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UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

LOS ANGELES DIVISION

In re:	Case No. 2:18-bk-11744-NB
B&B Liquidating, LLC,	Chapter 11
Debtor and Debtor in Possession.	**JOINT MOTION OF THE DEBTOR AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO DISMISS CHAPTER 11 CASE SUBJECT TO A RESERVATION OF RIGHTS TO ENFORCE PREVIOUSLY AGREED-UPON CARVE OUT FOR UNSECURED CREDITORS, OR, IN THE ALTERNATIVE, SUSPEND ALL PROCEEDINGS OR CONVERT CHAPTER 11 CASE TO A CASE UNDER CHAPTER 7** **DECLARATION OF BRIAN LIPMAN IN SUPPORT THEREOF**

Hearing

Date: November 6, 2018
Time: 2:00 p.m.
Place: Courtroom 1545
255 E. Temple Street
Los Angeles, CA 90012

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TO THE HONORABLE NEIL W. BASON, UNITED STATES BANKRUPTCY JUDGE, THE UNITED STATES TRUSTEE, ALL PARTIES-IN-INTEREST HEREIN, AND THEIR RESPECTIVE COUNSEL:

Debtor and Debtor in Possession B&B Liquidating, LLC, f/k/a B&B Bachrach, LLC, (the "Debtor") and the Official Committee of Unsecured Creditors (the "Committee" together with the Debtor, "Movants") appointed in the above captioned chapter 11 case (the "Chapter 11 Case"), hereby submit their joint motion (this "Motion") and move for entry of an order, pursuant to sections 305(a) and 1112(b) of title 11 of the United States Code (the "Bankruptcy Code") and Rule 1017(f) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules" and each a "Bankruptcy Rule") dismissing this Chapter 11 Case subject to the creditor's reservation of rights to enforce the agreement between the Committee and Siena Lending Group, LLC ("Siena") and administer any proceeds related thereto pursuant the financing stipulation approved by the Court. In the alternative, Movants request that the Court either stay all proceedings, or convert this Chapter 11 Case to a case under chapter 7, which, in each case, will preserve such rights of the creditors. In support of this Motion, Movants respectfully represent as follows:

I. INTRODUCTION

Despite some hurdles in the process, including slower than anticipated sales, the Debtor's liquidation is now winding down. Owing to the relief granted by the Court pursuant to the Debtor's various "first day" motions, and with the cooperation of Siena and the various landlords, the Debtor has been able to liquidate nearly all of its inventory, close its head office and distribution center, and close all but one of its retail locations. To facilitate a liquidation process that has largely been conducted for the benefit of Siena, Siena and Movants agreed to a post-petition financing arrangement, which provided, among other things, a "carve out" from its secured claim for creditors and professionals.

With a minimal amount of inventory remaining, Siena has opted to seek relief from the automatic stay and foreclose on the remaining assets, including intellectual property and other intangible assets. After obtaining relief from stay, Siena has proceeded to foreclose on the Debtor's assets and noticed a foreclosure sale. This has left the Debtor with the prospect of

insufficient assets to support a plan of liquidation in the Chapter 11 Case. Therefore, dismissal of the Chapter 11 Case is warranted, though any such dismissal should preserve the remaining contractual obligations of Siena under the carve out arrangement.

II. JURISDICTION AND VENUE

The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The venue of the Chapter 11 Case is proper pursuant to 28 U.S.C. §§ 1408 and 1409. Movants consent to the entry of a final judgment or order with respect to the Motion if it is determined that the Court, absent consent of the parties, cannot enter a final order or judgment consistent with Article III of the United States Constitution. The statutory predicate for the relief requested herein are sections 305(a) and 1112(b) of the Bankruptcy Code, Bankruptcy Rule 1017 and Local Bankruptcy Rule 1017-2.

III. BACKGROUND

A. Commencement of the Chapter 11 Case

On February 16, 2018 (the "Petition Date") the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, commencing the Chapter 11 Case. Pursuant to sections 1107 and 1108 of the Bankruptcy Code, after the Petition Date, the Debtor managed its affairs as a debtor in possession. No request for a trustee or examiner has been made. On March 13, 2018, the United States Trustee appointed the Committee, as reflected in the *Notice of Appointment of Committee of Creditors Holding Unsecured Claims* [Docket No. 79].

B. Prior *Bachrach* Case and Events Leading Up to the New Chapter 11 Filing

A decline across the board in sales in mid-2016 precipitated the Debtor's filing of a voluntary chapter 11 petition on April 28, 2017, commencing case no. 2:17-bk-15292-NB ("*Bachrach*"). During the course of *Bachrach*, the Debtor's goals were four-fold: (a) shed the poorest performing stores; (b) liquidate excess inventory; (c) free up liquidity by resolving the over-advance with the Debtor's then lender, Israel Discount Bank of New York ("IDB") through restructure of the debt or buyout of the obligation; and (d) restructure leases regarding stores that showed a potential for profitability if the lease was renegotiated.

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The Debtor successfully addressed each of these issues in a brisk chapter 11 reorganization process. On August 14, 2017—less than four months after the case began—the Court confirmed the *Bachrach* plan of reorganization. *See Bachrach* Docket No. 258 (including all exhibits attached thereto, the "*Bachrach* Plan"). The *Bachrach* Plan went effective on August 31, 2017.

Despite the relative success of the *Bachrach* reorganization, the decline in sales that the Debtor had faced pre-petition continued unabated after the Debtor's exit from the chapter 11 and starved the Debtor of vital cash. During this decline in sales, as part of its exit from *Bachrach*, the Debtor entered into a two-part refinance: (i) a bridge lender Emerald Capital Funding, LLC ("Emerald"), which purchased the IDB loan for $5,800,000 – resulting in the Debtor's issuance of a $1.2 million deficiency note to IDB; and (ii) a revolving facility refinance with Siena Lending Group, LLC (as defined above, "Siena"), which similarly resulted in the Debtor's issuance of a $500,000 deficiency note to Emerald.

With the two sequential refinance transactions not closing until October 31, 2017, as opposed to the end of September 2017 as contemplated under the *Bachrach* Plan, the Debtor received its holiday inventory late in mid-December 2017, which negatively affected the Debtor's 2017 holiday sales. Soon after obtaining the loan facility with Siena, the Debtor found itself in default on the obligations thereunder, and additionally in default on rent payments and on payments required under the *Bachrach* Plan. The Debtor's only alternative was an orderly liquidation.

In the face of such multiple defaults, the Debtor was allotted very little time to explore its liquidation alternatives, whether through an out-of-court process or in a new chapter 11 bankruptcy. The Debtor retained liquidation consultant Great American Group, LLC and Tiger Capital Group, LLC (collectively, the "Liquidation Consultant") to perform inventory liquidation sales (the "Store Closing Sales") at the 14 locations[1] leased by the Debtor and engaged in

[1] Store No. 20 located at the Fashion Outlets of Chicago, in Rosemont, Illinois, the Debtor subleased the premises from an affiliate of the Debtor.

negotiations with landlords in an attempt to conduct the liquidation outside of a chapter. After the Debtor was unable to reach an agreement with all landlords, it commenced this Chapter 11 Case.

C. Events in the Chapter 11 Case

1. **Debtor's Operations as of the Petition Date**

As of the Petition Date, the Debtor operated fourteen (14) retail stores located in Illinois, Indiana, Kansas, Michigan, New Jersey, Tennessee, Texas, Wisconsin, and Virginia. Shortly before the commencement of the case, the Debtor vacated the following two locations: (i) Orland Park Crossing (Store No. 28) located in Orland Park, Illinois and (ii) Oak Park Mall (Store No. 70) located in Overland Park, Kansas. Of the fourteen (14) retail stores operated by the Debtor, one location, Store No. 20 located at the Chicago Fashion Outlet Center in Rosemont, Illinois was operated by the Debtor but subleased by the Debtor from an affiliated entity Preylock, LLC. In addition to the retail locations, the Debtor operated from a corporate office and primary distribution center located at 8723 Bellanca Dr. Unit A, Los Angeles, California 90045 (the "Head Office") and a secondary distribution center located at 132nd St., Gardena, California 90249 (the "Distribution Center"). On the Petition Date, the Debtor employed approximately 109 non-insider employees, approximately 77 of which were regular full-time employees and approximately 32 were part-time employees.

2. **The Store Closing Sales**

On or about the Petition Date, along with a series of other "first day" motions, the Debtor filed its *Emergency Motion for Interim and Final Order Authorizing: (1) The Conduct 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* [Docket No. 17] (the "Store Closing Sale Motion"). The Store Closing Sale Motion anticipated that the Store Closing Sales would be conducted at thirteen (13) locations[2] (the "Closing Stores") over a 16-week period, ending on or about June 8, 2018, with each Closing Store closed upon completion of the respective Store Closing Sale.

[2] At Store No. 20 located at the Fashion Outlets of Chicago, in Rosemont, Illinois, the Debtor worked separately with the sublessor and the landlord to permit the conducting liquidation sales at this location.

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On February 22, 2018, the Court held an emergency hearing on the Store Closing Sale Motion and on February 26, 2018, the Court entered an *Interim Order Authorizing: (1) the Conduct of Inventory Liquidation, Store Closing or Similar Themed Sales; and (2) the Assumption of the Consulting Agreement* [Docket No. 60] (the "Interim Sale Order"). The Interim Sale Order, among other things, approved the Store Closing Sales on an interim basis through March 20, 2018, and authorized the assumption of the Debtor's consulting agreement with the Liquidation Consultant. The Interim Sale Order imposed certain conditions on the Store Closing Sales, such as providing governmental agencies additional time to object to the Store Closing Sales and that FF&E could only be abandoned by *ex parte* application.

The Court held a final hearing on the Store Closing Sale Motion on March 20, 2018. No governmental agency or party in interest filed any opposition to the Store Closing Sale Motion. On April 6, 2018, the Court entered its *Final Order Authorizing: (1) the Conduct of Inventory Liquidation, Store Closing or Similar Themed Sales; and (2) the Assumption of the Consulting Agreement* [Docket No. 115] (the "Final Sale Order"). The Final Sale Order approved the Store Closing Sales on a final basis.

3. **The Lease Rejection Motion**

An additional "first day" motion filed by the Debtor on or about the Petition Date was Debtor's *Motion and 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 of Nonresidential Real Property Pursuant to Rejection Notice Procedures* [Docket No. 7] (the "Lease Rejection Motion"). The Lease Rejection Motion, among other things, set forth certain procedures (the "Rejection Notice Procedures") for the rejection of leases associated with the Closing Stores, the Debtor's Head Office and the Debtor's Distribution Center. The Rejection Notice Procedures provided that the Debtor could reject any applicable lease by filing and serving a lease rejection notice no earlier than five business days prior to a proposed rejection date, with rejection effective upon the later of (x) the occurrence of that date; or (y) the date the Debtor relinquished control of the premises to the landlord by written notice.

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On February 22, 2018, the Court held an emergency hearing on the Lease Rejection Motion and on February 23, 2018, the Court entered its *Order on 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 of Nonresidential Real Property Pursuant to Rejection Notice Procedures* [Docket No. 49] (the "Lease Rejection Order"). Pursuant to the Lease Rejection Order, the Court granted the Lease Rejection Motion on a final basis and approved the Rejection Notice Procedures.

4. **The Financing Stipulation**

As the Debtor's pre-petition financing arrangement with Siena encumbered substantially all the assets of the Debtor and granted Siena full control of the Debtor's operating cash, a financing/cash collateral procedure was necessary for the new Chapter 11 Case. Following negotiations between Siena and the Debtor, the parties entered into the *Stipulation Regarding Continuance of Financing of Debtor and Debtor in Possession, Priority of Advances Made, Modification of the Automatic Stay and Adequate Protection* (the "Financing Stipulation"), the approval of which the parties sought through the *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* [Docket No. 21] (the "Financing Motion") filed on February 20, 2018. On February 22, 2018, the Court entered its *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* (the "Interim Financing Order") approving the Financing Motion and Financing Stipulation on an interim basis.

Following negotiations among the Committee, Siena and the Debtor, the Financing Stipulation was amended as reflected in the *Amended Stipulation Regarding Continuance of Financing of Debtor and Debtor in Possession, Priority of Advances Made, Modification of the Automatic Stay and Adequate Protection* [Docket No. 141) (the "Amended Financing Stipulation"). The Court approved the Amended Financing Stipulation and the Financing Motion

on a final basis by entry of its *Final Order Authorizing Use of Case 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* [Docket No. 162] (the "Final Financing Order").

Of particular relevance to this Motion are the provisions of the Amended Financing Stipulation relating to the carve-out Siena agreed to with the Debtor's professionals and the Committee (the "Carve-Out"). Specifically, Siena and the Committee agreed to: (i) a sharing with creditors of 10% of proceeds when Siena's secured debt is reduced to $1.5 million; and (ii) 25% of any proceeds stemming from commercial tort claims (collectively, the "Creditor Carve Out"), which Siena agreed constitute part of the Carve Out. This agreement is contained in the following paragraphs 21 and 28 of the Amended Financing Stipulation:

> 21. Siena has agreed to a carve-out for: (i) professional fees and expenses in a sum not to exceed $275,000 exclusively for Debtor's counsel; (ii) professional fees and expenses in a sum not to exceed $160,000 exclusively for Clear Thinking Group, Debtor's financial advisers ("CTG"); (iii) professional fees and expenses in a sum not to exceed $50,000 exclusively for Committee's counsel; and (iv) any quarterly or other fees payable to the United States Trustee pursuant to i*nter alia* 28 U.S.C. 1930(a) ("Carve-Out"). As a material inducement to the estate's professionals, Siena specifically agrees that items (i), (ii), and (iii) of the Carve-Out are exclusively for the respective estate's professionals in the amounts set forth above. Debtor acknowledges that (a) the amounts of the Carve-Out set forth herein include the respective retainers of Debtor's counsel and CTG, (b) the Carve-Out shall be funded as set forth in the DIP Budget and in the case of the Carve-Out for Committee's counsel, shall be funded on a weekly basis into the client trust fund account of Committee's counsel, and (c) upon five days written notice of an event of default, Siena's obligation to fund the Carve-Out shall immediately cease, except for an additional payment of $25,000 to the Debtor's counsel, and any unfunded Carve-Out amounts for Committee's counsel up to $50,000, all of which shall be part of the Carve Out. **The Carve-Out shall be binding upon Siena in the event of dismissal or conversion of this case to one under chapter 7 and shall be binding upon any chapter 7 trustee.**
>
> 28. Notwithstanding anything to the contrary herein and in complete resolution of the Committee's informal objections to entry of an Order approving this Stipulation on a final basis which is binding on the Committee, the Debtor, Siena, and the Committee agree as follows:
>
> > a. Siena agrees that after its secured debt is reduced to $1.5 million, then 10% of any further payment by the Debtor to Siena on account of the

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> Current Sum Due or the Pre-Petition Fees shall be held in trust for the benefit of claims of creditors other than Siena in this case and such amounts **shall constitute part of the Carve-Out set forth in paragraph 21** above. Such amounts shall not be distributed absent further Order of this Court.
>
> b. If any portion of the Current Sum Due or the Pre-Petition Fees is paid from the proceeds of any commercial tort claims, then 25% of such amount shall be paid to creditors other than Siena in this case and such amounts **shall also constitute part of the Carve-Out set forth in paragraph 21 above**. Such amounts, if any, shall not be distributed absent further Order of this Court.

Amended Financing Stipulation, ¶¶ 21 & 28 (emphasis added).

5. **The Slow Progress of the Store Closing Sales and the Extension Motion**

Together, the Store Closing Sale Motion and the Lease Rejection Motion allowed the Debtor to liquidate the Debtor's inventory assets and promptly close and vacate its stores. Though the Store Closing Sales progressed without major complication, the sales consistently did not meet the projections prepared by the Liquidation Consultant at the commencement of the case—with sales often amounting to less than 50% or 60% of the projections. Recognizing that additional time was needed to liquidate inventory and reject leases, on May 18, 2018, the Debtor filed its *Motion for (1) Extension of Time in Which to Assume or Reject Unexpired Leases of Nonresidential Real Property Through September 14, 2018; and (2) Extension of Term of Store Closing Sales Through September 14, 2018* [Docket No. 172] (the "Extension Motion"). The Court granted the Extension Motion by order entered on June 15, 2018 [Docket No. 186], which extended the Store Closing Sales and the Debtor's deadline to assume or reject leases through and including September 14, 2018.

6. **The Debtor's Liquidation**

By mid-June 2018, the Debtor vacated and closed 11 of the 14 stores it operated on the Petition Date. On or about May 8, 2018, as reflected in the Debtor's *First Notice of Rejection of Unexpired Leases* [Docket No. 145] the Debtor concluded the Store Closing Sales and vacated the following properties: (i) Great Lakes Crossing Outlets (Store No. 12); (ii) Opry Mills Mall (Store No. 21); and (iii) Menlo Park Mall (Store No. 82). Also, on or about April 30, 2018, the

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Debtor vacated Store No. 20 at the Fashion Outlets of Chicago. On or about May 13, 2018, as reflected in the Debtor's *Second Notice of Rejection of Unexpired Leases* [Docket No. 159], the Debtor concluded the Store Closing Sale at an additional location, the Houston Galleria (Store No. 18). On or about June 4, 2018, as reflected in the Debtor's *Third Notice of Rejection of Unexpired Leases* [Docket No. 177], the Debtor concluded the Store Closing Sales at the following properties: (i) Southlake Mall (Store No. 37); (ii) Galleria Dallas (Store No. 76); and (iii) Woodfield Mall (Store No. 79). Then, on or about June 11, 2018, as reflected in the Debtor's *Fourth Notice of Rejection of Unexpired Leases* [Docket No. 180], the Debtor concluded the Store Closing Sales at the following properties: (i) Fashion Mall at Keystone (Store No. 16); (ii) Mayfair Mall (Store No. 25); and (iii) Stonebriar Center (Store No. 31).

On or about July 3, 2018, the Debtor vacated its Headquarters and Distribution Center, as reflected in the *Fifth Notice of Rejection of Unexpired Leases* [Docket No. 190]. In August, the Debtor vacated and closed two additional stores: (i) Fashion Center at Pentagon (Store No. 89), as reflected in the *Sixth Notice of Rejection of Unexpired Leases* [Docket No. 204]; and (ii) Somerset Collection, as reflected in the *Seventh Notice of Rejection of Unexpired Leases* [Docket No. 213]. By September 2018, the Debtor operated from only a single store, Twelve Oaks Mall (Store No. 8). The Debtor currently operates from that location pursuant to ongoing negotiations between the Debtor and the landlord.

D. Siena's Relief from Stay Motion and Article 9 Foreclosure

On August 8, 2018, Siena filed its *Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362* [Docket No. 205] and the accompanying memorandum of points and authorities [Docket No. 206] (collectively, the "Siena RFS Motion"). Pursuant to the Siena RFS Motion, Siena sought relief from the automatic stay under section 362(d)(2) of the Bankruptcy Code to initiate a foreclosure of the Debtor's personal property assets under article 9 of the Uniform Commercial Code (the "UCC"). On August 23, 2018, the Committee filed its *Opposition to Siena Lending Group, LLC's Motion for Relief from the Automatic Stay* [Docket No. 212] (the "Committee RFS Response"). Also, on August 23, 2018, the Debtor filed *Debtor's Response to Motion for Relief from the Automatic Stay Filed by Siena Lending Group, LLC* [Docket No. 215]

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(the "Debtor RFS Response"). In the Debtor RFS Response, the Debtor noted its understanding through communications with Siena that Siena asserts Contingent Claims (as defined and discussed below) against the Liquidation Consultant, some of which may be claims of Siena, but others of which may be held by the estate and/or covered by the Debtor's insurance policies. *See* Debtor RFS Response 2:21-26, and Section III E below.

On September 13, 2018, the Court entered its *Order Granting Relief from the Automatic Stay Under 11 U.S.C. § 362 (Personal Property)* [Docket No. 220] (the "RFS Order") granting Siena's requested relief from stay as to all personal property of the Debtor, except as to any insurance policies of the Debtor. On September 14, 2018, Siena served on the Debtor a Notification of Disposition of Collateral (Uniform Commercial Code Section 9-613) (the "Foreclosure Notice"), a copy of which is attached to the accompanying *Declaration of Brian Lipman* as Exhibit 1. The Foreclosure Notice provided that Siena would conduct a private foreclosure sale of substantially all the assets of the Debtor "sometime on or after Tuesday, September 25, 2018." It is unknown as of the date of this Motion, whether Siena has completed its private foreclosure sale.

E. Remaining Assets and Status of the Bankruptcy Case

As a result of the Store Closing Sale Motion the Debtor has all but completed its intended liquidation. A nominal amount of inventory remains on the Debtor's books. Based on the most recent information from the Debtor's financial advisor, as of the week ending September 28, 2018, the value of remaining inventory was $217,000.00, all of which was subject to the lien of Siena. The amount of Siena's secured claim as of the same date is approximately $3.77 million. To the extent not already foreclosed upon by Siena, the Debtor also retains its customers lists, trade name and other intellectual property, all of which are also subject to the lien of Siena. To the extent that Siena has already completed it private foreclosure sale, the Debtor is no longer the owner of these assets. Further, the only leasehold interest the Debtor still holds is Twelve Oaks Mall (Store No. 8), which is the subject of ongoing negotiations between the Debtor and the landlord.

As noted above, notwithstanding Siena's article 9 foreclosure, pursuant to the agreement

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of Siena under the Amended Financing Stipulation, the unsecured creditors of the Debtor's estate will remain entitled to the following (hereinafter the "Remaining Assets"):

a. Contingent claims and any insurance policies and the proceeds therefrom covering the contingent claims. Specifically, these contingent claims ("Contingent Claims")[3] to the Debtor's understanding[4] are:

i. claims that Siena has against the Liquidation Consultant on account of a valuation of the Debtor's assets that the Liquidation Consultant or its affiliate provided to Siena prior to the commencement of this Chapter 11 Case and on which Siena, in part, based its decision to make its loan to the Debtor;

ii. claims that Siena has against the Liquidation Consultant for its management and supervision of the Store Closing Sales, including claims for loss of inventory;

iii. claims that the Debtor and/or Siena may have for loss of inventory against the Debtor's insurance policies, which may have occurred both prior to, and during the watch of the Liquidation Consultant.

b. The unsecured creditors of the Debtor's estate will retain the right to the extent the Siena secured debt is reduced to $1.5 million, in which case the creditors share in 10% of proceeds thereafter (the "Reduction Claim").

IV. DISCUSSION

A. "Cause" Exists for Dismissal Due to Continuing Loss or Diminution of the Estate and Absence of a Reasonable Likelihood of Rehabilitation

Pursuant to section 1112(b)(1) of the Bankruptcy Code, the court *shall* dismiss or convert a chapter 11 case when sufficient cause is shown. Section 1112(b)(4) provides a non-exhaustive list of sixteen (16) separate grounds that may constitute "cause." See 11 U.S.C. § 1112(b)(4); *See*

[3] Movants note that Siena has, in fact, initiated an action against the Liquidation Consultant as reflected in the proofs of claim recently filed by the Liquidation Consultant in the Chapter 11 Case (*See* Claim Nos. 63 & 64). The Liquidation Consultant attaches to said claims as Exhibit A, a complaint filed by Siena on September 26, 2018 against the Liquidation Consultant for (1) Negligence; (2) Breach of Contract; and (3) Negligent Representation, which commenced Case No. BC723332, pending in the Los Angeles Superior Court.

[4] Nothing stated herein shall be regarded as a complete recitation of the claims of Siena and/or the Debtor.

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In re Serron Investments, Inc., 2012 WL 2086501, *5 (B.A.P. 9th Cir. 2012). One enumerated cause for dismissal under section 1112(b) is a "substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation." 11 U.S.C. § 1112(b)(4)(A). Though this example often relates to cases where a debtor is unjustly diminishing an estate, it is equally applicable in a case such as this Chapter 11 Case, where the estate is left with no realizable assets and has no prospect for rehabilitation.

Establishing "cause" under section 1112(b)(4)(A) requires a two-fold inquiry: (a) there has been a diminution of value of the estate; and (b) the debtor does not have a reasonable likelihood of rehabilitation. *See, e.g., In re Citi-Toledo Partners*, 170 B.R. 602, 606 (Bankr. N.D. Ohio 1994). As to the first prong, "[i]n the context of a debtor who has ceased business operations and liquidated virtually all of its assets, any negative cash flow—including that resulting only from administrative expenses—effectively comes straight from the pockets of the creditors. This is enough to satisfy the first element of [§ 1112(b)(4)(A)]." *Loop Corp. v. U.S. Tr.*, 379 F.3d 511, 516 (8th Cir. 2004).

Here, though the Debtor began the Chapter 11 Case operating 14 stores and holding significant inventory, the Debtor has liquidated the inventory for the benefit of Siena through the Store Closing Sale process and the Debtor has vacated all but one of its retail stores. The remaining personal property assets of the Debtor, consisting ostensibly of a minimal amount of inventory and equipment held at a single retail location, and the Debtor's intellectual property and customer lists – all of which are subject to the Siena lien and are now being foreclosed upon by Siena following the Court's entry of the RFS Order and Siena's issuance of the Foreclosure Notice. The Remaining Assets of the estate, if any, are the Contingent Claims and the Reduction Claim, the latter of which will only arise if Siena's loan is paid down below $1.5 million as a result of the private foreclosure sale. Accordingly, the first prong requiring a diminution of the estate has been satisfied.

As to the second prong, courts have interpreted it "to refer to the debtor's ability to restore the viability of its business." *Loop Corp.*, 379 F.3d at 516. The inquiry "is not the technical one of whether the debtor can confirm a plan, but, rather, whether the debtor's business

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prospects justify continuance of the reorganization effort." *In re LG Motors, Inc.*, 422 B.R. 110, 116 (Bankr. N.D. Ill. 2009), quoting *In re Rey,* 2006 WL 2457435, at *6 (Bankr. N.D.Ill. Aug. 21, 2006). In this case, with the Debtor's remaining assets being foreclosed upon, the Debtor is left with no business prospects to justify a continuing effort to rehabilitate. Moreover, there are insufficient assets in the bankruptcy estate to fund and support a plan of liquidation.

B. "Cause" for Dismissal Otherwise Exists

In addition to the enumerated examples of cause under section 1112(b)(4), such grounds are not exclusive and "'[a] court may consider other factors as they arise and may 'use its equitable powers to reach an appropriate result in individual cases.'" *In re Mechanical Maintenance, Inc.*, 128 B.R. 382, 386 (E.D. Pa. 1991), quoting S. Rep No. 989, 95th Cong., 2d Sess. 117, reprinted in 1978 U.S. Code Cong. & Admin. News 5787, 5903; *see also* 11 U.S.C. § 102(3). Importantly, courts may find sufficient cause if a debtor is unable "to effectuate a plan" or where there is not a "reasonable possibility of a successful reorganization within a reasonable period of time." *In re Bronson*, 2013 WL 2350791, at *8 (B.A.P. 9th Cir. May 29, 2013) ("[W]hen it becomes apparent to the court that the debtor will not be able to confirm and effectuate a plan within the foreseeable future, the bankruptcy court should exercise its discretion under § 1112(b) to dismiss or convert.").

The "[i]nability to effectuate a plan arises when a debtor lacks the capacity to 'formulate a plan or carry one out'" or where the core for a workable plan of reorganization does not exist. *In re Preferred Door Co., Inc.*, 990 F.2d 547, 549 (10th Cir. 1993), quoting *Hall v. Vance*, 887 F.2d 1041, 1044 (10th Cir. 1989). As addressed above, with the pending foreclosure the Debtor simply does not have the means to effectuate the plan. As the Court is well aware, the Debtor has been unable to pay administrative rent claims or pay its professionals without such claims being financed by the Debtor's secured lender, Siena. Without any ability to fund such essential administrative claims, the Debtor lacks the capacity to support the core of a workable plan or reorganization or liquidation.

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C. Dismissal, Rather Than Conversion, Is Warranted

Once it is determined that "cause" exists, the Court must determine whether to convert or dismiss the case based on what is in the best interests of creditors and the estate. *In re Staff Investment Co.*, 146 B.R. 256, 260 (Bankr. E.D. Cal. 1993); *In re Evans*, 2002 WL 33939733, 1 (Bankr. D. Idaho 2002). A "[d]ebtor's request [to dismiss its Chapter 11 bankruptcy case] should ordinarily be granted unless some 'plain legal prejudice' will result to the creditors.'" *Kimble*, 96 B.R. at 907, quoting *In re Geller*, 74 B.R. 685, 688-89 (Bankr. E.D. Pa. 1987); *see also e.g., In re Hall*, 15 B.R. 913, 915-16 (B.A.P. 9th Cir. 1981), *In re International Airport Inn Partnership,* 517 F.2d 510, 512 (9th Cir. 1975). Here, dismissal of the Chapter 11 Case on the terms requested, will not result in prejudice to the creditors, as the Debtor and Committee have agreed to a mechanism preserving the creditors' rights to the proceeds of the Remaining Assets, if any, pursuant to Creditor Carve Out, as discussed further below. With such Remaining Assets being the only potential assets of the bankruptcy estate, there does not appear to be any significant realizable assets of the estate to liquidate in a chapter 7. In addition, absent a dismissal that provides for preservation of the Remaining Assets, a chapter 7 trustee may chose not to pursue those claims on behalf of creditors and close the case as a "no asset" case, which would prejudice creditors that could otherwise share in the proceeds on those Remaining Assets if the case was dismissed with the reservation of rights detailed below.

D. A Dismissal of the Chapter 11 Case Reserving the Rights of Creditors to Certain Proceeds from the Remaining Assets Under the Amended Financing Stipulation is Warranted

As discussed above, Siena has agreed to the Creditor Carve Out under the Amended Financing Stipulation which could potentially lead to proceeds to creditors in one of two cases: (a) the Siena secured debt is reduced to $1.5 million, in which case the creditors share in 10% of proceeds thereafter (i.e. the Reduction Claim); and (b) 25% of any proceeds from "commercial tort claims" (i.e. the Contingent Claims). *See* Section III(C)(4), above; Amended Financing Stipulation ¶¶ 21 & 28. In addition, Siena has agreed under the Amended Financing Stipulation that the Creditor Carve Out, and all other carve outs agreed to with Siena, survive any dismissal

or conversion of the case. *See id.* Therefore, the Committee and the Debtor request that any dismissal order include the following:

a. In the event of any proceeds that may be attributable to the Creditor Carve Out become available for distribution, that Siena is obligated to notify counsel for the Debtor and counsel for the Committee; and

b. the Committee shall have the right to seek, by *ex parte* application, the reopening of the Chapter 11 Case for the purpose of (i) enforcing the Amended Financing Stipulation and/or the Final Financing Order; or (ii) facilitating any distribution to the creditors under the Creditor Carve Out.

Such relief in connection with dismissal of this Chapter 11 Case is within the Court's discretion as provided under section 349 of the Bankruptcy Code. Although the general intention behind section 349 of the Bankruptcy Code is that dismissal will reinstate the prepetition state of affairs by revesting property to the debtor and vacating certain orders and judgments, the statute explicitly provides that the court "for cause, orde[r] otherwise" to modify the effect of a dismissal order. 11 U.S.C. § 349(b). As the U.S. Supreme Court has stated in *Jevic*, section 349 is "designed to give courts the flexibility to make the appropriate order to protect rights acquired in reliance on the bankruptcy case." *Cyzewski v. Jevic Holding Corp.*, 137 S.Ct. 973, 984 (2017) (internal citation and quotations omitted). In addition, section 349 of the Bankruptcy code, by its own terms, does not vacate the Final Financing Order and does not unwind the Amended Financing Stipulation. Section 349 provides that, subject to the discretion of the court, only certain orders or judgments are vacated, such as under sections 522(i)(1), 542, 550 or 553. 11 U.S.C. § 349(b)(2). Therefore, the terms of the Amended Financing Stipulation remain binding on Siena and entry of a dismissal order that specifically reserves the rights of the creditors to the Creditor Carve Out will provide a mechanism for creditors to receive what they bargained for in this Chapter 11 Case.

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E. The Dismissal Order Should Require Siena to Pay the Carve Out and Unpaid Administrative Fees

1. Unpaid Carve Out Amounts

As detailed above, pursuant to paragraph 21 of the Amended Financing Stipulation, Siena has agreed to pay the Carve Out to certain professionals, an obligation which Siena has agreed survives dismissal or conversion of this Chapter 11 Case. *See* Amended Financing Stipulation, ¶ 21; Section II(C)(4), above. For Debtor's counsel, Siena has agreed to a carve out in the aggregate amount of $275,000.00. To date, the Debtor's counsel has received payments on this carve out totaling $245,286.79, which has been drawn down upon pursuant to the fee statement procedures approved by the Court. The remaining balance of $29,713.21 has not been paid despite requests made by the Debtor's counsel to Siena. Accordingly, Movants request that any order dismissing this case require Siena to fulfil its obligation to fund the Carve Out and pay this, and any other outstanding amounts due under the Carve Out no later than 14 days from the later of (x) entry of the dismissal order; or (y) entry of an order approving the final fee application of the applicable professional.

2. Unpaid Administrative Fees

In addition to unpaid Carve Out amounts, any dismissal order should require Siena to pay outstanding administrative expenses incurred by the noticing agent, Donlin Recano & Company (Donlin Recano). For the majority of the Chapter 11 Case, Siena has timely funded the requests of the Debtor to pay the Donlin Recano invoices. However, as of the date of this Motion, there are three invoices that remain unpaid, with outstanding fees owed to Donlin Recano, net of the $5,000 retainer held by them, totaling $1,532.15. Also, Donlin Recano estimates $3,000.00 in fees will be incurred in connection with service of this Motion on all creditors and any final services rendered prior to dismissal. Within 14 days from entry of order on the Motion, Donlin Recano will file with the Court a supplemental declaration as to this administrative expense, including all invoices and other evidence in support. Movants request that the dismissal order require Siena to pay this administrative expense no later than seven (7) days from the filing of such supplemental declaration.

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3. Other Unpaid Administrative Fees

Though Siena has consistently paid accrued administrative expenses during the course of this Chapter 11 Case, Movants understand that since service of the Foreclosure Notice, Siena has refused to fund certain administrative expenses incurred by the Debtor. The Debtor is working with Siena to have such administrative expenses paid and will provide further information at, or prior to the hearing on the Motion regarding any such administrative expenses that remain unpaid.[5]

F. Dismissal Should Be Deferred for 45 days to Allow for Any Payments Required Under the Order on this Motion and for Any Other Final Matters

Prior to entry of an order dismissing the case, Movants request that sufficient time be provided to conclude the various final matters in this case. Such matters include, but are not limited to: (i) the completion of payments due following entry of the order on this Motion, including any unpaid payments under the Carve Out and the administrative claim of Donlin Recano; (ii) the finality of orders on fee applications to be filed with the Court; and (iii) resolution of contested matters, if any, brought by landlords in connection with the landlord administrative claim procedures provided for in the RFS Order. Movants request that dismissal of the case be deferred for at least forty-five (45) days and be entered upon the filing of a declaration by either the Debtor or the Committee detailing that any outstanding matters have been resolved and all required payments have been made.

G. Alternatively, the Court May Stay All Proceedings Under 11 U.S.C. § 305(a)

If the Court is not inclined to dismiss the Chapter 11 Case subject to the reservation of creditor rights under the Creditor Carve Out, Movants alternatively request that the Court suspend all proceedings and administratively close the Chapter 11 Case pursuant to the court's discretionary power under section 305(a) of the Bankruptcy Code. Section 305(a) of the Bankruptcy Code provides that the Court may dismiss a pending case or suspend all proceedings when "the interests of creditors and the debtor would be better served by such [suspension or] dismissal". *In re Macke Int'l Trade, Inc.*, 370 B.R. 236, 247 (B.A.P. 9th Cir. 2007), quoting

[5] Movants reserve all rights to seek prompt payment of any such unpaid administrative expenses.

Eastman v. Eastman (In re Eastman), 188 B.R. 621, 624 (B.A.P. 9th Cir. 1995). Such a determination is made based on the totality of circumstances. *Id.*

Movants acknowledge that suspension of a bankruptcy proceeding under section 305(a) is rare. *See In re Marciano,* 446 B.R. 407, 432 (Bankr. C.D. Cal. 2010) (identifying only one reported case, *In re Rookery Bay, Ltd.,* 190 B.R. 949 (Bankr.M.D.Fla.1995), in which the court suspended, rather than dismissed proceedings under section 305(a) of the Bankruptcy Code). Despite its rare occurrence, suspension of all proceedings and administrative closure of this Chapter 11 Case would serve the interest of the Debtor and all creditors, as it will cease the further accrual of administrative expenses, including U.S. Trustee fees, and concurrently preserve the rights of the creditors under the Creditor Carve Out. In the event that creditors are to receive proceeds under the Creditor Carve out, the Committee or the Debtor may seek to reopen and reinstate the proceedings to administer the distributions.

H. Alternatively, the Chapter 11 Case May be Converted to a Case Under Chapter 7

In the event that the Court is not inclined to dismiss the Chapter 11 Case for "cause" subject to preservation of rights under the Creditor Carve Out or suspend the proceedings under section 305(a), Movants request that the Court convert the Chapter 11 Case to a case under chapter 7. As discussed above, once the Court determines that "cause" exists under section 1112(b) of the Bankruptcy Code, the Court must determine whether to convert or dismiss the case based on what is in the best interests of creditors and the estate. *See In re Staff Investment Co.*, 146 B.R. at 260. While the Debtor and the Committee believe that with the procedures and mechanisms in place on a dismissal would provide a more efficient alternative of the Remaining Assets come to fruition, conversion to chapter 7 provides an alternative to preserve the rights of the creditors to such claims under Creditor Carve Out, though any such proceeds will be subject to chapter 7 administrative fees.

V. CONCLUSION

Based on the foregoing, the Debtor and the Committee jointly respectfully request entry of an order, pursuant to sections 1112(b) of the Bankruptcy Code and Bankruptcy Rule 1017(f)

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dismissing this Chapter 11 Case subject to the creditor's reservation of rights to enforce the provisions of the Amended Financing Stipulation and/or administer any proceeds from the Creditor Carve Out. In the alternative, Movants request that the Court either stay all proceedings and administratively close the Chapter 11 Case pursuant to section 305(a) of the Bankruptcy Code, or, as a further alternative, convert this Chapter 11 Case to a case under chapter 7.

October 12, 2018

GREENBERG GLUSKER FIELDS CLAMAN & MACHTINGER LLP

By: */s/ Brian L. Davidoff*
BRIAN L. DAVIDOFF
KEITH PATRICK BANNER
General Bankruptcy Counsel for Debtor and Debtor in Possession

October 12, 2018

PACHULSKI STANG ZIEHL & JONES LLP

By: _____
JEFFREY W. DULBERG
SHIRLEY S. CHO
Counsel for the Official Committee of Unsecured Creditors

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DECLARATION OF BRIAN LIPMAN

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

1. I am the Managing Member and Chief Operating Officer of B&B Liquidating, LLC, f/k/a B&B Bachrach, LLC (the "Company" or the "Debtor"). Except as otherwise indicated, all facts as set forth in this Declaration are based upon my personal knowledge and if I were called to testify, I would and could testify competently to the facts set forth in this Declaration.

2. I make this declaration in support of the accompanying *Joint Motion of the Debtor and the Official Committee of Unsecured Creditors to Dismiss Chapter 11 Case Subject to a Reservation of Rights to Enforce Previously Agreed-Upon Carve Out for Unsecured Creditors, or, in the Alternative, Suspend All Proceedings or Convert Chapter 11 Case to a Case Under Chapter 7* (the "Motion"). Capitalized terms not otherwise defined herein shall have the meaning ascribed in the Motion.

3. The Company has all but completed its intended liquidation. A nominal amount of inventory remains on the Company's books. Based on the most recent information available, as of the week ending September 28, 2018, the value of remaining inventory was $217,000.00, all of which was subject to the lien of Siena. The amount of Siena's secured claim as of the same date is approximately $3.77 million. To the extent not already foreclosed upon by Siena, the Company also retains its customers lists, trade name and other intellectual property, all of which are also subject to the lien of Siena. To the extent that Siena has already completed it private foreclosure sale, the Company is no longer the owner of these assets. Further, the only leasehold interest the Debtor still holds is Twelve Oaks Mall (Store No. 8), which is the subject of ongoing negotiations between the Company and the landlord.

4. Attached hereto as Exhibit 1 is a true and correct copy of a Notification of Disposition of Collateral (Uniform Commercial Code Section 9-613), which I received from Siena on September 14, 2018.

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5. For the majority of the Chapter 11 Case, Siena has timely funded the requests of the Company to pay the invoices issued by noticing agent Donlin Recano & Company ("Donlin Recano"). However, as of the date of the Motion, there are three invoices that remain unpaid, with outstanding fees owed to Donlin Recano totaling $6,532.15. I further understand that Donlin Recano is still holding a retainer of $5,000.00, which was paid by Siena upon Donlin Recano's retention. I have received an estimate from Donlin Recano of $3,000 for fees to be incurred in connection with service of this Motion on all creditors and any final services rendered prior to dismissal.

6. Since service of the Foreclosure Notice, Siena has refused to fund certain administrative expenses incurred by the Company. The Company is currently working with Siena to have such administrative expenses paid and will provide further information at, or prior to the hearing on the Motion regarding any such administrative expenses that remain unpaid.

[*Signature Page Follows*]

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

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

Executed this 12th day of October, 2018 at Los Angeles, California.

BRIAN LIPMAN

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

EXHIBIT “1”

NOTIFICATION OF DISPOSITION OF COLLATERAL
(Uniform Commercial Code Section 9-613)

Date: September 14, 2018

VIA OVERNIGHT DELIVERY
AND EMAIL WHERE AVAILABLE

To: **B&B LIQUIDATING, LLC** (formerly known as B&B Bachrach, LLC)
8723 Bellanca Avenue, Unit A
Los Angeles, CA 90045
Attention: Brian Lipman
Email: blipman@bachrach.com

MR. BRIAN LIPMAN
5 Washington Avenue
Lawrence, NY 11559

MS. ILANA LIPMAN
5 Washington Avenue
Lawrence, NY 11559

and the persons listed on Exhibit A hereto via Overnight Delivery

From: **SIENA LENDING GROUP LLC**, as servicer
SIENA FUNDING LLC (collectively, the "Secured Party")
9 W Broad Street, 5th Floor
Stamford, Connecticut 06902
Attn: Steve Sanicola

Name of Debtor: **B&B LIQUIDATING, LLC,** a California limited liability company
(formerly known as B&B Bachrach, LLC)
8723 Bellanca Avenue, Unit A
Los Angeles, CA 90045

NOTICE IS HEREBY GIVEN THAT we will sell or otherwise dispose of the following collateral (the "Collateral"):

All of Debtor's right, title, and interest in some or all of the Collateral described and defined on Exhibit B hereto,

privately sometime on or after Tuesday, September 25, 2018.

THE DISPOSITION OF THE COLLATERAL WILL BE AS IS, WHERE IS AND WITH ALL FAULTS, AND NO REPRESENTATION OR WARRANTY IS OR WILL BE MADE AS TO THE COLLATERAL. THERE IS NO WARRANTY RELATING TO TITLE, POSSESSION, QUIET ENJOYMENT, OR THE LIKE IN THIS DISPOSITION. SECURED PARTY MAY DISPOSE OF ALL OF THE COLLATERAL IN ONE SALE, OR MAY DISPOSE OF COLLATERAL IN A SERIES OF SALES.

The disposition will be without prejudice to the rights and remedies which Secured Party now has or may hereafter acquire against Debtor and any and all guarantors of the obligations of Debtor, all of which are hereby expressly reserved. This Notice is without prejudice to Secured Party's right to proceed against Collateral by other methods, including (but not limited to) the direct collection of accounts, general intangibles and other sums owing to Debtor.

We will provide Debtor with an accounting of the unpaid indebtedness secured by the property that we intend to sell or otherwise dispose of. You may request an accounting by calling us at (203)883-5657.

ALL OF SECURED PARTY'S RIGHTS ARE EXPRESSLY RESERVED.

Secured Party:

SIENA FUNDING LLC

By _____
Name: Michael Zielinski
Title: SVP

Exhibit A

VIA OVERNIGHT DELIVERY:

Emerald Capital Funding, LLC
4221 Wilshire Blvd., Suite 260
Los Angeles, CA 90010

CC Funding
505 Park Avenue, 6th Floor
New York, NY 10022

Greenberg Glusker Fields Claman & Machtinger LLP
1900 Avenue of the Stars, 21st Floor
Los Angeles, CA 90067
Attention: Brian L. Davidoff, Esq.
Attention: Jeffrey A. Krieger, Esq.

Exhibit B

Collateral

All property and interests in property in or upon which a security interest, mortgage, pledge or other Lien is granted pursuant to Secured Party pursuant to the loan documents entered into between Debtor and Secured Party, including all of the property of each Loan Party Obligor whether tangible or intangible, real or personal, now or hereafter owned, existing, acquired or arising and wherever now or hereafter located, and whether or not eligible for lending purposes, including: (i) all Accounts (whether or not Eligible Accounts) and all Goods whose sale, lease or other disposition by any Loan Party Obligor has given rise to Accounts and have been returned to, or repossessed or stopped in transit by, any Loan Party Obligor; (ii) all Chattel Paper (including Electronic Chattel Paper), Instruments, Documents, and General Intangibles (including all patents, patent applications, trademarks, trademark applications, trade names, trade secrets, goodwill, copyrights, copyright applications, registrations, licenses, software, franchises, customer lists, tax refund claims, claims against carriers and shippers, guarantee claims, contracts rights, payment intangibles, security interests, security deposits and rights to indemnification); (iii) all Inventory (whether or not Eligible Inventory); (iv) all Goods (other than Inventory), including Equipment, Farm Products, Health-Care-Insurance Receivables, vehicles, and Fixtures; (v) all Investment Property, including, without limitation, all rights, privileges, authority, and powers of each Loan Party Obligor as an owner or as a holder of Pledged Equity, including, without limitation, all economic rights, all control rights, authority and powers, and all status rights of each Loan Party Obligor as a member, equity holder or shareholder, as applicable, of each Issuer; (vi) all Deposit Accounts, bank accounts, deposits and cash; (vii) all Letter-of-Credit Rights; (viii) all Commercial Tort Claims disclosure to Secured Party; (ix) all Supporting Obligations; (x) any other property of any Loan Party Obligor now or hereafter in the possession, custody or control of Lender or any agent or any parent, Affiliate or Subsidiary of Secured Party or any Participant with Secured Party in the loans, for any purpose (whether for safekeeping, deposit, collection, custody, pledge, transmission or otherwise), and (xi) all additions and accessions to, substitutions for, and replacements, products and Proceeds of the foregoing property, including proceeds of all insurance policies insuring the foregoing property, and all of each Loan Party Obligor's books and records relating to any of the foregoing and to any Loan Party's business, except the following Collateral shall not be sold or transferred in connection with the above referenced sale: (A) Debtor's insurance policies (but the proceeds of all insurance policies insuring the foregoing property shall be included in the Collateral offered for sale) and (B) any and all claims of Debtor set forth in that certain Order Granting Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Personal Property) in Case No. 2:18-bk-11744-NB – Chapter 11 entered by the United States Bankruptcy Court Central District of California – Los Angeles Division on September 13, 2018.

As used herein the following terms have the following meanings:

Unless otherwise defined herein, the following terms are used herein as defined in the UCC: Accounts, Chattel Paper, Commercial Tort Claims, Deposit Accounts, Documents, Electronic Chattel Paper, Equipment, Farm Products, Fixtures, General Intangibles, Goods, Health-Care-Insurance Receivables, Instruments, Inventory, Letter-of-Credit Rights, Proceeds, and Supporting Obligations.

"Affiliate" means, with respect to any Person, any other Person in control of, controlled by, or under common control with the first Person, and any other Person who has a substantial interest, direct or indirect, in the first Person or any of its Affiliates, including, any officer or director of the first Person or any of its Affiliates; provided, however, that neither Secured Party nor any of its Affiliates shall be deemed an "Affiliate" of Debtor. For the purpose of this definition, a "substantial interest" shall mean the direct or indirect legal or beneficial ownership of more than ten (10%) percent of any class of equity or similar interest.

"Capitalized Lease" means any lease which is or should be capitalized on the balance sheet of the lessee thereunder in accordance with GAAP.

"Eligible Accounts" as defined in the loan documents between Debtor and Secured Party.

"Eligible Inventory" as defined in the loan documents between Debtor and Secured Party.

"Equity Interests" means, with respect to a Person, all of the shares of stock, warrants, interests, participations, or other equivalents (regardless of how designated) of or in such Person, whether voting or nonvoting, including capital stock (or other ownership or profit interests or units), preferred stock, or any other "equity security" (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the Securities Exchange Commission under the Securities Exchange Act of 1934, as in effect from time to time).

"Investment Property" means the collective reference to (a) all "investment property" as such term is defined in Section 9-102 of the UCC, (b) all "financial assets" as such term is defined in Section 8-102(a)(9) of the UCC, and (c) whether or not constituting "investment property" as so defined, all Pledged Equity.

"Issuers" means the collective reference to each issuer of Investment Property.

"Lien" means any mortgage, deed of trust, pledge, hypothecation, assignment, charge, deposit arrangement, encumbrance, easement, lien (statutory or other), security interest, or other security arrangement and any other preference, priority, or preferential arrangement in the nature of a security interest of any kind or nature whatsoever, including any conditional sale contract or other title retention agreement, the interest of a lessor under a Capital Lease and any synthetic or other financing lease having substantially the same economic effect as any of the foregoing.

"Loan Party" means, individually, Debtor, or any Subsidiary; and "Loan Parties" means, collectively Debtor and all Subsidiaries.

"Loan Party Obligor" means, individually, Debtor or any present or future Obligor that is a Loan Party; and "Loan Party Obligors" means, collectively, Debtor and each Loan Party Obligor.

"Obligations" as defined in the loan documents between Debtor and Secured Party

"Obligor" means any guarantor, endorser, acceptor, surety or other Person liable on, or with respect to, any of the Obligations or who is the owner of any property which is security for any of the Obligations, other than Debtor.

"Participant" means, one or more Persons having participating interests in a loan, commitments and/or other interests under the loan documents with Debtor and Secured Party.

"Person" means any individual, sole proprietorship, partnership, joint venture, limited liability company, trust, unincorporated organization, association, corporation, government or any agency or political division thereof, or any other entity.

"Pledged Equity" means all Equity Interests, certificates, options, or rights or instruments of any nature whatsoever in respect of the equity interests of any Person that may be issued or granted to, or held by, any Loan Party Obligor while the loan documents between Debtor and Secured Party is in effect, and including, without limitation, to the extent attributable to, or otherwise related to, such pledged equity interests, all of such Loan Party Obligor's (i) interests in the profits and losses of each Issuer, (ii) rights and interests to receive distributions of each Issuer's assets and properties, and (iii) rights and interests, if any, to participate in the management or each Issuer related to such pledged equity interests.

"Subsidiary" means any corporation or other entity of which a Person owns, directly or indirectly, through one or more intermediaries, more than 50% of the Equity Interests at the time of determination. Unless the context indicates otherwise, references to a Subsidiary shall be deemed to refer to a Subsidiary of Debtor.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 815 Moraga Drive, Los Angeles, California 90049.

On September 14, 2018, I served the foregoing document described as **NOTIFICATION OF DISPOSITION OF COLLATERAL** (California Uniform Commercial Code Section 9-613) via overnight delivery on the interested parties addressed as follows:

PLEASE SEE ATTACHED SERVICE LIST

☑ (By Overnight Delivery). I caused the above document to be delivered by overnight delivery (UPS next day) to the addresses listed on the attached service list.

☑ (By Email) I caused such document to be sent on this date via email to the following address: blipman@bachrach.com.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed September 14, 2018, at Los Angeles, California.

Wendy Ballot Huey

WENDY BALLOT HUEY

SERVICE LIST

VIA UPS NEXT DAY:

B&B LIQUIDATING, LLC (formerly known as B&B Bachrach, LLC)
8723 Bellanca Avenue, Unit A
Los Angeles, CA 90045
Attention: Brian Lipman

MR. BRIAN LIPMAN
5 Washington Avenue
Lawrence, NY 11559

MS. ILANA LIPMAN
5 Washington Avenue
Lawrence, NY 11559

EMERALD CAPITAL FUNDING, LLC
4221 Wilshire Blvd., Suite 260
Los Angeles, CA 90010

CC FUNDING
505 Park Avenue, 6th Floor
New York, NY 10022

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 815 Moraga Drive, Los Angeles, California 90049.

On September 17, 2018, I served the foregoing document described as **NOTIFICATION OF DISPOSITION OF COLLATERAL** (California Uniform Commercial Code Section 9-613) via overnight delivery on the interested parties addressed as follows:

Greenberg Glusker Fields Claman & Machtinger LLP
1900 Avenue of the Stars, 21st Floor
Los Angeles, CA 90067
Attention: Brian L. Davidoff, Esq.
Attention: Jeffrey A. Krieger, Esq.

☑ (By Overnight Delivery). I caused the above document to be delivered by overnight delivery (UPS next day) to the address listed above.

☑ (By Email) I caused such document to be sent on this date via email to the following addresses: bdavidoff@greenbergglusker.com and jkrieger@greenbergglusker.com.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed September 17, 2018, at Los Angeles, California.

Wendy Ballot Huey

WENDY BALLOT HUEY

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: 1900 Avenue of the Stars, 21st Fl. Los Angeles, CA 90067

A true and correct copy of the foregoing document entitled (*specify*): **JOINT MOTION OF THE DEBTOR AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO DISMISS CHAPTER 11 CASE SUBJECT TO A RESERVATION OF RIGHTS TO ENFORCE PREVIOUSLY AGREED-UPON CARVE OUT FOR UNSECURED CREDITORS, OR, IN THE ALTERNATIVE, SUSPEND ALL PROCEEDINGS OR CONVERT CHAPTER 11 CASE TO A CASE UNDER CHAPTER 7; DECLARATION OF BRIAN LIPMAN IN SUPPORT THEREOF** 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*) October 12 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

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:
On (*date*) October 12, 2018, 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.

☐ 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*) October 12, 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.

Honorable Neil W. Bason
U.S. Bankruptcy Court, Central District
Edward R. Roybal Federal Building and Courthouse
255 E. Temple Street, Suite 1552 / Courtroom 1545
Los Angeles, CA 90012

☐ 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.

October 12, 2018	Sherry Harper	*/s/ Sherry Harper*
Date	*Printed Name*	*Signature*

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**:

- Charla L Brown charla.brown@cpa.texas.gov
- Shirley Cho scho@pszjlaw.com
- Brian L Davidoff bdavidoff@greenbergglusker.com, calendar@greenbergglusker.com;jking@greenbergglusker.com
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- Elizabeth Weller dallas.bankruptcy@publicans.com