

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION  
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|                               |                                |
|-------------------------------|--------------------------------|
| In re:                        | Chapter 11                     |
| STEIN MART, INC. <sup>1</sup> | Case No. 3:20-bk-2387          |
| STEIN MART BUYING CORP.       | Case No. 3:20-bk-2388          |
| STEIN MART HOLDING CORP.,     | Case No. 3:20-bk-2389          |
| Debtors.                      | Joint Administration Requested |

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**DEBTORS' EMERGENCY MOTION FOR ENTRY OF AN ORDER  
AUTHORIZING AND APPROVING PROCEDURES FOR REJECTION OF  
EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**(Emergency Hearing Requested on or before Friday, August 14, 2020)**

Stein Mart, Inc. (“**SM**”), Stein Mart Buying Corp. (“**SMB**”) and Stein Mart Holding Corp. (“**SMHC**” and together with SM and SMB, the “**Debtors**” or the “**Company**”), as Debtors and Debtors-in-Possession in the above-captioned chapter 11 cases, by and through their undersigned proposed counsel, submit this motion (the “**Motion**”) for entry of an order, authorizing and approving procedures for the rejection of executory contracts and unexpired leases (the “**Rejection Procedures**”). In support of the Motion, the Debtors respectfully represent as follows:

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<sup>1</sup> The tax identification numbers of the Debtors are as follows: Stein Mart, Inc. 6198; Stein Mart Buying Corp. 1114; and Stein Mart Holding Corp. 0492. The address of the Debtors’ principal offices: 1200 Riverplace Blvd., Jacksonville, FL 32207. The Debtors’ claims agent maintains a website, <https://cases.stretto.com/SteinMart>, which provides copies of the Debtors’ first day pleadings and other information related to the case.

## **I. JURISDICTION**

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334(b). This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are pursuant to sections 105(a), 365, and 554 of title 11 of the United States Code, as amended (the “**Bankruptcy Code**”), Rules 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

## **II. BACKGROUND**

3. Headquartered in Jacksonville, Florida, the Company is a national specialty off-price retailer offering designer and name-brand fashion apparel, home décor, accessories and shoes at discount prices. The Company operates 281 stores, primarily in the southeast, Texas, Arizona and California and an ecommerce retail site. The Company has historically (prior to COVID-19) employed approximately 9,000 employees (equivalent to approximately 5,000 40-hour employees).

4. In March 2020, the World Health Organization declared the outbreak of the coronavirus (“**COVID-19**”) as a global pandemic, which continues to spread throughout the United States. In response to the COVID-19 pandemic, on March 18, 2020, the Company temporarily closed all of its stores. The Company started reopening stores in late April, 2020 and its supply chain operations restarted in late May. The COVID-19 pandemic has exacerbated an already difficult retail environment for the Company and has had, and continues to have, a negative impact on the Company’s operations and financial results and the Company’s revenues, liquidity, results of operations and cash flows, and its ability to pay vendors and landlords according to standard terms, have been materially, adversely impacted. Following the reopening

of the stores, revenues and store customer traffic was initially positive, but were substantially below pre-shutdown levels.

5. During July 2020, the resurgence of COVID-19 cases in the southeast, Texas, Arizona and California, where the majority of the Company's stores are located, again materially, adversely impacted the Company's revenues, liquidity, results of operations and cash flows. as a result of the second decline in customer traffic and sales resulting from the COVID-19 resurgence, the Company projects insufficient liquidity to continue operating as going concern in the ordinary course of business.

6. Prior to the COVID-19 pandemic, in January 2020, the Company entered into a merger agreement with Kingswood Capital Management, LLC ("**Kingswood**") and an entity managed by Jay Stein, chairman of the Company. Under the merger agreement, the stockholders of the Company would have received \$0.90 in cash for each share of common stock owned. However, on April 16, 2020, the Merger Agreement was terminated prior to closing because the COVID-19 pandemic forced the Company to close all of its stores and the Company was unable to satisfy the minimum liquidity closing condition in the merger agreement. Although the Company has subsequently engaged in discussions with Kingswood regarding sale of the Company as a going-concern in recent months pursuant to a bankruptcy sale but a transaction presently appears unlikely given the COVID-19 resurgence.

7. The Company believes the immediate liquidation of the Company's assets by a professional liquidation advisor under the supervision of the Bankruptcy Court is the best strategy to maximize value for the benefit of creditors. The Company's current best estimate is that the liquidation of inventory, equipment, fixtures, leases, intellectual property and similar assets will produce a gross recovery in the range of approximately \$250 million, which is likely

to be sufficient to pay the cost of the liquidation process and Chapter 11 administrative expenses and repay the secured creditors but unlikely to produce any meaningful funds for other creditors. Accurate financial projections are very difficult in the current COVID retail environment.

8. On the date hereof (the “**Petition Date**”), each of the Debtors commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee of creditors has been appointed in these chapter 11 cases.

9. Contemporaneously herewith, the Debtors have filed a motion requesting joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b).

10. Information regarding the Debtors’ business, capital structure, and the circumstances leading to the commencement of these chapter 11 cases is set forth in the *Declaration of Hunt Hawkins in Support of Debtors’ Chapter 11 Petitions and First Day Pleadings*, sworn to on the date hereof (the “**First Day Declaration**”), which has been filed with the Court contemporaneously herewith.<sup>2</sup>

11. After extensive, arm’s length negotiations with the assistance of Clear Thinking Group LLC, the Debtors’ advisor, the Debtors entered into a letter agreement, dated August 12, 2020 (as amended, modified, and supplemented from time-to-time, the “**Consultant Agreement**”), by and between SM and the contractual joint venture comprised of Hilco Merchant Resources, LLC, Gordon Brothers Retail Partners, LLC, Great American Group, LLC, Tiger Capital Group, LLC and SB360 Capital Partners, LLC (referred to herein, and in the

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration.

Consultant Agreement, as the “**Consultant**”) to, among other things, conduct “store closing” sales at certain of the Debtors’ retail locations.

12. The Debtors, with the assistance of the Consultant, started the store closing sale process prior to bankruptcy. All signs are prepositioned at the stores to formally announce the “store closing” sale and the Consultant has deployed personnel to the stores.. The Debtors desire to restart the “store closing” sale process immediately because sales at going-out-of-business sales are strongest on weekends. Obtaining authorization to restart the sale on Friday August 14, 2020 will permit the Debtor to maximize the potential sales that weekend and therefore provides Debtor with substantial cash at the outset of the case.

13. On the Petition Date, the Debtors filed the *Debtors’ Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Assume the Consulting Agreement, (II) Approving Procedures for Store Closing Sales, and (III) Approving the Implementation of Customary Store Bonus Program and Payments to Non-Insiders Thereunder* (the “**Store Closing Motion**”).

### **III. RELIEF REQUESTED**

14. In the ordinary course of business, the Debtors occupy premises in connection with their 281 retail stores, primarily in the southeast, Texas, Arizona and California, and their corporate headquarters in Jacksonville, Florida. The Debtors anticipate that the liquidation at store level will be substantially complete October 31, 2020. With respect to all of those locations, the Debtors do not own the real property where such stores and offices are located and, instead, lease the real property from various lessors. In connection with their efforts to preserve and maximize the value of their estates through the prosecution of these chapter 11 cases, the Debtors, in their business judgment, may determine that certain burdensome leases should be

rejected rather than allowing the Debtors' estates to accrue administrative expenses associated with such leases. In addition, the Debtors may determine, in their business judgment, that they no longer need certain executory contracts related to those locations or their business as a whole.

15. For instance, once any store closing sales have been completed, the Debtors will not be continuing operations at such stores. Thus, to the extent that the Debtors are unable, for whatever reason, to assume and assign any of the leases related to those stores to a third party, it is likely the Debtors will determine, in the exercise of their business judgment, to reject such leases. By this Motion, the Debtors seek entry of an order authorizing and approving the Rejection Procedures set forth below.

16. The Debtors believe that the Rejection Procedures (defined herein) will streamline their ability to reject burdensome executory contracts ("**Contracts**") and unexpired leases ("**Leases**") that no longer provide a benefit to the Debtors' estates while also providing parties in interest with adequate notice of the rejection of a Contract and a Lease and an opportunity to object to such relief within a reasonable time period. Absent the relief requested herein, filing multiple motions for the rejection of each Contract and Lease would result in substantial costs to, and impose administrative burdens on, the Debtors' estates, in addition to the burden such approach would place on the Court's docket and calendar. As such, the proposed procedures for rejection of Contracts and Leases are appropriate and necessary to limit the costs and administrative burdens that otherwise would be borne by the Debtors' estates. Accordingly, the Debtors request that the Court approve the Rejection Procedures and authorize the Debtors to take any and all actions as may be necessary to implement and effectuate the Rejection Procedures.

#### IV. THE PROPOSED REJECTION PROCEDURES

17. The Debtors request that the following procedures be authorized and approved in connection with the rejection of any Contract and Lease during the course of the Debtors' chapter 11 cases:

- (a) Rejection Notice. The Debtors will file a notice (the "**Rejection Notice**"), setting forth the proposed rejection of one or more Contracts and/or Leases and will serve the Rejection Notice via overnight delivery service, email, or fax on: (1) the non-Debtor counterparty (and its counsel, if known) under the respective Contract or Lease at the last known address available to the Debtors (the "**Counterparty**"); (2) with respect to real property Leases ("**Real Property Leases**"), any known third party having an interest in personal property located at the leased premises (the "**Leased Premises**"); (3) any party known to assert a lien in any property subject to the rejected Contract or Lease; (4) counsel for the administrative agent under the Debtors' pre-petition revolving credit facility, Wells Fargo Bank, National Association, c/o (a) Otterbourg P.C. (Attn: Daniel F. Fiorillo, Esq. and Chad B. Simon, Esq.), 230 Park Avenue, New York, NY 10169-0075 and (b) Smith Hulsey & Busey, One Independent Drive, Suite 3300, Jacksonville, Florida 32202 (Attn: Stephen D. Busey, Esq.); (5) counsel for the administrative agent under the Debtors' pre-petition term loan, Gordon Brothers Finance Company LLC, c/o (a) Morgan, Lewis & Bockius LLP, One Federal Street, Boston, MA 02110-1726 (Attn: Matthew F. Furlong, Esq., Julia Frost-Davies, Esq. and Christopher L. Carter, Esq.); and (b) Holland & Knight, 50 North Laura Street, Suite 3900, Jacksonville, Florida 32202, (Attn: Alan Weiss, Esq.); (6) counsel to any official committee appointed in these chapter 11 cases; and (7) the Office of the United States Trustee for the Middle District of Florida (collectively, the "**Rejection Notice Parties**").
- (b) Content of Rejection Notice. The Rejection Notice shall be substantially in the form attached as **Exhibit 1** to the proposed order. With respect to Real Property Leases, the Rejection Notice shall set forth the following information, to the best of the Debtors' knowledge: (1) the street address of the related real property; (2) the name and address of the landlord (the "**Landlord**"); and (3) the date on which the Debtors will vacate (or have vacated) the Leased Premises. With respect to all other Contracts or Leases to be rejected, the Rejection Notice shall set forth the following information, to the best of the Debtors' knowledge: (1) the name and address of the Counterparty; and (2) a brief description of the Contract or Lease to be rejected. All Rejection Notices will be accompanied by a copy of the proposed order approving the rejection of the Contracts and/or Leases set forth on the Rejection Notice (each such order, a "**Rejection**

**Order”**), substantially in the form attached to the Rejection Notice as **Exhibit A**.

- (c) **Objections.** Should a party in interest object to the Debtors’ proposed rejection of a Contract or Lease, such party must file and serve a written objection (an “**Objection**”) so that such objection is filed with the Court and actually received by the following parties no later than fourteen (14) calendar days after the date the Rejection Notice is filed: (1) proposed attorneys for the Debtors, Foley & Lardner LLP, One Independent Drive, Jacksonville, Florida 32202, Attn: Gardner F. Davis, Esq.; (2) Office of the United States Trustee, 400 West Washington Street, Suite 1100, Orlando, Florida 32801; (3) counsel for the administrative agent under the Debtors’ pre-petition revolving credit facility, Wells Fargo Bank, National Association, c/o (a) Otterbourg P.C. (Attn: Daniel F. Fiorillo, Esq. and Chad B. Simon, Esq.), 230 Park Avenue, New York, NY 10169-0075 and (b) Smith Hulsey & Busey, One Independent Drive, Suite 3300, Jacksonville, Florida 32202 (Attn: Stephen D. Busey, Esq.); (4) counsel for the administrative agent under the Debtors’ pre-petition term loan, Gordon Brothers Finance Company LLC, c/o (a) Morgan, Lewis & Bockius LLP, One Federal Street, Boston, MA 02110-1726 (Attn: Matthew F. Furlong, Esq., Julia Frost-Davies, Esq. and Christopher L. Carter, Esq.); and (b) Holland & Knight, 50 North Laura Street, Suite 3900, Jacksonville, Florida 32202 (Attn: Alan Weiss, Esq.); and (5) counsel to any official committee appointed in these chapter 11 cases (collectively, the “**Objection Notice Parties**”). Each Objection must state with specificity the ground for objecting to the proposed rejection of the Contract or Lease and/or abandonment of Remaining Property (as defined and discussed below), as applicable.
- (d) **Effects of Failing to File an Objection to a Rejection Notice.** If no Objection to a Rejection Notice is timely filed and served, the Debtors may submit the Rejection Order to the Court providing that the applicable Contract or Lease shall be deemed rejected on the effective date set forth in the Rejection Notice (the “**Rejection Date**”); *provided, however*, that the Rejection Date for a Real Property Lease shall not be earlier than the later of (i) the date the Debtors file and serve a Rejection Notice for the Real Property Lease and (ii) the date the Debtors relinquish control of the applicable Leased Premises by notifying the affected Landlord in writing of the Debtors’ irrevocable surrender of the premises. Upon the Rejection Date, any personal property or furniture, fixtures, and equipment (“**Remaining Property**”) remaining on the Leased Premises shall be deemed abandoned by the Debtors, and the Landlords may dispose of any Remaining Property, in their sole discretion, free and clear of all liens, claims, encumbrances, and interests, and without any liability to the Debtors and their estates and any third party and without waiver of any claim the Landlords may have against the Debtors and their estates.

- (e) Effects of Filing an Objection to a Rejection Notice. If a timely Objection to a Rejection Notice is filed and received in accordance with the Rejection Procedures, the Debtors shall schedule a hearing on such Objection and shall provide at least seven (7) days' notice of such hearing to the objecting party and the Objection Notice Parties. If the Court upholds the Debtors' determination to reject the applicable Contract or Lease, then the applicable Contract or Lease shall be deemed rejected (i) as of the Rejection Date or (ii) as otherwise determined by the Court as set forth in any order overruling such Objection.
- (f) Consent Orders. Any Objection may be resolved without a hearing by an order of the Court submitted on a consensual basis by the Debtors and the objecting party, in consultation with the ABL Agent and Term Loan Agent.
- (g) Deadlines for Filing Claims. Claims arising out of the rejection of Contracts or Leases must be filed on or before the later of (i) the deadline for filing proofs of claims established by the Court in these chapter 11 cases or (ii) thirty (30) days after the date of entry of the applicable Rejection Order. If no proof of claim is timely filed, such claimant shall not be treated as a creditor with respect to such claims for voting on any chapter 11 plan in these chapter 11 cases and shall be forever barred from asserting a claim for rejection damages and from participating in any distributions that may be made in connection with the Debtors' bankruptcy cases.
- (h) Treatment of Security Deposits. If the Debtors have deposited funds with a Counterparty or Landlord as a security deposit or other arrangement, such Counterparty or Landlord may not setoff or otherwise use such deposit without the prior authority of this Court or agreement of the Debtors.

18. In connection with the foregoing Rejection Procedures, the Debtors also request that they be authorized to execute and deliver all instruments and documents, and take such other actions as may be necessary or appropriate to implement and effectuate the Rejection Procedures, and that entry of the proposed order be without prejudice to the Debtors' right to seek further, other, or different relief regarding the Contracts or Leases.

## V. BASIS FOR RELIEF

### A. Rejection of the Contracts and Leases is a Sound Exercise of the Debtors' Business Judgment.

19. Section 365(a) of the Bankruptcy Code provides that a debtor in possession, “subject to the court’s approval, may ... reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). *See Univ. Med. Ctr. v. Sullivan (In re Univ. Med. Ctr.)*, 973 F.2d 1065, 1075 (3d Cir. 1992). The principal purpose of section 365(a) is to allow a debtor in possession or trustee “to relieve the bankruptcy estate of burdensome agreements which have not been completely performed.” *Stewart Title Guar. Co. v. Old Republic Nat’l Title Ins. Co.*, 83 F.3d 735, 741 (5th Cir. 1996) (quoting *Phoenix Exploration, Inc. v. Yaquinto (In re Murexco Petroleum, Inc.)*, 15 F.3d 60, 62 (5th Cir. 1994)). Rejection of an executory contract or unexpired lease is appropriate where rejection of the contract or lease would benefit the estate. *See L.R.S.C. Co. v. Rickel Home Ctrs., Inc. (In re Rickel Home Ctrs., Inc.)*, 209 F.3d 291, 298 (3d Cir. 2000); *see also Sharon Steel Corp. v. Nat’l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 39 (3d Cir. 1989).

20. The decision to assume or reject an executory contract or unexpired lease is a matter within the “business judgment” of the debtor. *See NLRB v. Bildisco & Bildisco (In re Bildisco)*, 682 F.2d 72, 79 (3d Cir. 1982) (“The usual test for rejection of an executory contract is simply whether rejection would benefit the estate, the ‘business judgment’ test.”), *aff’d* 465 U.S. 513 (1984); *see also Computer Sales Int’l, Inc. v. Fed. Mogul (In re Fed. Mogul Global, Inc.)*, 293 B.R. 124, 126 (D. Del. 2003); *In re HQ Global Holdings, Inc.*, 290 B.R. 507, 511 (Bankr. D. Del. 2003). The business judgment standard mandates that a court approve a debtor’s business decision unless the decision is the product of bad faith, whim, or caprice. *See In re Trans World Airlines, Inc.*, 261 B.R. 103, 121 (Bankr. D. Del. 2001); *see also Summit Land Co. v. Allen (In re*

*Summit Land Co.*), 13 B.R. 310, 315-16 (Bankr. D. Utah 1981) (absent extraordinary circumstance, court approval of a debtor's decision to assume or reject an executory contract "should be granted as a matter of course"). Accordingly, if a debtor's business judgment has been reasonably exercised, a court should approve the assumption or rejection of an unexpired lease or executory contract. *See Fed. Mogul*, 293 B.R. at 126.

21. The Debtors submit that any Contract or Lease that they seek to reject pursuant to the Rejection Procedures will be a contract or lease that is financially burdensome and unnecessary to the Debtors' operations. Moreover, before rejecting any of the Contracts or Leases, the Debtors will have ensured that the Contracts and Leases are of inconsequential value and benefit to the Debtors' estates and unlikely to generate any net proceeds to the estates. Accordingly, the Debtors will have determined that continued performance under the Contracts and Leases constitutes an unnecessary depletion of value of the Debtors' estates and, therefore, rejection of the Contracts and Leases reflects the Debtors' exercise of sound business judgment.

22. In addition, in the exercise of their business judgment, the Debtors may determine to leave certain personal property at the Leased Premises. To the extent that the Debtors leave any Remaining Property at the Leased Premises, the Debtors request that such Remaining Property be deemed abandoned pursuant to section 554 of the Bankruptcy Code.

23. Section 554(a) of the Bankruptcy Code provides that "[a]fter notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." 11 U.S.C. § 554(a). Prior to abandoning any Remaining Property pursuant to the Rejection Procedures, the Debtors will have determined that the Remaining Property to be abandoned by the Debtors is either: (i) burdensome to the estates to the extent that removal and storage of this property is likely to exceed any net proceeds from the

property; or (ii) of inconsequential value and benefit to the estates. *See, e.g., In re Contract Research Solutions, Inc.*, 2013 WL 1910286, at \*4 (Bankr. D. Del. May 1, 2013) (finding that abandonment of property was appropriate when it posed no threat to public safety and did not contravene any law or regulation; the debtor “need only demonstrate that [it] has exercised sound business judgment in making the determination to abandon.”) (citation omitted). Accordingly, should the Debtors abandon any Remaining Property, such abandonment will reflect the Debtors’ exercise of sound business judgment, taking into account the best interests of the Debtors, their estates, their creditors and other parties in interest.

24. Given the considerable number of Leases the Debtors may seek to reject, obtaining Court approval of each rejection and the abandonment of any related Remaining Property would impose unnecessary burdens on the Debtors and the Court, and results in costs to the Debtors’ estates that would correspondingly decrease the economic benefit of rejection. Thus, the Debtors propose to streamline the process as set forth in the Rejection Procedures, consistent with applicable law, in order to minimize potential costs to the Debtors’ estates and reduce the burden on the Court’s docket, while protecting Counterparties and Landlords by providing such parties notice and an opportunity to object to the proposed rejection.

25. For the foregoing reasons, the Debtors submit that adoption of the Rejection Procedures, including those related to the abandonment of any Remaining Property, is in the best interest of their estates and creditors and all other parties in interest.

**B. The Rejection Procedures Provide Reasonable Notice and Hearing**

26. As a procedural matter, Bankruptcy Rule 9014 provides, in part, that “reasonable notice and opportunity for hearing shall be afforded the party against whom the relief is sought.”

*See* Fed. R. Bankr. P. 9014(a).<sup>3</sup> The notice and hearing requirements for contested matters under Bankruptcy Rule 9014 are satisfied if appropriate notice and an opportunity for hearing are given in light of the particular circumstances. *See* 11 U.S.C. § 102(1)(A) (defining “after notice and a hearing” or a similar phrase to mean such notice and an opportunity for a hearing “as is appropriate in the particular circumstances”).

27. The Landlords will not be prejudiced by the Rejection Procedures because, upon receipt of the Rejection Notice, the Landlords and the Counterparties will receive notice of the proposed effective date of the rejection and opportunity to object. *See, e.g., In re Mid Region Petroleum, Inc.*, 111 B.R. 968, 970 (Bankr. N.D. Okla. 1990) (holding effective date of rejection of leases was the date the trustee gave notice to lessor of intent to reject). Also, in the case of any Real Property Leases, the Debtors intend to vacate the Leased Premises by the date specified in the Rejection Notice, thereby allowing the Landlords to take possession of the property. *See, e.g., Adelphia Bus. Solutions, Inc. v. Abnos*, 482 F.3d 602, 608-09 (2d Cir. 2007) (holding bankruptcy court did not abuse its discretion in finding balance of equities favored making rejection of a nonresidential lease of real property retroactive to date tenant vacated premises, as tenant’s action provided landlord with opportunity to relet premises); *In re New Valley Corp.*, Case No. 98-982, 2000 WL 1251858, at \*15-16 (D.N.J. Aug. 31, 2000) (holding bankruptcy court properly exercised its discretion in adjusting the effective date of rejection from the date the court signed the order authorizing rejection to the date on which the debtor vacated and the landlord exercised control over the property); *In re Amber’s Stores*, 193 B.R. 819, 827 (Bankr. N.D. Tex. 1996) (holding that lease at issue should be deemed rejected as of the petition date due

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<sup>3</sup> Bankruptcy Rule 9014 is made applicable to a motion to reject by Bankruptcy Rule 6006(a), which provides that “[a] proceeding to . . . reject . . . an executory contract or unexpired lease, other than as part of a plan, is governed by Rule 9014.” Fed. R. Bankr. P. 6006(a).

to equities of the case where debtor vacated premises and served motion to reject lease as soon as possible).

28. The Debtors submit that the Rejection Procedures balance the need for an expeditious reduction of potentially burdensome costs to the Debtors' estates, while providing appropriate notice of the proposed rejection to the Landlords and Counterparties. The Rejection Procedures are appropriately tailored to minimize potential administrative expenses, maximize the recovery for creditors in these chapter 11 cases and, with respect to the Real Property Leases, return control of the affected Leased Premises to the Landlords in an efficient manner.

**C. The Rejection Procedures Comply with Bankruptcy Rule 6006(f)**

29. Bankruptcy Rule 6006(f), in relevant part, requires that a motion to reject multiple executory contracts or unexpired leases:

(1) state in a conspicuous place that parties receiving the omnibus motion should locate their names and their contracts or leases listed in the motion;

(2) list parties alphabetically and identify the corresponding contract or lease;

...

(5) be numbered consecutively with other omnibus motions to assume, assign, or reject executory contracts or unexpired leases; and

(6) be limited to no more than 100 executory contracts or unexpired leases.

30. The Rejection Procedures satisfy Bankruptcy Rule 6006(f). The clear purpose of Bankruptcy Rule 6006(f), as amended, is to protect the due process rights of parties to the Contracts and Leases. Counterparties must be able to locate their Contracts or Leases and readily determine whether their Contracts or Leases are being rejected. Through the Rejection

Procedures, the Debtors will comply with all applicable procedural requirements of Bankruptcy Rule 6006(f) when serving the Rejection Notices.

**VI. REQUEST FOR BANKRUPTCY RULE 6004 WAIVERS**

31. To implement the foregoing successfully, the Debtors request a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen-day stay imposed by Bankruptcy Rule 6004(h), to the extent such stay applies.

**VII. NO PRIOR REQUEST**

32. No previous request for the relief sought herein has been made by the Debtors to this or any other Court.

WHEREFORE, the Debtors respectfully request an emergency hearing on this Motion and that the Court enter an order, substantially in the form submitted herewith granting the relief requested and such other or further relief as is just and proper.

Dated: Jacksonville, Florida  
August 12, 2020

Respectfully submitted,  
FOLEY & LARDNER LLP

/s/ Gardner F. Davis

Gardner F. Davis (FL 0471712)

Telephone: 904.359.8726

Email: gdavis@foley.com

John J. Wolfel (FL 30664)

Telephone: 904.359.8778

Email: jwolfel@foley.com

Neda A. Sharifi (FL 112172)

Telephone: 904.359.8719

Email: nsharifi@foley.com

Richard E. Guyer (FL 1004150)

Telephone: 904.633.8902

Email: rguyer@foley.com

One Independent Drive, Suite 1300

Jacksonville, FL 32202-5017

and

Mark J. Wolfson (FL 0352756)

Foley & Lardner LLP

100 N Tampa St Suite 2700

Tampa, FL 33602

Telephone: 813.225.4119

Email: mwolfson@foley.com

and

Marcus Helt (TX 24052187)

Foley & Lardner LLP

2021 McKinney Avenue, Suite 1600

Dallas, TX 75201

Telephone: 214.999.4526

Email: mhelt@foley.com

*Pro hac vice admission pending*

*Proposed Counsel for Debtors  
and Debtors in Possession*

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
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| STEIN MART HOLDING CORP.,     | Case No. 3:20-bk-2389          |
| Debtors.                      | Joint Administration Requested |

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**ORDER AUTHORIZING AND APPROVING PROCEDURES FOR  
REJECTION OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

THIS CASE came for consideration upon the motion (the “**Motion**”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”), for entry of an order pursuant to sections 105(a), 365, and 554 of title 11 of the United States Code (the “**Bankruptcy Code**”), and Rules 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the

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<sup>1</sup> The tax identification numbers of the Debtors are as follows: Stein Mart, Inc. 6198; Stein Mart Buying Corp. 1114; and Stein Mart Holding Corp. 0492. The address of the Debtors’ principal offices: 1200 Riverplace Blvd., Jacksonville, FL 32207. The Debtors’ claims agent maintains a website, <https://cases.stretto.com/SteinMart>, which provides copies of the Debtors’ first day pleadings and other information related to the case.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

“**Bankruptcy Rules**”) establishing procedures for the rejection of executory contracts and unexpired leases and abandonment of personal property as more fully set forth in the Motion; and the Court having jurisdiction to decide the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157(a), (b) and 1334(b); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and notice of the Motion having been given as provided in the Motion; and such notice having been adequate and appropriate under the circumstances; and it appearing that no other notice of Motion need be provided; and the Court having held a hearing to consider the relief requested in the Motion (the “**Hearing**”); and upon the *Declaration of Hunt Hawkins in Support of Debtors’ Chapter 11 Petitions and First Day Pleadings*; the record of the Hearing, and all of the proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion and granted herein is in the best interests of the Debtors, their respective estates and creditors and all parties in interest; that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby

**ORDERED:**

1. The Motion is granted as set forth herein.
2. The following Rejection Procedures are authorized and approved:
  - (a) Rejection Notice. The Debtors will file a notice (the “**Rejection Notice**”), setting forth the proposed rejection of one or more Contracts and/or Leases and will serve the Rejection Notice via overnight delivery service, email, or fax on: (1) the non-Debtor counterparty (and its counsel, if known) under the respective Contract or Lease at the last known address available to the Debtors (the “**Counterparty**”); (2) with respect to real property Leases (“**Real Property Leases**”), any known third party having an interest in personal property located at the leased premises (the “**Leased Premises**”); (3) any party known to assert a lien in any property subject to the rejected Contract or Lease; (4) counsel for the administrative agent under the

Debtors' pre-petition revolving credit facility Wells Fargo Bank, National Association, c/o (a) Otterbourg P.C. (Attn: Daniel F. Fiorillo, Esq. and Chad B. Simon, Esq.), 230 Park Avenue, New York, NY 10169-0075 and (b) Smith Hulsey & Busey, One Independent Drive, Suite 3300, Jacksonville, Florida 32202 (Attn: Stephen D. Busey, Esq.); (5) attorneys for the administrative agent under the Debtors' pre-petition term loan, Gordon Brothers Finance Company LLC, c/o (a) (a) Morgan, Lewis & Bockius LLP, One Federal Street, Boston, MA 02110-1726 (Attn: Matthew F. Furlong, Esq., Julia Frost-Davies, Esq. and Christopher L. Carter, Esq.); and (b) Holland & Knight, 50 North Laura Street, Suite 3900, Jacksonville, Florida 32202 (Attn: Alan Weiss, Esq.); (6) counsel to any official committee appointed in these chapter 11 cases; and (7) the Office of the United States Trustee for the Middle District of Florida (collectively, the "**Rejection Notice Parties**").

- (b) Content of Rejection Notice. The Rejection Notice shall be substantially in the form attached as Exhibit 1 to this Order. With respect to Real Property Leases, the Rejection Notice shall set forth the following information, to the best of the Debtors' knowledge: (1) the street address of the related real property; (2) the name and address of the landlord (the "**Landlord**"); and (3) the date on which the Debtors will vacate (or have vacated) the Leased Premises. With respect to all other Contracts or Leases to be rejected, the Rejection Notice shall set forth the following information, to the best of the Debtors' knowledge: (1) the name and address of the Counterparty; and (2) a brief description of the Contract or Lease to be rejected. All Rejection Notices will be accompanied by a copy of the proposed order approving the rejection of the Contracts and/or Leases set forth on the Rejection Notice (each such order, a "**Rejection Order**"), substantially in the form attached to the Rejection Notice as Exhibit A.
- (c) Objections. Should a party in interest object to the Debtors' proposed rejection of a Contract or Lease, such party must file and serve a written objection (an "**Objection**") so that such objection is filed with the Court and actually received by the following parties no later than fourteen (14) calendar days after the date the Rejection Notice is filed: (1) proposed attorneys for the Debtors, Foley & Lardner LLP, One Independent Drive, Suite 1300, Jacksonville Florida 32202, Attn: Gardner Davis, Esq.; (2) Office of the United States Trustee, 400 West Washington Street, Suite 1100, Orlando, Florida 32801; (3) counsel for the administrative agent under the Debtors' pre-petition revolving credit facility, Wells Fargo Bank, National Association, c/o (a) Otterbourg P.C. (Attn: Daniel F. Fiorillo, Esq. and Chad B. Simon, Esq.), 230 Park Avenue, New York, NY 10169-0075 and (b) Smith Hulsey & Busey, One Independent Drive, Suite 3300, Jacksonville, Florida 32202 (Attn: Stephen D. Busey, Esq.); (4) counsel for the administrative agent under the Debtors' pre-petition term loan, Gordon Brothers Finance Company LLC, c/o (a) Morgan, Lewis & Bockius LLP, One Federal Street, Boston, MA 02110-1726 (Attn: Matthew F. Furlong,

Esq., Julia Frost-Davies, Esq. and Christopher L. Carter, Esq.); and (b) Holland & Knight, 50 North Laura Street, Suite 3900, Jacksonville, Florida 32202 (Attn: Alan Weiss, Esq.); and (5) counsel to any official committee appointed in these chapter 11 cases (collectively, the “**Objection Notice Parties**”). Each Objection must state with specificity the ground for objecting to the proposed rejection of the Contract or Lease and/or abandonment of Remaining Property (as defined and discussed below), as applicable.

- (d) Effects of Failing to File an Objection to a Rejection Notice. If no Objection to a Rejection Notice is timely filed and served, the Debtors may submit the Rejection Order to the Court, and the applicable Contract or Lease shall be deemed rejected on the effective date set forth in the Rejection Notice (the “**Rejection Date**”); *provided, however*, that the Rejection Date for a Real Property Lease shall not be earlier than the later of (i) the date the Debtors file and serve a Rejection Notice for the Real Property Lease and (ii) the date the Debtors relinquish control of the applicable Leased Premises by notifying the affected Landlord in writing of the Debtors’ irrevocable surrender of the premises. Upon the Rejection Date, any personal property or furniture, fixtures, and equipment (“**Remaining Property**”) remaining on the Leased Premises shall be deemed abandoned by the Debtors, and the Landlords may dispose of any Remaining Property, in their sole discretion, free and clear of all liens, claims, encumbrances, and interests, and without any liability to the Debtors and their estates and any third party and without waiver of any claim the Landlords may have against the Debtors and their estates.
- (e) Effects of Filing an Objection to a Rejection Notice. If a timely Objection to a Rejection Notice is filed and received in accordance with the Rejection Procedures, the Debtors shall schedule a hearing on such Objection and shall provide at least seven (7) days’ notice of such hearing to the objecting party and the Objection Notice Parties. If the Court upholds the Debtors’ determination to reject the applicable Contract or Lease, then the applicable Contract or Lease shall be deemed rejected (i) as of the Rejection Date or (ii) as otherwise determined by the Court as set forth in any order overruling such Objection.
- (f) Consent Orders. Any Objection may be resolved without a hearing by an order of the Court submitted on a consensual basis by the Debtors and the objecting party.
- (g) Deadlines for Filing Claims. Claims arising out of the rejection of Contracts or Leases must be filed on or before the later of (i) the deadline for filing proofs of claims established by the Court in these chapter 11 cases or (ii) thirty (30) days after the date of entry of the applicable Rejection Order. If no proof of claim is timely filed, such claimant shall not be treated as a creditor with respect to such claims for voting on any chapter 11 plan in

these chapter 11 cases and shall be forever barred from asserting a claim for rejection damages and from participating in any distributions that may be made in connection with the Debtors' bankruptcy cases.

- (h) Treatment of Security Deposits. If the Debtors have deposited funds with a Counterparty or Landlord as a security deposit or other arrangement, such Counterparty or Landlord may not setoff or otherwise use such deposit without the prior authority of this Court or agreement of the Debtors.

3. The form of Rejection Notice attached hereto as **Exhibit 1** is hereby approved.

4. The Debtors are hereby authorized to execute and deliver all instruments and documents, and take such other actions, as may be necessary or appropriate to implement and effectuate the Rejection Procedures as approved by this Order.

5. Entry of this Order is without prejudice to the rights of the Debtors, including but not limited to, the right to seek further, other, or different relief regarding any Contract or Lease pursuant to, among other things, section 365 of the Bankruptcy Code.

6. All rights and defenses of the Debtors are preserved, including all rights and defenses of the Debtors with respect to a claim for damages arising as a result of the rejection of a Contract or Lease, including any right to assert an offset, recoupment, counterclaim or deduction. In addition, nothing in this Order or the Motion shall limit the Debtors' ability to subsequently assert that any particular Contract or Lease is terminated and is no longer an executory contract or unexpired lease.

7. Notwithstanding the relief granted herein and any actions taken hereunder, nothing in the Motion or this Order shall constitute, nor is it intended to constitute: (1) an admission as to the validity or priority of any claim against the Debtors; (2) a waiver of the Debtors' rights to dispute any claim; or (3) a rejection, assumption or assignment of any Contract or Lease pursuant to section 365 of the Bankruptcy Code.

8. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

9. This Court retains jurisdiction with respect to all matters arising from or related to the enforcement and implementation of this Order.

Debtors' counsel is directed to serve a copy of this order on interested parties who do not receive service by CM/ECF and file a proof of service within three days of entry of this order.

**EXHIBIT 1 TO LEASE REJECTION PROCEDURES ORDER**

**Form of Rejection Notice**

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION  
[www.flmb.uscourts.gov](http://www.flmb.uscourts.gov)

|                               |                                |
|-------------------------------|--------------------------------|
| In re:                        | Chapter 11                     |
| STEIN MART, INC. <sup>1</sup> | Case No. 3:20-bk-2387          |
| STEIN MART BUYING CORP.       | Case No. 3:20-bk-2388          |
| STEIN MART HOLDING CORP.,     | Case No. 3:20-bk-2389          |
| Debtors.                      | Joint Administration Requested |

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**NOTICE OF REJECTION OF  
EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**TO: The Parties Identified on Schedule 1 Attached Hereto:**

**PLEASE TAKE NOTICE** that on [\_\_\_\_], 2020, the United States Bankruptcy Court for the Middle District of Florida (the “**Bankruptcy Court**”) entered an order [Docket No. \_\_\_\_] (the “**Rejection Procedures Order**”) granting the Debtors’ Motion for Entry of an Order Authorizing and Approving Procedures for Rejection of Executory Contracts and Unexpired Leases [Docket No. \_\_\_\_ (the “**Motion**”), approving certain procedures for the rejection of executory contracts and unexpired leases of the Debtors.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the terms of the Rejection Procedures Order, the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) hereby provide notice of their intent to reject the Contracts and/or Leases identified on Schedule 1 hereto (the “**Contracts and Leases**”).

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<sup>1</sup> The tax identification numbers of the Debtors are as follows: Stein Mart, Inc. 6198; Stein Mart Buying Corp. 1114; and Stein Mart Holding Corp. 0492. The address of the Debtors’ principal offices: 1200 Riverplace Blvd., Jacksonville, FL 32207. The Debtors’ claims agent maintains a website, <https://cases.stretto.com/SteinMart>, which provides copies of the Debtors’ first day pleadings and other information related to the case.

**PLEASE TAKE FURTHER NOTICE** that should you object to the Debtors' rejection of a Contract or Lease identified on **Schedule 1** hereto, you must file and serve a written objection on: (1) proposed attorneys for the Debtors, Foley & Lardner LLP, One Independent Drive, Suite 1300, Jacksonville, Florida 32202, Attn: Gardner Davis, Esq.; (2) Office of the United States Trustee, 400 West Washington Street, Suite 1100, Orlando, Florida 32801; (3) counsel for the administrative agent under the Debtors' pre-petition revolving credit facility, Wells Fargo Bank, National Association, c/o (a) Otterbourg P.C. (Attn: Daniel F. Fiorillo, Esq. and Chad B. Simon, Esq.), 230 Park Avenue, New York, NY 10169-0075 and (b) Smith Hulsey & Busey, One Independent Drive, Suite 3300, Jacksonville, Florida 32202 (Attn: Stephen D. Busey, Esq.); (4) counsel for the administrative agent under the Debtors' pre-petition term loan, Gordon Brothers Finance Company LLC, c/o (a) Morgan, Lewis & Bockius LLP, One Federal Street, Boston, MA 02110-1726 (Attn: Matthew F. Furlong, Esq., Julia Frost-Davies, Esq. and Christopher L. Carter, Esq.); and (b) Holland & Knight, 50 North Laura Street, Suite 3900, Jacksonville, Florida 32202 (Attn: Alan Weiss, Esq.); and (5) counsel to any official committee appointed in these chapter 11 cases (collectively, the "**Objection Notice Parties**"), so that such objection is filed with the Bankruptcy Court and received by the Objection Notice Parties no later than [\_\_\_\_], 2020, which is fourteen (14) days after the date that the Debtors filed and served this Rejection Notice.

**PLEASE TAKE FURTHER NOTICE** that absent an objection being filed and served in compliance with the Rejection Procedures Order, the Rejected Contracts and Leases will be rejected pursuant to section 365(a) of the Bankruptcy Code effective as of the date set forth on **Schedule 1** to this Rejection Notice (the "**Rejection Date**") or, if no such date is set forth therein, the Rejection Date shall be the later of (i) the date of this Rejection Notice; and (ii) the date of surrender of the leased property.

**PLEASE TAKE FURTHER NOTICE** that if an objection is timely filed and served on the Objection Notice Parties as specified above, and cannot be resolved, the Debtors shall seek a hearing on such objection and shall provide at least seven (7) days' notice of such hearing to the objecting party and the Objection Notice Parties. If such objection is overruled by the Bankruptcy Court or withdrawn, the rejection of the Rejected Leases shall be deemed effective (a) as of the Rejection Date, or (b) as otherwise determined by the Bankruptcy Court as set forth in any order overruling such objection.

**PLEASE TAKE FURTHER NOTICE** that pursuant to the terms of the Rejection Procedures Order, if the Debtors have deposited monies with you as a security deposit or other arrangement, you may not setoff, recoup or otherwise use such deposit without prior authorization from the Bankruptcy Court.

**PLEASE TAKE FURTHER NOTICE** that pursuant to the terms of the Rejection Procedures Order, for any claim that you may assert against the Debtors as a result of the rejection of any Rejected Contract or Lease, you must submit a proof of claim for damages arising from such rejection on or before the later of (i) the deadline for filing proofs of claim established by the Bankruptcy Court in the Debtors' chapter 11 cases, or (ii) thirty (30) days after the Rejection Date. If you do not timely file such proof of claim, you will not be treated as a creditor with respect to such claim for voting on any chapter 11 plan in the Debtors' chapter 11 cases and shall be forever barred from asserting a claim for rejection damages arising from the rejection of the Rejected Contract and Leases or from participating in any distributions that may be made in connection with these chapter 11 cases.

Dated: \_\_\_\_\_, 2020

Respectfully submitted,  
FOLEY & LARDNER LLP

/s/ Gardner F. Davis

Gardner F. Davis (FL 0471712)

Telephone: 904.359.8726

Email: gdavis@foley.com

John J. Wolfel (FL 30664)

Telephone: 904.359.8778

Email: jwolfel@foley.com

Neda A. Sharifi (FL 112172)

Telephone: 904.359.8719

Email: nsharifi@foley.com

Richard E. Guyer (FL 1004150)

Telephone: 904.633.8902

Email: rguyer@foley.com

One Independent Drive, Suite 1300

Jacksonville, FL 32202-5017

and

Mark J. Wolfson (FL 0352756)

Foley & Lardner LLP

100 N Tampa St Suite 2700

Tampa, FL 33602

Telephone: 813.225.4119

Email: mwolfson@foley.com

and

Marcus Helt (TX 24052187)

Foley & Lardner LLP

2021 McKinney Avenue, Suite 1600

Dallas, TX 75201

Telephone: 214.999.4526

Email: mhelt@foley.com

*Pro hac vice admission pending*

*Proposed Counsel for Debtors  
and Debtors in Possession*

**SCHEDULE 1**

| <b>REJECTION SCHEDULE</b> |                             |                                   |                                                 |                       |
|---------------------------|-----------------------------|-----------------------------------|-------------------------------------------------|-----------------------|
| <b>Counterparty</b>       | <b>Counterparty Address</b> | <b>Title/Description of Lease</b> | <b>Property to be Abandoned (if applicable)</b> | <b>Rejection Date</b> |
|                           |                             |                                   |                                                 |                       |
|                           |                             |                                   |                                                 |                       |

| <b>PROPERTY TO BE ABANDONED</b>                                |                                                                |
|----------------------------------------------------------------|----------------------------------------------------------------|
| <b>Description of Property to be Abandoned (if applicable)</b> | <b>Counterparty to Personal Property Lease (if applicable)</b> |
|                                                                |                                                                |
|                                                                |                                                                |

**EXHIBIT A TO REJECTION NOTICE**

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION  
[www.flmb.uscourts.gov](http://www.flmb.uscourts.gov)

|                           |                                |
|---------------------------|--------------------------------|
| In re:                    | Chapter 11                     |
| STEIN MART, INC.          | Case No. 3:20-bk-2387          |
| STEIN MART BUYING CORP.   | Case No. 3:20-bk-2388          |
| STEIN MART HOLDING CORP., | Case No. 3:20-bk-2389          |
| Debtors.                  | Joint Administration Requested |

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**ORDER APPROVING THE REJECTION OF CONTRACTS AND LEASES AND  
ABANDONMENT OF PROPER IN CONNECTION THEREWITH**

Pursuant to and in accordance with the *Order Establishing Procedures for the Rejection of Executory Contracts and Unexpired Leases* [Docket No. \_\_\_\_] (the “**Rejection Procedures Order**”);<sup>4</sup> and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §157 and 1334; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of these cases and this matter is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Debtors having properly filed and served a “Notice of Rejection of Executory

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<sup>4</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Rejection Procedures Order.

Contracts and/or Unexpired Leases” [Docket No. \_\_\_\_] (the “**Rejection Notice**”) in accordance with the terms of the Rejection Procedures Order in respect of the rejection of the executory contracts (the “**Contracts**”) and/or unexpired leases (the “**Leases**”) set forth on **Exhibit 1** hereto; and no timely objections having been filed to the rejection of the Contracts and Leases; and it appearing that due and adequate notice of the Rejection Procedures Order and the Rejection Notice has been given, and that no other or further notice need be given; and the Court having determined that the rejections provided for herein are an appropriate exercise of the Debtors’ business judgment; and after due deliberation, and good and sufficient cause appearing therefor, it is hereby

**ORDERED:**

1. Contracts and Leases listed on **Exhibit 1** hereto are hereby rejected effective as of the dates set forth for such Contracts and Leases listed on **Exhibit 1** hereto (the “**Rejection Date**”).

2. The rights of the Debtors and their estates to assert that the Contracts and Leases rejected hereby expired by their own terms or were terminated prior to the date hereof are fully preserved, and the Debtors and their estates do not waive any rights or claims that they may have with respect to or against the counterparties to such Contracts and Leases, whether or not such rights or claims arise under, are related to the rejection of, or are independent of the Contracts and Leases rejected hereby.

3. If any affected counterparty subject to this Order (a “**Rejection Claimant**”) asserts a claim or claims against the Debtors and their estates arising from the rejection of the Contracts and Leases, such Rejection Claimant shall submit a proof of claim on or before the later of (i) the deadline for filing proofs of claims established by the Court in these chapter 11 cases or (ii) thirty (30) days after the date of entry of this Order. If no proof of claim is timely filed, such claimant shall not be treated as a creditor with respect to such claims for voting on any chapter 11 plan in

these chapter 11 cases and shall be forever barred from asserting a claim for rejection damages and from participating in any distributions that may be made in connection with the Debtors' bankruptcy cases.

4. The Debtors are authorized to take any action necessary or appropriate to implement the terms of this Order and the rejections without further order from this Court.

5. This Court shall retain exclusive jurisdiction and power to resolve any dispute arising from or related to this Order.

Debtors' counsel is directed to serve a copy of this order on interested parties who do not receive service by CM/ECF and file a proof of service within three days of entry of this order.