

**UNITED STATES BANKRUPTCY COURT
 SOUTHERN DISTRICT OF NEW YORK**

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 :
In re : **Chapter 11**
 :
PACIFICCO INC., et al., : **Case No. 23–10470 (PB)**
 :
Debtors.¹ : **(Jointly Administered)**
 : **Re: ECF No. 8**
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**INTERIM ORDER
 (I) APPROVING DEBTORS’ PROPOSED FORM OF
 ADEQUATE ASSURANCE OF PAYMENT TO UTILITY
 PROVIDERS, (II) ESTABLISHING PROCEDURES PROVIDING
 ADEQUATE ASSURANCE AND RESOLVING OBJECTIONS BY
 UTILITY PROVIDERS, (III) PROHIBITING UTILITY PROVIDERS
 FROM ALTERING, REFUSING, OR DISCONTINUING UTILITY
 SERVICE, AND (IV) GRANTING RELATED RELIEF**

Upon the motion, dated March 28, 2023 (the “**Motion**”)² of PacificCo Inc. and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), pursuant to sections 105(a) and 366 of the Bankruptcy Code, for entry of an interim order (a) approving the Debtors’ proposed form of adequate assurance of payment for postpetition Utility Services; (b) establishing procedures for providing adequate assurance and resolving objections by Utility Providers relating to the adequacy of the proposed adequate assurance; (c) prohibiting the Utility Providers from altering, refusing, or discontinuing service to, or discriminating against, the Debtors because of the commencement of these chapter

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Catalina Marketing Corporation (9007); PacificCo Inc. (1563); PacificCo Intermediate Corp. (8394); PacificCo Acquisition Corp. (4852); Catalina Marketing Procurement, LLC (9333); Catalina Marketing Technology Solutions, Inc. (8728); Modiv Media, LLC (3507); Cellfire LLC (5599); Catalina Marketing Worldwide, LLC (9687); Catalina-Pacific Media, L.L.C. (3931); CMJ Investments, L.L.C. (0561); Supermarkets Online, Inc. (6998); Supermarkets Online Holdings, Inc. (1736); Catalina Marketing Loyalty Holdings, Inc. (3746); and Catalina Digital Holdings, LLC (3488). The Debtors’ principal offices are located at 200 Carillon Parkway, Suite 200, St. Petersburg, FL 33716.

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



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11 cases or a debt that is owed by the Debtors for Utility Services rendered prior to the Petition Date; and (d) granting related relief, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference M-431*, dated January 31, 2012 (Preska, C.J.); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties; and such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and this Court having reviewed the Motion; and this Court having held a hearing to consider the relief requested in the Motion on an interim basis (the “**Hearing**”); and upon the First Day Declarations and the record of the Hearing; and all objections to the relief requested in the Motion on an interim basis, if any, having been withdrawn, resolved, or overruled; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates as contemplated by Bankruptcy Rule 6003; and is in the best interests of the Debtors, their estates, creditors, and all parties in interest; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted on an interim basis to the extent set forth herein.
2. Absent compliance with the procedures set forth in the Motion and this Interim Order, the Debtors’ utility providers (the “**Utility Providers**”), including without

limitation those listed on **Exhibit C** of the Motion (the “**Utility Service List**”), are prohibited from altering, refusing, or discontinuing service on account of the commencement of these chapter 11 cases and/or any unpaid prepetition charges and are deemed to have received adequate assurance of payment in accordance with section 366 of the Bankruptcy Code.

3. As adequate assurance, the Debtors shall deposit \$47,500 (the “**Adequate Assurance Deposit**”) into a segregated bank account (the “**Adequate Assurance Account**”); provided that to the extent any Utility Provider receives any other value from the Debtors on account of adequate assurance, upon agreement with the Utility Provider, the Debtors may reduce the Adequate Assurance Deposit maintained in the Adequate Assurance Account by such amount.

4. The portion of the Adequate Assurance Deposit attributable to each Utility Provider shall be returned to the Debtors on the effective date of a plan of reorganization in these chapter 11 cases or at such time as these cases may be closed without further Court order, if not applied earlier; *provided that*, there are no outstanding disputes relating to postpetition amounts due to such Utility Provider.

5. The Adequate Assurance Deposit, in conjunction with the Debtors’ cash on hand, cash flow from operations, and any existing cash deposits held by the Utility Providers, demonstrate the Debtors’ ability to pay for future utility services in the ordinary course of business (together, the “**Proposed Adequate Assurance**”) and constitute sufficient adequate assurance to the Utility Providers.

6. The following Adequate Assurance Procedures are hereby approved:

a. The Debtors will fax, e-mail, serve by overnight mail, or otherwise expeditiously cause a copy of the Motion, this Proposed Interim Order, and the Proposed Final Order (upon entry of the Proposed Final Order, the “**Utilities Order**”), which include the proposed Adequate Assurance

Procedures, to be served on each Utility Provider within two (2) business days after entry of the Utilities Order.

- b. The Debtors will deposit the Adequate Assurance Deposit in the Adequate Assurance Account within twenty (20) calendar days after entry of the Utilities Order; provided that to the extent any Utility Provider receives any other value from the Debtors as adequate assurance of payment (such as deposits held by a Utility Provider), the Debtors may, upon agreement with the Utility Provider, reduce the Adequate Assurance Deposit maintained in the Adequate Assurance Account on account of such Utility Provider by the amount of such other value.
- c. Any Utility Provider seeking additional assurances of payment in the form of deposits, prepayments or otherwise must serve a request for additional assurance (an “**Additional Assurance Request**”) so that it is actually received by the Adequate Assurance Notice Parties (as defined below) at the following addresses: (i) PacificCo Inc., 200 Carillon Parkway, Suite 200, St. Petersburg, FL 33716, (Attn: David Glogoff, Esq.); (ii) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153, (Attn: Gary T. Holtzer, Esq. Kevin Bostel, Esq. and Rachael Foust, Esq.), (iii) Wachtell, Lipton, Rosen & Katz, as counsel to Mudrick Capital Management, LP (Attn: Joshua A. Feltman, Esq. and Mitchell S. Levy, Esq.); and (iv) counsel to any creditors’ committee appointed in these chapter 11 cases (collectively, the “**Adequate Assurance Notice Parties**”).
- d. Any Additional Assurance Request must (i) be made in writing and actually received by the Debtors and the other Adequate Assurance Notice Parties, (ii) set forth the location for which Utility Services are provided, (iii) include a summary of the Debtors’ payment history relevant to the affected account(s), including the amounts of any security deposits, and (iv) set forth why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.
- e. If a Utility Provider believes it is entitled to additional adequate assurance but fails to serve on the Adequate Assurance Notice Parties an Additional Assurance Request, such Utility Provider shall be (i) deemed to have received adequate assurance of payment “satisfactory” to such Utility Provider in compliance with section 366 of the Bankruptcy Code; and (ii) prohibited from discontinuing, altering, or refusing service to, or discriminating against, the Debtors on account of the commencement of the Debtors’ chapter 11 cases and/or any unpaid prepetition charges, or requiring additional assurance of payment other than the Proposed Adequate Assurance.
- f. Upon receipt of any Additional Assurance Request as provided herein, the Debtors shall have until the later of (i) twenty (20) days after receipt of

such Additional Assurance Request, (ii) thirty (30) days after entry of the Utilities Order, or (iii) such date as may be agreed to by the Debtors and the relevant Utility Provider (collectively, the “**Resolution Period**”) to negotiate with such Utility Provider to resolve its Additional Assurance Request.

- g. The Debtors may, in their sole discretion and without further order of the Court, resolve any Additional Assurance Request by mutual agreement with a Utility Provider, and may, in connection with any such agreement, in their sole discretion, provide a Utility Provider with additional adequate assurance of future payment, which may include, but shall not be limited to, cash deposits, prepayments or other forms of security, in each case, without further order of the Court.
- h. If the Debtors are not able to reach a resolution with a Utility Provider that has submitted an Adequate Assurance Request during the Resolution Period, the Debtors, during or immediately after the Resolution Period, will request a hearing before the Court to determine the adequacy of assurance of payment with respect to the Utility Provider (the “**Determination Hearing**”) pursuant to section 366(c)(3) of the Bankruptcy Code, and such Determination Hearing shall be scheduled for the next omnibus hearing date for which shortened notice is not required.
- i. Pending resolution of such dispute at the Determination Hearing, the relevant Utility Provider shall be prohibited from discontinuing, altering, or refusing service to the Debtors on account of the commencement of these chapter 11 cases, any unpaid charges for prepetition services provided to any of the Debtors by the Utility Provider, or any objections to the Proposed Adequate Assurance.
- j. Absent compliance with the Adequate Assurance Procedures and the terms of the Utilities Order, the Debtors’ Utility Providers are prohibited from altering, refusing, or discontinuing service on account of the commencement of these chapter 11 cases and/or any unpaid charges for prepetition services provided to any of the Debtors and are deemed to have received adequate assurance of payment in accordance with section 366 of the Bankruptcy Code.

7. The Debtors are authorized, in their sole discretion, to amend the Utility

Service List to add or delete any Utility Provider, and this Interim Order shall apply to any Utility Provider that is subsequently added to the Utility Service List. Any such amended Utility Service List shall be filed with the Court.

8. The inclusion of any entity on, or the omission of any entity from, the Utility Service List shall not be deemed an admission by the Debtors that such entity is or is not a “utility” within the meaning of section 366 of the Bankruptcy Code, and the Debtors reserve all rights and defenses with respect thereto.

9. For those Utility Providers that are subsequently added to the Utility Service List, the Debtors will serve a copy of this Interim Order on the subsequently added Utility Provider and deposit two (2) weeks’ worth of estimated utility costs in the Adequate Assurance Account for the benefit of such Utility Provider (less any amounts already on deposit with any such Utility Provider), and any such subsequently added entities shall make any Additional Assurance Requests in accordance with the Adequate Assurance Procedures.

10. The Debtors may terminate the services of any Utility Provider and are immediately authorized to reduce the Adequate Assurance Deposit by the amount held on account of such terminated Utility Provider.

11. Nothing in the Motion or this Interim Order shall be deemed to authorize the Debtors to accelerate any payments not otherwise due prior to the date of the hearing to consider entry of an order granting the relief requested in the Motion on a final basis (the “**Final Hearing**”).

12. Each of the Banks at which the Debtors maintain their accounts relating to the payment of the Adequate Assurance Deposit are authorized to (a) receive, process, honor, and pay all checks presented for payment and to honor all funds transfer requests made by the Debtors related thereto, to the extent that sufficient funds are on deposit in those accounts and (b) accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires, electronic funds or automated clearing house transfers should be honored or

dishonored in accordance with this or any other order of this Court, whether such checks, drafts, wires, electronic funds or automated clearing house transfers are dated before, on, or after the Petition Date, without any duty to inquire otherwise.

13. The Debtors are authorized, but not directed, to issue new postpetition checks, or effect new electronic funds or automated clearing house transfers, and to replace any prepetition checks or electronic fund or automated clearing house transfer requests that may be lost or dishonored or rejected as a result of the commencement of the Debtors' chapter 11 cases with respect to any prepetition amounts that are authorized to be paid pursuant to this Interim Order.

14. Following entry of this Interim Order, the Debtors shall serve a copy of this Interim Order on the Utility Providers.

15. Nothing contained in the Motion or this Interim Order, nor any payment made pursuant to the authority granted by this Interim Order, is intended to be or shall be construed as (a) an admission as to the validity of any claim against the Debtors, (b) a waiver of the Debtors' or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors, (c) a waiver of any claims or causes of action which may exist against any creditor or interest holder, or (d) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between the Debtors and any third party under section 365 of the Bankruptcy Code.

16. Notwithstanding entry of this Interim Order, nothing herein shall create, nor is intended to create, any rights in favor of or enhance the status of any claim held by any party.

17. The requirements of Bankruptcy Rule 6003(b) have been satisfied.

18. Under the circumstances of these chapter 11 cases, notice of the Motion is adequate under Bankruptcy Rule 6004(a).

19. Notwithstanding Bankruptcy Rule 6004(h), this Interim Order shall be immediately effective and enforceable upon its entry.

20. A hearing to consider entry of an order granting the relief requested in the Motion on a final basis shall be held on **April 28, 2023, at 10:00 a.m. (Eastern Time)** and any objections or responses to the Motion shall be in writing, filed with the Court, submitted electronically to pb.chambers@nysb.uscourts.gov, and served by no later than **4:00 p.m. (Eastern Time) on April 18, 2023**, on the following:

- a. proposed attorneys for the Debtors: Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Gary T. Holtzer, Esq. (gary.holtzer@weil.com), Kevin Bostel, Esq. (kevin.bostel@weil.com), and Rachael Foust, Esq. (rachael.foust@weil.com));
- b. the Office of the United States Trustee for Region 2, One Bowling Green, Suite 534, New York, New York 10004 (Attn: Brian Masumoto (brian.masumoto@usdoj.gov); Tara Tiantian (tara.tiantian@usdoj.gov); and Daniel Rudewicz (Daniel.rudewicz@usdoj.gov)); and
- c. counsel to any creditors' committee appointed in these chapter 11 cases.

21. The Debtors are authorized to take all actions necessary or appropriate to effectuate the relief granted in this Interim Order.

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22. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Interim Order.

Dated: March 31, 2023
New York, New York

/s/ Lisa G. Beckerman
THE HONORABLE LISA G. BECKERMAN
UNITED STATES BANKRUPTCY JUDGE