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10 Westfield, LLC, The Macerich Company
11 and RREEF Management Company

12 **UNITED STATES BANKRUPTCY COURT**
13 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
14 **LOS ANGELES DIVISION**

15 In re) Case No. 2:08-bk-13518-SB
16)
17 ESTYLE, INC.,) Chapter 11
18 a Delaware corporation, dba babystyle, Cadeau)
19 and Cadeau Designs,) **OBJECTION TO SCHEDULE OF**
20) **PROPOSED CURE AMOUNTS**
21 Debtor.) **REGARDING (1) UNEXPIRED REAL**
22) **PROPERTY LEASES AND (2)**
23) **EXECUTORY CONTRACT, WHICH**
24) **MAY BE ASSUMED AND ASSIGNED**
25) **PURSUANT TO THE DEBTOR'S**
26) **MOTION FOR ORDER AUTHORIZING**
27) **AND APPROVING (1) THE SALE OF**
28) **ESTYLE, INC'S ASSETS FREE AND**
) **CLEAR OF LIENS; AND (2) THE**
) **ASSUMPTION AND ASSIGNMENT OF**
) **EXECUTORY CONTRACTS AND**
) **UNEXPIRED NONRESIDENTIAL**
) **REAL PROPERTY LEASES**
)
) Date: July 8, 2008
) Time: 2:00 p.m.
) Place: Courtroom 1575
) 255 East Temple Street
) Los Angeles, CA 90012

25 Westfield, LLC, The Macerich Company, and RREEF Management Company
26 (collectively the "Landlords") hereby file this Objection (the "Cure Objection") to the Debtor's
27 Schedule Of Proposed Cure Amounts Regarding (1) Unexpired Real Property Leases And (2)
28 Executory Contract, Which May Be Assumed And Assigned Pursuant To The Debtor's Motion

1 For Order Authorizing And Approving (1) The Sale Of eStyle, Inc’s Assets Free And Clear Of
2 Liens; And (2) The Assumption And Assignment Of Executory Contracts And Unexpired
3 Nonresidential Real Property Leases (the “Cure Schedule”), and respectfully represent as
4 follows:

5 **I. INTRODUCTION**

6 The cure amounts proposed by the Debtor fails to include all amounts currently owing
7 under the Leases. In addition, other amounts may come due and owing prior to the closing of
8 any sale that are chargeable under the Leases. The Debtor must satisfy all such obligations as
9 part of any assumption and assignment of the Leases.

10 **II. BACKGROUND FACTS**

11 1. eStyle, Inc. (the “Debtor”) filed its voluntary petition for relief under Chapter 11
12 of Title 11 of the United States Code on March 19, 2008. The Debtor has continued to operate
13 its business and manage its properties as debtor-in-possession pursuant to 11 U.S.C. §§ 1107(a)
14 and 1108.¹

15 2. The Debtor leases retail space from the Landlord in the following shopping
16 centers (the “Centers”) where it continues to operate retail stores as tenants pursuant to unexpired
17 leases of nonresidential real property (the “Leases”) at the following locations (the “Premises”):

The Macerich Company	
Kierland Commons	Scottsdale, AZ
Scottsdale Fashion Square	Scottsdale, AZ
Westfield, LLC	
Fashion Square	Sherman Oaks, CA
Valley Fair	Santa Clara, CA
RREEF Management Company	
Manhattan Village	Manhattan Beach, CA

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28 ¹ Unless otherwise specified, all statutory references to “Section” are to 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”).

1 3. Each of the leases is a “lease of real property in a shopping center” as that term is
2 used in Section 365(b)(3). See In re Joshua Slocum, Ltd., 922 F.2d 1081, 1086-1087 (3rd Cir.
3 1990).

4 4. On June 26, 2008, the Debtor filed the Cure Schedule, which proposed cure
5 amounts for each of the Debtor’s locations that are subject to the proposed sale. The amounts set
6 forth in the Cure Schedule does not reflect all outstanding balances due and owing to Landlords
7 under the Leases, or account for accrued but unbilled charges which may come due in the future.
8 Therefore, the cure amounts set forth by the Debtor must be modified to reflect the additional
9 charges, and accruing charges, due under the Leases as set forth herein.

10 **III. THE DEBTORS’ PROPOSED CURE AMOUNTS DO NOT PROVIDE FOR**
11 **PAYMENT OF ALL OBLIGATIONS DUE UNDER THE LEASES.**

12 5. The Landlords’ cure, as compared to the Debtor’s cure is summarized below, and
13 more fully set forth in Exhibits A through E, which are attached hereto and incorporated into this
14 Cure Objection by this reference:²

Landlord	Center	Debtors’ Cure	Landlords’ Cure
Macerich	Kierland Commons	\$6,726.48	\$ 26,121.15
Macerich	Scottsdale Fashion Square	\$2,292.46	\$ 26,782.92
RREEF	Manhattan Village	\$1,089.98	\$ 17,741.33
Westfield	Fashion Square	\$0.00	\$ 19,619.26
Westfield	Valley Fair	\$0.00	\$ 23,171.99

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19 6. In addition to the amounts set forth above, in determining what the Debtor must
20 pay as cure pursuant to Section 365(b), the following must also be taken into consideration:

21 *i. Year-end adjustments and reconciliations*

22 7. In addition to rent, attorneys fees, costs, and interest, some charges for which the
23 Debtor bears responsibility under the Leases have not yet been reconciled and/or adjusted from
24 pre-petition (or even post-petition) periods. By way of example, the Debtor occupies retail space
25 at the Centers pursuant to triple-net leases, where they typically pay rent and related lease
26 charges in advance for each month. The Debtor pays fixed minimum rent, along with a pro-rata
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28 ²Declarations from each landlord supporting these amounts are being filed concurrently with this Cure Objection,
and those declarations are incorporated herein by this reference.

1 share of expenses such as real property taxes, insurance, common area maintenance (“CAM”)
2 fees, annual percentage rent, and the like. Certain charges, such as CAM and property taxes are
3 estimated prospectively, billed to and paid by the tenant during the year, and then reconciled
4 after year-end. The reconciliation compares the amounts estimated and paid against actual
5 charges incurred by the property. To the extent the estimated payments exceed actual charges,
6 the result is a credit to the tenant. To the extent the estimated payments do not cover actual
7 charges incurred under the Leases, the result is an additional amount (or debit) for which the
8 tenant is liable. In some instances in this case, year-end reconciliations and adjustments for
9 previous years for the Premises may not yet complete (i.e. - year-end reconciliations and
10 adjustments which accrue throughout 2007 will not be billed until sometime in 2008 and
11 accruing 2008 adjustments will not be billed until sometime in 2009). In other instances, certain
12 charges may be paid in arrears, and cannot be calculated (in some cases) until a year or more
13 after year-end. Since these accrued, but unbilled, charges are not yet due under the Leases, they
14 do not create a current default that gives rise to a requirement to cure by the Debtor and/or an
15 eventual assignee.

16 8. Nevertheless, the Debtor or any assignee will continue to be responsible for all
17 such accrued charges as and when they come due and are billed under the Leases. Therefore,
18 any order approving any assumption and assignment of the Leases must specify that these
19 unbilled amounts will be paid as and when due under the Leases, regardless of whether the
20 underlying charges relate to periods that pre-date the assumption and assignment of the Leases.

21 9. Finally, the Leases provide that the Debtor must indemnify and hold the
22 Landlords harmless with respect to any existing claims which may not become known until after
23 the assumption and assignment of the Leases, which may include such claims as personal
24 injuries at the Premises and damage to the Premises or Centers by the Debtor. Any order with
25 respect to cure obligations should provide that the Debtor or any assignee continue to be
26 responsible for all such indemnification obligations, regardless of when they arose. In the
27 alternative, the Debtor must provide (by insurance or otherwise) that it can satisfy the
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1 indemnification obligations under the Leases for any such claims that relate to the pre-
2 assumption and assignment period.

3 *ii. Attorneys' fees, costs, and interest*

4 10. In addition, the Leases contain provisions for the recovery of attorneys' fees,
5 costs, and interest in the event the Landlords are required to take legal action to protect their
6 interests. The Debtor is obligated to cure all defaults under the Leases, and compensate the
7 Landlords for their actual pecuniary losses as a result of defaults under the Leases. *See* 11
8 U.S.C. § 365(b)(1)(A) and (B). The principle is well-recognized. In re LCO Enterprises, 12
9 F.3d 938, 941 (9th Cir. 1993); Elkton Associates v. Shelco Inc. (Matter of Shelco), 107 B.R. 483,
10 487 (Bankr. D. Del. 1989) (debtors allowed to assume lease provided it cured *all pre-petition*
11 *defaults*).

12 11. In assuming and assigning the Leases, the Debtor and its assignee take the Leases
13 *cum onere*, that is, subject to existing burdens. The Debtor cannot, on the one hand, assume the
14 favorable portions of the Leases and, on the other hand, reject the unfavorable provisions of the
15 same Leases. In re Washington Capital Aviation & Leasing, 156 B.R. 167,172 (Banks. E.D. Va.
16 1993). If forced to continue in the performance of the Leases, the Landlords are entitled to the
17 full benefit of the bargain under the Leases with the Debtors. *See* Matter of Superior Toy and
18 Mfg. Co., Inc., 78 F.3d 1169 (7th Cir. 1996). The “full benefit of the bargain” principle has been
19 held to require payment of interest. “The cure of a default under an unexpired lease pursuant to
20 11 U.S.C. § 365 is more akin to a condition precedent to the assumption of a contract obligation
21 than it is to a claim in bankruptcy. One of the purposes of Section 365 is to permit the debtors to
22 continue in a beneficial contract; provided, however, that the other party to the contract is made
23 whole at the time of the debtor’s assumption of the contract.” In re Entertainment, Inc., 223 B.R.
24 141, 151 (Bankr. N.D. Ill. 1998) (citation omitted; bankruptcy court allowed interest at 18%).
25 Interest on pre-petition lease charges continues to run from the filing of the Debtor’s petition and
26 must be paid as a condition to the assumption and assignment of the Leases. *See* In re Skylark
27 Travel, Inc., 120 B.R. 352055 (Bankr. S.D. N.Y. 1990). Interest calculations are therefore not
28 cut short by the automatic stay, and payment of such interest is required to fully compensate

1 Landlords for the Debtor’s default under the Leases, and thus to properly assume the Leases.
2 Finally, post-petition interest is allowable where such interest is provided for under the terms of
3 the Leases. Cukierman v. Uecker (In re Cukierman), 265 F.3d 846, 853 (9th Cir. 2001).

4 12. Attorneys’ fees and costs are also proper components of a cure claim. Attorneys’
5 fees and costs incurred in enforcement of the covenants, obligations, and conditions of a lease
6 must be paid as a condition of the assumption and assignment of the Leases. Entertainment, Inc.,
7 223 B.R. at 152 (citation omitted). There is no logical distinction for purposes of Section 365
8 between attorneys’ fees incurred in connection with pre-petition defaults and fees incurred with
9 post-petition defaults. Id. 154. The fact that a landlord uses bankruptcy procedures to enforce a
10 lease should not preclude recovery of attorneys’ fees and costs for such enforcement activity,
11 particularly where the Bankruptcy Court is the exclusive forum where the landlord can obtain
12 any relief, being foreclosed from state court relief by the automatic stay. Id., *see also*, In re
13 Crown Books Corporation, 269 B.R. 12 (Bankr. D. Del. 2001) (Landlords’ fees and costs are
14 recoverable as a component of cure under 11 U.S.C. § 365(b)(1)); Urban Retail Properties v.
15 Loews Cineplex Entertainment Corporation, et al., 2002 WL 5355479 (S.D.N.Y. Apr. 9, 2002)
16 (where lease “provides for recovery of attorneys’ fees and interest, their receipt deserves the
17 same priority under Section 365(d)(3) as any of the debtors’ other obligations that arise
18 postpetition”); Three Sisters Partners, L.L.C. v. Harden (In re Shangra-La, Incorporated),
19 167 F.3d 843, 850 (4th Cir. 1999). The Supreme Court has recently upheld the enforceability of
20 such attorneys’ fees clauses, ruling that such pre-petition attorneys’ fee clauses were enforceable
21 with respect to issues peculiar to bankruptcy law. Travelers Casualty & Surety Co. Of America
22 v. Pacific Gas & Electric, 127 S. Ct. 1199, 1206 (2007).

23 13. At this time, Landlords can only estimate the total attorneys’ fees that will be
24 incurred in connection with each Lease because these amounts will continue to accrue at least
25 through any hearing on a motion to assume and assign any of the Leases. Landlords will provide
26 Debtor with the most current information on attorneys’ fees at the time of such hearing or an
27 eventual assumption and assignment.

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1 *iii. The cure amounts serve only as estimates*

2 14. As a practical matter at this juncture, the best the Landlords can do is provide the
3 most accurate information presently available regarding the cure amounts payable by the Debtor,
4 but must reserve the unqualified right to unilaterally amend the cure amounts as necessary to
5 include any additional sum of money for any reason, including but not limited to subsequent rent
6 defaults, attorney fees, costs, interest, and year-end adjustments and reconciliations. There is no
7 basis to impose upon the Landlords the equivalent of an administrative bar date without the
8 ability to recover lease charges to which they are entitled under the Leases.

9 **IV. JOINDER IN OBJECTIONS BY OTHER LANDLORDS**

10 15. To the extent not inconsistent herewith, the Landlords hereby join in the
11 objections raised by other landlords.

12 **V. CONCLUSION**

13 In order to protect the interests of the Landlords, the cure amounts should be established
14 (subject to adjustment by the Landlords) as set forth herein, and the Court should grant such
15 other relief that the Court finds just and proper.

16 Dated: July 2, 2008

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19 By: /s/ Dustin P. Branch
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