

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

)	
In re:)	Chapter 11
)	
AKORN, INC., <i>et al.</i> , ¹)	Case No. 20-11177 (___)
)	
Debtors.)	(Joint Administration Requested)
)	

**DEBTORS’ MOTION
SEEKING ENTRY OF INTERIM AND FINAL
ORDERS (I) DETERMINING ADEQUATE ASSURANCE OF
PAYMENT FOR FUTURE UTILITY SERVICES, (II) PROHIBITING
UTILITY PROVIDERS FROM ALTERING, REFUSING, OR DISCONTINUING
UTILITY SERVICES, (III) ESTABLISHING PROCEDURES FOR DETERMINING
ADEQUATE ASSURANCE OF PAYMENT, AND (IV) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) respectfully state as follows in support of this motion:²

Relief Requested

1. The Debtors seek entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (respectively, the “Interim Order” and “Final Order”):
(a) determining adequate assurance of payment for future utility services; (b) prohibiting utility

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, if any, are: Akorn, Inc. (7400); 10 Edison Street LLC (7890); 13 Edison Street LLC; Advanced Vision Research, Inc. (9046); Akorn (New Jersey), Inc. (1474); Akorn Animal Health, Inc. (6645); Akorn Ophthalmics, Inc. (6266); Akorn Sales, Inc. (7866); Clover Pharmaceuticals Corp. (3735); Covenant Pharma, Inc. (0115); Hi-Tech Pharmacal Co., Inc. (8720); Inspire Pharmaceuticals, Inc. (9022); Oak Pharmaceuticals, Inc. (6647); Olta Pharmaceuticals Corp. (3621); VersaPharm Incorporated (6739); VPI Holdings Corp. (6716); and VPI Holdings Sub, LLC. The location of the Debtors’ service address is: 1925 W. Field Court, Suite 300, Lake Forest, Illinois 60045.

² A detailed description of the Debtors and their business, and the facts and circumstances supporting the Debtors’ chapter 11 cases, are set forth in greater detail in the *Declaration of Duane Portwood in Support of Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed contemporaneously with the Debtors’ voluntary petitions for relief filed under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), on May 20, 2020 (the “Petition Date”) and incorporated by reference herein. Capitalized terms used but not otherwise defined in this motion shall have the meanings ascribed to them in the First Day Declaration.



providers from altering, refusing, or discontinuing services; (c) establishing procedures for determining adequate assurance of payment; and (d) granting related relief. In addition, the Debtors request that the Court schedule a final hearing within approximately 25 days of the Petition Date to consider entry of the Final Order.

Jurisdiction and Venue

2. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter pursuant to 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. The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), to the entry of a final order by the Court in connection with this motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory bases for the relief requested herein are sections 105(a) and 366 of the Bankruptcy Code, Bankruptcy Rules 6003 and 6004, and Local Rule 9013-1(m).

Background

5. Akorn, Inc., together with its Debtor and non-Debtor subsidiaries (collectively, “Akorn”) is a specialty pharmaceutical company that develops, manufactures, and markets generic and branded prescription pharmaceuticals, branded as well as private-label over-the-counter consumer health products, and animal health pharmaceuticals. Akorn is an industry leader in the development, manufacturing, and marketing of specialized generic

pharmaceutical products in alternative dosage forms. Headquartered in Lake Forest, Illinois, Akorn has approximately 2,180 employees worldwide and maintains a global manufacturing presence, with pharmaceutical manufacturing facilities located in Illinois, New Jersey, New York, Switzerland, and India. Akorn's operations generated approximately \$682 million in revenue and approximately \$124 million of Adjusted EBITDA in 2019. The Debtors commenced these chapter 11 cases to conduct an orderly sale process that will position the Debtors for sustained future success by right-sizing their balance sheet and addressing their litigation overhangs.

6. On the Petition Date, each of the Debtors filed a voluntary petition with the Court under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors and debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrently with the filing of this motion, the Debtors have requested procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). No party has requested the appointment of a trustee or examiner in these chapter 11 cases, and no committees have been appointed or designated.

The Utility Services

7. In connection with the operation of their business and management of their properties, the Debtors historically obtain water, sewer, electricity, waste disposal, natural gas, and other similar services (collectively, the "Utility Services") from a number of utility providers (collectively, the "Utility Providers"). A nonexclusive list of the Utility Providers and their affiliates that provide Utility Services to the Debtors as of the Petition Date (the "Utility Providers List") is attached hereto as **Exhibit C**.³

³ The inclusion of any entity on, or the omission of any entity from, the Utility Providers List is not 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 with respect to any such determination. Additionally, although **Exhibit C** is intended to be comprehensive, the Debtors may have inadvertently omitted one or more Utility Providers. By

8. Uninterrupted Utility Services are essential to the Debtors' ongoing business operations and the overall success of these chapter 11 cases. As of the Petition Date, the Debtors' business includes approximately 23 research and development facilities, fulfillment and distribution facilities, as well as corporate offices. These locations require electricity, telecommunications, internet, water, waste management (including sewer and trash), and other utility services to operate. Should any Utility Provider refuse or discontinue service, even for a brief period, the Debtors' business operations would be severely disrupted, and such disruption would jeopardize the Debtors' ability to administer their chapter 11 cases. Such disruption would adversely affect employee relations, which, in turn, would negatively affect the Debtors' revenues. Accordingly, it is essential that the Utility Services continue uninterrupted during the chapter 11 cases.

9. On average, the Debtors pay approximately \$570,000 each month for third-party Utility Services, calculated as a historical average payment for the twelve-month period ending February 2020. The Debtors estimate that their cost for Utility Services during the next 25 days will be approximately \$470,000. The Debtors estimate the aggregate amount currently held as deposits or prepayments by the Utility Providers is approximately \$13,500.

I. The Proposed Adequate Assurance and Adequate Assurance Procedures.

10. The Debtors intend to pay postpetition obligations to the Utility Providers in a timely manner in the ordinary course of business. Cash held by the Debtors, cash generated in the ordinary course of business, the proposed debtor-in-possession financing, and anticipated access

this motion, the Debtors request relief applicable to all Utility Providers, regardless of whether such Utility Providers are specifically identified on Exhibit C.

to cash collateral will provide sufficient liquidity to pay the Debtors' Utility Service obligations in accordance with their prepetition practice.

11. To provide additional assurance of payment, the Debtors propose to deposit approximately \$285,000 into a segregated account (the "Adequate Assurance Deposit"), which represents an amount equal to approximately one-half of the Debtors' average monthly cost of Utility Services, calculated based on the Debtors' average utility expenses over the twelve-month period ending February 2020.

12. The Adequate Assurance Deposit will be held by the Debtors in a segregated account that may be interest bearing or non-interest bearing at the Debtors' election (the "Adequate Assurance Account") for the benefit of the Utility Providers and for the duration of these chapter 11 cases, subject to the Adequate Assurance Procedures (as defined below). No liens will encumber the Adequate Assurance Deposit or the Adequate Assurance Account. The Debtors submit that the Adequate Assurance Deposit, in conjunction with the Debtors' ability to pay for future utility services in accordance with their prepetition practices (collectively, the "Proposed Adequate Assurance"), constitutes sufficient adequate assurance to the Utility Providers in full satisfaction of section 366 of the Bankruptcy Code.

13. Nevertheless, if any entity believes that they are a Utility Provider and seeks to make a request for additional adequate assurance of future payment (each, an "Adequate Assurance Request"), the Debtors request they be required to do so pursuant to the following procedures (the "Adequate Assurance Procedures"):

- a. The Debtors will serve a copy of this motion and the order granting the relief requested herein to each Utility Provider within two (2) business days after entry of such order by the Court.
- b. Subject to sections (e)–(i) of this paragraph, the Debtors will deposit the Adequate Assurance Deposit, in the aggregate amount of \$285,000, in the Adequate Assurance Account within 20 days of the Petition Date.

- c. The amount of the Adequate Assurance Deposit allocated to each Utility Provider shall be set forth on the Utility Providers List in the column labeled “Proposed Adequate Assurance.”
- d. Any Utility Provider desiring additional assurances of payment in the form of deposits, prepayments, or otherwise must serve a request for additional assurance (an “Additional Assurance Request”) on the following parties: (i) the Debtors, Akorn, Inc. 1925 W. Field Court, Suite 300, Lake Forest, Illinois 60045, Attn: Joseph Bonaccorsi; (ii) proposed counsel to the Debtors, Kirkland & Ellis LLP, 300 North LaSalle, Chicago, Illinois 60654, Attn: Patrick J. Nash, Jr., P.C., Gregory F. Pesce, Christopher M. Hayes, and Dan Latona, and Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Nicole L. Greenblatt, P.C.; (iii) proposed co-counsel to the Debtors, Richards, Layton & Finger P.A., 920 N. King Street, Wilmington, Delaware 19801, Attn: Paul N. Heath; (iv) the Office of The United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Jane Leamy; (v) counsel to any statutory committee appointed in these chapter 11 cases, and (vi) counsel to the Ad Hoc Group, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166, Attn: Scott J. Greenberg and Steven A. Domanowski (collectively, the “Notice Parties”).
- e. Any Additional Assurance Request must: (i) be in writing; (ii) identify the location for which the Utility Services are provided and the related account number(s); (iii) include the alleged outstanding balance for the affected account(s); (iv) certify the amount that is equal to one-half the monthly cost of the Utility Services the applicable Utility Provider supplies to the Debtors, calculated as a historical average over the twelve-month period ending February 2020; (v) certify that the Utility Provider does not already hold a deposit equal to or greater than one-half the monthly cost of the Utility Services; (vi) provide evidence that the Debtors have a direct obligation to the Utility Provider; and (vii) explain why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.
- f. Any Additional Assurance Request may be made at any time. If a Utility Provider fails to serve an Additional Assurance Request as set forth herein, the Utility Provider shall be forbidden from discontinuing, altering, or refusing Utility Services to, or discriminating against, the Debtors on account of any unpaid prepetition charges, or requiring additional assurance of payment other than the Proposed Adequate Assurance.
- g. Upon the Debtors’ receipt of an Additional Assurance Request, the Debtors shall promptly negotiate with the Utility Provider to resolve the Utility Provider’s Additional Assurance Request.

- h. Without further order of the Court, the Debtors may enter into agreements granting additional adequate assurance to a Utility Provider serving an Additional Assurance Request if the Debtors determine that the Additional Assurance Request is reasonable.
- i. If the Debtors determine that the Additional Assurance Request is not reasonable and the Debtors are unable to reach an alternative resolution with the Utility Provider within twenty-one (21) days, the Debtors will request a hearing (a “Determination Hearing”) before the Court to determine the adequacy of assurance of payment with respect to that Utility Provider pursuant to section 366(c)(3) of the Bankruptcy Code.
- j. Pending resolution of such dispute at a Determination Hearing, the relevant Utility Provider shall be prohibited from altering, refusing, or discontinuing service to the Debtors on account of: (i) unpaid charges for prepetition services; (ii) a pending Additional Assurance Request; or (iii) any objections to the Proposed Adequate Assurance.
- k. The Adequate Assurance Deposit deposited into the Adequate Assurance Account on behalf of any Utility Provider (including any additional amount deposited upon request of any applicable Utility Provider), or any portion thereof, shall be returned to the Debtors by no later than five (5) business days following the earlier of the date upon which (i) a chapter 11 plan becomes effective after being confirmed in these chapter 11 cases or (ii) the Debtors provide notice to a Utility Provider that services provided to the Debtors by such Utility Provider will no longer be needed or will be reduced. The Debtors may reduce the amount of the Adequate Assurance Deposit allocated to a particular Utility Provider to the extent consistent with any alternative assurance arrangements agreed to by the Debtors and the affected Utility Provider.

14. The Adequate Assurance Procedures set forth a streamlined process for Utility Providers to address potential concerns with respect to the Proposed Adequate Assurance, while at the same time allowing the Debtors to administer their chapter 11 estates uninterrupted. More specifically, the Adequate Assurance Procedures permit a Utility Provider to object to the Proposed Adequate Assurance by serving an Additional Assurance Request upon certain notice parties. The Debtors may then resolve any Additional Assurance Request by mutual agreement with the Utility Provider and without further order of the Court. If the Additional Assurance

Request cannot be resolved by mutual agreement, the Debtors may seek Court resolution of the Additional Assurance Request.

15. Absent compliance with the Adequate Assurance Procedures, the Debtors request that the Utility Providers, including subsequently added Utility Providers, be forbidden from altering, refusing, or discontinuing service or requiring additional assurance of payment other than the Proposed Adequate Assurance.

16. The relief requested herein is intended to apply to all Utility Providers providing Utility Services to the Debtors and is not limited to those parties or entities listed on the Utility Providers List.

II. Subsequently Identified Utility Providers.

17. To the extent the Debtors identify new or additional Utility Providers, the Debtors seek authority to add or remove parties from the Utility Providers List. For any Utility Provider that is subsequently added to the Utility Providers List, the Debtors will serve such Utility Provider with a copy of the Court's order regarding Utility Services, including the Adequate Assurance Procedures, and increase the Adequate Assurance Deposit by an amount equal to approximately one-half of the Debtors' average monthly cost from the subsequently added Utility Provider, net of any prepetition deposits, letters of credit, or surety bonds already provided to the Utility Provider in the ordinary course of business. The Debtors request that the terms of the entered Interim Order and/or Final Order, as applicable, and the Adequate Assurance Procedures apply to any subsequently identified Utility Provider to the same extent as if the Utility Provider was listed on the original Utility Providers List attached hereto. For any Utility Provider that may be subsequently removed from the Utility Providers List, the Debtors request the authority to decrease

the Adequate Assurance Deposit by an amount equal to approximately one-half of the Debtors' average monthly cost from such removed Utility Provider.

Basis for Relief

18. Section 366 of the Bankruptcy Code protects a debtor against the immediate termination or alteration of utility services after the Petition Date. *See* 11 U.S.C. § 366. Section 366(c) of the Bankruptcy Code requires the debtor to provide “adequate assurance” of payment for postpetition services in a form “satisfactory” to the utility provider within thirty days of the Petition Date, or the utility provider may alter, refuse, or discontinue service. 11 U.S.C. § 366(c)(2). Section 366(c)(1) of the Bankruptcy Code enumerates what constitutes “assurance of payment.” 11 U.S.C. § 366(c)(1). Although assurance of payment must be “adequate,” it need not constitute an absolute guarantee of the debtors' ability to pay. *See, e.g., In re Great Atl. & Pac. Tea Co.*, No. 11-CV-1338, 2011 WL 5546954, at *5 (Bankr. S.D.N.Y. Nov. 14, 2011) (finding that “[c]ourts will approve an amount that is adequate enough to insure against unreasonable risk of nonpayment, but are not required to give the equivalent of a guaranty of payment in full”); *In re Caldor, Inc.*, 199 B.R. 1, 3 (S.D.N.Y. 1996) (“Section 366(b) requires . . . adequate assurance of payment. The statute does not require an absolute guarantee of payment.” (internal quotation and citation omitted)), *aff'd sub nom. Va. Elec. & Power Co. v. Caldor, Inc.*, 117 F.3d 646 (2d Cir. 1997).

19. When considering whether a given assurance of payment is “adequate,” courts should examine the totality of the circumstances to make an informed decision as to whether the Utility Provider will be subject to an unreasonable risk of nonpayment. *See Mass. Elec. Co. v. Keydata Corp. (In re Keydata Corp.)*, 12 B.R. 156, 158 (B.A.P. 1st Cir. 1981) (citing *In re Cunha*, 1 B.R. 330 (Bankr. E.D. Va. 1979)); *In re Adelpia Bus. Sols., Inc.*, 280 B.R. 63, 82–83 (Bankr. S.D.N.Y. 2002). Courts have recognized that, in determining the requisite level of adequate

assurance, “a bankruptcy court must focus upon the need of the utility for assurance, and . . . require that the debtor supply no more than that, since the debtor almost perforce has a conflicting need to conserve scarce financial resources.” *Va. Elec. & Power Co.*, 117 F.3d at 650 (internal quotations omitted) (citing *In re Penn Jersey Corp.*, 72 B.R. 981, 985 (Bankr. E.D. Pa. 1987)); *see also In re Penn. Cent. Transp. Co.*, 467 F.2d 100, 103–04 (3d Cir. 1972) (affirming bankruptcy court’s ruling that no utility deposits were necessary where such deposits likely would “jeopardize the continuing operation of the [debtor] merely to give further security to suppliers who already are reasonably protected”). Accordingly, demands by a Utility Provider for a guarantee of payment should be refused when the Debtors’ specific circumstances already afford adequate assurance of payment.

20. Here, the Utility Providers are adequately assured against any risk of nonpayment for future services. The Adequate Assurance Deposit and the Debtors’ ongoing ability to meet obligations as they come due in the ordinary course provides assurance of the Debtors’ payment of their future obligations. Moreover, termination of any Utility Services could result in the Debtors’ inability to operate their business to the detriment of all stakeholders. *Cf. In re Monroe Well Serv., Inc.*, 83 B.R. 317, 321–22 (Bankr. E.D. Pa. 1988) (noting that without utility service, the debtors “would have to cease operations” and that section 366 of the Bankruptcy Code “was intended to limit the leverage held by utility companies, not increase it”).

21. Courts are permitted to fashion reasonable procedures, such as the Adequate Assurance Procedures proposed herein, to implement the protections afforded under section 366 of the Bankruptcy Code. *See, e.g., In re Circuit City Stores Inc.*, No. 08-35653, 2009 WL 484553, at *5 (Bankr. E.D. Va. Jan. 14, 2009) (“The plain language of § 366 of the Bankruptcy Code allows the court to adopt the Procedures set forth in the Utility Order.”). Such

procedures are important because, without them, the Debtors “could be forced to address numerous requests by utility companies in an unorganized manner at a critical period in their efforts to reorganize.” *Id.* Here, notwithstanding a determination that the Debtors’ Proposed Adequate Assurance constitutes sufficient adequate assurance, any rights the Utility Providers believe they have under sections 366(b) and 366(c)(2) of the Bankruptcy Code are wholly preserved under the Adequate Assurance Procedures. *See id.* at *5–6. The Utility Providers still may choose, in accordance with the Adequate Assurance Procedures, to request modification of the Proposed Adequate Assurance. *See id.* at *6. The Adequate Assurance Procedures, however, avoid a disorganized process whereby each Utility Provider could make a last-minute demand for adequate assurance that would force the Debtors to pay under the threat of losing critical Utility Services. *See id.* at *5.

22. Because the Adequate Assurance Procedures are reasonable and in accord with the purposes of section 366 of the Bankruptcy Code, the Court should grant the relief requested herein. Similar procedures have been approved by courts in this district. *See, e.g., In re Longview Power, LLC*, No. 20-10951 (BLS) (Bankr. D. Del. May 18, 2020) (approving adequate assurance deposit equal to one-half of debtor’s monthly utility expenses on a final basis); *In re Bluestem Brands, Inc., et al.*, No. 20-10566 (MFW) (Bankr. D. Del. Apr. 13, 2020) (same); *In re Art Van Furniture, LLC, et al.*, No. 20-10553 (CSS) (Bankr. D. Del. Mar. 10, 2020) (approving adequate assurance deposit equal to one-half of debtor’s monthly utility expenses on an interim basis); *In re Clover Techs. Grp., LLC, et al.*, No. 19-12680 (KBO) (Bankr. D. Del. Jan. 21, 2020) (approving adequate assurance deposit equal to one-half of debtor’s monthly utility expenses on a final basis); *In re Anna Holdings, Inc., et al.*, No. 19-12551 (CSS) (Bankr. D. Del. Dec. 3, 2019) (approving

adequate assurance deposit equal to one-half of debtor's monthly utility expenses on an interim basis).⁴

23. Further, the Court possesses the power, under section 105(a) of the Bankruptcy Code, to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). The Adequate Assurance Procedures and the Proposed Adequate Assurance are necessary and appropriate to carry out the provisions of the Bankruptcy Code, particularly section 366 of the Bankruptcy Code. Accordingly, the Court should exercise its powers under sections 105(a) and 366 of the Bankruptcy Code and approve both the Adequate Assurance Procedures and the Proposed Adequate Assurance.

Processing of Checks and Electronic Fund Transfers Should Be Authorized

24. The Debtors have sufficient funds to pay the amounts described in this motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations, the proposed debtor-in-possession financing, and anticipated access to cash collateral. Under the Debtors' existing cash management system, the Debtors have made arrangements to readily identify checks or wire transfer requests relating to the authorized payments in respect of Utility Services, as applicable. Accordingly, the Debtors believe that checks or wire transfer requests that are not related to authorized payments will not be honored inadvertently. Therefore, the Debtors respectfully request that the Court authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this motion.

⁴ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this motion. Copies of these orders are available upon request of the Debtors' proposed counsel.

The Requirements of Bankruptcy Rule 6003 Are Satisfied

25. Bankruptcy Rule 6003 empowers a court to grant relief within the first 21 days after the Petition Date “to the extent that relief is necessary to avoid immediate and irreparable harm.” Fed. R. Bankr. P. 6003. For the reasons discussed above, prohibiting Utility Providers from altering or discontinuing services, authorizing the Debtors to deposit the Proposed Adequate Assurance and utilize the Adequate Assurance Procedures, and granting the other relief requested herein is integral to the Debtors’ ability to transition their operations into these chapter 11 cases smoothly. Failure to receive such authorization and other relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors’ operations at this critical juncture. For the reasons discussed herein, the relief requested is necessary in order for the Debtors to operate their business in the ordinary course, preserve the going concern value of the Debtors’ operations, and maximize the value of their estates for the benefit of all stakeholders. Accordingly, the Debtors submit that they have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

Reservation of Rights

26. Nothing contained in the motion or any actions taken by the Debtors pursuant to relief granted in the Interim Order and Final Order is intended or should be construed as: (a) an admission as to the validity, priority, or amount of any particular claim against a Debtor entity; (b) a waiver of the Debtors’ or any other party-in-interest’s right to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in the motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver of the Debtors’ or any other party-in-interest’s right to dispute whether any of the Utility Providers listed on the Utility Providers List or subsequently identified

by the Debtors are or are not “utilities” within the meaning of Bankruptcy Code section 366(a); (g) a waiver or limitation of the Debtors’ or any other party-in-interest’s rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors or any other party-in-interest that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the motion are valid and the Debtors and all other parties-in-interest expressly reserve their rights to contest the extent, validity, or perfection, or to seek avoidance of all such liens. If the Court grants the relief sought herein, any payment made pursuant to the Court’s order is not intended and should not be construed as an admission as to the validity, priority, or amount of any particular claim or a waiver of the Debtors’ or any other party-in-interest’s right to subsequently dispute such claim.

Waiver of Bankruptcy Rule 6004(a) and 6004(h)

27. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

Notice

28. The Debtors will provide notice of this motion to: (a) the U.S. Trustee for the District of Delaware; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) Wilmington Savings Fund Society, FSB, in its capacity as successor administrative agent under the Term Loan Credit Agreement, or any of its predecessors or successors (the “Term Loan Agent”); (d) counsel to the Term Loan Agent; (e) counsel to the ad hoc group of the Debtors’ Prepetition Lenders (the “Ad Hoc Group”); (f) the United States Attorney’s Office for the District of Delaware; (g) the Internal Revenue Service; (h) the Food and

Drug Administration; (i) the Drug Enforcement Administration; (j) the Securities Exchange Commission; (k) the state attorneys general for all states in which the Debtors conduct business; (l) the Utility Providers; and (m) any party that requests service pursuant to Local Rule 9013-1(m)(iii).

No Prior Request

29. No prior request for the relief sought in this motion has been made to this or any other court.

[Remainder of page intentionally left blank]

WHEREFORE, the Debtors respectfully request entry of interim and final orders, substantially in the form attached hereto as **Exhibit A** and **Exhibit B**, respectively, (a) granting the relief requested herein and (b) granting such other relief as is just and proper.

Wilmington, Delaware
May 21, 2020

/s/ Paul N. Heath

RICHARDS, LAYTON & FINGER, P.A.

Paul N. Heath (No. 3704)
Amanda R. Steele (No. 5530)
Zachary I. Shapiro (No. 5103)
Brett M. Haywood (No. 6166)
One Rodney Square
920 N. King Street
Wilmington, Delaware 19801
Telephone: (302) 651-7700
Facsimile: (302) 651-7701
Email: heath@rlf.com
steele@rlf.com
shapiro@rlf.com
haywood@rlf.com

*Proposed Co-Counsel for the
Debtors and Debtors in Possession*

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP
Patrick J. Nash, Jr., P.C. (*pro hac vice* admission pending)
Gregory F. Pesce (*pro hac vice* admission pending)
Christopher M. Hayes (*pro hac vice* admission pending)
300 North LaSalle Street
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
Email: patrick.nash@kirkland.com
gregory.pesce@kirkland.com
christopher.hayes@kirkland.com

-and-

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP
Nicole L. Greenblatt, P.C. (*pro hac vice* admission pending)
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900
Email: nicole.greenblatt@kirkland.com

*Proposed Co-Counsel for the
Debtors and Debtors in Possession*

Exhibit A

Proposed Interim Order

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

In re:)	
)	Chapter 11
AKORN, INC., ¹)	
)	Case No. 20-11177 (___)
)	
Debtors.)	(Joint Administration Requested)
)	Re: Docket No. _____

**INTERIM ORDER (I) DETERMINING ADEQUATE ASSURANCE
OF PAYMENT FOR FUTURE UTILITY SERVICES, (II) PROHIBITING
UTILITY PROVIDERS FROM ALTERING, REFUSING, OR DISCONTINUING
UTILITY SERVICES, (III) ESTABLISHING PROCEDURES FOR DETERMINING
ADEQUATE 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 an interim order (this “Interim Order”): (a) approving the Debtors’ Proposed Adequate Assurance; (b) prohibiting Utility Providers from altering, refusing, or discontinuing services; (c) approving the Debtors’ proposed procedures for resolving any Additional Assurance Requests; (d) granting related relief; and (e) scheduling a final hearing to consider approval of the Motion on a final basis, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 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

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, if any, are: Akorn, Inc. (7400); 10 Edison Street LLC (7890); 13 Edison Street LLC; Advanced Vision Research, Inc. (9046); Akorn (New Jersey), Inc. (1474); Akorn Animal Health, Inc. (6645); Akorn Ophthalmics, Inc. (6266); Akorn Sales, Inc. (7866); Clover Pharmaceuticals Corp. (3735); Covenant Pharma, Inc. (0115); Hi-Tech Pharmacal Co., Inc. (8720); Inspire Pharmaceuticals, Inc. (9022); Oak Pharmaceuticals, Inc. (6647); Olta Pharmaceuticals Corp. (3621); VersaPharm Incorporated (6739); VPI Holdings Corp. (6716); and VPI Holdings Sub, LLC. The location of the Debtors’ service address is: 1925 W. Field Court, Suite 300, Lake Forest, Illinois 60045.

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

that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and the First Day Declaration and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and the First Day Declaration and at the Hearing establish just cause for the relief granted herein; 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 as set forth herein.
2. The final hearing (the "Final Hearing") on the Motion shall be held on _____, 2020, at __:___.m., prevailing Eastern Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Eastern Time, on _____, 2020, and shall be served on: (a) the Debtors, Akorn, Inc., 1925 W. Field Court, Suite 300, Lake Forest, Illinois 60045 Attn: Joseph Bonaccorsi; (b) proposed counsel to the Debtors, Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654, Attn: Patrick J. Nash, Jr., P.C., Gregory F. Pesce, and Christopher M. Hayes, and Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Nicole L. Greenblatt, P.C.; (c) proposed co-counsel to the Debtors, Richards, Layton & Finger, P.A., 920 N. King Street, Wilmington, Delaware 19801, Attn: Paul N. Heath; (d) the Office of The United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Jane Leamy; (e) counsel to any statutory

committee appointed in these chapter 11 cases; and (f) counsel to the Ad Hoc Group, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166, Attn: Scott J. Greenberg and Steven A. Domanowski. In the event no objections to entry of the Final Order on the Motion are timely received, this Court may enter such Final Order without need for the Final Hearing.

3. All Utility Providers are prohibited from altering, refusing, or discontinuing services on account of any unpaid prepetition charges, the commencement of these chapter 11 cases, or any perceived inadequacy of the Proposed Adequate Assurance.

4. The following Adequate Assurance Procedures are hereby approved on an interim basis:

- a. The Debtors will serve a copy of this Motion and the order granting the relief requested herein to each Utility Provider within two (2) business days after entry of this Interim Order by the Court.
- b. Subject to sections (e)–(i) of this paragraph, the Debtors will deposit the Adequate Assurance Deposit, in the aggregate amount of \$285,000, in the Adequate Assurance Account within 20 days of the Petition Date.
- c. The amount of the Adequate Assurance Deposit allocated to each Utility Provider shall be set forth on the Utility Providers List in the column labeled “Proposed Adequate Assurance.”
- d. Any Utility Provider desiring additional assurances of payment in the form of deposits, prepayments, or otherwise must serve a request for additional assurance (an “Additional Assurance Request”) on the following parties: (i) the Debtors, Akorn, Inc., 1925 W. Field Court, Lake Forest, Illinois 60045 Attn: Joseph Bonaccorsi; (ii) proposed counsel to the Debtors, Kirkland & Ellis LLP, Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654, Attn: Patrick J. Nash, Jr., P.C., Gregory F. Pesce, Christopher M. Hayes, and Dan Latona, and Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Nicole L. Greenblatt, P.C.; (iii) proposed co-counsel to the Debtors, Richards, Layton & Finger, P.A., 920 N. King Street, Wilmington, Delaware 19801, Attn: Paul N. Heath; (iv) the Office of The United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Jane Leamy; (v) counsel to any statutory committee appointed in these chapter 11 cases; and (vi) counsel to the Ad Hoc Group, Gibson, Dunn & Crutcher, LLP, 200 Park Avenue, New York, NY 10166,

Attn: Scott J. Greenberg and Steven A. Domanowski (collectively, the “Notice Parties”).

- e. Any Additional Assurance Request must: (i) be in writing; (ii) identify the location for which the Utility Services are provided and the related account number(s); (iii) include the alleged outstanding balance for the affected account(s); (iv) certify the amount that is equal to one-half the monthly cost of the Utility Services the applicable Utility Provider supplies to the Debtors, calculated as a historical average over the twelve-month period ending February 2020; (v) certify that the Utility Provider does not already hold a deposit equal to or greater than one-half the monthly cost of the Utility Services; (vi) provide evidence that the Debtors have a direct obligation to the Utility Provider; and (vii) explain why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.
- f. Any Additional Assurance Request may be made at any time. If a Utility Provider fails to serve an Additional Assurance Request as set forth herein, the Utility Provider shall be forbidden from discontinuing, altering, or refusing Utility Services to, or discriminating against, the Debtors on account of any unpaid prepetition charges, or requiring additional assurance of payment other than the Proposed Adequate Assurance.
- g. Upon the Debtors’ receipt of an Additional Assurance Request, the Debtors shall promptly negotiate with the Utility Provider to resolve the Utility Provider’s Additional Assurance Request.
- h. Without further order of the Court, the Debtors may enter into agreements granting additional adequate assurance to a Utility Provider serving an Additional Assurance Request if the Debtors determine that the Additional Assurance Request is reasonable.
- i. If the Debtors determine that the Additional Assurance Request is not reasonable and the Debtors are unable to reach an alternative resolution with the Utility Provider, within twenty-one (21) days, the Debtors will request a hearing (a “Determination Hearing”) before the Court to determine the adequacy of assurance of payment with respect to that Utility Provider pursuant to section 366(c)(3) of the Bankruptcy Code.
- j. Pending resolution of such dispute at a Determination Hearing, the relevant Utility Provider shall be prohibited from altering, refusing, or discontinuing service to the Debtors on account of: (i) unpaid charges for prepetition services; (ii) a pending Additional Assurance Request; or (iii) any objections to the Proposed Adequate Assurance.
- k. The Adequate Assurance Deposit deposited into the Adequate Assurance Account on behalf of any Utility Provider (including

any additional amount deposited upon request of any applicable Utility Provider), or any portion thereof, shall be returned to the Debtors by no later than five (5) business days following the earlier of the date upon which (i) a chapter 11 plan becomes effective after being confirmed in these chapter 11 cases or (ii) the Debtors provide notice to a Utility Provider that services provided to the Debtors by such Utility Provider will no longer be needed or will be reduced. The Debtors may reduce the amount of the Adequate Assurance Deposit allocated to a particular Utility Provider to the extent consistent with any alternative assurance arrangements agreed to by the Debtors and the affected Utility Provider.

5. The Utility Providers are prohibited from requiring additional adequate assurance of payment other than pursuant to the Adequate Assurance Procedures.

6. The Debtors will cause a copy of this Interim Order, including the Adequate Assurance Procedures, to be served on any subsequently identified Utility Provider and any such Utility Provider shall be bound by the Adequate Assurance Procedures.

7. Any deposit provided to a Utility Provider by the Debtors prior to the Petition Date must be returned to the Debtors within twenty-one (21) days of receiving a notice that the services provided to the Debtors by such Utility Provider will no longer be needed, or such other period as may be specified in any agreement between the Debtors and such Utility Provider.

8. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief, nothing in this Interim Order shall be deemed: (a) an admission as to the validity, priority, or amount of any particular claim against a Debtor entity; (b) a waiver of the Debtors' or any other party-in-interest's right to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Interim Order or the Motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver of the Debtors' or any other party-in-interest's right to dispute whether any of the Utility Providers listed on the Utility Providers List or subsequently identified

by the Debtors are or are not “utilities” within the meaning of Bankruptcy Code section 366(a); (g) a waiver or limitation of the Debtors’ or any other party-in-interest’s rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors or any other party-in-interest that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to this Interim Order are valid and the Debtors and all other parties-in-interest expressly reserve their rights to contest the extent, validity, or perfection or to seek avoidance of all such liens. Any payment made pursuant to this Interim Order should not be construed as an admission as to the validity, priority, or amount of any particular claim or a waiver of the Debtors’ or any other party-in-interest’s right to subsequently dispute such claim.

9. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors’ designation of any particular check or electronic payment request as approved by this Interim Order without any duty of further inquiry and without liability for following the Debtors’ instructions.

10. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with any Utility Services.

11. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

12. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

13. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order are immediately effective and enforceable upon its entry.

14. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

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

Dated: _____, 2020
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

Exhibit B

Proposed Final Order

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 this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate and no other notice need be provided; and this Court having reviewed the Motion and the First Day Declaration and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and the First Day Declaration and at the Hearing establish just cause for the relief granted herein; 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 a final basis as set forth herein.
2. All Utility Providers are prohibited from altering, refusing, or discontinuing services on account of any unpaid prepetition charges, the commencement of these chapter 11 cases, or any perceived inadequacy of the Proposed Adequate Assurance.
3. The following Adequate Assurance Procedures are hereby approved on a final basis:
 - a. The Debtors will serve a copy of this Motion and the order granting the relief requested herein to each Utility Provider within two (2) business days after entry of this Final Order by the Court.
 - b. Subject to sections (e)–(i) of this paragraph, the Debtors will deposit the Adequate Assurance Deposit, in the aggregate amount of \$285,000, in the Adequate Assurance Account within 20 days of the Petition Date.
 - c. The amount of the Adequate Assurance Deposit allocated to each Utility Provider shall be set forth on the Utility Providers List in the column labeled "Proposed Adequate Assurance."

- d. Any Utility Provider desiring additional assurances of payment in the form of deposits, prepayments, or otherwise must serve a request for additional assurance (an “Additional Assurance Request”) on the following parties: (i) the Debtors, Akorn, Inc., 1925 W. Field Court, Lake Forest, Illinois 60045 Attn: Joseph Bonaccorsi; (ii) proposed counsel to the Debtors, Kirkland & Ellis LLP, Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654, Attn: Patrick J. Nash, Jr., P.C., Gregory F. Pesce, Christopher M. Hayes, and Dan Latona, and Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Nicole L. Greenblatt, P.C.; (iii) proposed co-counsel to the Debtors, Richards, Layton & Finger, P.A., 920 N. King Street, Wilmington, Delaware 19801, Attn: Paul N. Heath; (iv) the Office of The United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Jane Leamy; (v) counsel to any statutory committee appointed in these chapter 11 cases; and (vi) counsel to the Ad Hoc Group, Gibson, Dunn & Crutcher, LLP, 200 Park Avenue, New York, NY 10166, Attn: Scott J. Greenberg and Steven A. Domanowski (collectively, the “Notice Parties”).
- e. Any Additional Assurance Request must: (i) be in writing; (ii) identify the location for which the Utility Services are provided and the related account number(s); (iii) include the alleged outstanding balance for the affected account(s); (iv) certify the amount that is equal to one-half the monthly cost of the Utility Services the applicable Utility Provider supplies to the Debtors, calculated as a historical average over the twelve-month period ending February 2020; (v) certify that the Utility Provider does not already hold a deposit equal to or greater than one-half the monthly cost of the Utility Services; (vi) provide evidence that the Debtors have a direct obligation to the Utility Provider; and (vii) explain why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.
- f. Any Additional Assurance Request may be made at any time. If a Utility Provider fails to serve an Additional Assurance Request as set forth herein, the Utility Provider shall be forbidden from discontinuing, altering, or refusing Utility Services to, or discriminating against, the Debtors on account of any unpaid prepetition charges, or requiring additional assurance of payment other than the Proposed Adequate Assurance.
- g. Upon the Debtors’ receipt of an Additional Assurance Request, the Debtors shall promptly negotiate with the Utility Provider to resolve the Utility Provider’s Additional Assurance Request.
- h. Without further order of the Court, the Debtors may enter into agreements granting additional adequate assurance to a Utility Provider serving an Additional Assurance Request if the Debtors determine that the Additional Assurance Request is reasonable.

- i. If the Debtors determine that the Additional Assurance Request is not reasonable and the Debtors are unable to reach an alternative resolution with the Utility Provider, within twenty-one (21) days, the Debtors will request a hearing (a “Determination Hearing”) before the Court to determine the adequacy of assurance of payment with respect to that Utility Provider pursuant to section 366(c)(3) of the Bankruptcy Code.
- j. Pending resolution of such dispute at a Determination Hearing, the relevant Utility Provider shall be prohibited from altering, refusing, or discontinuing service to the Debtors on account of: (i) unpaid charges for prepetition services; (ii) a pending Additional Assurance Request; or (iii) any objections to the Proposed Adequate Assurance.
- k. The Adequate Assurance Deposit deposited into the Adequate Assurance Account on behalf of any Utility Provider (including any additional amount deposited upon request of any applicable Utility Provider), or any portion thereof, shall be returned to the Debtors by no later than five (5) business days following the earlier of the date upon which (i) a chapter 11 plan becomes effective after being confirmed in these chapter 11 cases or (ii) the Debtors provide notice to a Utility Provider that services provided to the Debtors by such Utility Provider will no longer be needed or will be reduced. The Debtors may reduce the amount of the Adequate Assurance Deposit allocated to a particular Utility Provider to the extent consistent with any alternative assurance arrangements agreed to by the Debtors and the affected Utility Provider.

4. The Utility Providers are prohibited from requiring additional adequate assurance of payment other than pursuant to the Adequate Assurance Procedures.

5. The Debtors will cause a copy of this Final Order, including the Adequate Assurance Procedures, to be served on any subsequently identified Utility Provider and any such Utility Provider shall be bound by the Adequate Assurance Procedures.

6. Any deposit provided to a Utility Provider by the Debtors prior to the Petition Date must be returned to the Debtors within twenty-one (21) days of receiving a notice that the services provided to the Debtors by such Utility Provider will no longer be needed, or such other period as may be specified in any agreement between the Debtors and such Utility Provider.

7. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an admission as to the

validity, priority, or amount of any particular claim against a Debtor entity; (b) a waiver of the Debtors' or any other party-in-interest's right to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Final Order or the Motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver of the Debtors' or any other party-in-interest's right to dispute whether any of the Utility Providers listed on the Utility Providers List or subsequently identified by the Debtors are or are not "utilities" within the meaning of Bankruptcy Code section 366(a); (g) a waiver or limitation of the Debtors' or any other party-in-interest's rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors or any other party-in-interest that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to this Final Order are valid and the Debtors and all other parties-in-interest expressly reserve their rights to contest the extent, validity, or perfection or to seek avoidance of all such liens. Any payment made pursuant to this Final Order should not be construed as an admission as to the validity, priority, or amount of any particular claim or a waiver of the Debtors' or any other party-in-interest's right to subsequently dispute such claim.

8. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order without any duty of further inquiry and without liability for following the Debtors' instructions.

9. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with any Utility Services.

10. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

11. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

12. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

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

Dated: _____, 2020
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

Exhibit C**Utility Providers List**

Name	Account Number	Service Type	Location	Average Monthly Spend	Proposed Adequate Assurance
Ameren Distribution	26587-12976	Electricity	150 S. Wyckles Rd Decatur, IL	\$5,355	\$2,678
Ameren Distribution	75148023	Natural Gas	1222 W Grand Decatur, IL	\$4,503	\$2,252
Ameren Distribution	1550143010	Natural Gas	150 S. Wyckles Rd Decatur, IL	\$1,503	\$752
Ameren Illinois	8939758577	Electricity	1222 W Grand Decatur, IL	\$23,175	\$11,588
Ameren Illinois	7582236024	Electricity	1390 N Fairview Ave Decatur, IL	\$149	\$75
Ameren Illinois	7582236024	Natural Gas	1390 N Fairview Ave Decatur, IL	\$105	\$53
Ameren Light	8694800013; 6556490002	Electricity	1222 W Grand Decatur, IL	\$83	\$42
AT&T	8003-121-7674 831-000-7947 345 831-000-7392 178	Telephone/Cable/Internet	Multiple	\$32,797	\$16,399
BCN Telecom Inc.	TE1462	Telephone/Cable/Internet	Multiple	\$1,336	\$668
Cablevision	57641	Telephone/Cable/Internet	Multiple	\$2,320	\$1,160
Call One Inc.	1213216 1207209	Telephone/Cable/Internet	Multiple	\$50,917	\$25,459
City of Decatur	17 312000; 17 312100; 17 312105	Water Treatment	1222 W Grand Decatur, IL	\$24,183	\$12,092
City of Decatur	12 350500	Water Treatment	150 S. Wyckles Rd Decatur, IL	\$2,757	\$1,379
City of Decatur	28 255780	Water Treatment	1390 N Fairview Ave Decatur, IL	\$21	\$11
Comcast	900015563	Telephone/Cable/Internet	Multiple	\$34,993	\$17,497
Commonwealth Edison Company	1203118086	Electric	1925 W Field Ct Lake Forest, IL	\$3,552	\$1,776

Name	Account Number	Service Type	Location	Average Monthly Spend	Proposed Adequate Assurance
Commonwealth Edison Company	Acct # 2870462107 (Unit 125); Acct # 1592099138 (Unit 140); Acct # 1879045129 (Unit 145); Acct # 0369014326 (Unit 230); Acct # 2870470083 (Unit 240)	Electric	100 N Field Lake Forest, IL	\$1,483	\$742
Commonwealth Edison Company	Acct #1619120081 (Unit 109); Acct #1619121079 (Unit 111); Acct #1619122147 (Unit 114); Acct #1619123135 (Unit 115); Acct #0412040012 (Unit 110); Acct #1619096106 (Unit 112)	Electric	50 Lakeview Parkway, Suite 112 Vernon Hills, IL	\$8,902	\$4,451
Commonwealth Edison Company	Acct #2677007039 (Unit C); Acct #0777126128 (Fire PP); Acct #0389152103 (Unit A); Acct #5253162010 (Unit B); Acct #5853064048 (BLDG)	Electric	605 CenterPoint Ct., Suite B Gurnee, IL	\$6,050	\$3,025
Direct Energy	730544-75272	Natural Gas	1222 W Grand Decatur, IL	\$15,933	\$7,967
Direct Energy	730544-75271	Natural Gas	150 S. Wyckles Rd Decatur, IL	\$2,240	\$1,120
Franklin Sewage	19482	Water Treatment	72 Veronica Building 72 Somerset, NJ	\$3,195	\$1,597
Franklin Township	5412-3	Water	72 Veronica Building 72 Somerset, NJ	\$3,837	\$1,918
Freepoint Energy Solutions LLC	7216	Electric	605 CenterPoint Ct., Suite B Gurnee, IL	\$8,896	\$4,448
Homefield Energy	8939758577	Electricity	1222 W Grand Decatur, IL	\$39,841	\$19,921
Homefield Energy	2658712976	Electricity	150 S. Wyckles Rd Decatur, IL	\$9,025	\$4,513

Name	Account Number	Service Type	Location	Average Monthly Spend	Proposed Adequate Assurance
National Grid	80245-03006	Natural Gas	26 Edison St Amityville, NY	\$6,200	\$3,100
National Grid	55344-09003; 67798-33006	Natural Gas	225 Dixon Ave Amityville, NY	\$300	\$150
National Grid	55344-10006	Natural Gas	10 Edison St Amityville, NY	\$1,100	\$550
National Grid	80245-13002	Natural Gas	369 Bayview Ave Amityville, NY	\$700	\$350
National Grid	92707-45008	Natural Gas	13 Edison St Amityville, NY	\$1,800	\$900
National Grid	81296-56004	Natural Gas	132 Lincoln St Copiague, NY	\$1,100	\$550
New York Power Authority (NYPA)	200006602	Electricity	Multiple	\$18,600	\$9,300
North Shore Gas	0606283005-00008	Gas	50 Lakeview Parkway, Suite 112 Vernon Hills, IL	\$47	\$23
North Shore Gas	Acct #0606283005- 00001 (STE 115); Acct #0606283005- 00003 (STE 113); Acct #0606283005- 00005 (STE 114); Acct #0606283005- 00002 (STE 112); Acct #0606283005- 00004 (STE 110); Acct #0606283005- 00008 (STE 109)	Gas	50 Lakeview Parkway, Suite 112 Vernon Hills, IL	\$727	\$364
North Shore Gas	Acct #0606283005- 00009 (STE A); Acct #0606283005- 00007 (STE B); Acct #0606283005- 00006 (STE C)	Gas	605 CenterPoint Ct., Suite B Gurnee, IL	\$2,081	\$1,040
Public Service Electric and Gas Company	4242201206	Gas	5 Cedar Brook Drive Cranbury, NJ	\$1,887	\$943

Name	Account Number	Service Type	Location	Average Monthly Spend	Proposed Adequate Assurance
Public Service Electric and Gas Company	4242201206	Electric	5 Cedar Brook Drive Cranbury, NJ	\$22,190	\$11,095
Public Service Electric and Gas Company	4242201206	Gas	5 Cedar Brook Drive Cranbury, NJ	\$3,009	\$1,504
Public Service Enterprise Group	7012044524	Electricity	10 Edison St Amityville, NY	\$7,900	\$3,950
Public Service Enterprise Group	7012038862	Electricity	369 Bayview Ave Amityville, NY	\$6,300	\$3,150
Public Service Enterprise Group	7012041401; 7012041503; 7012041523	Electricity	225 Dixon Ave Amityville, NY	\$12,900	\$6450
Public Service Enterprise Group	7012042007; 7012042111	Electricity	26 Edison St Amityville, NY	\$22,900	\$11,450
Public Service Enterprise Group	7012042787; 7012042803; 7012042906	Electricity	13 Edison St Amityville, NY	\$4,400	\$2,200
Public Service Enterprise Group	7012065121	Electricity	369 Bayview Ave Amityville, NY	\$15,100	\$7,550
Public Service Enterprise Group	7031320103	Electricity	132 Lincoln St Copiague, NY	\$2,300	\$1,150
Public Service Enterprise Group	4201069907; 6983745205	Electricity	72 Veronica Building 72 Somerset, NJ	\$21,825	\$10,913
Public Service Enterprise Group	66722486607; 6575183905; 660077110; 6508556703; 6543605308	Natural Gas	72 Veronica Building 72 Somerset, NJ	\$4,655	\$2329
Public Service Enterprise Group	4245561904	Electricity	72 Veronica Building 68 Somerset, NJ	\$5,660	\$2,830
Public Service Enterprise Group	4245561904; 6775256000	Natural Gas	72 Veronica Building 68 Somerset, NJ	\$2,384	\$1,193
Public Service Enterprise Group	7183206203	Electricity	Pierce Street Somerset, NJ	\$1,082	\$541
Public Service Enterprise Group	7183206203	Natural Gas	Pierce Street Somerset, NJ	\$2,584	\$1,292
Sensible Solar Solutions LLC	N/A	Electricity	Pierce Street Somerset, NJ	\$1,815	\$908
Sprague Operating Resources LL	72003408	Gas	5 Cedar Brook Drive Cranbury, NJ	\$4,439	\$2,220

Name	Account Number	Service Type	Location	Average Monthly Spend	Proposed Adequate Assurance
Sprague Operating Resources LL	70638784	Natural Gas (all of Somerset)	3rd Party Gas Supplier Somerset, NJ	\$14,873	\$7,437
Suffolk County Sewer District	47120012	Sewer	225 Dixon Ave Amityville, NY	\$986	\$493
Suffolk County Sewer District	47120002	Sewer	369 Bayview Ave Amityville, NY	\$1,159	\$580
Suffolk County Sewer District	47140011	Sewer	10 Edison St Amityville, NY	\$143	\$71
Suffolk County Sewer District	47150011	Sewer	13 Edison St Amityville, NY	\$55	\$27
Suffolk County Sewer District	6747110012	Sewer	132 Lincoln St Copiague, NY	\$18	\$9
Suffolk County Water Authority (SCWA)	3000006283	Water	219 Dixon Ave Amityville, NY	\$40	\$20
Suffolk County Water Authority (SCWA)	3000023455	Water	369 Bayview Ave Amityville, NY	\$900	\$450
Suffolk County Water Authority (SCWA)	3000023556	Water	225 Dixon Ave Amityville, NY	\$100	\$50
Suffolk County Water Authority (SCWA)	3000023559; 3000023562; 3000667565	Water	26 Edison St Amityville, NY	\$780	\$390
Suffolk County Water Authority (SCWA)	3000023566; 3000060231	Water	13 Edison St Amityville, NY	\$120	\$60
Suffolk County Water Authority (SCWA)	3000502017	Water	10 Edison St Amityville, NY	\$150	\$75
Suffolk County Water Authority (SCWA)	3000624863	Water	132 Lincoln St Copiague, NY	\$20	\$10
Verizon	652-751-123-0001-75 552-067-128-0001-72	Telephone/Cable/Internet	Multiple	\$418	\$209
Verizon Wireless	242075491-00001 780310794-00001	Telephone/Cable/Internet	Multiple	\$27,641	\$13,820
Vonage Business Solutions Inc.	171606	Telephone/Cable/Internet	Multiple	\$970	\$485