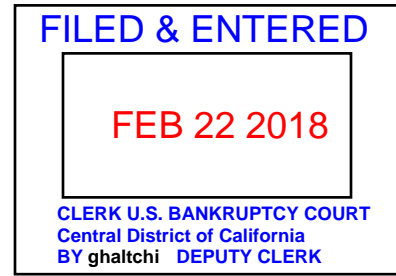


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Proposed General Bankruptcy Counsel for
Debtor and Debtor in Possession

CHANGES MADE BY COURT

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re:
B&B Liquidating, LLC,

Debtor and Debtor in Possession.

Case No. 2:18-bk-11744-NB
Chapter 11

**INTERIM ORDER AUTHORIZING USE OF
CASH COLLATERAL AND CONTINUANCE
OF FINANCING OF DEBTOR AND DEBTOR
IN POSSESSION, GRANTING SECURITY
INTERESTS, ACCORDING PRIORITY
STATUS PURSUANT TO BANKRUPTCY
CODE SECTION 364(c) AND AFFORDING
ADEQUATE PROTECTION, AND GIVING
NOTICE OF RULE 4001(c)(2) FINAL
HEARING**

Hearing on Interim Relief

Date: February 22, 2018
Time: 2:00 p.m.
Place: Courtroom 1545
255 E. Temple Street
Los Angeles, CA 90012

Final Hearing

Date: March 20, 2018
Time: 2:00 p.m.
Place: Courtroom 1545
255 E. Temple Street
Los Angeles, CA 90012

On the above captioned date and time, the Court considered the *Emergency Motion*
for Interim and Final Orders Approving Stipulation with Siena Lending Group, LLC: (1)
Authorizing Post-Petition Financing; (2) Authorizing the Debtor's Use of Cash Collateral; and (2)

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1 *Related Relief* [Docket No. 21] (the “Motion”), filed by Debtor and Debtor-in-Possession B&B
2 Liquidating, LLC, f/k/a B&B Bachrach, LLC, (the “Debtor”) pursuant to sections 105(a), 361,
3 362, 363, 364, 506, 1107(a) and 1108 of title 11 of the United States Code, 11 U.S.C. §§ 101 et
4 seq. (the “Bankruptcy Code”) and Rule 4001 of the Federal Rules of Bankruptcy Procedure (the
5 “Bankruptcy Rules” and each a “Bankruptcy Rule”), pursuant to which, the Debtor seeks
6 approval of the *Stipulation Regarding Continuance of Financing of Debtor and Debtor in*
7 *Possession, Priority of Advances Made, Modification of the Automatic Stay and Adequate*
8 *Protection* (the “Stipulation”) accompanying the Motion entered into between the Debtor and
9 Siena Lending Group LLC (“Siena”), and attaches the following documents: (i) the Loan and
10 Security Agreement dated as of October 30, 2017 attached to the Stipulation as Exhibit 1 (the
11 “Loan Agreement”), (ii) the Modification to Loan and Security Agreement attached to the
12 Stipulation as Exhibit 2 (the “Modification”); (iii) and the DIP 8-week Budget attached to the
13 Stipulation as Exhibit 3 (the “Budget” and collectively with the Stipulation, Loan Agreement, and
14 Modification, the “DIP Loan Documents”). Unless otherwise defined herein, capitalized terms
15 have the meaning ascribed to them in the Motion.

16 Based upon the Court’s review of the Motion, the accompanying Memorandum of
17 Points and Authorities, the Loan Documents, the *Declaration of Brian Allen of Clear Thinking*
18 *Group LLC, Financial Advisor to the Debtor In Support of First Day Motions*, the *Declaration of*
19 *Brian Lipman in Support of First Day Motions*, the evidentiary record, and argument of counsel;
20 it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and
21 1334; the Court having determined that the relief requested in the Motion is in the best interests of
22 the Debtor, its estate, its creditors, and other parties-in-interest and that the post-petition financing
23 use of cash collateral detailed in the DIP Loan Documents is necessary to avoid immediate and
24 irreparable harm to the estate pending the Final Hearing (as defined below); it appearing that due
25 and adequate notice of the Motion having been given under the circumstances; and after due
26 deliberation and good cause appearing therefor, based upon findings of fact and conclusions of
27 law stated in the Court’s *Memorialization of Tentative Rulings* (Docket ~~No.~~ No. 35) (the
28 “Tentative Ruling”) as modified or supplemented orally on the recorded in open court pursuant to

1 Rule 52(a) of the Federal Rules of Civil Procedure, as incorporated into Bankruptcy Rule 7052
2 and applied to contested matters by Bankruptcy Rule 9014(c),

3 **IT IS HEREBY ORDERED THAT:**

4 1. The Motion is granted on an interim basis subject to the clarifications and
5 conditions set forth in the Tentative Rulings, as modified or supplemented on the record at the
6 hearing (collectively, the “Modified Ruling”). Without limiting the generality of the immediately
7 preceding sentence, this order is deemed amended to the same extent provided in the tentative
8 ruling for the cash collateral motion in the *Bachrach* case (no. 2:17-bk-15292-NB, dkt. 46, Ex. A,
9 pp. 4-9), which is incorporated herein by this reference, except that the following modifications
10 and supplemental conditions apply:

11 (a) there is no requirement that the carveout for any creditors’ committee professionals be
12 “equal” to the carveout for the Debtor’s professionals;

13 (b) any proposed postpetition lien on leaseholds is revised to be a postpetition lien on the
14 proceeds of any disposition of the leasehold interests;

15 (c) the “stub” postpetition rent for February and the March rent shall be paid directly by
16 Siena to the landlords, all concurrent with the due date for March rent;

17 (d) the modification of rights under 11 U.S.C. §§ 506(c) and 552(b) is subject to a period
18 of seven calendar days for written notice to Siena (rather than the three business days
19 provided in the *Bachrach* case);

20 (e) paragraph 23 of the stipulation attached to the Debtor’s DIP financing/cash collateral
21 motion regarding rights under 11 U.S.C. §§ 506(c) and 552(b) (dkt. 21 at p. 14:1-6) is
22 deemed amended to add the following after the words “Section 506(c) of the Bankruptcy
23 Code”: “, except to the extent that postpetition occupancy charges prior to the Termination
24 Date have not been paid.”; and

25 (f) the Debtor shall file and serve on the Limited Notice List an amended Budget, no later
26 than February 28, 2018, which shall reflect payments of stub rent and carveout payments
27 to the Debtor’s proposed financial advisor and proposed bankruptcy counsel as stated at
28 the hearing.

1 2. On **March 20, 2018, at 2:00 p.m.** in the above referenced courtroom, a hearing
2 (the “Final Hearing”) will be held before this Court to consider the relief requested in the Motion,
3 on a final basis. All objections, if any, to the Motion shall be in writing and filed with this Court
4 and served on (a) the counsel for the Debtor; (b) counsel for Siena; (c) the Office of the United
5 States Trustee; (d) the largest twenty unsecured creditors appearing on the list filed in accordance
6 with Bankruptcy Rule 1007(d) by the Debtor unless and until an official committee of unsecured
7 creditors (the “Committee”) is appointed, then in that event, to counsel for the Committee; (e)
8 Emerald Capital Funding, LLC (“Emerald”); and (f) any other known secured creditors so as to
9 be received on or before **March 6, 2018**. The Debtor shall file any reply(s) to any such objection
10 on or before **March 13, 2018**.

11 3. Subject to the foregoing conditions, the Stipulation is approved, on an interim
12 basis, effective *nunc pro tunc* to the Petition Date. Except as otherwise provided therein or in the
13 Modified Ruling, the Stipulation shall be valid and binding upon the Debtor, all successors-in-
14 interest to the Debtor, all creditors of the Debtor, the Committee, if any, any other committee
15 appointed herein, any trustee appointed in this or any superseding chapter 7 bankruptcy case, and
16 all other parties-in-interest from and after the Petition Date.

17 4. Subject to terms and conditions of the Stipulation, the DIP Loan Documents, and
18 the Modified Ruling, Siena is authorized to provide post-financing to the Debtor and the Debtor is
19 authorized to obtain post-petition financing in accordance with Budget, subject to Approved
20 Variances as defined in the DIP Loan Documents.

21 5. The Debtor is authorized to use the cash collateral of Siena pursuant to 11
22 U.S.C. § 363 as provided for in the DIP Loan Documents.

23 6. The security interests and liens granted in this Interim Order, the Stipulation and
24 the DIP Loan Documents in favor of Siena shall be first and prior security interests in and liens
25 on all Pre-Petition Collateral and all Post-Petition Collateral, except for Avoidance Actions or the
26 Carve-Out. No claims, expenses, indebtedness, liabilities or obligations, present or future,
27 including without limitation any claims of any agent that Debtor may employ or retain for
28 liquidation sales of Debtor’s inventory, shall have or be granted a priority status equal to or

1 greater than the priority of Siena or be secured by a security interest or lien with a priority status
2 equal to or greater than that granted to Siena, except for the Carve Out and except to the extent
3 expressly agreed in writing signed by Siena.

4 7. The Post-Petition Debt, to the extent expended by the Debtor on items that would
5 require expenditures by Debtor in the absence of any efforts to liquidate the Pre-Petition
6 Collateral, shall be an administrative expense in accordance with the provisions of 11
7 U.S.C. § 364(c)(1), with priority over all other administrative expenses of the kind specified in
8 11 U.S.C. §§ 503(b) and 507(b), provided that, Siena subordinates any claim for an expense of
9 administration to the Carve Out, as provided in the Stipulation.

10 8. To provide adequate protection to Siena with respect to the Pre-Petition Collateral,
11 Siena shall have a replacement lien in and to all of the Post-Petition Collateral to secure the Pre-
12 Petition Debt, to the extent of diminution of value (from use or decline in value, whether such
13 decline is from reduction in market value, depreciation, waste, or otherwise) of the Pre-Petition
14 Collateral.

15 9. Siena shall be entitled to file financing statements covering Post-Petition
16 Collateral, and any other similar documents deemed reasonably necessary by Siena, and the
17 automatic stay pursuant to 11 U.S.C. § 362 is hereby modified for the purpose of allowing Siena
18 to file such financing statements and other documents with any appropriate offices or agencies,
19 but as additional protection to Siena, the entry of this Interim Order shall be deemed perfection by
20 Siena of its security interests in Post-Petition Collateral, without the necessity of filing any
21 financing statements or any further action on the part of Siena. Siena may, but shall not be
22 required to, file a certified copy of this Interim Order in any filing or recording office in any
23 jurisdiction in which Debtor has or maintains any Collateral or an office.

24 10. If any or all of the provisions of the Stipulation or this Interim Order are modified,
25 vacated or stayed by order of the Court or any other court, such modification, vacation or stay
26 shall not affect the validity of any of the Post-Petition Debt incurred prior to the effective date of
27 such modification, vacation or stay, or the validity, enforceability or priority of the liens and
28 security interests securing the Post-Petition Debt or any replacement liens securing the Pre-

1 Petition Debt, and notwithstanding such modification, vacation, or stay, all Post-Petition Debt
2 incurred prior to the effective date of such modification, vacation or stay shall be governed in all
3 respects by the original provisions of the Stipulation and this Interim Order, and Siena shall be
4 entitled to all of the rights, privileges and benefits hereof, including without limitation the first
5 priority security interests granted herein with respect thereto.

6 11. The liens, security interests, rights and remedies provided to Siena under the terms
7 of the Stipulation, this Interim Order, and any Final Order of this Court which may be entered
8 with respect hereto shall survive entry of any order which may be entered converting this case
9 from chapter 11 to chapter 7 or any order confirming a plan of reorganization of Debtor, and the
10 priorities, liens, and security interests in favor of Siena shall continue, and such liens and security
11 interests shall maintain their priority as provided for hereunder, until all Pre-Petition and all Post-
12 Petition Debt, respectively, has been satisfied, discharged and performed in full.

13 12. The security interests, liens and administrative claims allowed by the Stipulation
14 and granted in this Interim Order shall be subject and subordinate to: (i) professional fees and
15 expenses in a sum not to exceed \$275,000 exclusively for Debtor's counsel; (ii) professional fees
16 and expenses in a sum not to exceed \$160,000 exclusively for Clear Thinking Group, Debtor's
17 financial advisers ("CTG"); (and (iii) any quarterly or other fees payable to the United States
18 Trustee pursuant to *inter alia* 28 U.S.C. 1930(a) ("Carve-Out"). In the event a Committee is
19 appointed Siena will agree to such further Carve-Out as is agreed to with the Committee, or by
20 order of the Bankruptcy Court, for payment of Committee professionals. The Carve-Out shall be
21 funded as set forth in the DIP Budget. Upon five days written notice of an event of default,
22 Siena's obligation to fund the Carve-Out shall immediately cease, except for an additional
23 payment of \$25,000 to the Debtor's counsel and \$10,000 to CTG, both of which shall be part of
24 the Carve Out.

25 13. Siena is a good faith lender pursuant to Bankruptcy Code Section 364(e), and
26 accordingly is entitled to all the protections of that section.

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28

1 14. The Debtor and Siena are authorized to execute all further documents and perform
2 such further acts as may reasonably be required to effectuate the purpose and intent of this
3 Interim Order and the Stipulation.

4 15. Notwithstanding anything in this Interim Order to the contrary, the liens currently
5 held by the local Texas tax authorities (Dallas County, Frisco and Harris County, hereinafter the
6 "Tax Authorities") shall neither be primed by nor subordinated to any liens granted herein or in
7 the Stipulation. Furthermore, from the proceeds of the sale of any of the debtors' assets located in
8 the state of Texas (the "Texas Proceeds"), the amount of \$78,000 shall be set aside by Siena in a
9 segregated account as adequate protection for the secured claims of the Tax Authorities prior to
10 the distribution of any Texas Proceeds to any other creditor. The liens of the Tax Authorities shall
11 attach to these proceeds to the same extent and with the same priority as the liens they now hold
12 against the property of the debtors. These funds shall be on the order of adequate protection and
13 shall constitute neither the allowance of the claims of the Tax Authorities, nor a cap on the
14 amounts they may be entitled to receive. Furthermore, the claims and liens of the Tax Authorities
15 shall remain subject to any objections any party would otherwise be entitled to raise as to the
16 priority, validity or extent of such liens. These funds may be distributed upon agreement between
17 the Tax Authorities, the Debtor and Siena, or by subsequent order of the Court, duly noticed to
18 the Tax Authorities and Siena.

19 16. No later than 5 business days after entry of this Interim Order, the Debtor shall
20 serve a copy of this Interim Order by first class U.S. Mail, postage prepaid on the following
21 parties or their counsel: (a) the Office of the United States Trustee; (b) the largest twenty
22 unsecured creditors appearing on the list filed in accordance with Bankruptcy Rule 1007(d) by the
23 Debtor unless and until a Committee is appointed, then in that event, to counsel for such
24 committee; (c) Siena; (d) Emerald; (e) all other known secured creditors; (f) any party that files
25 with the Court and serves upon the Debtor requests for notice of all matters in accordance with
26 Bankruptcy Rule 2002.

27 17. The Bankruptcy Court shall retain jurisdiction to hear and determine all matters
28 arising from the implementation and interpretation of this Interim Order.

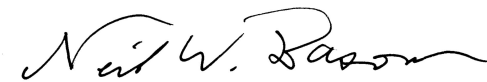
1 18. Notwithstanding any provision in the Bankruptcy Rules to the contrary, including
2 Bankruptcy Rule 6004(h): (i) this Interim Order shall be effective immediately and enforceable
3 upon its entry, *nunc pro tunc* to the Petition Date; (ii) the Debtor is not subject to any stay in the
4 implementation, enforcement, or realization of the relief granted in this Interim Order; and (iii)
5 the Debtor is authorized and empowered, and may in its discretion and without further delay, take
6 any action necessary or appropriate to implement this Interim Order

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1900 Avenue of the Stars, 21st Floor
Los Angeles, California 90067-4590

Date: February 22, 2018



Neil W. Bason
United States Bankruptcy Judge