

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

In re:

iM3NY LLC, *et al.*,

Debtors.¹

Chapter 11

Case No. 25-10131 (BLS)

(Jointly Administered)

Hearing Date: May 13, 2025, at 10:00 a.m. (Eastern Time)

Objection Deadline: May 6, 2025, at 4:00 p.m. (Eastern Time)

DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) DISMISSING THE CHAPTER 11 CASES; (II) EXCULPATING CERTAIN PARTIES FROM LIABILITY IN CONNECTION WITH THE CHAPTER 11 CASES; (III) TERMINATING ENGAGEMENT OF CLAIMS AGENT; AND (IV) GRANTING RELATED RELIEF

The above-captioned debtors and debtors-in-possession (the “**Debtors**” or the “**Company**”), by and through their undersigned counsel, hereby move (the “**Motion**”) pursuant to sections 105(a), 305(a), 349 and 1112(b) of 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”), Rule 1017(a) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 1017-2 of the Local Rules of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”) for entry of an order, substantially in the form attached as **Exhibit A** (the “**Order**”), (i) dismissing the Debtors’ chapter 11 cases (collectively, these “**Chapter 11 Cases**”); (ii) exculpating certain parties in connection with the Chapter 11 Cases; (iii) terminating the services of Stretto, as claims agent (the “**Claims Agent**”) in these Chapter 11 Cases; and (iv) granting related relief. In support of this Motion, the Debtors respectfully state as follows:

¹ The Debtors in these chapter 11 cases, along with the last four digits of their respective tax identification numbers, are as follows: (i) iM3NY LLC (N/A); and (ii) Imperium3 New York, Inc. (4574). The address of the Debtors’ corporate headquarters is 1093 Clark Street, Endicott, New York 13760.

PRELIMINARY STATEMENT

The Debtors filed these chapter 11 cases to effectuate a sale of all or substantially all of their assets to maximize value for all stakeholders. On April 4, 2025, the Debtors successfully consummated the sale of certain of their assets, an executory contract and unexpired lease.

Although the Debtors have explored alternative options to bring these Chapter 11 Cases to a conclusion, the Debtors believe that dismissal is the most expeditious and cost-effective mechanism to wind down these Chapter 11 Cases. Because all of the Debtors' cash constitutes encumbered "cash collateral," the Debtors determined that dismissal would not negatively impact creditors (vis-à-vis conversion to chapter 7). Further, the Debtors submit that there are no assets of any value available for distribution to unsecured creditors or to support the administrative costs of pursuing anything other than the prompt exit from bankruptcy. Moreover, a conversion to chapter 7 would not serve a purpose if there is no unencumbered cash to administer the chapter 7 cases, as the Debtors anticipate would be the case in this instance.

Accordingly, the Debtors seek to dismiss the Chapter 11 Cases on the terms set forth in the Proposed Order attached hereto to allow them to wind down under applicable state law.

JURISDICTION AND VENUE

1. The Court has jurisdiction over the Debtors, their estates, and these matters under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b).

2. Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are sections 105(a), 305(a), 349 and 1112(b) of the Bankruptcy Code, Bankruptcy Rule 1017(a), and Local Rule 1017-2.

4. Pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final order by the Court in connection with this Motion, to the extent it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

BACKGROUND

A. THE CHAPTER 11 CASES.

5. On January 27, 2025 (the “**Petition Date**”), the Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “**Court**”), thereby commencing these cases (the “**Chapter 11 Cases**”). The Chapter 11 Cases are jointly administered for procedural purposes only pursuant to Bankruptcy Rule 1015(b).

6. The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

7. On January 29, 2025, the Court entered the *Order Authorizing Retention and Appointment of Stretto as Claims and Noticing Agent* [Docket No. 26] (the “**Stretto Retention Order**”).

8. On February 12, 2025, the United States Trustee for Region 3 (the “**U.S. Trustee**”) appointed an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code [Docket No. 59] (the “**Committee**”).

9. On February 28, 2025, the Court entered the *Final Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral; (II) Granting*

Adequate Protection to Prepetition Secured Lender; (III) Modifying the Automatic Stay; and (IV) Granting Related Relief [Docket No. 118] (the “**Final DIP Order**”).

10. Additional factual background regarding the Debtors, including their business operations, their capital and debt structures and the events leading to the filing of these Chapter 11 Cases, is set forth in the *Declaration of Lukasz P. Ciancara in Support of the Debtors’ Chapter 11 Petitions and First Day Pleadings* [Docket No. 10], which is incorporated in this Motion by reference.

B. THE SALE OF THE DEBTORS’ ASSETS.

11. On February 3, 2025, the Debtors filed the *Debtors’ Motion for (i) an Order Establishing Bidding Procedures and Granting Related Relief, and (ii) an Order Approving the Sale of the Assets* [Docket No. 46].

12. On February 26, 2025, the Court entered the *Order Scheduling a Hearing to Consider Approval of the Sale of Substantially All of the Debtors’ Assets, and the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (II) Approving Certain Bidding Procedures, Assumption and Assignment Procedures, and the Form and Manner of Notice Thereof, and (III) Granting Related Relief* [Docket No. 111].

13. On March 31, 2025, the Debtors filed the *Notice of Filing of Asset Purchase Agreement* [Docket No. 179] (the “**APA**”) with Musashi Auto Parts Michigan, Inc. (the “**Buyer**”).

14. A hearing was held on March 31, 2025, at which time the Court approved the sale of the Debtors’ assets to the Buyer as provided in the APA (the “**Sale**”).

15. On April 3, 2025, the Court entered the *Order Authorizing the Sale of Certain of the Debtors' Assets, and the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (II) Granting Related Relief* [Docket No. 189] (the “**Sale Order**”).

16. On April 4, 2025, the Debtors closed on the Sale pursuant to the Sale Order.

17. Since the closing of the Sale, the Debtors are no longer operating their business nor do they have sufficient funding to propose a plan of liquidation.

RELIEF REQUESTED

18. By this Motion, the Debtors request entry of the Proposed Order (i) dismissing the Debtors’ Chapter 11 Cases; (ii) exculpating certain parties from liability in connection with the Chapter 11 Cases; (iii) terminating the services of the Claims Agent in these Chapter 11 Cases; and (iv) granting related relief.

BASIS FOR RELIEF

I. THE COURT SHOULD DISMISS THE CHAPTER 11 CASES

A. THE CHAPTER 11 CASES MUST BE DISMISSED UNDER SECTION 1112(b)(1) OF THE BANKRUPTCY CODE.

19. Upon the request of a party in interest, section 1112(b)(1) of the Bankruptcy Code provides that, absent unusual circumstances, a court “shall” dismiss a chapter 11 bankruptcy case (or convert such case to a case under chapter 7) “for cause.” *See* 11 U.S.C. § 1112(b)(1). The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“**BAPCPA**”) changed the statutory language with respect to conversion or dismissal from permissive to mandatory.² *See* H.R. Rep. No. 109-31(I), at 442, reprinted in 2005 U.S.C.C.A.N. 88, 94 (stating that the Act “mandate[s] that the court convert or dismiss a chapter 11 case, whichever is in the best interests

² Prior to the enactment of BAPCPA, a bankruptcy court had the discretion, pursuant to its broad equitable powers, to dispose of a debtor’s case, including by means of dismissal. However, a court was not mandated to

of creditors and the estate, if the movant establishes cause, absent unusual circumstances”); *see also Nester v. Gateway Access Sols., Inc. (In re Gateway Access Sols., Inc.)*, 374 B.R. 556 (Bankr. M.D. Pa. 2007) (stating that the amendments to section 1112 limit the court’s discretion to refuse to dismiss or convert a chapter 11 case upon a finding of cause); *accord In re TCR of Denver, LLC*, 338 B.R. 494, 498 (Bankr. D. Colo. 2006) (“Congress has purposefully limited the role of this Court in deciding issues of conversion or dismissal, such that this Court has no choice, and no discretion, in that it ‘shall’ dismiss or convert a case under Chapter 11 if the elements for ‘cause’ are shown under 11 U.S.C. § 1112(b)(4).”).

20. The amendments to section 1112 of the Bankruptcy Code thus limit the Court’s discretion to refuse to dismiss or convert a chapter 11 case upon a finding of cause. *See In re 3 Ram, Inc.*, 343 B.R. 113, 119 (Bankr. E.D. Pa. 2006) (“Under new § 1112 when cause is found, the court shall dismiss or convert unless special circumstances exist that establish that the requested conversion or dismissal is not in the best interests of creditors and the estate.”); *see also In re Broad Creek Edgewater, LP*, 371 B.R. 752, 759 (Bankr. D.S.C. 2007). For reasons more fully explained below, the Court should dismiss the Chapter 11 Cases because cause exists. Further, dismissal (and not conversion to a case under chapter 7) is in the best interests of the Debtors, their creditors, and their estates because such dismissal allows the Debtors to exit the Chapter 11 Cases as efficiently as possible.

B. CAUSE EXISTS UNDER SECTION 1112(b)(4) OF THE BANKRUPTCY CODE.

21. Section 1112(b) of the Bankruptcy Code provides a nonexclusive list of 16 grounds for dismissal for cause. 11 U.S.C. § 1112(b)(4)(A)-(P). *See In re Gateway Access Sols.*, 374 B.R. at 561 (“Generally, such lists are viewed as illustrative rather than exhaustive, and the

dismiss a case upon the showing of cause. H.R. Rep. No. 95-595, at 405 (1977), reprinted in 1978 U.S.C.C.A.N. 5963; S. Rep. No. 95-989, at 117 (1978), reprinted in 1978 U.S.C.C.A.N. 5787.

Court should ‘consider other factors as they arise.’”) (quoting *First Jersey Nat’l Bank v. Brown* (*In re Brown*), 951 F.2d 564, 572 (3d Cir. 1991)); *Frieouf v. U.S.*, 938 F.2d 1099, 1102 (10th Cir. 1991) (stating that section 1112(b) of the Bankruptcy Code’s list is nonexhaustive); *In re 3 Ram, Inc.*, 343 B.R. at 117 (“While the enumerated examples of ‘cause’ to convert or dismiss a chapter 11 case now listed in § 1112(b)(4) have changed under BAPCPA, the fact that they are illustrative, [and] not exhaustive has not.”) (citation omitted); *accord Frieouf v. United States* (*In re Frieouf*), 938 F.2d 1099, 1102 (10th Cir. 1991) (stating that section 1112(b)’s list is non-exhaustive).³

22. One such ground is where a party-in-interest shows that (i) there has been a “loss” or “diminution” of value of the estate and (ii) the debtor does not have a “reasonable likelihood of rehabilitation.” *See* 11 U.S.C. § 1112(b)(4)(A). Another such ground is a debtor’s inability to effectuate a successful plan of reorganization. *See* 11 U.S.C. § 1112(b)(4)(M); *In re Am. Cap. Equip., LLC*, 688 F.3d 145, 162 n.10 (3d Cir. 2012) (“the ‘inability to effectuate a plan’ remains a viable basis for dismissal because the listed examples of cause [in section 1112(b)] are not exhaustive”). Inability to effectuate a plan arises when a debtor lacks the capacity to “formulate a plan or carry one out” or where the “core” for a workable plan of reorganization “does not exist.” *See Preferred Door*, 990 F.2d 547, 549 (10th 1993) (quoting *Hall v. Vance*, 887 F.2d 1041, 1044 (10th Cir. 1989)) (finding an inability to effectuate a plan arises where debtor lacks capacity to formulate a plan or carry one out); *In re Blunt*, 236 B.R. 861, 865 (Bankr. M.D Fla. 1999) (finding cause to dismiss debtor’s case under section

³ In *In re TCR of Denver*, the court recognized the apparent typographical error in section 1112(b)(4) of the Bankruptcy Code. 338 B.R. at 498. The sixteen illustrative examples of “cause” set forth in that section are linked by the word “and” after subsection (O). *Id.* Accordingly, strict construction of the statute would require that a debtor establish all of the items constituting “cause” before a case can be dismissed by the court. *Id.* The TCR Court held that Congress could not have intended to require a “perfect storm” of all sixteen circumstances listed before a case may be dismissed. *Id.*

1112(b)(2) of the Bankruptcy Code where “core” for a workable plan of reorganization found to be nonexistent).

23. As set forth above, the Debtors have liquidated their core assets and no longer conduct business, thus there is no business to reorganize. Further, despite the Debtors’ best efforts to maximize value through the sale of their assets, the Sale fell short of anticipated sales prices and did not fully satisfy the prepetition secured debt owed to HSBC Bank PLC (the “**DIP Lender**”). Since the closing of the Sale, the Debtors’ estates have existed solely to (i) meet the Debtors’ obligations under the APA, (ii) satisfy the Debtors’ valid postpetition obligations incurred during the course of the Chapter 11 Cases, and (iii) effectuate an orderly exit from the Chapter 11 Cases. While doing so, the estates continue to accrue professional fees and expenses and fees payable to the U.S. Trustee, for which a finite amount has been reserved and segregated pursuant to the final budget, as approved by the Final DIP Order. There is no longer a business to reorganize, assets to distribute or funds to satisfy ongoing expenses, and thus, there is no reason or funding available to pursue a plan of reorganization or liquidation. Accordingly, the Debtors respectfully submit that cause exists to dismiss the Chapter 11 Cases pursuant to section 1112(b)(4) of the Bankruptcy Code and related case law.

C. DISMISSAL OF THE CHAPTER 11 CASES IS WARRANTED UNDER SECTION 305(a) OF THE BANKRUPTCY CODE.

24. Cause also exists to dismiss these Chapter 11 Cases pursuant to section 305(a) of the Bankruptcy Code, which provides that the “court, after notice and a hearing, may dismiss a case under this title . . . at any time if—(1) the interests of creditors and the debtor would be better served by such dismissal or suspension” *See* 11 U.S.C. § 305(a). *In re AMC Investors, LLC*, 406 B.R. 478, 487-88 (Bankr. D. Del. 2009).

25. Whether dismissal is appropriate under this provision is determined on a case-by-case basis and rests in the sound discretion of the bankruptcy court. *In re Sky Grp. Int'l, Inc.*, 108 B.R. 86, 91 (Bankr. W.D. Pa. 1989). Many factors are considered when determining the best interests of creditors and the debtor, including (i) the economy and efficiency of administration, (ii) whether federal proceedings are necessary to reach a just and equitable solution, (iii) whether there is an alternative means of achieving an equitable distribution of assets, and (iv) whether the debtor and the creditors are able to work out a less expensive out-of-court arrangement that better serves all interests in the case. *AMC Investors*, 406 B.R. at 488.

26. Here, as described above, cause exists for dismissal under section 305 of the Bankruptcy Code. The Debtors do not believe that there are any additional potential recoveries that would warrant keeping the Chapter 11 Cases open for further administration. Under the circumstances, conversion to chapter 7 would impose additional administrative costs with no corresponding benefit to the Debtors' creditors or their estates. Dismissal of the Chapter 11 Cases as set forth in this Motion provides the most efficient, cost-effective method of effectuating the wind-down of the Debtors' estates and ensures payment of all U.S. Trustee fees.

D. DISMISSAL IS IN THE BEST INTERESTS OF THE DEBTORS' CREDITORS AND THEIR ESTATES.

27. Since the Closing Date, the Debtors' estates have existed solely to (i) meet the Debtors' obligations under the APA, (ii) satisfy the Debtors' valid postpetition obligations incurred during the course of the Chapter 11 Cases, and (iii) effectuate an orderly exit from the Chapter 11 Cases. While the cases remain pending, the estates continue to accrue professional fees and expenses and U.S. Trustee fees. There is no longer a business to reorganize or assets to distribute to anyone other than the DIP Lender, and thus there is no reason, nor are there funds available, to pursue a plan of reorganization or liquidation. Accordingly, the Debtors submit that

cause exists to dismiss the Chapter 11 Cases pursuant to section 1112(b)(4) of the Bankruptcy Code and related relevant case law.

28. Once a court determines that cause exists to dismiss a chapter 11 case, the court must also evaluate whether dismissal is in the best interests of the estate and creditors. *See In re Calrissian LP*, 2018 WL 3854004, at *2 (Bankr. D. Del. 2018); *In re Superior Sliding & Window, Inc.*, 14 F.3d 240, 243 (4th Cir. 1994) (“Once ‘cause’ is established, a court is required to consider this second question of whether to dismiss or convert.”). As set forth herein, a variety of factors demonstrate that it is in the best interests of the Debtors, their estates, and their creditors to dismiss the Chapter 11 Cases and authorize the relief sought herein.

29. *First*, dismissal of a debtor’s case meets the best interests of creditors test where a debtor has nothing left to reorganize and the debtor’s assets are fixed and liquidated. *See In re BTS, Inc.*, 247 B.R. 301, 310 (Bankr. N.D. Okla. 2000); *In re Camden Ordinance Mfg. Co. of Arkansas, Inc.*, 245 B.R. 794, 799 (E.D. Pa. 2000) (finding that a reorganization to salvage a business which ceased doing business was not feasible); *In re Brogdon Inv. Co.*, 22 B.R. 546, 549 (Bankr. N.D. Ga. 1982) (dismissing chapter 11 case in part where there was “simply nothing to reorganize” and no reason to continue the reorganization).

30. *Second*, courts have found that dismissal is in the “best interests of creditors” where an interested party, other than the debtor, supports the dismissal of the debtor’s chapter 11 case. *See Camden Ordinance*, 245 B.R. at 798; *In re Mazzone*, 183 B.R. 402, 414 (Bankr. E.D. Pa. 1995), *aff’d*, 200 B.R. 568 (E.D. Pa. 1996) (factors weighed more heavily in favor of dismissal of chapter 11 case rather than conversion to chapter 7 where debtor and U.S. Trustee both favored dismissal). Here, the DIP Lender, the only creditor with any real economic interest in

any remaining assets, supports dismissal of these Chapter 11 Cases rather than conversion to chapter 7.

31. *Third*, a court may find dismissal to be in the “best interests of the creditors” where a debtor demonstrates the ability to oversee its own liquidation. *See Camden Ordnance*, 245 B.R. at 798; *Mazzocone*, 183 B.R. at 412 (“Only when a Chapter 11 debtor has no intention or ability to . . . perform its own liquidation . . . should a debtor be permitted to remain in bankruptcy[.]”). Here, to the extent this factor is applicable to the facts and circumstances of these proceedings, the Debtors have already liquidated most of their assets in advance of dismissal.

32. *Fourth*, and finally, dismissal is appropriate where, as here, the dismissal of a chapter 11 case will maximize the value of a debtor’s estate,⁴ because conversion to chapter 7 would impose substantial and unnecessary additional administrative costs upon the Debtors’ estates with no hope or expectation that the estate and unsecured creditors would receive more consideration. Under the circumstances, a chapter 7 trustee would have no funds to satisfy additional claims arising after conversion of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code.

33. The Debtors have further determined that there are no remaining unencumbered assets of any material value that warrant keeping the Chapter 11 Cases open or that justify the appointment of a chapter 7 trustee. As a result, creditors would not receive greater recoveries in a chapter 7 liquidation and there would be nothing of value for a chapter 7 trustee to do.

⁴ One element of the best interest test focuses upon whether the economic value of the estate is greater inside or outside of bankruptcy. *In re Clark*, 1995 WL 495951, at 5 (N.D. Ill. 1995); *In re Staff Inv. Co.*, 146 B.R. 256, 261 (Bankr. E.D. Cal. 1993). The prime criterion for assessing the best interests of the estate is the maximization of value as an economic enterprise. *See id.*

34. Numerous courts, both in this District and throughout the country, have approved orderly dismissals under similar circumstances to the Debtors, where the debtor lacks the requisite financial wherewithal to confirm a chapter 11 plan and/or where the costs associated with plan confirmation would eliminate the possibility of a meaningful creditor recovery. *See, e.g., The RP Co. Liquidating, LLC, et al.*, Case No. 23-10774, D.I. 700 (BLS) (Bankr. D. Del. Mar. 27, 2024); *Makeup Liquidating Holdings, LLC (f/b/a BHCosmetics Holdings, LLC)*, Case No. 22-10050, D.I. 415; *In re KB Toys, Inc.*, Case No. 08-13269, D.I. 914 (Bankr. D. Del. 2009); *In re CFM U.S. Corporation, et. al.*, Case No. 08-10668, D.I. 1097 (Bankr. D. Del. 2009); *In re Wickes Holdings, LLC, et al.*, Case No. 08-10212, D.I. 1418 (Bankr. D. Del. 2009); *In re Bag Liquidation, Ltd*, Case No. 08- 32096, D.I. 688 (Bankr. N.D. Tex. 2009); *In re Levitz Home Furnishings, Inc.*, Case. No. 05- 45189, D.I. 1167 (Bankr. S.D.N.Y. 2008); *In re Princeton Ski Shop, Inc., et al*, Case No. 07-26206, D.I. 546 (Bankr. D.N.J. 2008); *In re Harvey Elecs., Inc.*, Case No. 07-14051, D.I. 177 (Bankr. S.D.N.Y. 2008).

35. For these reasons, the Debtors submit that dismissal pursuant to section 1112 of the Bankruptcy Code is in the best interest of the Debtors' creditors and their estates.

E. THE COURT SHOULD DISMISS THE CHAPTER 11 CASES PURSUANT TO SECTION 105(a) OF THE BANKRUPTCY CODE.

36. Consistent with the aforementioned standards, the Debtors' Chapter 11 Cases should be dismissed under Section 1112(b) as soon as possible. Dismissal of these cases will not impair the rights of creditors, as dismissal will simply return such creditors to their relative positions immediately prior to filing of the Debtors' voluntary petitions. The Debtors' prepetition secured lenders continue to have a superior claim on all of the Debtors' assets.

37. Section 105(a) of the Bankruptcy Code provides the Court with supplemental authority to effectuate the overall policy objectives of the Bankruptcy Code in connection with

a motion to dismiss a chapter 11 case. *See* 11 U.S.C. § 105(a) (“The Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.”).

38. Here, given the circumstances discussed above, the Chapter 11 Cases should be dismissed to allow the other Debtor entities to winddown their affairs and exit from the Chapter 11 Cases as efficiently as possible. The voluntary dismissal of the Chapter 11 Cases accomplishes this goal. Absent a dismissal, the Debtors would continue to incur substantial chapter 11 administrative expenses with no hope of satisfying them.

39. Accordingly, the dismissal of the Chapter 11 Cases is consistent with the policy objectives of the Bankruptcy Code and this Court should dismiss such cases.

II. ALL ORDERS ENTERED IN THESE CHAPTER 11 CASES SHOULD REMAIN IN EFFECT

40. The dismissal of a chapter 11 case ordinarily vacates all orders previously entered by the bankruptcy court and restores all parties to the prepetition status quo. *See* 11 U.S.C. § 349(b). A bankruptcy court may, however, “for cause, order otherwise” *Id.* Courts in this jurisdiction have regularly allowed orders, including those approving releases and settlements, to be given continued effect after a dismissal, notwithstanding section 349 of the Bankruptcy Code. *See, e.g., In re TSAWD Holdings, Inc.*, No. 16-10527 (MFW) (Bankr. D. Del. Mar. 23, 2021) [Docket No. 4833] (giving continued effect to orders entered throughout the pendency of the chapter 11 cases, including sale orders); *In re RM Wind-Down Holdco LLC*, No. 18-11795 (MFW) (Bankr. D. Del. Feb. 18, 2020) [Docket No. 721] (same); *In re The Bon-Ton Stores, Inc.*, No. 18- 10248 (MFW) (Bankr. D. Del. Feb. 1, 2019) [Docket No. 1488] (same); *In re Sunco Liquidation, Inc.*, No. 17-10561 (KG) (Bankr. D. Del. Nov. 6, 2017) [Docket No. 865] (giving continued effect to orders entered throughout the pendency of the chapter 11 cases).

41. In these Chapter 11 Cases, the Debtors have sold their core assets to the Buyer pursuant to a highly negotiated APA and the Sale Order. Through the Sale, the Debtors have also assumed and assigned the facility lease to the Buyer. The Sale accomplished the main purpose of these Chapter 11 Cases. The Debtors believe it is critical that all orders, including the Sale Order, be given continued effect after dismissal, and that the relief requested is necessary to protect the Debtors and preserve the authority the Debtors had to act pursuant to the various orders entered by this Court. Given the facts and circumstances, the Debtors submit that ample cause exists to allow all prior orders, releases (including, without limitation, all releases granted to the DIP Lender through the Final DIP Order), stipulations, settlements, rulings, and judgments entered by the Court in connection with the Chapter 11 Cases to be given continued effect, notwithstanding the requested dismissal, unless otherwise provided by a subsequent stipulation with the same party or parties.

III. THE LIMITED EXCULPATION PROVISIONS IN THE DISMISSAL ORDER ARE APPROPRIATE AND SHOULD BE APPROVED

42. The limited exculpation sought by the Debtors in the Proposed Order is appropriate because it is fair, necessary, and supported by the factual record and applies to parties that played significant roles in these Chapter 11 Cases. *See, e.g., In re Great Atlantic & Pacific Tea Co., Inc., et al.*, No. 15-23007 (RDD) 2021 WL 5863393, at *12 (Bankr. S.D.N.Y. May 13, 2021) (approving exculpation of the debtors, creditors' committee and secured lender, among others, in dismissal order). The Debtors, their directors, officers, and employees of the Debtors who served during any portion of these Chapter 11 Cases, and the Debtors' professionals retained in these Chapter 11 Cases, the Committee and the Committee's professionals retained in these Chapter 11 Cases, HSBC Bank PLC in its capacity as DIP Lender and its professionals retained in these Chapter 11 Cases (collectively, the "**Exculpated Parties**") worked diligently

and cooperatively throughout the Chapter 11 Cases to consummate the successful sale of the Debtors' assets and accomplish an efficient and value-maximizing wind-down of the Debtors' estates. In consideration of those efforts, the Debtors seek limited exculpation for the Exculpated Parties.

43. The exculpation provisions included in the Proposed Order will protect the Exculpated Parties from liability for any actions taken (or omitted to be taken) in good faith, relating to or in connection with these Chapter 11 Cases, including the formulation and implementation of this Motion and the Proposed Order. Courts in this District have approved similar relief where, like here, it is warranted. *See, e.g., The RP Co. Liquidating, LLC, et al.*, Case No. 23-10774, D.I. 700 (BLS) (Bankr. D. Del. Mar. 27, 2024); *Makeup Liquidating Holdings, LLC (f/b/a BHCosmetics Holdings, LLC)*, Case No. 22-10050 (JKS) (Bankr. D. Del. September 23, 2022); *In re Destination Maternity Corp., et al.*, No. 19-12256 (BLS) (Bankr. D. Del. Dec. 29, 2021) [Docket No. 1229] (approving release provision in dismissal order that relieved estate fiduciaries of liability related to actions taken in good faith in connection with the chapter 11 proceedings); *In re Great Atlantic & Pacific Tea Co., Inc., et al.*, 2021 WL 5863393, at *12 (approving exculpation of the debtors, creditors' committee, and secured lender, among others, in dismissal order); *In re Real Industry, Inc., et al.*, No. 17-12464 (KJC) (Bankr. D. Del. Dec. 18, 2018) [Docket No. 1165] (approving exculpation of estate fiduciaries in dismissal order); *In re City Sports, Inc.*, No. 15-12054 (KG) (Bankr. D. Del. Mar. 4, 2016) [Docket No. 647] (approving broad release provision); *In re Coach Am Grp. Holdings Corp.*, No. 12-10010 (KG) (Bankr. D. Del. May 31, 2013) [Docket No. 1568] (approving consensual releases and broad exculpation). Further, the proposed exculpation provisions expressly exclude liability for any acts of gross negligence or willful misconduct on the part of the Exculpated Parties. The Debtors,

therefore, submit that the limited exculpation provisions in the Proposed Order are appropriate and request that they be approved.

IV. DEBTORS' AUTHORITY TO TERMINATE ENGAGEMENT OF CLAIMS AGENT

44. In connection with the closure of the Chapter 11 Cases, the Debtors request the claims and noticing services provided by the Claims Agent pursuant to the Stretto Retention Order be terminated. Upon termination of the Claims Agent's services, and except as otherwise provided in the Local Rules, the Debtors request that the Claims Agent shall have no further obligations under the Stretto Retention Order to the Debtors or to any other party in interest with respect to the Claims Agent's services.

45. Pursuant to Local Rule 2002-1(f)(ix), within fourteen (14) days after entry of the Proposed Order, the Claims Agent shall (a) forward to the Clerk of the Court an electronic version of all imaged claims, (b) upload the creditor mailing list into CM/ECF, and (c) docket a final claims register.

V. ESTABLISHMENT OF DEADLINE FOR FINAL FEE APPLICATIONS AND SCHEDULING A HEARING THEREON

46. The Debtors request that the Court establish a deadline for retained professionals to file their final fee applications (the "**Final Fee Applications**"). Doing so will allow the Debtors' estates to determine, in a timely and efficient manner, the final amount owed to Retained Professionals for fees and expenses related to these Chapter 11 Cases.

47. The Debtors further request that the Court schedule a hearing to consider approval of the Final Fee Applications.

NOTICE

48. Notice of this Motion will be provided to: (a) the U.S. Trustee; (b) counsel for the Committee; (c) counsel to the DIP Lender; (d) any party that has requested notice under

Bankruptcy Rule 2002; and (e) all creditors. The Debtors respectfully submit that no other or further notice of this Motion is required.

NO PRIOR REQUEST

49. No prior request for the relief sought in this Motion has been made to this or any other Court.

WHEREFORE, the Debtors respectfully request that the Court enter the Order, substantially in the form attached hereto: (a) dismissing the Debtors' Chapter 11 Cases under sections 105, 305(a) and 1112(b) of the Bankruptcy Code, Bankruptcy Rule 1017(a) and Local Rule 1017-2; and (b) granting such further relief as may be just and proper.

Dated: April 22, 2025
Wilmington, Delaware

CHIPMAN BROWN CICERO & COLE, LLP

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Debtors in Possession*

EXHIBIT A

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

In re:

iM3NY LLC, *et al.*,

Debtors.¹

Chapter 11

Case No. 25-10131 (BLS)

(Jointly Administered)

Related Docket Nos.

**ORDER (I) DISMISSING THE CHAPTER 11 CASES; (II) EXCULPATING
CERTAIN PARTIES FROM LIABILITY IN CONNECTION WITH THE
CHAPTER 11 CASES; (III) TERMINATING ENGAGEMENT OF CLAIMS
AGENT; AND (IV) GRANTING RELATED RELIEF**

Upon consideration of the motion (the “**Motion**”)² of the Debtors for entry of an order (i) dismissing the Debtors’ chapter 11 cases (collectively, these “**Chapter 11 Cases**”); (ii) exculpating certain parties in connection with the Chapter 11 Cases; (iii) terminating the services of Stretto, as claims agent (the “**Claims Agent**”) in these Chapter 11 Cases; and (iv) granting related relief, pursuant to sections 105(a), 305(a), 349 and 1112(b) of the Bankruptcy Code, Bankruptcy Rule 1017(a), and Local Rule 1017-2; and the Court having jurisdiction to consider the Motion and to grant the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and the matter being a core proceeding under 28 U.S.C. § 157(b)(2); and venue being proper under 28 U.S.C. §§ 1408 and 1409; and due and proper notice having been given, and it appearing that no other or further notice need be provided; and after due deliberation thereon and good and sufficient cause appearing therefor, it is hereby

¹ The Debtors in these chapter 11 cases, along with the last four digits of their respective tax identification numbers, are as follows: (i) iM3NY LLC (N/A); and (ii) Imperium3 New York, Inc. (4574). The address of the Debtors’ corporate headquarters is 1093 Clark Street, Endicott, New York 13760.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED as set forth herein.
2. All objections to the Motion or the relief requested therein that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are overruled on the merits and denied with prejudice.
3. Pursuant to sections 1112(b), 305(a), and 105(a) of the Bankruptcy Code, each of the Chapter 11 Cases are hereby dismissed effective as of the date of entry of this Order.
4. The Clerk of the Court shall enter this Order individually on each of the dockets of the Chapter 11 Cases and thereafter each docket shall be marked as “Closed.”
5. Notwithstanding anything to the contrary, including, without limitation, section 349 of the Bankruptcy Code, all prior orders, releases, stipulations, settlements, rulings, orders and judgments of this Court made during the course of the Chapter 11 Cases or any related adversary proceeding, including, without limitation, the Sale Order, and the Final DIP Order, shall remain final and in full force and effect, shall be unaffected by the dismissal of the Chapter 11 Cases, and are specifically preserved for all preclusive purposes, including, without limitation, collateral estoppel and *res judicata*.
6. Within ten (10) business days of entry of this Order, the Debtors shall remit all accrued and unpaid fees owed to the Office of the United States Trustee.
7. From and after the date of entry of this Order, the Debtors, their directors, officers and employees of the Debtors who served during any portion of these Chapter 11 Cases, and the Debtors’ professionals retained in these Chapter 11 Cases, the Committee and the Committee’s professionals retained in these Chapter 11 Cases, HSBC Bank PLC in its capacity as DIP Lender and its professionals retained in these Chapter 11 Cases (each an “**Exculpated Party**”), shall be

exculpated from any liability for any act taken or omitted to be taken in good faith from the Petition Date through the date of entry of this Order in connection with or related to the Chapter 11 Cases, including but not limited to, the implementation of this Order (other than an act in contravention of this Order), except for any claim or cause of action arising from the fraud, gross negligence, or willful misconduct of such Exculpated Party.

8. Entry of this Order is without prejudice to (a) the rights of the Debtors or any other party in interest to seek to reopen the Chapter 11 Cases for cause pursuant to section 350(b) of the Bankruptcy Code, and (b) the right of the Debtors or any other parties in interest to dispute, object to or resolve all claims that were filed against the Debtors in the Chapter 11 Cases.

9. All of the Debtors' executory contracts and leases, to the extent not rejected by prior Court order or having expired by their own terms, shall be deemed rejected as of the date of entry of this Order.

10. Upon entry of this Order, Stretto, as the Debtors' claims and noticing agent, is relieved of its responsibilities as the Debtors' claims and noticing agent in these Chapter 11 Cases provided, however, that Stretto shall provide the services described in this paragraph. Pursuant to Local Rule 2002-1(f)(ix), within fourteen (14) days of entry of this Order, the Claims Agent shall (i) forward to the Clerk of the Court an electric version of all imaged claims, (ii) upload the creditor mailing list into CM/ECF, and (iii) docket a combined final claims register in the lead case. Should the Claims Agent receive any mail regarding the Chapter 11 Cases after entry of this Order, the Claims Agent shall collect and forward such mail monthly, to the Debtors; provided, however, that the Claims Agent is authorized to destroy any undeliverable mail, correspondence, or other documents that it has in its possession related to the Debtors, other than the mail referenced in this paragraph.

11. The Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or relating to the implementation of any motion filed or order of this Court entered in these Chapter 11 Cases, including, without limitation, the Sale Order, and to rule on the allowance of the interim and final compensation of professionals retained in these Chapter 11 Cases.

12. Any professional shall file their Final Fee Applications on or before _____, 2025. The deadline to object to a Final Fee Application shall be _____, 2025 at 4:00 p.m. (*prevailing* Eastern Time). A hearing to consider all timely filed Final Fee Applications shall be held on _____, 2025 at ____:____.m. (*prevailing* Eastern Time).

13. From and after the entry of this Order, the Debtors, and any of their respective directors, officers, employees, managers, attorneys, consultants and advisors shall neither have nor incur any liability to any person for any act taken or omitted, or to be taken, in connection with the preparation, filing, or prosecution of the Chapter 11 Cases including, but not limited to, seeking and effectuating the dismissal of the Chapter 11 Cases and implementation or consummation of this Order.

14. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

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

In re:

iM3NY LLC, *et al.*,

Debtors.¹

Chapter 11

Case No. 25-10131 (BLS)

(Jointly Administered)

Hearing Date: May 13, 2025, at 10:00 a.m. (Eastern Time)

Objection Deadline: May 6, 2025, at 4:00 p.m. (Eastern Time)

**NOTICE OF DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) DISMISSING THE
CHAPTER 11 CASES; (II) EXCULPATING CERTAIN PARTIES FROM LIABILITY IN
CONNECTION WITH THE CHAPTER 11 CASES; (III) TERMINATING
ENGAGEMENT OF CLAIMS AGENT; AND (IV) GRANTING RELATED RELIEF**

PLEASE TAKE NOTICE that on April 22, 2025, the above-captioned debtors and debtors-in-possession (the “**Debtors**”) filed the *Debtors’ Motion for Entry of an Order (I) Dismissing the Chapter 11 Cases; (II) Exculpating Certain Parties from Liability in Connection with the Chapter 11 Cases; (III) Terminating Engagement of Claims Agent; and (IV) Granting Related Relief* (the “**Motion**”) with the United States Bankruptcy Court for the District of Delaware (the “**Court**”).

PLEASE TAKE FURTHER NOTICE that responses, if any, to the Motion, must be filed on or before **May 6, 2025, at 4:00 p.m. (Eastern Time)** (the “**Objection Deadline**”) with the Court, 824 North Market Street, Third Floor, Wilmington, Delaware 19801.

PLEASE TAKE FURTHER NOTICE that at the same time, you must serve a copy of the response on (i) the Debtors, iM3NY LLC, 1093 Clark Street, Endicott, New York 13760, Attn: Lukasz P. Cianciara, Chief Executive Officer (lcianciara@imperium3.com); (ii) counsel to the Debtors, Chipman Brown Cicero & Cole, LLP, Hercules Plaza, 1313 North Market Street, Suite 5400, Wilmington, Delaware 19801, Attn: William E. Chipman, Jr. (chipman@chipmanbrown.com) and Mark D. Olivere (olivere@chipmanbrown.com); (iii) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lock Box 35, Wilmington, Delaware 19801, Attn: Jane M. Leamy (jane.m.leafy@usdoj.gov) and Megan Seliber (megan.seliber@usdoj.gov); (iv) counsel to the DIP Lender, DLA Piper LLP (US), 1201 North Market Street, Suite 2100, Wilmington, Delaware 19801, Attn: Stuart Brown (stuart.brown@dlpiper.com); and (v) proposed counsel to the Official Committee of Unsecured Creditors, (a) Seward & Kissel LLP, One Battery Park Plaza, New York, New York 10004 (Attn: Robert J. Gayda, Esquire (gayda@sewkis.com); Catherine V. LoTempio, Esquire (lotempio@sewkis.com); and Andrew J. Matott, Esquire (matott@sewkis.com); and (b) Potter Anderson & Corroon LLP, 1313 North Market Street, 6th Floor, Wilmington, Delaware 19801

¹ The Debtors in these chapter 11 cases, along with the last four digits of their respective tax identification numbers, are as follows: (i) iM3NY LLC (N/A); and (ii) Imperium3 New York, Inc. (4574). The address of the Debtors’ corporate headquarters is 1093 Clark Street, Endicott, New York 13760.

(Attn: Christopher M. Samis, Esquire (csamis@potteranderson.com); R. Stephen McNeill, Esquire (rmcneill@potteranderson.com); James R. Risener III, Esquire (jrisener@potteranderson.com); and Ethan H. Sulik, Esquire (esulik@potteranderson.com), so as to be received on or before the Objection Deadline.

PLEASE TAKE FURTHER NOTICE that a hearing on the Motion will be held on **May 13, 2025, at 10:00 a.m. (Eastern Time)** before the Honorable Brendan L. Shannon, in the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, Sixth Floor, Court Room 1, Wilmington, Delaware 19801.

PLEASE TAKE FURTHER NOTICE THAT IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: April 22, 2025
Wilmington, Delaware

CHIPMAN BROWN CICERO & COLE, LLP

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