

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

----- X
In re: : Chapter 11
: :
STARRY GROUP HOLDINGS, INC., *et al.*,¹ : Case No. 23-10219 (KBO)
: :
Debtors. : (Jointly Administered)
: :
----- X Ref. Docket Nos. 5 & 62

CERTIFICATE OF COUNSEL

On February 20, 2023, Starry Group Holdings, Inc. and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”) filed the *Motion of Debtors for Entry of Interim and Final Orders (I) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Service, (II) Approving Proposed Adequate Assurance of Payment, (III) Establishing Procedures for Resolving Requests for Additional Assurance of Payment, and (IV) Granting Related Relief* [D.I. 5] (the “**Motion**”).

On February 23, 2023, the United States Bankruptcy Court for the District of Delaware (the “**Court**”) entered an order [D.I. 62] (the “**Interim Order**”) granting the relief requested in the Motion on an interim basis. Pursuant to the Interim Order, objections to the entry of an order approving the Motion on a final basis (the “**Proposed Final Order**”) were to be filed and served by 4:00 p.m. (ET) on March 15, 2023 (the “**Objection Deadline**”).

Prior to the Objection Deadline, the Debtors received informal comments to the Proposed Final Order from the Office of the United States Trustee for the District of Delaware (the “**U.S.**

¹ The debtors in these cases, along with the last four digits of each debtor’s federal tax identification number, are: Starry Group Holdings, Inc. (9355); Starry, Inc. (9616); Connect Everyone LLC (5896); Starry Installation Corp. (7000); Starry (MA), Inc. (2010); Starry Spectrum LLC (N/A); Testco LLC (5226); Starry Spectrum Holdings LLC (9444); Widmo Holdings LLC (9208); Vibrant Composites Inc. (8431); Starry Foreign Holdings Inc. (3025); and Starry PR Inc. (1214). The debtors’ address is 38 Chauncy Street, Suite 200, Boston, Massachusetts 02111.



Trustee”) and the Official Committee of Unsecured Creditors (the “**Committee**”). No other informal responses or objections to the Motion were received.

Following discussions with the U.S. Trustee and the Committee, the Debtors agreed to a revised form of order (the “**Revised Proposed Final Order**”) approving the Motion, a copy of which is attached hereto as **Exhibit A**. For the convenience of the Court and other interested parties, a blackline comparing the Revised Proposed Final Order against the Proposed Final Order is attached hereto as **Exhibit B**.

The Debtors respectfully request that the Court enter the Revised Proposed Final Order without further notice or hearing at the Court’s earliest convenience.

Dated: March 19, 2023
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Joseph M. Mulvihill

Michael R. Nestor (No. 3526)
Kara Hammond Coyle (No. 4410)
Joseph M. Mulvihill (No. 6061)
Timothy R. Powell (No. 6894)
Rodney Square, 1000 North King Street
Wilmington, Delaware 19801
Telephone: (302) 571-6600
Facsimile: (302) 571-1253
Email: mnestor@ycst.com
kcoyle@ycst.com
jmulvihill@ycst.com
tpowell@ycst.com

-and-

LATHAM & WATKINS LLP

Jeffrey E. Bjork (admitted *pro hac vice*)
Ted A. Dillman (admitted *pro hac vice*)
Jeffrey T. Mispagel (admitted *pro hac vice*)
Nicholas J. Messana (admitted *pro hac vice*)
355 South Grand Avenue, Suite 100
Los Angeles, California 90071
Telephone: (213) 485-1234
Facsimile: (213) 891-8763
Email: jeff.bjork@lw.com
ted.dillman@lw.com
jeffrey.mispagel@lw.com
nicholas.messana@lw.com

Jason B. Gott (admitted *pro hac vice*)
330 North Wabash Avenue, Suite 2800
Chicago, Illinois 60611
Telephone: (312) 876-7700
Facsimile: (312) 993-9767
Email: jason.gott@lw.com

Proposed Counsel for Debtors and Debtors in Possession

EXHIBIT A

Revised Proposed Order

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

	X	
	:	
In re:	:	Chapter 11
	:	
STARRY GROUP HOLDINGS, INC., <i>et al.</i> , ¹	:	Case No. 23-10219 (KBO)
	:	
Debtors.	:	(Jointly Administered)
	:	
	X	Re: Docket Nos. 5 & 62

**FINAL ORDER (I) PROHIBITING UTILITY
PROVIDERS FROM ALTERING, REFUSING, OR
DISCONTINUING SERVICE, (II) APPROVING PROPOSED
ADEQUATE ASSURANCE OF PAYMENT, (III) ESTABLISHING
PROCEDURES FOR RESOLVING REQUESTS FOR ADDITIONAL
ASSURANCE OF PAYMENT, AND (IV) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)² of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) for entry of orders (a) prohibiting the Utility Providers from altering, refusing, or discontinuing utility service on account of any outstanding amounts for services rendered prepetition; (b) determining that adequate assurance of payment for postpetition Utility Services has been furnished to the Utility Providers; (c) establishing procedures for resolving future requests by Utility Providers for additional assurance of payment; and (d) granting related relief, all as more fully set forth in the Motion; and this Court having reviewed the Motion, the First Day Declaration, and the Interim Order, as approved by this Court; and this 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

¹ The debtors in these cases, along with the last four digits of each debtor’s federal tax identification number, are: Starry Group Holdings, Inc. (9355); Starry, Inc. (9616); Connect Everyone LLC (5896); Starry Installation Corp. (7000); Starry (MA), Inc. (2010); Starry Spectrum LLC (N/A); Testco LLC (5226); Starry Spectrum Holdings LLC (9444); Widmo Holdings LLC (9208); Vibrant Composites Inc. (8431); Starry Foreign Holdings Inc. (3025); and Starry PR Inc. (1214). The debtors’ address is 38 Chauncy Street, Suite 200, Boston, Massachusetts 02111.

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

Court for the District of Delaware, dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and this Court having determined that there is good and sufficient cause for the relief granted in this Final Order, therefore, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is granted on a final basis, as set forth herein.
2. All objections to the entry of this Final Order, to the extent not withdrawn or settled, are overruled.
3. Absent compliance with the procedures set forth in this Final Order, the Utility Providers are prohibited from altering, refusing, or discontinuing service on account of the commencement of the Chapter 11 Cases or any unpaid prepetition charges and are deemed to have received adequate assurance of payment in accordance with section 366 of the Bankruptcy Code.
4. Funds held in the Adequate Assurance Account and any Adequate Assurance Deposit shall be returned to the Debtors, (a) as provided pursuant to, or consistent with, any further order of this Court, or (b) without further order of this Court, upon the earlier of the effective date of a chapter 11 plan for the Debtors or such other time as the Chapter 11 Cases may be closed; provided that there are no outstanding disputes related to postpetition payments due.
5. The Adequate Assurance Deposit, in conjunction with the Debtors' cash on hand, cash flow from operations, and their proposed use of cash collateral and debtor-in-possession

financing, 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 in their entirety:

- a. The Debtors will email or otherwise expeditiously cause a copy of this Final Order, which includes the Adequate Assurance Procedures, to be served on each Utility Provider within 48 hours after entry hereof.
- b. The Debtors will deposit the Adequate Assurance Deposit in the Adequate Assurance Account within 30 calendar days after the Petition Date; *provided* that, to the extent any Utility Provider receives any other post-petition value from the Debtors as adequate assurance of payment, the Debtors may 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 assurance 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 following parties (collectively, the "**Adequate Assurance Notice Parties**"): (i) Starry Group Holdings, Inc. (Attn.: Courtney Norton (cnorton@starry.com)); (ii) proposed counsel to the Debtors (1) Latham & Watkins LLP, 355 South Grand Avenue, Suite 100, Los Angeles, California 90071 (Attn: Ted A. Dillman (ted.dillman@lw.com), Jeffrey T. Mispagel (jeffrey.mispagel@lw.com), and Nicholas J. Messana (nicholas.messana@lw.com)), and (2) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801 (Attn: Kara Hammond Coyle (kcoyle@ycst.com), Joseph M. Mulvihill (jmulvihill@ycst.com), and Timothy R. Powell (tpowell@ycst.com)); (iii) counsel to ArrowMark Agency Services LLC as DIP Agent and Prepetition Agent, (1) Sheppard, Mullin, Richter & Hampton LLP, (A) 333 South Hope Street, 43rd Floor, Los Angeles, California 90071 (Attn: Kyle J. Matthews (KMatthews@sheppardmullin.com) and (B) 321 North Clark Street, 32nd Floor, Chicago, Illinois 60654 (Attn: Justin Bernbrock (JBernbrock@sheppardmullin.com), Bryan V. Uelk (BUelk@sheppardmullin.com), and Catherine Jun (CJun@sheppardmullin.com)), and (2) Potter Anderson & Corroon LLP, Hercules Plaza, 1313 North Market Street, 6th Floor, P.O. Box 951, Wilmington, Delaware 19801 (Attn: L. Katherine Good (kgood@potteranderson.com)); (iv) proposed counsel to the official

committee of unsecured creditors appointed in the Chapter 11 Cases (the “**Creditors’ Committee**”), McDermott Will & Emery LLP (1) The Nemours Building, 1007 North Orange Street, 10th Floor, Wilmington, DE 19801 (Attn: David Hurst (dhurst@mwe.com)) and (2) One Vanderbilt Avenue, New York, NY 10017 (Attn: Kristin Going (kgoing@mwe.com), Darren Azman (dazman@mwe.com), Stacy Lutkus (salutkus@mwe.com) and Natalie Rowles (nrowles@mwe.com)); (v) counsel to any other statutory committee appointed in the Chapter 11 Cases; and (vi) the U.S. Trustee (Attn: Benjamin Hackman (Benjamin.A.Hackman@usdoj.gov)).

- d. Any Additional Assurance Request must (i) be made in writing, (ii) set forth the location and account number(s) for which Utility Services are provided, (iii) identify any applicable security deposits, and (iv) set forth why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.
- e. Any Additional Assurance Request must be made and actually received by the Debtors. If a Utility Provider fails to serve on the Adequate Assurance Notice Parties an Additional Assurance Request in accordance with the Adequate Assurance Procedures, such Utility Provider shall be prohibited from discontinuing, altering, or refusing service to, or discriminating against, the Debtors on account of the commencement of the Chapter 11 Cases 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 the greater of (i) 20 days after receipt of such Additional Assurance Request, and (ii) 30 days after entry of the order granting the relief requested by the Motion (the “**Resolution Period**”), or such greater period as may be agreed to by the Debtors and the relevant Utility Provider to resolve its Additional Assurance Request.
- g. The Debtors may, upon written notice to ArrowMark Agency Services LLC, in its capacity as DIP Agent, and the Creditors’ Committee, without further order of this Court, resolve any Additional Assurance Request by mutual agreement with a Utility Provider, and may, in connection with any such agreement, provide a Utility Provider with additional adequate assurance of future payment, which may include, but is not limited to, cash deposits, prepayments, or other forms of security, in each case, without further order of this Court.
- h. If the Debtors are not able to promptly reach a resolution with a Utility Provider that has submitted an Additional Assurance Request, the Debtors will request a hearing before this 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.

- i. Pending resolution of such dispute at the Determination Hearing, the relevant Utility Provider is prohibited from discontinuing, altering or refusing service to the Debtors on account of the commencement of the Chapter 11 Cases, any unpaid charges for prepetition services provided to any of the Debtors by the Utility Provider, or any objections to the Adequate Assurance.
- j. Except as provided by the Adequate Assurance Procedures and the terms of this Final Order, the Debtors' Utility Providers are prohibited from (i) altering, refusing, or discontinuing service on account of the commencement of the Chapter 11 Cases or any unpaid charges for prepetition services provided to any of the Debtors or on account of any objections to the Adequate Assurance Deposit or (ii) requiring the Debtors to pay a deposit or other security in connection with the provision of postpetition Utility Services, other than the funding of the Adequate Assurance Deposit.

7. The Debtors are authorized to amend the Utility Provider List attached as **Exhibit C** to the Motion to add or delete any Utility Provider, and this Final Order shall apply to any Utility Provider that is subsequently added to the Utility Provider List. The Debtors shall consult with the Creditors' Committee with respect to amendments to the Utility Provider List and shall file any such amended Utility Provider List with this Court.

8. The inclusion of any entity in, or the omission of any entity from, the Utility Provider 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 Provider List, the Debtors will serve a copy of this Final Order on the subsequently added Utility Provider and deposit two weeks' worth of estimated utility costs in the Adequate Assurance Account for the benefit of such Utility Provider (less any amounts on deposit with any such Utility Provider that have not been applied to outstanding prepetition amounts), and any such subsequently added

entities shall make an Additional Assurance Request 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; *provided* that there is no pending dispute regarding the provision of postpetition Utility Services; and *provided further*, that the Utility Provider shall have 14 days from the termination of postpetition Utility Services to object to the reduction of the Adequate Assurance Deposit.

11. The Debtors shall provide the Creditors' Committee with all material information regarding the Adequate Assurance Deposit and the Adequate Assurance Account, including, without limitation, its balance upon reasonable request.

12. The Banks shall be, and are hereby authorized, when requested by the Debtors, to process, honor, pay, and, if necessary, reissue any and all checks or electronic funds transfers, including prepetition checks and electronic payment and transfer requests that the Debtors reissue or re-request postpetition, drawn on the Debtors' accounts, whether those checks were presented before or after the Petition Date, provided that sufficient funds are available in such accounts to make the payments.

13. The Banks may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors before the Petition Date should be honored pursuant to this Final Order, and the Banks shall not have any liability to any party for relying on such representations by the Debtors as provided for in this Final Order.

14. The Debtors are authorized, but not directed, to issue new postpetition checks, or effect new electronic funds transfers, on account of Utility Services as set forth herein, and to

replace any prepetition checks or electronic fund transfer requests that may be lost or dishonored as a result of the commencement of the Chapter 11 Cases.

15. Nothing in the Motion or this Final Order, nor any actions or payments made by the Debtors pursuant to this Final Order, shall be construed as: (a) an admission as to the validity of any claim against the Debtors or the existence of any lien against the Debtors' properties; (b) a waiver of the Debtors' or any other party in interest's respective rights to dispute any claim or lien on any grounds; (c) a promise to pay any claim; (d) an implication or admission that any particular claim would constitute an allowed claim; (e) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; (f) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Final Order; or (g) a waiver of the Debtors' or any other party in interest's respective rights under the Bankruptcy Code, any other applicable non-bankruptcy law, or any order of this Court. Nothing contained in this Final Order shall be deemed to increase, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

16. Notwithstanding Bankruptcy Rule 6004(h) or any other procedural rule, to the extent applicable, this Final Order shall be effective and enforceable immediately upon entry hereof.

17. The Debtors are hereby authorized to take such actions and to execute such documents as may be necessary to implement the relief granted by this Final Order.

18. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

EXHIBIT B

Blackline

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

	X	
	:	
In re:	:	Chapter 11
	:	
STARRY GROUP HOLDINGS, INC., <i>et al.</i> , ¹	:	Case No. 23- 10219 (KBO)
	:	
Debtors.	:	(Jointly Administered)
	:	
	X	Re: Docket Nos. <u>5 & 62</u>

**FINAL ORDER (I) PROHIBITING UTILITY
PROVIDERS FROM ALTERING, REFUSING, OR
DISCONTINUING SERVICE, (II) APPROVING PROPOSED
ADEQUATE ASSURANCE OF PAYMENT, (III) ESTABLISHING
PROCEDURES FOR RESOLVING REQUESTS FOR ADDITIONAL
ASSURANCE OF PAYMENT, AND (IV) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)² of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) for entry of orders (a) prohibiting the Utility Providers from altering, refusing, or discontinuing utility service on account of any outstanding amounts for services rendered prepetition; (b) determining that adequate assurance of payment for postpetition Utility Services has been furnished to the Utility Providers; (c) establishing procedures for resolving future requests by Utility Providers for additional assurance of payment; and (d) granting related relief, all as more fully set forth in the Motion; and this Court having reviewed the Motion, the First Day Declaration, and the Interim Order, as approved by this Court; and this Court having jurisdiction to consider the Motion and the relief requested therein

¹ The debtors in these cases, along with the last four digits of each debtor’s federal tax identification number, are: Starry Group Holdings, Inc. (9355); Starry, Inc. (9616); Connect Everyone LLC (5896); Starry Installation Corp. (7000); Starry (MA), Inc. (2010); Starry Spectrum LLC (N/A); Testco LLC (5226); Starry Spectrum Holdings LLC (9444); Widmo Holdings LLC (9208); Vibrant Composites Inc. (8431); Starry Foreign Holdings Inc. (3025); and Starry PR Inc. (1214). The debtors’ address is 38 Chauncy Street, Suite 200, Boston, Massachusetts 02111.

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

in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and this Court having determined that there is good and sufficient cause for the relief granted in this Final Order, therefore, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is granted on a final basis, as set forth herein.
2. All objections to the entry of this Final Order, to the extent not withdrawn or settled, are overruled.
3. Absent compliance with the procedures set forth in ~~the Motion and~~ this Final Order, the Utility Providers are prohibited from altering, refusing, or discontinuing service on account of the commencement of the Chapter 11 Cases or any unpaid prepetition charges and are deemed to have received adequate assurance of payment in accordance with section 366 of the Bankruptcy Code.
4. Funds held in the Adequate Assurance Account and any Adequate Assurance Deposit shall be returned to the Debtors, (a) as provided pursuant to, or consistent with, any further order of this Court, or (b) without further order of this Court, upon the earlier of the effective date of a chapter 11 plan for the Debtors or such other time as the Chapter 11 Cases

may be closed; provided that there are no outstanding disputes related to postpetition payments due.

5. The Adequate Assurance Deposit, in conjunction with the Debtors' cash on hand, cash flow from operations, and their proposed use of cash collateral and debtor-in-possession financing, 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 in ~~the~~their entirety:

- a. The Debtors will email or otherwise expeditiously cause a copy of this Final Order, which includes the Adequate Assurance Procedures, to be served on each Utility Provider within 48 hours after entry hereof.
- b. The Debtors will deposit the Adequate Assurance Deposit in the Adequate Assurance Account within ~~20~~30 calendar days after the Petition Date; *provided* that, to the extent any Utility Provider receives any other post-petition value from the Debtors as adequate assurance of payment, the Debtors may 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 assurance 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 following parties (collectively, the "**Adequate Assurance Notice Parties**"): (i) Starry Group Holdings, Inc. (Attn.: Courtney Norton (cnorton@starry.com)); (ii) proposed counsel to the Debtors (1) Latham & Watkins LLP, 355 South Grand Avenue, Suite 100, Los Angeles, California 90071 (Attn: Ted A. Dillman (ted.dillman@lw.com), Jeffrey T. Mispagel (jeffrey.mispagel@lw.com), and Nicholas J. Messana (nicholas.messana@lw.com)), and (2) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801 (Attn: Kara Hammond Coyle (kcoyle@ycst.com), Joseph M. Mulvihill (jmulvihill@ycst.com), and Timothy R. Powell (tpowell@ycst.com)); (iii) counsel to ArrowMark Agency Services LLC as DIP Agent and Prepetition Agent, (1) Sheppard, Mullin, Richter & Hampton LLP, (A) 333 South Hope Street, 43rd Floor, Los Angeles, California 90071 (Attn: Kyle J. Matthews

(KMatthews@sheppardmullin.com) and (B) 321 North Clark Street, 32nd Floor, Chicago, Illinois 60654 (Attn: Justin Bernbrock (JBernbrock@sheppardmullin.com), Bryan V. Uelk (BUelk@sheppardmullin.com), and Catherine Jun (CJun@sheppardmullin.com)), and (2) Potter Anderson & Corroon LLP, Hercules Plaza, 1313 North Market Street, 6th Floor, P.O. Box 951, Wilmington, Delaware 19801 (Attn: L. Katherine Good (kgood@potteranderson.com)); (iv) proposed counsel to the official committee of unsecured creditors appointed in the Chapter 11 Cases (the “Creditors’ Committee”), McDermott Will & Emery LLP (1) The Nemours Building, 1007 North Orange Street, 10th Floor, Wilmington, DE 19801 (Attn: David Hurst (dhurst@mwe.com)) and (2) One Vanderbilt Avenue, New York, NY 10017 (Attn: Kristin Going (kgoing@mwe.com), Darren Azman (dazman@mwe.com), Stacy Lutkus (salutkus@mwe.com) and Natalie Rowles (nrowles@mwe.com)); (v) counsel to any other statutory committee appointed in the Chapter 11 Cases; and (vi) the U.S. Trustee (Attn: Benjamin Hackman (Benjamin.A.Hackman@usdoj.gov).

- d. Any Additional Assurance Request must (i) be made in writing, (ii) set forth the location and account number(s) for which Utility Services are provided, (iii) identify any applicable security deposits, and (iv) set forth why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.
- e. Any Additional Assurance Request must be made and actually received by the Debtors. If a Utility Provider fails to serve on the Adequate Assurance Notice Parties an Additional Assurance Request in accordance with the Adequate Assurance Procedures, such Utility Provider shall be prohibited from discontinuing, altering, or refusing service to, or discriminating against, the Debtors on account of the commencement of the Chapter 11 Cases 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 the greater of (i) 20 days after receipt of such Additional Assurance Request, and (ii) 30 days after entry of the order granting the relief requested by the Motion (the “**Resolution Period**”), or such greater period as may be agreed to by the Debtors and the relevant Utility Provider to resolve its Additional Assurance Request.
- g. The Debtors may, upon written notice to ArrowMark Agency Services LLC, in its capacity as DIP Agent, and the Creditors’ Committee, without further order of this Court, resolve any Additional Assurance Request by mutual agreement with a Utility Provider, and may, in connection with any such agreement, provide a Utility Provider with additional adequate assurance of future payment, which may include, but

is not limited to, cash deposits, prepayments, or other forms of security, in each case, without further order of this Court.

- h. If the Debtors are not able to promptly reach a resolution with a Utility Provider that has submitted an Additional Assurance Request, the Debtors will request a hearing before this 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.
- i. Pending resolution of such dispute at the Determination Hearing, the relevant Utility Provider is prohibited from discontinuing, altering or refusing service to the Debtors on account of the commencement of the Chapter 11 Cases, any unpaid charges for prepetition services provided to any of the Debtors by the Utility Provider, or any objections to the Adequate Assurance.
- j. Except as provided by the Adequate Assurance Procedures and the terms of this Final Order, the Debtors’ Utility Providers are prohibited from (i) altering, refusing, or discontinuing service on account of the commencement of the Chapter 11 Cases or any unpaid charges for prepetition services provided to any of the Debtors or on account of any objections to the Adequate Assurance Deposit or (ii) requiring the Debtors to pay a deposit or other security in connection with the provision of postpetition Utility Services, other than the funding of the Adequate Assurance Deposit.

7. The Debtors are authorized, to amend the Utility Provider List attached as **Exhibit C** to the Motion to add or delete any Utility Provider, and this Final Order shall apply to any Utility Provider that is subsequently added to the Utility Provider List. ~~Any~~The Debtors shall consult with the Creditors’ Committee with respect to amendments to the Utility Provider List and shall file any such amended Utility Provider List ~~shall be filed~~ with this Court.

8. The inclusion of any entity in, or the omission of any entity from, the Utility Provider 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 Provider List, the Debtors will serve a copy of this Final Order on the subsequently added Utility Provider and deposit two weeks' worth of estimated utility costs in the Adequate Assurance Account for the benefit of such Utility Provider (less any amounts on deposit with any such Utility Provider that have not been applied to outstanding prepetition amounts), and any such subsequently added entities shall make an Additional Assurance Request 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; *provided* that there is no pending dispute regarding the provision of postpetition Utility Services; and *provided further, that the Utility Provider shall have 14 days from the termination of postpetition Utility Services to object to the reduction of the Adequate Assurance Deposit.*

11. The Debtors shall provide the Creditors' Committee with all material information regarding the Adequate Assurance Deposit and the Adequate Assurance Account, including, without limitation, its balance upon reasonable request.

12. ~~11.~~ The Banks shall be, and are hereby authorized, when requested by the Debtors, to process, honor, pay, and, if necessary, reissue any and all checks or electronic funds transfers, including prepetition checks and electronic payment and transfer requests that the Debtors reissue or re-request postpetition, drawn on the Debtors' accounts, whether those checks were presented before or after the Petition Date, provided that sufficient funds are available in such accounts to make the payments.

13. ~~12.~~ The Banks may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors before the Petition Date should be honored pursuant to this Final Order, and the Banks shall not have any liability to any party for relying on such representations by the Debtors as provided for in this Final Order.

14. ~~13.~~ The Debtors are authorized, but not directed, to issue new postpetition checks, or effect new electronic funds transfers, on account of Utility Services as set forth herein, and to replace any prepetition checks or electronic fund transfer requests that may be lost or dishonored as a result of the commencement of the Chapter 11 Cases.

15. ~~14.~~ Nothing in the Motion or this Final Order, nor any actions or payments made by the Debtors pursuant to this Final Order, shall be construed as: (a) an admission as to the validity of any claim against the Debtors or the existence of any lien against the Debtors' properties; (b) a waiver of the Debtors' or any other party in interest's respective rights to dispute any claim or lien on any grounds; (c) a promise to pay any claim; (d) an implication or admission that any particular claim would constitute an allowed claim; (e) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; ~~or~~ (f) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Final Order; or (g) a waiver of the Debtors' or any other party in interest's respective rights under the Bankruptcy Code, any other applicable non-bankruptcy law, or any order of this Court.

Nothing contained in this Final Order shall be deemed to increase, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

| 16. ~~15.~~ Notwithstanding Bankruptcy Rule 6004(h) or any other procedural rule, to the extent applicable, this Final Order shall be effective and enforceable immediately upon entry hereof.

| 17. ~~16.~~ The Debtors are hereby authorized to take such actions and to execute such documents as may be necessary to implement the relief granted by this Final Order.

| 18. ~~17.~~ This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

Summary report: Litera® Change-Pro for Word 10.8.2.11 Document comparison done on 3/17/2023 1:59:17 PM	
Style name: L&W without Moves	
Intelligent Table Comparison: Active	
Original DMS: iw://usdocs.lw.com/US-DOCS/140002823/1	
Modified DMS: iw://usdocs.lw.com/US-DOCS/140002823/4	
Changes:	
<u>Add</u>	28
Delete	18
Move From	0
Move To	0
<u>Table Insert</u>	0
Table Delete	0
Table moves to	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	46