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Willow Bend Shopping Center Limited Partnership

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

LOS ANGELES DIVISION

In re ESTYLE, INC., a Delaware corporation d/b/a babystyle and Cadeau and Cadeau Designs, Debtor.	Case No. LA 08-13518-SB Chapter 11 **LIMITED OBJECTION TO MOTION FOR ORDER APPROVING DEBTOR'S REJECTION OF SIX UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY** Date: April 29, 2008 Time: 11:00 a.m. Dept: U.S. Bankruptcy Court Courtroom 1575 255 East Temple Street Los Angeles, CA 90012

West Farms Mall, LLC and Willow Bend Shopping Center Limited Partnership (collectively "Objecting Landlords"), lessors of debtor eStyle, Inc., doing business as babystyle, at two shopping center locations, submit their limited objection to Debtor's Motion for Order Approving Debtor's Rejection of Six Unexpired Leases of Nonresidential Real Property (the "Lease Rejection Motion"). As discussed below, Debtor's rejection of leases effective April 30, 2008 should be conditioned on Debtor's payment of unpaid "stub rent" for the post-petition of March 2008, as required by Bankruptcy Code section 365(d)(3).

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UNITED STATES BANKRUPTCY COURT

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LOS ANGELES DIVISION

In re ESTYLE, INC., a Delaware corporation d/b/a babystyle and Cadeau and Cadeau Designs, Debtor.	Case No. LA 08-13518-SB Chapter 11 **DECLARATION OF MARTHA L. FISHER IN SUPPORT OF LIMITED OBJECTION TO MOTION FOR ORDER APPROVING DEBTOR'S REJECTION OF SIX UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY** Date: April 29, 2008 Time: 11:00 a.m. Dept: U.S. Bankruptcy Court Courtroom 1575 255 East Temple Street Los Angeles, CA 90012

I, MARTHA L. FISHER, declare:

1. I am a Manager, Lease Administration of The Taubman Company, LLC ("Taubman"), which has been retained to provide property management and leasing services at both Westfarms Mall ("Westfarms") and The Shops at Willow Bend ("Willow Bend") by the respective owners thereof. My duties include the monitoring and collection of monies owed by tenants at retail developments managed by Taubman.

2. As a consequence of my position as Manager of Lease Administration, I am one of the custodians of the books, records, and files of Westfarms and Willow Bend as those books, records, and files relate to the use and occupancy of retail premises leased by eStyle, Inc., doing business under the trade name "babystyle" (hereinafter "Debtor"). If called upon to testify in this proceeding, as to the matters set forth in this declaration, I could and would competently testify thereto, since the facts set forth herein are personally known to me to be true.

3. Westfarms is a regional retail development located in Farmington, Connecticut, consisting of approximately 1,296,000 square feet of gross leaseable area. Westfarms has over 160 stores and restaurants and is anchored by Lord & Taylor, Macy's, Nordstrom, and J.C. Penney department stores.

4. Willow Bend is regional retail development located in Plano, Texas, consisting of approximately 1,250,000 square feet of gross leaseable area. Willow Bend has over 125 stores and restaurants and is anchored by Dillard's, Macy's, Neiman Marcus and Saks Fifth Avenue department stores.

5. On or about December 14, 2004, West Farms Mall, LLC, as landlord, and Debtor, as tenant, entered into a written lease agreement (the "Westfarms Lease") for approximately 2,404 square feet of retail premises commonly known as Store Number 227 of Building B of Westfarms Mall, as more particularly described in the Westfarms Lease. The term of the Westfarms Lease commenced April 6, 2005 and is scheduled to expire on January 31, 2016.

6. On or about December 14, 2004, Willow Bend Shopping Center Limited Partnership, LLC, as landlord, and Debtor, as tenant, entered into a written lease agreement (the "Willlow Bend Lease") for approximately 2,457 square feet of retail premises commonly known as Store Number 121-A of Building C of The Shops at Willow Bend, as more particularly described in the Willow Bend Lease. The term of the Willow Bend Lease commenced August 1, 2005 and is scheduled to expire on January 31, 2016.

7. Monthly rent and charges accruing under the Westfarms Lease effective February 1, 2008 were the sum of $22,890.50, consisting of $13,823.00 in minimum rent,

$1,163.93 in additional minimum rent, $4,711.87 in common area maintenance charges, $851.78 in tenant's share of real property taxes and assessments, $1,427.02 in ventilation and air conditioning charges, and $912.90 in promotional charges.

8. Monthly rent and charges accruing under the Willow Bend Lease effective February 1, 2008 were the sum of $11,769.26, consisting of $3,884.48 in minimum rent, $279.67 in additional minimum rent, $4,877.41 in common area maintenance charges, $960.13 in tenant's share of real property taxes and assessments, $1,059.00 in ventilation and air conditioning charges, and $708.57 in promotional charges.

9. Debtor filed its voluntary Chapter 11 petition herein on March 19, 2008 (the "Petition Date").

10. Since the Petition Date, neither West Farms Mall, LLC nor Willow Bend Shopping Center Limited Partnership have received any payment on account of Debtor's post-petition use and occupancy for any portion of the month of March 2008 with respect to Westfarms and Willow Bend. Pro-rated March rent and charges for Debtor's store at Westfarms are the sum of $9,599.25, as itemized in the account status report, attached hereto as Exhibit "1" and incorporated herein by this reference, prepared from our records. Pro-rated March rent and charges for Debtor's store at Willow Bend are the sum of $4,935.51, as itemized in the account status report, attached hereto as Exhibit "2" and incorporated herein by this reference, prepared from our records.

11. We maintain our tenant ledgers in a computerized accounting and property management system in the ordinary course of our business. I use this system regularly. Charges are entered into the computer based upon the terms of the respective lease. Payments are entered into the computer on or about the date a payment is received. Our records are checked and balanced periodically to confirm their accuracy.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed on April 15th, 2008 at Bloomfield Hills, Michigan.

Martha L. Fisher

EXHIBIT 1

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- /0-0-00/cdl/cdl

Exh 1

STORE NAME: Babystyle
ACCOUNT #: 206-011722

CENTER: Westfarms
TODAY'S DATE: April 4, 2008
FILE DATE 03/19/08
REJECTION DATE

Account Status Report
Post Petition Calculations

	CAM	PRO	RNT	AMR	VAC	TAX	MISC	Explanation	Period Covered
	1,975.95	$ 382.83	$ 5,796.74	$ 488.10	$ 598.43	$357.20		Post Petition Charges	03/19/08-03/31/08
	$1,975.95	$382.83	$5,796.74	$488.10	$598.43	$357.20	$0.00		
SUBTOTAL:									$ 9,599.25
TOTAL:									

EXHIBIT 2

Exh. 2

STORE NAME:	Babystyle
ACCOUNT #:	262-C121A
CENTER:	WILLOW BEND
LTD-S:	1/31/2016
Lease Date:	12/14/2004
LCD-A:	8/1/2005
Today's Date:	4/4/2008

ACCOUNT STATUS REPORT
POST-PETITION
Chapter 11 filed 3/20/2008

Due Date	CAM	PRO	RENT	TAXES	VAC	AMR	WAT	MISC	Miscellaneous	Period Covered
	2,045.37	297.14	1,628.98	402.64	444.10	117.28			Post-Petition Rent & Charges	03/19/2008-3/31/2008
SUBTOTAL:	2,045.37	297.14	1,628.98	402.64	444.10	117.28	0.00	0.00		
TOTAL:									4,935.51	

1. Debtor eStyle, Inc., doing business as babystyle and Cadeau Maternity ("Debtor") operates twenty-three (23) retail stores in shopping centers and urban locations in nine states. On March 19, 2008, Debtor filed its voluntary Chapter 11 petition herein. No trustee has been appointed and Debtor continues to operate its business as a debtor-in-possession under Bankruptcy Code sections 1107(a) and 1108.

2. Objecting Landlords are lessors of two of the retail locations that are the subject of Debtor's Store Closing Motion: Westfarms Mall, Farmington, Connecticut, and The Shops at Willow Bend, Plano, Texas. It cannot be seriously disputed that each of the debtors' leases for these locations are for premises in a "shopping center" as that term was defined in In re Joshua Slocum Ltd., 922 F.2d 1081, 1087-1089 (3rd Cir. 1990).

3. Debtor's Lease Rejection Motion [Docket No. 51] seeks authority for the Debtor to reject the leases of six unprofitable store locations, including the two leased from the Objecting Landlords, effective April 30, 2008, following the anticipated conclusion of the store closing sales being conducted at those locations. (See Lease Rejection Motion at 2: 9-19.) Objecting Landlords do not challenge the Debtor's business decision to cease operations at unprofitable stores and reject the six leases that are the subject of the Lease Rejection Motion. Debtor cannot, however, use rejection of these leases to avoid performance of its post-petition rent obligations as required by Bankruptcy Code section 365(d)(3).

4. The Bankruptcy Code affords lessors of nonresidential real property specific protections with regard to post-petition, pre-rejection rent. Both a trustee and debtor-in-possession are required to timely perform all post-petition obligations under an unexpired lease of nonresidential real property, and must do so until that lease is assumed or rejected. 11 U.S.C. §365(d)(3); In re Pacific-Atlantic Trading Co., 27 F.3d 401, 405 (9th Cir. 1994).

5. Section 365(d)(3) of the Bankruptcy Code provides, in pertinent part, as follows:

> The trustee shall timely perform all of the obligations of the debtor, except those specified in section 365(b)(2), arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected, notwithstanding section 503(b)(1) if this title.

LAW OFFICES
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6. The plain language of Section 365(d)(3) and applicable case law require payment by the Debtor of the pre-rejection obligations under the Lease. In In re Pacific-Atlantic Trading Co., supra, the Ninth Circuit Court of Appeals held that Section 365(d)(3) mandates immediate payment of rent to a landlord at the full lease amount during the period the debtor-in-possession or trustee is deciding to reject or assume a lease "regardless of the benefit to the estate." (27 F.3d at 405.) The Ninth Circuit also concluded that "section 365(d)(3) authorizes administrative status for the unpaid rent for the 60-day period." (Id.)[1]

7. The legislative history of Bankruptcy Code section 365 suggests that its purpose of the 1984 Amendments to Section 365 was "to relieve the burden placed on nonresidential real property lessors (or 'landlords') during the period between a tenant's bankruptcy petition and assumption or rejection of a lease." Omni Partners, L.P. v. Pudgie's Development of NY, Inc. (In re Pudgie's Development of NY, Inc.), 239 B.R. 688, 692 (S.D.N.Y. 1999) (citing 130 Cong. Rec. S8894-95 (daily ed. June 29, 1994) (statement of Sen. Hatch). Prior to these amendments, the Bankruptcy Code did not require a trustee to perform its obligations under a nonresidential lease, but the landlord was forced to provide services to the debtor-tenant. Congress specifically chose to protect real property lessors because "the Landlord is forced to provide current services – the use of its property, utilities, security, and other services – without current payment. No other creditor is put in this position." Id.; accord, In re Cukierman, 265 F.3d 846, 850-851 (9th Cir. 2001); see also In re Warehouse Club, Inc., 184 B.R. 316, 317 (Bankr, N.D. Ill. 1995) ("The purpose of § 365(d)(3) is to prevent landlords from becoming involuntary post-petition creditors of the bankruptcy estate."). The Ninth Circuit has "interpreted § 365(d)(3) broadly, consistent with its purpose of ensuring immediate payment of lease obligations to protect landlords pending the trustee's [or debtor-in-possession's] decision to assume or reject a lease." In re LPM Corporation, 300 F.3d 1134, 1138 (9th Cir. 2002).

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[1] The Ninth Circuit also held that Section 365(d)(3) "does not require the lessor to take any action" to secure priority treatment for post-petition, pre-rejection rent. In re Pacific-Atlantic Trading Co., supra, 27 F.3d at 405.

8. Thus, while rejection of a lease relieves a chapter 11 debtor from paying burdensome obligations arising under an unexpired lease, correspondingly, the Code also ensures lessors a form of "current payment" for "current services provided," that is, for a debtor's use of leased property between the petition and rejection dates.

9. Here, contrary to the requirements of the Bankruptcy Code, neither of the Objecting Landlords has received any payment from the bankruptcy estate on account of rent and charges for the pro-rated post-petition portion of the month of March 2008 in the total sum of $14,534.76. (See accompanying Declaration of Martha L. Fisher at ¶ 10 and Exhibits 1 and 2.)

10. Objecting Landlords are entitled to payment of such post-petition rent and charges for the so-called post-petition "stub period" (March 14-31, 2008) for the month of March 2008 under the pro-ration approach that has been adopted by many bankruptcy courts in the Ninth Circuit. See, e.g., In re National Refractories & Minerals Corp., 297 B.R. 614, 619-620 (Bankr. N.D. Cal. 2003); In re Ernst Home Center, Inc., 209 B.R. 955, 963-964 (Bankr. W.D. Wash. 1997); In re RB Furniture, Inc., 141 B.R. 706, 712 (Bankr. C.D. Cal. 1992); see In re TreeSource Industries, Inc., 363 F.3d 994, 998 (9th Cir. 2004) (indicating support for the pro-ration approach); see also In re Phar-Mor, Inc., 290 B.R. 319, 323-324 (Bankr. N.D. Ohio, 2003) ("The majority of courts that have considered this general issue have followed the pre-1984 practice of prorating both a debtor's real estate tax obligations and periodic rent payments due pursuant to a lease, regardless of the billing date."); In re Travel 2000, Inc., 264 B.R. 444, 451 (Bankr. W.D. Mich. 2001).

11. Consistent with the application of the pro-ration approach to the post-petition portion of the month of March 2008, Debtor's rejection of the Westfarms and Willow Bend leases should be conditioned in Debtor's payment of March 2008 stub rent in the aggregate sum of $14,534.76.

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JOINDER

To the extent not inconsistent with the foregoing, the Objecting Landlords join in any other objections to Debtor's Lease Rejection Motion asserted by other affected shopping center landlords.

CONCLUSION

For the foregoing reasons, the Objecting Landlords request that, in connection with Debtor's rejection of the Westfarms and Willow Bend leases, Debtor be ordered to satisfy its pre-rejection obligations under Section 365(d)(3) of the Bankruptcy Code through the payment of March "stub rent" in the sum of $14,534.76.

Dated: April 15, 2008

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By: */s/ Marlene Moffitt*
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UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

LOS ANGELES DIVISION

In re ESTYLE, INC., a Delaware corporation d/b/a babystyle and Cadeau and Cadeau Designs, Debtor.	Case No. LA 08-13518-SB Chapter 11 **CERTIFICATE OF SERVICE** Date: April 29, 2008 Time: 11:00 a.m. Dept: U.S. Bankruptcy Court Courtroom 1575 255 East Temple Street Los Angeles, CA 90012

CERTIFICATE OF SERVICE BY OVERNIGHT DELIVERY

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action. My business address is Three Embarcadero Center, 12th Floor, San Francisco, CA 94111-4074.

On April 15, 2008, I served on interested parties in said action the within:

(1) LIMITED OBJECTION TO MOTION FOR ORDER APPROVING DEBTOR'S REJECTION OF SIX UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY; and

(2) DECLARATION OF MARTHA L. FISHER IN SUPPORT OF LIMITED OBJECTION TO MOTION FOR ORDER APPROVING DEBTOR'S REJECTION OF SIX UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY.

by depositing in a box or other facility regularly maintained by Federal Express, an express service carrier, or delivering to a courier or driver authorized by said express service carrier to receive documents, a true copy of the foregoing document in sealed envelopes or packages designated by the express service carrier, addressed as stated below, with fees for overnight delivery paid or provided for and causing such envelope(s) to be delivered by said express service carrier.

Attorneys For Debtor-In-Possession
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Debtor
eStyle, Inc.
865 South Figueroa Street, Suite 2700
Los Angeles, CA 90017

Attorney for Official Committee of Unsecured Creditors
Ian S. Landsberg, Esq.
Landsberg Margulies LLP
16030 Ventura Blvd., Ste. 470
Encino, CA 91436

I declare under penalty of perjury that I am employed in the office of a member of the bar of this Court at whose direction the service was made and that the foregoing is true and correct.

Executed on April 15, 2008, at San Francisco, California.

Cynthia Lynch	*/s/ Cynthia Lynch*
(Type or print name)	(Signature)