

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re	:	Chapter 11
	:	
BURGERFI INTERNATIONAL, INC.,	:	Case No. 24-12017 (CTG)
<i>et al.</i> , <sup>1</sup>	:	
	:	(Jointly Administered)
Debtors.	:	
	:	<b>Objection Deadline: January 10, 2025</b>
	:	<b>Hearing Date: To be Scheduled if Necessary</b>
	:	<b>Related to Docket Nos. 311, 867</b>

**LIMITED OBJECTION OF SECOND 82<sup>ND</sup> SM LLC, TO DEBTORS' SECOND NOTICE  
OF REJECTION OF CERTAIN DESIGNATED CONTRACTS**

Second 82<sup>nd</sup> SM LLC (the “Landlord”) hereby files this limited objection (the “Objection”), by and through their undersigned counsel, to *Debtors’ Second Notice of Rejection of Certain Designated Contracts* [D.I. 867] (the “Rejection Notice”),<sup>2</sup> and respectfully represents as follows:

**I. BACKGROUND FACTS**

1. BurgerFi International, Inc. and its debtor affiliates in the above-captioned chapter 11 cases (the “Debtors”) filed their voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code on September 11, 2024 (the “Petition Date”) in the United States Bankruptcy Court for the District of Delaware (the “Court”). The Debtors continue to operate

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<sup>1</sup> The last four digits of the tax identification number of BurgerFi International, Inc. and of Anthony’s Pizza Holding Company, LLC are 8815 and 4718, respectively. A list of all Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, is available at <https://cases.stretto.com/BFI>. The Debtors’ mailing address is 200 E Las Olas Blvd., Suite 1400, Fort Lauderdale, FL 33301

<sup>2</sup> Capitalized terms used but not otherwise defined here shall have the meaning given to them in the Rejection Notice and accompanying documents.

their businesses and manage their properties as debtors-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.<sup>3</sup>

2. Landlord is the owner or the agent for the owner of certain real property (the “Premises”) in which the Debtors operated a BurgerFi restaurant pursuant to written lease (the “Lease,”) on the Upper East Side of Manhattan.

3. On September 20, 2024, the Debtors filed a motion seeking approval of certain procedures for the sale of substantially all of the Debtors’ assets [D.I. 88].

4. On October 30, 2024, the Debtors filed a notice naming TREW Capital Management Private Credit 2 LLC (the “Buyer”) as the successful bidder for the BurgerFi assets [D.I. 238].

5. On November 8, 2024, the Court entered an order approving the sale of the Debtors’ BurgerFi assets (the “Sale Order”) [D.I. 311]. The Sale Order, *inter alia*, provided for the sale of certain designation rights, allowing the Buyer to deliver written notice to the Debtors designating any contract to be assumed and assigned to Buyer or rejected by the Debtors through February 4, 2025, and setting forth certain procedures related thereto (the “Designation Rights”).

6. Specifically, paragraph 21 provides the following with respect to contracts or leases designated by the Buyer for rejection:

***Each Rejection Notice shall identify the proposed effective date of rejection for each relevant Designated Contract, which shall be no earlier than the later of (a) the date of filing of such notice, (b) for any unexpired lease, the date of notice to the landlord in writing (email being sufficient) that the premises are being surrendered and on which either the Debtors have returned keys, provided access codes, or confirmed that such keys or codes are not available and that the premises may be rekeyed, or (c) such other date as may be agreed by the Debtors and the affected counterparty.***

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<sup>3</sup> Unless otherwise specified, all statutory references to “Section” are to 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”).

The Rejection Notice shall be accompanied by a proposed form of order authorizing the rejection. If any objection to the Rejection Notice is timely filed, the Debtors may set such matter for hearing at any scheduled omnibus hearing date, or request a hearing date for such matter from the Court, in each case with such hearing to be on not less than 5 business days' notice to the applicable counterparty

D.I. 310 at ¶ 21 (emphasis supplied).

7. On December 27, 2024, the Debtors filed the Rejection Notice, which includes a “proposed effective date” for the rejection of Landlord’s Lease of December 31, 2024.

8. Despite filing this Rejection Notice, the Debtors did not *actually* surrender the Premises on or prior to December 31, as required by the Designation Rights set forth in the Sale Order and applicable law.

9. On December 31, 2024, Landlord was contacted for the first time by a representative of Loomis U.S. (“Loomis”), the purported owner of a smart safe located within the Premises, seeking access to coordinate pickup of the safe no sooner than January 2, 2025. See December 31, 2024 e-mail attached and incorporated herein as “Exhibit 1.” However, the Debtors had not returned keys to the Landlord, provided access to a lockbox, or notified the Landlord in writing that it may rekey on or prior to that date, so Landlord could not legally provide any party access to Premises subject to the Debtors’ Lease.

10. On January 3, 2025, the undersigned counsel inquired with counsel to the Debtors regarding the status of this Lease and surrender of the Premises. In response, on January 3, 2025, a representative of the Debtors—for the first time—notified Landlord that the keys to the Premises were in a lockbox on the door, provided Landlord with the lockbox code, and provided the requisite notice in writing that the Debtors surrendered the Premises. See January 3, 2025 e-mail attached and incorporated herein as “Exhibit 2.” Landlord requested evidence that the Premises were actually surrendered on or before December 31, 2024 and no such evidence has been provided.

11. The Debtors further left personal property on the Premises after December 31, 2024 that was subject to a known interest of a third-party and thus cannot be abandoned by the Landlord—namely a smart safe belonging to Loomis. Loomis did not retrieve its property from the Premises until January 9, 2025. The Debtors’ failure to coordinate removal of Loomis’s property before the purported rejection effective date saddled Landlord with the burden of storing such property in violation of applicable federal and state law, and forced the Landlord to incur additional time and expense to coordinate removal. Furthermore, the Debtors have not sought authority to abandon Loomis’s personal property (or the Debtors’ interest therein) as of the date it rejects the Lease.

12. On January 3, 2025, once Landlord finally received access to the Premises, it became apparent that the Debtors had shut down the power at some unknown point and left the Premises in a state inconsistent with the requirements of the Lease, and appears to reflect damage caused by the Debtors’ removal of fixtures and equipment from the Premises. See Photographs of Premises from January 6, 2025 email attached hereto and incorporated herein as “Exhibit 3.”

13. While Landlord does not challenge the Debtors’ exercise of its business judgment to reject Landlord’s Lease, or the Buyer’s exercise of its right to designate the Lease for rejection, Landlord objects to the Debtors’ request to establish December 31, 2024, as the rejection effective date.

14. Landlord has attempted to reach a consensual resolution of this issue with the Debtors in advance of the filing of this Objection, seeking to establish January 3, 2025 (the date the Debtors actually surrendered the Premises) as the effective date of rejection, but to date, the Debtors have not agreed. Landlord files this Objection to establish a rejection effective date consistent with the facts and applicable law, resolve issues related to the purported abandonment

of Loomis's safe, and to reserve its right to payment of lease obligations arising in connection with the Lease pursuant to Section 365(d)(3) through the effective date of rejection of the Lease. Proposing a rejection date that precedes the date the Debtors' actually surrendered the Premises exposes the Landlord to a number of undue risks uniquely related to real property, including chain of title issues, title insurance issues, risk of loss to the Premises, and ability to insure the Premises. Landlord should not be burdened with those risks and potential costs because of the Debtors' failure to properly surrender the Premises.

15. Accordingly, Landlord asserts that any rejection of Landlord's Lease cannot be effective prior to the date Debtors unequivocally and fully surrender possession of Landlord's Premises, which can be no earlier than January 3, 2025.

## II. ARGUMENT

16. The Landlord does not generally object to the rejection of the Lease. However, the Landlord does object to entry of any rejection order that provides for a rejection effective date before the date the Debtors actually surrendered the Premises.

### A. **The Effective Date of Rejection Can Only Occur Once the Debtors Have Surrendered the Premises.**

17. In general, rejection of a lease is not effective until the date the order is entered by the Bankruptcy Court. See In re Jamesway Corp., 179 B.R. 33, 37 (S.D.N.Y. 1995) ("Section 365 merely states that rejection of an unexpired lease is subject to court approval."). See also In re Thinking Machines Corp., 67 F.3d 1021, 1025-28 (1st Cir. 1995) (reversing judgment of District Court setting rejection date as of the motion filing date); In re Federated Dep't. Stores, Inc., 131 B.R. 808, 815-16 (S.D. Ohio 1991) (holding that the effective date of rejection was the date of the

bankruptcy court's order approving the rejection); In re Chi-Chi's, Inc., 305 B.R. 396 (Bankr. D. Del. 2004) In re Fleming Cos., 304 B.R. 85, 96 (Bankr. D. Del. 2003).

18. Retroactive rejection is the exception to this general rule and is considered extraordinary relief only to be granted in specific circumstances. In re Epic Energy Resources, Inc. v. Terrace Point P'ship, LLC, No. 12-CV-01046-RBJ, 2013 WL 427060, at \*5 (D. Colo. Feb. 4, 2013). If there is to be a retroactive rejection (which means a rejection date earlier than the date of entry of a rejection order), the Premises must be unequivocally surrendered to the landlord. See TW, Inc. v. Angelastro (In re TW, Inc.), No. 03-10785 (MFW), 2004 WL 115521, at \*2 (D. Del. Jan. 14, 2004) (upholding bankruptcy court ruling denying rejection of leases *nunc pro tunc* to the petition date when the debtor had not surrendered possession prior to the petition date); In re Romacorp, Inc., No. BKR. 05-86818-BJH-11, 2006 WL 6544088, at \*5-6 (Bankr. N.D. Tex. Feb. 2, 2006) (rejection *nunc pro tunc* not appropriate when debtor leaves property in premises subject to lender lien and does not abandon interest in property). As the Bankruptcy Court in *Romacorp* correctly held, "the Debtor's failure to remove the Personal Property from the [Premises] creates what may be best deemed an illusory rejection." Romacorp, 2006 WL 6544088, at \*4.

19. Courts in this district (and many others) have adopted Judge Walsh's ruling in *Namco Cybertainment, Inc.* with respect to retroactive rejection, which provides, in relevant part: "So, if you want a rejection date prior to the hearing, it seems that it could be done in circumstances where (a) prior to the filing of the motion, the keys were surrendered, the premises surrendered with an unequivocal statement to the landlord of abandonment; . . . ." Namco Cybertainment, Inc.,

Case No. 98-00173 (PJW), April 15, 1998 Transcript of Proceedings, at p. 35 (attached hereto as Exhibit 4).

20. Here, the Debtors missed the critical step, required by *Namco* and its progeny, of providing the Landlord with written notice of actual surrender of the Premises and return of keys or written permission to rekey on or before December 31, 2024, so that simply cannot be the effective date of rejection ordered by this Court.

21. Moreover, the Lease is governed by New York law. Under New York law, “a lease may be surrendered by express surrender or surrender by operation of law. An express surrender involves a mutual agreement between the landlord and the tenant that the lease be terminated.” Wasserman v. Ewing, 270 A.D.2d 427, 428 (2d Dept. 2000). Surrender is effective by an agreement of the parties or an unequivocal act that a surrender has been made. Schnee v. Jonas Equities, Inc., 426 N.Y.S.2d 431, 432 (Civ. Ct. Kings County 1980), *order modified*, 109 Misc. 2d 221, 442 N.Y.S.2d 342 (App. Term 1981) (citation omitted). For instance, “the return of the keys by the tenant is not sufficient by itself and must be accompanied by an act of acceptance such as a resumption of possession for the landlord’s benefit.” Id.

22. Though the Debtors filed the Rejection Notice, they have provided no evidence that of the actual, unequivocal return of possession of the Premises to the Landlord on or before December 31, 2024, or that the Landlord agreed to accept possession of the Premises on or before that date. Thus, state law similarly provides no argument that the Debtors actually surrendered on or prior to December 31, 2024.

23. Moreover, the Debtors’ position does not comport with the requirements of the Designation Rights approved by this Court in the Sale Order. The Sale Order provides in relevant part that:

Each Rejection Notice shall identify the proposed effective date of rejection for each relevant Designated Contract, *which shall be no earlier than the later of (a) the date of filing of such notice, (b) for any unexpired lease, the date of notice to the landlord in writing (email being sufficient) that the premises are being surrendered and on which either the Debtors have returned keys, provided access codes, or confirmed that such keys or codes are not available and that the premises may be rekeyed, or (c) such other date as may be agreed by the Debtors and the affected counterparty.*

Sale Order, ¶ 21 (emphasis supplied).

24. Here, notwithstanding the requirements of the Sale Order, the Debtors did not notify Landlord in writing of their intent to surrender and relinquish possession of the Property on or before December 31, 2024. Nor did the Debtors timely turnover keys for the Premises or provide permission to rekey. The Debtors' return of a single key on *January 3, 2025* is insufficient to demonstrate the requisite surrender on December 31, 2024. At best, the Premises were surrendered on January 3, 2025, which should be the effective date of rejection of the Lease. The December 31, 2024 date of rejection is contrary to the law in Delaware, New York law, and the Sale Order—all of which provide for rejection to be effective on the later of the notice of intent surrender and *actual* surrender.

25. And this is for good reason. Landlord should not be forced to bear any risk of loss for the Premises prior to the date they regained possession. As of the rejection date, the Debtors' insurable interest in the property is cut off, placing all of the risk of loss on the Landlord. See, e.g., Shotmeyer v. N.J. Realty Title Ins. Co., 195 N.J. 72, 85, 948 A.2d 600 (2008) (there must be “an insurable interest at the time of the loss”). See also Commercial Union Fire Ins. Co. v. Parvin, 189 So. 2d 330, 334 (Ala. 1966) (holding that where a lessee's rights ended, he consequently “had no insurable interest in the property . . .”). If the rejection date occurs prior to the Debtors actually surrendering the Premises to the Landlord, the risk of loss for this gap period between the rejection date and the Landlord gaining possession and control of the Premises would be improperly shifted



to Landlord. See Romacorp, 2006 WL 6544088, at \*5 (“The Court cannot require the [l]essors to guess as to whether or not the Debtor truly rejected the . . . Lease; to do so would be inequitable and place an onerous and unnecessary burden upon the [l]essors.”).

26. As a result, the proposed December 31, 2024 rejection date prematurely terminates Debtors’ insurable interest in the Premises, leaving Landlord exposed to potential losses from vandalism and damages resulting from the removal of additional property, including the safe, from the Premises. Indeed, Landlord has already been exposed to risks of loss as the Debtors left the Premises in disorderly and damaged condition, See Exhibit 3, despite the Lease requiring that the Premises be returned to the Landlord in “broom clean” condition.

27. Of course, the Debtors’ unwillingness to agree to a rejection date consistent with the facts and law is motivated by the desire to avoid the incurrence of January lease obligations. While noting that the avoidance of those obligations was entirely within the Debtors’ dominion and control<sup>4</sup> if they had correctly surrendered on or before December 31, 2024, Landlord submits that the determination of what amount the Landlord is owed for the Debtors’ occupancy into January can and should be addressed separately from rejection. The Rejection Order should instead provide for the rejection of the Lease to be effective as of no earlier than January 3, 2025, and all parties may reserve their rights with respect to the Landlord’s claim for January lease obligations.

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<sup>4</sup> See In re Leather Factory, Inc., 475 B.R. 710, 713 (Bankr. C.D. Cal. 2012) ( “the statute is clear and the control of the date of rejection is in the hands of the trustee [or debtor-in-possession], not the landlord.”).

**B. The Personal Property Must be Removed or Abandoned without Imposing Liability to Landlord under Any Applicable Law**

28. To effectuate an unequivocal surrender of the Premises as of the Rejection Date, all property either must be removed (in the case of the safe) or abandoned. The Bankruptcy Code clearly provides for the immediate surrender of property upon rejection. See 11 U.S.C. § 365(d)(4)(A) (“the trustee shall immediately surrender that nonresidential real property to the lessor”); In re Scarborough-St. James Corp., No. 15-10625 (LSS), 2015 WL 5672628, \*9-10, 2015 WL 5672628 (Bankr. D. Del. Sept. 24, 2015) (“[U]pon rejection of a lease of nonresidential real property, the trustee shall ‘immediately surrender that nonresidential real property to the lessor.’” (quoting 11 U.S.C. § 365(d)(4)(A))); In re Cobham Enters., Inc., 72 B.R. 779, 781 n.1 (S.D.N.Y. 1987) (“under 11 U.S.C. § 365 (Supp. 1986) the trustee in bankruptcy or the debtor in possession may ‘assume’ the lease and continue to exercise control over the leasehold estate or ‘reject’ it and surrender the leased premises to the landlord.”); In re Newman, 81 B.R. 796, 803 (S.D.N.Y. 1988) (“assuming a valid lease, there is legal authority for the proposition that a trustee who remains in possession of property subsequent to his rejection of the lease, must continue to pay the full rent reserved, pending surrender of the property.”).

29. In this District, surrender includes “an unequivocal statement to the landlord of abandonment.” Namco Cybertainment, Inc., Case No. 98-00173 (PJW), April 15, 1998 Transcript of Proceedings, at p. 35 (attached hereto as Exhibit 4). If certain property cannot be abandoned, such as in the case of the safe, it must be removed without any liability to the Landlord for failing to comply with any applicable law with respect to the safe. Landlord is not in a position to be, and

should not be, tasked with bearing the risks and costs of storing and maintaining any non-abandoned property for an indeterminate, post-rejection period.

30. Importantly, the Debtors did not file a motion seeking abandonment of any personal property at the premises pursuant to Section 554, and the Designation Rights in the Sale Order are silent with respect to abandonment and provide no streamlined procedures for the Court to authorize abandonment of personal property. The Rejection Notice itself also fails to mention that any personal property will be abandoned at the Premises (in order to provide adequate notice to both the Landlord and third parties with an interest in any such personal property) and the exhibit fails to identify or describe such abandoned property, as is customary in such notices. Finally, the proposed form of order fails to include any legal conclusions with respect to abandonment. Thus, based on these facts and the relief sought, *none* of the Debtors' personal property interests have been abandoned here.

31. Presuming that the safe is property of Loomis, and not Debtors, as Loomis claims, Debtors would not be permitted to abandon the safe on the Premises in any event. Landlord cannot be liable in any way for compliance with any applicable law with respect to the safe, or identification of the rightful owner of same. It likewise cannot be deemed to have exercised possession, custody, or control over any funds or personal property residing in the safe, to be an owner of the safe, or in any way liable for non-compliance with any federal, state, or local privacy laws or breach notification laws.

32. Moreover, as reflect in the photographs in Exhibit 3, the Debtors left other Personal Property behind in the space, including a cable box and certain canisters, which may belong to the Debtors or may belong to a third-party, but the Landlord has no way to know whose property it is, and the Debtors have sought no relief to abandon it, even if it is theirs. Rejection of the Lease

should not be effective until the property is removed. To rule otherwise would effectively require Landlord to provide storage and safekeeping of personal property that does not belong to Debtors. Landlord should not be required to be made an involuntary bailee of the Debtors' property for the benefit of the Debtors without compensation for the continuing use of Landlord's property.

33. As set forth above, Landlord is continuing its efforts to try to work on resolutions to these issues with the Debtors, and Loomis finally retrieved the safe from the Premises on January 9, 2025. However any Personal Property remaining after the rejection date must be unequivocally abandoned as of the rejection date.

34. As such, the Debtors should be given a choice: (i) defer rejection until the Personal Property is removed or the estate's interest in the Personal Property is extinguished, or (ii) abandon the Personal Property when the Lease is rejected.

#### **C. Debtors Must Pay Lease Charges for January 2025**

35. Although the adjudication of what Landlord is owed for the Debtors' continued occupancy of the premises until at least January 3, 2025 can be determined at a later date, the Bankruptcy Code and applicable law provide that the Debtors owe Landlord rent for the full month of January.

36. Section 365(d)(3) provides:

The trustee shall timely perform all the obligations of the debtor . . . arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected, notwithstanding section 503(b)(1) of this title.

11 U.S.C. § 365(d)(3).

37. The purpose of Section 365(d)(3) is to protect landlords by requiring debtors to timely perform their obligations arising under the lease. In the Third Circuit, which is a billing date jurisdiction, Section 365(d)(3) requires debtors to pay rent obligations in full and without proration as they come due in the pre- rejection period. In re Valley Media, Inc., 290 B.R. 73, 74

(Bankr. D. Del. 2003); *citing* Koenig Sporting Goods, Inc. v. Morse Road Co. (In re Koenig Sporting Goods, Inc.), 203 F.3d 986 (6th Cir. 2000) (holding lessor entitled to full month's rent when rent due on first of month and lease rejected on second). Under prevailing Third Circuit authority, the "plain language of § 365(d)(3) mandates that a billing date approach be used to determine when a lease obligation arises." Valley Media, Inc., 290 B.R. at 75; *citing* Centerpoint Props. v. Montgomery Ward Holding Corp., 268 F.3d 205, 211 (3d Cir. 2001).

38. The Debtors cannot seek to disregard the billing date approach for its own purposes in the context of rejection the Lease. To do so would be particularly inequitable where, as here, the Debtors enjoyed the benefit of the billing date approach in delaying the payment of September rent at the outset of these cases, but now may prefer an accrual approach (which is not consistent with Third Circuit law) on the back end to pay the Landlord less than the full amount of January lease obligations.

39. Essentially, Debtors cannot suddenly utilize a proration approach rather than a billing date approach during the month that the Lease is rejected. As set forth above, this is inconsistent with Third Circuit law. Montgomery Ward Holding Corp., 268 F.3d at 209. Additionally, the proration approach does not comport with the policy behind Section 365(d)(3), which is intended to shift the burden of indecision to the debtor. The rejection date is solely within the Debtors' control, and the policy behind Section 365(d)(3) is better served by compelling the Debtors to continue to perform all obligations under their Lease or reject their Lease prior to some payment coming due during the pre-rejection period. In re Krystal Co., 194 B.R. 161, 164 (Bankr. E.D. Tenn. 1996).

40. Here, full rent became due and payable on January 1, 2025 when the Debtors were still in possession of the Premises. Landlord has received no payment for post-petition rent due

for January 2025, as required by Section 365(d)(3). Third Circuit law clearly holds that a debtor is responsible for the full amount of any lease payment coming due during the post-petition and pre-rejection period. Montgomery Ward Holding Corp., 268 F.3d at 209. The fact that the rejection date may occur early in the month is of no moment, and other Courts have required the payment of a full month of rent in these circumstances. See, e.g., HA-LO Industries v. CenterPoint Properties Trust, 342 F.3d 794 (7th Cir. 2003) (where the rent was due on November 1 and the rejection took place on November 2, the Seventh Circuit required the debtor to pay its November rent in full); Koenig Sporting Goods, 203 F.3d 986 (the Sixth Circuit required payment of rent in full there rejection occurred on the second day of month because rent was due on the first).

41. As such, Landlord must be paid for rent and related charges for the full month of January.

**D. Debtors Must Insure the Premises Until Surrender.**

42. The Debtors must continue to perform all obligations under the Lease until it is rejected. See 11 U.S.C. § 365(d)(3). Here, Landlord requests that any Order granting authority to reject the Lease as of January 3, 2025 or at some later date require the Debtors to maintain appropriate insurance coverage of Landlord's Premises until the rejection date. This coverage is essential to protect Landlord's property and Landlord should not be subjected to a disproportionate risk of loss because of the Debtors' relief and mistakes.

**III. RESERVATION OF RIGHTS**

43. Landlord reserves its right to supplement this Objection and to make such other and further objections as it may deem necessary or appropriate, including, but not limited to, any revised proposed order in regard to the rejection of the Lease.

**IV. CONCLUSION**

WHEREFORE, Landlord objects to the entry of an order approving the rejection of its Lease effective as of December 31, 2024. This Court should provide for rejection of the Lease no earlier than January 3, 2025, or a date certain by which Debtors unequivocally surrender and abandon its interest in the Personal Property remaining on the Premises. No rejection should take effect until all Personal Property is promptly and properly removed from the Premises and disposed of in accordance with applicable law or abandoned.

Dated: January 10, 2025  
Wilmington, Delaware

/s/ Laurel D. Roglen

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*Counsel to Second 82nd SM LLC*

# **EXHIBIT 1**



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**Subject:** RE: BurgerFi (Manhattan)

**From:** David Malanga <[DavidM@solil.com](mailto:DavidM@solil.com)>

**Sent:** Friday, January 3, 2025 11:03 AM

**To:** Reena Malhotra <[Reenam@solil.com](mailto:Reenam@solil.com)>; Nicholas Forelli <[NicholasF@solil.com](mailto:NicholasF@solil.com)>; Judy Brener <[JudyB@solil.com](mailto:JudyB@solil.com)>

**Subject:** Fw: BurgerFi (Manhattan)

As you can see below, they are still working on getting out the safe from the space. They have not given us keys. I don't believe we were ever given possession back so I think the clock keeps running. Have you heard otherwise?

David Malanga  
646-391-6468  
[davidm@solil.com](mailto:davidm@solil.com)

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**From:** Putrino, Donald <[Donald.Putrino@us.loomis.com](mailto:Donald.Putrino@us.loomis.com)>

**Sent:** Friday, January 3, 2025 10:49:35 AM

**To:** Darlene Young <[DarleneY@solil.com](mailto:DarleneY@solil.com)>

**Cc:** Samuel Mahabir <[SamuelM@solil.com](mailto:SamuelM@solil.com)>; David Malanga <[DavidM@solil.com](mailto:DavidM@solil.com)>

**Subject:** RE: BurgerFi (Manhattan)

Let me send this back to my vendor. **We will be unbolting the safe from the floor.**

**Donald Putrino**  
SafePoint Implementations



**Loomis U.S.**  
2500 CityWest Blvd., Suite 2300  
Houston, TX 77042

Direct: 585.869.6853  
Cell: 585.662.7871  
[www.loomis.us](http://www.loomis.us)

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**From:** Darlene Young <[DarleneY@solil.com](mailto:DarleneY@solil.com)>

**Sent:** Friday, January 3, 2025 10:44 AM

**To:** Putrino, Donald <[Donald.Putrino@us.loomis.com](mailto:Donald.Putrino@us.loomis.com)>

**Cc:** Samuel Mahabir <[SamuelM@solil.com](mailto:SamuelM@solil.com)>; David Malanga <[DavidM@solil.com](mailto:DavidM@solil.com)>

**Subject:** RE: BurgerFi (Manhattan)

[SECURITY ADVISORY]: External Sender - Use caution when clicking links and opening attachments

Donald,

The describe work: \_\_\_\_\_ is missing as displayed on our sample.

Please revise and return.

Thank you,



**Darlene L. Young**

**Risk Manager**

1185 Sixth Avenue – 10<sup>th</sup> Floor

New York, NY 10036

212.506.0479 | [DarleneY@solil.com](mailto:DarleneY@solil.com)

[www.solil.com](http://www.solil.com)

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**From:** Putrino, Donald <[Donald.Putrino@us.loomis.com](mailto:Donald.Putrino@us.loomis.com)>

**Sent:** Thursday, January 2, 2025 4:37 PM

**To:** Darlene Young <[DarleneY@solil.com](mailto:DarleneY@solil.com)>

**Cc:** Samuel Mahabir <[SamuelM@solil.com](mailto:SamuelM@solil.com)>; David Malanga <[DavidM@solil.com](mailto:DavidM@solil.com)>

**Subject:** RE: BurgerFi (Manhattan)

Darlene, attached is the COI from Bibbeo. They are the third party vendor who will be de-installing and removing the safe from the closed BurgerFi location. Please let me know if you accept this form and the proof of ownership that I forwarded to you earlier this afternoon. Thanks.

**Donald Putrino**

SafePoint Implementations



**Loomis U.S.**

2500 CityWest Blvd., Suite 2300  
Houston, TX 77042

Direct: 585.869.6853

Cell: 585.662.7871

[www.loomis.us](http://www.loomis.us)

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**From:** Putrino, Donald

**Sent:** Thursday, January 2, 2025 3:26 PM

**To:** Darlene Young <[DarleneY@solil.com](mailto:DarleneY@solil.com)>

**Cc:** Samuel Mahabir <[SamuelM@solil.com](mailto:SamuelM@solil.com)>; David Malanga <[DavidM@solil.com](mailto:DavidM@solil.com)>

**Subject:** RE: BurgerFi (Manhattan)

Darlene, good afternoon. Attached is the safe manufacturer's invoice for the safe that we are pulling from the closed BurgerFi location in Manhattan. It is billed to Huntington Bank, as that is who Loomis finances the safes through. However, if you look at the bottom of the second page...it states that the safe was sold to Loomis US. Please let me know if you accept this as proof of ownership. Thanks.

**Donald Putrino**

SafePoint Implementations



**Loomis U.S.**

2500 CityWest Blvd., Suite 2300  
Houston, TX 77042

Direct: 585.869.6853

Cell: 585.662.7871

[www.loomis.us](http://www.loomis.us)

---

**From:** Brad Steiger <[bsteiger@burgerfi.com](mailto:bsteiger@burgerfi.com)>

**Sent:** Tuesday, December 31, 2024 1:35 PM

**To:** Darlene Young <[DarleneY@solil.com](mailto:DarleneY@solil.com)>; David Malanga <[DavidM@solil.com](mailto:DavidM@solil.com)>; Putrino, Donald  
<[Donald.Putrino@us.loomis.com](mailto:Donald.Putrino@us.loomis.com)>; Christian Morales <[cmorales@burgerfi.com](mailto:cmorales@burgerfi.com)>; Will Coyne <[wcoyne@burgerfi.com](mailto:wcoyne@burgerfi.com)>

**Cc:** Samuel Mahabir <[SamuelM@solil.com](mailto:SamuelM@solil.com)>

**Subject:** Re: BurgerFi (Manhattan)

[SECURITY ADVISORY]: External Sender - Use caution when clicking links and opening attachments

Ok. I will work on getting that COI.

Let me know if this is sufficient for the email portion....

BurgerFi currently uses and is in possession of the Loomis safe at the NYC location with the address of 1571  
2nd Ave, New York, NY 10028

Bradley Joseph Steiger (Regional Operations Leader for BurgerFi)

Thanks,

**Bradley Steiger**

Regional Operations Leader

**BURGERFI**, Inc.

C: (561) 255-8489

[BURGERFI.COM](http://BURGERFI.COM)

---

**From:** Darlene Young <[DarleneY@solil.com](mailto:DarleneY@solil.com)>  
**Sent:** Tuesday, December 31, 2024 12:29 PM  
**To:** Brad Steiger <[bsteiger@burgerfi.com](mailto:bsteiger@burgerfi.com)>; David Malanga <[DavidM@solil.com](mailto:DavidM@solil.com)>; [Donald.Putrino@us.loomis.com](mailto:Donald.Putrino@us.loomis.com)  
<[Donald.Putrino@us.loomis.com](mailto:Donald.Putrino@us.loomis.com)>; Christian Morales <[cmorales@burgerfi.com](mailto:cmorales@burgerfi.com)>; Will Coyne <[wcoyne@burgerfi.com](mailto:wcoyne@burgerfi.com)>  
**Cc:** Samuel Mahabir <[SamuelM@solil.com](mailto:SamuelM@solil.com)>  
**Subject:** RE: BurgerFi (Manhattan)

**ATTENTION:** This email originated outside of your organization. Do not click links or open attachments unless you know they are safe.

Brad,

This is for the vendor that will work on your premises, and we also **need a current liability certificate from BurgerFi.**

If there are any questions, please contact our office.

Thank you,



**Darlene L. Young**  
**Risk Manager**  
1185 Sixth Avenue – 10<sup>th</sup> Floor  
New York, NY 10036  
212.506.0479 | [DarleneY@solil.com](mailto:DarleneY@solil.com)  
[www.solil.com](http://www.solil.com)

---

**From:** Brad Steiger <[bsteiger@burgerfi.com](mailto:bsteiger@burgerfi.com)>  
**Sent:** Tuesday, December 31, 2024 12:24 PM  
**To:** Darlene Young <[DarleneY@solil.com](mailto:DarleneY@solil.com)>; David Malanga <[DavidM@solil.com](mailto:DavidM@solil.com)>; [Donald.Putrino@us.loomis.com](mailto:Donald.Putrino@us.loomis.com);  
Christian Morales <[cmorales@burgerfi.com](mailto:cmorales@burgerfi.com)>; Will Coyne <[wcoyne@burgerfi.com](mailto:wcoyne@burgerfi.com)>  
**Cc:** Samuel Mahabir <[SamuelM@solil.com](mailto:SamuelM@solil.com)>  
**Subject:** Re: BurgerFi (Manhattan)

Darlene,

Just to clarify. You need this information from Loomis end and not our (BurgerFi) COI?

Thanks,

Bradley Steiger

Regional Operations Leader

BURGERFI, Inc.

C: (561) 255-8489

[BURGERFI.COM](http://BURGERFI.COM)

---

**From:** Darlene Young <[DarleneY@solil.com](mailto:DarleneY@solil.com)>  
**Sent:** Tuesday, December 31, 2024 12:17 PM  
**To:** Brad Steiger <[bsteiger@burgerfi.com](mailto:bsteiger@burgerfi.com)>; David Malanga <[DavidM@solil.com](mailto:DavidM@solil.com)>; [Donald.Putrino@us.loomis.com](mailto:Donald.Putrino@us.loomis.com) <[Donald.Putrino@us.loomis.com](mailto:Donald.Putrino@us.loomis.com)>; Christian Morales <[cmorales@burgerfi.com](mailto:cmorales@burgerfi.com)>; Will Coyne <[wcoyne@burgerfi.com](mailto:wcoyne@burgerfi.com)>  
**Cc:** Samuel Mahabir <[SamuelM@solil.com](mailto:SamuelM@solil.com)>  
**Subject:** BurgerFi (Manhattan)

**ATTENTION:** This email originated outside of your organization. Do not click links or open attachments unless you know they are safe.

Brad,

Attached please find our sample liability certificate for the Vendor that will work at your premises.

Please have them forward this to their broker and return to our office and if there are any questions, please contact our office.

Thank you,



**Darlene L. Young**  
**Risk Manager**  
1185 Sixth Avenue – 10<sup>th</sup> Floor  
New York, NY 10036  
212.506.0479 | [DarleneY@solil.com](mailto:DarleneY@solil.com)  
[www.solil.com](http://www.solil.com)

---

**From:** David Malanga <[DavidM@solil.com](mailto:DavidM@solil.com)>  
**Sent:** Tuesday, December 31, 2024 11:26 AM  
**To:** Brad Steiger <[bsteiger@burgerfi.com](mailto:bsteiger@burgerfi.com)>; [Donald.Putrino@us.loomis.com](mailto:Donald.Putrino@us.loomis.com); [cmorales@burgerfi.com](mailto:cmorales@burgerfi.com); Will Coyne <[wcoyne@burgerfi.com](mailto:wcoyne@burgerfi.com)>; Darlene Young <[DarleneY@solil.com](mailto:DarleneY@solil.com)>  
**Cc:** Samuel Mahabir <[SamuelM@solil.com](mailto:SamuelM@solil.com)>  
**Subject:** RE: BurgerFi (Manhattan)

Please provide proof of ownership of the safe, a letter or email from Burger Fi as additional proof of ownership, and insurance matching our requirements. Then we can arrange access.

Darlene: Provide the sample COI for Tenants vendor at 240 East 82<sup>nd</sup> ST



**David Malanga**  
**Director of Property Management**  
1185 Sixth Avenue – 10<sup>th</sup> Floor  
New York, NY 10036  
M: 212.265.2280 | D: 212.506.0431 | C: 646.391.6468  
[davidm@solil.com](mailto:davidm@solil.com) [www.solil.com](http://www.solil.com)

---

**From:** Samuel Mahabir <[SamuelM@solil.com](mailto:SamuelM@solil.com)>  
**Sent:** Tuesday, December 31, 2024 9:49 AM  
**To:** David Malanga <[DavidM@solil.com](mailto:DavidM@solil.com)>  
**Subject:** FW: BurgerFi (Manhattan)

Good Morning David,

Please see Email below.

Happy to help with anything needed here.  
Not sure how this should be handled.

---

**From:** Putrino, Donald <[Donald.Putrino@us.loomis.com](mailto:Donald.Putrino@us.loomis.com)>  
**Sent:** Tuesday, December 31, 2024 9:45 AM  
**To:** Samuel Mahabir <[SamuelM@solil.com](mailto:SamuelM@solil.com)>  
**Cc:** Brad Steiger <[bsteiger@burgerfi.com](mailto:bsteiger@burgerfi.com)>; Christian Morales <[cmorales@burgerfi.com](mailto:cmorales@burgerfi.com)>; Will Coyne <[wcoyne@burgerfi.com](mailto:wcoyne@burgerfi.com)>  
**Subject:** BurgerFi (Manhattan)

Sam, good morning. My name is Donald Putrino and I work for Loomis (armored car company). I was given your name and email address from a Brad Steiger (BurgerFi International). Loomis has a smart safe at the closed BurgerFi located at 1571 2<sup>nd</sup> Ave., New York NY. This safe is scheduled to be emptied today but needs to be de-installed and removed from the location. I was told that BurgerFi International will be officially out of the building by tonight. Thus, I'm assuming that the existing lockbox will be removed by tonight. I have a tech who can de-install the safe and remove it from the building on 1/2 at 12:30pm. Who can I work with directly to gain access to the building to de-install/remove the safe? Thank you and I look forward to hearing from you.

**Donald Putrino**  
SafePoint Implementations



**Loomis U.S.**  
2500 CityWest Blvd., Suite 2300  
Houston, TX 77042

Direct: 585.869.6853

Cell: 585.662.7871

[www.loomis.us](http://www.loomis.us)

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# **EXHIBIT 2**

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**Subject:** FW: [EXTERNAL] Re: FW: BurgerFI - Store 207 (Manhattan)

**From:** Roglen, Laurel D. <[RoglenL@ballardspahr.com](mailto:RoglenL@ballardspahr.com)>

**Sent:** Friday, January 3, 2025 4:59 PM

**To:** Richard Cohn <[rcohn@burgerfi.com](mailto:rcohn@burgerfi.com)>

**Cc:** John Gatti <[jgatti@kerr-russell.com](mailto:jgatti@kerr-russell.com)>; Mo Bashi <[mo@happyspiza.com](mailto:mo@happyspiza.com)>; David Forsh <[dforsh@raineslaw.com](mailto:dforsh@raineslaw.com)>; Branch, Dustin P. <[BranchD@ballardspahr.com](mailto:BranchD@ballardspahr.com)>; Zarnighian, Nahal <[ZarnighianN@ballardspahr.com](mailto:ZarnighianN@ballardspahr.com)>; Vesper, Margaret <[VesperM@ballardspahr.com](mailto:VesperM@ballardspahr.com)>; Heilman, Leslie C. <[HeilmanL@ballardspahr.com](mailto:HeilmanL@ballardspahr.com)>; Hamid R. Rafatjoo <[hrafatjoo@raineslaw.com](mailto:hrafatjoo@raineslaw.com)>; Robert S. Marticello <[rmarticello@raineslaw.com](mailto:rmarticello@raineslaw.com)>; Mark W. Eckard <[meckard@raineslaw.com](mailto:meckard@raineslaw.com)>

**Subject:** RE: [EXTERNAL] Re: FW: BurgerFI - Store 207 (Manhattan)

Hi Richard:

Thanks for the response and I received the lockbox code under separate cover which I will pass along to my client now.

I'm not sure who was handling surrender on the Debtors' behalf, but your email is the first notice of surrender my client or I has received with respect to this location and it is of course now January 3, 2025 and not December 31, 2024, and there is no ability to retroactively surrender under the bankruptcy code. Can the Debtors please confirm that the effective date of surrender under the proposed rejection order will be modified to reflect the actual surrender date of January 3, 2025?

Further, the landlord reserves its rights with respect to January lease obligations.

Thanks,  
Laurel

**Laurel D. Roglen**

**Ballard Spahr**  
LLP

---

919 N. Market Street, 11th Floor  
Wilmington, DE 19801-3034  
302.252.4462 DIRECT  
302.252.4466 FAX

914.525.5695 MOBILE | [roglenl@ballardspahr.com](mailto:roglenl@ballardspahr.com)  
VCARD

-----  
[www.ballardspahr.com](http://www.ballardspahr.com)

---

**From:** Richard Cohn <[rcohn@burgerfi.com](mailto:rcohn@burgerfi.com)>

**Sent:** Friday, January 3, 2025 4:52 PM

**To:** Roglen, Laurel D. <[RoglenL@ballardspahr.com](mailto:RoglenL@ballardspahr.com)>

**Cc:** John Gatti <[jgatti@kerr-russell.com](mailto:jgatti@kerr-russell.com)>; Mo Bashi <[mo@happyspiza.com](mailto:mo@happyspiza.com)>; David Forsh <[dforsh@raineslaw.com](mailto:dforsh@raineslaw.com)>; Branch, Dustin P. <[BranchD@ballardspahr.com](mailto:BranchD@ballardspahr.com)>; Zarnighian, Nahal <[ZarnighianN@ballardspahr.com](mailto:ZarnighianN@ballardspahr.com)>; Vesper, Margaret <[VesperM@ballardspahr.com](mailto:VesperM@ballardspahr.com)>; Heilman, Leslie C. <[HeilmanL@ballardspahr.com](mailto:HeilmanL@ballardspahr.com)>; Hamid R. Rafatjoo

<[hrafatjoo@raineslaw.com](mailto:hrafatjoo@raineslaw.com)>; Robert S. Marticello <[rmarticello@raineslaw.com](mailto:rmarticello@raineslaw.com)>; Mark W. Eckard <[meckard@raineslaw.com](mailto:meckard@raineslaw.com)>

**Subject:** RE: [EXTERNAL] Re: FW: BurgerFi - Store 207 (Manhattan)

 **EXTERNAL**

Laurel,

I am the current GC of BurgerFi Restaurant Group, LLC the new owner, and prior was GC for the Debtor. Not sure who needs to provide the LL with the surrender notice, however, BurgerFi Restaurant Group, LLC is surrendering the location as of 12/31/24. Additionally, the key is in a lock box hanging on the right side door.

I will email you separately with the code so not everyone is cc'd with the lockbox code.

Have a good weekend.

Thanks,  
Richard P. Cohn  
General Corporate Counsel  
**BURGERFI**  
E-mail: [rcohn@burgerfi.com](mailto:rcohn@burgerfi.com)  
[BURGERFI.COM](http://BURGERFI.COM)

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---

**From:** Roglen, Laurel D. <[RoglenL@ballardspahr.com](mailto:RoglenL@ballardspahr.com)>

**Sent:** Friday, January 3, 2025 11:46 AM

**To:** David Forsh <[dforsh@raineslaw.com](mailto:dforsh@raineslaw.com)>; Thomas J. Francella Jr. <[tfrancella@raineslaw.com](mailto:tfrancella@raineslaw.com)>; Hamid R. Rafatjoo <[hrafatjoo@raineslaw.com](mailto:hrafatjoo@raineslaw.com)>; Robert S. Marticello <[rmarticello@raineslaw.com](mailto:rmarticello@raineslaw.com)>; Mark W. Eckard <[meckard@raineslaw.com](mailto:meckard@raineslaw.com)>

**Cc:** Branch, Dustin P. <[BranchD@ballardspahr.com](mailto:BranchD@ballardspahr.com)>; Zarnighian, Nahal <[ZarnighianN@ballardspahr.com](mailto:ZarnighianN@ballardspahr.com)>; Vesper, Margaret <[VesperM@ballardspahr.com](mailto:VesperM@ballardspahr.com)>; Heilman, Leslie C. <[HeilmanL@ballardspahr.com](mailto:HeilmanL@ballardspahr.com)>

**Subject:** RE: BurgerFi - Store 207 (Manhattan)

**Importance:** High

Hi David:

Happy New Year! I hope you were able to enjoy some time off during the holidays.

I am reaching out about BurgerFi store #207. This location was noticed for rejection as of 12/31/24, but the landlord has not received keys or a surrender letter. Also, Loomis reach out to the landlord on 12/31/24 at the direction of BurgerFi (copied on those emails) to suggest a removal of the smart safe on 1/2/25, which of course, is after the proposed rejection effective/surrender date. Can you please provide me with proof of the Debtors' surrender of the premises on or before 12/31/24?

Thanks,  
Laurel

**Laurel D. Roglen**  
**Ballard Spahr**  
LLP

919 N. Market Street, 11th Floor  
Wilmington, DE 19801-3034  
302.252.4462 DIRECT  
302.252.4466 FAX

914.525.5695 MOBILE | [roglenl@ballardspahr.com](mailto:roglenl@ballardspahr.com)  
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# **EXHIBIT 3**































# **EXHIBIT 4**

1

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

IN RE: )  
 )  
NAMCO CYBERTAINMENT, INC., ) Case No. 98-173 (PJW)  
 )  
Debtor. )

United States Bankruptcy Court  
Courtroom No. 2  
Sixth Floor  
824 North Market Street  
Wilmington, Delaware 19801

Wednesday, April 15, 1998  
4:00 p.m.

BEFORE: HONORABLE PETER J. WALSH  
United States Bankruptcy Judge

TRANSCRIPT OF PROCEEDINGS

---

WILCOX & FETZER  
1330 King Street - Wilmington, Delaware 19801  
(302) 655-0477



WILCOX & FETZER LTD.  
Registered Professional Reporters

15 THE COURT: Okay. Well, it does seem  
16 to me that where it is patently clear that the lease is  
17 going to be rejected that as a matter, some equity  
18 relief ought to be granted.

19 And I think the role that I am  
20 inclined to adopt--and I'm not going to apply it in  
21 this case because for the reasons I mentioned--I  
22 believe that if the premises are surrendered with an  
23 unequivocal statement to the landlord that the debtor  
24 is abandoning and thereafter the debtor files a motion





1 to reject, then I believe that it would be equitable to  
2 allow the rejection date to be effective on the date  
3 that that motion is served, provided that the motion  
4 contains a representation that the committee agrees  
5 with the motion; because if that representation were in  
6 the motion, then I can't conceive of the circumstances  
7 under which the motion would be denied.

8 And if a landlord wants--I'm sorry.  
9 If the debtor wants a rejection date prior to the  
10 hearing date, then to the extent it seeks that date,  
11 then a part of my rule would be that the debtor cannot  
12 change its mind.

13 So, if you want a rejection date  
14 prior to the hearing, it seems to me that it could be  
15 done in the circumstances where (a) prior to the filing  
16 of the motion, the keys were surrendered, the premises  
17 surrendered with an unequivocal statement to the  
18 landlord of abandonment; (b) the motion is served and  
19 filed on the landlord; (c) the motion states that the  
20 committee agrees with the motion; and (d) that the  
21 debtor acknowledges that it will not have the right to  
22 withdraw that motion prior to the hearing. Given those  
23 situation--given those factors, I would permit the  
24 rejection effective as of service of the motion.



1                   You don't have those facts in this  
2 case. So, I wouldn't apply the rule in this case.

3                   However, it does seem to me that  
4 there was an objection deadline of April 6th, 1998.  
5 Nobody objected to the rejection. And it certainly  
6 seems to me that a rejection date of April 6 would be  
7 appropriate under these circumstances. So, I'll sign  
8 an order authorizing the rejection as of April 6.

**CERTIFICATE OF SERVICE**

I, Laurel D. Roglen, Esquire, hereby certify that on this 10<sup>th</sup> day of January, 2025, I caused a true and correct copy of the foregoing pleading to be served by electronic notice upon all parties registered to receive notice via CM/ECF.

Dated: January 10, 2025  
Wilmington, Delaware

/s/ Laurel D. Roglen  
Laurel D. Roglen (DE No. 5759)