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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

FINAL ORDER AUTHORIZING:

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

(2) THE ASSUMPTION OF CONSULTING AGREEMENT

Final Hearing

Date: March 20, 2018

Time: 2:00 p.m.

Place: Courtroom 1545
255 E. Temple Street
Los Angeles, CA 90012

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

7 Following the initial emergency hearing on the Motion held on February 22, 2018 at 2:00
8 p.m., the Court granted the relief requested in the Motion on an interim basis by order entered
9 February 23, 2018 [Docket No. 46] (the “Interim Order”). The Interim Order further provided
10 that any party opposing the granting of relief requested in the Motion on a final was required to
11 file and serve an opposition no later than March 6, 2018.

12 No party in interest having filed a written response to the Motion; based upon the Court’s
13 review of the Motion, the accompanying Memorandum of Points and Authorities, the *Declaration*
14 *of Brian Lipman in Support of First Day Motions* [Docket No. 25] (the “Lipman Declaration”),
15 the concurrently filed *Declaration of Brian Allen of Clear Thinking Group LLC, Financial*
16 *Advisor to the Debtor in Support of First Day Motions* [Docket No. 23] the *Statement of*
17 *Disinterestedness for Employment of Professional Person Under FRBP 2014 (Great American*
18 *Group LLC)* [Docket No. 47], the *Statement of Disinterestedness for Employment of Professional*
19 *Person Under FRBP 2014 (Tiger Capital Group, LLC)* [Docket No. 50], the evidentiary record,
20 and argument of counsel; it appearing that this Court has jurisdiction over this matter pursuant to
21 28 U.S.C. §§ 157 and 1334; it appearing that due and adequate notice of the Motion having been
22 given under the circumstances; and after due deliberation and good cause appearing therefor,
23 based upon findings of fact and conclusions of law stated in the Court’s *Memorialization of*
24 *Tentative Rulings* (Docket No. 35) as modified or supplemented orally on the record in open court
25 pursuant to Rule 52(a) of the Federal Rules of Civil Procedure, as incorporated into Rule 7052 of
26 the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules” and each a “Bankruptcy
27 Rule”) and applied to contested matters by Bankruptcy Rule 9014(c).

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1 IT IS HEREBY FOUND AND DETERMINED THAT:

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

4 B. The relief set forth herein is necessary to avoid immediate and irreparable harm to the
5 Debtor and the Debtor's estate and the Debtor has demonstrated good, sufficient, and sound
6 business purposes and justifications for the relief approved herein.

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

9 D. The entry of this Final Order is in the best interest of the Debtor and the Debtor's
10 estate, creditors, and interest holders and all other parties in interest herein.

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

14 IT IS ORDERED THAT:

15 1. The Motion is granted on a final basis.

16 2. The Debtor is authorized and empowered to take any and all further actions as may
17 be reasonably necessary or appropriate to give effect to this order ("Final Order").

18 3. To the extent of any conflict between this Final Order and the Sale Guidelines, the
19 terms of this Final Order shall control.

20 **A. Assumption of Consulting Agreement**

21 4. Subject to Paragraph 5 hereof, the Debtor is authorized to and hereby assumes the
22 Consulting Agreement in its entirety in accordance with section 365 of the Bankruptcy Code.
23 The assumption of the Consulting Agreement is an exercise of the Debtor's sound business
24 judgment and is in the best interest of the Debtor's estate.

25 5. Pursuant to agreement among the parties, notwithstanding anything herein to the
26 contrary, the indemnification provided for under Section 7(i) of the Consulting Agreement shall
27 be amended as follows:
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1 Merchant shall indemnify, defend, and hold Consultant and its consultants,
2 members, managers, partners, officers, directors, employees, attorneys, advisors,
3 representatives, lenders, potential coinvestors, principals, affiliates, and
4 Supervisors (collectively, "Consultant Indemnified Parties") harmless from and
5 against all liabilities, claims, demands, damages, costs and expenses (including
6 reasonable attorneys' fees) arising from or related to: (a) the willful or negligent
7 acts or omissions of Merchant or the Merchant Indemnified Parties (as defined
8 below); (b) the material breach of any provision of this Agreement by Merchant;
9 (c) any liability or other claims **arising from services performed under this**
10 **Agreement**, including, without limitation, product liability claims, asserted by
11 customers, any Store employees (under a collective bargaining agreement or
12 otherwise), or any other person (excluding Consultant Indemnified Parties)
13 against Consultant or an Consultant Indemnified Party, except claims arising from
14 Consultant's negligence, willful misconduct or unlawful behavior; (d) any
15 harassment, discrimination or violation of any laws or regulations or any other
16 unlawful, tortuous or otherwise actionable treatment of Consultant's Indemnified
17 Parties or Merchant's customers by Merchant or Merchant's Indemnified Parties;
18 and (e) Merchant's failure to pay over to the appropriate taxing authority any
19 taxes required to be paid by Merchant during the Sale Term in accordance with
20 applicable law.

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

22 6. The Sale Guidelines attached to the Motion as Exhibit 1 are approved in their
23 entirety on a final basis, provided that, the Sale Guidelines are subject to any Side Letters entered
24 into between the Debtor and landlords, as provided in paragraph 19 hereof.

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

8. The Debtor is authorized to sell the Merchandise at the Closing Stores,
Distribution Center and Head Office, without necessity of further order of this Court, in the

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

9 9. The Debtor is authorized to sell the FF&E at the Closing Stores, Distribution
10 Center and Head Office, without necessity of further order of this Court, in the manner provided
11 in the Motion, Consulting Agreement, Sale Guidelines and/or Side Letters, as applicable, and
12 pursuant to section 363(f) of the Bankruptcy Code, free and clear of any liens, claims or
13 encumbrances, provided, however, that any such liens, claims or encumbrances shall attach to the
14 proceeds of the FF&E with the same validity, in the amount, with the same priority as, and to the
15 same extent that any such liens, claims, and encumbrances have with respect to the FF&E, subject
16 to any claims and defenses that the Debtor may possess with respect thereto, and subject to the
17 Liquidation Consultant's fee and expenses (as provided in the Consulting Agreement).

18 10. Pursuant to section 554(a) of the Bankruptcy Code, the Debtor is authorized, but
19 not required, to abandon any FF&E or other property located at any of the Closing Stores,
20 Distribution Center and/or Head Office which Debtor has determined in its sole discretion, is of
21 inconsequential value and no benefit to the estate and/or may be burdensome for the Debtor's
22 bankruptcy estate to retain. Any abandonment under this paragraph does not absolve the Debtor
23 from any liability that the Debtor may incur to any landlord or third party resulting from such
24 abandonment; provided that nothing in this paragraph shall be construed to create any liability to
25 the Debtor for such abandoned property.

26 11. To the extent that the Debtor proposes to sell or abandon FF&E which may
27 contain personal and/or confidential information about the Debtor's employees and/or customers
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1 (the “Confidential Information”), the Debtor shall remove the Confidential Information from such
2 items of FF&E before such sale or abandonment.

3 12. Subject to paragraph 13 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 Final Order, the
5 Sale Guidelines and/or Side Letters, as applicable, the Debtor is authorized to conduct the Store
6 Closing Sales notwithstanding applicable state and/ or local laws, statutes, rules and/or ordinances
7 governing store closing, liquidation or similar sales (collectively, the “Liquidation Laws”).

8 13. Any governmental entity seeking to enforce any particular state and/or local laws
9 addressed in Paragraph 12 above, including state and local public health and safety laws,
10 applicable tax, labor, employment, and environmental laws, and consumer protection laws
11 regulating deceptive practices and false advertising, must first serve a written request (the
12 “Enforcement Request”) upon the Debtor setting forth the Store location; the specific applicable
13 state and/ or local laws which the governmental entity seeks to enforce; and the specific grounds
14 supporting enforcement. The Enforcement Request must be served on the Debtor’s counsel,
15 Greenberg Glusker Fields Claman & Machtinger LLP, Attention: Brian L. Davidoff, Esq., and
16 Keith Patrick Banner, Esq. 1900 Avenue of the Stars, 21st Floor, Los Angeles, California 90067.
17 If after the expiration of 7 days from service of the Enforcement Request, the parties are unable to
18 resolve the Enforcement Request, the applicable governmental entity is permitted to file a motion
19 (an “Enforcement Motion”) seeking enforcement of the applicable state and/ or local laws. The
20 Court permits any Enforcement Motion filed pursuant to this paragraph to be heard on shortened
21 time pursuant to Local Bankruptcy Rule 9075-1.

22 14. Except as limited by this Final Order, the Sale Guidelines and/or any Side Letter,
23 as applicable, the Debtor is hereby authorized to take such actions as may be necessary and
24 appropriate to conduct the Store Closing Sales without necessity of further order of this Court,
25 including, but not limited to, advertising the sale as a “going out of business” , “store closing sale”,
26 “sale on everything”, “everything must go”, or similar-themed sales through the posting of signs
27 (including the use of exterior banners at non-enclosed mall stores, and at enclosed mall stores to
28 the extent the applicable Closing Store entrance does not require entry into the enclosed mall

1 common area), and use of signwalkers and/or street signage on property located outside of the
2 respective mall properties.

3 15. All newspapers and other advertising media in which the Store Closing Sales may
4 be advertised and all landlords are directed to accept this Final Order as binding authority so as to
5 authorize the Debtor to conduct the Store Closing Sales and the sale of Merchandise, including,
6 without limitation, to conduct and advertise the sale of the Merchandise in the manner
7 contemplated by and in accordance with this Final Order, the Sale Guidelines and/or any Side
8 Letter, as applicable.

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

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

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

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

3 20. The Debtor shall have the right to use the Closing Stores and all related Closing
4 Store services, furniture, fixtures, equipment and other assets of the Debtor for the purpose of
5 conducting the Store Closing Sales, free of any interference from any entity or person, subject to
6 compliance with the Sale Guidelines and this Final Order.

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

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

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

3 **E. Employee Retention Incentives**

4 23. The Debtor shall have the authority, but not the obligation, to pay certain sales
5 commissions to certain key management employees at the Closing Stores (the “Retention
6 Incentives”) who remain in the employ of the Debtor during the Store Closing Sales, which the
7 Debtor, working in conjunction with the its financial advisor and Liquidation Consultant estimate
8 to total approximately \$63,000.00.

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

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

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

14 **G. Service of the Final Order**

15 26. Within three business days of entry of this Final Order, the Debtor shall serve a
16 copy of this Final Order via e-mail, facsimile, overnight mail, or regular mail, on the following
17 parties, or, in lieu thereof, to their counsel, if known: (a) the Office the United States Trustee, (b)
18 counsel for the Committee; (c) the landlords who are party to leases affected by the Store Closing
19 Sales; (d) Siena Lending Group, LLC; (e) any other known secured creditors; (f) the Attorney
20 General’s office for each state where the Store Closing Sales are being held.; and (vii) any other
21 known party asserting an interest in the Merchandise or FF&E, if any.

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

23 27. Notwithstanding anything in this Final Order to the contrary, the liens currently
24 held by the local Texas tax authorities (Dallas County, Frisco and Harris County, hereinafter the
25 “Tax Authorities”) shall neither be primed by nor subordinated. Furthermore, from the proceeds
26 of the sale of any of the Merchandise or FF&E located in the state of Texas (the “Texas
27 Proceeds”), Siena will reserve and have available to pay to the Tax Authorities, as ordered by the
28 Court or otherwise agreed, the sum of \$78,000 on account of the secured claims of the Tax

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1 Authorities prior to the distribution of any Texas Proceeds to any other creditor. The liens of the
2 Tax Authorities shall attach to the Texas Proceeds to the same extent and with the same priority
3 as the liens they now hold against the property of the Debtor. These funds shall be on the order of
4 adequate protection and shall constitute neither the allowance of the claims of the Tax Authorities,
5 nor a cap on the amounts they may be entitled to receive. Furthermore, the claims and liens of the
6 Tax Authorities shall remain subject to any objections any party would otherwise be entitled to
7 raise as to the priority, validity or extent of such liens. These funds may be distributed upon
8 agreement between the Tax Authorities and the Debtor and Siena, or by subsequent order of the
9 Court, duly noticed to the Tax Authorities and Siena.

10 **I. Other Provisions**

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

13 29. Notwithstanding any provision in the Bankruptcy Rules to the contrary, including
14 Bankruptcy Rule 6004(h): (i) this Final Order shall be effective immediately and enforceable
15 upon its entry; (ii) the Debtor is not subject to any stay in the implementation, enforcement, or
16 realization of the relief granted in this Final Order; and (iii) the Debtor is authorized and
17 empowered, and may in their discretion and without further delay, take any action necessary or
18 appropriate to implement this Final Order.

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24 Date: April 6, 2018



Neil W. Bason
United States Bankruptcy Judge