

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:

OTB HOLDING LLC, *et al.*,

Debtors.

CHAPTER 11

CASE NO. 25-52415-SMS

(Jointly Administered)

NOTICE OF HEARING

PLEASE TAKE NOTICE that Wallen Ventures, LLC (“Debtor”) filed an *Application for Allowance of Administrative Expense Claim* (the “Application”) and related papers with the Court.

PLEASE TAKE FURTHER NOTICE that the Court will hold a hearing on the Application at **10:00 a.m. on October 14, 2025, in Courtroom 1201, U.S. Courthouse, 75 Ted Turner Drive, SW, Atlanta, GA 30303**, which must be attended in person, unless the Court orders otherwise.

Your rights may be affected by the Court’s ruling on these pleadings. You should read these pleadings carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.) If you do not want the Court to grant the relief sought in these pleadings or if you want the Court to consider your views, then you and/or your attorney must attend the hearing. You may also file a written response to the pleadings with the Clerk at the address stated below, but you are not required to do so. If you file a written response, you must attach a certificate stating when, how and on whom (including addresses) you served the response. Mail or deliver your response so that it is received by the Clerk before the hearing. The address of the Clerk’s Office is: Clerk, U. S. Bankruptcy Court, Suite 1340, 75 Ted Turner Drive, SW, Atlanta Georgia 30303. You must also mail a copy of your response to the undersigned at the address stated below.

This 19th day of September, 2025.

JONES WALDEN LLC

/s/ Mark D. Gensburg

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Georgia Bar No. 213119

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IN RE:

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**CASE NO. 25-52415-SMS
(Jointly Administered)**

**WALLEN VENTURES, LLC'S APPLICATION FOR
ALLOWANCE OF ADMINISTRATIVE EXPENSE CLAIM**

COMES NOW Wallen Ventures, LLC ("Wallen Ventures") and files this *Wallen Ventures, LLC's Application for Allowance of Administrative Expense Claim* (this "Application"). By and through this Application, Wallen Ventures seeks the allowance and payment of its administrative expense claim in the amount of \$22,405.19 (the "Administrative Claim").

JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this Application pursuant to 28 U.S.C. § 157 and § 1334. This matter is a core proceeding pursuant to 28 U.S.C. §157(b)(2).
2. Venue is proper in the Northern District of Georgia (this "District") pursuant to 28 U.S.C. §1408 and §1409.
3. The statutory predicates for the relief requested herein are 11 U.S.C. (the "Bankruptcy Code") § 365(d)(3) and § 503(b)(1).

BACKGROUND

4. On June 30, 2010, Cole OB Woodbridge VA, LLC ("Cole") entered into a *Lease* (the "Original Lease") with OTB Acquisition, LLC ("OTB") for the use of real property located at 2651 Prince William Pkwy, Woodbridge, VA 22192 (the "Premises"). At the Premises, OTB operated an "On the Border Mexican Grill & Cantina", Store # 69 (the "Restaurant").

5. The Original Lease was assigned and assumed by Wallen Ventures from Cole on September 13, 2019.

6. On April 11, 2020, Wallen Ventures and OTB entered into an amendment to the Original Lease (the “First Amendment”).

7. On August 1, 2020, Wallen Ventures and OTB entered into a *Second Lease Amendment Agreement* (the “Second Amendment”, together with the Original Lease and the First Amendment, the “Lease”).

8. Pursuant to the Second Amendment base rent was \$24,805.73 per month (“Rent”), and would contractually increase to \$25,301.84 per month starting in December of 2025.

9. On February 28, 2025, Wallen Ventures received a letter stating OTB’s intent to surrender possession of the Premises back to Wallen Ventures (the “February Letter”).

10. Despite the February Letter, an “On the Border” branded vehicle (the “Van”) remained parked at the Premises until the last week of April, 2025, at which time an employee of the above-captioned jointly administered debtors (the “Debtors”) removed the vehicle.

11. The Debtors initiated the above-captioned jointly administered Chapter 11 bankruptcies on March 4, 2025 (the “Petition Date”).

12. On April 11, 2025, Wallen Ventures filed proof of claim no. 200 (the “Claim”). The Claim contained (i) an administrative priority component in the amount of \$22,405.19 (the “Administrative Claim”), and (ii) a general unsecured component in the amount of \$467,103.89.

13. Pursuant to the Lease, Rent came due on March 1, 2025 in the amount of \$24,805.73. From March 1st through March 3rd the Debtors owed a pre-petition prorated amount of \$2,400.54 (at a proration of \$800.18 per day). For the next 27 days of March, Debtors incurred an administrative expense debt for the remaining \$22,405.19.

14. On September 8, 2025, this Court entered a *Findings of Fact, Conclusions of Law, and Order Confirming the Debtors' Amended Joint Chapter 11 Plan as of July 21, 2025* (Docket No. 607) (the “Confirmation Order”), whereby this Court confirmed the *Debtors' Amended Joint Chapter 11 Plan as of July 21, 2025* (Docket No. 522) (as later amended and modified, the “Plan”).

15. Pursuant to the Plan, the “Administrative Bar Date” is defined as “the first Business Day that is thirty (30) days following the Effective Date, except as specifically set forth in the Plan or a Final Order.” The Effective Date is defined as “the first Business Day following the date on which all conditions to consummation set forth in Article IX of the Plan have been satisfied or waived (if capable of being duly and expressly waived), provided that no stay of the Confirmation Order is then in effect.”

16. Section 9.01, titled “Conditions to Effective Date”, set out the predicate conditions to the occurrence of the Effective Date, one of which is the final entry of the Confirmation Order. Therefore, the Administrative Bar Date is no earlier than Wednesday, October 8, 2025¹.

RELIEF REQUESTED

17. Wallen Ventures respectfully requests that, pursuant to Bankruptcy Code Sections 365(d)(3) and 503(b)(1), this Court enter an order allowing and directing the payment to Wallen Ventures of the Administrative Claim.

BASIS FOR RELIEF

I. Section 365(d)(3)

18. Section 365(d)(3) of the Bankruptcy Code provides that:

The trustee shall timely perform all the obligations of the debtor, except those specified in section 365(b)(2), arising from and after the order for relief under any

¹ The Administrative Bar Date may in reality be later than October 8, 2025 if certain Conditions to Effective Date were not satisfied until after September 8, 2025 (i.e. obtaining “all authorizations, consents and regulatory approvals required, if any, in connection with the Plan’s effectiveness”). For the purpose of this Application, Wallen Ventures assumes the Administrative Bar Date is the earliest possible date of October 8, 2025.

unexpired lease of nonresidential real property, until such lease is assumed or rejected, notwithstanding section 503(b)(1) of this title

19. For commercial non-residential leases, Section 365(d)(3) grants a landlord an administrative priority claim for the prorated value of the post-petition portion of the month in which that debtor filed for bankruptcy. In other words, “rent for the days after the filing of the petition until the next lease payment is due are an administrative claim under §365(d)(3) in a prorated amount of a full monthly lease payment.” *In re Leather Factory Inc.*, 475 B.R. 710, 714 (Bankr. C.D. Cal. 2012).

20. In this District, to determine whether the prorated amount of the post-petition monthly rent is an administrative expense under Section 365, the Court must analyze the intent of the parties when entering into the lease. Stated differently, “the issue under that section is primarily a factual one that turns on the intentions of the parties to a particular lease.” *Publix Super Markets, Inc. v. Rhodes, Inc. (In re Rhodes, Inc.)*, 2005 Bankr. LEXIS 1411, *8 (Bankr. N.D. Ga. June 30, 2005).

21. Here, when the Lease was executed, it was clearly the intent of the parties that, in the event of a lessee bankruptcy, the post-petition portion of that month’s rent would be rendered an administrative expense. More specifically, Section 45(ii) of the Lease states:

Any and all obligations under this Lease that accrue or become due from and after the date that an Action is commenced and that are not paid as required by this Lease shall, in the amount of such rents, constitute administrative expense claims allowable under the Code with priority of payment at least equal to that of any other actual and necessary expenses incurred after the commencement of the Action;

22. This Lease language unequivocally shows that the parties intended to prorate post-petition rent and to characterize that prorated amount as an administrative expense. Wallen Venture’s Administrative Claim should be allowed in its entirety under Section 365(d)(3).

II. Section 503(b)(1)

23. Additionally, Section 503(b)(1) provides that “there shall be allowed administrative expenses . . . including — the actual, necessary costs and expenses of preserving the estate.” *See* 11 U.S.C. § 503(b)(1). As summarized in Collier on Bankruptcy, “[t]he actual and necessary expenditures of the trustee in operating the business of the estate, **for storage of property**, for rent and for other goods and services incidental to protecting, conserving, maintaining, and rehabilitating the estate are certainly contemplated within the phrase ‘actual, necessary costs and expenses of preserving the estate.’” 4 Collier on Bankruptcy P 503.06 (16th 2025) (emphasis added).

24. Here, Wallen Venture is entitled to an administrative expense claim for its preservation of property of the estate. Debtor used the Premises to park its “On the Border” branded Van. The Van remained parked at the Premises until the last week of April, 2025, at which time an employee of the Debtors removed the vehicle.

25. It is clear that the storage of the Van at the Premises benefited the Debtors’ estate. Having provided an actual and necessary benefit to the estate, Wallen Ventures is entitled to an allowed administrative expense claim. Wallen Venture’s Administrative Claim should be allowed in full.

NOTICE

26. Pursuant to Section 3.03 of the Plan, a copy of this Application shall be served on counsel for the Debtors.

WHEREFORE, Wallen Ventures requests that the Court enter an order allowing the \$22,405.19 Administrative Claim of Wallen Ventures in full and grant such other and further relief as may be just and proper.

This 19th day of September, 2025.

JONES WALDEN LLC

/s/ Mark D. Gensburg

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CERTIFICATE OF SERVICE

This is to certify that I have on this day electronically filed the foregoing *Wallen Ventures, LLC's Application for Allowance of Administrative Expense Claim* using the Bankruptcy Court's Electronic Case Filing program, which sends a notice of and an accompanying link to this document to the following parties who have appeared in this case under the Bankruptcy Court's Electronic Case Filing Program:

- **Brooke Bean** bbean@kslaw.com, brooke-bean-2300@ecf.pacerpro.com
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This 19th day of September, 2025.

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