

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NORTH DAKOTA**

In Re:  Vanity Shop of Grand Forks, Inc.,  Debtor.	Case No.: 17-30112  Chapter 11
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**FINAL ORDER: (I) PROHIBITING UTILITY COMPANIES FROM DISCONTINUING, ALTERING OR REFUSING SERVICE; (II) APPROVING ADEQUATE ASSURANCE UTILITY DEPOSIT; (III) ESTABLISHING PROCEDURES FOR RESOLVING REQUESTS FOR ADDITIONAL ASSURANCE; AND (IV) GRANTING RELATED RELIEF**

Debtor filed a Motion for Interim and Final Orders: (i) prohibiting the Utility Companies from altering, refusing, or discontinuing Utility Services on account of unpaid prepetition invoices, including the making of demands for security deposits or accelerated payment terms; (ii) determining Debtor has provided each Utility Company with Adequate Assurance; (iii) establishing the Additional Adequate Assurance Procedures; and granting related relief. Debtor served the motion and notice of hearing. The Court received no objections.

This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334(b) and venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding under 28 U.S.C. § 157(b) and the Court finds that it has authority to enter a final order consistent with Article III of the United States Constitution.

After considering the Declaration of Jill Motschenbacher [Doc. 26], her Supplemental Declaration [Doc. 156] and other evidence offered at the hearing, reviewing other pleadings



filed in this case and hearing arguments from counsel, the Court finds cause for granting the relief provided in this Order.<sup>1</sup>

**IT IS ORDERED:**

1. The Motion is GRANTED as provided below.
2. Debtor shall serve a copy of the Motion and this Final Order on each Utility Company listed on the Utility Services list no later than two business days after the date this Final Order is entered.
3. Debtor is authorized to pay on a timely basis in accordance with its prepetition practices all undisputed invoices for postpetition Utility Services provided by the Utility Companies to Debtor.
4. No later than 14 days after the Petition Date, Debtor shall cause the Utility Deposit to be deposited into a segregated account and held during the pendency of this Chapter 11 Case. The Utility Deposit shall total not less than a sum equal to 50% of Debtor's estimated monthly cost for Utilities.
5. The Court finds that the Utility Deposit is adequate assurance of future payment as required by Section 366 of the Bankruptcy Code.
6. All Utility Companies are prohibited from altering, refusing, or discontinuing services on account of any unpaid prepetition charges, the commencement of this Chapter 11 Case or any perceived inadequacy of the Adequate Assurance.

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<sup>1</sup> The findings and conclusions set forth in this Order constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

7. The following Additional Adequate Assurance Procedures are approved:
  - i. Any Utility Company that objects to the Adequate Assurance must serve a request (“**Additional Adequate Assurance Request**”) on (i) Debtor, 1001 North 25<sup>th</sup> Street, Fargo, ND 58102, Attn: Jill Motschenbacher; (ii) proposed counsel to Debtor, Vogel Law Firm, 218 NP Avenue, PO Box 1389, Fargo, ND 58107-1389, Attn: Jon R. Brakke, Caren W. Stanley; and (iii) counsel to any statutory committee appointed in this Chapter 11 case (collectively “**Notice Parties**”).
  - ii. Any Additional Adequate Assurance Request must be served on the Notice Parties and must : (a) be made in writing; (b) identify the location for which Utility Services are provided, and (c) explain why the Utility Company believes the Adequate Assurance is not sufficient adequate assurance of future payment.
  - iii. Debtor is authorized to resolve any Additional Adequate Assurance Request by mutual agreement with a Utility Company and without further order of the Court and, in connection with any such agreement, provide a Utility Company with alternative adequate assurance of payment, including cash deposits, prepayments, or other forms of security, without further order of the Court, if Debtor believes such alternative assurance is reasonable.
  - iv. If Debtor is unable to consensually resolve an Additional Adequate Assurance Request by mutual assent within 14 days of receipt of the Adequate Assurance Request, Debtor shall schedule a hearing (“**Determination Hearing**”) to determine the appropriate amount of adequate assurance required with respect to such Additional Adequate Assurance Request after such 14-day period has expired. Pending resolution of such Additional Adequate Assurance Request and Determination Hearing, the Utility Company shall be prohibited from altering, refusing, or discontinuing services to Debtor on account of unpaid charges for prepetition services or on account of any objections to the Adequate Assurance.
8. The Utility Companies are prohibited from requiring additional adequate assurance of payment other than pursuant to the Additional Adequate Assurance Procedures.
9. Debtor is authorized to add or remove any Utility Company from the Utility Services List, and Debtor shall add to or subtract from the Utility Deposit an amount equal to 50% of Debtor’s estimated monthly cost for each subsequently-added or removed Utility

Company as soon as practicable. For Utility Companies added to the Utility Services List, Debtor will serve a copy of this Final Order, including the Additional Adequate Assurance Procedures, on such subsequently-added Utility Company, and augment the Utility Deposit with an amount equal to 50% of the Debtor's estimated monthly cost for such added Utility Company within 14 days of its addition. Any Utility Company subsequently added to the Utility Services List (who received notice of this Order) shall comply with the Additional Adequate Assurance Procedures. Debtor shall have authority to reduce the Utility Deposit to reflect terminated utility service upon either (a) obtaining the affected Utility Company's consent to reduce the Utility Deposit or (b) providing such affected Utility Company with twenty one days' notice of its intent to reduce the Utility Deposit and receiving no response thereto.

10. The relief granted in this Order is for all Utility Companies providing Utility Services to Debtor listed on the Utility Services List, provided, however, this Final Order shall be binding on any Utility Companies listed on any amended Utility Services List filed with this Court as of the date of service of the notice of the amended Utility Services List.

11. Nothing contained in the Motion, this Final Order or Debtor's service of the Motion upon the Utility Services List, shall constitute an admission or concession each such entity is a "utility" within the meaning of Section 366 of the Bankruptcy Code, and Debtor's rights and defenses with respect thereto are fully reserved.

12. Notwithstanding the relief granted in this Order and any actions taken hereunder, nothing contained in the Motion or this Final Order, or any payment made pursuant to this Final Order shall constitute, nor is it intended to constitute, an admission as to the validity or priority of any claim or lien against Debtor, a waiver of the Debtor's rights to

subsequently dispute such claim or lien, or the assumption or adoption of any agreement, contract, or lease under Section 365 of the Bankruptcy Code.

13. Notwithstanding any provision in the Bankruptcy Rules to the contrary: (i) this Order shall be effective immediately and enforceable upon its entry; (ii) Debtor is not subject to any stay in the implementation, enforcement, or realization of the relief granted in this Order; and (iii) Debtor is authorized and empowered to, and may in its discretion and without further delay, take any action necessary or appropriate to implement this Order.

14. Debtor is authorized to take all actions necessary to effectuate the relief granted in this Final Order.

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

Dated this 23<sup>rd</sup> day of March, 2017.



SHON HASTINGS, JUDGE  
UNITED STATES BANKRUPTCY COURT