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7

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

11 In re:
12 B&B Liquidating, LLC,
13 Debtor and Debtor in Possession.

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

Chapter 11

**OPPOSITION TO SIENA LENDING
GROUP, LLC'S MOTION FOR RELIEF
FROM THE AUTOMATIC STAY**

Hearing Date: September 4, 2018

Time: 10:00 a.m.

16 Court: United States Bankruptcy Court
255 East Temple Street
17 Courtroom 1545
Los Angeles, CA

18 Judge: Honorable Neil Bason

1 The Official Committee of Unsecured Creditors (the “Committee”) appointed in the above-
2 captioned case hereby files this opposition to the *Notice of Motion and Motion for Relief from the*
3 *Automatic Stay* [Docket Nos. 205, 206] (the “Motion”)¹ filed by Siena Lending Group (“Siena”). In
4 further support of this Opposition, the Committee respectfully represents as follows:²

5 **I.**

6 **PRELIMINARY STATEMENT**

7 The Committee opposes entry of an order approving the Motion because (i) relief from stay
8 will lead to only one result, which is the disposition of the Debtor’s primary assets (i.e., inventory)
9 for Siena’s benefit, leaving no remaining assets to pay valid administrative claims, including U.S.
10 Trustee fees; (ii) there may be other plausible avenues for exit of this case that benefit all creditors,
11 not just Siena, including a structured dismissal or plan of liquidation, but granting the Motion will
12 foreclose those options; and (iii) this Court, the Committee, and parties in interest do not have a clear
13 picture of the valuation of the Debtor’s intangible litigation assets, which may be significant.

14 **II.**

15 **OBJECTION**

16 **A. Post-Petition Administrative Claims Must be Paid**

17 At the first day hearing in this case on February 22, 2018, after concerns raised by landlords
18 of the Debtor’s potential failure to pay post-petition rent, Siena offered to pay the post-petition
19 claims of landlords directly. *See* First Day Hearing Tr. at pp. 37-38. [Docket No. 67] Accordingly,
20 this Court ordered that Siena pay stub rent for February and March 2018 in the interim DIP order as
21 follows: “the “stub” postpetition rent for February and the March rent shall be paid directly by Siena
22 to the landlords, all concurrent with the due date for March rent.” *See* Docket No. 36 at ¶ 1(c). It is
23 the Committee’s understanding that this arrangement has continued through the course of the case.
24 The Committee is aware, however, that several landlords have not yet been paid their valid, post-
25 petition rent claims, despite multiple requests.

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28 ¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

² The Committee and its members were granted a two-day extension of time to respond to the Motion by Siena’s counsel.

1 After raising this issue with counsel for the Debtor and Siena, all parties are in agreement
2 that post-petition administrative claims for rent must be paid, yet the Committee is unclear as to the
3 mechanism or timing of when such claims will be paid. The Committee further understands that
4 there is a dispute between Siena and certain landlords as to what rent should be paid, which may
5 require claimants to have to incur additional expense and file motions to compel payment. Without
6 a clear commitment on payment of post-petition claims from Siena, the Motion should not be
7 allowed to go forward.

8 **B. Relief From Stay Must Be Denied When Such Relief Would Eliminate The Debtor's**
9 **Ability To Confirm A Plan**

10 This Court should not permit Siena relief from stay to foreclose on substantially all of the
11 Debtor's assets, which would eliminate the chance that a plan can be confirmed. It is a fundamental
12 principle of bankruptcy law that the Bankruptcy Code favors a debtor's reorganization. *JPMCC*
13 *2007-C1 Grasslawn Lodging, LLC v. Transwest Resort Props. Inc. (In re Transwest Resort Props.*
14 *Inc.)*, 801 F.3d 1161, 1174 (9th Cir. 2015) (stating that there is a "strong public policy in favor of
15 maximizing debtors' estates and facilitating successful reorganization, reflected in the Code itself")
16 (citing *In re Continental Airlines*, 91 F.3d 553, 565 (3d Cir. 1996)). Permitting Siena to foreclose on
17 all of the Debtor's tangible assets outside of the purview of this Court would essentially be the
18 conclusion of this case.

19 Under the *Second Amended Stipulation regarding the DIP Financing as approved by the*
20 *Court* [see Docket No. 162], the parties agreed that: "The Debtors, Siena, and the Committee shall
21 negotiate in good faith an appropriate and efficient exit strategy for these cases." See *Second*
22 *Amended Stipulation at ¶ 28(d)*. [Docket No. 141] Such negotiations have not occurred, although
23 there have been preliminary discussions since the filing of the Motion by Siena. Without a
24 commitment from Siena to fund an orderly wind-down of this case, granting the relief requested in
25 the Motion would foreclose the prospects of any exit other than conversion to chapter 7. Siena has
26 enjoyed the benefits of having this case remain in chapter 11 and its collateral liquidated under Court
27 supervision thus far. Siena should not be permitted to conclude the case prematurely now to the
28 detriment of all other creditors.

1 **C. Siena Has Not Met Its Burden of Proof**

2 The burden of proof on the Motion is on Siena. 11 U.S.C. § 362(g)(1) (stating that the party
3 requesting relief has the burden of proof on the issue of the debtor’s equity in property). Siena has
4 not put forth any competent evidence of the value of the Debtor’s intangible litigation assets and
5 potential claims against third parties, which may be significant. *In re Vanas*, 50 B.R. 988, 996
6 (Bankr. E.D. Mich. 1985) (“Pursuant to § 362(g), the party requesting relief from the automatic stay
7 has the burden of proof on the issue of the debtor's equity in the property. Because that issue
8 involves a determination of the value of the property, the creditors also have the burden of proof on
9 the issue of valuation.”). Unless and until all potential assets of the estate are valued and known,
10 parties in interest cannot know whether or not Siena is undersecured or not.

11 **I.**

12 **CONCLUSION**

13 WHEREFORE, for the reasons stated above, the Committee respectfully requests that the
14 Court deny the Motion.

15 Dated: August 23, 2018

PACHULSKI STANG ZIEHL & JONES LLP

17 By /s/ Shirley S. Cho
18 Jeffrey W. Dulberg
Shirley S. Cho

19 Counsel for the Official Committee of
20 Unsecured Creditors

PACHULSKI STANG ZIEHL & JONES LLP
ATTORNEYS AT LAW
LOS ANGELES, CALIFORNIA

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
10100 Santa Monica Blvd., 13th Floor, Los Angeles, CA 90067

A true and correct copy of the foregoing document entitled (specify): OPPOSITION TO SIENA LENDING GROUP, LLC'S MOTION FOR RELIEF FROM THE AUTOMATIC STAY will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) August 23, 2018, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

[X] Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Leo D. Plotkin
Levy, Small & Lallas
815 Moraga Dr.
Los Angeles, CA 90049

The Honorable Neil W. Bason
United States Bankruptcy Court
Central District of California
255 E. Temple Street, Suite 1552 / Ctrm. 1545
Los Angeles, CA 90012

[] Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) _____, 2018, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

[] Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

August 23, 2018 Sophia L. Lee /s/ Sophia L. Lee
Date Printed Name Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

In re: B&B Liquidating, LLC

Case 2:18-bk-11744-NB

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