

PRESENTMENT DATE AND TIME: May 5, 2022 AT 12:00 NOON (ET)
OBJECTION DEADLINE DATE AND TIME: May 5, 2022 AT 5:00 P.M. (ET)

WINDELS MARX LANE & MITTENDORF, LLP

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Proposed Incoming Bankruptcy Counsel to the Debtor and Debtor in Possession

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

| | | |
|------------|---|-------------------------|
| In re: |) | Chapter 11 |
| |) | |
| BUYK CORP. |) | Case No. 22-10328 (MEW) |
| |) | |
| Debtor. |) | |
| |) | |

**NOTICE OF PRESENTMENT OF STIPULATION AND ORDER
REJECTING LEASE AND RESOLVING ADMINISTRATIVE RENT
CLAIMS**

PLEASE TAKE NOTICE that Buyk Corp., the above-captioned debtor and debtor-in-possession (the “*Debtor*”), by and through its undersigned counsel, will, pursuant to Local Bankruptcy Rule 9074-1, will present the attached proposed Stipulation and Order Rejecting Lease and Resolving Administrative Rent Claims Between Debtor and 2717 Clark LLC (“*Landlord*”, together with Buyk, the “*Parties*”) (the “*Stipulation*”) to the Honorable Michael E. Wiles, United States Bankruptcy Court for the Southern District of New York (the “*Court*”), **on May 5, 2022 at 12:00 noon (ET) for approval and signature.**

PLEASE TAKE FURTHER NOTICE that copies of the Application and all pleadings and other papers filed in these chapter 11 cases may be obtained by (i) accessing the Court’s website at www.nysb.uscourts.gov, or (ii) contacting the Office of the Clerk of the Court at One Bowling Green, New York, New York 10004. Note that a PACER password is needed to access documents on the Court’s website.



PLEASE TAKE FURTHER NOTICE that responses or objections, if any, to entry of the Order approving the Application must: (i) be made in writing, (ii) state with particularity the grounds therefor, (iii) be filed in accordance with the electronic filing procedures for the United States Bankruptcy Court for the Southern District of New York, with proof of service, with a courtesy copy delivered to the Chambers of the Honorable Michael E. Wiles, United States Bankruptcy Judge, One Bowling Green New York, New York 10004; and (iv) be served upon (a) proposed incoming bankruptcy counsel for the Debtor, Windels Marx Lane & Mittendorf, LLP, 156 West 56th Street, New York, New York 10019 (Attn: James M. Sullivan, Esq.); (b) the Office of the United States Trustee for the Southern District of New York, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, New York 10014 (Attn: Mark Bruh, Esq.); (c) counsel for Landlord, FrankGecker LLP, 1327 W. Washington Blvd., Suite 5G-H, Chicago, Illinois 60607 (Attn: Joseph D. Frank, Esq. and Jeremy C. Kleinman) and (d) all entities that have requested notice in this Chapter 11 Case under Fed. R. Bankr. P. 2002 so as to be received no later than **5:00 p.m. (ET) on May 3, 2022 (the “Objection Deadline”)**.

PLEASE TAKE FURTHER NOTICE that if no objections are timely filed and received by the Objection Deadline, the Court may so-order the Stipulation without further notice or a hearing. If an objection is filed, you may be notified of a hearing to consider the requested relief. The moving and objecting parties are required to attend the hearing, and failure to attend in person or by counsel may result in relief being granted or denied upon default.

Dated: New York, New York
April 28, 2022

WINDELS MARX LANE & MITTENDORF, LLP
Proposed Incoming Bankruptcy Counsel for Buyk Corp.

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Attorney appearing: James M. Sullivan, Esq.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re

BUYK CORP.¹

Debtor.

Chapter 11

Case No. 22-10328 (MEW)

**STIPULATION AND ORDER
REJECTING LEASE AND RESOLVING ADMINISTRATIVE RENT
CLAIMS**

This Stipulation is made and entered into as of April 28, 2022, by and between Buyk Corp. (the “Debtor”), debtor and debtor-in-possession in the above captioned chapter 11 case, and 2717 Clark LLC (the “Landlord” and, collectively with the Debtor, the “Parties”) for the rejection of that certain Lease (as defined below) and resolving the Administrative Rent Claims (as defined below) arising hereunder.

RECITALS

WHEREAS, on March 17, 2022 (the “Petition Date”), the Debtor filed its voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) [ECF No. 1] in the United States Bankruptcy Court for the Southern District of New York (the “Court”);

WHEREAS, on March 22, 2022, the Debtor filed its *Omnibus Motion of Debtor Pursuant to 11 U.S.C. §§ 105(a) and 365(a) and Fed. R. Bankr. P. 6006 for Entry of An Order Authorizing Rejection of Certain Unexpired Leases* (the “Motion”) [ECF No. 37] seeking to reject certain unexpired leases to which the Debtor is a party;

¹ The Debtor in this case, along with the last four digits of its federal tax identification number is Buyk Corp. (1477). The principal place of business for Debtor is 360 West 31st Street, Floor 6, New York, NY 10001.

WHEREAS, among the unexpired leases listed in Exhibit C to the Motion (the “Rejected Occupied Leases Schedule”), the Debtor seeks to reject the Lease made as of November 5, 2021 by and between Landlord and Debtor (the “Lease”) for the premises commonly known as 2717 N. Clark Street, Chicago, Illinois 60614 (the “Premises”);

WHEREAS, on March 24, 2022, the Court entered the Order Granting Debtor’s Emergency Motion to (I) Approve Asset Sale Via Auction; and (II) Sell Property Free and Clear of All Liens, Claims, And Encumbrances [ECF No. 46] which authorizes the Debtor to sell all of the Debtor’s equipment;

WHEREAS, on or about April 2, 2022, a sewage back-up occurred at the Premises, causing sewage to flow into the basement of the Premises (the “Sewage Incident”).

WHEREAS, on April 12, 2022, the Landlord and one other entity that had also leased property to the Debtor filed a joint Objection to the Motion [ECF No. 119] (the “Objection”); and

WHEREAS, to resolve the Objection with respect to the Landlord, avoid the incurrence of regularly scheduled rental obligations owed by the Debtor to the Landlord arising under the Lease (“Administrative Rent Claims”) , and to satisfy, in part, the Landlord’s lease rejection damage claim, the Parties have entered into the following Stipulation.

STIPULATION

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, after good faith arm’s length extensive negotiations without collusion, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the following terms:

1. Effective Date. The effectiveness of this Stipulation is subject to, and conditioned upon, the occurrence of the “Effective Date,” which means the first date by which each of the following conditions has occurred:

- a. this Stipulation is executed by each of the Parties, and
- b. the Court, upon presentment of this Stipulation by the Debtor, notice of which shall occur no later than April 28, 2022, signs and enters this Stipulation by no later than May 5, 2022. The Parties shall use commercially reasonable efforts to ensure that the Court signs and enters the Stipulation by such date.

The conditions set forth in this Section 1 may be waived, in whole or in part, by mutual agreement of the Parties.

2. Security Deposit: In consideration of Landlord entering into this Stipulation, Debtor does hereby assign, transfer, convey, and release to Landlord all right, title and interest in and to the Security Deposit (as defined in the Lease) including all interest thereon. Debtor represents and warrants that Debtor is the sole owner of such Security Deposit, and interest thereon, that the Security Deposit, including the interest thereon, is free from all claims, liens and

encumbrances (other than those of Landlord). In consideration of Landlord entering into this Stipulation, Debtor waives any and all rights to the Security Deposit, except its right to enforce this Stipulation as set forth below in Paragraph 7.

3. The Lease. On the Effective Date, the Objection is deemed withdrawn with respect to the Landlord, and the Parties agree that the Debtor will be deemed to have rejected the Lease and surrendered the Premises to the Landlord as of April 29, 2022. On or before 5:00 p.m. Central Standard Time on April 29, 2022, the Debtor shall surrender possession of the Premises to the Landlord and deliver the keys to the Premises, together with all relevant information concerning any security system (passwords, codes, etc.) to the Premises, and Landlord may possess the Premises effective as of April 30, 2022. Landlord will have access to the Premises as of the date of this Stipulation for the purposes of remediation relating to the Sewage Incident.

4. The Equipment. The Parties agree that on or before April 26, 2022, Debtor shall remove its Equipment located in the Premises and is hereby granted a license to access the Premises on or before such date, on reasonable notice to Landlord, in order to remove and retain such non-Equipment inventory. Landlord shall have no responsibility for, or obligation to Debtor with respect to, the non-Equipment inventory while it is located in the Premises, and, at Debtor's expense, may remove and dispose of any non-Equipment inventory remaining at the Premises after April 26, 2022.

5. The Inventory. The Parties agree that on or before April 26, 2022, Debtor shall remove its non-Equipment inventory located in the Premises and is hereby granted a license to access the Premises on or before such date, on reasonable notice to Landlord, in order to remove and retain such non-Equipment inventory. Landlord shall have no responsibility for, or obligation to Debtor with respect to, the non-Equipment inventory while it is located in the Premises, and, at Debtor's expense, may remove and dispose of any non-Equipment inventory remaining at the Premises after April 26, 2022.

6. Abandonment. Any and all property of the Debtor which remains on the Premises as of April 27, 2022, shall be and is hereby deemed abandoned without further order of court. The Debtor represents and warrants that any Equipment and Inventory that remains in the Premises as of April 27, 2022 is free from all claims, liens and encumbrances of any third party, including secured lenders and PACA claimants.

7. Resolution of Administrative Rent Claims. Upon the Effective Date, and provided that Debtor abides by the terms of this Stipulation and Order, including but not limited to by tendering possession of the Premises to the Landlord on or before April 29, 2022, the Landlord shall waive any Administrative Rent Claims, and shall retain any remaining advanced rent and the Security Deposit received by it pre-petition and shall apply the Security Deposit in partial satisfaction of its rejection damage claim. Notwithstanding the foregoing, the Landlord shall retain any administrative claims relating to damage to the premises occurring after the Petition Date.

8. Voluntary Agreement. Each Party acknowledges that it has read all of the terms of this Stipulation, has had an opportunity to consult with counsel of its own choosing, or has voluntarily waived such right and enters into this Stipulation voluntarily and without duress.

9. Further Assurances. Each Party agrees, without further consideration, to execute and deliver such other documents and to take such other action as may be necessary to consummate and carry into effect the terms of this Stipulation.

10. Construction. The language used in this Stipulation will be deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction will be applied against any Party, nor will any rule of construction that favors a non-draftsman be applied. A reference to any statute will be deemed also to refer to all rules and regulations promulgated under the statute, unless the context requires otherwise. Unless specifically otherwise provided or the context otherwise requires, the singular includes the plural and the plural the singular; the word "or" is deemed to include "and/or", the words "including", "includes" and "include" are deemed to be followed by the words "without limitation", and references to sections are to those of this Stipulation. Headings in this Stipulation are included for convenience of reference only and do not constitute a part of this Stipulation for any other purpose.

11. Counterparts. This Stipulation may be executed in counterparts which, taken together, shall constitute one original. Delivery of an executed counterpart of a signature page to this Stipulation by .pdf format shall be effective as delivery of a manually executed counterpart thereof. The Parties have authorized their respective counsel to sign this Stipulation, and proposed counsel is authorized to sign this Stipulation on behalf of Debtor.

12. Applicable Law. The validity, interpretation, and performance of this Stipulation shall be construed and interpreted according to the laws of the State of Illinois, except to the extent that (a) provisions of the Bankruptcy Code apply, in which event the Bankruptcy Code shall control, or (b) applicable federal law preempts state law.

13. Entire Agreement; Amendments. This document contains the entire agreement among the Parties as to the matters addressed herein, and may only be modified in a writing signed by the Parties or their duly appointed agents. All prior agreements and understandings among the Parties concerning the subject matter hereof are superseded by the terms of this Stipulation.

14. Successors and Assigns. This Stipulation shall be binding on and inure to the benefit of the Parties and their respective agents, employees, affiliates, successors, and assigns including without limitation, any subsequently appointed Chapter 11 or Chapter 7 trustee.

15. Good Faith. This Stipulation has been negotiated at arm's length and Landlord has acted in good faith in entering into this Stipulation. Accordingly, Landlord shall be entitled to the protections of 11 U.S.C. § 363(m).

IN WITNESS WHEREOF, the Parties have executed this Stipulation as of the date written in the opening paragraph hereof.

WINDELS MARX
LANE & MITTENDORF LLP

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Counsel for 2717 Clark LLC

SO ORDERED

New York, New York
May __, 2022

PROPOSED

**HONORABLE MICHAEL E. WILES
UNITED STATES BANKRUPTCY JUDGE**