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10 *Attorneys for Jill H. Ford, Trustee*

11 **IN THE UNITED STATES BANKRUPTCY COURT**
12 **FOR THE DISTRICT OF ARIZONA**

13 In re:

14 DAVID BRADY BOGEN dba
15 PORKOPOLIS dba HAMROD
16 HOLMBOGEN, LLC dba BRADY'S
17 SAUCE LLC dba TORP-N-EDDIE LLC
18 and RONALEE ELLEN BOGEN fka
19 RONALEE CRANE,

20 Debtors.

(Chapter 7 Case)

No. 2:20-bk-07306-EPB

**TRUSTEE'S MOTION TO SELL
ESTATE'S INTEREST IN THE
BERNABE GROUP, LLC**

11 U.S.C. §363(b) and Local Rule 6004-1

21 Jill H. Ford, Chapter 7 Trustee, herein applies to this Court for an Order approving *Trustee's*
22 *Motion to Sell Estate's Interest in The Bernabe Group, LLC* ("**Motion**"). In support of her Motion,
23 the Trustee submits the following Memorandum of Points and Authorities and the entire record of
24 this administrative case.

25 **MEMORANDUM OF POINTS AND AUTHORITIES**

26 **A. FACTUAL BACKGROUND.**

27 1. This case was commenced by a voluntary Petition filed under Chapter 7 of Title 11,
28 United States Code, by David Brady Bogen and Ronalee Ellen Bogen ("**Debtors**") on June 18,
2020 ("**Petition Date**").

2. Jill H. Ford is the duly appointed and acting Trustee of the Chapter 7 Estate ("**Trustee**").

3. At the time of the commencement of this Chapter 7 case, Debtors had a 5.8% ownership
interest in The Bernabe Group, LLC ("**Company**").

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2 4. Debtors have not claimed an exemption in the Company and the interest in the Company
3 is property of the Estate pursuant to 11 U.S.C. 541.

4 5. Trustee has determined in her best business judgment that a sale of the Estate's interest
5 in the Company could generate funds for the Estate and is in the best interest of the Estate.

6 6. The Trustee proposes to offer the Estate's interest in the Company for sale to the person
7 making the highest and best bid at public sale on **Friday, March 26, 2021, at 8:30 a.m.**, by
8 telephone, by dialing 1 (310) 372-7549, wait for prompt – ACCESS CODE # 831482 then pressing
9 #. Any payment shall be in the form of a check naming as payee "Jill H. Ford, Trustee" and due
10 within five days of the Sale.

11 7. Trustee has received an opening bid to purchase the Estate's interest in the Company
12 from Kyle Bernabe for the sum of \$5,000.00. If Mr. Bernabe is the successful bidder at the sale, he
13 shall remit a check in the sum of \$5,000.00, made payable to "Jill H. Ford, Trustee" within five
14 days of the Sale.

15 8. Prospective purchasers are encouraged to personally inspect/perform their own due
16 diligence of the interest in the Company being sold, as the interest in the Company will be sold on
17 an "AS IS" "WHERE IS" basis, with no warranties, guarantees express or implied.

18 9. The proposed purchaser is not an "insider" as defined by 11 U.S.C. § 101(31). Kyle
19 Bernabe is the sole manager of the Company.

20 10. Trustee is not aware of any other entities holding an interest in the Estate's interest in the
21 Company.

22 11. There has been no stay relief sought as to the scheduled interest in the Company.

23 12. The Trustee is not aware of any recent appraisals on the scheduled interest in the
24 Company.

25 13. There are no broker's fees/compensation related to this sale.

26 14. Upon the later of the Court approving this Motion, completion of the proposed sale, and
27 receipt of full payment of the purchase price, Trustee shall execute an assignment transferring the
28

1 Estate's interest in the Company to the prevailing bidder subject to the terms set forth herein and
2 an Order entered by the Court approving the terms of the sale.

3 **B. LEGAL AUTHORITY.**

4 15. This Court has jurisdiction over Debtors' Chapter 7 case under 28 U.S.C. § 1334.
5 Proceedings with respect to the Motion are core proceedings that the Court may hear and decide.
6 See 28 U.S.C. § 157(b)(1) and (b)(2)(A), (M), (N), and (O). Moreover, venue is appropriate
7 pursuant to 28 U.S.C. § 1408(1).

8 16. Property of the Estate includes "all legal or equitable interests of the debtor in
9 property as of the commencement of the case." See 11 U.S.C. § 541(a). The concept of property
10 of the estate is broad in scope, encompassing all kinds of property, including tangible and
11 intangible property, causes of action, real and personal property, certain property held by the
12 debtor in trust for others, and certain property of the debtor held by others. See *U.S. v. Whiting*
13 *Pools*, 462 U.S. 198, n.9 (1983). As detailed above, Debtors acquired their interest in the
14 Company pre-petition and held the same interest in the Company on the Petition Date.
15 Therefore, the scheduled interest in the Company is property of the Estate that can be liquidated
16 for the benefit of the creditors of this Estate.

17 17. Section 363(b)(1) provides that "[t]he [T]rustee, after notice and a hearing, may use,
18 sell, or lease, other than in the ordinary course of business, property of the estate"

19 18. A trustee must demonstrate a sound business justification for a sale or use of assets
20 outside the ordinary course of business. *E.g., In re Continental Air Lines, Inc.*, 780 F.2d 1223,
21 1226 (5th Cir. 1986). Courts look to various factors to determine whether to approve a motion
22 under section 363(b), such as: (i) whether a sound business reason exists for the proposed
23 transaction; (ii) whether fair and reasonable consideration is provided; (iii) whether the
24 transaction has been proposed and negotiated in good faith; and (iv) whether adequate and
25 reasonable notice is provided. *In re Condere*, 228 B.R. 615, 626 (S.D. Miss. 1998).

26 19. The Trustee believes in her best business judgment that the prospective sale will
27 generate funds for the benefit of the creditors of this Estate and is in the best interest for all creditors
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1 and parties-in-interest. The sale will be conducted via public auction and will be subject to higher
2 and better bids.

3 20. Trustee is not aware of any liens, claims, encumbrances or interests in the Estate's
4 interest in the Company. The Trustee seeks to sell the interest in the Company **as-is, where-is,**
5 **with no representations, guarantees, or warranties, and subject to liens, encumbrances and**
6 **interests.**

7 21. Pursuant to Local Rule 6004-1, Trustee must file a motion and, after notice, obtain an
8 Order approving a sale outside the ordinary course of business if the property being sold is
9 expected to have a value greater than \$2,500.00. Therefore, this Motion is being filed in
10 compliance with Local Rule 6004-1.

11 22. Additionally, the Trustee respectfully requests that the Court, in the discretion
12 provided to it under Fed.R.Bankr.P. 6004(h), waive the fourteen-day stay of the Order arising
13 under that same Bankruptcy Rule.

14 **23. All sales are subject to Trustee final approval.**

15 WHEREFORE, the Trustee prays for an Order of this Court as follows:

- 16 A. Granting *Trustee's Motion to Sell Estate's 5.8% Interest in*
17 *The Bernabe Group, LLC* "as is" / "where is" with no warranties express or
18 implied, subject to any liens, claims, interests, or encumbrances to Kyle
19 Bernabe or anyone submitting a higher and better offer;
- 20 B. Authorizing the Trustee to accept the proceeds from the sale of the Estate's
21 interest in the Company;
- 22 C. Authorizing the Trustee to execute all additional documents and perform other
23 such acts as may be necessary or reasonably requested to facilitate and
24 complete the transaction;
- 25 D. Waiving the 14-day stay of Fed.R.Bankr.P. Rule 6004(h); and
- 26 E. For such other and further relief as this Court deems just and proper.
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2 RESPECTFULLY SUBMITTED this 12th day of February, 2021.

3 **LANE & NACH, P.C.**

4 By: /s/ Adam B. Nach
5 Adam B. Nach
6 Helen K. Santilli
7 *Attorneys for Trustee*

8 COPY of the foregoing delivered
9 via electronic mail to:

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28 By: /s/ Debbie McKernan