

Objection Deadline: July 10, 2024, at 4:00 p.m. (E.T.)
Hearing Date: July 16, 2024, at 11:00 a.m. (ET)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
FISKER, INC., <i>et al.</i> ,	Case No. 24-11390 (TMH)
Debtors.	(Jointly Administered)

**THE GROVE, LLC’S LIMITED OBJECTION TO DEBTORS’ MOTION TO REJECT
LEASE**

I. INTRODUCTION

The Grove, LLC, a Delaware limited liability company, registered in California as GFM, LLC (“**Creditor**” or “**Landlord**”) is the ground lessee of real property on which it operates a retail center known as The Grove (“**Retail Center**”). Before it filed for bankruptcy protection, Debtor Fisker Group, Inc. (“**Debtor**” or “**Fisker**”) had been leasing retail space within the Retail Center pursuant to a written lease with Landlord. By way of its Motion of Debtors for Entry of an Order (I) Authorizing Debtors To Reject Certain Unexpired Leases of Nonresidential Real Property and (II) Authorizing and Establishing Procedures To Reject Executory Contracts and Unexpired Leases, Fisker now seeks to reject the lease. However, as explained below Landlord had already terminated the lease pre-petition under California law. Therefore, the Debtor has no lease or tenancy with Landlord to reject in this proceeding.

II. FACTUAL BACKGROUND

Fisker and Landlord entered into a Retail Center Lease Agreement on October 1, 2021, (the “**Lease**”) for retail space located at 189 The Grove Drive, Spaces “G-7/8,” Los Angeles, California 90036 (the “**Premises**”). Fisker’s performance obligations under the Lease were



secured by a security deposit and Fisker waived all statutory limitations relating to the security deposit, including those pursuant to California Code of Civil Procedure section 1950.7. (Lease, §18.13.)

Pursuant to Section 5.5 of the Lease, Fisker was required to pay for all work performed and materials furnished to the Premises, including such work relating to Fisker's tenant improvements. Fisker was also obligated to keep the Premises or Retail Center free and clear from all mechanic's liens and materialmen's liens. If any such lien was filed, the Lease required that Fisker immediately remove the encumbrance from the property. (Lease, § 5.5, *et seq.*) Failure to comply with these provisions after 30 days' written notice from Landlord constituted an "Event of Default." (Lease, § 18.1, *et seq.*) Upon an Event of Default, Landlord's remedies included the right to terminate the Lease and Fisker's right of possession and to recover monetary damages. (Lease, § 18.2, *et seq.*)

Despite its obligations under the Lease, Fisker did not pay for all work performed and materials furnished to the Premises. In addition, at least two liens were recorded against the Premises and Landlord's interest in the Retail Center: one by Artisan Glass & Design, Inc. and one by PHL, Inc. dba VNSM in the aggregate amount of \$344,185.91 (the "**Liens**"). Landlord therefore sent a notice of default to Fisker on April 3, 2024, demanding Fisker take all steps to remove the Liens as required by the Lease. (A copy of Landlord's April 3, 2024, Notice of Default is attached as **Exhibit 1** to the Declaration of Paul E. Van Hoomissen In Support of Objection [**"Van Hoomissen Decl."**], filed concurrently herewith.) Fisker did not, in fact, remove the encumbrances from the Premises or Landlord's interest in the Retail Center. Therefore, after 30 days had elapsed, an Event of Default under the Lease was established entitling Landlord to exercise its remedies including termination of the Lease.

When, after expiration of the 30-day cure period Fisker still had not cured the default, Landlord served Fisker, on May 18, 2024, with a Three (3) Day Notice to Perform Or Quit (“**NPQ**”) pursuant to California Code of Civil Procedure section 1161(3), *et seq.* [California’s Unlawful Detainer statutory scheme]. The NPQ required that Fisker either cure the default regarding the Liens or quit its possession of the Premises. (A copy of Landlord’s NPQ is attached as **Exhibit 2** to the Van Hoomissen Decl.) Fisker again did not cure the default. As of May 23, but at the latest May 24, 2024, the Lease was terminated under operation of the Lease and California law.

In furtherance of its remedies, and for recovery of possession after Lease termination, Landlord filed an unlawful detainer action (“**UD**”) on May 24, 2024. On or about the date that the UD was filed, Fisker turned over the keys to the leased premises and surrendered possession of the Premises. On June 14, 2024, Landlord sent a letter to Fisker confirming its termination of the Lease and the application of the security deposit to Landlord’s damages pursuant to California Code of Civil Procedure section 1951.2. (A copy of Landlord’s June 14, 2024, letter is attached as **Exhibit 3** to the Van Hoomissen Decl.)

III. LEGAL DISCUSSION

Sections 18.2 and 18.2.1 of the Lease permitted Landlord to terminate the Lease upon the occurrence of an “Event of Default.” As explained above, the Event of Default was established by Landlord issuing a notice of default to Fisker and Fisker’s failure to timely cure. Landlord therefore exercised its contractual and legal right to terminate Fisker’s right to occupancy pursuant to the terms of the Lease and California Code of Civil Procedure section 1161(3) with service of the NPQ. In furtherance of and after termination, and to obtain possession of the Premises, Landlord filed the UD action against Fisker. Fisker then voluntarily turned over the keys to the premises and surrendered possession.

California Civil Code section 1951.2 provides that: “Except as otherwise provided in Section 1951.4, if a lessee of real property breaches the lease and abandons the property before the end of the term or if his right to possession is terminated by the lessor because of a breach of the lease, the lease terminates.” Fisker breached the Lease, its right to possession was terminated by the Landlord, and Fisker quit possession. Therefore, under both the terms of the lease and California law, the lease was terminated pre-petition. Upon termination, Landlord’s right to recover damages under California Civil Code section 1951.2, subsections (2) and (3) immediately ripened. These damages include an amount equal to unpaid rent from the date of termination through the end of the lease less only what Fisker can affirmatively prove could have been avoided.

Landlord reserves all rights with respect to any of the foregoing, all of its rights under the terminated Lease, including its right to pursue all monetary and other claims, as affected by any applicable Bankruptcy Code section, procedures or order of this Court, after notice and a right to be heard.

IV. CONCLUSION

The Lease was terminated pre-petition. There are no grounds for including the Lease in the list of leases to be rejected by the Motion and the Motion should be denied to the limited extent it seeks to reject the Lease which was terminated before the bankruptcy cases were commenced.

Dated: July 10, 2024

MUNGER TOLLES & OLSON LLP

By: /s/ Thomas B. Walper

Thomas B. Walper

Thomas.walper@mto.com

350 S. Grand Ave., Floor 50

Los Angeles, CA 90071-3426

Telephone: (213) 683-9193

Facsimile: (213) 683-5193

Attorneys for Landlord/Creditor

The Grove, LLC, a Delaware limited liability
company, registered in California as GFM,
LLC

Objection Deadline: July 10, 2024, at 4:00 p.m. (E.T.)
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

FISKER, INC., *et al.*,

Debtors.

Chapter 11

Case No. 24-11390 (TMH)

(Jointly Administered)

**DECLARATION OF PAUL E. VAN HOOMISSEN IN SUPPORT OF THE GROVE,
LLC'S LIMITED OBJECTION TO DEBTORS' MOTION TO REJECT LEASE**

I, Paul E. Van Hoomissen, hereby declare:

1. I make this declaration of my own personal knowledge, except where stated on information and belief, and if called to testify in Court on these matters, I could do so competently.

2. I am an attorney licensed to practice before the courts of California and a partner of Cox, Castle & Nicholson LLP. I am one of the attorneys that has represented The Grove, LLC, a Delaware limited liability company ("**Landlord**"), in connection with its California state claims against the Fisker Group, Inc. ("**Fisker**") pertaining to the terminated Retail Center Lease Agreement, dated October 1, 2021, (the "**Lease**") for retail space located at 189 The Grove Drive, Spaces "G-7/8," Los Angeles, California 90036 (the "**Premises**").

3. This Declaration is filed in support of the Landlord's Limited Objection to Debtor's Motion of Debtors for Entry of an Order (I) Authorizing Debtors To Reject Certain Unexpired Leases of Nonresidential Real Property and (II) Authorizing and Establishing Procedures To Reject Executory Contracts and Unexpired Leases, filed concurrently herewith.

4. Attached hereto as **Exhibit 1** is a true copy of Landlord's April 3, 2024, Notice of Default to Fisker.

5. Attached hereto as **Exhibit 2** is a true copy of Landlord's May 17, 2024, Three (3) Day Notice to Perform Or Quit.

6. Attached hereto as **Exhibit 3** is a true copy of Landlord's June 14, 2024, letter to Fisker confirming termination of the Lease.

7. On or about May 24, 2024, I caused to be filed in the Los Angeles Superior Court a Complaint for Unlawful Detainer on Landlord's behalf against Fisker relating to termination of the Lease and recovery of possession of the Premises. Los Angeles Superior Court, Case No. 24STCV13411.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 9th day of July 2024, at Irvine, California.

Dated: July 9, 2024



Paul E. Van Hoomissen
pvanhoomissen@coxcastle.com
3121 Michelson Drive
Suite 200
Irvine, CA 92612
Telephone: (949) 260-4610
Facsimile: (949) 260- 4699

EXHIBIT 1



Samantha Azulay
Deputy General Counsel
sazulay@caruso.com
323.900.8419

VIA OVERNIGHT COURIER & ELECTRONIC MAIL

TO: Fisker Group Inc.
1888 Rosecrans Avenue
Manhattan Beach, CA 90266
Attn: Geeta Gupta
Email: gfisker@fiskerinc.com
dahmed@fisker.com
shodgdon@fisker.com

Fisker Inc.
1888 Rosecrans Avenue
Manhattan Beach, CA 90266
Attn: Geeta Gupta
Dawn Ahmed

RE: That Retail Center Lease Agreement dated October 1, 2021 and any and all amendments, addenda and exhibits thereto (the “Lease”), made by and between Fisker Group, Inc., a Delaware corporation (“Tenant”) and The Grove, LLC, a Delaware limited liability company, registered in California as GFM, LLC, respecting that certain real property located at 189 The Grove Drive, Space “G-7/8”, Los Angeles, CA 90036 (the “Premises”).

To whom it may concern:

This letter is on behalf of The Grove, LLC, a Delaware LLC dba GFM, LLC, a California limited liability company (“Landlord”), regarding the referenced Lease of the Premises. At this time, Tenant is in default under the Lease. Specifically, despite the requirements of the Lease at Section 5.5, Tenant has permitted several mechanic’s liens to attach to the Premises including, but not limited to, one claimed by PHL, Inc. dba VNSM and one claimed by Artisan Glass & Design, Inc.

Pursuant to Section 5.5.1 of the Lease, Tenant, had it desired to contest the liens, was required to furnish Landlord with appropriate cash security equal to one and a half times the lien amount, or furnish a surety bond sufficient to release the Retail Center and the Premises from the

lien. Tenant wholly failed to do so. Despite several attempts by Landlord to cause Tenant to resolve this matter, Tenant has continued to fail and refuse to do so. At this time, and as set forth in Section 18.1.3 of the Lease, an Event of Default presently exists related to Tenant's failure to remove this lien. Pursuant to that Section, Tenant has 30 days to remove or bond around the lien or otherwise furnish appropriate security for Landlord and The A.F. Gilmore Company, a California corporation, as Ground Lessor under the Master Ground Lease. A failure to do so will permit Landlord to terminate the Lease should it so desire.

Furthermore, pursuant to Section 10.1 of the Lease, Tenant is to indemnify and defend Landlord and Ground Lessor from any claims. Please be advised that if there is any litigation involving the Lease, Landlord will seek indemnity from Tenant, including for all of Landlord's and Ground Lessor's attorneys' fees and costs as set forth in Section 20.4 of the Lease.

Obviously, this is not a complete recitation of all facts and law at issue in this matter and all of Landlord's rights and remedies are expressly reserved. Please note that the mechanics liens may result in litigation if not resolved, and Landlord will pursue all available legal means at that time if a satisfactory resolution is not reached. Please be so guided and govern yourself accordingly.

Dated: April 3, 2024

"Landlord"

**The Grove, LLC, a Delaware LLC dba GFM, LLC,
a California limited liability company**

By:



Samantha Azulay

Cc: Jackie Levy via email
Valerie Tran via email
Sunil Watumull via email
Richard Lynch via email

EXHIBIT 2



NOTICE TO PERFORM OR QUIT (“NOTICE”)

(Code of Civil Procedure, §1161)

TO: FISKER GROUP, INC., and any and all other occupants-in possession or those claiming a right of possession (collectively “**You**” or “**Your**” unless otherwise noted herein)

FROM: THE GROVE, LLC

RE: That certain real property located at 189 The Grove Drive, Spaces “G-7/8,” Los Angeles, California 90036 (the “**Premises**”).

Pursuant to Section 5.5 of the Retail Center Lease Agreement dated October 1, 2021 and any and all amendments, addenda and exhibits thereto (the “**Lease**”), made by and between Fisker Group, Inc., a Delaware corporation (“**Tenant**”) and The Grove, LLC, a Delaware limited liability company, registered in California as GFM, LLC9 (“**Landlord**”), WITHIN THREE (3) DAYS after service upon you of this NOTICE, you are hereby required to cure the following defaults (collectively “**Defaults**”) under the Lease:

Liens or encumbrances have attached, been recorded, or been placed on the Retail Center (as that term is defined in the Lease) including the Premises, including but not limited to mechanic’s liens or encumbrances by PHL, Inc. dba VNSM and Artisan Glass & Design, Inc.

You must either cure the above Defaults or you are hereby required to quit and surrender the Premises in accordance with Section 18.2.1 of the Lease to Landlord’s Agent within three (3) days after service upon you of this Notice, or Landlord will institute legal proceedings against you to recover possession of the Premises due to an uncured breach of a covenant, rent, damages, court costs and attorneys’ fees. Landlord’s Agent is Erica Tuttle - Property Manager, Caruso Management Company, Ltd., 101 The Grove Drive, Los Angeles, California 90036, (323) 900-8109 and is available at that address to receive possession of the Premises from you Monday through Friday (judicial holidays excepted) between the hours of 9:30 a.m. and 4:30 p.m.

This Notice to Perform or Quit is independent of and is not a waiver of the right of the Landlord to hold Tenant and others responsible for any other sums due under the Lease, including but not limited to future rent loss and any and all other damages that Landlord may suffer as a result of your default under the Lease including but not limited to any and all damages that Landlord is entitled to pursuant to law and/or in accordance with the Lease, or any other of Landlord’s rights and remedies. Moreover, Landlord reserves its right to recover from you all attorneys’ fees and costs Landlord incurs in connection with the Defaults, regardless of when incurred.

Caruso

THIS NOTICE SUPERSEDES ALL PRIOR NOTICES TO PERFORM OR QUIT.

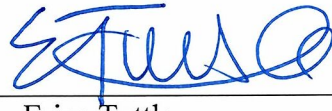
Dated: May 17, 2024

LANDLORD:

The Grove, LLC, a Delaware limited liability company, registered in California as GFM, LLC

By: Caruso Management Company, Ltd.

By:



Erica Tuttle
Property Manager
101 The Grove Drive
Los Angeles, California 90036
(323) 900-8109

Attorney or Party without Attorney: COX, CASTLE & NICHOLSON LLP 3121 Michelson Drive, Suite 200 Irvine, CA 92612 Telephone No: (949) 260-4600				For Court Use Only
Ref. No. or File No.: 086772/PEV				
Insert name of Court, and Judicial District and Branch Court:				
Plaintiff: Defendant:				Case Number:
PROOF OF SERVICE	Hearing Date:	Time:	Dept/Div:	

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the NOTICE TO PERFORM OR QUIT ("NOTICE")
3. a. Party served: FISKER GROUP, INC.
4. Address where the party was served: 189 The Grove Drive, Spaces G-7/8, Los Angeles, CA 90036
5. I served the party:
 - b. by substituted service. On: Sat, May 18 2024 at: 11:23 AM I left the documents listed in item 2 with or in the presence of: Ken Pacio, Manager
 - (1) ☒ (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
 - (2) ☐ (home) a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
 - (3) A declaration of mailing is attached.

Recoverable cost Per CCP 1033.5(a)(4)(B)

6. Person Who Served Papers:

- a. Mohammad Rafiquzzaman (6600, Los Angeles)
- b. FIRST LEGAL
600 W. Santa Ana Blvd., Ste. 101
SANTA ANA, CA 92701
- c. (714) 541-1110

d. The Fee for Service was: \$148.51

e. I am: A Registered California Process Server

7. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

05/21/2024

(Date)



(Signature)



Attorney or Party without Attorney: COX, CASTLE & NICHOLSON LLP 3121 Michelson Drive, Suite 200 Irvine, CA 92612 Telephone No: (949) 260-4600				For Court Use Only
Ref. No. or File No.: 086772/PEV				
Insert name of Court, and Judicial District and Branch Court:				
Plaintiff: Defendant:				Case Number:
PROOF OF SERVICE By Mail	Hearing Date:	Time:	Dept/Div:	

1. I am over the age of 18 and not a party to this action. I am employed in the county where the mailing occurred.
 2. I served copies of the NOTICE TO PERFORM OR QUIT ("NOTICE")
 3. By placing a true copy of each document in the United States mail, in a sealed envelope by **First Class** mail with postage prepaid as follows:
 - a. Date of Mailing: Mon, May 20, 2024
 - b. Place of Mailing: SANTA ANA, CA 92701
 - c. Addressed as follows: FISKER GROUP, INC. ATTN: PERSON IN CHARGE
189 The Grove Drive, Spaces G-7/8, Los Angeles, CA 90036
 4. I am readily familiar with the business practice for collection and processing of correspondence as deposited with the U.S. Postal Service on Mon, May 20, 2024 in the ordinary course of business.
- Recoverable cost Per CCP 1033.5(a)(4)(B)
5. **Person Serving:**
 - a. Ruben Fragoso (2886, Orange County)
 - b. **FIRST LEGAL**
600 W. Santa Ana Boulevard, Suite 101
SANTA ANA, CA 92701
 - c. (714) 541-1110
 - d. **The Fee for Service was: \$148.51**
 - e. I am: A Registered California Process Server
6. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

05/21/2024

(Date)

(Signature)



EXHIBIT 3



VIA OVERNIGHT COURIER & ELECTRONIC MAIL

Fisker Group Inc.
1888 Rosecrans Avenue
Manhattan Beach, CA 90266
Attn: Geeta Gupta

Email: jcielo@fiskerinc.com
gfisker@fiskerinc.com
dahmed@fiskerinc.com
shodgdon@fisker.com

Fisker Inc.
1888 Rosecrans Avenue
Manhattan Beach, CA 90266
Attn: Geeta Gupta
Dawn Ahmed

RE: That Retail Center Lease Agreement dated October 1, 2021 and any and all amendments, addenda and exhibits thereto (the “**Lease**”), made by and between Fisker Group, Inc., a Delaware corporation (“**Tenant**”) and The Grove, LLC, a Delaware limited liability company, registered in California as GFM, LLC, respecting that certain real property located at 189 The Grove Drive, Space “G-7/8”, Los Angeles, CA 90036 (the “**Premises**”).

To whom it may concern:

This letter is sent on behalf of The Grove, LLC, a Delaware limited liability company, registered in California as GFM, LLC (“**Landlord**”), regarding the referenced Lease of the Premises. As you are aware, on or about May 18, 2024, Landlord served upon Tenant a 3-Day Notice to Perform or Quit arising Tenant’s breach of the Lease and in response to such notice Tenant quit and relinquished possession of the Premises on May 24, 2024. As a result of the foregoing, the Lease terminated within the meaning of California Civil Code Section 1951.2 on May 24, 2024.

Pursuant to the Lease Landlord holds a cash security deposit in the amount of \$1,600,000 (the “**Security Deposit**”). Landlord’s losses, damages, and expenses resulting from the termination of the Lease, including but not limited to the recoveries permitted pursuant to California Civil Code Section 1951.2 (collectively, the “**Leasehold Damages**”), exceed the

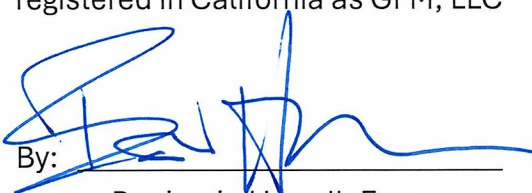
amount of the Security Deposit. Therefore, Tenant is hereby notified that, as of today's date, Landlord has applied the Security Deposit towards the Leasehold Damages pursuant to Section 18.13 of the Lease.

Nothing herein shall be construed as a waiver of any of Landlord's other rights or remedies, under the Lease, at law or in equity, all of which are hereby expressly reserved.

Dated: June 14, 2024

"Landlord"

The Grove, LLC, a Delaware limited liability company,
registered in California as GFM, LLC

By: 

Benjamin Howell, Esq.
General Counsel

cc: Jackie Levy, via email
Sunil Watumull, via email
Kristi Katsma, Esq., via email