provide uniformity through the liquidation process while still
19 adequately protecting the broad and varied interests of both landlords and applicable
20 governmental agencies charged with enforcing any liquidation laws that may otherwise have
21 applied to the Store Closing Sales outside of a chapter 11 bankruptcy, the Company and the
22 Liquidation Consultant have drafted, and concurrently seek approval of the sale guidelines
23 attached to the Store Closing Sale Motion as Exhibit 1 (the “Sale Guidelines”). Upon Court
24 approval, these Sale Guidelines are to be followed in conducting the Store Closing Sales,
25 provided, however that the Debtor may enter into so-called “side letters” with any Closing Store
26 landlords (each, a “Side Letter”) setting forth terms that vary from the Sale Guidelines and govern
27 the sales at that particular Closing Store. The Sale Guidelines and/or Side Letters will provide
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1 certain limitations on the Store Closing Sales to protect the landlords and the shopping public
2 from unnecessary disruption through the process.

3 51. I understand from my experiences and through consultation with the Liquidation
4 Consultant and CTG that the Sale Guidelines are consistent with the industry practice and
5 include, *inter alia*, provisions, which assure that: (a) the Store Closing Sales at the Closing Stores
6 may be conducted only during normal business hours; (b) leaflet or handbills may not be
7 distributed on the respective mall properties; (c) storefronts are not to be altered, except by the
8 hanging of exterior banners; and (d) the interior and exteriors of the stores are to be kept clear and
9 orderly consistent with present practices.

10 52. Any delay in approval of the Store Closing Sales will cause the Company to incur
11 up to additional \$271,903 for each extra month's rent and an additional \$8,335 to \$67,400 per
12 week in payroll and other operating expenses at the Closing Stores. Therefore, if the Store
13 Closing Sales are not permitted to go forward on an interim basis, and the Company is forced to
14 delay the Store Closing Sales for even one week, the Company will incur substantial
15 administrative expenses.

16 53. Siena has a first priority security interest securing a claim of approximately \$6.47
17 million in substantially all of the assets of the Debtor. Emerald has a security interest for its loan
18 of \$500,000 on all goods in international transit-of which there are none. The only other known
19 secured claims are claims filed by taxing agencies from Texas, Virginia and Maryland which
20 aggregate approximately \$29,373 relating to proofs of claim filed in *Bachrach*.

21 54. The Company intends to fully comply with applicable state and local public health
22 and safety laws, and applicable tax, labor, employment, environmental, and consumer protection
23 laws, including consumer laws regulating deceptive practices and false advertising in conducting
24 the Store Closing Sales

25 55. It is my belief that the employee incentives proposed in the Store Closing Sale
26 Motion (as defined therein, the "Retention Incentives") will motivate key employees during the
27 Store Closing Sales and will enable the Company to retain those employees necessary to
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1 successfully complete the Store Closing Sales. The results of the Store Closing Sales are wholly
2 dependent on such store-level employees who will soon face termination.

3 56. In the ordinary course of business, the Company sells gift cards or gift
4 certificates (collectively, the “Gift Cards”) to customers in amounts ranging from approximately
5 \$25 to \$500. On the Petition Date, the Company ceased all sale of Gift Cards. However, many
6 customers who previously purchased Gift Cards had not yet redeemed them as of the Petition
7 Date. Under the Consulting Agreement, the Liquidation Consultant has agreed to accept Gift
8 Cards as a form of payment. I believe that customers that purchased the Gift Cards have every
9 expectation that they would be redeemable.

10 57. Prior to the Petition Date, the Company accepted returns of merchandise according
11 to the following policy: (i) within 15 days a full refund is issued within 15 days of purchase with
12 proof of purchase; or (ii) store credit or exchanges are honored if returns are made without proof
13 of purchase or if made within 15-30 days of purchase (the “Return and Exchange Program”). I
14 believe that the customers that purchased items prior to the Petition Date did so with the
15 expectation that the Return and Exchange Program will be honored.

16 58. The Company, with the assistance of CTG, negotiated the Consulting Agreement
17 with the Liquidation Consultant in good faith and conferred with other prospective liquidation
18 consultants from nationally-recognized liquidation firms prior to entering into the Consulting
19 Agreement. I believe that allowing the Store Closing Sales to proceed with the assistance and
20 guidance of an experienced liquidation consultant with industry-specific experience conducting
21 “inventory liquidation” “store closing” or similarly themed sales will amplify the positive impact
22 of the Store Closing Sales for the benefit of all stakeholders.

23 **f. *Emergency Motion For Order: (1) Authorizing the Debtor to Pay Pre-***
24 ***Petition Sales, Use and Similar Taxes in the Ordinary Course of Business;***
25 ***and (2) Directing Banks and Financial Institutions to Honor and Process***
26 ***Checks and Transfers Related Thereto (the “Tax Motion”)***

27 59. The Company incurs and collects certain taxes, including sales, use, franchise,
28 commercial activity, business and occupation, and various other taxes, fees, charges, and
assessments (the “Taxes and Fees”), and periodically remits such Taxes and Fees to various

1 federal, state, and local taxing and other governmental authorities and/or certain municipal or
2 governmental subdivisions or agencies of those states (the “Taxing Authorities”). The Taxing
3 Authorities are set forth on Exhibit 1 attached to the Tax Motion. The Taxes and Fees are paid
4 monthly, quarterly, semi-annually, or annually to the respective Taxing Authorities, depending on
5 the given Tax or Fee and the relevant Taxing Authority to which it is paid. As of the Petition
6 Date, the Company estimates that it owes approximately \$132,390.47 in unremitted Taxes and
7 Fees incurred pre-petition, including approximately \$23,590.00 in sales tax accrued in from
8 February 1, 2018 to the Petition Date and \$108,800.47 in sales tax accrued prior to that period.
9 Any payments made will be subject to the Budget attached to the Cash Collateral Motion.

10 60. The Company through its budget and borrowing from Siena, projects to have
11 sufficient funds to pay any amounts related to the Taxes and Fees in the ordinary course of
12 business. It is my belief that there is minimal risk that checks or wire transfer requests that the
13 Court has not authorized by approval of the Tax Motion will be inadvertently made.

14 **g. *Emergency Motion for Order: (1) Authorizing the Maintenance and***
15 ***Continued Use of Cash Management System; (2) Prohibiting Banks from***
16 ***Offsetting or Freezing Debtor’s Existing Bank Accounts; and (3)***
17 ***Authorizing Continuation of Electronic Payment Processing and the***
18 ***Honoring of Related Pre-Petition Obligations in the Ordinary Course of***
19 ***Business (the “Cash Management Motion”)***

20 61. In the ordinary course of its business, the Company maintains a cash management
21 system (the “Cash Management System”), which includes all activities necessary and pertinent to
22 collecting and disbursing the Company’s cash assets. Under the Cash Management System, the
23 Company utilizes 8 separate bank accounts (the “Store Accounts”), each managing the cash and
24 check deposits of one or more retail stores.² Funds contained in the Store Accounts are regularly
25 deposited into a blocked master collateral account (the “Collateral Account”) controlled by Siena,
26 which is linked to a revolving debt facility utilized by the Company to provide operating capital.
27 All credit card and other electronic transactions are deposited directly into the Collateral Account,
28 as opposed to the individual Store Accounts. Siena then deposits funds available to the Company

² One Store Account at Bank of America, N.A., account no. xx8874 also serves as the Operating Account, as defined and discussed below.

1 under the revolving loan facility agreement based on a weekly borrowing base calculation into an
2 operating account (the “Operating Account”, collectively with the Store Accounts and the
3 Collateral Account, the “Bank Accounts”), which the Company draws on for operations.
4 Attached as Exhibit 1 to the Cash Management Motion is a true and correct list of the Bank
5 Accounts held at the various banks (the “Banks” and each, a “Bank”) that make up the Cash
6 Management System.

7 62. The Company’s Cash Management System generally operates similarly to the
8 centralized cash management systems used by other similar companies of comparable size to
9 manage the cash of numerous operating units in a cost-effective, efficient manner.

10 63. Essential to the orderly flow of cash under the Cash Management System is the
11 processing of electronic forms of payment (“Electronic Payment Processing”). Electronic forms
12 of payment constitute approximately 90% of all transactions at the Company’s retail stores and
13 100% of transactions through the Company’s e-commerce website, *bachrach.com*.

14 64. The Company’s ability to accept electronic forms of payment relies on pre-petition
15 agreements with the following electronic payment processors: (i) Worldpay US, Inc. (“Worldpay”)
16 which processes the “point of sale” credit card transactions at the Company’s retail locations; (ii)
17 USAePay (“USAePay”) which processes e-commerce credit card transactions; and (iii) PayPal
18 (“Paypal”, collectively with Worldpay and USAePay, the “Payment Processors”) which processes
19 online PayPal transactions.

20 65. Generally, the Payment Processers facilitate an electronic purchase by first
21 verifying and obtaining authorization for the purchase from the issuing bank of the card holder;
22 then the issuing bank begins the payment settlement process by forwarding the applicable funds
23 to the Payment Processor; the Payment Processor then completes the settlement process by
24 depositing funds to the Company’s Collateral Account, less any applicable fees. At any given
25 point in time, multiple such transactions may in process. Thus, even a relatively minor disruption
26 to the Electronic Payment Processing caused by a bankruptcy filing could have a negative effect
27 in the Company’s processing of customer purchases.

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1 66. Under the Company’s agreements with the Payment Processors, the Company is
2 required to pay the Payment Processors fees for their services, certain amounts of which may
3 have accrued but remain unpaid as of the Petition Date (the “Payment Processing Fees”). If the
4 Company is unable to continue Electronic Payment Processing of customer transactions,
5 including payment of certain pre-petition obligations, I believe that the Payment Processors may
6 refuse service.

7 67. The Company incurs approximately \$19,872.32 aggregate monthly fees to the
8 Payment Processors relating to customer purchases, some of which will be attributable to a pre-
9 petition period. During the twelve-month period ending in January 2018, the Company paid on
10 account of Electronic Payment Processing and related fees approximately \$236,170.40, but
11 collected approximately \$13,515,258.34 in sales relating to those fees.

12 68. In the ordinary course of the Company’s business, retail sales occur on a daily
13 basis and online sales can occur at any time of day, with credit cards and other electronic forms of
14 payment potentially taking up to three business days to post. It is my belief that any disruption in
15 the fluidity of this system will cause immediate and irreparable harm to Company, as pending
16 payments could be cancelled by the Payment Processors or delayed until new bank accounts can
17 opened—which could take days, if not weeks to complete. I do not believe that the granting the
18 Cash Management Motion will prejudice any party-in-interest or the Company’s estate.

19 69. In the ordinary course of the operation and maintenance of the Cash Management
20 System, the Company has and will continue to incur fees and other charges (collectively, all such
21 fees and charges, the “Cash Management Claims”) in connection with (a) Bank services; (b)
22 checks deposited with the Banks which have been dishonored or returned for insufficient funds in
23 the applicable amount; and (c) any reimbursement or other payment obligations, such as
24 overdrafts, arising under agreements with the Banks relating to the accounts, including, without
25 limitation, any pre-petition cash management agreements or treasury services agreements.

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1 **h. *Emergency Omnibus Motion For Order Authorizing Debtor: (1) To Reject***
2 ***Certain Unexpired Leases of Nonresidential Real Property Retroactively To***
3 ***the Petition Date; and (2) To Reject Certain Unexpired Leases of***
4 ***Nonresidential Real Property Upon the Closing of Each Store Pursuant to***
5 ***Rejection Notice Procedures (“Lease Rejection Motion”)***

6 70. As discussed above, prior to the Petition Date, the Company wound down and
7 vacated 2 retail stores (the “Vacated Stores” and each a “Vacated Store”), as specified in the
8 Lease Rejection Motion. It is my belief that there are no leases for the Vacated Stores for the
9 Company to reject based on these pre-petition terminations. The only remaining remedy the
10 landlords of the Vacated Stores may assert is the timely filing of a pre-petition claim for damages,
11 to the extent that such a claim can validly be asserted. Nevertheless, the Company seeks *nunc pro*
12 *tunc* rejection of the leases relating to the Vacated Stores in an abundance of caution and in the
13 interest of clarity.

14 71. The Company’s liquidation relies upon the immediate commencing of the Store
15 Closing Sales to liquidate inventory and promptly close the remaining retail stores that the
16 Company currently leases, exclusive of the Chicago Store³ (as defined above, collectively the
17 “Closing Stores”), the sale of any remaining inventory at the Distribution Center and Head Office
18 (which likely will occur by bulk sale to other clothing re-sellers), if any, and the sale of furniture,
19 fixtures and equipment (“FF&E”) at the Closing Stores, Distribution Center and Head Office.. A
20 true and correct list of the Closing Stores from which inventory liquidation sales will be
21 conducted, the Distribution Center and Head Office from which any remaining inventory and
22 FF&E will be sold, are identified in the Lease Rejection Motion.

23 72. Given that the amount of inventory at each Closing Store varies, some Store
24 Closing Sales will be completed earlier than others. In addition, during the Store Closing Sale
25 process, some inventory may be moved to other Closing Stores to be liquidated. For each
26 Closing Store, the facility will be promptly closed after inventory is moved, FF&E is sold or
27 removed, and the property is vacated. The Distribution Center will be closed when all remaining
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³ The Debtor is working with the landlord of the Chicago Store independently and outside of this case, to permit a Store Closing Sale at that location and a closing of the Chicago Store on terms similar to the relief sought herein.

1 inventory is either shipped to the Closing Stores or sold in bulk, and the FF&E is sold. The Head
2 Office will be closed when all remaining inventory is either shipped to the Closing Stores or sold
3 in bulk, the FF&E is sold, and the Company determines that all administrative functions which
4 run out of the Head Office are no longer necessary. Accordingly, at this time, the Company is
5 unable to accurately calculate the exact closing date of each location leased by the Company.

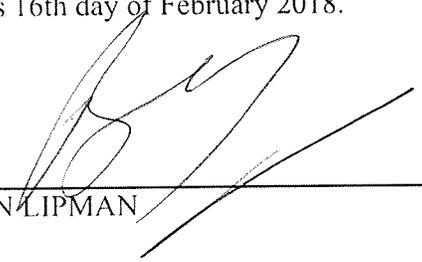
6 73. I believe that keeping any of the Closing Stores, the Distribution Center or the
7 Head Office open longer than necessary to liquidate and/ or move the inventory and sell the
8 FF&E, will result in the bankruptcy estate incurring unnecessary administrative fees.

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10 *(Signature Page Follows)*
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I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed at Los Angeles, California on this 16th day of February 2018.



BRIAN LIPMAN

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DECLARATION OF BRIAN LIPMAN IN
SUPPORT OF FIRST DAY MOTIONS