

Nathan Ochsner, Clerk

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) Chapter 11
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) Case No. 23-90901 (MI)
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) (Jointly Administered)
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) **Re: Docket No. ____**



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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 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 having heard the statements in support of the relief requested therein at a hearing before this Court; and this Court having determined that the legal and factual bases set forth in the Motion 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 Adequate Assurance shall constitute adequate assurance of future payment as required by section 366 of the Bankruptcy Code.
2. The Debtors are authorized, but not directed, to deposit the Adequate Assurance Deposit in the amount of \$90,000 into a segregated bank account for the benefit of the Utility Providers within twenty (20) days after entry of this Order.
3. The Debtors are authorized, but not directed, to pay on a timely basis and in accordance with their prepetition practices all undisputed invoices for postpetition Utility Services provided by the Utility Providers to the Debtors.
4. All Utility Providers are prohibited from altering, refusing, or discontinuing Utility Services, or otherwise discriminating against the Debtors, on account of any unpaid prepetition charges or any perceived inadequacy of the Debtors' proposed Adequate Assurance.
5. The following Adequate Assurance Procedures are hereby approved:

- a. The Debtors will serve a copy of this motion and the Order on the Utility Providers on the Utility Service List within five (5) business days after entry of the Order.
- b. The Debtors will deposit the Adequate Assurance Deposit, in the aggregate amount of \$90,000, in the Adequate Assurance Account within twenty (20) days after entry of the Order.
- c. Each Utility Provider will be entitled to funds in the Adequate Assurance Account in the amount set forth for such Utility Provider in the column labeled “Proposed Adequate Assurance” on the Utility Service List, subject to such Utility Provider’s compliance with these procedures.
- d. If an amount relating to Utility Services provided postpetition by a Utility Provider is unpaid, and remains unpaid beyond any applicable grace period, such Utility Provider may request a disbursement from the Adequate Assurance Account by giving notice to (i) the Debtors, Attn: Christopher Wiles (wilesc@anagramintl.com) and Alan Dalsass (alan.dalsass@ankura.com); (ii) the Office of the United States Trustee, 515 Rusk Street, Suite 3516, Houston, TX 77002; (iii) proposed counsel to the Debtors, Simpson Thacher & Bartlett LLP, 425 Lexington Avenue, New York, New York 10017, Attn: Sunny Singh (sunny.singh@stblaw.com; (212) 455-3470), Nicholas E. Baker (nbaker@stblaw.com; (212) 455-2032), Moshe A. Fink (moshe.fink@stblaw.com; (212) 455-3261), and Ashley Gherlone (ashley.gherlone@stblaw.com; (212) 455-7496); (iv) counsel to the Ad Hoc Group; and (v) counsel to the ABL Agent, Wells Fargo Bank, National Association, Goldberg Kohn Ltd., 55 East Monroe St., Suite 3300, Chicago, IL 60601, Attn: Jeremy M. Downs (jeremy.downs@goldbergkohn.com; (312) 201-3893) and Zachary G. Garrett (zachary.garrett@goldbergkohn.com; (312) 863-7149), and Bracewell LLP, 711 Louisiana Street, Suite 2300, Houston, Texas 77002-2770, Attn: William M. Wood III (trey.wood@bracewell.com; (713) 221-1166) (collectively, the “Utility Notice Parties”). The Debtors will honor such request within twenty (20) days after the date the request is received by the Debtors, subject to the ability of the Debtors and any such requesting Utility Provider to resolve any dispute regarding such request without further order of the Court. To the extent a Utility Provider receives a disbursement from the Adequate Assurance Account, the Debtors will replenish the Adequate Assurance Account in the amount so disbursed.
- e. The portion of the Adequate Assurance Deposit attributable to each Utility Provider will be returned to the Debtors on the earlier of (i) reconciliation and payment by the Debtors of the Utility Provider’s final invoice in accordance with applicable nonbankruptcy law following the Debtors’ termination of Utility Services from such Utility Provider, and (ii) the effective date of any chapter 11 plan confirmed in these chapter 11 cases,

- (iii) the consummation of sale for all or substantially all of the Debtors' assets.
- f. Any Utility Provider desiring additional assurances of payment in the form of deposits, prepayments, or otherwise must serve an Adequate Assurance Request on the Utility Notice Parties within twenty-one (21) days after the Petition Date.
 - g. The Adequate Assurance Request must (i) be made in writing; (ii) set forth the location(s) for which Utility Services are provided, the account number(s) for such location(s), and the outstanding balance for each such account; (iii) explain why the Utility Provider believes the Adequate Assurance is not adequate assurance of payment; (iv) summarize the Debtors' payment history related to the affected account(s); and (v) certify the amount that is equal to two weeks of the Utility Services provided by the Utility Provider to the Debtors, calculated as a historical average over the 12-month period ending prior to the Petition Date.
 - h. Unless and until a Utility Provider files and serves an Adequate Assurance Request in accordance with the Adequate Assurance Procedures, the Utility Provider will be (i) deemed to have received "satisfactory" adequate assurance of payment in compliance with section 366 of the Bankruptcy Code and (ii) 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.
 - i. The Debtors may, without further order from the Court, resolve an Adequate Assurance Request by mutual agreement with a Utility Provider, and the Debtors may, in connection with any such agreement, provide a Utility Provider with additional adequate assurance of payment including cash deposits, prepayments, or other forms of security if the Debtors believe that such adequate assurance is reasonable; *provided, however*, that the Debtors shall maintain a summary record of such agreements and their respective terms, and such summary record and the agreements themselves shall be available, on a confidential basis, to any statutory committee appointed in these cases and the U.S. Trustee upon request.
 - j. If the Debtors and the Utility Provider are not able to reach an alternative resolution within fourteen (14) days of receipt of the Adequate Assurance Request, the Debtors will request a hearing before the Court to determine the adequacy of assurances of payment with respect to a particular Utility Provider (the "Determination Hearing") pursuant to section 366(c)(3) of the Bankruptcy Code.
 - k. Pending resolution of the Determination Hearing, the Utility Provider filing such Adequate Assurance Request will be prohibited from altering,

refusing, or discontinuing Utility Services to the Debtors on account of unpaid charges for prepetition services or on account of any objections to the proposed Adequate Assurance.

1. Notwithstanding anything in these procedures to the contrary, the Court shall conduct a hearing within thirty (30) days following the Petition Date to resolve any objections to these procedures or the Proposed Adequate Assurance in the event any are timely filed by the Utility Providers.

6. The Utility Providers are prohibited from requiring payment of a deposit or other security for postpetition Utility Services as a result of the Debtors' chapter 11 filing or any outstanding prepetition invoices, other than pursuant to the Adequate Assurance Procedures; *provided, however*, that nothing herein shall prejudice the right of a Utility Provider to object to the Adequate Assurance Procedures or propose alternative procedures.

7. The inclusion of any entity in, as well as any omission of any entity from, the Utility Service 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.

8. The Debtors are authorized, but not directed, following the giving of two-weeks' notice to the affected Utility Provider, and the Debtors having received no objection from any such Utility Provider, to add or remove any Utility Provider from the Utility Service List, and the Debtors shall add to or subtract from the Adequate Assurance Deposit an amount equal to one half of the Debtors' average monthly cost for each subsequently added or removed Utility Provider as soon as practicable; *provided* that any additions to the Utility Service List and/or increases to the Adequate Assurance Deposit shall be made within thirty (30) days after the Petition Date. If an objection is received, the Debtors shall request a hearing before this Court at such date that the Debtors and the Utility Provider agree. The Debtors shall not deduct from the Adequate Assurance Deposit the amount set aside for any Utility Provider that the Debtors seek to terminate or delete

from the Utility Service List unless and until the two-week notice period has passed and the Debtors have not received any objection to termination or deletion of such Utility Provider from the Utility Service List, or until any such objection has been resolved consensually or by order of the Court. This Order shall apply to any such Utility Provider that is added to the Utility Service List, but only if the addition is made in sufficient time to comply with the deadlines in section 366 of the Bankruptcy Code. For Utility Providers that are added to the Utility Service List, the Debtors will cause a copy of this Order, including the Adequate Assurance Procedures, to be served on such subsequently added Utility Provider. Any Utility Provider subsequently added to the Utility Service List shall be bound by the Adequate Assurance Procedures.

9. 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 there are no outstanding disputes related to postpetition payments due.

10. The relief granted herein is for all Utility Providers providing Utility Services to the Debtors and is not limited to those parties or entities listed on the Utility Service List; *provided*, that timely adequate assurance must be posted in favor of all Utility Providers in accordance with the time deadlines in section 366 of the Bankruptcy Code.

11. The Debtors are authorized, but not directed, 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 the relief granted herein.

12. The banks and financial institutions on which checks were drawn or electronic fund transfer requests made in payment of the prepetition obligations approved herein are authorized to

receive, process, honor, and pay all such checks and electronic fund transfer 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 fund transfer requests as approved by this Order.

13. Notwithstanding the relief granted herein and any actions taken pursuant to such relief, nothing in the Motion or this Order shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable non-bankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in the Motion or any order granting the relief requested by the Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (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 that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in this Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

14. Notwithstanding the relief granted in the Motion or this Order, any payment made or to be made by the Debtors pursuant to the authority granted herein, and any relief or authorization granted herein, shall be subject to and in compliance with each interim and final

order entered by the Court in respect of the *Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, (B) Use Cash Collateral, and (C) Grant Liens And Superpriority Administrative Expense Claims, (II) Granting Adequate Protection to Certain Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief*, filed substantially contemporaneously herewith (collectively, such interim and final orders, the “DIP Order”), including compliance with any budget or cash flow forecast in connection therewith and any other terms and conditions thereof. Nothing herein is intended to modify, alter, or waive, in any way, any terms, provisions, requirements, or restrictions of the DIP Order, the DIP Notes Documents (as defined in the DIP Order), or the DIP ABL Agreement (as defined in the DIP Order). To the extent there is any inconsistency between the terms of the DIP Order and the terms of this Order or any action taken or proposed to be taken hereunder, the terms of the DIP Order shall control.

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

16. Notice of the Motion as provided therein is hereby deemed good and sufficient notice of such Motion, and the requirements of Bankruptcy Rule 6004(a) and the Bankruptcy Local Rules are satisfied by such notice.

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

18. The Debtors are authorized, but not directed, to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

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

Signed: November 10, 2023

A handwritten signature in black ink, appearing to read 'M. Isgur', is written over a horizontal line.

Marvin Isgur
United States Bankruptcy Judge