

**PRESENTMENT DATE AND TIME: MAY 2, 2022 AT 12:00 NOON (ET)**  
**OBJECTION DEADLINE DATE AND TIME: APRIL 28, 2022 AT 5:00 P.M. (ET)**

WINDELS MARX LANE & MITTENDORF, LLP

156 West 56th Street

New York, New York 10019

Telephone (212) 237-1000

Attorney Appearing: James M. Sullivan ([jsullivan@windelsmarx.com](mailto:jsullivan@windelsmarx.com))

*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 AUTHORIZING AND APPROVING SETTLEMENT AND TERMINATION AGREEMENT BETWEEN DEBTOR AND NATIONWIDE INDUSTRIAL SUPPLY, LLC**

**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 Authorizing and Approving Settlement and Termination Agreement Between Debtor and Nationwide Industrial Supply, LLC (“*NIS*”, 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 2, 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](http://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 56<sup>th</sup> 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 NIS, Olender Feldman LLP, 422 Morris Avenue, Summit, New Jersey 07901 (Attn: Kurt D. Olender, Esq.) 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 April 28, 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 25, 2022

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

By: /s/ James M. Sullivan  
James M. Sullivan ([jsullivan@windelsmarx.com](mailto:jsullivan@windelsmarx.com))  
156 West 56th Street  
New York, New York 10019  
Tel. (212) 237-1000 / Fax. (212) 262-1215

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

In re

BUYK CORP.,<sup>1</sup>

Debtor.

Chapter 11

Case No. 22-10328 (MEW)

**STIPULATION AND ORDER AUTHORIZING AND APPROVING  
SETTLEMENT AND TERMINATION AGREEMENT BETWEEN  
DEBTOR AND NATIONWIDE INDUSTRIAL SUPPLY, LLC**

This Agreement is made and entered into as of April 14, 2022 (this “*Agreement*”), between Buyk Corp., a Nevada corporation and debtor and debtor-in-possession in the above captioned chapter 11 case (“*Buyk*” or “*Debtor*”), and Nationwide Industrial Supply, LLC, a New Jersey limited liability company (“*NIS*”, together with Buyk, the “*Parties*”), for the settlement and termination of that certain Operating Services Term Sheet dated November 1, 2021 between Buyk and NIS, and the release of a Warehouseman’s Lien asserted by NIS against Buyk (the “*OSA*”).<sup>2</sup>

WHEREAS, on November 1, 2021, the Parties entered into the OSA, pursuant to which Buyk engaged NIS to perform, and NIS agreed to perform for Buyk, certain warehouse and logistics services as provided therein, for a monthly fee of one hundred sixty-eight thousand eight hundred dollars (\$168,800) (“*Logistics Fee*”);

WHEREAS, pursuant to the OSA, NIS has received and stored various equipment owned by Buyk at various warehouse locations (“*Warehouses*”) having an aggregate fair market value of approximately \$5,000,000 (“*Inventory*”);

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

<sup>2</sup> Capitalized terms used but not defined herein shall have the meaning ascribed to them in the OSA.

WHEREAS, pursuant to the OSA, the Logistics Fee for March 2022 and the freight invoices for February 2022 in the amount of eighteen thousand five hundred forty-eight dollars (\$18,548) were to be paid to NIS on or before March 1, 2022 (together, the “*Overdue Fees*”);

WHEREAS, Buyk failed to pay such Overdue Fees and notified NIS that Buyk would not pay either the Overdue Fees or any other required fees pursuant to the OSA for the remainder of the Term (such failures, the “*Breach*”);

WHEREAS, on March 11, 2022, Buyk entered into that certain Pre-Petition Term Loan Credit Agreement (the “*Prepetition Loan*”), pursuant to which all of Buyk’s assets and property were pledged as collateral and secured by a first-priority senior lien (“*Superpriority Lien*”) as security for the financing facility;

WHEREAS, on March 14, 2022, NIS delivered to Buyk a Warehouse’s Lien Notice, in accordance with Section 3.2 of the OSA (the “*Lien Notice*”) and a notice of Breach and termination (“*Breach Notice*”);

WHEREAS, in light of the preexisting Prepetition Loan and Superpriority Lien, the Lien Notice and Breach Notice represent material issues with which both the Debtor and NIS must contend;

WHEREAS, on March 17, 2022, 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, the Inventory referenced above represents a significant portion of the Debtor’s assets and protracted litigation over lien amounts priority could result in significant delay in selling the Inventory, significant litigation expenses, and economic harm to the estate; and

WHEREAS, the Parties desire to enter into this Agreement to resolve any and all issues with respect to the performance of NIS in assisting Buyk with the logistics of removing the Inventory from the Warehouses, the settlement and termination of the OSA, the release of the warehouse lien, and the obligations of BUYK to NIS.

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Removal of Inventory:** As promptly as practicable following Court approval of this Agreement, Buyk, through the Court-appointed Auctioneer (the “*Auctioneer*”), shall have the right to remove all Inventory from the Warehouses (the “*Inventory Removal*”), targeted to be completed on or before April 30, 2022 (the “*Termination Date*”). In furtherance of the foregoing, the Parties shall collaborate in good faith to coordinate the relevant date(s), time(s), manner of execution and other preparation, packing and outbound shipment details for the Inventory Removal. The Auctioneer shall be required to supply such additional labor and equipment as is necessary to supplement the Services provided by NIS to complete the Inventory Removal by the Termination Date.

2. **NIS Services:** NIS shall provide its services in accordance with the OSA, as modified by this Agreement (the “*Services*”). The Parties acknowledge and agree that the Services to be provided by NIS hereunder exceed the nature and level of services to be provided by NIS under the OSA. Buyk agrees that NIS is engaged on a “best efforts” basis only.

3. **Failure to Remove Inventory:** If Buyk fails to complete the Inventory Removal on or before the Termination Date, other than due to the gross negligence or willful misconduct of NIS, the Parties may agree to extend the term of performance as set forth in Section 11 below. If the Parties fail to so agree, then NIS shall have the right to remove, sell, destroy and/or dispose of such Inventory in any manner in its sole discretion and retain the proceeds therefrom (the “*Removal Remedies*”), provided, however, that in no event shall NIS exercise such Removal Remedies prior to May 30, 2022 so long as Buyk continues to pay the Per Diem Fees in accordance with the terms of this Agreement.

4. **No Inventory Count or Inspection:** The Auctioneer shall be solely responsible and liable for any inspection, physical inventory count and/or recordation of removal of any Inventory from the Warehouses and NIS shall have no obligation to conduct any such inspection, physical inventory count and/or recordation of removal.

5. **No Auctions:** Neither the Auctioneer nor Buyk shall conduct or permit to be conducted any auction, liquidation, or foreclosure sale on or at any Warehouse or otherwise sell any Inventory to any third party directly on, at, or from any Warehouse. Notwithstanding the

foregoing, buyers interested in purchasing the Inventory shall be permitted to have, upon reasonable prior notice to NIS, reasonable access to the Warehouses, during normal operating hours, to inspect the Inventory.

6. **No Demurrage or Detention:** NIS shall not be liable for demurrage or detention, delays in obtaining and loading cars, trailers or other containers for outbound shipment unless such demurrage or detention, or delays are caused by the gross negligence or willful misconduct of NIS or any of its contractors, agents, servants, subcontractors, suppliers, officers, directors, or employees. In the event NIS, for the convenience of the carriers, permits Buyk's contracted carriers to drop or park trailers or containers on the Warehouse yard, NIS shall not be liable for loss or damage to Inventory, trailers, or containers occurring while the trailers or containers are on the yard, except to the extent of any gross negligence or willful misconduct of NIS or any of its contractors, agents, servants, subcontractors, suppliers, officers, directors, or employees. NIS shall maintain existing insurance policies and programs sufficient to cover the Inventory at prepetition coverage levels and in accordance with the OSA and any applicable laws.

7. **Limited Liability of NIS:** NIS shall not be liable for, and shall incur no liability by reason of, any Inventory that is lost, damaged, or destroyed, except to the extent of any gross negligence or willful misconduct of NIS or any of its contractors, agents, servants, subcontractors, suppliers, officers, directors, or employees. Concealed shortages, damage or tampering will not be the responsibility of NIS, nor will NIS be liable for loss or damage if caused by any act or omission of Buyk, Buyk's contractors. NIS shall maintain existing insurance policies and programs sufficient to cover the Inventory at prepetition coverage levels and in accordance with the OSA and any applicable laws.

**TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, OTHER THAN DUE TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF NIS, NIS SHALL NOT BE LIABLE FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM BEING IN CONTRACT, TORT, OR OTHERWISE, AND WHETHER IN LAW OR IN EQUITY, WHETHER NIS WAS ADVISED OF, OR OTHERWISE SHOULD HAVE BEEN AWARE OF, THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING IS A SEPARATE, ESSENTIAL TERM OF THIS AGREEMENT AND SHALL BE EFFECTIVE EVEN IN THE EVENT OF THE FAILURE OF ANY REMEDY, EXCLUSIVE OR NOT.**

8. **Indemnification of NIS:** Buyk shall indemnify, defend and hold NIS and its affiliates, subsidiaries, parent and related companies, and all of their employees, agents, officers, directors, shareholders, members and personnel (collectively, the "*NIS Indemnitees*") harmless from any third party awards, damages, costs, expenses, losses, or liabilities (including, without limitation, reasonable attorneys' fees and expenses), that a NIS Indemnitee may incur as a result of a third party claim for injury or death to any person (including but not limited to the employees of NIS, Buyk and its subcontractors) and for damage to property (including the Inventory and any other property of a NIS Indemnitee and its subcontractors), arising out of or resulting directly from the Inventory Removal performed by Buyk or the Liquidator.

9. **Overdue Fees:** To the extent not previously paid under the Budget provided for under the Cash Collateral Order approved by the Court on March 30, 2022, upon Court approval of this Agreement, in satisfaction of the Overdue Fees and in consideration of the revocation of the Lien Notice and Termination Notice, NIS shall be permitted to withdraw from the deposit escrow under the OSA ("**OSA Security Funds**") an amount equal to \$187,348.00, comprised of:

- \$18,548 February 2022 freight fees
- \$168,800 March 2022 Facility fees

10. **NIS Service Fees:** To the extent not previously paid under the Budget provided for under the Cash Collateral Order approved by the Court on March 30, 2022, and provided that the Court has approved of this Agreement, on April [30], 2022, in consideration of the performance of the Services by NIS and in consideration of the settlement and termination of the OSA in accordance with this Agreement, NIS shall be permitted to withdraw from the OSA Security Funds the amount of \$168,800.00, comprised of:

- \$168,800 April 2022 Facility fees<sup>3</sup>

On or before the later of Court approval of the Agreement or April 15, 2022 (provided that Court approval of the Agreement has been obtained by April 15, 2022), in consideration of the settlement and termination of the OSA and withdrawal of the Lien Notice, Buyk shall pay to NIS via wire the amount of \$200,144<sup>4</sup> ("**Final Settlement Payment**"). Upon receipt of the final settlement payment, NIS shall be deemed to have released, waived and otherwise relinquished any and all claims for any amounts due or to become due under the OSA.

11. **Termination of OSA; Extension of OSA; Per Diem Fees.** The OSA shall terminate on April 30, 2022<sup>5</sup>. The Parties acknowledge and agree that if Buyk is unable to complete the Inventory Removal before the Termination Date, upon the written request of Buyk, the OSA shall be automatically extended on a daily basis through the last day of the performance of such Services (the "**OSA Extension**"). In consideration of the OSA Extension and the continued performance of Services by NIS, Buyk shall pay a per diem fee of \$8,440 to NIS. Buyk shall pay NIS the per diem fee on a weekly basis, on the Monday following the week in which the services

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<sup>3</sup> Buyk and NIS anticipate \$78,000 will be paid to NIS under the Budget on or before April 4, 2022, which shall reduce the permitted withdraw from the OSA Security Funds set forth in paragraph 10 from \$168,800 to \$90,000.

<sup>4</sup> Comprised of: (i) two months base rent at three facilities (\$107,700); (ii) one month of additional equipment lease payment (\$5,444); (iii) two months' management overhead (\$10,000); (iv) one month labor overhead (2 additional on-site supervisors) (\$10,000); (v) broker commission on Ledgewood facility (\$44,000), and (vi) attorneys' fees incurred by NIS in connection with the Lien Notice and this Agreement (\$23,000).

<sup>5</sup> Such OSA Termination Date shall not prejudice Buyk's ability to continue storing its Inventory in the Warehouses until May 30, 2022, provided that Buyk is paying the Per Diem Fees in accordance with this Term Agreement.

were provided. After April 30, 2022, if, when and as Inventory is removed from the Warehouses and the Parties are able to reasonably consolidate the remaining Inventory into one Warehouse (subject to any applicable occupancy and storage limitations and other operating requirements), the Parties will negotiate in good faith to reduce the per diem fee to reflect the reduction in operating costs associated with the remaining Inventory.

12. **Conditions to Effectiveness.** This Agreement shall not be effective unless approved by the Court pursuant to Federal Rule of Bankruptcy Procedures 9019.

13. **Confidentiality; Public Announcements:** Each Party acknowledges and agrees that the terms and conditions of this Agreement and any non-public information relating in any way to design, merchandising, financial, customer, promotional, marketing and/or advertising proposals, ideas, and concepts, business plans or strategies, and/or any other nonpublic information relating to the other Party (“*Confidential Information*”) are confidential and proprietary to the disclosing Party. Each Party agrees not to disclose or otherwise make such Confidential Information available to any third party, and agrees that such Confidential Information shall be used by it only in connection with its performance of this Agreement. Upon either Party’s request, the other Party shall return all copies of written and other tangible materials provided to it by the requesting Party. Except as required by applicable law, neither Party, without the express prior written approval of the other Party, will (i) issue a press release or other public announcement, whether written or oral, in any form or medium, regarding the Parties’ relationship and/or that the Parties have entered into this Agreement or (ii) use any of the other Party’s trademarks, trade names, service marks, or logos in any form or medium.

14. **Relationship of Parties:** This Agreement shall not be construed to create any relationship of joint venture, agency, partnership or co-employer between the Parties. Neither Party shall have any authority to bind the other Party into any agreement, nor shall either Party be considered to be an agent of the other Party in any respect. In the performance of the services hereunder, NIS shall act as an independent contractor and the employees of NIS and its subcontractors, if applicable, performing services hereunder shall not be deemed to be employees of Buyk.

15. **Governing Law:** This Agreement will be governed by and interpreted according to the laws of the State of New Jersey, without regard to conflicts of laws principles thereof. The United States Bankruptcy Court for the Southern District of New York shall retain exclusive jurisdiction over any dispute relating to the terms of this Agreement.

16. **Entire Agreement:** The OSA as modified by this Agreement supersedes in its entirety any prior proposals, written or oral, relating to the transactions contemplated herein.

**[signature page follows]**



**OLENDER FELDMAN LLP**

*Attorneys for Nationwide Industrial Services, LLC*

By: /s/ Kurt D. Olender  
Kurt D. Olender  
422 Morris Avenue  
Summit, New Jersey 07901  
Tel. (908) 964-2485  
Email: [Kolender@olenderfeldman.com](mailto:Kolender@olenderfeldman.com)

**WINDELS MARX LANE & MITTENDORF, LLP**

*Attorneys for Buyk Corp., Debtor and Debtor In Possession*

By: /s/ James M. Sullivan  
James M. Sullivan  
156 West 56<sup>th</sup> Street  
New York, New York 10019  
Tel. (212) 237-1000  
Email: [jsullivan@windelsmarx.com](mailto:jsullivan@windelsmarx.com)

**SO ORDERED**

New York, New York

\_\_\_\_\_, 2022

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United States Bankruptcy Judge