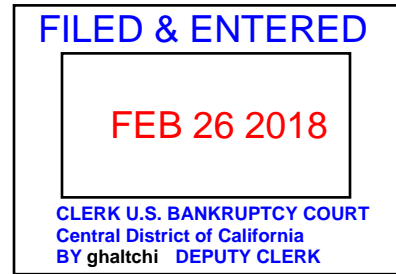


1 BRIAN L. DAVIDOFF (SBN 102654)
BDavidoff@GreenbergGlusker.com
2 KEITH PATRICK BANNER (SBN 259502)
KBanner@GreenbergGlusker.com
3 GREENBERG GLUSKER FIELDS CLAMAN
& MACHTINGER LLP
4 1900 Avenue of the Stars, 21st Floor
Los Angeles, California 90067-4590
5 Telephone: 310.553.3610
6 Fax: 310.553.0687



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

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

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

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

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

Chapter 11

INTERIM ORDER AUTHORIZING:

**(1) THE CONDUCT OF INVENTORY
LIQUIDATION, STORE CLOSING OR
SIMILAR THEMED SALES; AND**

**(2) THE ASSUMPTION OF CONSULTING
AGREEMENT**

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

1 On the above captioned date and time, the Court considered the *Emergency Motion for*
2 *Order: (1) Authorizing the Conducting of Inventory Liquidation, Store Closing or Similar*
3 *Themed Sales; (2) Approving the Assumption of Consulting Agreement with Liquidation*
4 *Consultant Great American Group, LLC/ Tiger Capital Group, LLC; and (3) Related Relief*
5 [Docket No. 17] (the “Motion”), filed by Debtor and Debtor in Possession B&B Liquidating,
6 LLC, f/k/a B&B Bachrach, LLC, (the “Debtor”) pursuant to sections 105, 363, 365, 554, 1107
7 and 1108 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”).
8 Unless otherwise defined herein, capitalized terms have the meaning ascribed to them in the
9 Motion.

10 Based upon the Court’s review of the Motion, the accompanying Memorandum of Points
11 and Authorities, the concurrently filed *Omnibus Declaration of Brian Lipman in Support of First*
12 *Day Motions* (the “Lipman Declaration”), the concurrently filed *Declaration of Brian Allen of*
13 *Clear Thinking Group LLC, Financial Advisor to the Debtor in Support of First Day Motions*, the
14 evidentiary record, and argument of counsel; it appearing that this Court has jurisdiction over this
15 matter pursuant to 28 U.S.C. §§ 157 and 1334; it appearing that due and adequate notice of the
16 Motion having been given under the circumstances; and after due deliberation and good cause
17 appearing therefor, based upon findings of fact and conclusions of law stated in the Court’s
18 *Memorialization of Tentative Rulings* (Docket No. 35) as modified or supplemented orally on the
19 record in open court pursuant to Rule 52(a) of the Federal Rules of Civil Procedure, as
20 incorporated into Rule 7052 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy
21 Rules” and each a “Bankruptcy Rule”) and applied to contested matters by Bankruptcy Rule
22 9014(c),

23 IT IS HEREBY FOUND AND DETERMINED THAT:

24 A. The conduct of the Store Closing Sales will provide an efficient means for the Debtor
25 to dispose of the Store Closure Assets.

26 B. The relief set forth herein is necessary to avoid immediate and irreparable harm to the
27 Debtor and the Debtor’s estate and the Debtor has demonstrated good, sufficient, and sound
28 business purposes and justifications for the relief approved herein.

1 C. The Debtor has represented that the Debtor is neither selling nor leasing personally
2 identifiable information pursuant to the Motion.

3 D. The entry of this Interim Order is in the best interest of the Debtor and the Debtor's
4 estate, creditors, and interest holders and all other parties in interest herein; and now therefore,

5 E. The Consulting Agreement was negotiated, proposed and entered into by the
6 Liquidation Consultant and the Debtor without collusion, in good faith, and from arm's length
7 bargaining positions.

8 IT IS ORDERED THAT:

9 1. The Motion, on an interim basis, is granted as set forth herein.

10 2. On **March 20, 2018, at 2:00 p.m.** in the above referenced courtroom, a hearing
11 (the "Final Hearing") will be held before this Court to consider the relief requested in the Motion,
12 on a final basis. All objections, if any, to the Motion shall be in writing and filed with this Court
13 and served on counsel for the Debtor, so as to be received on or before **March 6, 2018**, subject to
14 the provisions in paragraphs 30-31 hereof regarding service of this Interim Order. The Debtor
15 shall file any reply(s) to any such objection on or before **March 13, 2018**.

16 3. Pursuant to Local Bankruptcy Rule 9013-1(h), failure to file a timely opposition to
17 the Motion prior to the Final Hearing may be deemed as consent to the granting of the relief
18 requested in the Motion on a final basis.

19 4. The Debtor is authorized and empowered to take any and all further actions as may
20 be reasonably necessary or appropriate to give effect to this Interim Order.

21 5. To the extent of any conflict between this Interim Order and the Sale Guidelines,
22 the terms of this Interim Order shall control.

23 **A. Assumption of Consulting Agreement**

24 6. No later than February 23, 2018, the Debtor shall file a satisfactory statement of
25 Liquidation Consultant's disinterestedness on Local Form F 2014-1.STMT.DISINTEREST.PROF.

26 7. Contingent upon the Debtor's compliance with paragraph 6 hereof, the Debtor is
27 authorized to and hereby assumes the Consulting Agreement in its entirety in accordance with
28

1 section 365 of the Bankruptcy Code. The assumption of the Consulting Agreement is an exercise
2 of the Debtor's sound business judgment and is in the best interest of the Debtor's estate.

3 **B. Authority to Engage in Store Closing Sales**

4 8. The Sale Guidelines attached to the Motion as Exhibit 1 are approved in their
5 entirety on an interim basis, provided that, the Sale Guidelines are subject to any Side Letters
6 entered into between the Debtor and landlords, as provided in paragraph 23 hereof.

7 9. The Debtor is authorized pursuant to 105(a) and 363(b)(1) of the Bankruptcy Code
8 to continue and/or conduct Store Closing Sales at the Closing Stores in accordance with the Sale
9 Guidelines and/or Side Letters, as applicable, to sell any remaining inventory, if any, at the
10 Distribution Center and Head Office in accordance with the Motion, the Consulting Agreement,
11 and this Interim Order, and to act and perform in accordance with the terms of the Consulting
12 Agreement, including, making payments provided for in or required by the Consulting Agreement
13 to the Consultant without the need for any application of the Consultant or a further order of the
14 Court. The Debtor is authorized, at the conclusion of the Store Closing Sale at any particular
15 Closing Store, to discontinue operations at such Closing Store in accordance with this Interim
16 Order, the Sale Guidelines and/or any applicable Side Letter.

17 10. The Debtor is authorized to sell the Merchandise at the Closing Stores,
18 Distribution Center and Head Office, without necessity of further order of this Court, in the
19 manner provided in the Motion, Consulting Agreement, Sale Guidelines and/or Side Letters, as
20 applicable, free and clear of any and all liens, claims or encumbrances pursuant to section 363(f)
21 of the Bankruptcy Code; provided, however, that any such liens, claims or encumbrances shall
22 attach to the proceeds of the Store Closing Sales with the same validity, in the amount, with the
23 same priority as, and to the same extent that any such liens, claims, and encumbrances have with
24 respect to the Merchandise, subject to any claims and defenses that the Debtor may possess with
25 respect thereto and the Liquidation Consultant's fee and expenses (as provided in the Consulting
26 Agreement).

27 11. The Debtor is authorized to sell the FF&E at the Closing Stores, Distribution
28 Center and Head Office, without necessity of further order of this Court, in the manner provided

1 in the Motion, Consulting Agreement, Sale Guidelines and/or Side Letters, as applicable, and
2 pursuant to section 363(f) of the Bankruptcy Code, free and clear of any liens, claims or
3 encumbrances held by any party that has been served with the Motion, provided, however, that
4 any such liens, claims or encumbrances shall attach to the proceeds of the Store Closing Sales
5 with the same validity, in the amount, with the same priority as, and to the same extent that any
6 such liens, claims, and encumbrances have with respect to the FF&E, subject to any claims and
7 defenses that the Debtor may possess with respect thereto and the Liquidation Consultant's fee
8 and expenses (as provided in the Consulting Agreement).

9 12. The Court defers until the Final Hearing a ruling on the request in the Motion to
10 abandon FF&E located in the Closing Stores; provided that, prior to the Final Hearing the Debtor
11 may separately file an *ex parte* application for entry of an order approving the abandonment of
12 FF&E located at any particular Closing Store (an "FF&E Application"). Any FF&E Application
13 must: (i) be supported by a declaration demonstrating that Debtor has conducted the necessary
14 diligence to identify whether any third party has an interest in the applicable FF&E; (ii) identify
15 that either no such party is known to exist, or summarize the terms of any arrangement agreed to
16 with any such party regarding the abandonment of the applicable FF&E; (iii) if no agreement has
17 been reached with any third party that has an interest in the applicable FF&E, identify the basis
18 on which such FF&E may be abandoned free and clear of such third party's interest in the FF&E.

19 13. Pursuant to section 554(a) of the Bankruptcy Code, and subject to the limitations
20 of paragraph 12 hereof, the Debtor is authorized, but not required, to abandon any FF&E or other
21 property located at any of the Closing Stores, Distribution Center and/or Head Office which
22 Debtor has determined in its sole discretion, is of inconsequential value and benefit to the estate
23 and/or may be burdensome for the Debtor's bankruptcy estate to retain. Any abandonment under
24 this paragraph does not absolve the Debtor from any liability that the Debtor may incur to any
25 landlord or third party resulting from such abandonment; provided that nothing in this paragraph
26 shall be construed to create any liability to the Debtor for such abandoned property.

27 14. To the extent that the Debtor proposes to sell or abandon FF&E which may
28 contain personal and/or confidential information about the Debtor's employees and/or customers

1 (the “Confidential Information”), the Debtor shall remove the Confidential Information from such
2 items of FF&E before such sale or abandonment.

3 15. Subject to paragraph 16 hereof, provided that the Store Closing Sales and the sale
4 of Merchandise and FF&E are conducted in accordance with the terms of this Interim Order and
5 the Sale Guidelines, the Debtor is authorized to conduct the Store Closing Sales notwithstanding
6 applicable state and/ or local laws, statutes, rules and/or ordinances governing store closing,
7 liquidation or similar sales (collectively, the “Liquidation Laws”). .

8 16. **Any governmental agency seeking to enforce any Liquidation Law against**
9 **the Debtor should file objections, if any, to the Motion with the Court and serve the same on**
10 **counsel for the Debtor, so as to be received on or before March 6, 2018.** The Debtor shall file
11 any reply(s) to any such objection on or before March 13, 2018. A governmental agency’s failure
12 to file a timely opposition may be deemed consent to the conducting of the Store Closing Sales
13 notwithstanding any applicable Liquidation Laws.

14 17. Nothing in this Interim Order shall be construed to waive Debtor’s duty to comply
15 with applicable state and local public health and safety laws, and applicable tax, labor,
16 employment, environmental, and consumer protection laws, including consumer laws regulating
17 deceptive practices and false advertising.

18 18. During the period of this Interim Order, except as limited by this Interim Order,
19 the Sale Guidelines and/or any Side Letter, as applicable, the Debtor is hereby authorized to take
20 such actions as may be necessary and appropriate to conduct the Store Closing Sales without
21 necessity of further order of this Court, including, but not limited to, advertising the sale as a
22 “store closing sale”, “sale on everything”, “everything must go”, or similar-themed sales through
23 the posting of signs (including the use of exterior banners at non-enclosed mall stores, and at
24 enclosed mall stores to the extent the applicable Closing Store entrance does not require entry into
25 the enclosed mall common area), and use of signwalkers and/or street signage on property located
26 outside of the respective mall properties.

27 19. All newspapers and other advertising media in which the Store Closing Sales may
28 be advertised and all landlords are directed to accept this Interim Order as binding authority so as

1 to authorize the Debtor to conduct the Store Closing Sales and the sale of Merchandise, including,
2 without limitation, to conduct and advertise the sale of the Merchandise in the manner
3 contemplated by and in accordance with this Interim Order, the Sale Guidelines and/or any Side
4 Letter, as applicable.

5 20. The Debtor is authorized and empowered, in its sole discretion, to transfer
6 Merchandise and FF&E among the Closing Stores or between the Closing Stores and the Head
7 Office and/or Distribution Centers in conjunction with the Store Closing Sales.

8 21. Pursuant to, and subject to the terms of the Consulting Agreement, the Liquidation
9 Consultant is permitted to augment the Merchandise of any individual Store Closing Sale with
10 additional goods procured by the Liquidation Consultant which are of like kind, and no lesser
11 quality to the Merchandise, provided that no augmentation under this paragraph shall exceed an
12 aggregate cost value of \$500,000 for all Store Closing Sales absent further order of the Court.

13 22. The sale of the Merchandise shall be conducted by the Debtor, the Liquidation
14 Consultant, or any party acting under their direction, notwithstanding any restrictive provision of
15 any lease, sublease or other agreement relative to occupancy affecting or purporting to restrict the
16 conduct of the Store Closing Sales, the rejection of leases, abandonment of assets, or “going dark”
17 provisions.

18 23. Notwithstanding anything to the contrary in this order, the Debtor, the Liquidation
19 Consultant and landlords of the Closing Stores are authorized to enter into agreements (“Side
20 Letters”) between themselves modifying the Sale Guidelines without further order of the Court,
21 and such Side Letters shall be binding as among the Debtor and any such landlords. In the event
22 of any conflict between the Sale Guidelines and any Side Letter, the terms of such Side Letter
23 shall control. The Debtor shall separately file with the Court a notice of any Side Letters entered
24 into, but the Debtor is not required to disclose any material terms of the Side Letters, except for
25 the identity of the subject landlord and the address of the Closing Store.

26 24. The Debtor shall have the right to use the Closing Stores and all related Closing
27 Store services, furniture, fixtures, equipment and other assets of the Debtor for the purpose of
28

1 conducting the Store Closing Sales, free of any interference from any entity or person, subject to
2 compliance with the Sale Guidelines and this Interim Order.

3 25. Except as expressly provided for herein, the Sale Guidelines, or any Side Letters,
4 no person or entity, including, but not limited to, any landlord, licensor, service providers,
5 governmental entity, utilities, and creditor, shall take any action to directly or indirectly prevent,
6 interfere with, or otherwise hinder consummation of the Store Closing Sales or the sale of
7 Merchandise, or the advertising and promotion of such sales, and all such parties and persons and
8 all those acting for or on behalf of such parties, are prohibited and enjoined from (i) interfering in
9 any way with, obstructing, or otherwise impeding, the conduct of the Store Closing Sales and/or
10 (ii) instituting any action or proceeding in any court (other than in the Bankruptcy Court) seeking
11 an order or judgment against, among others, the Debtor or the landlords at the Stores, that might
12 in any way directly or indirectly obstruct or otherwise interfere with or adversely affect the
13 conduct of the Store Closing Sales or sale of the Merchandise, or the FF&E as permitted herein,
14 and/or seek to recover damages for breach(es) of covenants or provisions in any lease, sublease,
15 license, or contract based upon any relief authorized herein.

16 **D. Non-Payment of Post-Petition Rent/Expedited Procedures**

17 26. In the event that the Debtor and/or Siena fails to timely pay any post-petition rent
18 or occupancy charges as to the Closing Stores, the respective Closing Store landlord may file and
19 serve a notice of rent default specifying the amount of unpaid rent and seek related appropriate
20 relief on no less than five (5) calendar days' notice to: (i) the Debtor's counsel; (ii) counsel for
21 Siena; (iii) the Liquidation Consultant via email at MNaughton@TigerGroup.com and
22 scarpenter@greatamerican.com; (iv) the U.S. Trustee; and (v) parties that file with the Court and
23 serve upon the Debtor requests for notice of all matters in accordance with Bankruptcy Rule 2002.

24 **E. Employee Retention Incentives**

25 27. The Debtor shall have the authority, but not the obligation, to pay certain sales
26 commissions to certain key management employees at the Closing Stores (the "Retention
27 Incentives") who remain in the employ of the Debtor during the Store Closing Sales, which the
28

1 Debtor, working in conjunction with the its financial advisor and Liquidation Consultant estimate
2 to total approximately \$63,000.00.

3 **F. Gift Cards/ Returns and Exchanges of Merchandise**

4 28. The Debtor is authorized, but not directed, to honor all Gift Cards purchased prior
5 to the Petition Date for a period of 60 days from the commencement of the Store Closing Sales.

6 29. The Debtor is authorized, but not directed, to honor its Return and Exchange
7 Program post-petition for sales of Merchandise made prior to the Petition Date.

8 **G. Service of the Interim Order**

9 30. Within three business days of entry of this Interim Order, the Debtor shall serve
10 copies of this Interim Order and the Sale Guidelines via e-mail, facsimile, overnight mail, or
11 regular mail, on the following parties, or, in lieu thereof, to their counsel, if known: (a) the Office
12 the United States Trustee, (b) the largest twenty unsecured creditors appearing on the list filed in
13 accordance with Bankruptcy Rule 1007(d) by the Debtor unless and until an official committee of
14 unsecured creditors (the "Committee") is appointed, then in that event, to counsel for the
15 Committee; (c) the landlords who are party to leases affected by the Store Closing Sales; (d)
16 Siena Lending Group, LLC; (e) any other known secured creditors; (f) the Attorney General's
17 office for each state where the Store Closing Sales are being held.; and (vii) any other known
18 party asserting an interest in the Merchandise or FF&E, if any.

19 31. Notwithstanding the foregoing paragraph 30, with respect to any such person who
20 has not been served so as to receive a copy of this Interim Order and the Sale Guidelines by 4:00
21 p.m. (their local time) on March 2, 2018, the deadline for any opposition by that person shall be
22 extended by one business day for each business day that such service is delayed, and the deadline
23 for any reply shall be extended by the same amount, with a maximum of either extension being
24 the date and time of the continued hearing. The Debtor is directed to file appropriate proof(s) of
25 service no later than 24 hours after effectuation of such service.

26 **H. Treatment of Proceeds Relating to Texas Taxing Authorities**

27 32. Notwithstanding anything in this Interim Order to the contrary, the liens currently
28 held by the local Texas tax authorities (Dallas County, Frisco and Harris County, hereinafter the

1 “Tax Authorities”) shall neither be primed by nor subordinated. Furthermore, from the proceeds
2 of the sale of any of the Merchandise or FF&E located in the state of Texas (the “Texas
3 Proceeds”), the amount of \$78,000 shall be set aside by Siena in a segregated account as adequate
4 protection for the secured claims of the Tax Authorities prior to the distribution of any Texas
5 Proceeds to any other creditor. The liens of the Tax Authorities shall attach to the Texas
6 Proceeds to the same extent and with the same priority as the liens they now hold against the
7 property of the Debtor. These funds shall be on the order of adequate protection and shall
8 constitute neither the allowance of the claims of the Tax Authorities, nor a cap on the amounts
9 they may be entitled to receive. Furthermore, the claims and liens of the Tax Authorities shall
10 remain subject to any objections any party would otherwise be entitled to raise as to the priority,
11 validity or extent of such liens. These funds may be distributed upon agreement between the Tax
12 Authorities and the Debtor and Siena, or by subsequent order of the Court, duly noticed to the
13 Tax Authorities and Siena.

14 **I. Other Provisions**

15 33. Bankruptcy Rule 6003(b) has been satisfied because the relief requested in the
16 Motion is necessary to avoid immediate and irreparable harm to the Debtor.

17 //

1 34. 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; (ii) the Debtor is not subject to any stay in the implementation, enforcement, or
4 realization of the relief granted in this Interim Order; and (iii) the Debtor is authorized and
5 empowered, and may in their discretion and without further delay, take any action necessary or
6 appropriate to implement this Interim Order.

7 #####

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

Date: February 26, 2018



Neil W. Bason
United States Bankruptcy Judge