

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re:	:	Chapter 11
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PENSON WORLDWIDE, INC., <i>et al.</i> ,	:	Case No. 13-10061 (PJW)
	:	
Debtors. ¹	:	(Jointly Administered)
	:	
	:	Re: Docket Nos. 5 & 32 <i>et seq.</i> 126
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FINAL ORDER (I) PROHIBITING UTILITY COMPANIES FROM ALTERING, REFUSING, OR DISCONTINUING UTILITY SERVICES, (II) DEEMING UTILITY COMPANIES ADEQUATELY ASSURED OF FUTURE PERFORMANCE, AND (III) ESTABLISHING PROCEDURES FOR DETERMINING ADEQUATE ASSURANCE OF PAYMENT

Upon consideration of the motion (the "Motion")² of the debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors"), seeking entry of an Interim Order and Final Order pursuant to sections 105(a) and 366 of the Bankruptcy Code (i) prohibiting Utility Companies from altering, refusing, or discontinuing Utility Services, (ii) deeming Utility Companies adequately assured of future performance, and (iii) establishing procedures for determining adequate assurance of payment, all as described more fully in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334, and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012; and due notice of the Motion having been provided; and it

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Penson Worldwide, Inc. (6356); SAI Holdings, Inc. (3657); Penson Financial Services, Inc. (3990); Penson Financial Futures, Inc. (6207); Penson Holdings, Inc. (4821); Penson Execution Services, Inc. (9338); Nexa Technologies, Inc. (7424); GHP1, Inc. (1377); GHP2, LLC (1374); and Penson Futures (6207). The Debtors' mailing address is 800 Klein Road, Suite 200, Plano, Texas 75074.

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



appearing that no other or further notice of the Motion need be provided; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtors, their estates and all parties in interest; and upon consideration of the Motion and the First Day Declaration; and all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that:

1. The Motion is granted on a final basis.
2. The Debtors are authorized, but not directed, to pay on a timely basis and in accordance with their prepetition practices all undisputed invoices for postpetition Utility Services provided by the Utility Companies to the Debtors.
3. The Utility Deposit and Utility Deposit Account are deemed to provide adequate assurance of payment pursuant to section 366(c) of the Bankruptcy Code, subject to the resolution of any Request pursuant to the Procedures.
4. Except in accordance with the Procedures set forth below and absent further order of the Court, the Utility Companies are prohibited from altering, refusing, or discontinuing Utility Services on the basis of the commencement of the Chapter 11 Cases, on account of any unpaid invoice for Utility Services provided before the Petition Date or otherwise, and requiring the Debtors to furnish any additional deposit or other security to the Utility Companies for the continued provision of Utility Services (except for the Utility Deposit established pursuant to the Motion and Interim Order).
5. Parties who wish to request adequate assurance in addition to, or other than, the Utility Deposit shall comply with the following Procedures:
 - (a) If a Utility Company is not satisfied with the assurance of future payment provided by the Debtors, the Utility Company must serve

a written request (a "Request") upon proposed counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801 (Attention: Ashley E. Markow, Esq.), setting forth the location(s) for which Utility Services are provided, the account number(s) for such location(s), the outstanding balance for each account, a summary of the Debtors' payment history on each account, and an explanation of why the Utility Deposit is not adequate assurance of payment.

- (b) Upon the Debtors' receipt of any Request in accordance with the above, the Debtors shall have thirty (30) days from the receipt of such Request (the "Resolution Period") to negotiate with such Utility Company to resolve such Utility Company's Request.
- (c) The Debtors may, in their sole discretion, resolve any Request by mutual agreement with the Utility Company and without further order of this Court, and may, in connection with any such agreement, in their sole discretion, provide a Utility Company with additional adequate assurance of future payment, including, but not limited to, cash deposits, prepayments, and other forms of security, without further order of this Court if the Debtors believe such additional assurance is reasonable. The Debtors may reduce the Utility Deposit by any amount allocated to a particular Utility Company to the extent consistent with any alternative adequate assurance arrangements mutually agreed to by the Debtors and the affected Utility Company.
- (d) If the Debtors determine that the Request is not reasonable or are not able to reach an alternative resolution with the Utility Company during the Resolution Period, the Debtors will request a hearing promptly before this Court to determine the adequacy of assurances of payment with respect to a particular Utility Company pursuant to section 366(c)(3) of the Bankruptcy Code (the "Determination Hearing") to be held after the expiration of the Resolution Period.
- (e) Pending resolution of any such Determination Hearing, the Utility Company filing such Request shall be prohibited from altering, refusing, or discontinuing service to the Debtors on account of the commencement of the Chapter 11 Cases, unpaid charges for prepetition services or on account of any objections to the Debtors' proposed adequate assurance.
- (f) The proposed adequate assurance shall be deemed adequate assurance of payment for any Utility Company that fails to make a Request.

6. To the extent that the Debtors terminate any account with a Utility Company, the Debtors may reduce the Utility Deposit by the amount allocated for such account and withdraw those funds from the Utility Deposit Account, without further order of the Court, and any bank at which the Debtors maintain the Utility Deposit Account may rely on the representations of the Debtors that a request to reduce the Utility Deposit Account is in accordance with this Order without liability.

7. Nothing in the Motion or this Order, nor as a result of any payment made pursuant to this Order, shall be deemed or construed as an admission as to the validity or priority of any claim against the Debtors, an approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code or a waiver of the right of the Debtors, or shall impair the ability of the Debtors, or any other party in interest, to the extent applicable, to contest the validity and amount of any payment made pursuant to this Order.

8. Upon the effective date of a chapter 11 plan in these cases, the Debtors may close the Utility Deposit Account and withdraw any amounts that remain in the Utility Deposit Account, without further notice or hearing.

9. Southern California Edison Company shall be exempted from the terms of this Final Order.

10. Pending notice and a Determination Hearing, the Utility Company that is the subject of an unresolved Request may not alter, refuse, or discontinue services to the Debtors.

11. This Court shall retain jurisdiction over any and all matters arising from or related to the interpretation and implementation of this Order.

Dated: February 7, 2013
Wilmington, Delaware


Peter J. Walsh
United States Bankruptcy Judge