

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

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In re: : Chapter 11
:
VALERITAS HOLDINGS, INC., *et al.*,¹ : Case No. 20-10290 (LSS)
:
Debtors. : (Jointly Administered)
:
: Re: D.I. 8, 53
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**FINAL ORDER (I) AUTHORIZING THE DEBTORS’ PROPOSED
FORM OF ADEQUATE ASSURANCE OF PAYMENT, (II) ESTABLISHING
PROCEDURES FOR RESOLVING OBJECTIONS BY UTILITY COMPANIES,
AND (III) PROHIBITING UTILITY COMPANIES FROM ALTERING,
REFUSING, OR DISCONTINUING SERVICE**

Upon the *Motion of the Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors’ Proposed Form of Adequate Assurance of Payment, (II) Establishing Procedures for Resolving Objections by Utility Companies, (III) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Service, and (IV) Scheduling a Final Hearing* (the “Motion”),² for entry of a final order (this “Final Order”), (i) approving the Debtors’ proposed form of adequate assurance of postpetition payment to the Utility Companies; (ii) establishing procedures for resolving any objections by the Utility Companies relating to the Proposed Adequate Assurance; and (iii) prohibiting the Utility Companies from altering, refusing, or discontinuing service to, or discriminating against, the Debtors solely on the basis of the commencement of these cases, a debt that is owed by the Debtors for services rendered prior to the Petition Date, or on account of any perceived inadequacy of the Debtors’ Proposed Adequate Assurance, all as further described

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor’s federal tax identification number, are: Valeritas Holdings, Inc. (8907); Valeritas, Inc. (1056); Valeritas Security Corporation (9654); Valeritas US, LLC (0007). The corporate headquarters and the mailing address for the debtors is 750 Route 202 South, Suite 600, Bridgewater, New Jersey 08807.

² Capitalized terms used but not otherwise defined in this Final Order shall have the meanings ascribed to them in the Motion.



in the Motion; and upon consideration of the First Day Declaration and the record of these Chapter 11 Cases; and this Court having found that (i) this Court has jurisdiction over the Debtors, their estates, property of their estates and to consider the Motion and the relief requested therein under 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, (ii) this Court may enter a final order consistent with Article III of the United States Constitution, (iii) this is a core proceeding under 28 U.S.C § 157(b)(2)(A), (iv) venue of this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409, and (v) no further or other notice of the Motion is required under the circumstances; and this Court having reviewed the Motion and having heard the statements in support of the relief requested in the Motion at a hearing before this Court; the Court having reviewed the Motion and the First Day Declaration and having considered the statements of counsel and the evidence adduced with respect to the Motion at the interim hearing; and the Court having granted the interim relief requested in the Motion [D.I. 53]; and that the legal and factual bases set forth in the Motion establish just cause for the relief granted in this Final Order; and any objections to the requested relief having been withdrawn or overruled;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED, on a final basis, as set forth in this Final Order.
2. All Utility Companies are prohibited from altering, refusing, or discontinuing Utility Services to the Debtors, or otherwise discriminating against the Debtors on account of the Debtors' bankruptcy filings or any outstanding prepetition invoices.
3. Any Utility Company to which the Debtors already provided a deposit equal to approximately two (2) weeks of Utility Services, as reflected on **Schedule 1** attached to this

Final Order, shall be deemed to have received adequate assurance of payment as required by section 366 of the Bankruptcy Code.

4. Notwithstanding anything to the contrary in any other order of this Court, including any DIP financing order, no creditor, including the DIP Lender, shall have any interest in or lien on the Adequate Assurance Deposit or the Utility Deposit Account.

5. The Adequate Assurance Deposit shall be maintained until the entry of an order of the Court authorizing or directing the return of the Adequate Assurance Deposit to the Debtors.

6. The Debtors are authorized to amend, as necessary, the Utility Company List by adding or deleting a Utility Company, which amendment shall be accompanied by filing with this Court a notice of such amendment and serving such amendment on the affected Utility Company.

7. Subject to the entry of the Final Order and the Adequate Assurance Procedures set forth below, the Adequate Assurance Deposit constitutes sufficient adequate assurance of future payment to the Utility Companies to satisfy the requirements of section 366 of the Bankruptcy Code (the “Proposed Adequate Assurance”) and no Utility Company shall discontinue Utility Services without complying with the following Adequate Assurance Procedures:

If a Utility Company is not satisfied with the Proposed Adequate Assurance and seeks additional adequate assurance of payment, it must serve within thirty (30) days from the Petition Date an Additional Assurance Request upon (i) the Debtors, Valeritas Holdings, Inc., 750 Route 202 South, Suite 600, Bridgewater, New Jersey 08807 (Attn: John E. Timberlake); (ii) DLA Piper LLP (US), 1251 Avenue of the Americas, New York, New York 10020, (Attn: Rachel Ehrlich Albanese, Rachel.Albanese@us.dlapiper.com); and DLA Piper LLP (US), 1201 North Market Street, Suite 2100, Wilmington, Delaware 19801, (Attn: Maris Kandestin,

Maris.Kandestin@us.dlapiper.com); (iii) PricewaterhouseCoopers LLP, 300 Madison Avenue, New York, NY 10017 (Attn: Steven Fleming), steven.fleming@pwc.com; (iv) the Office of the United States Trustee, J. Caleb Boggs Federal Building, 844 King St., Lockbox 35, Wilmington, DE 19801 (Attn: Richard L. Schepacarter, Richard.Schepacarter@usdoj.gov); (v) proposed counsel to the Committee, Porzio, Bromberg & Newman, P.C., 100 Southgate Parkway, Morristown, New Jersey 07962 (Attn: Kelly Curtin, kdcurtin@pbnlaw.com, Brett Moore, bsmoore@pbnlaw.com, and Robert Schechter, rmschechter@pbnlaw.com) and Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, Delaware 19801 (Attn: Brya Keilson, bkeilson@morrisjames.com, and Eric Monzo, emonzo@morrisjames.com); (vi) counsel to the Prepetition Secured Lenders, Venable LLP (Attn: Jeffrey S. Sabin, Esq., jssabin@venable.com), 1270 Avenue of the Americas, 24th Fl., New York, New York 10020; (vii) counsel for HB Fund LLC, Proskauer Rose LLP, Eleven Times Square, New York, New York 10036 (Attn: Peter Antoszyk, Esq. and Lucy F. Kweskin, Esq., pantoszyk@proskauer.com and lkweskin@proskauer.com), and Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19081 (Attn: Adam G. Landis, Esq. and Kerri Mumford, Esq., landis@lrclaw.com and mumford@lrclaw.com) (collectively, the “Notice Parties”) via first class mail and electronic mail.

- i. Each Additional Assurance Request must (i) be made in writing; (ii) set forth the amount and form of additional assurance of payment requested; (iii) set forth the type of Utility Services, any account numbers, and the location for which Utility Services are provided; (iv) set forth whether the Utility Company holds any deposits or other security, and if so, in what amount; and (v) set forth why the Utility Company believes the Proposed Adequate Assurance is not sufficient adequate assurance of payment.
- ii. Upon the Debtors’ receipt of an Additional Assurance Request, the Debtors shall have twenty (20) days after the receipt of such Additional Assurance Request (the “Resolution Period”) to negotiate with such Utility Company to resolve its request for additional assurance of payment. The Debtors and the applicable Utility Company also may mutually agree to extend the Resolution Period.

- iii. The Debtors may resolve any Additional Assurance Request by mutual agreement with the requesting Utility Company and without further order of the Court, and may, in connection with any such resolution, in their discretion, provide the requesting Utility Company with additional assurance of future payment in a form satisfactory to the Utility Company, including, but not limited to, cash deposits, prepayments and/or other forms of security, if the Debtors believe such additional assurance is reasonable. The Debtors may reduce the amount of the Adequate Assurance 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.
- iv. If the Debtors determine that an Additional Assurance Request is not reasonable or they are not able to resolve such request during the Resolution Period, the Debtors, during or promptly after the Resolution Period, will schedule a hearing to be held on the date of the next scheduled omnibus hearing, to determine the adequacy of assurances of payment made to the requesting Utility Company (the “Determination Hearing”), pursuant to section 366(c)(3)(A) of the Bankruptcy Code.
- v. Pending the resolution of the Additional Assurance Request at a Determination Hearing, the Utility Company making such request shall not discontinue, alter, or refuse service to the Debtors on account of unpaid charges for prepetition services, the commencement of these Chapter 11 Cases, or any objections to the Proposed Adequate Assurance, or require the Debtors to furnish any additional deposit or other security for the continued provision of services.

8. The Debtors are authorized, as necessary, to provide a copy of this Final Order to any Utility Company not listed on the Utility Service List (each, an “Additional Utility Company” and, collectively, the “Additional Utility Companies”), as such Utility Companies are identified. Promptly upon their discovery of an Additional Utility Company, the Debtors shall increase the Adequate Assurance Deposit by an amount equal to approximately two weeks of the Estimated Utility Expense for each Additional Utility Company, unless such Additional Utility

Company agrees in writing to a lesser amount. The Additional Utility Companies shall be subject to the terms of this Interim Order, including the Adequate Assurance Procedures.

9. If any Utility Company becomes a Closed Account prior to the Final Order, without the need for further order of this Court, the Debtors shall be authorized to decrease the amount of the Adequate Assurance Deposit by withdrawing from the segregated account the amount deposited with respect to such Closed Account only to the extent the Utility Company has not communicated to the Debtor that a dispute regarding postpetition payments exists; provided, however, that any reduction is subject to notice and objection by the Utility Companies.

10. A Utility Company shall be deemed to have adequate assurance of payment under section 366 of the Bankruptcy Code unless and until: (a) the Debtors, in their discretion, agree to an alternative assurance of payment; or (b) this Court enters an order after a Determination Hearing requiring that additional adequate assurance of payment be provided to the Utility Company.

11. This Final Order is without prejudice to the rights of the Debtors and their estates to contest the validity, priority, or amounts of any obligations relating to the Utility Companies on any grounds they deem appropriate, and any rights of the Debtors and their estates with respect to such matters shall be reserved.

12. The Debtors are authorized to reduce the Adequate Assurance Deposit to the extent that it includes an amount on account of a Utility Company that the Debtors subsequently determine should be removed from the Utility Company List.

13. If any undisputed amount relating to postpetition Utility Services provided by a Utility Company is unpaid beyond any applicable grace period, such Utility Company may

request a disbursement from the Utility Deposit Account (a “Disbursement Request”) by giving written notice to the Notice Parties.

14. Notwithstanding the relief granted in this Order or any actions taken hereunder, nothing contained in this Final Order shall create any rights in favor of, or enhance the status of any claim held by, any Utility Company.

15. The Debtors’ service of the Motion, the Interim Order, or this Final Order upon the Utility Companies shall not constitute an admission or concession that any such entity is a utility company within the meaning of section 366 of the Bankruptcy Code, and all rights and defenses of the Debtors are reserved with respect thereto.

16. Notwithstanding the relief granted in this Final Order and any actions taken hereunder, nothing contained in the Motion or this Final Order or any payment made pursuant to this Interim Order shall constitute, nor is it intended to constitute: (a) an admission as to the validity or priority of any claim or lien against the Debtors, (b) a limit on a claim asserted by any Utility Company, (c) a waiver of the Debtors’ rights to subsequently dispute any unpaid portion of such claim or lien, (d) an undertaking, obligation, or commitment to pay any claims hereunder, or (e) the assumption or adoption of any agreement, contract, or lease under section 365 of the Bankruptcy Code.

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

18. The requirements of Bankruptcy Rule 6004(a) are waived.

19. Notwithstanding the possible applicability of Bankruptcy Rule 6004(h), the terms and provisions of this Final Order shall be immediately effective and enforceable upon its entry.

20. The Debtors are hereby authorized to take all actions they deem necessary to effectuate the relief granted in this Final Order.

21. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation or interpretation of this Final Order.

Schedule 1

(Utility Company List)

Utility Company	Corporate Address	Service	Account Number(s) (If Available)	Proposed Adequate Assurance
National Grid	PO Box 960 Northborough, MA 01532	Electric	53995-85011	\$550
Masergy	2740 N. Dallas Pkwy Ste. 260 Plano, TX 75093	Phone/Internet	MC002884	\$3,025
Verizon		Fios Internet	555-593-820-0001-59	\$80
Verizon	P.O Box 408 Newark, NJ 07101-0408	Cell Phones	682717477-00010	\$3,650
Verizon	7900 Tysons One Place Suite 1450 McLean, VA 22102	Phone	334770	\$1,000
Verizon	7734 S 133rd Street Omaha, NE 68138	Trash Removal	MA: 13795114 NJ: 11898490	\$108 \$57
Iron Mountain	1000 Campus Dr Collegeville, PA 19426	Storage	B7951/VALERITAS, INC	\$104
Total				\$8,574

Dated: March 11th, 2020
Wilmington, Delaware

Verizon

LAURIE SELBY SILVERSTEIN
LAURIE SELBY SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE