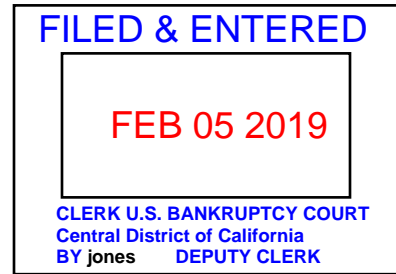


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CHANGES MADE BY COURT

NOT FOR PUBLICATION

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re 8800, LLC

Debtor and
Debtor-in-Possession

Case No. 2:18-bk-17263 RK

Chapter 11

**ORDER REQUIRING DEBTOR TO
VACATE PREMISES**

Date: January 30, 2019
Time: 11:00 AM
Place: Courtroom 1675

1 This matter came on for hearing on January 30, 2019. The Debtor appeared by its
2 counsel, Levene, Neale, Bender, Yoo & Brill, LLP by David B. Golubchik, and TMC
3 Realty, LLC (“TMC”) appeared by its counsel, Manatt, Phelps & Phillips, LLP by Carl
4 L. Grumer. Other appearances are as noted in the record. The Court having made and
5 entered its Findings of Fact and Conclusions of Law on Debtor’s Motion to Assume
6 Lease [Docket No. 129] and its Order Denying Debtor’s Motion to Assume Lease
7 [Docket No. 131], the parties having agreed on the record that the Debtor will vacate the
8 Premises described below not later than the close of business on March 1, 2019, having
9 considered TMC’s Notice of Lodgment of Order in Bankruptcy Case re: Order Requiring
10 Debtor to Vacate Premises [Docket No. 137] and Debtor’s Objection to Form of Order
11 Requiring Debtor to Vacate Premises in connection with Motion of Debtor to Assume
12 Lease [Docket No. 140], and good cause appearing,

13 The Debtor, 8800 LLC (“Debtor”) is hereby ordered, not later than the close of
14 business on March 1, 2019, to vacate the Premises described below, surrender possession
15 of the Premises to TMC, and deliver to TMC all keys to the premises, or any part thereof,
16 ~~leaving said Premises in good and clean condition, normal wear and tear excepted,~~ not
17 later than the close of business on March 1, 2019. The “Premises” referred to in this
18 Order is a portion of the ground floor of the building (“Building”) located at 8800 Sunset
19 Blvd., West Hollywood, CA as depicted on Exhibit “A” attached hereto, comprised of (i)
20 the existing restaurant space (approximately 1,876 usable square feet; (ii) the existing
21 mailroom (approximately 539 usable square feet); (iii) the existing hallway space
22 (approximately 369 usable square feet); (iv) the restaurant expansion space
23 (approximately 681 usable square feet); (v) the Patio Area, generally depicted on Exhibit
24 “A-1” attached hereto; and (vi) the Additional Premises of 144 square ft. comprised of
25 the portion of the first floor of the Building as shown on Exhibit “B” attached hereto.

26 In the event that the Debtor shall fail to vacate the Premises, surrender possession
27 of the Premises to TMC, and deliver to TMC all keys to the Premises, or any part thereof,
28

1 then TMC may apply to the Court *ex parte* for an Order directing the Clerk of the Court
2 to issue a Writ of Possession for the Premises, and may proceed to execute that Writ of
3 Possession by all lawful means. To the extent necessary, the automatic stay imposed by
4 Section 362 of the Bankruptcy Code is lifted to allow TMC to take back possession and
5 control of the Premises, and to enforce the terms of this Order and any Writ of Possession
6 for the Premises.

7 With respect to Debtor's Objection to the Form of Order Requiring Debtor to
8 Vacate Premises in connection with Motion of Debtor to Assume Lease, the court
9 sustains Debtor's Objection as to the language, "leaving said Premises in good and clean
10 condition, normal wear and tear excepted," because that language is not a requirement of
11 11 U.S.C. §365(d)(4) requiring the trustee/debtor in possession to "immediately
12 surrender" the leased property to the lessor and otherwise does not reflect the agreement
13 of the parties at the hearing on January 30, 2019. The sustaining of the objection and the
14 striking of this language from the proposed order from Landlord TMC is without
15 prejudice to the assertion of a claim by Landlord TMC based on any failure of Debtor to
16 lease the premises in good and clean condition, normal wear and tear excepted, pursuant
17 to the lease or otherwise under applicable law.

18 The court overrules Debtor's Objection requesting that the court not enter the
19 proposed order from TMC on grounds that the protections for TMC as the lessor are
20 already provided in the proposed relief from stay orders because granting stay relief itself
21 does not compel immediate surrender as required by 11 U.S.C. §365(d)(4). Landlord
22 TMC would otherwise need to go back to state court for an unlawful detainer order which
23 seems unnecessary in light of the command of 11 U.S.C. §365(d)(4), which states that
24 "the trustee [or debtor in possession under 11 U.S.C. §1107] shall immediately surrender
25 that nonresidential real property to the lessor, if the trustee does not assume or reject the
26 unexpired lease [timely]. . . ." As one leading California bankruptcy treatise has stated,
27 "If a lease of a nonresidential real property where the debtor is the lessee is not timely
28 assumed, and thus is deemed rejected, the trustee/DIP '*shall immediately surrender*' the

1 property to the lessor. [11 USC §365(d)(4)(emphasis added)] . . . The ‘immediate
2 surrender’ occurs by operation of law; pursuant to §365(d)(4), the lessor should not have
3 to request a court order for surrender. Indeed, the majority view is that bankruptcy courts
4 have jurisdiction to issue an order compelling the trustee/DIP to surrender the property
5 after termination pursuant to §365(d)(4); and can and should issue the surrender order
6 unless the nature of the debtor’s interest is disputed. Further, the bankruptcy court may
7 issue a writ of possession pursuant to its surrender order; and eviction may proceed under
8 the writ, as a matter of federal bankruptcy law, without resort to state unlawful detainer
9 procedures. [See *In re LCO Enterprises* (9th Cir. 1993) 12 F3d 938, 941; *In re Elm Inn,*
10 *Inc.* (9th Cir. 1991) 942 F2d 630, 634].”

11 3 March, Ahart and Shapiro, *Rutter Group California Practice Guide: Bankruptcy*,
12 ¶¶16:912-16:913 at 16-52 (2018).

13 IT IS SO ORDERED.

14 # # #

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24 Date: February 5, 2019



Robert Kwan
United States Bankruptcy Judge