

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

In re:

Brightmark Plastics Renewal LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 25-10472 (LSS)

(Jointly Administered)

Hearing Date: 6/24/2025 @ 2:30 p.m. (ET)

Obj. Deadline: 6/17/2025 @ 4:00 p.m. (ET)

Related Docket Nos. 152, 191

**MOTION OF BRIGHTMARK PLASTICS ASHLEY HOLDCO LLC TO
ENFORCE FINAL DIP ORDER AND SALE ORDER**

Brightmark Plastics Ashley Holdco LLC (“Brightmark Parent”), by and through its undersigned counsel, hereby submits this *Motion of Brightmark Plastics Ashley Holdco LLC to Enforce Final DIP Order and Sale Order* (this “Motion”), seeking to enforce (a) this Court’s *Final Order (I) Authorizing the Debtors to Obtain Postpetition Financing; (II) Granting Liens and Superpriority Administrative Expense Claims Subject to Certain Permitted Liens; (III) Granting Adequate Protection; (IV) Modifying the Automatic Stay; and (V) Granting Related Relief* (the “Final DIP Order”) [Docket No. 152], and (b) this Court’s *Order (I) Approving the Sale of Substantially All of the Debtors’ Assets Free and Clear of All Liens, Encumbrances, Claims and Interests, (II) Approving the Assumption and Assignment of Designated Executory Contracts and Unexpired Leases, and (III) Granting Related Relief* [Docket No. 191] (the “Sale Order”)², and seeking entry of an order, substantively in the form of the proposed order attached hereto, pursuant

¹ The Debtors in these chapter 11 cases, together with the last four digits of each Debtor’s federal tax identification number, are: Brightmark Plastics Renewal LLC (7907); Brightmark Plastics Renewal Indiana LLC (7118); and Brightmark Plastics Renewal Services LLC (3789) (collectively, the “Debtors”). The Debtors’ headquarters are located at 1725 Montgomery St, Floor 3, San Francisco, CA 94111.

² Capitalized terms not otherwise defined shall have the same meaning as set forth in the Sale Order or the Final DIP Order, as applicable.

to sections 105, 362, 363 and 364 of title 11 of the United States Code, 11 U.S.C. § 101, *et. seq.* (the “Bankruptcy Code”), and respectfully states as follows:

PRELIMINARY STATEMENT

1. Brightmark Parent, as Purchaser, acquired substantially all assets of the Debtors. The transaction closed on May 13, 2025. [Docket No. 192]. The Purchased Assets included the Debtors’ Cash and Cash Equivalents. The Debtors’ maintain Cash in accounts at UMB Bank. Despite the closing of the sale, UMB Bank has refused to release control over the Debtors’ Cash, preventing the Debtors from delivering all of the Purchased Assets to the Purchaser. This Court should order UMB Bank to release control over the Debtors’ Cash, and the Debtors to transfer the Debtors’ Cash to the Purchaser.

2. In addition, UMB Bank violated the Final DIP Order. The Final DIP Order, at paragraph 17, as a form of adequate protection, provided a procedure for the Prepetition Secured Parties to withdraw the Debtors’ Cash from the UMB Accounts at UMB Bank. The procedures required the Prepetition Secured Parties to provide the Debtors and their counsel with three business days’ notice prior to any withdrawal of funds from the UMB Accounts. Around the Closing, on May 12-13, 2025, the Prepetition Secured Parties withdrew the amounts of \$6,000, \$10,665 and \$22,418 from the UMB Accounts without providing the requisite notice. Such withdrawals violated both the Final DIP order and the automatic stay, and the amounts should be returned to the UMB Accounts, for further transfer to the Purchaser as Purchased Assets.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are 11 U.S.C. §§ 105, 362, 363 and 364.

BACKGROUND

4. On March 16, 2025 (the “Petition Date”), the Debtors filed voluntary petitions for relief pursuant to chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), thereby initiating the cases (the “Chapter 11 Cases”) jointly administered under Case No. 25-10472. The Debtors are managing their businesses and their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

A. The Final DIP Order

5. On March 17, 2025, the Debtors filed their *Motion For Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing; (II) Granting Liens and Superpriority Administrative Expense Claims Subject to Certain Permitted Liens; (III) Granting Adequate Protection; (IV) Modifying the Automatic Stay; (V) Scheduling a Final Hearing; and (VI) Granting Related Relief* [Docket No. 26].

6. On April 22, 2025, the Court entered the *Final Order (I) Authorizing the Debtors to Obtain Postpetition Financing; (II) Granting Liens and Superpriority Administrative Expense Claims Subject to Certain Permitted Liens; (III) Granting Adequate Protection; (IV) Modifying the Automatic Stay; and (V) Granting Related Relief* (the “Final DIP Order”) [Docket No. 152].

7. As a form of adequate protection to the Prepetition Secured Parties, Paragraph 17 of the Final DIP Order provided a procedure for the Prepetition Secured Parties to access the

Debtors' Cash Collateral (the "Withdrawal Procedure"). The Withdrawal Procedure required the Prepetition Secured Parties to provide the Debtors and their counsel with three business days' notice prior to any withdrawal of funds, including funds the Debtors held in accounts with UMB Bank (collectively, the "UMB Accounts"). [Docket No. 152 at ¶ 17].

8. Paragraph 18 of the Final DIP Order modified the automatic stay in section 362 of the Bankruptcy Code only "to the extent necessary to permit the Debtors, the DIP Lender, and the Prepetition Secured Parties to accomplish the transactions contemplated" in the Final DIP Order. [Docket No. 152 at ¶ 18].

9. On May 12-13, 2025, the amounts of \$6,000, \$10,665 and \$22,418 were withdrawn from the UMB Accounts (the "Improper Withdrawals"). The Prepetition Secured Parties failed to comply with the Withdrawal Procedure prior to the Improper Withdrawals, thereby exceeding the bounds of the Final DIP Order's permitted modifications of the automatic stay. Had the Improper Withdrawals not occurred, such amounts would be part of the Debtors' Cash that constituted Purchased Assets under the APA.

10. On May 14, 2025, counsel for Purchaser sent correspondence (the "May 14 Letter") to counsel for UMB Bank, N.A. ("UMB Bank" or "UMB"), notifying UMB Bank of the Improper Withdrawals, and demanding return of the Improper Withdrawals to the UMB Accounts.

11. On May 28, 2025, counsel for UMB Bank sent responsive correspondence (the "May 28 Letter") to counsel for Brightmark Parent, arguing – for the first time – that the UMB Accounts do not belong to the Debtor, are not property of the estates and accordingly, are not subject to the automatic stay.

B. The Sale Order

12. On March 17, 2025, the Debtors filed their *Motion for Entry of Orders (I)(A) Approving Bidding Procedures for the Sale of Substantially All of the Debtors' Assets, (B) Authorizing the Debtors to Designate One or More Stalking Horse Bidders and to Provide Bid Protections, (C) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (D) Approving Assumption and Assignment Procedures, (E) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof and (F) Granting Related Relief; and (II)(a) Approving Sale of the Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances, (B) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (C) Granting Related Relief* [Docket No. 22] (the “Sale Motion”).

13. On April 4, 2025, the Court entered the *Order (I) Approving Bidding Procedures for the Sale of Substantially All of the Debtors' Assets, (II) Authorizing the Debtors to Designate One or More Stalking Horse Bidders and to Provide Bid Protections, (III) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (IV) Approving Assumption and Assignment Procedures, (V) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof, and (VI) Granting Related Relief* [Docket No. 85] (the “Bid Procedures Order”).

14. On May 7, 2025, the Debtors conducted an Auction in connection with the Sale Motion.

15. On May 8, 2025, the Debtors filed the *Notice of Auction Results* [Docket No. 176] (the “Auction Notice”). In the Auction Notice, the Indenture Trustee, by way of a credit bid, was identified as the “Successful Bid” for the assets of Brightmark Plastics Renewal Indiana LLC with a net credit bid of \$14,500,000. Brightmark Parent was designated as the Backup Bidder for

substantially all of the Assets of the Debtors, with a bid of (a) \$14,250,000 in cash, (b) \$7,000,000 in the form of a credit bid, and (c) the assumption of certain of the Debtors' liabilities.

16. On that same day, Brightmark Parent filed its *Objection to Sale* (the "Sale Objection") [Docket No. 179], arguing, among other things, that Brightmark Parent's bid was the highest and best offer, and that Brightmark Parent's bid should be deemed the Successful Bid.

17. At a hearing on May 9, 2025, this Court deemed Brightmark Parent the successful bidder, and entered the Sale Order on May 13, 2025. On that same day, Brightmark Parent closed the transaction (the "Bankruptcy Sale") and acquired the Purchased Assets from the Seller Parties. *See Notice of Closing* [Docket No. 192]. Attached to the Sale Order is the Asset Purchase Agreement dated May 12, 2025, by and among Brightmark Parent, on the one hand, and the Seller Parties on the other hand (the "APA").

18. On May 14, 2025, counsel for Brightmark Parent sent the May 14 Letter to counsel for UMB Bank, notifying UMB Bank that Brightmark Parent had closed the Bankruptcy Sale, and that UMB Bank remained in possession and control of the Debtors' Cash which constitutes a Purchased Asset under the APA's terms. The Correspondence identified the accounts at UMB Bank, and demanded that UMB Bank comply with the Sale Order and surrender possession and control of the Debtors' Cash.

19. In response, by way of the May 28 Letter, UMB Bank asserted it is "not in possession or control of any 'Cash that is a Purchased Asset' and accordingly is not required to turn over any amounts" in the Accounts to Brightmark Parent, as the Accounts do not belong to the Debtors, but to the Indenture Trustee.

BASIS FOR RELIEF

20. Section 105 of the Bankruptcy Code permits the Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a). The United States Supreme Court has recognized that a bankruptcy court has continuing jurisdiction “to interpret and enforce its own prior orders.” *Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 151 (2009).

21. Consistent with this authority, the Bankruptcy Court expressly retained such jurisdiction in the Sale Order:

The Court shall retain jurisdiction to (i) interpret, implement, and enforce the terms and provisions of this Sale Order, the Bidding Procedures Order, and the Asset Purchase Agreement, including all amendments thereto and any waivers and consents thereunder and each of the agreements executed in connection therewith, in all respects, (ii) decide any disputes concerning this Sale Order, the Asset Purchase Agreement or the rights and duties of the parties hereunder or thereunder or any issues relating to the Asset Purchase Agreement and this Sale Order including, but not limited to, the interpretation of the terms, conditions, and provisions hereof and thereof, the status, nature, and extent of the Purchased Assets and any Purchased Contracts and all issues and disputes arising in connection with the relief authorized herein, inclusive of those concerning the transfer of the assets free and clear of all Liens, and (iii) enforce the injunctions set forth herein.

Sale Order at ¶ 47.

22. Similarly, with respect to the Final DIP Order, the Court retained “jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of the DIP Credit Agreement or this Final Order.” [Docket No. 152 at ¶ 45].

ARGUMENT

A. The Sale Order

23. This Court retained jurisdiction over “any and all issues, disputes, controversies, causes of action, and/or claims with regard to, or arising under, such provisions [of the APA], including, without limitation, the enforcement thereof.” Sale Order at ¶ 14, as well as jurisdiction to “enforce the terms and provisions of this Sale Order[.]” *id.* at ¶ 47.

24. Paragraph 17 of the Sale Order unambiguously directs:

All persons or entities, presently or on or after the Closing Date, in possession or control of some or all of the Purchased Assets subject to a Sale, are authorized to surrender possession or control of the Purchased Assets to the Purchaser on the Closing Date of the Sale or at such time thereafter as the Purchaser may request.

Sale Order at p. 20, ¶ 17.

25. The Sale Order approved the APA, which defines “Cash” and “Cash Equivalents” as:

cash and cash equivalents (including deposit accounts, marketable securities and short-term investments) of Seller Parties, net of customer and other third party deposits, deferred revenue, any overdrafts and any outstanding checks, drafts, wire transfers or similar instruments which have not been applied against such cash and cash equivalent balances.

[Docket No. 191-1, p. 21 of 68].

26. Cash and Cash Equivalents are included in the APA’s definition of Purchased Assets. [Docket No. 191-1, p. 25 of 68].

27. Pursuant to the Sale Order and the APA, Brightmark Parent purchased the Debtors’ Cash free and clear of any liens UMB Bank may have held on the Debtors’ Cash.

28. As of May 28, 2025, the Debtors held approximately \$623,577.56 of the Debtors’ Cash in the UMB Accounts. *See Declaration of G. Robert Powell in Support of Brightmark*

Plastics Ashley Holdco LLC's Motion to Enforce Final DIP Order and Sale Order (the "Powell Declaration") at ¶ 11, filed contemporaneously herewith.

29. UMB Bank asserts that the Debtors' Cash is not property of the Debtors' bankruptcy estates and refuses to release possession and control of the Debtors' Cash.

30. UMB Bank's position has no basis in fact. During these cases, both the Debtors and UMB Bank have consistently taken the position that the funds in the UMB Accounts are cash collateral, meaning that such funds are property of the Debtors' bankruptcy estates.

31. The Debtors have consistently claimed legal possession the UMB Accounts. In the *Declaration of Craig R. Jalbert in Support of Chapter 11 Petitions and First Day Motions* (the "First Day Declaration") [Docket No. 25], the Debtors' CRO states "the Debtors maintain fifteen (15) bank accounts, of which twelve (12) are with UMB which are all restricted accounts established pursuant to the Prepetition Credit Documents." First Day Declaration at ¶37, p. 12. Likewise, the Debtors scheduled the Debtors' Cash in the UMB Accounts on Brightmark Plastics Renewal Indiana LLC's Schedule B as property of the estate. *See* Docket No. 145 at pp. 14-15 of 71.

32. In the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue to Operate their Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Perform Intercompany Transactions, and (D) Maintain Existing Business Forms; (II) Authorizing the Debtors' Banks to Honor All Related Payment Requests; and (III) Granting Related Relief* (the "Cash Management Motion") [Docket No. 16], the Debtors' plainly state that "Debtor Brightmark Plastics Renewal Indiana LLC maintains twelve (12) Bank Accounts at UMB (the "UMB Bank Accounts"). UMB, in its capacity

as Indenture Trustee under the Indenture, maintains control over the UMB Bank Accounts.” Cash Management Motion at ¶11, p. 4.

33. In the *Debtors’ Objection to Motion of UMB Bank, N.A. as Trustee and Collateral Agent, for Entry of an Order (I) Dismissing the Chapter 11 Cases for Cause Pursuant to 11 U.S.C. § 1112 or (II) in the Alternative, Granting Relief from the Automatic Stay Pursuant to 11 U.S.C. § 362* (the “Debtors’ Objection”) [Docket No. 167], the Debtors recounted that a central impetus to filing these Bankruptcy Cases was when “the Indenture Trustee swept all the cash, approximately \$893,029.23, from the Debtors’ bank accounts held at UMB.” Debtor’s Objection at ¶12, p. 5 (emphasis added).

34. While the Debtors never sought authority to use UMB Bank’s cash collateral, all parties operated under the belief that the funds in the UMB Accounts were the Debtors’ property as well as UMB Bank’s cash collateral. In the *Declaration of Mark E. Chesen in Support of Debtors’ Motion for Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing; (II) Granting Liens and Superpriority Administrative Expense Claims Subject to Certain Permitted Liens; (III) Granting Adequate Protection; (IV) Modifying the Automatic Stay; (V) Scheduling a Final Hearing; and (VI) Granting Related Relief* (the “DIP Declaration”) [Docket No. 27] the Debtors’ Investment Banker states, in clear reference to the UMB Accounts, that “[t]here is no use of the UMB Cash Collateral, to the contrary through the collection of receipts, will increase from approximately \$914,000 at the Petition Date to over \$1.85 million at the end of the Budget Period[.]” DIP Declaration at ¶37, p. 10.

35. Most notably, on at least two separate occasions UMB Bank itself stated the UMB Accounts were accounts holding cash collateral. First, in the *Combined Initial Response and Reservation of Rights of UMB Bank, N.A. as Trustee, to Debtors’ First Day Pleadings* (the “UMB

Response”) [Docket No. 31] UMB commented, in relation to the Debtors’ proposed DIP Order that,

It appears the Debtors are taking the position that the restricted cash receipts will be deposited into the Trustee’s accounts and that the Debtors will not seek to access that cash and use it as cash collateral. The Trustee takes no issue with that approach.

UMB Response at FN3, p. 4.

36. While indirect, UMB Bank is admitting that the funds in the UMB Accounts are cash collateral, which means that such funds are property of the Debtors’ estates.

37. UMB Bank was more to the point at the April 14, 2025 final hearing on DIP financing. UMB Bank’s counsel stated, in the context of discussing adequate protection, that:

in an effort to reach resolution, we have agreed to the language that was just discussed in the order, that we will have relief from stay to **at least access the cash collateral** to the extent needed to the extent we decide to use it.

4/14/25 Transcript at p. 7:22 – 8:1.³

38. The funds currently sitting in the UMB Accounts are proceeds of the Debtors’ Accounts Receivable, which proceeds are a Purchased Asset under the APA.

39. On March 12, 2025, \$144,584.00 was deposited into the UMB Accounts from the Debtors’ accounts receivable. Powell Declaration at ¶6.

40. Following the March 16, 2025, Petition Date, \$264,832.06 was deposited into the UMB Accounts from the Debtors’ accounts receivable. *Id.* at ¶8.

41. Following the sale closing, an additional \$247,621.00 was deposited into the UMB Accounts from the Debtors’ accounts receivable. *Id.* at ¶10.

³ A true and correct copy of the transcript of this Court’s April 14, 2025 hearing on the entry of the Final DIP Order (the “4/14/25 Transcript”) is attached hereto as Exhibit A.

42. From January 1, 2024, until shortly before the Petition Date, the Debtors' accounts receivable were deposited into the UMB Accounts and were used by the Debtors to fund maintenance and operations. *Id.* at ¶12.

43. The deposit of the Debtors' accounts receivable into the UMB Accounts, and the Debtor's subsequent use of such deposits to fund maintenance and operations, had no impact on the outstanding balance owed to the Debtors' bond holders. In other words, the deposits were not a paydown of the bond debt, and the withdrawals were not a re-borrowing of bond debt. The deposits and withdrawals of the Debtors' accounts receivable had no impact on the bond debt. *Id.* at ¶13. That is because the funds the Debtors deposited into the UMB Accounts was the Debtors' property.

44. Based on the foregoing, the Debtors' Cash in the UMB Accounts is property of the Debtors' estates, and constitute Purchased Assets that were sold to the Purchaser free and clear of UMB Bank's liens. UMB Bank's continued possession of the Debtors' Cash after the closing of the Bankruptcy Sale violates the Sale Order. UMB Bank should be directed to release possession and control of the Debtors' Cash so that the Debtors can transfer the Purchased Assets to the Purchaser.

B. The Final DIP Order

45. This Court also retained "jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of the DIP Credit Agreement or this Final [DIP] Order." [Docket No. 152 at ¶ 45].

46. The Final DIP Order, at paragraph 17, as a form of adequate protection, modified the automatic stay by providing the Withdrawal Procedure which permitted the Prepetition Secured Parties to withdraw the Debtors' Cash from the UMB Accounts at UMB Bank, provided

that proper notice was provided. [Docket No. 152 at ¶ 17]. This procedure required UMB Bank to provide the Debtors and their counsel with three business days' notice prior to any withdrawal of funds from the UMB Accounts.

47. Around the closing on May 12-13, 2025, UMB Bank withdrew the amounts of \$6,000, \$10,665 and \$22,418 from the UMB Accounts without complying with the Withdrawal Procedure. In so doing, UMB Bank (or the Prepetition Secured Parties) violated both the Final DIP Order and the automatic stay.

48. UMB Bank (or the Prepetition Secured parties) should be directed to return such amounts to the UMB Accounts, to enable the Debtors to withdraw such amounts for further transfer to the Purchaser as Purchased Assets.

CONCLUSION

WHEREFORE, Brightmark Parent requests that the Court: (i) compel UMB Bank to comply with the Sale Order and release possession and control of the Debtors' Cash to enable the Debtors to withdraw the Debtors' Cash and transfer the Purchased Assets to the Purchaser; (ii) UMB Bank should be directed to return to the UMB Accounts the amounts that were improperly withdrawn in violation of the Final DIP Order and the automatic stay, to enable the Debtors to withdraw such amounts for further transfer to the Purchaser as Purchased Assets; and (iii) grant such other relief as is just.

Dated: June 4, 2025

CHIPMAN BROWN CICERO & COLE, LLP

/s/ Mark L. Desgrosseilliers

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EXHIBIT A

April 14, 2025 Hearing Transcript

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: Chapter 11
Brightmark Plastics Case No. 25-10472 (LSS)
Renewal LLC, et al., (Jointly Administered)
Debtors. April 14, 2025
11:30 a.m.
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TRANSCRIPT OF HEARING
BEFORE THE HONORABLE LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE

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INDEX

HEARING REGARDING:

Agenda Matter No. 12 - Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing; (II) Granting Liens and Superpriority Administrative Expense Claims Subject to Certain Permitted Liens; (III) Granting Adequate Protection; (IV) Modifying the Automatic Stay; (V) Scheduling a Final Hearing; and (VI) Granting Related Relief [Docket No. 26]

Declarations

Jalbert Declaration
Chesen Declaration

1 (Recorded proceedings commence at 11:31 a.m.)

2 THE CLERK: Please rise.

3 THE COURT: Please be seated.

4 MS. MORALES: Good morning, Your Honor.

5 THE COURT: Good morning.

6 MS. MORALES: Katelin Morales from Potter Anderson
7 & Corroon on behalf of the debtors.

8 I'll start with the amended agenda which the
9 debtors filed Friday at Docket No. 122.

10 There's only one matter going forward today and
11 that's entry of the final DIP motion, the final DIP order,
12 which I'm happy to report is going forward today on a
13 consensual basis.

14 THE COURT: Oh, okay. Thank you.

15 MS. MORALES: And so by way of some background, as
16 you may recall, the debtors are proposing a DIP facility here
17 on a subordinated priority basis in the aggregate amount of
18 up to 13,235,000.

19 I did want to note that there was an increase in
20 the aggregate amount, the available funds under the DIP
21 facilities when the interim order was entered. The debtors
22 were expecting a tax abatement which was temporarily denied.
23 As they do intend to reapply for such abatement, they were
24 advised to pay the full amount now while the appeal is
25 pending. Accordingly, there's been a corresponding increase

1 to the borrowing amount.

2 The financing will allow the debtors to continue
3 to build out and improve the circularity center from day to
4 day operations and from the cost of bankruptcy all while
5 working towards the company's goal of reducing cost of waste
6 across the globe.

7 At this point, Your Honor, I would like to move
8 into evidence the declaration of Craig Jalbert, the debtors'
9 CRO, in further support of the DIP motion. That's at Docket
10 No. 104.

11 And we move the declaration of Mark Chesen in
12 support of the DIP motion, which was filed at Docket No. 27.
13 Both Mr. Chesen and Mr. Jalbert are available via Zoom if you
14 have any questions.

15 THE COURT: Does anyone object to either of those
16 declarations coming into evidence?

17 They're admitted.

18 (Jalbert Declaration entered into evidence.)

19 (Chesen Declaration entered into evidence.)

20 THE COURT: They're admitted. Does anyone seek to
21 cross-examine either declarant? I hear no one.

22 MS. MORALES: Thank you, Your Honor.

23 The debtors filed a proposed final DIP order on
24 April 9th which is at Docket No. 106. But like I mentioned,
25 since then the debtors, the DIP lender and the indentured

1 trustee have worked diligently to come to a resolution. And
2 I'm happy to report that the parties have a revised form of
3 final order which there is going to be some additional
4 changes from what I'll hand you up. But it's mostly there.

5 So if I may approach, I have a clean and a redline
6 for you we can walk through.

7 THE COURT: You may. Thank you.

8 MS. MORALES: All right. So I'll walk through the
9 redline.

10 Page 2, you'll notice an increase in the borrowing
11 amounts like I mentioned. Page 10, you'll just see a cleanup
12 to reflect further changes. Page 18 towards the top, you'll
13 see some comments from the indentured trustee to resolve some
14 issues that were raised in their objection having to do with
15 information requests.

16 THE COURT: Yes.

17 MS. MORALES: Page 20, paragraph 17 is a new
18 additional paragraph to reflect a resolution between the
19 parties concerning fees and the UMB accounts specifically.

20 THE COURT: Okay.

21 MS. MORALES: And there will be a slight change to
22 the language at the end of that paragraph. We just received
23 an email before this, so we'll resubmit a redline and a clean
24 under COC later today.

25 THE COURT: Okay.

1 MS. MORALES: And then the last changes on page
2 22, towards the bottom, just some clarifications on the
3 indentured trustee's right to credit bid.

4 THE COURT: Okay.

5 MS. MORALES: And that's it, Your Honor.

6 Unless you have any questions, I'll cede the
7 podium to counsel for the indentured trustee.

8 THE COURT: Ms. Brownstein.

9 MS. BROWNSTEIN: Good morning, Your Honor. Beth
10 Brownstein from Arent Fox Schiff on behalf of UMB in its
11 capacity as indentured trustee and collateral agent.

12 Again, Your Honor, I want to thank you for
13 allowing me to appear via Zoom today in light of the holiday.
14 I really appreciate it.

15 I do want to provide some context behind sort of
16 this resolution and not objecting, but not necessarily
17 waiving any rights as a result of our non-objection to the
18 DIP.

19 I want to reiterate first which I have said to
20 Your Honor before that which is that, you know, we do not ask
21 for these cases to be filed, and we certainly do not pressure
22 the debtors to file the cases. We continue to believe that
23 they're being filed by the insider for the insider, and that
24 the insider DIP is part of that strategy.

25 The trustee had raised concerns with the budget

1 that have still gone somewhat unanswered. So including why
2 the debtors are continuing to pay on non-contractual
3 obligations to the insider including to its executives when
4 there is a lack of historical practice to do that; why
5 they're spending money on cap X, that seems to be
6 inconsistent with pre-petition practices and even their post-
7 petition projections.

8 We've also raised concerns about whether we're
9 adequately protected. I'll note that the original budget had
10 an estimate of about \$930,000 to be in our account at the end
11 of the period. That projection has changed by 400, decreased
12 by 400,000. So now we're projected to have a little over
13 \$500,000 in that account.

14 And we still don't have information about the
15 mechanic's liens and why we should be adequately protected by
16 the debtors making those payments which we had requested at
17 the first day hearing.

18 And, of course, the response to many of our
19 concerns is that the DIP is junior and so we shouldn't be
20 concerned because we're not being primed. And we really
21 shouldn't be concerned with how the dollars are spent.

22 Now, in an effort to reach resolution, we have
23 agreed to the language that was just discussed in the order,
24 that we will have relief from stay to at least access the
25 cash collateral to the extent needed to the extent we decide

1 to use it.

2 And that there is no finding in this order, Your
3 Honor, that we are adequately protected. All of our rights
4 are preserved in that respect. So to the extent we need to
5 seek additional adequate protection or seek other relief from
6 the Court, nothing in this order precludes us from doing it,
7 doing that, and Your Honor is not making a finding at this
8 time that we are adequately protected.

9 I do want to note one other item which is that the
10 debtor did file a 506(c) surcharge motion that essentially
11 seeks to surcharge us, the trustee, for the, essentially the
12 entire amount of the DIP.

13 And so we want to make sure that nothing in this
14 order pre-judges that 506(c) motion is going to be used in
15 that 506(c) motion, and that all of our rights, you know, are
16 reserved. And we're not waiving any rights with respect to
17 that 506(c), you know, if and when it's heard, that there's
18 nothing in this order that's going to be a finding related to
19 that order.

20 So with that, Your Honor, and in that context, we
21 do have a, subject to what Ms. Morales mentioned about fixing
22 some of the language, we will not be moving forward with our
23 objection today.

24 THE COURT: Thank you.

25 MS. BROWNSTEIN: Thank you, Your Honor.

1 THE COURT: Does anyone else wish to be heard?

2 I hear no one else. Okay.

3 Well, I will approve a consensual form of order
4 which I understand we have with a few changes. So if you re-
5 file that under certification of counsel and let chambers
6 know that that has been done, I will look for it and we'll
7 get it signed.

8 MS. MORALES: Thank you, Your Honor.

9 I believe that there is nothing else on the agenda
10 going forward.

11 THE COURT: Very good. Thank you, we're
12 adjourned.

13 ALL: Thank you, Your Honor.

14 (Proceedings concluded at 11:40 a.m.)

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CERTIFICATION

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of our knowledge and ability.

/s/ Theresa Pullan

April 18, 2025

Theresa Pullan, CET-782

Certified Court Transcriptionist

For Reliable

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

In re:

Brightmark Plastics Renewal LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 25-10472 (LSS)

(Jointly Administered)

Related Docket Nos. 152, 191, ____

**ORDER APPROVING MOTION OF
BRIGHTMARK PLASTICS ASHLEY HOLDCO LLC
TO ENFORCE FINAL DIP ORDER AND SALE ORDER**

Upon the motion (the “Motion”)² of Brightmark Parent seeking entry of an order (this “Order”), pursuant to sections 105, 362, 363 and 364 of the Bankruptcy Code enforcing certain provisions of both this Court’s Final DIP Order and the Sale Order; and this Court having jurisdiction over this matter in accordance with 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; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of these Chapter 11 Cases is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that Brightmark Parent’s notice of the Motion and opportunity for a hearing on the Motion were appropriate and no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the

¹ The Debtors in these chapter 11 cases, together with the last four digits of each Debtor’s federal tax identification number, are: Brightmark Plastics Renewal LLC (7907); Brightmark Plastics Renewal Indiana LLC (7118); and Brightmark Plastics Renewal Services LLC (3789) (collectively, the “Debtors”). The Debtors’ headquarters are located at 1725 Montgomery St, Floor 3, San Francisco, CA 94111.

² Capitalized terms used herein but not defined shall have the meaning ascribed to them in the Motion.

proceedings had before the Court after due deliberation thereon and sufficient cause appearing therefor, it is HEREBY ORDERED THAT,

1. The Motion is GRANTED, as set forth herein.
2. The Court finds that UMB Bank has violated the Final DIP Order and the Sale Order.
3. UMB Bank shall immediately release its possession and control of the Debtors' Cash, thereby enabling the Debtors to withdraw the Debtors' Cash for transfer to Brightmark Parent as a Purchased Asset.
4. UMB Bank shall immediately return the Improper Withdrawals to the Debtors, thereby enabling the Debtors to transfer the Improper Withdrawals to Brightmark Parent as a Purchased Asset.
5. This Court shall hold a status conference on this matter on [_____].
6. The Court shall retain jurisdiction with respect to all matters arising from or related to the interpretation, implementation, and enforcement of this Order.

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

In re:

Brightmark Plastics Renewal LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 25-10472 (LSS)

(Jointly Administered)

Hearing Date: 6/24/2025 @ 2:30 p.m. (ET)

Obj. Deadline: 6/17/2025 @ 4:00 p.m. (ET)

**NOTICE OF MOTION OF BRIGHTMARK PLASTICS ASHLEY HOLDCO LLC TO
ENFORCE FINAL DIP ORDER AND SALE ORDER**

PLEASE TAKE NOTICE that on June 4, 2025, Brightmark Plastics Ashley Holdco LLC (“Brightmark Parent”), filed the attached Motion of Brightmark Plastics Ashley Holdco LLC to Enforce Final DIP Order and Sale Order (the “Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

PLEASE TAKE FURTHER NOTICE that responses, if any, to the Motion, must be filed on or before **June 17, 2025, at 4:00 p.m. (Eastern)** (the “Objection Deadline”) with the Court, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801.

PLEASE TAKE FURTHER NOTICE that at the same time, you must serve a copy of the response to the undersigned counsel so as to be received on or before the Objection Deadline.

PLEASE TAKE FURTHER NOTICE THAT A HEARING ON THE MOTION AT WILL BE HELD ON JUNE 24, 2025, AT 2:30 P.M. (EASTERN) BEFORE THE HONORABLE LAURIE S. SILVERSTEIN, IN THE BANKRUPTCY COURT, 824 NORTH MARKET STREET, 6TH FLOOR, COURTROOM 2, WILMINGTON, DELAWARE 19801.

¹ The Debtors in these chapter 11 cases, together with the last four digits of each Debtor’s federal tax identification number, are: Brightmark Plastics Renewal LLC (7907); Brightmark Plastics Renewal Indiana LLC (7118); and Brightmark Plastics Renewal Services LLC (3789). The Debtors’ headquarters are located at 1725 Montgomery St, Floor 3, San Francisco, CA 94111.

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

Dated: June 4, 2025
Wilmington, Delaware

CHIPMAN BROWN CICERO & COLE, LLP

Mark L. Desgrosseilliers

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-and-

Paul M. Rosenblatt (admitted *pro hac vice*)
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Atlanta, GA 30309-4528
Telephone: (404) 815-6321
Email: PRosenblatt@ktslaw.com

Counsel for Brightmark Plastics Ashley Holdco LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 4, 2025, I caused a true and correct copy of the foregoing **MOTION OF BRIGHTMARK PLASTICS ASHLEY HOLDCO LLC TO ENFORCE FINAL DIP ORDER AND SALE ORDER**, to be filed with the Court's CM/ECF system and to be served in accordance therewith to all parties receiving electronic noticing, upon the parties listed below and upon the Core/2002 attached hereto as **Exhibit A**, via electronic mail, and U.S. First Class Mail.

By: /s/ Mark L. Desgrosseilliers
Counsel for Brightmark Plastics Ashley Holdco LLC

VIA HAND DELIVERY:

POTTER ANDERSON & CORROON LLP Jeremy W. Ryan R. Stephen McNeill Katelin A. Morales 1313 N. Market Street, 6 th Floor Wilmington, DE 19801 jryan@potteranderson.com rmcneill@potteranderson.com kmorales@potteranderson.com <i>Counsel for the Debtor</i>	Benjamin A. Hackman The Office of the United States Trustee for the District of Delaware 844 King Street, Suite 2207 Wilmington, DE 19801 Benjamin.a.hackman@usdoj.gov <i>Office of the United States Trustee</i>
Womble Bond Dickinson (US) LLP Attn: Matthew P Ward 1313 N. Market Street, Ste 1200 Wilmington, DE 19801 <i>Counsel to Indenture Trustee</i>	

VIA OVERNIGHT MAILING:

Brightmark Plastics Renewal LLC ATTN: President or Chief Legal Officer 1725 Montgomery St., Fl 3 San Francisco, CA 94111	ArentFox Schiff LLP Attn: Beth M. Brownstein Mark A. Angelov 1301 Ave of the Americas, 42nd F New York, NY 10019
<i>The Debtor</i>	<i>Counsel to Indenture Trustee</i>
ArentFox Schiff LLP Attn: James E. Britton 800 Boylston St, 32nd Fl Boston, MA 02199	Brightmark Plastics Ashley Holdco LLC Attn: General Counsel 1725 Montgomery St, 3rd Fl San Francisco, CA 94111-1018
<i>Counsel to Indenture Trustee</i>	<i>The Debtor</i>

/s/ Mark L. Desgrosseilliers
Mark L. Desgrosseilliers (Bar No. 4083)

EXHIBIT A

Core/2002 SERVICE LIST

Creditor	Address1	Address2	Address3	Address4	Address5	Email	Method of Service
BBC Pump & Equipment Company, Inc	Sales Engineer	777 N Tibbs Ave	Indianapolis, IN 46222			AR@bbcpump.com	Electronic Mail
Brightmark Plastics Ashley Holdco LLC	Attn: General Counsel	1725 Montgomery St, 3rd Fl	San Francisco, CA 94111-1018				First-Class Mail
Brushy Creek Industrial Solutions, LLC	2909 Graphic Pl	Plano, TX 75075				kt@bcindsol.com	Electronic Mail
CB&I LLC	dba McDermott	915 N Eldridge Parkway	Houston, TX 77079			cash applications@mcdermott.com	Electronic Mail
Chemted LLC	981 TX-174	Rio Vista, TX 76093				kk@chemted.com	Electronic Mail
Chipman Brown Cicero & Cole LLP	Attn: Mark L Desgrosseilliers	Hercules Plz	1313 N Market St, Ste 5400	Wilmington, DE 19801		desgross@chipmanbrown.com	Electronic Mail
Chipman Brown Cicero & Cole, LLP	Attn: Alison R Maser	Attn: Robert A Weber	Hercules Plz	1313 N Market St, Ste 5	Wilmington, DE 19801	desgross@chipmanbrown.com	Electronic Mail
Chipman Brown Cicero & Cole, LLP	Attn: Robert A Weber					maser@chipmanbrown.com	Electronic Mail
Colliers, Engineering & Design Inc	101 Crawford's Corner Rd, Ste 3400	Holmdel, NJ 07733				weber@chipmanbrown.com	Electronic Mail
Consolidated Mechanical Inc (CMI)	2900 Airpark Dr	Owensboro, KY 42301				remittanceadvice@collierseng.com	Electronic Mail
E2G, The Equity Engineering Group, Inc	Operations Coordinator	20600 Chagrin Blvd, Ste 1200	Shaker Heights, OH 44122			scampbell@cmipower.com	Electronic Mail
Enpro, Inc	Sales Dept	121 S Lombard Rd	Addison, IL 60101-3084			accounting@e2g.com	Electronic Mail
Flosource Inc	1405 Hancel Pkwy	Moorestville, IN 46158				beth_obrien@enproinc.com	Electronic Mail
G&L Corp	3101 Brooklyn Ave	Ft Wayne, IN 46809				ar@flosource.com	Electronic Mail
George E Booth Company, Inc	8202 W 10th St	Indianapolis, IN 46214				krista@g-incorp.com	Electronic Mail
Heat Power Engineering Co Inc (HPE)	Sales Dept	702 Incentive Dr	Ft Wayne, IN 46825			ar@gebooth.com	Electronic Mail
Hydrocarbon Filtration LLC	107 B Shooting Club Rd	Boerne, TX 78006				accounting@therigteam.com	First-Class Mail
IMET Corp	P.O. Box 470812	Cleveland, OH 44147				cmills@imet.net	Electronic Mail
Industrial Applied Technologies	2381 W Stadium Blvd	Ann Arbor, MI 48103				tbearden.iatlinc@gmail.com	Electronic Mail
Internal Revenue Service	Attn: Centralized Insolvency Operation	P.O. Box 7346	Philadelphia, PA 19101-7346				First-Class Mail
IPS Resources LLC	146 Dixie Hwy	Rossford, OH 46571				accounting@ipscontractor.com	Electronic Mail
JK ICE Ventures Inc	dba Industrial Contracting & Engineering	319 Pokagon Trl, Ste C	Angola, IN 46703			kwilliams@jici.com	Electronic Mail
Kammerer Inc	2348 E Kammerer Rd	Kendallville, IN 46755				AR@kammerer-inc.com	Electronic Mail
Kendall Electric Inc	5101 S Sprinkle Rd	Portage, MI 49002				ar@kendallgroup.com	Electronic Mail
Kilpatrick Townsend & Stockton LLP	Attn: Paul M Rosenblatt	1100 Peachtree St Ne, Ste 2800	Atlanta, GA 30309-4528			PRosenblatt@ktslaw.com	Electronic Mail
Kilpatrick Townsend & Stockton LLP	Attn: Paul M Rosenblatt	1100 Peachtree St NE, Ste 2800	Atlanta, GA 30309			prosenblatt@ktslaw.com	Electronic Mail
Krohne Inc	55 Cherry Hill Dr	Beverly, MA 01915				AR@KROHNE.COM	Electronic Mail
Larry's Lock & Safe Service, Inc	dba Lakeland Electronics	1601 N Wayne St, Ste 107	Angola, IN 46703			mike@lakelandelectronics.com	Electronic Mail
MTR Machining Concept, Inc	2878 W 800 S	Ashley, IN 46705				customerservice@mtrmachine.com	Electronic Mail
NES Global Ltd	1 Memorial City Plz	800 Gessner Dr, Ste 800	Houston, TX 77024			us.receiveables@nesgt.com	Electronic Mail
Office of the Attorney General	Attn: Kathy Jennings	Carvel State Office Bldg	820 N French St	Wilmington, DE 19801		attorney.general@delaware.gov	Electronic Mail
Office of the Attorney General	Attn: Todd Rokita	Indiana Govt Ctr S	302 W Washington St, 5th Fl	Indianapolis, IN 46204		Constituent@atg.in.gov	Electronic Mail
Office of the Attorney General of Delaware	Delaware Dept of Justice	Carvel State Bldg	820 N French St	Wilmington, DE 19801		attorney.general@delaware.gov	Electronic Mail
Office of the US Attorney	for the District of Delaware	1313 N Market St	P.O. Box 2046				First-Class Mail
Office of the US Trustee	for the District of Delaware	J Caleb Boggs Federal Bldg	844 King St, Ste 2207	Lockbox 35	Wilmington, DE 19801		First-Class Mail
Price Automation LLC	205 W 700 S	Pleasant Lake, IN 46779				lance.price@p-automation.com	Electronic Mail
Rochem Americas Inc	426 30th St	Hermosa Beach, CA 90254				nora@rochemamericas.com	Electronic Mail
Securities & Exchange Commission	100 F St NE	Washington, DC 20549					First-Class Mail
Securities & Exchange Commission	Ft Worth Regional Office	801 Cherry St, Ste 1900, Unit 18	Ft Worth, TX 76102				First-Class Mail
Shambaugh & Sons	7614 Opportunity Dr	Ft Wayne, IN 46825				aperkey@shambaugh.com	Electronic Mail
South Shore Controls, Inc	9395 Pinecone Dr	Mentor, OH 44060				AR@southshorecontrols.com; rhowell@southshorecontrols.com	Electronic Mail
Transmission & Fluid Equipment Inc	Sales Dept	6912 Trafalgar Dr	Ft Wayne, IN 46803			ar@tfedirect.com	Electronic Mail
Vecoplan LLC	5708 Uwharrie Rd	Archdale, NC 27263				ar.us@vecoplan.com	Electronic Mail
ZymeFlow Inc	12600 N Featherwood Dr, Ste 330	Houston, TX 77034				eddiekaye.jecmenek@zymeflow.com	Electronic Mail