

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

)	
)	Chapter 11
In re:)	
)	
EATERIES, INC., <i>et al.</i> ¹)	Case No. 17-11444-SAH
)	
Debtors.)	(Jointly Administered)
)	

**FIRST OMNIBUS
MOTION FOR ORDER APPROVING
REJECTION OF AN UNEXPIRED NONRESIDENTIAL REAL
PROPERTY LEASES AND SETTING TIME FOR LESSORS TO
FILE REJECTION CLAIMS, BRIEF IN SUPPORT, AND
NOTICE OF OPPORTUNITY FOR HEARING**

Your rights may be affected. You should read this document carefully and consult your attorney about your rights and the effect of this document. If you do not want the Court to grant the requested relief, or you wish to have your views considered, you must file a written response or objection to the requested relief with the Clerk of the United States Bankruptcy Court for the Western District of Oklahoma, 215 Dean A. McGee Ave., Oklahoma City, OK 73102 no later fourteen (14) days from the date of filing of this request for relief. You should also serve a file-stamped copy of your response or objection to the undersigned movant's attorney and all others required to be served and file a certificate of service with the Court. If no response or objection is timely filed, the Court may grant the requested relief without a hearing or further notice.

The 14-day period for response includes the three (3) days allowed for mailing provided for in Bankruptcy Rule 9006(f).

Eateries, Inc. (“Eateries”) and GRP of Zanesville, LLC (“Zanesville”), debtors and debtors-in-possession (collectively the “Debtors”), pursuant to 11 U.S.C. § 365(a) and

¹ The affiliated Debtors are Eateries, Inc. and GRP of Zanesville, LLC, Case Nos. 17-11444 and 17-11445.

FED.R.BANKR.P. 6006(a) & (f), hereby respectfully move for entry of an Order approving the Debtors rejection of the four (4) unexpired, nonresidential real property leases identified below:

<u>EXPIRATION DATE</u>	<u>LANDLORD</u>	<u>PROPERTY ADDRESS</u>
7/31/2017	CBL & Associates Management, Inc	GARFIELD'S-NORTH PARK MALL 101 N. RANGE LINE RD JOPLIN, MO 64801
4/30/2021	Clearview Mall Associates; JJ Gumberg Co, Agent	GARFIELD'S-CLEARVIEW MALL 101 CLEARVIEW CTR #800 BUTLER, PA 16001
4/30/2021	T Adrian Mall MI, LLC	S&B's BURGER JOINT-ADRIAN MALL 1357 S. MAIN ST. #1264 ADRIAN, MI 49221
7/31/2019	Washington Park Mall LLC	GARFIELD'S-WA PARK MALL 2350 SE WASHINGTON BLVD #426 BARTLESVILLE, OK 74006

(hereinafter referred to as the “Leases”).

In support of this Motion, the Debtors respectfully represent as follows:

JURISDICTION & VENUE

1. This Court has jurisdiction of this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

2. The statutory predicates for the relief requested are 11 U.S.C. § 365(a), and FED.R.BANKR.P. 6006(a) & (f).

BACKGROUND

3. On April 18, 2017 (the “Petition Date”), the Debtors filed voluntary petitions for relief pursuant to chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Western District of Oklahoma (the “Bankruptcy Court”).

4. The Debtors continue to operate their businesses as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors continue to operate their businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. An official committee of unsecured creditors has not yet been appointed in these Chapter 11 Cases.

5. A description of the Debtors' businesses, the reasons for filing these Chapter 11 Cases and the relief sought from the Bankruptcy Court to allow for a smooth transition into operations under chapter 11 of the Bankruptcy Code is set forth in the First Day Affidavit. The Debtors hereby adopt and incorporate the First Day Affidavit as if fully set forth herein.

6. Eateries (directly or through its various subsidiaries, including Zanesville) operates a chain of 15 restaurants located in 9 states, and employs more than 450 people. These restaurants are located in various shopping malls whose business is directly related to the volume of shoppers visiting the anchor tenants in such malls. The continued increase in online shopping has left brick-and-mortar shopping centers to fight over a smaller group of consumers. As a result, over the last year, certain segments of the retail shopping industry have experienced a significant downturn resulting in announcements by Macy's, Sears, and, most recently, JCPenney that they have or will close hundreds of these anchor stores. This downturn has had a direct impact on this business of those restaurants located in shopping malls experiencing decreased business.

7. As a result of the decreased business, Eateries has been attempting to renegotiate its lease terms with various of its landlords without success. Indeed, the downturn has resulted in the closure of 4 of Eateries' restaurant locations in advance of the filing of this bankruptcy,

leaving 11 in operation in 6 states, employing approximately 360 people, at the time of the filing of this case.

8. Consequently, the financial obligations associated with the Leases, which Eateries entered into prior to the Petition Date, are not necessary for current operations or for an effective reorganization. Further, the Leases impose an unnecessary burden on the Debtors' limited financial resources.

14. Accordingly, the Debtors have determined that rejection of the Leases is in the best interest of the Debtors' estates. Debtors have informed each of the Lessors of the Debtors' intention to reject the Leases.

RELIEF REQUESTED

15. By this Motion and pursuant to § 365 of the Bankruptcy Code, the Debtors request authority to reject the Leases identified above.

16. The Debtors request the Court find their prepetition vacation of the leasehold premises under each of the Leases constitutes a surrender of the same that was effective on or before the Petition Date.

17. The Debtors also request the Court to fix a time within which the Lessors may file claims arising from rejection of the Leases, if any. The Debtors request that the Lessors file a claim before the later of (i) thirty (30) days from the entry of the Order approving rejection; or (ii) the proof of claim bar date for unsecured creditors set by the Court. The Debtors submit that such time would be sufficient for the Lessors to file a claim resulting from rejection of the Leases, if any.

18. The Debtors' Motion is filed without prejudice to the Debtors' assumption or rejection of additional contracts or leases at a later date and is not intended as a rejection of any unexpired lease that is not specifically listed herein.

BRIEF IN SUPPORT

19. The Bankruptcy Code provides that a debtor, “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). “[A] debtor in possession ‘is free to . . . reject burdensome executory contracts . . . and to take all steps necessary to solve the problems created by the debtor’s operation of the business in the past.’” *In re Commercial Financial Serv., Inc.*, 233 B.R. 885, 890 (Bankr. N.D. Okla. 1999) (citation omitted).

20. Courts apply a “business judgment” test to a debtor’s decision to assume or reject an executory contract or unexpired, non-residential real property leases. *Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1099 (2d Cir. 1993); *In re J.H. Land & Cattle Co.*, 8 B.R. 237, 239 (Bankr. W.D. Okla. 1981) (“The test for court approval of a debtor’s (trustee’s) proposed rejection of an executory contract or lease under § 365 is one of ‘business judgment’” (citations omitted)). Under the business judgment test, a bankruptcy court, focusing on the business judgment of the debtor, should examine the lease or executory contract and the surrounding circumstances and approve a proposed rejection, if such rejection will benefit the estate. *In re Orion Pictures Corp.*, 4 F.3d at 1099. Indeed, as one court has explained, a bankruptcy court should presume that the debtor “acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate,” and it should approve rejection unless the “conclusion that rejection would be advantageous is so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice.” *In re Pomona Valley Medical Group*, 476 F.3d 665, 670 (9th Cir. 2007).

21. The Debtors effectively surrendered the leasehold premises under each of the Leases. The Debtor have examined the Leases, and in exercising their business judgment, the

Debtors have determined that the Leases are burdensome to their estates and are not likely to add any value to any sale of the Debtors' assets or the chapter 11 process, given (among other things) that the Debtors' have limited financial resources and have discontinued operations at the properties underlying the Leases. Specifically, none of the Leases are at rates substantially below the prevailing market rates and as such, there is no equity in any of the Leases. Accordingly, rejection of the Leases is beneficial and in the best interest of the Debtors, their estates, and creditors and should be approved.

22. Pursuant to Fed. R. Bankr. P. 6006(f), the Debtor may seek rejection of up to 100 separate leases in a single omnibus motion. Herein, the Debtor seeks rejection of 4 separate unexpired leases of non-residential real property.

23. A copy of the proposed order is attached hereto as Exhibit 1.

NOTICE

Notice of this Motion will be provided on the Debtors' Master Service List which includes the Lessor of each of the Leases. The Debtors submit that no further or other notice need be provided.

CONCLUSION

For the reasons stated, the Debtors respectfully request that the Court enter an order granting the relief requested herein and for any and such other relief to which the Court may deem the Debtors entitled.

Respectfully submitted,

s/ Mark A. Craige

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PROPOSED COUNSEL FOR DEBTORS

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

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)	Chapter 11
In re:)	
)	
EATERIES, INC., <i>et al.</i> ¹)	Case No. 17-11444-SAI
Debtors.)	
_____)	(Jointly Administered)

**ORDER GRANTING DEBTORS’ FIRST OMNIBUS MOTION FOR ORDER
APPROVING REJECTION OF UNEXPIRED NONRESIDENTIAL REAL PROPERTY
LEASES AND SETTING TIME FOR LESSORS TO FILE REJECTION CLAIMS**

[Dkt. No. _____]

Upon the *First Omnibus Motion for Order Authorizing Rejection of an Unexpired Nonresidential Real Property Lease and Setting Time for Lessor to File Rejection Claim* (the “Motion”) [Dkt. No. ____] filed on April 18, 2017. No objections being timely filed; and this Court having subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this being a core proceeding under 28 U.S.C. § 157(b); and venue before this Court being proper

¹ The affiliated Debtors are Eateries, Inc. and GRP of Zanesville, LLC, Case Nos. 17-11444 and 17-11445

pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that the relief requested in the Motion is in the best interests of all parties-in-interest; and the Debtors having provided adequate and appropriate notice of this Motion under the circumstances; and based upon the representations of the moving parties set forth in the Motion, and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED, DETERMINED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED.
2. The Debtors' rejection of the unexpired leases of non-residential real property described below shall be effective on the date of the filing of the Motion set forth above.

<u>EXPIRATION DATE</u>	<u>LANDLORD</u>	<u>PROPERTY ADDRESS</u>
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(hereinafter referred to as the "Leases").

3. The Debtors surrendered and vacated the leasehold premises under each of the Leases prior to the Petition Date.

4. The Lessor shall file any claim arising from the rejection of the Lease as authorized herein before the later of (i) thirty (30) days from the entry date of this Order; or (ii) the proof of claim bar date for unsecured creditors established by this Court.

5. Findings of fact in this Order are based upon representations of counsel.

IT IS SO ORDERED.

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SUBMITTED FOR ENTRY:

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