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CLERK U.S. BANKRUPTCY COURT
Central District of California
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UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

LOS ANGELES DIVISION

In re
☐ ITTELLA INTERNATIONAL LLC, a California limited liability company
☐ ITTELLA'S CHEF, LLC, a California limited liability company
☐ TATTOOED CHEF, INC., a Delaware corporation
☐ MY JOJO, INC., a Delaware corporation
☐ NEW MEXICO FOOD DISTRIBUTORS INC., a New Mexico corporation
☐ KARSTEN TORTILLA FACTORY, LLC, a New Mexico limited liability company
☐ BCI ACQUISITION, INC., a Delaware corporation
☐ TTCF-NM HOLDINGS INC., a New Mexico corporation
☒ All Debtors.

OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF ITTELLA INTERNATIONAL LLC

Plaintiff,

v.

BRITE WAY FOODS, INC.

Defendant.

Case No. 2:23-bk-14154-WB

Jointly administered with Case Nos. 2:23-bk-14161-WB; 2:23-bk-14159-WB; 2:23-bk-14157-WB; 2:23-bk-14156-WB; 2:23-bk-14158-WB; 2:23-bk-14155-WB; 2:23-bk-14160-WB

Chapter 7

Adversary No. 2:23-ap-01495-WB/RK

FINDINGS OF FACT AND CONCLUSIONS OF LAW AFTER TRIAL

<u>Trial</u>

Date:	May 4, 2026
Time:	9:00 a.m.
Place:	255 East Temple Street Courtroom 1675 Los Angeles, CA 90012
Judge:	Hon. Robert N. Kwan

This adversary proceeding was tried before the undersigned United States Bankruptcy Judge on May 4, 2026. Jacob E. Itzkowitz and Madeline R. Horner of the law firm of Manatt, Phelps & Phillips, LLP, appeared for Plaintiff Peter Hurwitz, Liquidating Trustee, successor-in-interest to the Official Committee of Unsecured Creditors of Ittella International LLC ("Liquidating Trustee" or "Plaintiff"). Kelly Ann Tran of the law firm, Small Law PC, appeared for Defendant Brite Way Foods, Inc. ("Brite Way" or "Defendant"). The matter was taken under submission after the passing of the deadline of June 26, 2026 for reply to any objections to proposed findings of fact and conclusions of law lodged by Defendant.

Having considered the evidence received at trial, including the testimony of the witnesses in declaration form and in live testimony, the exhibits offered by the parties, and the oral and written arguments of the parties, the Court makes the following findings of fact and conclusions of law in this adversary proceeding pursuant to Federal Rule of Bankruptcy Procedure 7052, making Federal Rule of Civil Procedure 52 applicable to this adversary proceeding. Any finding of fact that should be properly characterized as a conclusion of law should be considered as such, and any conclusion of law that should be properly characterized as a finding of fact should be considered as such.

FINDINGS OF FACT

1. On December 20, 2023, the Official Committee of Unsecured Creditors of Ittella International LLC (the "Committee") commenced this adversary proceeding by filing its Verified Complaint to Collect Amounts Due to Debtors against Defendant, alleging five causes of action: (1) account stated, (2) unjust enrichment, (3) breach of the duty of good faith and fair dealing, (4) conversion, and (5) breach of contract. Complaint, Docket No. 1, filed on December 20, 2023 (a copy of the complaint was received into evidence as Trial Exhibit 14). [1]
2. The Liquidating Trustee, Peter Hurwitz, is the current plaintiff in this action, having succeeded to the rights of the Committee pursuant to the First Amended Joint Chapter 11

[1] Pursuant to Federal Rule of Evidence 201, the Court takes judicial notice of the pleadings and orders filed and/or entered in the adversary proceeding and the underlying bankruptcy cases.

Liquidating Plan as confirmed by order of this Court on May 9, 2024. Final Pretrial Order, Docket No. 67, filed and entered on April 16, 2026, at 4; see also, First Amended Plan in Jointly Administered Cases of Ittella International LLC, BCI Acquisition, Inc., dba Belmont Confections ("Belmont") and other affiliates, Motion to Confirm First Amended Plan and Confirmation Order, Docket Nos. 848, 914 and 965, *In re Ittella International LLC*, Bankruptcy Case No. 2:23-bk-14154-WB Chapter 11 (lead bankruptcy case), filed and/or entered on February 21, 2024, April 16, 2024 and May 9, 2024.

3. Defendant Brite Way is a California company with a place of business at 2612 Obelisco Place, Rancho La Costa, California 92009. Final Pretrial Order at 4.
4. On May 6, 2024, Defendant served and filed its answer to the complaint in this adversary proceeding. Answer, Docket No. 28, filed and served on May 6, 2024; see also, Final Pretrial Order at 3.
5. Plaintiff's Complaint in paragraph 7 alleged as follows: "The Debtors sold certain products (the 'Products' to Defendant. At request of Defendant, the Debtors delivered the Products to Defendant. Contemporaneously with each delivery, the Debtors issued invoices for the products. Each invoice was sent to Defendant (each an '<u>Invoice</u>' and collectively, the '<u>**Invoices**</u>'), seeking payment in the collective amount of $1,254,779.57. A true and correct copy of a statement listing each of the Invoices is attached hereto as Exhibit A and incorporated herein by reference." Complaint at 3 and Exhibit 1 attached thereto (emphasis in original; copies in evidence as Joint Trial Exhibit 14).[2]
6. Plaintiff's Complaint in paragraph 8 alleged as follows: "Despite receiving and retaining the Products and despite receiving and not objecting to the Invoices, Defendant has failed and refused to make payment to the Debtors." Complaint at 3 and Exhibit 1 attached thereto (copies in evidence as Joint Trial Exhibit 14).
7. Plaintiff's Complaint in paragraph 13 alleged as follows: "The Debtors provided the Invoices to Defendant for amounts due." Complaint at 3 and Exhibit 1 attached thereto

[2] The Statement attached to the Complaint was identified as Exhibit 1 on an attachment sheet inserted before the exhibit, and not as Exhibit A referred to in paragraph 7 of the Complaint.

(copies in evidence as Joint Trial Exhibit 14).

8. Plaintiff's Complaint in paragraph 14 alleged as follows: "The Invoices were accepted as correct by Defendant and Defendant did not object to the Invoices in a timely manner." Complaint at 3 and Exhibit 1 attached thereto (copies in evidence as Joint Trial Exhibit 14).

9. Defendant in its Answer to the Complaint denied the allegations of paragraphs 7, 8 and 14 of the Complaint, further alleging that it "purchased product from Debtor BCI Acquisition, Inc., dba Belmont Confections ("Belmont" or "BCI"), only one of the above-captioned debtors," it "purchased ingredients totaling $760,030.36 for Belmont's benefit and with the express understanding that these funds would be credited by Belmont to Defendant," that it "is entitled to other credits." Answer at 2-3.

10. Defendant in its Answer to the Complaint "admit[ted] that Belmont provided Defendant with invoices, but disputes the amount claimed by Plaintiff." Answer at 3.

11. Based on these pleadings, whether Belmont's invoices to Brite Way were accepted as correct and not objected to in a timely manner and whether the amounts claimed were correct are matters at issue.

12. The Court filed and entered the Final Pretrial Order in this adversary proceeding on April 16, 2026 as Docket No. 67. As reflected in the Final Pretrial Order, at the final pretrial conference held on April 14, 2026, the Court received all of the Joint Trial Exhibits 1 through 20 into evidence without objection. Final Pretrial Order at 5, 9-10. Two of the three facts that the parties were able to stipulate to in their Joint Pre-Trial Stipulation later incorporated into the Final Pretrial Order provided as follows: "1. Liquidating Trustee and Ittella made numerous demands to Defendant for payment to the Debtors. 2. Defendant provided the Committee and Liquidating Trustee with an accounting disputing the amount owed by Defendant." Joint Pre-Trial Stipulation, Docket No. 53, filed on March 4, 2026, at 3; Final Pretrial Order at 4.

13. The parties filed their trial briefs on April 28, 2026. Plaintiff Liquidating Trustee's Trial Brief ("Plaintiff's Trial Brief"), Docket No. 70, filed on April 28, 2026; Defendant Brite

Way Foods, Inc.'s Trial Brief ("Defendant's Trial Brief"), Docket No. 71, filed on April 28, 2026.

14. The Court conducted the trial of this adversary proceeding on May 4, 2026, during which witness testimony and closing arguments of the parties were given. A written transcript of the trial proceedings was filed on May 26, 2026 as Docket No. 94.[3]

Plaintiff's Evidentiary Showing of Amounts Allegedly Due from Brite Way

15. Plaintiff argues in his trial brief that "Brite Way is not entitled to the credits claimed and instead must pay the full value of the outstanding invoices owed to Debtors" and therefore, "[t]he Liquidating Trustee respectfully requests that the Court order Brite Way to pay the full value of the outstanding invoices to Plaintiff, plus interest, in the amount of no less than $1,254,779.57." Plaintiff's Trial Brief at 5.

16. In support of this argument, Plaintiff set forth his factual showing for his prima facie case in support of its claims in his trial brief in the Factual Background discussion at page 2 of the trial brief. Plaintiff's Trial Brief at 2. Without citation to evidence, Plaintiff made the following factual assertions: "BCI [i.e. Belmont] made nutrition bars and sold them to customers, including to Brite Way. The parties had an ongoing business relationship. Unfortunately, Brite Way failed to pay several invoices for goods produced and delivered." *Id.* Plaintiff then asserted with cited evidence that on July 20, 2023, BCI [i.e., Belmont] emailed Brite Way a list of unpaid invoices totaling $765,863.36, that on September 11, 2023, it emailed Brite Way a list of unpaid invoices totaling $632,874.62, and that on

[3] At trial, after closing arguments were finished, the Court ordered Defendant to lodge proposed findings of fact and conclusions of law by May 29, 2026 and set deadlines for Plaintiff to file a post-trial brief and any objections to Defendant's proposed findings of fact and conclusions of law by June 12, 2026 and for Defendant to file any reply thereto by June 26, 2026. Trial Transcript at 160-162. The parties waived notice of these dates. *Id.* Defendant lodged its proposed findings of fact and conclusions of law on May 29, 2026. Docket No. 96. As the adversary docket on August 12, 2026 reflects, Plaintiff did not file a post-trial brief and objections to Defendant's proposed findings of fact and conclusions of law by the June 12, 2026 deadline. Adversary Docket. In its post-trial deliberations, the Court has considered Defendant's proposed findings of fact and conclusions of law, but has conducted an independent review and analysis of the evidentiary record and applicable law and substantially modified the proposed findings of fact and conclusions of law.

September 13, 2023, it sent two past due invoices for $6,504.74 and $92,412.00 and requested payment. *Id., citing,* Declaration of Stephanie Dieckmann in Support of Plaintiff's Complaint ("Dieckmann Trial Declaration"), Docket No. 69, filed on April 28, 2026, at 2, ¶ 7, and Joint Trial Exhibits 5 and 8. Without citation to evidence, Plaintiff then asserted: "Despite receiving and retaining the products and despite receiving and not objecting to the invoices, Brite Way has failed to pay the invoices." Plaintiff's Trial Brief at 2.

17. Plaintiff's factual assertion in his trial brief that on September 13, 2023, Belmont sent two past due invoices for $6,504.74 and $92,412.00 is not supported by evidence, including the evidence cited in his trial brief which apparently was the email of that date from Monica Phillips, Belmont's accounts receivable specialist, to Brite Way, who listed two past due invoices in her email, but did not include any invoices. Joint Trial Exhibit 8. Plaintiff's evidence received at trial did not include actual invoices issued by Belmont to Brite Way, except Invoice No. INV21632, dated April 27, 2023, received into evidence as Joint Trial Exhibit 5.[4] As acknowledged by Plaintiff's counsel during closing argument, the actual invoices issued by Belmont to Brite Way are not in the evidentiary record before the Court. Trial Transcript at 124 (colloquy between Plaintiff's counsel and the Court).

18. The evidence of the invoices issued by Belmont to Brite Way cited by Plaintiff in his trial brief is only lists of invoices in the emails sent by Belmont's accounts receivable specialist, Ms. Phillips, to Brite Way, on the dates referenced in the trial brief, i.e., on July 20, 2023, September 11, 2023 and September 13, 2023. That is, there is no proof that there were actual invoices sent to Brite Way in this cited evidence.

19. In closing argument, Plaintiff argued as follows: "The creditors committee and the Liquidating Trustee hold the burden of proof in this matter to show that the amounts owed – the amounts claimed are owed, and that they should be paid. We have met that burden. We have demonstrated that the invoices for goods provided were sent to Brite Way, and

[4] As the Court has found below, this invoice does not matter because the evidence has shown that it was paid in full. Finding No. 56, *infra.*

that they have not been paid. Therefore, we've met that burden." Trial Transcript at 121-122.

20. In Plaintiff's trial brief, there was no evidence cited in support of the amount of $1,254,779.57 demanded by Plaintiff. Plaintiff's Trial Brief at 1-5. Upon questioning by the Court during closing argument, counsel clarified that Plaintiff was relying upon the testimony of Ms. Dieckmann in paragraph 9 of her trial declaration and Belmont's Statement of Account dated December 15, 2023, which was attached to the Complaint as Exhibit 1 and received in evidence as part of Joint Trial Exhibit 14, for the amount that he was demanding. Trial Transcript at 121-127 (colloquy between Plaintiff's counsel and the Court).

21. Plaintiff's reliance on Ms. Dieckmann's testimony that the amount of $1,254,779.57 was owed by Brite Way is problematic because her specific testimony was that she was not aware that Belmont or any of its affiliates provided Brite Way with credits against that amount owed, except for one credit in the amount of $43,855.20. Dieckmann Trial Testimony at 2. She did not give any testimony on how the amount of $1,254,779.57 was determined to be owed by Brite Way, other than it was owed. *Id.* at 2-3. [5] That is, there was nothing in Ms. Dieckmann's testimony that Belmont sent invoices to Brite Way for goods it produced and Brite Way failed or refused to pay, except for one limited instance. *Id.* Her only testimony on that subject of invoices sent by Belmont to Brite Way was that on April 27, 2023, Belmont sent an invoice to Brite Way for bars sold as Jenny Craig Bars, of which $264,635.00 remained due. *Id.* at 2. As the Court has found below, that invoice

[5] Counsel for Plaintiff in closing argument admitted as much, stating, "That's correct[,]" in response to the Court's comments that "[s]o she [i.e., Ms. Dieckmann] said there are no credits. And so the amount that's owed – well, she didn't really testify as to the amount that owed . . . There was no – no direct testimony for that. It was just that there are no credits, so. Because she doesn't say in her other body [i.e., testimony] how she arrived at the number." Trial Transcript at 126 (colloquy between the Court and Plaintiff's counsel). In any event, there was no evidentiary foundation for such testimony as there was no showing that Ms. Dieckman had the requisite personal knowledge of the amounts allegedly owed Belmont by Brite Way. Federal Rule of Evidence 602 (personal knowledge generally required for percipient witness testimony).

does not matter here because the evidence shows that it was fully paid by Brite Way. See Finding No. 56, *infra.*

22. Plaintiff's reliance on Belmont's Statement of Account dated December 15, 2023 that the amount of $1,254,779.57 was owed by Brite Way is problematic because there was no testimony or other evidence showing who prepared it, how it was prepared and what it was based on. Plaintiff's only witness was Ms. Dieckmann, who did not testify that she was involved in the preparation of the Statement of Account, which was unlikely because she had left her employment with the Ittella group in October 2023. Dieckmann Trial Declaration at 2-3; Trial Transcript at 17-67 (testimony of Ms. Dieckmann).

23. Belmont's December 15, 2023 Statement of Account is purportedly a list of invoices issued to Brite Way and payments from Brite Way for such invoices which show the dates of the invoices, the amounts charged in the invoices, the dates and amounts of any payments from Brite Way. Joint Trial Exhibit 14; see also, Federal Rule of Evidence 1006 (summary of exhibits may be admissible to prove content of voluminous exhibits). However, while the Statement of Account has been received into evidence, admissibility is not necessarily amount to credibility as there is no documentary support for the Statement of Account in evidence, such as copies of the actual invoices themselves. Moreover, having considered all the direct testimony trial declarations, the joint trial exhibits and the live testimony during the trial, the Court is not aware of any evidence showing that the Statement of Account was accurately prepared because there is no testimony or other evidence describing its preparation and the information on which it was based. Apparently, Plaintiff wants the Court to draw inferences that the Statement of Account establishes that notice of the invoices were sent to Brite Way in ordinary course of business on the invoice dates and in the amounts shown on the Statement, but absent testimony or other evidence laying a foundation for the Statement, the Court will not draw such inferences. Moreover, there was no testimony or other evidence regarding Belmont's billing procedures to show that the invoices were issued and sent to Brite Way as the

Complaint alleges. Complaint at 2. [6]

24. Based on the evidence cited by Plaintiff in his closing argument and in his trial brief, i.e., Belmont's December 15, 2023 Statement of Account and Ms. Dieckmann's testimony, Plaintiff has not met his burden of proof to establish a prima facie case that the amounts claimed totaling $1,254,779.57 are due and owing by Brite Way based on invoices purportedly sent to Brite Way and not paid. While Belmont's December 15, 2023 Statement of Account is in evidence as Joint Trial Exhibit 14, it lacks a sufficient evidentiary foundation as discussed herein to constitute sufficient proof of that matters asserted therein that invoices were indeed sent to Brite Way on the dates of the invoices and that the amounts of the charges and payments or credits on the statement were correct.

25. Plaintiff's focus in his arguments in this case was on Defendant's affirmative defense that it is entitled to credits against any amounts owed on Belmont's invoices. Plaintiff's Trial Brief at 3-4. The Argument section of Plaintiff's Trial Brief only discusses Defendant's affirmative defense of claimed credits, asserting that Brite Way is not entitled to such credits because it had no contractual or other right to such credits, any credits promised to it by LKV, the purchaser of Belmont's assets in bankruptcy, are not binding on Debtors and that if it seeks credits, it could do so against LKV. *Id.* The Argument section of Plaintiff's Trial Brief did not set out a prima facie case setting forth that the elements of his claims in the Complaint and showing that such elements have been met. *Id.* at 1-5. This is also evident from Plaintiff's closing argument focusing on Defendant's affirmative defense of claimed credits, asserting that Defendant has not met its burden of proving entitlement to such credits because there were no contemporaneous records showing that Belmont's invoices were not owed. Trial Transcript at 121-127 (Plaintiff's closing argument). As discussed herein, the Court finds that not only has Defendant met its burden of proving its

[6] For example, Plaintiff could have called Monica Phillips and/or Nancy McFall, who were involved with collecting accounts receivable for Belmont, as witnesses at trial as they were listed on the witness list in the Joint Pre-Trial Stipulation, but they did not testify. That is, there was no one with personal knowledge to testify at trial about Belmont's billing procedures or the preparation of its December 15, 2023 Statement of Account. See Federal Rule of Evidence 602 (personal knowledge generally required for percipient witness testimony).

affirmative defense to Plaintiff's claims based on claimed credits by a preponderance of the evidence, but that Plaintiff has failed to prove his claims by a preponderance of the evidence.

Brite Way Ingredient Purchase Dispute

26. Brite Way has been working with Belmont, a mid-tier manufacturer of private label nutrition bars, for over ten years. Declaration of Arnold "Nol" Calabrese (Direct Testimony) ("Calabrese Trial Declaration"), Docket No. 72, filed on April 28, 2026, at 1-2 (Mr. Calabrese is Brite Way's president). [7] During the course of their relationship, Brite Way produced approximately 45 to 50 million bars with Belmont and was one of Belmont's largest customers. *Id.* Specifically, Brite Way purchased bars from Belmont on a "turnkey" basis, meaning Belmont supplied all of the necessary ingredients to manufacture the bars and Brite Way supplied the foil wrappers and secondary packaging. *Id.; see also,* Declaration of Jennifer Greaver (Direct Testimony) ("Greaver Trial Declaration"), Docket No. 74, filed on April 28, 2026, at 2 (Jennifer Greaver was Belmont's purchasing manager from 2019 through at least 2023 and is still employed with Belmont's successor); Declaration of Karen Hoffman (Direct Testimony) ("Hoffman Trial Declaration"), Docket No. 73, filed on April 28, 2026, at 2 (Karen Hoffman was Brite Way's financial consultant from January 2021 to June 2024 whose duties included taking care of accounts payables and receivables and financial reporting and maintained and had access to Brite Way's financial records, including invoices received from Belmont, payments made by Brite Way and ingredient purchases made by Brite Way on behalf of Belmont). According to Mr. Calabrese, Brite Way's president, this arrangement is standard in the industry. Calabrese Trial Declaration at 2. [8] Brite Way's customers for bars produced

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[7] Mr. Calabrese's testimony that Brite Way and Belmont have been working together for over ten years is stated in the present tense, and thus, it appears that based on his testimony, this ten year relationship was measured from the date of his trial declaration dated April 27, 2026, that is, from 2016 to 2026.

[8] The Court is not sure what Mr. Calabrese meant in referring to "industry practice" as he did not identify the industry in his testimony. The Court only finds that his testimony relating to industry practice simply characterizes the over ten year business relationship between Brite Way and Belmont.

at Belmont included Access Business Group International and Jenny Craig International. *Id.*

27. As described by Karen Hoffman, Brite Way's financial consultant, in her testimony, Belmont produced private label "turn key" nutrition bars for Brite Way's customers. Hoffman Trial Declaration at 2. Under the normal course of the parties' business relationship, Brite Way would submit purchase orders to Belmont, and Belmont would handle purchasing all ingredients necessary to manufacture the bars. *Id.* Once Belmont produced the bars, it would invoice Brite Way, and Brite Way would pay Belmont. *Id.* [9] As discussed below, this arrangement was modified by an agreement between Brite Way and Belmont around the time of the filing of Belmont's bankruptcy case when Belmont's ingredient suppliers would not deliver ingredients to Belmont. *Id.*; Findings of Fact Nos. 31 *et seq.*

28. In December 2021, Ittella International LLC ("Ittella"), through its related entity, BCI Acquisition, Inc., acquired Belmont for approximately $16.7 million. Calabrese Trial Declaration at 2. [10]

29. Ittella and its related entities, including Belmont, filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code, 11 U.S.C. on July 2, 2023. *In re Ittella International LLC*, No. 2:23-bk-14154-SK Chapter 11, Docket No. 1, filed on July 2, 2023; *In re BCI Acquisition, Inc.,* No. 2:23-bk-14155-SK Chapter 11, Docket No. 1, filed on July 2, 2023. The Court ordered joint administration of these bankruptcy cases of Ittella and its related

[9] As indicated by Joint Trial Exhibit 1, the email exchange between Ms. Hoffman, Brite Way's financial consultant, and Nancy McFall and Monica Phillips who monitored accounts receivables for Belmont, dated July 12-14, 2023, Brite Way and Belmont routinely communicated regarding the status of invoices issued by Belmont to Brite Way and payments thereon, which communications sometimes reflected Brite Way's requests for adjustments of the amounts on the invoices due to inaccurate billing. Joint Trial Exhibit 1.

[10] This is an undisputed fact as no objection was interposed to Mr. Calabrese's testimony on this point. This fact is also recited on behalf of Belmont's successor entity, BCI Acquisition, Inc., in the First Amended Disclosure Statement Describing Debtors' First Amended Chapter 11 Liquidating Plan filed by Ittella and its related entities, including Belmont, in their jointly administered bankruptcy cases, *In re Ittella International LLC*, No. 2:23-bk-14154-SK Chapter 11, Docket No. 849, filed on February 21, 2024, at 13.

entities, including BCI Acquisition, on July 3, 2023. *See In re BCI Acquisition, Inc.*, No. 2:23-bk-14155-SK Chapter 11, Docket No. 15, order filed and entered on July 3, 2023.

30. Prior to Belmont's filing its bankruptcy petition, it experienced significant cash flow issues and was not paying invoices as they became due. Greaver Trial Declaration at 2; Trial Transcript at 81-85 (testimony of Ms. Greaver). Following Belmont's bankruptcy filing, its ingredient suppliers would no longer extend credit to or sell ingredients to Belmont without payment in full and prepayment. *Id.* The financial situation at Belmont was extremely tight as vendors required prepayment and would not ship ingredients on credit, and that without a supply of ingredients, Belmont could not manufacture bars and fulfill its customers' open purchase orders. Greaver Trial Declaration at 2-3. Thus, in order for Belmont to keep its production lines running and continue fulfilling open purchase orders, Belmont needed customers, such as Brite Way, to step in and purchase ingredients directly from suppliers on Belmont's behalf. *Id.*; Trial Transcript at 81 (testimony of Ms. Greaver).

31. In or around July 2023, Mr. Calabrese, Brite Way's president, personally spoke with George Tsudis, Belmont's president, about the situation created by Belmont's inability to procure ingredients. Calabrese Trial Declaration at 4. According to Mr. Calabrese, Chris Bartek, Brite Way's project manager, also participated in that conversation. *Id.* at 4. During that conversation, Mr. Tsudis informed Mr. Calabrese and Mr. Bartek that Belmont was not able to buy ingredients for its production runs and that Brite Way would need to purchase the ingredients directly from Belmont's suppliers in order for production by Belmont to continue. *Id.* It was agreed between Mr. Calabrese for Brite Way and Mr. Tsudis for Belmont during that conversation that Brite Way would be credited back the full cost of any ingredients it purchased on Belmont's behalf. *Id.;* Trial Transcript at 104-106 (testimony of Mr. Calabrese).[11] According to Mr. Calabrese in his trial testimony, this was not a casual or ambiguous understanding—it was the express basis on which Brite Way

[11] It is not disputed that Mr. Tsudis had the authority at Belmont to give credits to customers like Brite Way. Trial Transcript at 19-20, 47 (testimony of Stephanie Dieckmann, former chief financial officer at Ittella, Belmont's parent, who was called as a witness at trial by Plaintiff).

agreed to purchase the ingredients for Belmont, and it was consistent with the turn-key nature of the parties' long-standing relationship in which Belmont, not Brite Way, was responsible for the cost of all ingredients. Calabrese Trial Declaration at 4-5. According to Mr. Calabrese, "[a]side from this exception [for Belmont], Brite Way was not in the business of purchasing ingredients for manufacturing bars." *Id.; see also,* Trial Transcript at 108-109 (testimony of Mr. Calabrese). However, as Mr. Calabrese admitted in his testimony at trial, this agreement between Brite Way and Belmont based on his conversation with Mr. Tsudis was not in writing. Trial Transcript at 95-97, 104 (testimony of Mr. Calabrese).

32. Pursuant to the agreement between Brite Way and Belmont from the conversation between their presidents, Mr. Calabrese and Mr. Tsudis, Brite Way purchased ingredients from Belmont's suppliers totaling at least $763,030.36. Calabrese Trial Declaration at 5; Joint Trial Exhibit 16 (invoices for ingredient purchases by Brite Way for Belmont). All ingredients purchased by Brite Way were shipped directly to Belmont's facility at 6105 West Liberty Street, Hubbard, Ohio 44425. *Id.; see also,* Trial Transcript at 97-100, 106-107 (testimony of Mr. Calabrese).

33. Brite Way did not mark up or upcharge Belmont for any of these ingredient purchases. Calabrese Trial Declaration at 5; Trial Transcript at 108-109 (testimony of Mr. Calabrese). Brite Way charged Belmont only the exact invoice cost of the ingredients, charging no labor, carrying costs, or interest, even though purchasing ingredients directly from suppliers was entirely outside the scope of Brite Way's normal business operations. *Id.* The actual invoices from the ingredient suppliers to Brite Way for its ingredient purchases for Belmont corroborate the course of conduct implementing the agreement between Brite Way and Belmont that Brite Way would purchase ingredients for Belmont to produce the nutrition bars that Brite Way was purchasing from Belmont. Joint Trial Exhibit 16.

34. The documentation for Brite Way's ingredient purchases for Belmont under their agreement, the ingredient invoices to Brite Way from Belmont's ingredient suppliers, is in

evidence as Joint Trial Exhibit 16. [12] For example, an invoice dated July 18, 2023 in the amount of $92,461.40 from Delta Protein International of Sunflower, Mississippi, billed to Brite Way based on "prepay" terms showed a delivery address for Belmont in Hubbard, Ohio for ingredients (i.e., Bovine Collagen Hyrolysate). *Id.* One invoice dated July 25, 2023 in the amount of $64,820.00 from SensoryEffects, Inc., of Defiance, Ohio billed to Brite Way based on "prepaid" terms showed a shipping address for Belmont in Hubbard, Ohio for ingredients (i.e., protein whey crisps). *Id.* Another invoice dated July 28, 2023 in the amount of $82,946.00 from Glanbia Nutritionals of Fitchburg, Wisconsin billed to Brite Way based on "cash in advance" terms showed a delivery address for Belmont in Hubbard, Ohio for ingredients (i.e., BarFlex, Nutrasol, Thermax and Provon), *Id.* Another invoice dated August 10, 2023 in the amount of $95,914.43 from the Blommer Chocolate Company of Campbellford, Ontario billed to Brite Way based on a "prepaid wire" terms showed shipment of ingredients (i.e., milk confectionary coating and discs) to Belmont's Hubbard, Ohio address. *Id.* These invoices and many others in Joint Trial Exhibit 16 substantiate Brite Way's purchases of ingredients for Belmont under their agreement which were shipped to Belmont at its Hubbard, Ohio address during the time period of July 2023 through October 2023, totaling over $1 million. [13] Brite Way's purchasing of ingredients for Belmont was burdensome for Brite Way because of the carrying costs, including resources from Brite Way to do all the ordering and setting up of accounts,

[12] Plaintiff does not dispute the authenticity of the invoices for Brite Way's ingredient purchases for Belmont in Joint Trial Exhibit 16. Trial Transcript at 142 (colloquy between Plaintiff's counsel and the Court in which counsel stated: "We certainly are not alleging that the attachments to Exhibit 16 are manufactured or, you know, otherwise false.").

[13] In its post-trial deliberations, the Court made a rough, informal computation of the amounts billed to Brite Way for its ingredient purchases for Belmont, using invoices in Joint Trial Exhibit 16 with order dates before October 27, 2023, the apparent effective date of the asset purchase agreement for Belmont's assets, and order amounts rounded down to the nearest dollar. Most of these invoices in Joint Trial Exhibit 16 indicated that the ordered ingredients were billed to Brite Way but shipped to Belmont. The Court computed an aggregate amount of $1,054,224 for these invoices with order dates in July, August, September and October 2023 (i.e., before October 27, 2023). This aggregate amount is larger than the amount of $763,060.36 that Brite Way is requesting in this adversary proceeding that it should be credited with from ingredient purchases for Belmont. See Defendant's Trial Brief at 5-10.

having to prepay for the ingredients, and many times ingredients were in transit, which tied up Brite Way's money for 60 or 90 days. Trial Transcript at 108-109 (testimony of Mr. Calabrese).

35. As shown in Joint Trial Exhibit 16, most of the invoices for Brite Way's ingredient purchases for Belmont indicated that the purchased ingredients were shipped to Belmont at its Hubbard, Ohio address, which was provided by Belmont to Brite Way. Calabrese Trial Declaration at 5; Hoffman Trial Declaration at 2-4; Greaver Trial Declaration at 3 (Ms. Greaver, Belmont's purchasing manager, provided Belmont's exact shipping address to Brite Way for Brite Way's ingredient purchases for Belmont); Joint Trial Exhibit 16. A few of the ingredient invoices reflected Brite Way's Carlsbad, California corporate address as the "ship to" address rather than Belmont's Hubbard, Ohio address. Joint Trial Exhibit 16. As explained by Mr. Calabrese in his testimony, this aberration is a common industry occurrence in "buy to/ship to" transactions in which a purchaser's corporate address is inadvertently entered. Trial Transcript at 97-100, 106-107 (testimony of Mr. Calabrese) (counsel for the parties stipulated that this explanation in Mr. Calabrese's testimony applied to multiple invoices in Joint Trial Exhibit 16). The court finds Mr. Calabrese's testimony on this point to be credible and does not undermine the finding that the ingredient purchases by Brite Way for Belmont went to Belmont so that Belmont could produce the nutrition bars ordered by Brite Way rather than shipped to Brite Way to produce the bars itself.

36. Pursuant to the agreement between Brite Way and Belmont for Brite Way to make ingredient purchases for Belmont to produce nutrition bars ordered by Brite Way, Brite Way kept contemporaneous records to track its ingredient purchases for Belmont. Hoffman Trial Declaration at 2-4; Calabrese Trial Declaration at 5. As explained by Karen Hoffman, Brite Way's financial consultant, in her testimony, she prepared and maintained a contemporaneous Google spreadsheet tracking all ingredient purchases by Brite Way for Belmont, including totals for each vendor invoice, which invoices were shipped and received, and the total credit amounts owed. Hoffman Trial Declaration at 2-4. Ms.

Hoffman simultaneously recorded a corresponding credit against Belmont's account in Brite Way's books whenever a vendor invoice was paid and provided copies of vendor invoices to Belmont as documentation supporting the credits owed. *Id.*

37. On or about July 17, 2023, Ms. Hoffman contacted Nancy McFall and Monica Phillips at Belmont in an email, notifying them that she was sending over credit memos for the ingredients that Brite Way was purchasing for Belmont "to run product," and inquired who was the best person at Belmont to send them. Hoffman Trial Declaration at 3; Joint Trial Exhibit 3. On July 17, 2023, Ms. McFall responded to Ms. Hoffman in an email, stating: "Jen [i.e., Jennifer Greaver] said send the credit memos [to her] they will take things off invoices to make it easier instead." *Id.*; Joint Trial Exhibit 3. In response to Ms. Hoffman's further email of July 17, 2023, asking for clarification to whom the credit memos should be sent at Belmont, on July 18, 2023, Ms. McFall responded in an email to Ms. Hoffman and told her to send the credit memos to Jennifer Greaver and herself. *Id.*; Joint Trial Exhibit 3.

38. On July 20, 2023, Monica Phillips, who was an accounts receivable specialist for Belmont, sent an email to Ms. Hoffman, while acknowledging that Brite Way was "working with BCI [i.e. Belmont] on some credits," but stating Belmont needed to get payment from Brite Way on past due invoices, including Invoice Nos. INV21632 and INV21669, or Belmont would place Brite Way's account on hold and thus would be unable to process new orders from Brite Way. Joint Trial Exhibit 4. Ms. Phillips copied Mr. Tsudis, Belmont's president, and her supervisor, Stephanie Dieckmann, Chief Financial Officer of Ittella International LLC, the parent of Belmont, on her July 20, 2023 email to Ms. Hoffman. Joint Trial Exhibit 4; see also, Dieckmann Trial Declaration at 2. In response, on July 20, 2023, Ms. Hoffman for Brite Way emailed Ms. Phillips that she "just opened this email and [found]it surprising to put it nicely" and that regarding Invoice Nos. INV21669 and INV21632, she had "responded several times that this represents product that will be shipping and ingredients that will be used in producing product therefore I have been instructed to hold payment." *Id.* Previously, Ms. Hoffman in her email of July 13, 2023 to

Ms. McFall and Ms. Phillips had stated that "Inv 21632 & 21669 are both an open item due to po's being placed" [i.e., purchase orders were still open]." Joint Trial Exhibit 1. Ms. Hoffman further responded to Ms. Phillips in her July 20, 2023 email that she has "included Nol Calabrese – owner of Brite Way on this email since he has been in communication with BCI [i.e., Belmont] in regards to these 2 invoices." Joint Trial Exhibit 4. Ms. Hoffman further stated in her July 20, 2023 email that taking out these two invoices, the amount past due was only $2,319.48, which was due to a price misunderstanding on Brite Way's part and which she had approval to pay. *Id.* In this email of July 20, 2023, Ms. Hoffman also stated that Brite Way had already paid over $200,000 for ingredients for Belmont and that credit memos would be forthcoming to cover the past due amount of $2,319.48 "plus upcoming invoices." *Id.;* Hoffman Trial Declaration at 3; see also, Dieckmann Trial Declaration at 2. Mr. Tsudis, Belmont's president, and Ms. Dieckmann, Ms. Phillips's supervisor, were copied on Ms. Hoffman's July 20, 2023 email. *Id.* In response to these emails, on July 21, 2023, Ms. Dieckmann emailed Ms. Hoffman asking when Brite Way will pay Invoice No. 21632, which she said was for finished bars, not ingredients purchased by Brite Way for Belmont, or Belmont would pause all production and new orders on Brite Way's account unless it received an acceptable payment plan. *Id.* In response to Ms. Dieckmann's email to Ms. Hoffman, on July 21, 2023, Mr. Calabrese, Brite Way's president, emailed Ms. Dieckmann, stating that he agreed that Invoice No. INV21632 was for finished goods, which Brite Way would pay the balance on July 25, 2023, that its customer, Jenny Craig, has been purchased and that Brite Way has a purchase order for 120,000 units that is scheduled to run on August 20, 2023. Joint Trial Exhibit 6. In this email to Ms. Dieckmann of July 21, 2023, Mr. Calabrese stated that separately, Brite Way has been buying all of the ingredients for its open orders with Belmont for its customer, Amway, and asked whether Brite Way should stop purchasing ingredients for Belmont or "if Belmont will run these bars per our agreement with Belmont." *Id.* Mr. Calabrese copied Mr. Tsudis on his July 21, 2023 email. *Id.* In reply, on July 21, 2023, Ms. Dieckmann informed Mr. Calabrese that she had heard that Jenny Craig was purchased, which was good news, and that "Belmont will run the order as scheduled." Joint Trial Exhibit 7. Ms. Dieckmann copied Mr. Tsudis on her email of July 21, 2023 responding to Mr. Calabrese's July 21, 2023 email, to which Mr. Tsudis responded by email on July 21, 2023 to Ms. Dieckmann, "Thank you, Stephanie. We will let you know if there are any other questions to make sure this is on schedule to run." *Id.* Mr. Tsudis also copied Mr. Calabrese on this email. *Id.*

39. On September 7, 2013, Ms. Hoffman, Brite Way's financial consultant, sent an email to Jennifer Greaver, Belmont's purchasing manager, seeking clarification on how to process Brite Way's credit memos for the ingredients that Brite Way had purchased on Belmont's behalf. Greaver Trial Declaration at 3. [14] According to Ms. Greaver, Ms. Hoffman proposed in her email two options that Brite Way send a package with all proformas and invoices with a summary per vendor (Option A) or that Brite Way create the credit memos and send them to Belmont with the proformas and invoices (Option B). *Id.*

40. On September 11, 2023, Ms. Phillips, the account receivables specialist for Belmont, sent an email to Brite Way with the subject, "Past due invoices." Joint Trial Exhibit 8. In this email, Ms. Phillips stated: "This is a friendly reminder that your account is past due." *Id.* Ms. Phillips in her email listed invoices which she said were past due and asked when payment will be made. *Id.* On September 11, 2023, Ms. Hoffman sent an email response to Ms. Phillips's email of that day, which was also a follow-up to her email of September 7, 2023 to the "Belmont Team," consisting of Ms. Phillips, the account receivables specialist for Belmont, Ms. McFall, also monitoring accounts receivable for Belmont, Ms. Greaves, Belmont's purchase manager, Ms. Dieckmann, the CFO of Ittella, Belmont's parent, and their supervisor, and Mr. Tsudis, Belmont's president. Joint Trial Exhibit 8. In

[14] Ms. Hoffman's September 7, 2023 email is not in the record, but it is referred to in her email on September 11, 2023 to the "Belmont Team," which included Ms. Greaver, Monica Phillips, Nancy McFall, Stephanie Dieckmann and George Tsudis. Joint Trial Exhibit 8. Some members of the "Belmont Team" as shown in the email correspondence relating to the Brite Way account worked on the account from an affiliate of Ittella, Tattooed Chef, Inc., as indicated in their email addresses in the correspondence. See *In re Ittella International LLC*, No. 2:23-bk-14154-SK Chapter 11, Docket No. 1, filed on July 2, 2023 at 5.

this email to the Belmont Team, Ms. Hoffman asked them how to handle the credits that Brite Way has to apply to Belmont's invoices from purchasing all the ingredients for Belmont, noting that she did not get a reply to her September 7, 2023 email to Ms. Greaver, Mr. Tsudis and Ms. McFall. *Id.* Ms. Hoffman in this email further noted that she sent an email to Ms. Greaver and Ms. McFall on August 14, 2023 with the detail of payment being made on an invoice, No. INV21780, along with a credit memo applying for $6,504.70 to have it paid in full, but received no reply. *Id.* Ms. Hoffman in this email reiterated that she needed help from Belmont in order to process Brite Way's credit memos. *Id.* In this email to the Belmont Team, Ms. Hoffman further stated: "I have multiple times expressed that the ingredients invoice listed as past due shouldn't be on our account because those ingredients are being used in current productions. Belmont will be paid like always – having the ingredient costs part of the bar price charged to us." *Id.*

41. On September 13, 2023, Ms. Phillips sent an email to Ms. Hoffman regarding "Past due invoices," apparently in response to Ms. Hoffman's September 11, 2023 email, stating: "As BCI [i.e., Belmont] works through the credits on Invoice 21669. We need to get payment for the two past due invoices below? [i.e., Invoice No. INV21780 for $6,504.74 and Invoice No. INV21841 for $92,412.00]." *Id.* Later, on September 13, 2023, Ms. Hoffman sent an email to the "Belmont Team," including Ms. Phillips, Ms. McFall, Ms. Greaver, Ms. Dieckmann and Mr. Tsudis, in response to Ms. Phillips's email that day, expressing thanks "for working on the ingredients invoice with the portions used on recent production [i.e., Invoice INV21669 for Jenny Craig]." *Id.* Ms. Hoffman further stated in this email that Invoice No. INV21780 should have a zero balance based on Brite Way's credit memo for ingredient purchases and Brite Way needed a credit against Invoice No. INV21841 since it purchased the ingredients for that order and would of course be "happy to pay the portion due but we do need to apply a credit to each invoice since the ingredients were purchased by Brite Way." *Id.* Ms. Hoffman reiterated her offer to send over to Belmont the ingredient invoices for Brite Way's ingredient purchases and/or credit memos as back up proof for the ingredient purchases for Belmont. *Id.* Ms. Hoffman in this email

finally stated: "I [would] appreciate someone on the Belmont Team to verify how we are taking into consideration the over $740,000 in ingredients purchased [by Brite Way for Belmont under the agreement]." Joint Trial Exhibit 8; Hoffman Trial Declaration at 3; [15] see also, Dieckmann Trial Declaration at 2.

42. On September 14, 2023, Ms. Dieckmann sent an email in response to Ms. Hoffman's September 13, 2003 email, stating: "Hi Karen, Can you please advise what the $740,000 in ingredients are that were purchased? I am not clear if these are the ingredients that were invoiced or if these are consigned goods on the floor or if these are new items. I need a clear understanding of when the account will be current before the plant releases the product to you next week and there is additional production scheduled next week as well. Thank you, Stephanie." Joint Trial Exhibit 8; Dieckmann Trial Declaration at 2.

43. On September 15, 2023, Ms. Hoffman sent Ms. Dieckmann all ingredient invoices and a detailed Google Sheets spreadsheet listing every ingredient purchased, the amounts ordered, corresponding invoice numbers, and amounts paid, which Ms. Dieckman requested in an email dated September 14, 2023. Hoffman Trial Declaration at 3. According to Ms. Hoffman, Ms. Dieckman responded to her on September 18, 2023, confirming that she (Ms. Dieckmann) reviewed the invoices and was waiting on answers from the plant (i.e., Belmont), but while Ms. Hoffman followed up with Ms. Dieckmann on September 25, 2023, she did not receive a substantive response from Ms. Dieckmann about Brite Way's request for credits. *Id.* at 3-4.

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[15] Ms. Hoffman's testimony about her September 13, 2023 communication with the Belmont Team was more emphatic: "On September 13, 2023, in response to a request for payment on past due invoices, I informed Monica Phillips and Stephanie Dieckmann (CFO of Tattooed Chef) that Brite Way could not simply pay the invoices without first having the over $740,000 in ingredient costs credited to its account. I requested confirmation of how Belmont intended to apply the ingredient credits before Brite Way made any further payments." Hoffman Trial Declaration at 3, *citing*, Joint Trial Exhibit 8. Plaintiff did not cross-examine Ms. Hoffman, so there was no clarifying whether her only communication with the Belmont Team on September 13, 2023 was the email or there were other communications.

[16] Ms. Dieckmann in her testimony identified Mr. Hyatt as the cost accountant who provided her as CFO of Ittella accounting information for Belmont. Trial Transcript at 19-20 (testimony of Ms. Dieckmann).

44. On September 14, 2023, Mr. Tsudis, Belmont's president, sent an email to Ms. Dieckmann and copied Ms. Greaver, Ms. McFall, Ms. Phillips, and James Hyatt, cost accountant for Belmont,[16] on the email. Joint Trial Exhibit 9. This email also forwarded a copy of Ms. Dieckmann's email that day, which stated: "Good Afternoon. Is there a good time Monday afternoon to discuss Briteway? I want to talk about the ingredients that they purchased, the current pricing, and credits that are due on their account. They are sending me a list of ingredients and I will go through them so we can straighten this out. Thank you, Stephanie." *Id.* Mr. Tsudis suggested a time for the meeting in his email, and Ms. Dieckmann responded in another email, suggesting another time for the meeting. *Id.* As indicated by a subsequent email by Ms. Phillips to this group on September 25, 2023, they had a discussion, and as a follow-up, she inquired of the group: "Just following up on the discussed we had about the open balance for Briteway. Have you had a chance to look into the possible credit for Invoice 21669?" *Id.* On September 26, 2023, Mr. Hyatt, the cost accountant for Belmont, sent an email in response to Ms. Phillips's September 25, 2023, with an attachment, apparently his analysis of Brite Way's credit requests, which attachment is not in the record. *Id.* Mr. Hyatt copied Ms. Greaver, Ms. McFall, Ms. Dieckmann and Mr. Tsudis on his email. *Id.* On September 26, 2023, Ms. Dieckmann sent an email to Mr. Hyatt in response to his earlier email of that date, stating: "Hi James, What is the amount of the credit that should be created? Thank you, Stephanie." *Id.* Ms. Dieckmann copied Ms. Greaver, Ms. McFall, Ms. Phillips and Mr. Tsudis on her email. *Id.* Later, on September 26, 2023, Mr. Hyatt sent an email to Ms. Dieckmann in response to her earlier email of that date, stating: "They have a total of $742,286.89 they say are owed, but we only have $701,376.91 that have been received. Thank you, James Hyatt[,] Cost Accountant.[.]" *Id.* Mr. Hyatt copied Ms. Greaver, Ms. McFall, Ms. Dieckmann and Mr. Tsudis on this email. *Id.* This internal email correspondence of September 2023 in the

[16] Ms. Dieckmann in her testimony identified Mr. Hyatt as the cost accountant who provided her as CFO of Ittella accounting information for Belmont. Trial Transcript at 19-20 (testimony of Ms. Dieckmann).

Ittella affiliate group demonstrates that Belmont's management, including Mr. Tsudis, its president, and Ms. Dieckmann, Ittella's CFO, were on notice of Brite Way's ingredient purchase credit requests then totaling $740,000 and of the conclusion of Belmont's cost accountant, Mr. Hyatt, that Brite Way was entitled to a substantial portion of its credit requests, i.e., at least $700,000.

45. As discussed above, the testimony of Ms. Hoffman and the evidence of the email correspondence between her representing Brite Way and the accounts receivable staff for Belmont shows that pursuant to the agreement between Brite Way and Belmont, Brite Way purchased ingredients for Belmont to produce the nutrition bars it ordered from Belmont and requested Belmont to give credits for such purchases against the invoices issued by Belmont for the nutrition bars it produced with Brite Way purchased ingredients. Brite Way provided Belmont with the documentation to substantiate its ingredient purchases as Ms. Hoffman recited in her trial testimony, which is confirmed by the trial testimony of Ms. Greaver on the Belmont side as well as the contemporaneous email correspondence between Brite Way and Belmont staff during the relevant time period of July through September 2023. Plaintiff did not cross-examine Ms. Hoffman at trial, and her testimony is uncontroverted.

46. The testimony of Brite Way's witnesses, Mr. Calabrese and Ms. Hoffman, about the making and implementation of the agreement between Brite Way and Belmont for Brite Way to purchase ingredients for Belmont to produce the nutrition bars ordered by Brite Way is corroborated by witness testimony on the Belmont side. Greaver Trial Declaration at 2-4; Trial Transcript at 81-85 (testimony of Ms. Greaver). The testimony of Jennifer Greaver, Belmont's purchasing manager, corroborates Mr. Calabrese's testimony that Brite Way and Belmont had an agreement for Brite Way to purchase ingredients for Belmont to produce the nutrition bars that Brite Way had ordered from Belmont. *Id.* First, Ms. Greaver testified about Belmont's financial difficulties that in order for Belmont to keep its production lines running and continue fulfilling open purchase orders for customers like Brite Way, it needed customers such as Brite Way to step in and purchase ingredients

directly from suppliers on Belmont's behalf. *Id.* Thus, this testimony indicates that Belmont had the need for such agreement with Brite Way, supporting a finding that such agreement existed. Second, Ms. Greaver testified that it was Mr. Tsudis, Belmont's president, who walked into her office and gave her the direction to coordinate with customers like Brite Way regarding ingredient purchases by the customers for Belmont to produce finished product for the customers. Trial Transcript at 82-87 (testimony of Ms. Greaver). Third, in July 2023, Ms. Greaver communicated with Chris Bartek, Brite Way's project manager, and Nancy McFall at Belmont and provided them with a detailed list and breakdown of open purchase orders, quantities of ingredients needed for all open purchase orders, and supplier contact information, so that Brite Way could place ingredient orders directly with Belmont's suppliers. Greaver Trial Declaration at 2-3. Fourth, as Belmont's purchase manager, Ms. Greaver examined the paperwork, including the ingredient invoices provided by Brite Way to substantiate its credits for its purchases for Belmont, and based on this examination, she prepared a spreadsheet in October 2023 attached in her email to Ed Bidanset of Tattooed Chef, Inc., an Ittella affiliate, which was also one of the bankruptcy debtors in the jointly administered Ittella bankruptcy cases,[17] and Ron McAfee of LKV, LLC, the purchaser of Belmont's assets,[18] showing that Brite Way should have been issued credits of $763,030.36 for its ingredient purchases on behalf of Belmont. Greaver Trial Declaration at 3-4; Joint Trial Exhibit 15 (Ms. Greaver's email to her supervisors). Ms. Greaver's October 27, 2023 email and her spreadsheet showing her

[17] Mr. Bidanset is the chief restructuring officer of Tattooed Chef, Inc., as he was identified on the witness list in the Joint Pre-Trial Stipulation at 10, which list was adopted in the Final Pretrial Order at 11.

[18] LKV purchased Belmont's assets through an asset purchase agreement dated September 26, 2023, which approved by the Court in an order filed and entered on October 4, 2023. Joint Exhibits 10 and 11. The closing date of the 15th day after the entry of the order approving the sale for the purchase was set forth in the Asset Purchase Agreement, Joint Trial Exhibit 10 at 16, which was adopted in the order of October 4, 2023 approving the sale, Joint Exhibit 11, which would have been October 19, 2023. However, the actual effective date may have been later on October 27, 2023. See Exhibit B to Liquidating Trustee's Motion to Amend Joint Pre-Trial Stipulation, Docket No. 75 (assignment agreement): Defendant's Trial Brief at 7-8, citing Joint Trial Exhibit 12 (email between Monica Phillips and counsel for the Committee).

analysis that Belmont owed Brite Way credits totaling $763,030.36 for ingredient purchases attached thereto are in evidence as Joint Exhibit 15. Greaver Trial Declaration at 3-4.

47. Ms. Greaver in her testimony described her analysis of Brite Way's ingredient purchases for Belmont's benefit as follows: "The spreadsheet I attached to my October 27, 2023 email reflects my analysis of the ingredient purchases made by Brite Way for Belmont's benefit. The spreadsheet identifies each ingredient purchased, the specific Brite Way purchase orders the ingredients were tied to, the quantities received, the amounts used in production runs, remaining inventory, and the credit amounts to be issued as of October 27, 2023. The spreadsheet reflects a total credit owed to Brite Way of $763,030.36. This spreadsheet was prepared by Belmont's own records and represents Belmont's internal acknowledgment of the amounts it owed to Brite Way for ingredients." Greaver Trial Declaration at 4. This testimony was received into evidence without objection. Trial Transcript at 69-70; Liquidating Trustee's Objections to Defendant's Declaration Testimony, Docket No. 87, filed on May 4, 2026, at 1. As Ms. Greaver testified, her spreadsheet (i.e., Joint Trial Exhibit 15) reflected the amounts of ingredients received and used in production, that is, as opposed to the cost of the ingredients. Trial Transcript at 77-78 (testimony of Ms. Greaver). Ms. Greaver's spreadsheet indicates quantities of specific ingredients received by Belmont and then used by Belmont in production, and as to the ingredients received from Brite Way's purchases and used in production for Brite Way's purchase orders, and apparently, based on this information, Ms. Greaver assigned a value for a credit to be issued Brite Way for each ingredient it purchased for Belmont as of October 27, 2023, which totaled $763,030.36. Joint Trial Exhibit 15. The cost information for Brite Way's ingredient purchases as shown on the invoices from the ingredient suppliers it ordered from is not reflected in Ms. Greaver's spreadsheet, though she received this information from Brite Way as she and Ms. Hoffman had testified. Greaver Trial Declaration at 3-4; Hoffman Trial Declaration at 3-4. In their testimony, Mr. Calabrese and Ms. Hoffman stated that the total amount of credits that Brite Way was

entitled to for ingredient purchases for Belmont was the same amount determined by Ms. Greaver on her spreadsheet, namely, $763,030.36. Calabrese Trial Declaration at 5; Hoffman Trial Declaration at 4. Thus, it appears that Brite Way is relying on Ms. Greaver's analysis of its credit requests to value the credits for its ingredient purchases for Belmont in the amount of $763,030.36. The Court finds that the valuation of Brite Way's credits for its ingredient purchases for Belmont under their July 2023 agreement at $763,030.36 is reasonable in light of Ms. Greaver's analysis as Belmont's purchase manager who was tasked the responsibility of monitoring and analyzing Brite Way's ingredient purchases for Belmont and requests for credits and in light of Brite Way's supporting documentation in the invoices from the ingredient suppliers it purchased ingredients from for Belmont, which during the period of July through October 2023 totaled over $1 million.

48. Internal email correspondence within the Ittella affiliate group for the most part accepted Ms. Greaver's analysis that Brite Way was entitled to credits for ingredient purchases as indicated in the email of the same date, October 27, 2023, from Ms. Phillips, the account receivables specialist, to counsel and Mr. Bidanset, stating as follows: "Also in regard to the attachments Ed [Bidanset] got from BCI [i.e., Belmont] regarding ingredients/inventory for Brite Way after the credit is applied they still owed $468,722.38 [reduced from $1,254,779.57]. . . . So total credit Jennifer [Greaver] shows they are owed $763,030.36 which $50,015.37 has been already issued. [19] The remaining credit owed is

[19] The reference to a credit of $50,015.37 in Ms. Phillips's October 27, 2023 email was apparently reflected in the accounts receivable aging report of that date as being applied on October 23, 2023 and also stated in her October 27, 2023 email on her list of outstanding invoices and applied credits. Joint Trial Exhibits 12 and 13. However, no testimony was given by Ms. Phillips about her October 27, 2023 email and the attached aging report referring to such credit, so there is no evidence in the record based on testimony of a witness with personal knowledge that Belmont applied this credit to Brite Way's account. Federal Rule of Evidence 602. The only evidence in the record offered by Plaintiff about credits given by Belmont to Brite Way for ingredient purchases was Ms. Dieckmann's testimony which was no such credits were given as of September 27, 2023. Dieckmann Trial Declaration at 2. Assuming for the sake of argument, if Ms. Phillips was correct that Brite Way was given the credit of $50,015.37 on October 23, 2023, her analysis was that Brite Way's remaining credit was

$713,014.99, leaving a balance due of $468,722 due[.]" Joint Trial Exhibit 12.[20]

49. Furthermore, it is a stipulated fact adopted in the Final Pretrial Order that "[o]n October 27, 2023, Jennifer Greaver, a manager at Belmont, sent an email to Ed Bidanset and LKV, LLC and its representatives with a spreadsheet showing the ingredients purchased by Defendant for Belmont's benefit and stated that credits needed to be issued to Defendant in the amount of $760,030.36." Joint Pretrial Stipulation at 3; Final Pretrial Order at 4. [21]

$713,014.99 (after applying the credit of $50,015.37), leaving a balance due of $468.722.38. Joint Trial Exhibit 12. If this amount of $468,722.38 analyzed by Ms. Phillips on October 27, 2023 to be the remaining amount due from Brite Way were reduced by $350,686.20 for the erroneous Invoice No. INV21669 and $141,726.50 for Brite Way's November 2023 payment as the Court finds herein, there would be no remaining amount due based on Ms. Phillips's accounting in her October 27, 2023 email.

[20] In this email, Ms. Phillips also stated: "My understanding is as of today the sale of BCI (i.e., Belmont] is final and we no longer own the receivables and will only get a percentage of what the new owners collect?" Joint Trial Exhibit 12. Belmont's accounts receivables, including those related to Brite Way, were part of the asset sale to LKV. Joint Trial Exhibits 10 and 11. Defendant in its trial brief argued that the action must be dismissed with prejudice because Plaintiff had no standing to claim the Brite Way accounts receivable, having been sold in the asset sale to LKV. Defendant's Trial Brief at 13. Plaintiff filed a motion to amend the joint pretrial stipulation to add an exhibit which was the assignment agreement transferring the receivables to the Debtor BCI [i.e., Belmont], which was later withdrawn after the Court ruled that Defendant could not raise the lack of standing as an issue because the issue was not included in the final pretrial order. Liquidating Trustee's Motion to Amend Joint Pre-Trial Stipulation to Add Proposed Exhibit 21, Docket No. 75, filed on April 29, 2026; Rulings After Status Conference re: Trial, Docket No. 84, filed and entered on April 30, 2026.

[21] Plaintiff in its trial brief at 4 argues that Ms. Greaver's email and spreadsheet of October 27, 2023 should be disregarded because she was an employee of Brite Way and that the email came after the sale of Belmont's assets to another entity, LKV. Plaintiff's Trial Brief at 4. Plaintiff's first argument is factually unsupported as Ms. Greaver's uncontroverted testimony was that she was the purchase manager at Belmont and its successors. Greaver Trial Declaration at 2; Trial Transcript at 71 (testimony of Ms. Greaver). There is nothing in the record that supports the bald assertion that Ms. Greaver was employed by Brite Way, and Plaintiff cites nothing in his trial brief. Plaintiff's Trial Brief at 4. This argument is also contrary to the stipulated fact that Ms. Greaver was a manager at Belmont when she prepared the October 27, 2023 email and spreadsheet. Final Pretrial Order at 4. Plaintiff's second argument has colorable merit in that Ms. Greaver's email and spreadsheet dated October 27, 2023 were after the effective date of the asset purchase of Belmont's assets fifteen days after the date of the Court's order approving the bankruptcy sale of the Belmont assets on October 19, 2023. Joint Trial Exhibits 10, 11, 15 and 16. (However, the effective date of the sale may have been October 27, 2023 as recited in an agreement between Debtor Belmont and the purchaser, LKV, through its entity, Belmont Confections. Exhibit B to Liquidating Trustee's Motion to Amend Joint Pre-Trial Stipulation, Docket No. 75; see also, Defendant's Trial Brief

50. The contemporaneous email correspondence between Brite Way (i.e., Ms. Hoffman and Mr. Calabrese) and Belmont (i.e., Ms. Phillips, Ms. Greaver and Ms. Dieckmann) during the time period from July to October 2023 substantiates the exchange of information regarding ingredient purchases by Brite Way for Belmont and Brite Way's requests for credits against its purchase orders with Belmont pursuant to their agreement. Joint Trial Exhibits 3, 8, 9 and 15. The testimony of these witnesses, Mr. Calabrese and Ms. Hoffman at Brite Way and Ms. Greaver at Belmont indicates that both sides were aware of the agreement that Brite Way was purchasing ingredients for Belmont to produce the nutrition

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at 7-8, citing Joint Trial Exhibit 12 (email between Monica Phillips and counsel for the Committee).) Although the record is not clear, it appears that Ms. Greaver's employment may have gone over to the successor entity for Belmont's business, Belmont Confections, controlled by LKV along with Belmont's assets purchased by LKV, so that the analysis in her October 27, 2023 email and spreadsheet arguably is not binding on the pre-sale Debtor, Belmont, and its successor, the Liquidating Trustee. *Id.;* Greaver Trial Declaration at 2. However, the fact of her October 27, 2023 email and spreadsheet is stipulated to as set forth in the Joint Pre-Trial Stipulation and Final Pretrial Order. Moreover, Ms. Greaver's October 27, 2023 email and spreadsheet are in evidence as Joint Trial Exhibit 15. Ms. Greaver's testimony and her October 27, 2023 email and spreadsheet are probative because she as Belmont's purchase manager during the relevant time period in 2023 was a percipient witness to Belmont's financial condition and its conduct in implementing the agreement with Brite Way for Brite Way to purchase ingredients for Belmont to produce the nutrition bars ordered by Brite Way. Ms. Greaver's testimony and her October 27, 2023 email and spreadsheet may not be conclusive evidence of the credits owed by Belmont to Brite Way, but highly probative evidence of such credits because Ms. Greaver as Belmont's purchase manager had personal knowledge of Belmont's receipt of information from Brite Way about Brite Way's ingredient purchases for Belmont under the direction of Mr. Tsudis, Belmont's president, from July 2023 through October 2023. As discussed above, Ms. Greaver was the person designated at Belmont to receive ingredient invoices from Brite Way as indicated, for example, the email from Monica Phillips, Belmont's account receivables specialist, on July 18, 2023, telling Karen Hoffman at Brite Way to send the ingredient invoices to Ms. Greaver for Belmont. Joint Trial Exhibit 3. The testimony of Ms. Hoffman and Ms. Greaver that Ms. Greaver was the person at Belmont receiving and keeping track of ingredient purchase documentation from Brite Way is uncontroverted. Hoffman Trial Declaration at 2-3; Greaver Trial Declaration at 2-6. The Court also notes that Ms. Greaver's October 27, 2023 email was sent to different parties, i.e., Debtors represented by Mr. Bidanset, which sold Belmont's assets to LKV, and Ron McAfee for LKV, the purchaser of Belmont's assets. Joint Trial Exhibit 15. The Court further notes that on the same date, October 27, 2023, Monica Phillips, the accounts receivable specialist for Belmont at Tattooed Chef, Inc., one of the other bankruptcy debtors in the Ittella affiliate group, sent an email to debtors' counsel with a copy to Mr. Bidanset, debtors' chief restructuring officer, adopting Ms. Greaver's analysis for applying ingredient purchase credits to Brite Way's account and recommending that the group demand Brite Way pay the balance after applying the credits. Joint Trial Exhibit 12.

bars that Brite Way ordered and that Brite Way was providing the documentation to substantiate these purchases for it to be credited for the ingredient purchases against the purchase orders for the finished product, the nutrition bars, manufactured by Belmont which Brite Way had ordered.

51. The Court has heard Mr. Calabrese's testimony regarding the oral agreement between Brite Way and Belmont based on his conversation with Mr. Tsudis, Belmont's president, for Brite Way to purchase ingredients for Belmont to produce the nutrition bars to fulfill Brite Way's purchase orders with Belmont. After considering Mr. Calabrese's testimony, both written and oral, and observing his demeanor in open court upon cross-examination by Plaintiff's counsel, the Court finds that his testimony about the making of the agreement to be credible. Mr. Calabrese's testimony about the agreement between Brite Way and Belmont is uncontroverted. Although the other persons involved in the conversation from which the agreement between Brite Way and Belmont was reached, Mr. Tsudis and Mr. Bartek, were listed as trial witnesses in the Joint Pretrial Stipulation, Docket No. 53, filed on March 4, 2026, no testimony from either of these witnesses was offered at trial, which may been offered to contravene Mr. Calabrese's testimony. [22] Moreover, Mr. Calabrese's testimony about the agreement between Brite Way and Belmont is corroborated by substantial probative evidence of the course of conduct between Brite Way and Belmont representatives regarding implementation of the agreement indicating ingredient purchases by Brite Way which were shipped to Belmont with supporting documentation in the invoices to Brite Way for ingredient purchases, which documentation was provided to

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[22] The only witness called by Plaintiff at trial was Ms. Dieckmann, and she gave no testimony on the subject of the making of the agreement between Belmont and Brite Way for Brite Way to purchase ingredients for Belmont to produce nutrition bars ordered by Brite Way. Dieckmann Trial Declaration at 2-3; Trial Transcript at 17-67 (testimony of Ms. Dieckmann). As Mr. Calabrese testified, the agreement was made between him and Mr. Tsudis, Belmont's president, in their conversation in July 2023, and the only other participant was Chris Bartek, Brite Way's project manager. Calabrese Trial Declaration at 4. As discussed herein, Ms. Dieckmann was made aware of the agreement as shown by the email correspondence she was copied on and participated in later in July and September 2023 discussing Brite Way's requests for credits for ingredient purchases for Belmont. Joint Trial Exhibits 4, 7 and 8.

Belmont, and email exchanges between Brite Way and Belmont regarding Brite Way's requests for credits based on its ingredient purchases for Belmont as recited herein.

52. The evidence offered by Plaintiff in support of its case-in-chief for its claims consisted of the Joint Trial Exhibits 1-20 and the testimony of his sole witness, Ms. Dieckmann, the former chief financial officer of Ittella, Belmont's parent through its affiliate, BCI Acquisition, Inc. Joint Trial Exhibits 1-20; Dieckmann Trial Declaration; Trial Transcript at 17-67 (testimony of Ms. Dieckmann). In her direct testimony declaration, Ms. Dieckmann stated that on April 27, 2023, Belmont issued an invoice for bars to be sold as Jenny Craig Bars in the total amount of $365,635.00, and after Brite Way had made a payment of $100,000.00, $264.635.00 remained due. Dieckmann Trial Declaration at 2. She further stated that a true and accurate copy of this invoice, Invoice No. INV21632, was Hearing Exhibit [i.e. Joint Trial Exhibit] 5. [23] This invoice was the only invoice issued by Belmont to Brite Way specifically discussed in her testimony. Dieckmann Trial Declaration; Trial Transcript at 17-67 (testimony of Ms. Dieckmann).

53. In her direct testimony declaration, Ms. Dieckmann stated that she was copied and participated in the email correspondence with Brite Way representatives regarding unpaid invoices which occurred on July 20 and 21, 2023 and in September 2023, true and accurate copies of which were designated as Hearing Exhibits [i.e., Joint Trial Exhibits] 4, 7 and 8. Dieckmann Trial Declaration at 2. Ms. Dieckmann testified that at the time these referenced emails were sent or received, they accurately reflected her understanding as of those dates. *Id.* However, Ms. Dieckmann testified in her direct testimony declaration and in her live testimony at trial that she had no independent present recollection of additional details beyond what was reflected in the above referenced emails and her direct testimony declaration, further stating that she could not testify to facts outside the contents thereof. *Id.* at 3; Trial Transcript at 17-67 (testimony of Ms. Dieckmann).

[23] The declaration testimony is $1,000.00 different from the invoice stating the total amount due was $364,635.00. Apparently, the difference was from a typographical error, which is immaterial as the Court finds that Brite Way paid the invoice in full as discussed herein.

54. Ms. Dieckmann testified in her direct testimony declaration that "[a]t no point prior to September 27, 2023 did I, or to the best of my recollection anyone at Belmont or any other affiliated entity, provide any credits to Brite Way in regards to the $1,254,779.57 owed. The only credit to Brite Way that I am aware of during this time period is a $43,855.20 credit for incorrect pricing on a product referred to as Barflex." Dieckmann Trial Declaration at 2.

55. Regarding Ms. Dieckmann's direct testimony in her declaration that the only credit from Belmont to Brite Way that she was aware "during this time period" (i.e., April 27, 2023 through September 27, 2023)[24] of was a $43,855.20 credit for incorrect pricing on a product referred to as "BarFlex," on cross-examination, she admitted that a credit memo line item in an email of July 20, 2023 from Monica Phillips, the accounts receivable specialist for Belmont, to Brite Way which Ms. Dieckmann was copied on, described that credit with a date of "7/14/2023" as being "for ingredient that customer purchased." Dieckmann Trial Declaration at 2; Trial Transcript at 23-25 (testimony of Ms. Dieckmann); Joint Trial Exhibit 7 (email from Ms. Phillips). Ms. Dieckmann could not recall in her testimony why there was a discrepancy between her trial declaration statement and Ms. Phillips's July 20, 2023 email which Ms. Dieckmann was copied on that the credit was for ingredients purchased by Brite Way for Belmont. *Id.* The Court finds that Ms. Dieckmann's after the fact recollection in her testimony three years in 2026 that the credit was not for ingredient purchases was mistaken because it lacks credibility as it is inconsistent with contemporaneous email correspondence between Belmont and Brite Way at the time of the credit in July 2023 documented in Joint Trial Exhibit 7 as shown by Ms. Phillips's email of July 20, 2023 that the credit was issued by Belmont on July 14, 2023 for Brite Way's ingredient purchases. Based on the date of the credit of July 14, 2023 and the notation that the credit was "for ingredient that customer purchased" in Ms. Phillips's July

[24] The term "during this time period" was not identified in this testimony, but the Court infers that the time period referred to the dates of April 27, 2023 and September 27, 2023, the first and last specific dates of Ms. Dieckmann's contacts with Brite Way in her trial declaration. Dieckmann Trial Declaration at 2-3.

20, 2023 email, such evidence supports Brite Way's contention that it was entitled to credits for ingredient purchases it made for Belmont pursuant to its agreement with Belmont, and in this instance, Belmont actually credited Brite Way for an ingredient purchase, thus effectuating the agreement in part.

56. Regarding the one invoice that Belmont issued to Brite Way discussed in Ms. Dieckmann's testimony, Invoice No. INV21632, dated April 27, 2023, for Jenny Craig Bars with a remaining amount due of $264,635.60. Dieckmann Trial Declaration at 2; Joint Trial Exhibit 5. The evidence before the Court indicates that the dispute over that invoice was resolved as discussed in Finding No. 38 above which details the email correspondence between Brite Way and Belmont representatives, including Ms. Dieckmann and Mr. Calabrese, on or about July 20, 2023 regarding that invoice. Finding No 38, *supra*, *citing,* Joint Trial Exhibits 4 and 7. In this email correspondence, Ms. Phillips for Belmont emailed Ms. Hoffman for Brite Way stating Brite Way had past due invoices, listing them, including INV21632, who responded that Brite Way was holding off payment of that invoice because the goods were still in production based on ingredients not yet used in production. *Id.* In response, Ms. Dieckmann clarified and confirmed in an email to Brite Way representatives that Invoice No. INV21632, was for finished goods and was past due, and in response, Mr. Calabrese for Belmont agreed and said Brite Way would pay it on July 25, 2026. *Id.* Subsequently, on September 11, 2023, Ms. Phillips emailed to Brite Way "a friendly reminder that your account is past due," with a list of past due invoices, which did not include Invoice No. INV21632. Joint Trial Exhibit 8. Finally, Belmont's Statement of Account dated December 15, 2023, attached to the Complaint as Exhibit 1, reflects that Brite Way made a payment of $264,635.60, which was the remaining amount due on the invoice, on July 25, 2023 as Mr. Calabrese testified that Brite Way would do. Statement at 2, Joint Trial Exhibit 14. Based on this evidence, the Court finds that as a factual matter, Brite Way paid Invoice No. INV21632 dated April 27, 2023 in full on July 25, 2023 as discussed between Ms. Dieckmann and Mr. Calabrese in their email correspondence of July 20 and 21, 2023 and that the invoice received in

evidence as Joint Trial Exhibit 5 does not support Plaintiff's claims based on outstanding past due invoices allegedly due from Brite Way.

57. Ms. Dieckmann's testimony is not inconsistent with the testimony of Brite Way's witnesses, such as Mr. Calabrese, Ms. Hoffman and Ms. Greaver. Ms. Dieckmann acknowledged in her testimony that the email correspondence on July 20 and 21, 2023 and in September 2023 with Brite Way representatives regarding past due invoices received in evidence as Joint Trial Exhibits 4, 7 and 8 reflected her understanding as of the dates of such correspondence. Dieckmann Trial Declaration at 2. As the Court has discussed above, this email correspondence in which Ms. Dieckmann had been copied on and/or participated in reflected that in response to Belmont's requests of July and September 2023 for payment of past due invoices, Brite Way representatives, such as Ms. Hoffman and Mr. Calabrese, had informed Belmont that Brite Way disagreed with the invoices because Brite Way was not given credits for the ingredient purchases it made for Belmont. For example, in the email exchange of July 21, 2023 between Mr. Calabrese and Ms. Dieckmann, he told her that Brite Way was buying the ingredients for Belmont to run Brite Way's open Amway orders and asked her whether Brite Way should stop buying ingredients for Belmont or "would Belmont run these bars per our agreement with Belmont." Joint Trial Exhibit 7. In this email exchange, Ms. Dieckmann responded first thanking Mr. Calabrese for his email response, stating appreciation for his informing her that Brite Way would make payment on one invoice on July 25, 2023 and that "Belmont will run the order as scheduled," and informing him that "we can discuss everything else when you are back [from his travel]." *Id.* Also, in another email exchange of July 20 and 21, 2023 between Belmont and Brite Way representatives, Ms. Hoffman, Brite Way's financial consultant, commented in an email to Belmont that "Brite Way Foods has already paid over $200,000 for ingredients for Belmont (and adding as orders are placed) and will be sending the cm [i.e., credit memo] tomorrow that will offset the $2,318.48 [owed] plus upcoming invoices due," and Ms. Dieckmann replied to Ms. Hoffman's email, stating that Belmont will pause all production and new orders on Brite Way's account unless Belmont receives an

acceptable payment plan from Brite Way, though she did not specifically respond to Ms. Hoffman's comment about Brite Way's request for credit for ingredient purchases. *Id.* Furthermore, in email correspondence of September 2023 between Brite Way and Belmont representatives, Ms. Hoffman for Brite Way told Belmont that she has made multiple requests to Belmont for credits based on Brite Way's ingredient purchases for Belmont without any response from Belmont and asked how Belmont is going to take into consideration the over $740,000 in ingredients purchased by Brite Way for Belmont, and Ms. Dieckmann emailed Ms. Hoffman on September 14, 2023 in response, stating: "Hi Karen, Can you please advise what the $740,000 in ingredients are that were purchased? I am not clear if these are ingredients that are invoiced or if these are the consigned goods on the floor or if these are new items. I need a clear understanding of when the account will be current before the plant releases the product to you and there is additional production scheduled next week as well. Thank you, Stephanie[.]" Joint Trial Exhibit 8. As Ms. Hoffman stated in her testimony, on September 15, 2023, she sent Ms. Dieckmann all of Brite Way's ingredient invoices along with a spreadsheet listing every ingredient purchased, the amounts ordered, the corresponding invoice numbers and the amounts paid, Hoffman Trial Declaration at 3-4. As Ms. Hoffman further testified, Ms. Dieckmann sent her an email on September 18, 2023, confirming that Ms. Dieckmann had reviewed the invoices and was waiting on answers from the plant, but Ms. Hoffman never received a substantive response from Ms. Dieckmann. *Id.* Nevertheless, as discussed herein, Ms. Dieckmann authenticated the email correspondence with these email exchanges and did not dispute that for example, Brite Way made requests to Belmont for credits for ingredient purchases made by Brite Way for its orders with Belmont. Dieckman Trial Declaration at 2; Joint Trial Exhibits 4, 7 and 8; see also, Trial Transcript at 45-54 (testimony of Ms. Dieckmann). However, Ms. Dieckmann in her testimony stated that she had no present independent recollection of matters described in this email correspondence. Trial Transcript at 23-30,

58. Ms. Dieckmann in her testimony had no recollection of internal email correspondence of

the Ittella affiliate group in September 2023 about Brite Way's requests for credits for CFO of Ittella, which was received in evidence as Joint Trial Exhibit 9. Trial Transcript at 33-37, 55-59 (testimony of Ms. Dieckmann). As the Court discussed above, Ms. Dieckmann emailed Belmont's accounting staff on September 14, 2023 in which she stated that she wanted to discuss Brite Way and "the ingredients that they purchased, the current pricing, and credits that are due on their account." Finding No. 44, *citing*, Joint Trial Exhibit 9. As the Court also noted, Ms. Dieckman emailed Belmont's cost accountant James Hyatt on September 26, 2023, asking "What is the amount of the credit that should be created?", and Mr. Hyatt responded to her, stating that Brite Way said it was owed $742,286.89, while Belmont's records reflected $701,376.91 had been received. *Id.* This internal email correspondence within the Ittella group shows that while Ms. Dieckmann testified that no credits were given by Belmont to Brite Way for ingredient purchases, she knew that Brite Way was entitled to such credits because she specifically asked her accounting staff for an analysis and recommendation on Brite Way's credit requests, which she got from Mr. Hyatt, the cost accountant, saying that Brite Way was entitled to over $700,000 in credits, which was over 90% of what it asked for at the time.

59. Ms. Dieckmann's direct testimony in her trial declaration that "[a]t no point prior to September 27, 2023 did I, or to the best of my recollection anyone at Belmont or any other affiliated entity, provide any credits to Brite Way in regards to the $1,254,779.57 owed" (is not inconsistent with the evidentiary record as it appears that she was right that Belmont or any of its affiliates did not provide Brite Way with credits for the ingredients that Brite Way purchased for Belmont as of September 27, 2023, except for the one credit of $43,855.20 that Ms. Phillips's July 20, 2023 email noted was for ingredients purchased by Brite Way. Dieckmann Trial Declaration at 2. However, Ms. Dieckmann's testimony that Belmont did not provide Brite Way with credits for its ingredient purchases does not mean that Brite Way was and is not entitled to such credits as Plaintiff seems to argue in this case, relying on this testimony of Ms. Dieckmann. As discussed in these findings of fact and conclusions of law, Brite Way has shown based on witness testimony and supporting

documentation that it is entitled to credits for its ingredient purchases it made for Belmont pursuant to their July 2023 agreement.

60. Based on the state of the pleadings as reflected in the Complaint and Answer, Brite Way admitted that it received invoices from Belmont, though it is unclear whether it was admitting that it received all of the invoices set forth in Belmont's Statement of Account dated December 15, 2023, attached as Exhibit 1 to the Complaint, but disputed the amounts claimed in the invoices due to credits that Brite Way contends that it is entitled to. The Statement only recites the dates and amounts of the invoices that Plaintiff asserts were sent by Belmont to Brite Way, but the actual invoices are not in evidence. Joint Trial Exhibit 14; Trial Transcript at 122-124 (colloquy between Plaintiff's counsel and the Court regarding the absence of the actual Belmont invoices in evidence). The Statement was dated December 23, 2023, and there was no testimony as to how it was prepared and who prepared it. Joint Trial Exhibit 14; Trial Transcript at 1-163. Apparently, the Statement was not prepared by Ms. Dieckmann, Plaintiff's only witness, as she gave no testimony as to its preparation and it was dated after her tenure with Ittella, Belmont's parent, ended in October 2023. Dieckmann Trial Declaration; Trial Transcript at 18-67 (testimony of Ms. Dieckmann). Based on the foregoing, the Court determines that the Statement in evidence is only secondary evidence at best that all of the invoices were sent to Brite Way on the dates and in the amounts recited therein, though not conclusive evidence, and it does not necessarily establish that such invoices were accepted by Brite Way.

61. Based on the evidence received at trial, including the trial testimony of the witnesses, such as Mr. Calabrese, Ms. Hoffman and Ms. Greaver, the Court finds that there was an agreement between Belmont and Brite Way as reached in the July 2023 conversation between Mr. Tsudis for Belmont as its president and Mr. Calabrese for Brite Way as its president that Brite Way would purchase ingredients for Belmont to produce nutrition bars as ordered by Brite Way and that Brite Way would be credited for such purchases against Belmont's invoices for the finished bars. As reflected in the business email correspondence between Brite Way and Belmont in evidence in Joint Trial Exhibits 3, 4, 7

and 8, Brite Way and Belmont discussed Brite Way's requests for credits for ingredients purchased by Brite Way for Belmont pursuant to their agreement, and Belmont was on notice that Brite Way did not agree to the amounts of invoices that Belmont said were past due based on credits that Brite Way was requesting Belmont to apply against outstanding invoices for bars produced by Belmont for Brite Way. As shown by the invoices for ingredient purchases by Brite Way for Belmont received into evidence as Joint Trial Exhibit 16, Brite Way made purchases of ingredients which were shipped to Belmont for the production of nutrition bars ordered by Brite Way during the time period of July 2023 at least through October 2023, and as roughly calculated by the Court, the amount of the ingredient purchases by Brite Way for Belmont substantiated by these invoices exceeded $1 million. See Finding No. 34, *supra*. During this time period of July 2023 through October 2023, Brite Way made multiple requests for credits for its ingredient purchases for Belmont against the outstanding invoices issued by Belmont for finished products in which the ingredients purchased by Brite Way were used. Hoffman Trial Declaration at 2-4; Greaver Trial Declaration at 2-4; Calabrese Trial Declaration at 4-5; Joint Trial Exhibits 3, 4, 7 and 8 (email correspondence from Ms. Hoffman and Mr. Calabrese requesting credits from Belmont for Brite Way's ingredient purchases). During this time period of July 2023 through October 2023, Brite Way provided Belmont with documentation to substantiate its ingredient purchases for Belmont. *Id.* Belmont received Brite Way's requests for credits and supporting documentation and considered the requests and documentation. Greaver Trial Declaration at 2-4; Joint Trial Exhibits 3, 4, 7, 8 and 9 (email correspondence showing receipt, acknowledgment and consideration by Belmont of Brite Way's requests for credits from Belmont for Brite Way's ingredient purchases). Based on their analysis of Brite Way's credit requests and documentation, Belmont's accountant staff members recommended that Brite Way be issued credits in the amount of $760,030.36 by Ms. Greaver, Belmont's purchase manager, who had been assigned to receive Brite Way's ingredient purchase documentation, and the amount of $701,376.91 by James Hyatt, Belmont's cost accountant. Greaver Trial Declaration at 2-4; Joint Trial Exhibit 9 (Mr.

Hyatt's email of September 26, 2023 to Ms. Dieckmann). Belmont has only provided Brite Way with a credit of $43,855.20 on July 14, 2023 for ingredients that Brite Way purchased for Belmont. Joint Trial Exhibit 7 (emails of July 20, 2023 between Ms. Phillips, Belmont's accounts receivable specialist, and Ms. Hoffman, Brite Way's financial consultant).

Jenny Craig Order Fulfillment Dispute

62. In May 2023, Jenny Craig, one of Brite Way's customers, filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code, 11 U.S.C. Calabrese Trial Declaration at 3. At the time of Jenny Craig's bankruptcy filing, Brite Way had open purchase orders for Jenny Craig bars that Belmont was to fulfill. *Id.* After Jenny Craig filed its bankruptcy case, Belmont sent Brite Way Invoice No. INV21669 in the amount of $350,686.20, purportedly representing the cost of ingredients that Belmont claimed it had purchased to fulfill those purchase orders but could no longer use. *Id.;* Trial Transcript at 102-103, 112-113 (testimony of Mr. Calabrese). According to Mr. Calabrese, Brite Way's president, as he testified at trial, there was no contract between Brite Way and Belmont—other than individual purchase orders—that would hold Brite Way responsible for any unused ingredients. *Id.* As Mr. Calabrese also testified at trial, Brite Way's purchase orders with Belmont were for finished products, not for stand-alone ingredients. *Id.* Belmont's accounts receivable aging report as of October 27, 2023, received into evidence as Joint Trial Exhibit 13, supports Mr. Calabrese's testimony that Brite Way did not contract for purchase of ingredients as reflected in Invoice No. INV21669 as there is no purchase order referenced on the aging report for that invoice. Joint Trial Exhibit 13 at 1. The aging report shows Invoice No. INV21669 as an outstanding account receivable with an open balance of $350,686.20, but under the column on the report for "P.O. No." [i.e.. Purchase Order No.], the word "INGREDIENTS" was stated, and not a purchase order number unlike most of the other accounts receivable for Belmont's invoices issued to Brite Way on the aging report. *Id.* A purchase order number would have shown that Brite Way had placed an order so that a contract could be inferred in accordance with Brite Way

business relationship with Belmont as Mr. Calabrese had testified. Trial Transcript at 102-104 (testimony of Mr. Calabrese). Thus, it appears from its own records that Belmont did not receive a purchase order from Brite Way for ingredients relating to Invoice No. INV21669, and Plaintiff has not offered other evidence showing that Brite Way sent a purchase order to Belmont for ingredients or otherwise entered into a contract for ingredients relating to Belmont's invoice, No. INV21669.

63. Perhaps, more significantly, Invoice No. INV21669 is not in evidence. Plaintiff did not produce actual invoices issued by Belmont to Brite Way, including Invoice No. INV21669, with one exception previously discussed, Invoice No. INV21632, Joint Trial Exhibit 5. Trial Transcript at 124 (colloquy between the Court and Plaintiff's counsel regarding the absence of actual invoices in evidence). Thus, it is problematic for Plaintiff to argue what Invoice No. INV21669 is for if there is no evidence to show what it actually was for based on the actual document or on personal knowledge. Federal Rules of Evidence 602, 901 *et seq.*

64. Subsequent email correspondence between Brite Way and Belmont in July through September 2023 in evidence indicates that the parties were having further discussions on INV21669 and that the amount due on the invoice dated April 27, 2023 was subject to reconsideration and adjustment based on later developments, including the purchase of Jenny Craig, Brite Way's customer, by a buyer, Nutrisystem, who could make good on the prior Jenny Craig orders with Brite Way. Joint Trial Exhibits 6, 7 and 8; *see also,* Trial Transcript at 102-103, 111-115 (testimony of Mr. Calabrese). As previously discussed, on July 20, 2023, Monica Phillips, the accounts receivable specialist for Belmont, sent an email to Karen Hoffman, Brite Way's financial consultant, while acknowledging that Brite Way was "working with BCI [i.e. Belmont] on some credits," but stating Belmont needed to get payment from Brite Way on past due invoices, or otherwise, Belmont would put Brite Way's account on hold and not process new orders. Joint Trial Exhibit 4. The past due invoices that Ms. Phillips identified in her July 20, 2023 email included INV21669 in the amount of $350,686.20 for "INGREDIENTS", that is, not for finished nutrition bars as

recited in Ms. Dieckmann's testimony previously discussed. *Id.* 4. In response, on July 20, 2023, Ms. Hoffman for Brite Way emailed Ms. Phillips stating that her email about past due invoices was "surprising to put it nicely" and that regarding INV21669 and another invoice, she had "responded several times that this represents product that will be shipping and ingredients that will be used in producing product therefore I have been instructed to hold payment." *Id.* Ms. Hoffman further responded to Ms. Phillips in this email that she has "included Nol Calabrese – owner of Brite Way on this email since he has been in communication with BCI [i.e., Belmont] in regards to these 2 invoices." *Id.* Mr. Tsudis, Belmont's president, and Ms. Dieckmann, Ms. Phillips's supervisor, were copied on both of these emails. *Id.* In response to these emails, on July 21, 2023, Ms. Dieckmann emailed Ms. Hoffman asking when Brite Way will pay the other invoice, which was for finished bars. *Id.* In response to Ms. Dieckmann's email to Ms. Hoffman, on July 21, 2023, Mr. Calabrese, Brite Way's president, emailed her, stating that Brite Way will pay the other invoice on July 25, 2023, that Jenny Craig has been purchased and that Brite Way has a purchase order for 120,000 units that is scheduled to run on August 20, 2023. *Id.* In this email to Ms. Dieckmann of July 21, 2023, Mr. Calabrese stated that separately, Brite Way has been buying all of the ingredients for its open orders with Belmont for its customer, Amway, and asked whether Brite Way should stop purchasing ingredients for Belmont or "if Belmont will run these bars per our agreement with Belmont." *Id.* Mr. Calabrese copied Mr. Tsudis on his July 21, 2023 email. In reply, on July 21, 2023, Ms. Dieckmann informed Mr. Calabrese that she had heard that Jenny Craig was purchased, which was good news, and that "Belmont will run the order as scheduled." Joint Trial Exhibit 7. Ms. Dieckmann copied Mr. Tsudis on her email of July 21, 2023 responding to Mr. Calabrese's July 21, 2023 email, to which Mr. Tsudis responded by email on July 21, 2023 to Ms. Dieckmann, "Thank you, Stephanie. We will let you know if there are any other questions to make sure this is on schedule to run." *Id.* Mr. Tsudis also copied Mr. Calabrese on this email. *Id.* Based on this email correspondence, the Court can and does infer that Belmont's management agreed that Belmont would run, or manufacture, nutrition bars ordered by Brite Way for the Jenny Craig orders from ingredients that already had been purchased for such orders as Mr. Calabrese testified. Calabrese Trial Declaration at 3-4; Trial Transcript at 94-95, 113, *citing,* Joint Trial Exhibit 7 (testimony of Mr. Calabrese stating that the ingredients purchased for the Jenny Craig bars were run in producing those bars after Jenny Craig had been purchased).

65. The volume of ingredients claimed in Invoice No. INV21669 substantially exceeded the amount necessary to fulfill the relevant purchase orders relating to Jenny Craig. Calabrese Trial Declaration at 3-4; Trial Transcript at 93-96, 102-103, 112-114 (testimony of Mr. Calabrese). Based on Mr. Calabrese's assessment and knowledge of the industry, the quantity of ingredients reflected in that invoice represents an over-purchase of approximately 75% above what would have been needed. *Id.* Belmont's management has acknowledged and agreed with this assessment, that is, Mr. Calabrese identified George Tsudis as the Belmont management representative with whom he discussed this over-purchase, and this testimony is uncontroverted. Calabrese Trial Declaration at 5-6; Trial Transcript at 115-116 (testimony of Mr. Calabrese).

66. Nutrisystem subsequently purchased Jenny Craig's assets in the Jenny Craig bankruptcy proceeding, and Belmont resumed production of the Jenny Craig bars ordered by Brite Way. Calabrese Trial Declaration at 3; Trial Transcript at 111-115 (testimony of Mr. Calabrese); see also, Joint Trial Exhibit 7 (emails exchanged between Mr. Calabrese and Ms. Dieckmann on July 21, 2023, stating that Belmont will run the order to produce Jenny Craig bars as scheduled on August 20, 2023). In doing so, Belmont used a portion of the very ingredients reflected in Invoice No. INV21669 in those resumed production runs, specifically in bars reflected on Belmont's invoices INV21862, INV21861, INV21903, and INV21904. Calabrese Trial Declaration at 3-4; Trial Transcript at 111-115 (testimony of Mr. Calabrese). Any remaining ingredients would have passed to LKV, LLC as part of LKV's purchase of Belmont's assets pursuant to the Asset Purchase Agreement dated September 26, 2023, which included inventory among the purchased assets. *Id*. The email correspondence between Belmont and Brite Way in Joint Trial Exhibit 7 corroborates Mr.

Calabrese's testimony that the parties were resolving their dispute over Belmont's ingredients invoice, Invoice No. INV21669, and Belmont was running bar production for Belmont using the ingredients now that Jenny Craig had been purchased and Brite Way could fulfill the Jenny Craig orders from Jenny Craig's purchaser, Nutrisystem.

Brite Way November 2023 Payment Dispute

67. On or about November 10, 2023, Brite Way made a payment in the amount of $141,726.50 via wire transfer to Belmont. Calabrese Trial Declaration at 5; Trial Transcript at 100-101, 110 (testimony of Mr. Calabrese); Hoffman Trial Declaration at 4. [25] Ms. Hoffman personally wired this payment to Belmont's account at Mr. Calabrese's direction. Hoffman Trial Declaration at 4.

68. Brite Way's November 10, 2023 payment is not reflected in Plaintiff's accounting in the Complaint as set forth in Belmont's Statement of Account dated December 15, 2023 attached to the Complaint as Exhibit 1. Complaint and Exhibit 1, Statement, attached thereto, Docket No. 1 (copies are in evidence as Joint Trial Exhibit 14).[26]

69. According to Mr. Calabrese, Brite Way made the November 10, 2023 payment in an effort of Brite Way to resolve any remaining accounting disputes. Calabrese Trial Declaration at

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[25] In cross-examination, counsel asked Mr. Calabrese to which entity the wire payment on November 10, 2023 was made by Brite Way, and Mr. Calabrese answered, "To BCI." Trial Transcript at 100-101 (testimony of Mr. Calabrese). Counsel then asked, "Are you aware of whether at the time that payment was made BCI had been sold to LKV?" *Id.* at 101. Mr. Calabrese answered, "I don't recall." *Id.* It appears that counsel's question was based on the faulty premise that BCI as an entity was sold rather than its assets were sold as reflected in the asset purchase agreement, Joint Trial Exhibit 10. Based on the asset purchase agreement, BCI was not being sold, but its assets. *Id.* Thus, it appears based on Mr. Calabrese's trial testimony, the wire payment went to BCI, the entity, which apparently holds the rights to the accounts receivable at issue in this matter.

[26] The Court notes that the amount of $1,254,779.57 claimed in Belmont's December 15, 2023 Statement of Account as owed by Brite Way is the same amount as accounts receivable owed by Brite Way in Belmont's accounts receivable aging report as of October 27, 2023 prepared by Monica Phillips. Joint Trial Exhibits 12, 13 and 14. The date of last activity noted in Belmont's December 15, 2023 Statement of Account was October 27, 2023, the date of Ms. Phillips's aging report. *Id.* Although there was no testimony given on the preparation of Belmont's December 15, 2023 Statement of Account or on the October 27, 2023 accounts receivable aging report, it appears that the December 15, 2023 statement was based on the October 27, 2023 aging report and would not have reflected any account activity after October 27, 2023, such as a payment on November 10, 2023 as asserted by Brite Way.

5. The direct testimony of Mr. Calabrese and Ms. Hoffman regarding this payment in their trial declarations was received in evidence without objection. The trial declarations of Mr. Calabrese and Ms. Hoffman were filed and served on April 28, 2026, but Plaintiff offered no evidence in rebuttal to this testimony as the testimony of its sole witness, Ms. Dieckmann, only addressed whether Belmont or any affiliated entities provided credits to Brite Way as of September 27, 2023 and she left Ittella, Belmont's parent, in October 2023 and would not have had any involvement with Belmont when Brite Way made its November 10, 2023 payment. Dieckman Trial Declaration at 2-3. Also, Plaintiff did not offer any witness testimony or other evidence in rebuttal to address Defendant's witness testimony about Brite Way's November 10, 2023 payment. Trial Transcript at 118 (Plaintiff stated there is no rebuttal case).

70. Based on the uncontroverted witness testimony of Mr. Calabrese and Ms. Hoffman, the Court finds that Brite Way has shown by a preponderance of the evidence that it made a payment of $141,726.50 to BCI (i.e., Belmont) and is entitled to a credit in that amount against any outstanding accounts receivable owed by Brite Way to Belmont.

Adjustments for Credits that Brite Way is Entitled to

71. When Plaintiff's accounting as set forth in Belmont's December 15, 2023 Statement of Account is properly adjusted to reflect (a) the $763,030.36 in ingredient purchase credits owed to Brite Way; (b) the proper treatment of Invoice No. INV21669 for Jenny Craig ingredients that were consumed in subsequent production runs or transferred as part of the LKV asset sale; and (c) the $141,726.50 payment made by Brite Way on November 10, 2023, Brite Way does not owe any balance to Belmont or Plaintiff.

CONCLUSIONS OF LAW

Jurisdiction

1. This adversary proceeding arises under, arises in, and relates to the jointly administered Chapter 11 bankruptcy cases of Ittella International LLC, and affiliate companies, including BCI Acquisition, Inc., dba Belmont Confections [i.e. Belmont], pending before this Court. This Court has jurisdiction over this adversary proceeding pursuant to 28

U.S.C. §§ 157 and 1334(b).

2. Plaintiff's claims in this adversary proceeding are state law claims independent of federal bankruptcy law asserted against a non-debtor party not stemming from the bankruptcy itself or would be necessarily resolved in the claims allowance process and are therefore subject to the jurisdictional requirements of *Stern v. Marshall*, 564 U.S. 462, 499 (2011) that the bankruptcy court may not enter a final judgment on such claims absent the consent of the parties. *See, Wellness International Network v. Sharif,* 575 U.S. 665, 671 (2015). The parties have expressly consented to entry of a final judgment by this Court, and the Court therefore has authority to enter findings of fact and conclusions of law and a final judgment in this matter. Joint Status Report, Docket No. 46, filed on January 14, 2026, at 4 (both parties expressly indicated that they consent to bankruptcy court jurisdiction to enter a final judgment).

3. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1408 and 1409 because this proceeding arises in or is related to a bankruptcy case pending in this judicial district.

Burden of Proof

4. Plaintiff's claims are California state law claims, and state law governs the substance of claims, including the burden of proof. *Raleigh v. Illinois Department of Revenue,* 530 U.S. 15, 20 (2000). Plaintiff bears the burden of proof by a preponderance of the evidence on each cause of action alleged in the Complaint: (1) account stated, (2) unjust enrichment, (3) breach of the duty of good faith and fair dealing, (4) conversion, and (5) breach of contract. California Evidence Code § 115 (in California, the burden of proof in a civil case is proof by a preponderance of the evidence unless otherwise provided by law); California Evidence Code § 500 (in California, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting); *see also,* Trial Transcript at 128 (colloquy between Plaintiff's counsel and the Court during closing arguments acknowledging that Plaintiff bears the burden of proof on his claims alleged in the Complaint). Where Defendant asserts the affirmative defense of credits and offsets against the amounts alleged to be due, it bears the burden of proof on

that affirmative defense by a preponderance of the evidence. *Id.*

Plaintiff's First Cause of Action: Account Stated

5. In California, an action for an account stated requires: (1) previous transactions between the parties establishing the relationship of debtor and creditor; (2) an agreement between the parties, express or implied, on the amount due from the debtor to the creditor; (3) a promise by the debtor, express or implied, to pay the amount due. *Leighton v. Forster,* 8 Cal.App.5th 467, 491 (2017).[27] An account stated action requires an agreement that the balance struck is correct and a final conclusive acknowledgment of an exact amount due having in contemplation all credits and offsets. *Perry v. Schwartz,* 219 Cal.App.2d 825, 829 (1963). As the court in *Perry v. Schwartz* stated: "An account stated is an agreed balance of accounts; an account which has been examined and accepted by the parties. It implies an admission that the account is correct, and that the balance struck is due and owing from one party to the other. Its effect is to establish prima facie the accuracy of the items without further proof, and to constitute a new contract on which an action will lie. *Id.* at 829-830, *citing, Klein-Simpson Fruit Co. v. Hunt, Hatch & Co*., 65 Cal.App. 625, 633 (1924) and *Vance v. Supreme Lodge Fraternal Brotherhood*, 15 Cal.App. 178, 182 (1911).

6. Before July 2023, Belmont and Brite Way had a prior business arrangement in which Brite Way ordered from Belmont nutrition bars that Belmont manufactured for Brite Way from ingredients that Belmont purchased from its suppliers, and Brite Way paid Belmont for the produced bars. That is, Brite Way sent Belmont purchase orders for Belmont to produce and sell nutrition bars to Brite Way, and Belmont manufactured the nutrition bars for Brite Way and Belmont sent invoices to Brite Way for the manufactured bars that Brite Way ordered, which Brite Way later paid. Under this arrangement, Belmont purchased the ingredients from its suppliers that it used to manufacture the bars for Brite Way's orders.

7. This arrangement changed after Belmont was having financial difficulties in paying its

[27] The elements for establishing account stated were not addressed in Plaintiff's Trial Brief, and at trial, Plaintiff's counsel could not list the elements for an account stated claim. Plaintiff's Trial Brief at 1-5; Trial Transcript at 133-136 (colloquy between the Court and Plaintiff's counsel during closing argument.

ingredient suppliers and the suppliers were no longer willing to sell ingredients to Belmont without prepayment. In their conversation in July 2023, Mr. Tsudis, Belmont's president, asked Mr. Calabrese, Brite Way's president, if Brite Way could purchase the ingredients for Belmont to produce the nutrition bars that Brite Way was ordering from Belmont because Belmont was having financial problems, which Mr. Calabrese agreed that Brite Way would do so, provided that Brite Way was credited for its ingredient purchases.

8. As set forth in California Civil Code § 1550, the elements to prove the existence of a contract are: (1) parties capable of contracting; (2) consent; (3) a lawful object; and (4) consideration. See also, 1 Witkin, Summary of California Law, Contracts § 3 (11th edition, online May 2026 update). As the California Supreme Court has observed, "An essential element of any contract is the consent of the parties, or mutual assent. (Civ.Code, §§ 1550, subd. 2, 1565, subd. 2.) Mutual assent usually is manifested by an offer communicated to the offeree and an acceptance communicated to the offeror. (1 Witkin, Summary of Cal. Law (9th ed. 1987) Contracts, § 128, p. 153 (hereafter Witkin).)." *Donovan v. RRL Corp*., 26 Cal.4th 261, 270-271 (2001).

9. Plaintiff's case is premised on the existence of contracts between Belmont and Brite Way, but Plaintiff's allegations regarding the existence of the contracts between Belmont and Brite lacks clarity in the Court's view. Specifically, Plaintiff alleges in the Complaint that the contracts are the invoices issued by Belmont to Brite Way: "34. The Invoices are valid and enforceable contracts between the Debtors and Defendant." Complaint at 5. To put this allegation in context, the Court reiterates paragraph 7 of the Complaint: "7. The Debtors sold certain products (the 'Products') to Defendant. At request of Defendant, the Debtors delivered the Products to Defendant. Contemporaneously with each delivery, the Debtors issued invoices for the products. Each invoice was sent to Defendant (each an '<u>Invoice</u>' and collectively, the '**<u>Invoices</u>**'), seeking payment in the collective amount of $1,254,779.57. A true and correct copy of a statement listing each of the Invoices is attached hereto as **Exhibit A** [i.e., Belmont's December 15, 2023 Statement of Account) and incorporated herein by reference." Complaint at 3 (emphasis in original). As

previously noted, as stated by California Civil Code § 1550, an element for the existence of a contract is consent, which as the California Supreme Court in *Donovan v. RRL Corp*., 26 Cal.4th at 270-271, stated, is usually manifested by an offer communicated to the offeree and an acceptance communicated to the offeror. Plaintiff's reliance on Belmont's invoices does not establish the element of consent. First, reliance on Belmont's invoices to show consent is problematic because the invoices themselves (though with one nonmaterial exception in Joint Trial Exhibit 5, which has been fully paid) are not in evidence, so the invoices cannot be examined themselves to determine consent. In any event, invoices issued by Belmont would have been most likely unilaterally issued by it as the seller, and not manifesting consent by the Brite Way, the buyer. As indicated in paragraph 7 of the Complaint, Plaintiff relies not on the primary evidence of the invoices themselves, but a secondary listing of invoices in Belmont's December 15, 2023 Statement of Account, which may or may not be accurate since Plaintiff did not offer testimony regarding the Statement's preparation based on the primary evidence of the invoices themselves. Thus, the Court concludes that the invoices are not the contracts themselves.

10. The record in this case indicates that business was transacted between Brite Way and Belmont for the purchase and sale of the manufactured nutrition bars in the manner now described. Brite Way sent to Belmont purchase orders to buy nutrition bars that Belmont would manufacture for Brite Way in accordance with the purchase orders. Belmont manufactured the bars as ordered in the purchase orders to sell to Brite Way and shipped the manufactured bars to Brite Way and sent an invoice requesting payment for the orders. It appears that there was no single written document manifesting consent, such as an offer with an acceptance that served as a contract between the parties as no evidence of such documents has been offered into evidence. As acknowledged by Plaintiff's counsel and the Court during closing argument, the purchase orders, the shipment of finished goods and the invoices represent a course of dealing that constitute contracts by performance or conduct. Trial Transcript at 135 (colloquy between the Court and Plaintiff's counsel). This course of conduct meets the elements for the existence of a contract under California Civil

Code § 1550, i.e., (1) the parties, Brite Way and Belmont were parties capable of contracting; (2) consent to contract is shown by Brite Way's purchase orders to buy nutrition bars produced by Belmont and Belmont's performance in manufacturing and shipping the produced bars to Brite Way; (3) the purchase and sale of nutrition bars manufactured by Belmont as ordered by Brite Way is a lawful contractual object; and (4) consideration existed in Brite Way's agreement to pay Belmont for the goods produced by Belmont for the purchase orders. Thus, the Court finds that Belmont's invoices themselves are not contracts and do not by themselves prove consent by Brite Way, though the invoices arguably may be evidence of a course of dealing to show the existence of a contract. However, as previously noted, the actual invoices issued by Belmont to Brite Way are not in evidence, and Plaintiff's evidence based on a listing of the invoices in Belmont's December 15, 2023 Statement of Account lacks foundation.

11. In July 2023, the terms of contracts between Brite Way and Belmont for the purchase and sale of nutrition bars ordered by Brite Way and manufactured by Belmont were modified by the agreement between them in the conversation between Mr. Tsudis, Belmont's president, and Mr. Calabrese, Brite Way's president, that Brite Way would purchase the ingredients for Belmont to produce the nutrition bars ordered by Brite Way and Brite Way would be credited for its ingredient purchases for Belmont against the amounts due on its orders. The agreement of July 2023 between Brite Way and Belmont modified the terms of the contracts for purchase and sale of nutrition bars produced by Belmont for Brite Way, and the parties could and did modify the terms of these contracts. As one California Court of Appeal has observed, "A modification of a contract is a change in the obligations of a party by a subsequent mutual agreement of the parties." *West v. JPMorgan Chase Bank, N.A.*, 214 Cal.App.4th 780 (2013), *citing,* 1 Witkin, Summary of California Law, Contracts § 964 (10th ed. 2005). As another California Court of Appeal has observed, "It is axiomatic that the parties to an agreement may modify it." *Vella v. Hudgins*, 151 Cal.App.3d 515, 519 (1984). The parties' July 2023 agreement was a change in the obligations of Brite Way regarding payment of the invoices from Belmont in that Brite

Way was entitled to credits for purchases of ingredients it made for Belmont, which was the subsequent mutual agreement of the parties for modification of their prior contractual arrangement.

12. Against this factual backdrop, Plaintiff failed to prove by a preponderance of the evidence that the elements of an action for an account stated as set forth in *Leighton v. Forster*, 8 Cal.App.5th at 491 are met, namely, (1) previous transactions between the parties establishing the relationship of debtor and creditor; (2) an agreement between the parties, express or implied, on the amount due from the debtor to the creditor; (3) a promise by the debtor, express or implied, to pay the amount due. Element (1), previous transactions between the parties establishing the relationship of debtor and creditor, is not disputed as it is Brite Way's position that with respect to the amounts that are claimed by Plaintiff as owed to Belmont for its goods, Brite Way is entitled to credits against such amounts owed for its ingredient purchases on behalf of Belmont. Element (2), an agreement between the parties, express or implied, on the amount due from the debtor to the creditor, and Element (3), a promise by the debtor, express or implied, to pay the amount due, are disputed by Brite Way.

13. Regarding Element (2), an agreement between the parties, express or implied, on the amount due from the debtor to the creditor, the Court notes as stated by the California Court of Appeal in *Perry v. Schwartz,* 219 Cal.App.2d at 829-830: "An account stated is an agreed balance of accounts; an account which has been examined and accepted by the parties. It implies an admission that the account is correct, and that the balance struck is due and owing from one party to the other. Its effect is to establish prima facie the accuracy of the items without further proof, and to constitute a new contract on which an action will lie." Plaintiff's Complaint alleged in paragraphs 13, 14 and 15 that Debtors [i.e., Belmont] provided the invoices to Brite Way for amounts due, that the invoices were accepted as correct and Brite Way did not object to the invoices in a timely manner. The evidence does not prove these allegations as the uncontroverted testimony of the witnesses, Mr. Calabrese, Ms. Hoffman and Ms. Greaver, corroborated by the email correspondence

between Brite Way and Belmont and Brite Way's invoices for its ingredient purchases on behalf of Belmont show that in response to Belmont's invoices, during the time period of July through October 2023, Brite Way promptly and repeatedly requested Belmont to credit Brite Way for its ingredient purchases for Belmont against the amounts due on the invoices issued by Belmont pursuant to their July 2023 agreement. This evidence shows that Brite Way did not accept Belmont's invoices and the amounts claimed on the invoices to be due without Brite Way being credited as requested. In support of its requests to Belmont for credits for ingredient purchases, Brite Way submitted its documentation to Belmont, specifically, to its purchase manager, Ms. Greaver, to substantiate its purchases for Belmont, as she and Ms. Hoffman, Brite Way's financial consultant, testified. As shown by the email correspondence between Brite Way and Belmont, Belmont had received Brite Way's credit requests and supporting documentation, and considered them, but did not issue the credits that Brite Way requested under their agreement, except perhaps one or two exceptions. Thus, Plaintiff has failed to show by a preponderance of the evidence Element (2) for an account stated claim that there was an agreement between the parties, express or implied, on the amount due from the debtor to the creditor based on Belmont's invoices. To the extent that Plaintiff relies upon Belmont's December 15, 2023 Statement of Account claiming an amount due totaling $1,254,779.57, Plaintiff has failed to show by a preponderance of the evidence that Brite Way was sent that document and had agreed to it. The evidence is to the contrary that Brite Way never agreed to such amount because it was not credited for its ingredient purchases for Belmont as requested under their agreement.

14. Similarly, regarding Element (3), a promise by the debtor, express or implied, to pay the amount due for an account stated claim, Plaintiff has failed to prove that element by a preponderance of the evidence. As for Element (2), the evidence shows that Brite Way had requested credits for its ingredient purchases for Belmont before it paid the invoices from Belmont for goods produced with such ingredient purchases, which requests that Belmont has not granted despite supporting documentation and repeated requests from

Brite Way. There is no evidence in the record showing that Brite Way has promised to pay the amount of $1,254,779.57 that Plaintiff claims as due Belmont. The evidence in the testimony of Brite Way's witnesses, Mr. Calabrese, Ms. Hoffman and Ms. Greaver, corroborated by the contemporaneous email correspondence between Brite Way and Belmont show that Brite Way did not promise to pay Belmont the amounts due as shown on Belmont's invoices unless Belmont applied the credits requested by Brite Way for its ingredient purchases on behalf of Belmont pursuant to their agreement.

15. Based on the foregoing, the Court concludes that Plaintiff failed to meet his burden of proof by a preponderance of the evidence on his claim for account stated. Accordingly, Plaintiff's first cause of action for account stated should be denied and dismissed with prejudice.

Plaintiff's Second Cause of Action: Unjust Enrichment

16. As argued by Defendant in its trial brief, California does not recognize a cause of action for unjust enrichment. Defendant's Trial Brief at 10-11*, citing, Hooked Media Group, Inc. v. Apple Inc.,* 55 Cal.App.5th 323, 336 (2020)(citing *Melchior v. New Line Productions, Inc.*,106 Cal.App.4th 779, 793 (2003) [the phrase "unjust enrichment" does not describe a theory of recovery; it is a general principle underlying various legal doctrines and remedies].) [28] As also argued by Defendant in its trial brief, regarding the remedy of restitution, unjust enrichment requires two elements: (1) the receipt of a benefit, and (2) the unjust retention of the benefit at the expense of another. Defendant's Trial Brief at 10. *citing, Professional Tax Appeal v. Kennedy-Wilson Holdings, Inc.,* 29 Cal.App.5th 230, 238 (2018). The Court agrees with Brite Way that based on the authorities it cited in its trial brief, there is no cause of action for unjust enrichment.

17. To the extent unjust enrichment may be construed as an equitable principle or a restitution

[28] The claim for unjust enrichment, although pleaded as Plaintiff's Second Cause of Action in the Complaint, was not addressed in his trial brief. Plaintiff's Trial Brief at 1-5. During closing argument, Plaintiff requested the opportunity to file a post-trial brief on the issue, which request was granted, but he did not file any post-trial brief by the deadline of June 12, 2026. Trial Transcript at 129-130, 162 (colloquy between counsel and the Court during closing arguments).

remedy, the record does not support it. As the Court has found above, Brite Way is entitled to credits for its purchases of ingredients at Belmont's request, enabling Belmont to continue production, and for Brite Way's November 2023 payment and for the invoice for the Jenny Craig ingredients was mistaken in that the ingredients were consumed in the production of bars which later Brite Way paid for, which credits offset any amounts that Plaintiff claims Brite Way owes Belmont.

18. Based on the foregoing, the Court concludes that Plaintiff failed to meet his burden of proof by a preponderance of the evidence on his alleged claim for unjust enrichment, that is, to the extent that such claim is legally cognizable. Accordingly, Plaintiff's second cause of action for unjust enrichment should be denied and dismissed with prejudice.

Plaintiff's Third Cause of Action: Breach of the Duty of Good Faith and Fair Dealing

19. As argued by Defendant in its trial brief, a cause of action for breach of the implied covenant of good faith and fair dealing generally requires the existence of a contractual relationship and the covenant to prevent one party from unfairly frustrating the other party's right to receive the benefits of the agreement as made. Defendant's Trial Brief at 11*, citing, Alameda Health System v. Alameda County Employees' Retirement Assn.*, 100 Cal.App.5th 1159, 1190 (2024). [29] As the California Supreme Court has stated, "The covenant of good faith and fair dealing, implied by law in every contract, exists merely to prevent one contracting party from unfairly frustrating the other party's right to receive the *benefits of the agreement actually made*." *Guz v. Bechtel National, Inc*., 24 Cal.4th 317, 349 (2000) (emphasis in original; citation omitted). Moreover, as the court in *Alameda Health System* stated, "A claim for breach of the implied covenant of good faith and fair dealing requires the existence of a contract, whether express or implied. *Alameda Health System v. Alameda County Employees' Retirement Assn.*, 100 Cal.App.5th at 1190, *citing and quoting, Racine & Laramie, Ltd. v. Department of Parks & Recreation*, 11 Cal.App.4th 1026, 1031-1032 (1992) ("The implied covenant of good faith and fair dealing

[29] The elements for establishing a cause of action for breach of the implied covenant of good faith and fair dealing were not addressed in Plaintiff's trial brief. Plaintiff's Trial Brief at 1-5.

rests upon the existence of some specific contractual obligation. [¶] ... [¶] [T]here is no obligation to deal fairly or in good faith absent an existing contract.").

20. Plaintiff's Complaint alleges that Defendant acted in bad faith and breached the covenant of good faith and fair dealing by failing and refusing to make payment on Debtors' [i.e., Belmont's] invoices, despite repeated demand by Debtors and Plaintiff. Complaint at 4-5. In response to these allegations of Plaintiff regarding the covenant of good faith and fair dealing, Defendant argues in its trial brief as follows: "Brite Way did not simply refuse to pay Belmont's invoices. Based on the express understanding reached with George Tsudis [i.e.., Belmont's president], and in order to enable Belmont to keep its production lines running and fulfill Brite Way's open purchase orders, Brite Way purchased ingredients from Belmont's suppliers and the balance due to be credited to Belmont based on Belmont's own records is $763,030.36." Defendant's Trial Brief at 11*, citing,* Calabrese Trial Declaration and Greaver Trial Declaration.

21. As the Court has found above, the preponderance of the evidence supports Defendant's affirmative defense that is entitled to credits against the invoice amounts based on its ingredient purchases at Belmont's behest for Belmont to produce the finished products in the nutrition bars ordered by Brite Way as agreed between by Mr. Tsudis for Belmont and Mr. Calabrese for Brite Way and that Belmont's invoice for ingredients respecting the Jenny Craig purchase orders was incorrect because the ingredients were eventually consumed for the production of nutrition bars resumed after Jenny Craig's purchase by a buyer. Because Belmont did not adjust the amounts due under the invoices it issued to Brite Way for credits due Brite Way for its ingredient purchases for Belmont made by Brite Way under their agreement and for consumption of ingredients used by Belmont in producing bars on the Jenny Craig purchase orders, Brite Way did not unfairly frustrate Belmont's benefits under their contracts to produce nutrition bars to Brite Way as Brite Way justifiably sought its credits for ingredient purchases as agreed between Brite Way and Belmont before making final payments on the invoices issued by Belmont and a reduction of the amount due for the invoice for a nonexistent contract. *Alameda Health*

System v. Alameda County Employees' Retirement Assn., 100 Cal.App.5th at 1190. That is, there was no breach of a duty of good faith and fair dealing as to the parties' agreement as actually made that Brite Way was entitled to credits for its ingredient purchases it made for Belmont to produce the nutrition bars against the amounts due for the produced bars and Brite Way was within its rights under their agreement to have the credits applied before it paid Belmont's invoices for goods produced by Belmont with the ingredients purchased by Brite Way. *Guz v. Bechtel National, Inc*., 24 Cal.4th at 349. Moreover, there could be no breach of the duty of good faith and fair dealing if there was no contract existing for Invoice No. INV21669 billed by Belmont for ingredients that Brite Way did not order. *Id.*, *citing, Racine & Laramie, Ltd. v. Department of Parks & Recreation*, 11 Cal.App.4th at 1031-1032.

22. Based on the foregoing, the Court concludes that Plaintiff has failed to meet his burden of proof by a preponderance of the evidence on his claim based on the implied covenant of good faith and fair dealing. Accordingly, Plaintiff's third cause of action for breach of the implied covenant of good faith and fair dealing should be denied and dismissed with prejudice.

Plaintiff's Fourth Cause of Action: Conversion

23. "Conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion claim are: (1) the plaintiff's ownership or right to possession of the property; (2) the defendant's conversion by a wrongful act or disposition of property rights; and (3) damages." *Lee v. Hanley*, 61 Cal.4th 1225, 1240 (2015). [30]

24. Plaintiff failed to show that the elements of a conversion claim were met here. First, Plaintiff failed to show that he or Belmont owned or had a right to possession of the property in question, which consisted of finished goods, i.e., the nutrition bars that Belmont manufactured for Brite Way. Brite Way ordered the finished goods by sending

[30] Neither party cited the elements for establishing a cause of action for conversion in their trial briefs. Plaintiff's Trial Brief at 1-5; Defendant's Trial Brief at 12. Defendant without citation to authority argued that conversion requires an intentional interference with another party's property, which did not occur. Defendant's Trial Brief at 12.

purchase orders to Belmont to buy the goods, and Belmont sold the goods to Brite Way by manufacturing and delivering them to Brite Way. Title to sold goods generally passes from the seller to the buyer upon the seller's delivery of the goods to the buyer. 4 Witkin, Summary of California Law, Sales § 129 (11th edition, online May 2026 update), *citing inter alia,* California Commercial Code § 2401(2)(b). In this case, Brite Way lawfully obtained possession of the goods when Belmont delivered them to Brite Way. Plaintiff does not advance any theory showing that Belmont had a continuing interest in the goods it sold to Brite Way, such as a lien based on a secured interest. *See, e.g.* Plaintiff's Trial Brief at 1-5. Second, Plaintiff failed to show any conversion of its goods by a wrongful act as just discussed because Brite Way obtained lawful title to the goods it purchased from Belmont and sold by Belmont upon delivery. Regarding any argument that Brite Way's lack of payment for the goods was wrongful, Brite Way was justified in withholding payment based on its agreement with Belmont that it was entitled to credits for its ingredient purchases for Belmont against any amount due for its nutrition bar order purchases. Third, Plaintiff failed to show any damages from any alleged conversion since the credits that Brite Way is entitled to in this case offset any amount due claimed by Plaintiff.

25. Based on the foregoing, the Court concludes that Plaintiff failed to meet his burden of proof by a preponderance of the evidence on his claim for conversion. Accordingly, Plaintiff's fourth cause of action for conversion should be denied and dismissed with prejudice.

Plaintiff's Fifth Cause of Action: Breach of Contract

26. "To prevail on a cause of action for breach of contract, the plaintiff must prove (1) the contract, (2) the plaintiff's performance of the contract or excuse for nonperformance, (3) the defendant's breach, and (4) the resulting damage to the plaintiff." *Richman v. Hartley*, 224 Cal.App.4th 1182, 1186 (2014), *citing, Careau & Co. v. Security Pacific Business*

Credit, Inc., 222 Cal.App.3d 1371, 1388 (1990).[31]

27. With respect to the first element of the existence of a contract for a breach of contract claim, Plaintiff failed to show that there was a contract between Brite Way and Belmont reflected in Belmont's Invoice No. INV21669 for ingredients purchased by Belmont to produce Jenny Craig nutrition bars for Brite Way. As the Court has found, Plaintiff has failed to show that Brite Way entered into a contract to pay for ingredients that Belmont purchased to produce the Jenny Craig bars. As the evidence showed, Brite Way only contracted with Belmont in its orders it placed for finished goods through its purchase orders issued to Belmont, and not for ingredients purchased by Belmont to be used for finished goods. As Belmont's records showed in the email correspondence between the parties shows that there was no purchase order from Brite Way to Belmont for ingredients. Plaintiff produced no evidence at trial showing that Brite Way agreed to purchase the ingredients represented by Invoice No. INV21669. Apparently, Belmont unilaterally billed Brite Way in Invoice No. INV21669 when Brite Way's customer, Jenny Craig, filed for bankruptcy, as problems arose for Brite Way in going ahead with its Jenny Craig bar orders placed with Belmont after Jenny Craig's bankruptcy. However, these problems were resolved when Jenny Craig was purchased by Nutrisystem which took responsibility for the ordered Jenny Craig bars, and the ingredients that Belmont had originally purchased for production for those bars were later consumed when production resumed

[31] The elements for establishing breach of contract were not addressed in Plaintiff's trial brief. Plaintiff's Trial Brief at 1-5; Trial Transcript at 134 (colloquy between the Court and Plaintiff's counsel with counsel admitting the elements for breach of contract were not in the trial brief). However, Plaintiff did argue in his trial brief that in a breach of contract action, the burden of proof is on the breaching party to establish that damages caused by its breach were mitigated and should be reduced. *Id.* at 3, *citing, Steelduct Co. v. Henger-Seltzer Co.,* 26 Cal.2d 634, 654 (1945). In closing argument, Plaintiff's counsel did identify the elements of a claim for breach of contract as (1) the existence of a contract; (2) breach thereof; and (3) damages, though without citing any authority and missing one element regarding a plaintiff's performance. Trial Transcript at 134 (colloquy between the Court and Plaintiff's counsel). Defendant also did not cite the elements of a claim for breach of contract in its trial brief, but stated the elements in its proposed findings of fact and conclusions of law without any legal citation. Defendant's Trial Brief at 12; Defendant's Proposed Findings of Fact and Conclusions of Law at 13, attached as Exhibit A to Notice of Lodgment, Docket No. 95, filed on May 29, 2026.

after Jenny Craig had been purchased. Thus, the Court concludes that Plaintiff has failed to prove the element of a contract as to his claim for breach of contract as to the amount of $350,686.20 based on Invoice No. INV 21669.

28. With respect to the second element of the plaintiff's performance of the contract or excuse for nonperformance, Plaintiff failed to show that Belmont performed or is excused from performance on the contracts it had with Brite Way, which had been modified by the July 2023 agreement that Brite Way would be credited for the purchases of ingredients that Belmont would be using to produce the nutrition bars that Brite Way was ordering. The evidence shows that Belmont failed to perform under its contracts with Brite Way in failing or refusing to credit Brite Way for purchases of ingredients that Brite Way made in order for Belmont to produce nutrition bars ordered by Brite Way under their agreement in July 2023 made in the conversation between Mr. Tsudis, Belmont's president, and Mr. Calabrese, Brite Way's president. Brite Way provided Belmont with documentation substantiating its purchases of ingredients it made at Belmont's behest under their July 2023 agreement and made repeated requests for credits, which were inexplicably not granted, even though Belmont's own accounting staff had recommended that Brite Way be given the requested credits, which indicates to the Court a lack of excuse from performance for Belmont. Thus, the Court concludes that Plaintiff has failed to prove the element of performance or excuse from performance by Belmont for his breach of contract claim.

29. With respect to the third element of Defendant's breach for Plaintiff's breach of contract claim, he failed to show that there was any breach of contract by Brite Way. First, because Plaintiff has failed to show the existence of a contract for the Jenny Craig order ingredients, and therefore, there can be no breach of contract by Defendant that he failed to show was made. Second, Plaintiff has failed to show a breach of contract with respect to Defendant's payment of $141,726.50 on or about November 10, 2023, which Belmont had not taken into account as reflected in its December 15, 2023 Statement of Account. Third, Plaintiff has failed to show a breach of contract as to the amount of $760,030.36 because

the evidence shows that Belmont failed to credit Brite Way in that amount for purchases of ingredients that Brite Way made in order for Belmont to produce nutrition bars ordered by Brite Way under their agreement in July 2023 made in the conversation between Mr. Tsudis, Belmont's president, and Mr. Calabrese, Brite Way's president. That is, based on their agreement, Brite Way was entitled to credits for its purchases of ingredients for Belmont against the amounts owed to Belmont for its purchase orders placed with Belmont. There was no contractual breach by Brite Way because it was acting in accordance with the agreement it had with Belmont to purchase ingredients for Belmont and be credited for such purchases against its orders with Belmont, which Belmont invoiced. Whatever contracts that Brite Way had from its purchase orders with Belmont were subject to their agreement in July 2023 for Brite Way being credited with its purchases of ingredients for Belmont. Accordingly, the Court concludes that Plaintiff has failed to prove the element of breach by Defendant for his breach of contract claim.

30. With respect to the fourth element of resulting damages for a breach of contract claim, Plaintiff failed to show that there were any resulting damages from an alleged breach of contract by Brite Way. Assuming for the sake of argument that the amount of $1,254,779.57 claimed as owed by Brite Way is correct, Plaintiff has failed to show that there were any resulting damages in this case. First, Plaintiff has failed to prove the existence of a contract for the Jenny Craig order ingredients, and therefore, there can be no resulting damages claimed by him for $350,686.20 for a breach of contract that he failed to prove was made. Second, Plaintiff has failed to show resulting damages in the amount of $141,726.50 as he failed to account for the payment made by Brite Way in this amount on or about November 10, 2023. Third, Plaintiff has failed to show resulting damages in the amount of $760,030.36 because the evidence shows that Belmont failed to credit Brite Way in that amount for purchases of ingredients made by Brite Way in order for Belmont to produce nutrition bars ordered by Brite Way as they agreed in July 2023 in the conversation between Mr. Tsudis, Belmont's president, and Mr. Calabrese, Brite Way's president. The alleged contractual damages of $1,254,779.57 claimed by Plaintiff are

completely offset by credits that have not been accounted for by Belmont and Plaintiff for Belmont's erroneous billing in its Invoice No. INV21669 ($350,686.20), Brite Way's November 2023 payment ($141,726.50) and Brite Way's ingredient purchases for Belmont ($763,030.36), and therefore, there is no balance due. [32] Accordingly, the Court concludes that Plaintiff has failed to prove the element of resulting damages for his breach of contract claim.

31. Based on the foregoing, the Court concludes that Plaintiff failed to meet his burden of proof by a preponderance of the evidence on his claim for breach of contract. Accordingly, Plaintiff's fifth cause of action for breach of contract should be denied and dismissed with prejudice.

Defendant Satisfied Its Burden on its Affirmative Defense that It Is Entitled to Credits from Belmont

32. Based on the findings above, the Court determines that Brite Way has met its burden of proof by a preponderance of the evidence on its affirmative defense that it is entitled to credits with respect to: the invoice for the Jenny Craig inventory/ingredients in the amount of $350,686.20; ingredients purchased by Brite Way for Belmont in the amount of $763,030.36; and the November 2023 wire payment by Brite Way in the amount of $141,726.50.

33. The Court concludes that the preponderance of the evidence establishes that Brite Way is entitled to a credit of $763,030.36 for ingredients it purchased from Belmont's suppliers and shipped to Belmont's facility, as acknowledged in Belmont's own internal records prepared by Ms. Greaver and Ms. Phillips on October 27, 2023 (Joint Trial Exhibits No. 12 and 15), and as confirmed by the uncontroverted testimony of Mr. Calabrese, Ms. Hoffman, and Ms. Greaver.

34. The Court concludes that the preponderance of the evidence establishes that Invoice No. INV21669 for $350,686.20 does not represent an amount properly owed by Brite Way to

[32] These offsets that should be allowed Defendant total $1,255,443.06, and when applied to the alleged balance due $1,254,779.57 claimed by Plaintiff leaves a credit balance of $663.49.

Belmont as the invoice was not based on any contract entered into by Brite Way as there was no evidence presented that such contract existed and Belmont's records themselves indicated that there was no purchase order for that invoice and moreover, based on Mr. Calabrese's uncontroverted testimony, the ingredients reflected on that invoice were used in subsequent production runs after Nutrisystem purchased Jenny Craig's assets, and/or were transferred to LKV, LLC as part of Belmont's asset sale, and the invoice substantially overstated the ingredients needed to fulfill Brite Way's existing Jenny Craig purchase orders by approximately 75%.

35. The Court concludes that the preponderance of the evidence establishes that Brite Way made a payment of $141,726.50 by wire to Belmont on November 10, 2023, as confirmed by the uncontroverted testimony of Ms. Hoffman and Mr. Calabrese, which should have been reflected on Belmont's December 15, 2023 Statement of Account, but was not.

36. Plaintiff's reliance on Belmont's December 15, 2023 Statement of Account omitting the credits of $763,030.36 that Brite Way requested for its purchases of ingredients for Belmont and Brite Way's November 2023 payment of $141,726.50 payment is misplaced. First, Plaintiff failed to provide an evidentiary foundation for the Statement of Account as there was no witness testifying at trial with personal knowledge as to how it was prepared and what information it was based on. Second, as reflected in contemporaneous internal email correspondence in the Ittella affiliate group, the accounting staff for Belmont analyzed Brite Way's requests for credits and supporting documentation and recommended that the requested credits be applied to Brite Way's account as reflected in emails from Ms. Greaver, Ms. Phillips and Mr. Hyatt. Ms. Greaver and Ms. Phillips's emails of October 27, 2023 which were sent to their superior, Mr. Bidanset, debtors' chief restructuring officer, recommended that Brite Way's credits of $763,030.36 be applied, though Ms. Phillips would have made an adjustment of $50,015.37 for a credit she said had been already applied. Mr. Hyatt's September 26, 2023 email to Ms. Dieckmann, Plaintiff's lone trial witness, recognized that Belmont received $701,376.91 in ingredients purchased by Brite Way, though Brite Way had requested credits for such purchases in the amount of

$742,286.89. Third, the uncontroverted testimony of Brite Way's witnesses, Mr. Calabrese, Ms. Hoffman and Ms. Greaver, and supporting documentation show that Belmont's December 15, 2023 Statement of Account was inaccurate in failing to show credits from Brite Way's ingredient purchases for Belmont based on their agreement, failing to reflect Brite Way's November 2023 payment and in erroneously including an amount due from Invoice No. INV21669 which has not been shown to be based on an existing contract with Brite Way.

Summary

Based upon the foregoing findings of fact and conclusions of law, IT IS HEREBY ORDERED that:

1. Judgment should be entered in favor of Defendant Brite Way Foods, Inc. and against Plaintiff Peter Hurwitz, Liquidating Trustee, on all five causes of action alleged in the Complaint.
2. Plaintiff should take nothing by way of the Complaint, and all of the claims in the Complaint should be denied and dismissed with prejudice.
3. The Court will file and enter a judgment consistent with these findings of fact and conclusions of law concurrently herewith.

IT IS SO ORDERED.

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Date: August 13, 2026

Robert Kwan
United States Bankruptcy Judge