

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

	)	
	)	Chapter 11
In re:	)	
	)	Case No. 25-10131 (BLS)
iM3NY LLC, <i>et al.</i> , ¹	)	
	)	(Jointly Administered)
Debtors.	)	
	)	Objection Deadline: March 14, 2025 at 4:00 p.m. (ET)
	)	
	)	Rel. Docket No. 119

OBJECTION OF CHARGE CCCV, LLC TO PROPOSED CURE AMOUNT

Charge CCCV, LLC (“**C4V**”), by and through its undersigned counsel, hereby files this objection (this “**Objection**”) to the cure amount (the “**Cure Amount**”) proposed in respect of the License Agreement (as defined below) as set forth in the *Notice of Assumption, Assignment and Cure Amount with Respect to Executory Contracts and Unexpired Leases of the Debtors* [Docket No. 119] (the “**Cure Notice**”). In support of this Motion, C4V respectfully states as follows:

BACKGROUND

The Chapter 11 Cases

1. On January 27, 2025 (the “***Petition Date***”), the above-captioned debtors (the “***Debtors***”) commenced voluntary cases (the “***Chapter 11 Cases***”) under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “***Bankruptcy Code***”) in the United States Bankruptcy Court for the District of Delaware (the “***Bankruptcy Court***”). The Debtors are authorized to continue to operate and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

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. The Chapter 11 Cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure and Rule 1015-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware.

3. On February 26, 2025, the Bankruptcy Court entered the *Order (I) 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] (the “**Bidding Procedures Order**”). Among other things, the Bidding Procedures Order approved Assumption and Assignment Procedures (as defined therein) requiring (a) the Debtors to file and serve the Cure Notice on or before February 28, 2025, and (b) any non-Debtor counterparty objecting to, among other things, the cure amount proposed in respect of its executory contract or unexpired lease to file an objection thereto on or before March 14, 2025.

The License Agreement

4. Debtor Imperium3 New York, Inc. (“**Imperium3**”) and C4V are party to that certain Amended and Restated License Agreement made as of April 12, 2021 (as amended by that certain Amendment to License Agreement dated March 24, 2022, and that certain Second Amendment to License Agreement dated April 13, 2022, and as otherwise amended or amended and restated from time to time, and as attached to the C4V Proof of Claim, the “**License Agreement**”).²

5. In exchange for the license of C4V-owned intellectual property provided pursuant to the License Agreement, Imperium3 is obligated to pay a “Use Fee” calculated according to the

² The “**C4V Proof of Claim**” refers to proof of claim no. 5, filed by C4V on February 25, 2025.

kilowatts hours of Cell Energy Storage Capacity (as defined in the License Agreement) produced. *See* License Agreement at § 4.1.2. Beginning two years after the Restated Effective Date of the License Agreement (*i.e.*, beginning as of April 12, 2023), Imperium3 agreed to pay a minimum annual use fee (the “*Minimum Use Fee*”) of two million dollars (\$2,000,000) per year for the three contract years thereafter, payable in advance and with a reduction for any Use Fee (as defined in the License Agreement) actually paid. *Id.* at § 4.2 and Schedule B.

6. The License Agreement provides that interest of five percent (5%) shall accrue on payments not made on or before the applicable due dates. *Id.* at § 4.5.

7. Imperium3 failed to pay the Minimum Use Fees for each of the last two years, leading to an arrearage of \$4,000,000 plus interest assessed at five percent annually. As a result, Imperium3 owes C4V no less than \$4,262,777.78 on account of unpaid Minimum Use Fees.

8. The License Agreement further provides for reimbursement by Imperium3 of C4V’s reasonable out-of-pocket costs, including time and reasonable out-of-pocket travel and other expenses, for technical assistance rendered by its technical liaison(s) upon request from Imperium3. *See* License Agreement at § 2.7.

9. C4V incurred reimbursable expenses of no less than \$36,567.31. *See* C4V Proof of Claim (Invoices dated February 28, 2023 for \$19,067.31 and December 1, 2023 for \$17,500). Imperium3 has not paid these amounts.

10. Accordingly, as of the Petition Date, Imperium3 owed C4V no less than \$4,299,345.09 on account of Minimum Use Fees, reimbursable expenses, and interest accruing thereon.

OBJECTION

11. Section 365(b)(1) of the Bankruptcy Code provides that an executory contract may not be assumed unless the debtor cures any payment-related default thereunder. Specifically:

If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—

- (A) cures, or provides adequate assurance that the trustee will promptly cure, such default[.]

11 U.S.C. § 365(b)(1)(A).

12. Accordingly, in order to assume the License Agreement, C4V's position is that the Debtors are obligated to pay the full amount owed thereunder: \$4,299,345.09. The proposed Cure Amount of \$2,000,000 is insufficient to achieve the requisite cure. Absent cure in the full amount, the Debtors cannot assume or assign the License Agreement.

RESERVATION OF RIGHTS

13. C4V reserves its right to amend or supplement this Objection and to object to any proposed assignment of the License Agreement, including on grounds of adequate assurance of future performance.

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CONCLUSION

For the foregoing reasons, C4V respectfully requests that the Court deny the Debtors' request for authority to assume the License Agreement absent cure of all amounts outstanding and due to C4V thereunder.

Date: March 14, 2025
Wilmington, Delaware

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